

WATER RIGHTS NEGOTIATING SESSION
among the
CONFEDERATED SALISH AND KOOTENAI TRIBES
MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION
AND UNITED STATES

9 00 a m
At KwaTukNuk
Polson, Montana
December 18, 2002

Chris D Tweeten, Chair
Montana RWRCC

Opening Prayer and Song 8 30 a m

Opening Statements

Work Group Presentations and Discussion

Data and Technical Work Group

Claims Examination Work Group

Administration Work Group/ Interim Plan

Public Comment

Concluding Remarks and Summary

Water Rights Negotiation Meeting between the
United States, CSKT and the State of Montana
Hosted by the State of Montana
At KwaTukNuk, Polson, Montana
December 18, 2002

Federal Negotiating Team

Chris Kenney
Rich Aldrich
Cheryl Willis
Scott Miller
Bernie Burnham
Robert Grace

CSKT Negotiating Team

Clayton Matt
Fred Matt
Brian Litscomb
Lloyd Ervin
Ron Trehan
Maggie Good
Pat Pierre
Joel Clairmont

State Negotiating Team

Chris Tweeten
Susan Cottingham
Anne Yates
Tara DePuy
Cindy Younkin
Bill Tash
Candy West

Chris Tweeten As far as opening statements are concerned, we'll turn first to the Tribes, Clayton?

Clayton Matt Thank you, Chris We've put a lot of time into our discussions and our negotiations and we want to welcome you again back to the Flathead I will start by saying welcome to the homeland of the Confederated Salish and Kootenai Tribes Welcome to all the travelers from Washington DC as well And welcome to all who are friends and neighbors here

We've spent a lot of time in recent weeks and months talking to a lot of you to help explain this process and help explain some of the issues Some of you are more well

versed in that today now than others. Some of you are still learning. We hope today to try to shed some more light on some of the process that we've been through to try to make as clear as possible where we are today. Welcome. We thank you for being here.

I think an important part of spending time at the meetings we've spent recently in past months is that we continue to build relationships between the Tribe and the local community and I think that lots of people who have lived here already understand the importance of those relationships because without that relationship, without those working relationships that already exist between the Tribe and the communities, between the Tribe and the municipalities, between the Tribe and all other water users on the reservation, things just would not work. So a lot of those relationships are already there. And I think that part of our job in these negotiations is to continue to try to reassure people that those relationships will continue to be strong and viable into the future. That is the intent of the Tribe.

Before I get into the main body of my opening remarks, I just wanted to talk just a little bit about the fact that when I talk it's not just me that's talking. We have a negotiation team that consists of the Tribal Chairman Fred Matt, vice chair Amy Hermall, Tribal Council representative Ron Trehan, Lloyd Ervin, Maggie Good, Joe Clairmont, Tribal attorney Ronald MacDonald, myself, Francis All, Pat Pierre, Abe Piture and Brian Litscomb. That constitutes the formal Tribal water rights negotiation team.

We spent a lot of time talking about these issues and we spent a lot of time talking about these issues with the Tribal Council. They are fully apprised and aware of the status of the issues we are going to talk about today and have authorized us to come here and make the statements that we are going to make today. So when we talk about these things we're talking about them because there is a deep interest and deep involvement by the Tribe in this process.

These negotiations are about the settlement of Tribal, aboriginal and reserved water rights for the Confederated Salish and Kootenai Tribes. And the Tribes have been more than patient in this process. And to that end we want to explain a little bit of history for some of you who have not attended of these negotiation sessions in the past.

Negotiations began proper in the 1980's actually. The Tribes met a few times with the State of Montana and then in that process after that process the State of Montana legislature charged the Compact Commission with some different priorities. And they went off and negotiated settlements in different parts of the state. In 1995 then the Tribes reestablished the Tribal water rights negotiation team and we began requesting that negotiation commence. In the year 2000 negotiations finally commenced. And this is the fourth session since they began. And in June of 2001, the Tribe proposed a framework for negotiation negotiating its water rights titled "A Proposal for Negotiation of Reserved and Aboriginal Water Rights in Montana."

The basis of our proposal is simple. As a sovereign Tribal government, the Confederated Salish and Kootenai Tribes take the position that the reservation water is a Tribal unitary resource that should be managed by the Tribe. The proposal recognizes that there are existing junior users and uses throughout the reservation and that the Tribe proposes that those uses be administered by the Tribal water administration program.

About a year ago in February at a negotiation session in Missoula, the Tribe agreed to move forward with the State and the United States and create three working groups. One working group to talk about administration issues, one to talk about claims examination issues and one to talk about data and technical issues.

The State then invited the Tribe at that time to consider discussing interim administration issues. The Tribe agreed to move forward based on two fundamental principals, one, the viability of the Tribal proposal and two, due consideration and concern to do what is best for the reservation community.

Today our goals are one, to move these negotiations towards long-term settlement discussions preferably based on the June 2001 proposal. We believe this is in the best interest of all parties and in the best interest of the community. We believe it can be accomplished within five years. We believe it is a fair approach and deserves serious consideration by the State. And two, we want to advance interim negotiation discussions. We should agree to advance these discussions based on current Federal position of revocability or we should move on to long-term settlement discussions. We believe it is time to fish or cut bait. Further, discussions on claims examination and data may depend on how we advance these issues. These negotiations are vital to the Tribe. They represent the past and the present and the future of our people and for all the people on the reservation. The State of Montana Supreme Court has recognized that the Tribe owns its water and that water rights are extensive and pervasive, prior and preeminent. We intend to keep it that way but we do not intend to hurt anyone in the process. So let's get on with some meaningful settlement discussions that will perfect the Tribal right to manage its resources. Thank you.

Chris Tweeten Thank you, Clayton. Chris, do you have an opening statement on behalf of the Federal team?

Chris Kenney I think the only opening statement the Federal team would like to make is I think it's helpful after some time is past is to remind folks that the United States' primary responsibility is trustee to the Tribe. The United States is responsible for protecting trust assets as those assets are identified.

Many years ago, the Department of the Interior and the United States realized that litigating and fighting over trust assets was harmful not only to the non-Indian populations within the Indian communities but it was probably not helpful to the Indian communities as well because of the time and expense involved and so the reason there is a Federal negotiation team here is to, and to reiterate Clayton's point, is to try to put

together a working relationship and partnership with the Tribes and the other folks in the Indian community on the reservation that will assure a working relationship that is successful and helps grow to improve the use of the resource in the future. That's what the federal team is here to do as a trustee and as a negotiation team and that's what we continue to do and we're hopeful that we can move forward and find some success in the near future. Thanks

Chris Tweeten Thank you, Chris. On behalf of the State team, first of all I want to thank the community here on the reservation in Lake County for the hospitality that they show us every time we come up here to meet. It's very much appreciated on the part of our team.

Our team exists as a representative of Governor Martz in the conduct of government-to-government negotiations. That's the policy of the State of Montana in dealing not just with the Tribes here on the Flathead Reservation but with Indian tribes throughout Montana. And it's been the policy of the governor's office for some time to conduct these negotiations on a government-to-government basis to try to resolve those issues that continue to divide the State government from the government of the various tribes across the State of Montana.

I appreciate Clayton's effort to put the discussions in a historical perspective and generally agree with most of what he laid out. We agree with the general objectives that Clayton laid out with some reservations. First, I think the primary objective of all the negotiating teams is the first objective that Clayton outlined which is to move these discussions toward a final settlement of the issues that continue to confront us with respect to the allocation of water on the Flathead Reservation. We also, I think, agree generally with the second goal, which is to advance the discussions with respect to an interim proposal.

I think, with respect to the history that Clayton outlined, there is one important aspect to that history that Clayton omitted and that is that several years ago, several years prior to the time when the negotiations began again in earnest in the year 2000, governor Racicot then came to the reservation and proposed to the Tribes that we engage in discussions over an interim plan. And at that point, we received a formal response from the Tribal government rejecting that overture from governor Racicot and it was only later, when the negotiations began in earnest, that the Tribes came around to the idea that an interim agreement might be something that they would want to talk about. We've been interested in pursuing an interim agreement for some time. Since the first litigation in the recent series of three cases that went to the Montana Supreme Court was decided by the court, it's been apparent to the State representatives that an interim agreement is important for the welfare of the people of this area of Montana. And we've been pursuing that ever since and we were pleased at the meeting in 2000 that the Tribes agreed to pursue discussions with respect to an interim agreement.

Historically, we then appointed our negotiating teams and went forward with those discussions, I think significant progress was made in trying to identify a framework for the permitting or licensing or allowing of water uses on the reservation during the period of time that this limbo status imposed by the Supreme Courts' decisions has existed and will continue to exist until we have a final quantification of the Tribes' water right. I think we've made significant progress in trying to identify what that framework might look like but there are issues that continue to divide us and the irrevocability issue is one that I think that we're going to be talking about later when we get around to presenting our various viewpoints with respect to the report of the working group in administration which is the one that has been working on the interim plan.

There are other issues though, in addition to irrevocability, that remain to be resolved and in fairness I think it needs to be pointed out that the State team has been pushing for a resolution of some of those issues on parallel tracks with the resolution of irrevocability issue. For example, we've been talking for some time about the need to identify criteria that would be used in deciding whether one of these State Tribal licenses would be issued. As of yet, those criteria have not been identified. We've indicated from our side what we think those criteria need to include, understanding that other parties may have additions that they want to make. But the other parties have not yet identified what those additions might be. And this is one example of some of the issues that we've been trying to press forward on at the same time. So if we are able to resolve the outstanding issue with respect to the question of whether we can have an interim agreement that provides for licenses for water uses that are unilaterally revocable, we're not done yet.

We have other things we need to resolve in addition to that and some of them are going to be simple issues and some of them may not be simple. So we remain hopeful that there is an interim agreement there to be reached if there is one that can be reached in a way that's fair to all parties and that provides realistic and tangible benefits to the water users in this area, we're going to do everything we can to find that agreement, to put it in writing, to get whatever legislative approval we need to put that agreement into practice so that water development can continue on the reservation in an orderly way while we continue our work in reaching a final compact.

We remain committed to those goals but you need to understand that our commitment does not extend to the point where we will make an agreement that we think is not in the best interest of the water users in this area or an agreement that we don't think can secure the necessary approval of the Montana legislature. We're not committed to making an agreement at all costs and we don't think that a bad agreement is necessarily better than no agreement at all. So we will work very hard to try to reach an agreement that protects your interests as water users and that provides you with tangible benefits and gives you a way to continue to develop water uses on the reservation and we'll do everything that we can to reach that agreement, that fair agreement that recognizes the interests of all parties is out there to be had.

So with that, I'll conclude my opening statement and will proceed to the next item on the agenda, which is work group presentations and discussion. And we'd like to take these in order and deal with the ones that are likely to be less controversial first and save the interim administration issue for the final agenda item in this category. We have a working group on data and technical issues and we have a report from them.

Susan Cottingham I guess, Clayton, we hadn't talked about who wanted to start on the technical one. Do you want to or do you want me to start?

Clayton Matt I can simply report that after there had been some review of some data we received a letter it's been some time since we received that and I think recently we finally sent a letter back to you suggesting some language that, proposing some language that would be the basis of your sign off basically on the review of data as we go through that process and if you're ready to respond to that today, that's fine, if not, as far as I understand, that's where we're at.

Susan Cottingham Let me make a preliminary response. I think we probably need to have some more discussions about it. The letter Clayton mentioned was after we had gotten some data from the Tribe back in the spring and reviewed it and then the State technical folks got together and we wrote a letter to the Tribe requesting a bunch more data, all of this involves hydrology and maybe to step back a little bit what we attempted to do initially was see if could take one watershed in this case the Jocko watershed and start developing joint technical information on hydrology and water use and land use and irrigation and what have you and try to get an understanding and some mutual understanding of that technical information. The Tribe itself has developed a computer model to work on hydrology and they began by giving us some information that we reviewed and then we asked for some more information and at that point I think the position stated by the Tribes that they want our technical folks to sign off on each step before we get the next set of information. And so in July when we wrote and asked for that we said we really are reluctant to do that. Our technical staff doesn't want to sign off piece meal on information. They want to be able to look at the whole picture. And that is how it stood.

We got another letter from the Tribe I believe last week basically reiterating the position that they would like for us to sign off on the data and the quality of the data that they gave us last spring before they give us the next round. I met with the technical staff and talked to our team and I guess it's fairly simple from a technical perspective that our hydrologist wants to be able to see the raw data the inputs that go into the natural flow calculations before he signs off. I don't think anybody's questioning the work that you guys have done with USGS, the quality of it. But it's hard for him as a hydrologist to say I'm okay with the outputs when I haven't been able to see the nature of the raw data and I don't think we're expecting that reams of raw data will be copied and handed off to us but if Stan Jones was just able to come and work with Seth or whoever and take a look at that data and see what the nature of it is how you did the quality control then we can move on to the next step. We're as anxious as you are to start doing that because we

really want to try to start figuring out how we can jointly cooperate on the technical data but I think there's a reluctance to say okay everything's fine when we haven't been able to see some of that raw data so if it's just a matter of coming up and looking at it and ascertaining what it's like I think we'd prefer to have it but as a backup alternative I guess if Stan could just come up and take a look at some of that We have made a step forward in the technical work and that we had requested a bunch of information from the BIA last spring and that got hung up a little bit in the approvals in DC with the whole trust case and the release of data but Bernie Burnham and Rich and others have been really helpful in moving that forward and so I think we're going to get some of that as well I don't want to belabor the point but I think we really, I have to listen to my hydrologist and he's more comfortable being able to look at some of that data and put it context before we sign off and then we can move on to the next step

Clayton Matt I can clarify a couple things The request you made for additional hydrologic information we looked at and there were five items that were listed and items two through five I think we looked and characterized as information that supports an understanding of methodology used for developing base line natural flow data for the Jocko model We don't generally have any problem with providing that The other piece of information that you wanted, the underlying data that was used to develop that in the first instance I guess we wanted to understand first of all why you need it and I think we heard a general explanation I guess there wasn't a lot of technical basis to that explanation but we did sort of imply that we might offer an opportunity for your hydrologist to come to Flathead and take a look at that and that way at least he has had an opportunity to see that And if you're saying that that would be satisfactory for that element of the data, I think we can accommodate that We need to re-verify that in terms of what we're asking for in the letter we're not asking for you to sign off on it before you see it What we do need though is some indication that there is some language that we can agree to that when you have finished reviewing the hydrologic component of the data that you can sign off on it then we can move on to the next data set And that's what we're after

Susan Cottingham I guess I'm having a hard time understanding why, I don't know, I haven't talked to your hydrologist, but I don't know that they would be amenable as scientists to sign off on something piece meal and I don't understand what the point of it is We respect that you have gathered good data we know it's going to be of high quality but our hydrologist wants to be able to have all the information at hand so that he can make a meaningful assessment of it from our technical standpoint and report to our team We seem to be hung up on the fact that you require sign off on each step of the data and I just have to listen to my folks who say why, why do we have to do that

Clayton Matt There are a couple of ways to look at this First of all, I kind of want to also look to the federal team and ask them to [garbled] briefly here in a minute because it's essentially the same process we went through with the federal team when we share data with them there was essentially a sign off that said we reviewed it we accept it at this point The difference is in the letter that we received from you there is a piece of

language in there that said you wanted to reserve the right to make changes at any time in the future I think that we're willing to say that the modeling exercise might result in some changes to hydrologic data as a joint exercise but I don't think that we want to allow Tribal data to be subject to change by the State at will just because you think that it might need change sometime in the future So we need to clarify that and come to some agreement with some kind of language that says that once you've reviewed it that obviously we think that there will be some changes in the future If there have to be changes based on modeling, but we want to not go as far as saying we reserve the right to make changes in the future, carte blanche That's not going to happen

Susan Cottingham That was not our intent to change the fundamental data We just want to be able to have some flexibility as we work on that water model as you say in the future to do that and to go back and say well maybe we could gather some additional data There was never any intention to change the Tribal data so I want to clarify that

Clayton Matt In the language we're proposing in the letter just simply addresses that If you could take a look at that and think about that that's what we're after and if we need to adjust the language a little we can take a look at that but we're looking at if we can look at some language that you would agree to, we would agree to, when you finish a data set then I think that would make us more comfortable and I'm trying to be specific about what that is at this point other than what we put in the letter

Scott Miller If I could offer two points from the federal perspective One, as you mentioned Susan, Bernie has worked very hard going through what has been a very complex and difficult process of getting federal approval for some of the documents that you requested and I think Bernie has got those now and is ready to share them tomorrow

On this point of the process the Tribe is offering, I can just report from the federal perspective That has worked very well with us We've had a number of our scientists working through the process suggested by the Tribes and I think it's worked quite well In fact it reflects, as I understand it, the general scientific process anyway You're going to start with the basic data and you're going to look at that and make sure that it makes sense and that its accurate and then you move forward step by step We have worked closely with the Tribe on some of their data and not only found it to be accurate but have found the process to be workable, productive and efficient

Susan Cottingham Well, we've had a lot of conversation since July about this but I guess we're getting closer to clarifying

Clayton Matt If you'd be willing to take a look at that language again we'd certainly be willing to consider having a hydrologist come to Flathead and look at that one element of your request Otherwise, as soon as we can conceptually understand that there will be a process we can put in place for stepping through this that we can agree to then we're ready to move on with the rest of the hydrologic methodology, which I think is basic

anyway You need to know that complete, we understand you need to know that to complete your hydrologic review of the hydrologic data of the Jocko model

The other thing that I wanted to remind you is that from the Tribal perspective, again as we move forward with any and all of these work groups, I think I made this pretty clear in the opening remarks, that is from our perspective, we're thinking about this and moving forward with this based on the concept that our proposal is a viable option here and we want to continue to move forward and what we're talking about is our June 2000 proposal that forms a basis of our negotiations So that is one of reasons that we are able and willing and want to move forward with this in its present form, also And that's going to be true with of these work groups I want to make that clear

Chris Tweeten Clayton, let me inquire about that because I'm not sure I understand it At the meeting in Missoula, last February, we responded to your proposal and we did that after careful consideration When you said in your opening remarks that you thought that your proposal deserved careful consideration and I want to assure you that it has received careful consideration on the part of the State negotiating team We've discussed it thoroughly amongst ourselves We've discussed it with the people in state government that we represent, and we've made it clear not just at that meeting but subsequently as well that we don't view that proposal as being a potential basis for a final settlement I don't think it's within the scope of the agenda today to discuss in detail the Tribes proposal beyond just reciting that historical background which is that we've made it clear from the beginning that from the first time we've addressed the proposal that we don't view it as being a framework that we think can serve as a basis for a final settlement

Now I guess I'd like to know where that leaves us in terms of discussion of these other issues in light of what you've said this morning because this is the first time we've heard from the Tribal team that proceeding with discussion of claims examination and data exchanges was in some manner contingent on the states willingness to continue to consider the Tribes proposal or to change our position if you will on the Tribes proposal

Clayton Matt Not contingent on our willingness to discuss these other issues but certainly we need to understand also very clearly what you mean by the statement you made because we also, as you're aware, have received a letter from you saying that you're not considering the proposal and so I guess when you say, make a statement that it's been considered and now it's not a viable, doesn't form a viable basis for negotiations, what does that mean?

Chris Tweeten Now Clayton, you recall when the proposal was first laid on the table, we responded with a series of written questions regarding the proposal And we had thought that we would be receiving responses, in fact we were told that we would be receiving responses to those questions at the meeting in Missoula From our perspective, we don't believe those questions have been answered The response that we got at the meeting in Missoula was for the Tribes to propose a framework for future discussion of

those questions but the questions themselves in substance have not been addressed and still have not been addressed

Based on our understanding of the proposal, we made it clear at that meeting and subsequently in the letter that you referred to that we didn't think the proposal would be acceptable to the State. I think I made it clear at the meeting in Missoula that that decision was reached after thorough and careful consideration of the proposal, of its fairness to all the parties, of its capacity to address the legal issues that were presented and to fairly address those within the context of an outcome that a court might award in a lawsuit. Because those are the kind of things that are of concern to us in first of all in convincing the legislature to approve a compact and then finally in getting the compact integrated into a water court decree. Those are the kinds of things the water court looks at and it's important that those issues be addressed and from our perspective, having viewed the proposal and considered it thoroughly and carefully at that time, we didn't feel that the proposal adequately addressed those problems. I think I made that clear at the meeting in Missoula, if it wasn't clear then it should have been clear as a result of a letter that we sent. In that letter you'll recall, the letter was prompted by the fact that it was being represented by representatives of the Tribes that the State was still considering the Tribes proposal despite the fact that we had told you at the meeting in Missoula that we did not think it would be acceptable. And we wrote that letter simply to clarify that, as of the time we sent the letter, the proposal was not being considered because we had considered it and we had given you our response to it and didn't think that further consideration was warranted. So, historically that is how we got where we are now.

Clayton Matt I've heard a couple things over time and not considering it now and saying that you considered it and just rejected it that it is not a viable option for a basis of our negotiations. I think you say that you asked the Tribe for comments based on questions. I think we did respond by saying if this proposal forms a basis for negotiation we believe that discussing administration long-term administration issues is the fundamental basis of that proposal and we haven't gotten onto long-term discussions as you're aware because we're spending all of our time on interim administration. While we think interim administration is important and we want to continue to discuss that, we also want to know and wanted to know very clearly whether or not this, our proposal, is going to continue to be rejected at this point.

Chris Tweeten Well, until we receive the information that we asked for in the questions that we posed, I think the answer is yes.

Clayton Matt So you want to consider the proposal?

Chris Tweeten We don't want to consider it or not consider it. We asked you to clarify the proposal and hopefully when the proposal was laid on the table at the meeting in Helena and you'll recall that it was our position at that time that it was premature for proposals for final settlement to be placed on the table and it was only at the Tribes insistence that that item was included on the agenda at the Helena meeting and that the

proposal was aired at that time. We received your proposal, we considered it. There were things about it that we thought needed to be clarified at that time. We asked you to clarify it in the expectation that it was a thoroughly developed and thought through proposal that the Tribe could simply and easily respond to those questions based on the process that was followed in developing the proposal. We didn't think the questions were that complicated, frankly. And we thought it was not unreasonable for us to expect that those issues had been considered and that responses would be forthcoming and in substance they were not and that's one of the reasons why we felt that it was important to consider the proposal on its face in light of the state of the information that we had then and give you a response which we gave you.

Clayton Matt So the state of the information will form the basis of whether or not you consider it or do you want to consider it? Do you want to continue to take the position that you will not consider it?

Chris Tweeten Well, Clayton, all I can tell you is that if had received responses to those questions that address the concerns that we've got regarding the proposal, regarding its viability in the political climate that it needs to survive in, in order to become a final settlement. Not just with respect to the Montana Legislature but also with respect to the water court and with respect to congress, frankly. And to give us the assurance that we need that the proposal has a solid grounding in fact in law. If we'd received responses that addressed our concerns in those areas then we're reasonable people with open minds and we would consider taking another look at the proposal in light of those responses. But until we see those responses, I can't give you any assurance that our position is going to change.

Clayton Matt Well I guess we can't give you any assurances that there's going to be any different response unless I think at this point we're responding based on the fact that we're involved in these work groups. How do we move to long-term settlement discussions if that proposal, if you're not considering that proposal. Either you want to consider the proposal or you don't. And if you're not considering the proposal there's no value in us providing you with a response. If you want to consider it we'd be glad to provide you with a response. That's the direction we would like to move.

Chris Tweeten Well, Clayton, our experience has been that you build these compacts from the ground up based on the technical data. And that's why we thought it was premature for the Tribes to put their proposal on the table when they did because in our experience without an understanding of the hydrology without an understanding of the patterns of water use that exist in the area, the consideration of formal proposals in the abstract is not helpful.

Clayton Matt It's pretty clear that your consideration in negotiations is based on negotiations at other reservations in Montana, not at Flathead and what we're saying is this proposal forms the basis of negotiations for water rights here at Flathead. Do you want to consider it or not?

Chris Tweeten Well, I think I've answered your question

Clayton Matt No I don't I think we need to know if we can move forward from here today with long-term discussions based on that proposal or not

Chris Tweeten Well, unless we get, I'll go back to what I said before

Clayton Matt Does that mean you want to consider it?

Chris Tweeten I'm not going to bandy words with you, Clayton

Clayton Matt I'm not bandying words, either At this point, the point is we're either going to provide something you're going to consider or you're not There is no sense us providing something if you're not going to consider it

Chris Tweeten I think I just told you that if you give us the answers to the questions we'd consider them and take another look at your proposal

Clayton Matt Our proposal is alive and on the table and you won't consider it

Chris Tweeten Well, no, I'm not going to make that commitment to you until we see the responses to the questions The questions form the basis

Clayton Matt Why should we provide you with a response if we're not going to have consideration of it? We're not going to be jerked around that way

Chris Tweeten Well, Clayton, I'm not jerking you around I've told you that if you provide us with answers to the questions, we'll re-evaluate your proposal

Clayton Matt That means you won't consider the proposal

Chris Tweeten I'm going to go beyond what I've said If you provide us with answers to the questions that we posed, we'll re-evaluate the proposal in light of those responses

Clayton Matt We have to take the position and would take the position that that means you're going to consider the proposal and the proposal is a viable option for us to consider in negotiations

Chris Tweeten, Well, Clayton, you can spin it however you want, I mean we can't control that

Clayton Matt I'm not trying to spin it You clarify, do you want to consider the proposal or not? That's your decision

Chris Tweeten I'm not going to go beyond what I've said. If you provide us with the answers, we'll re-evaluate our position based on those responses.

Clayton Matt Well, we can clarify Tribal position today. We can do that. And I think as we step through discussions on these work groups I think we're going to get to the point where we're going to have to stop, take a break, I want to consult with the team, make sure I know where we're at and then I do have a response because either our proposal is being considered or not and if you're saying it's not being considered then we do have another option to put on the table.

Chris Tweeten Well, in the absence of responses to the questions we're not considering the proposal at this time. If you give us responses, we'll re-evaluate that position.

Clayton Matt Then we will give that consideration.

Chris Tweeten Okay.

Clayton Matt And I think at some point in time we're going to ask for a break here and we're going to step out, we're going to talk about it, we're going to decide exactly what that means because I don't think your statement is clear at all. I don't think the state is clear at all about whether or not it wants to consider the proposal and I think that's putting the Tribe in a position where on one hand you're taking the position that you won't consider the proposal but on the other hand if we provide a response you might. But then you're in a position of saying well since you're not considering it you will reject those and in the second instance. We need something more clear than that and we can create something more clear than that and we'll be prepared to do that unless you say you want to consider the proposal. That's where we're at.

Chris Tweeten I don't think there's anything magic about the word consider and perhaps you do but I don't.

Clayton Matt Well, I think the Tribal Council and the Tribal negotiators here that I've been talking to don't think it's magic either but I think that if our proposal is due serious consideration or a straight answer that says it's not being considered.

Chris Tweeten Let me just go back to what I said before. We gave it serious consideration based on the information that was provided to us and we haven't gotten substantive answers to those areas of concern that we posed to the Tribes after that proposal was laid on the table. If we get that information, we're prepared to re-evaluate that position.

Clayton Matt You tell us you're considering the proposal, you'll get that information.
Period.

Chris Tweeten Clayton, I'm not going to bandy words with you I mean the word consider is not magic for us And I've told you what we will do and if we get responses to the substantive questions

Clayton Matt I'm not sure what you'll do You might just turn around and say well we're not considering it because we don't like it

Chris Tweeten Well, we might say that if the responses are such that they don't address the concerns that we've posed then we're not going to make a commitment that just because you give us a piece of paper that lists responses to certain questions we're going to turn our position around and put the Tribes proposal back on the table If those responses adequately address the concerns that we pose, we're willing to re-evaluate our position but I'm not making a commitment to do that until we see the responses

Clayton Matt I think for the public we need to move on to these other discussions then we're going to take a break and I think we're going to talk about where we're at here in a few a minutes but maybe you can entertain me with an answer to one additional question In other negotiations, what is the concept that you have proceeded with in terms of negotiations with other tribes in the State of Montana? What is the concept of putting a proposal on the table if we put a proposal on the table that's all it really means is that it's a proposal and we expect that should receive consideration If our proposals can't receive consideration then what is the nature of the negotiation?

Chris Tweeten Well, Clayton, I question the premise of your question Your question seems to be premised on the idea that we didn't consider your proposal Obviously we did consider it We studied it We studied it seriously enough that we had a series of questions that we posed to you based on the proposal That was an attempt on our part to put some flesh onto the framework that the Tribes had laid out How could we have done that had we not considered your proposal? Clearly, we considered the proposal and the premise of your question that we didn't consider it I think is inaccurate

Clayton Matt But you're not now? But you're not now considering it, and that's the answer I think we [garbled] hear

Chris Tweeten Well, we're not at the present time because we haven't gotten the information we asked for

Clayton Matt Maybe now is a good time for us to take a break and we should probably visit

Chris Tweeten Certainly, that's fine with us

Caucus

Chris Kenney In the interest of dramatic flamboyance, I read from Ciotti 3 “There may be no water left to appropriate on the Flathead Reservation because the Indians own it all ”

The reason I read that is because as I heard the dialog between Clayton and Chris Tweeten, what kept occurring to me is that they’re not talking about the same thing I believe the United States, and we have said so in Helena, we have reservations about the white paper And mainly our reservations, I think, are basically process oriented But we have no reservations about the underlying premise of the white paper, I think, based on what we understand And our underlying premise is that until this negotiation and dialog with the State of Montana and the Tribes shows us the technical information and analysis of where the water use is and what the best use of water is on this reservation and how the best use to put the water and what we can do to help everybody on the reservation continue to have viable lives and economic lives on the reservation, we believe that the Tribes do own all the water based on the Tribes treaty and how the reservation was established and what purposes they have to put to the water The United States has no basis for assuming anything other than the Tribes own all the water on this reservation That’s what we believe going into this

And because of that, we believe that negotiating the Flathead Reservation, the Confederated Salish and Kootenai Tribes’ claims, is going to be a uniquely different process And what I think the Tribe is asking and what I propose is that the Tribe is asking for the State to consider some changes and difference in approach to how we negotiate this water rights claim I can’t, I’m not going to speak for the Tribe, that’s my supposition But that’s where the United States comes from and I think that is what I was hearing in this proceeding dialog and if those underlying understandings and premises are what we’re having confusion about then I think that’s what we need to discuss

Clayton Matt I do not get completely away from the data question which was one element we were talking about and kind of sprung us off into this other area and I think at the last negotiation session, probably at the last couple, we’ve talked about data sharing and I just want to make it absolutely clear that the Tribe took the position that it’s committed to data sharing but we also, I think through dialog at least through questions to you, to the State, understand that in terms of data sharing, data sharing in and of itself is kind of a misnomer because I think it’s pretty clear that the bulk of the data that can really be brought to bear on the problem we’re trying to solve here in our negotiations is held by the Tribe

There is some public data and information out there that I think the State is starting to look at and starting to gather and starting to collect But in terms of information that is really characterized as that can shared then back to the Tribe, there isn’t really that big body of information I think it’s important to understand that from the Tribal perspective, we took a position of wanting to share data and do a very deliberate approach because we only want to do this one time and we’re not going to get carried away with dumping a

truckload of data on you. We're going to do this as we need it and try to solve the problem as we go.

We made the statement in the opening remarks that one of our goals today is to advance our negotiations toward long-term settlement discussions. I think that is an important principal. When we put our proposal on the table back in June of 2001 and when we verbally presented that to you in the previous meeting in Helena we think it's important to recognize a number of things out there. One of the things to recognize in that whole exercise is that we're going to negotiate water rights at Flathead the way that makes sense to negotiate water rights to the Confederated Salish and Kootenai Tribes. This is not going to be necessarily negotiated the way you might be familiar with negotiating water rights at say one of the other reservations. That was good for them. This is what's good for us.

This proposal, we believe, is absolutely reasonable. The legal basis for it is explained in the proposal itself. The proposal, we think, addresses some fundamental points. One, that the United States owns the water in trust on behalf of the Confederated Salish and Kootenai Tribes and you just heard the United States position on that. And I think that what's important about that is that the Tribe is trying very hard to be reasonable in its approach, trying very hard to find and balance and perspective in a way that we can offer an opportunity to form a basis for the negotiation that will be good for everyone and in that the proposal recognizes the existing junior water users throughout the reservation. The Tribe has said that. And I think the important part about not considering it at this point is to say well it doesn't matter that you're considering it because we just don't really like what you're saying anyway. Then it says that because we own it and we're recognizing existing uses that we want to develop an administrative mechanism and a process for admin and water rights on the reservation that would be fair to everyone. Therefore the real meat in negotiation based on that proposal is to negotiate and find a process for negotiating the elements of a water administration plan on the reservation. So all of those questions that you had for us some of which were legal, some of which were technical, are answers came on two ways when we first answered that back in Missoula. First of all it was we don't have all the answers for you today and that was what we said then. And we'll say it again, we don't have preconceived answers for you today. We could go off and develop single-handedly a water administration plan for the reservation but our proposal says that we want to negotiate that. That can't happen if it's not under consideration. We think that that's a fair approach.

Given that that's not being considered and I think that we want to take a different approach to our discussions from here on and we want to suggest that we will move our negotiations in a different direction based on [garbled]. First of all, as far as the Tribe is concerned you can always return back to the table to discuss that proposal, we do not intend to remove that proposal from the table. As far as the Tribe is concerned that will continue to be a viable source and basis for negotiations for the Tribe. Since you are not considering it however, and I think it's important for us to look at maybe a different approach at this point simply because we need to meet that goal to advance these

negotiations toward long-term settlement discussions. For us, that's going to mean that we are going to go set the proposal to the side, keep it available if we want to return to it because we think it's an absolutely reasonable approach and I think it makes sense not only to the Tribe but to the people of the reservation who are going to have to depend on that in the future.

Then we have to go off now and quantify water rights on the reservation and develop a quantification proposal. As we do that we want you to be clear that we are not breaking off negotiations. We want that proposal to be considered and when you're ready to we'd like to hear from you on that.

We are also saying that interim administration is important and we think we need to get to the bottom of that and find a solution to that and we want to continue discussions on interim admin.

However on the other two points of the work groups, claims examination and data sharing, we are going to take a very serious look at whether or not we should even continue with those because if we take this other approach, they may not be necessary.

That is the basis of where we want head with this. And I think that it makes it very clear for the Tribe and for the public and hopefully for you. Thank you.

Chris Tweeten First of all I guess our understanding had been that back at the meeting in Missoula we had essentially understood that the Tribes were willing to put their proposal off to the side and proceed down this working group process. So your expression today of a willingness to do that to set your proposal to the side and look at other approaches I think is very positive and we appreciate that. We thought that's where we were back then and we certainly glad to hear that's where we may be headed today.

With respect to data and claims examination work groups and the necessity for continuing those efforts, obviously until we understand more about what this alternative approach is that you wish to discuss, we can't respond to your suggestion that those may not be necessary, that those processes can be set aside. Is there some timetable in which we might expect to know what this alternative route that you discussed will be?

Clayton Matt We're going to go off and quantify water rights and we're going to put a proposal together and we're going to give it to you and it might take two years to do it.

Susan Cottingham So Clayton, just to clarify, that means that in the meantime you're giving serious consideration to not having any of the working groups, we'll just put everything on hold, we would each do our own technical work.

Clayton Matt Let's be very clear and step back to the interim administration discussions. Interim administration discussions have to continue. In terms of the other two, we're going to give very serious consideration to not continuing with those.

Chris Tweeten Clayton, I don't understand why it makes sense for the Tribes to go and unilaterally develop a proposal with respect to a quantification of water rights. Wouldn't it be preferable to do that collectively and collaboratively in a negotiated process in which all three of the parties can have input rather than the Tribes come back and say, "we've done this work this is what we think now you take two years and go tear it apart and come back with your take on the same issue." Don't you think it will advance the ball faster if we do that jointly through the negotiated process rather than having the Tribes go and do it on their own and then come back and sort of give us a package that we can then either accept or reject, I'm not sure that's going to be productive.

Clayton Matt We proposed a solution and you're not considering it and I think that this is our alternative and we don't think it's going to be any less fast than any of the other alternatives because I think within a couple years we can have a proposal on the table.

Chris Tweeten Well, I'd like you to consider, let me find another word, I'd like you to think about whether it doesn't make more sense for us to develop that quantification if that's the route we're going to take, collaboratively.

Clayton Matt That's the route the Tribe is going to take and I think what's important about it and I want to make sure it's really clear even if we take this approach the viability of the proposal in the Tribes mind and those elements of the proposal that I just described still make sense to us. We're claiming ownership in the proposal you want to consider the proposal, fine. We'll go off and quantify the right and even the State of Montana Supreme Court has said the Tribe owns its water. We'll quantify that we own it. We have accomplished the same principal. We then have the opportunity to develop a water administration scheme for the administration of Tribal water resources. And we will do that and we will give very serious consideration to including existing uses. How we do that I think will be determined in the water administration package but if we can't continue to get on with long-term negotiations based on this proposal we're saying we need to get on with our settlement process and this is the alternative approach that we're going to take and I think it's time we get on with it.

Chris Tweeten Well, I have serious concerns about whether that's going to be a constructive way to approach these negotiations, frankly. Because I don't think a series of solutions unilaterally developed by the Tribes and then placed on the table in the way you're suggesting would be done, I don't think that's a process that is necessarily designed to or necessarily will produce consensus among the parties. It seems to me that's designed to produce a series of almost ultimatums on the part of the Tribe saying you may take this proposal if you don't like that we'll give you another one and you can take that or leave it and I don't think that's

Clayton Matt Let's step back here.

Chris Tweeten Let me finish. I don't think that

Clayton Matt And not paint the Tribe in a negative light here because it is not the Tribe that's the bad guy here We're certainly not saying that anyone else is the bad guy here but you can paint your own picture, don't paint our picture for us We're going to take the opportunity to do what state law says State law says that these negotiations are settled Tribal water rights Let's go do it

Chris Tweeten You can obviously do what you want and how that fits into the process of negotiation I guess remains to be seen I just want you to understand going in that speaking on behalf of the commission, I have serious concerns about whether that process is actually going to be productive, constructive and as to whether it's designed to lead to the kind of consensus that we're going to have to have to get a compact that has the support of the three negotiating teams, the support of the water users both Tribal and non-Tribal that are going to be affected by it and it can ultimately get the support of the Montana legislature, the congress and the Water Court I think we need to keep in mind that this is a long process that has many steps

Clayton Matt Absolutely, but we're defining the process and it is, as I said in our opening remarks, not our intent to hurt anybody so we'll see where that goes because it's not our intent to hurt the people here in this valley In fact, we intend to work together with the people of this valley So we just need to get on with it and we can't continue to wait for you to be ready to consider our other proposal because that is the solution, that really is the solution So that's where we're at

Chris Tweeten So is the outcome, Clayton, going to be that we either accept your original proposal or something that gets you to your original proposal or there won't be a compact?

Clayton Matt I don't know That'll be for you to decide We're going to go quantify our water and bring the numbers to you

Chris Tweeten But from the Tribes perspective

Clayton Matt From the Tribes perspective we're going to go quantify our water and bring the numbers to you

Chris Tweeten And what I've heard you say is that you're going to quantify your water right in such a way as to reach the conclusion that all the water within the reservation belongs to the Tribe, is that correct?

Clayton Matt Well, our proposal already says that

Chris Tweeten So, am I correct in understanding that after this two-year process that you're going to follow to quantify your water right, you're going to come back with a conclusion that all the water belongs to the Tribes?

Clayton Matt You're catching on

Chris Tweeten Well, I don't know how that advances the ball

Clayton Matt I think how that advances the ball is that we get through the quantification of the Tribal right and we develop an administration scheme that we think is fair to everyone. What that looks like will be dependent on how we develop that. And if you want to join us in doing that, our proposal is on the table.

Chris Tweeten Well, I guess

Clayton Matt If you don't want to join us in doing that then we're prepared to move forward and we just need to get on in doing that and if you want to paint the Tribe in some negative light that we're out to hurt people here in this valley, go ahead and try. But we're not there to do it.

Chris Tweeten Clayton, nobody said that. I don't think that's a fair characterization of anything that's been said this morning. So I

Clayton Matt We're not here.

Chris Tweeten Don't think it helps to put the discussion in that context.

Clayton Matt We're not here to threaten the local water users. We are here to protect the water resources in the reservation and manage them. So that's the reason we're doing it. That's it. And I think the United States supports the position in terms of at least as far as what you heard them say here a few minutes ago.

Chris Tweeten We've also considered as the United States has, the legal basis of the Tribes proposal and frankly we disagree with the premise based on our review and our research and the study that we made of your proposal at the time it was put on the table. So there is a fundamental disagreement with respect to the underlying basis of the Tribes proposal.

Clayton Matt We have a solution for getting to this, we've just offered it and I guess the next question is do you want to continue discussions on any of the other work items at this point because that's where we're headed in terms of the overall strategy.

Chris Tweeten I think it's probably appropriate to move onto the discussion of the interim plan at this point because I do think it's important and actually the whole purpose of this meeting being held at this time was to inform the people in the community with respect to the status of those negotiations and to get input from the public with respect to the discussions that we've had on the interim plan.

Clayton Matt In your opinion, I think these negotiations are much broader than that Do you want to talk about claims examination issue before you get to that?

Chris Tweeten I think we can provide information for the public with respect to what the status of that is And if there is a point to discussing it, I guess we can Based on what you said, I'm not sure there is If the Tribes position is that those things are going to be set to the side and not pursued

Clayton Matt Your choice

Susan Cottingham I guess what we were just going to say today was the claims examination one was the furthestest one along, I think We have had some very productive drafts going back and forth it's taken awhile but everybody did agree that we wanted to go forward with the claims examination on the Jocko The DNRC had provided a staff person to do so and we were just trying to come up with some language for a proposed order to the Water Court and as recently as yesterday there were more discussions about it and I think we're very, very close to having some language So I guess in light of all this discussion today we'll have to see whether we want to go forward and at least put the order in to the court and see if they want to order it and then we can decide how But that was the only work group that I thought we were pretty close to moving forward and getting that done but like I said I don't know where we are with that now if you guys want to put that aside for a couple years

Chris Tweeten Does the federal team have anything to add at this point?

Chris Kenney Just a small point in clarification I stand by our characterization of the Federal position on the Tribes water rights claims I guess I would offer up that the purpose of negotiation is to try to find reasonable accommodation to what the senior versus the junior claims are on the reservation I don't know how you do that if you don't have a continuing dialog to do that And so what I would recommend and encourage the Tribe to consider is if they are going to try to quantify their right, and I think I understand what they're trying to accomplish in doing that, but if they sincerely want to continue to negotiate with the State of Montana and I'm sort of speaking for the State of Montana, you can correct me if I'm wrong but I seems to me that the negotiations are not going to be very productive if there isn't something of an ongoing dialog as that quantification process moves along

From the other side of it though I think that if I take the Tribe at their word what they've always said is that their white paper provides a basis for a dialog and discussion and that all the elements in the white paper were negotiable At least I thought I heard that at one time And that the State can see a vehicle in order to continue to dialog without trying to decide whether you're considering it or not or whether you think you need to accept it whole cloth or not I would encourage the State to consider the white paper as some kind of vehicle to at least keep the dialog open and going even if its not a traditional concept that has reached the water rights negotiations in other parts of the state because I'm

confused by our desire to try to continue to be successful and our seeming desire to try to not get together to work and put these things together in a mutually consensual kind of way And so until we find some kind of vehicle our language that will allow us to discuss these things equitably I'm not quite sure that this is going to be a healthy process

The United States will continue to try to do its own quantification As trustee, we have our own understanding of what we think we're trying to protect and our budget hasn't gotten any better from the last time I told you about our budget so we will try to be doing our best to try to bring resources to it so that the United States can do what it considers its responsibility and that's partly to do the quantification process

Chris Tweeten In response to that I would say that I share many of the concerns that you've just expressed and I think for many of the reasons that you've just stated, I'm very concerned about the process that the Tribe has indicated it intends to now follow because I'm not sure its going to be constructive or productive for the Tribe unilaterally to go develop this proposal and come back and lay it on the table in two years and expect us to either take it or leave it I don't think that that's going to be helpful

Clayton Matt It might take us two years, in response, to develop that I don't think we've discounted any continued dialog I don't think that's the point at all

Chris Tweeten Well, without some understanding of the way in which you envision the other negotiating teams participating in the process of developing this quantification, its very difficult for us to respond to that right now

Clayton Matt I wouldn't expect you to have an immediate response to that right now In any case I think we just brought this out I think that we need to get started and as we move through this we'll talk about how we need to continue dialog

Chris Tweeten That's fine We have to report back to the people that we report to with regard to where things stand and after we've had a chance to discuss with them what the Tribe proposes to do we'll be in touch with you and we'll talk about where things go

Before we go to the interim plan discussion, there's one more process issue that we'd like to briefly bring forward and that is that's its become more and more apparent to us on the State side as we've had discussions over the interim plan and over the compact generally that our process for negotiating is not entirely functional and that ought to be apparent to anybody that's watched the discussion this morning We talk past each other a lot There are requests for information that are passed back and forth that are not responded to or are responded to in ways that are not particularly helpful And I'm not placing blame on anybody for that, I think there's probably some responsibility for that that lies with all three of the parties But the fact of the matter is I think it exists and I think it's evident to anybody that's watched this negotiation process as it's gone on

We have talked for some time and suggested for some time that the parties ought to consider some third party neutral to join us and to participate as a facilitator or mediator or whatever you want to call it in trying to help the parties find some direction to their discussions and trying to direct traffic between the parties with respect to communications back and forth to avoid the kinds of semantic debates and dialogs that we've had this morning as an example

We think its time to revisit that issue We think that having somebody available to the parties to provide some structure to these discussions and to make sure everybody understands what's going to be discussed and that information is passed back and forth in a timely way and that the information that's passed is actually responsive to the needs of the parties for exchange of information can only serve to help us in communicating with each other more effectively and reaching an agreement that's fair and equitable to all parties if there is such an agreement there to be reached

I don't expect to reach an agreement on this today but we just wanted to pose the issue and let you know that we think that if we are going to make progress we probably need to need the assistance of somebody like that And we'd like to engage in some discussions in the very near future on how that might be structured and who that person might be

Clayton Matt I'll take it under consideration In the past we didn't think it was necessary Maybe it's time we revisit that We'll certainly at least consider it

Chris Kenney The United States agrees with that as well I'll even make another suggestion or supplemental suggestion I know of a couple of firms One in particular that is very good at coming in a doing a general assessment of a negotiation through engaging the parties and this particular outfit also is very familiar with Indian water rights activities and federal process and it might be worth the expense and the effort to have them come in because I think it would be an objective third party assessment and would be something that would give us something to evaluate where we are I'm open to facilitation and mediation because I think that's probably going to be helpful but that interim step might even be more helpful particularly if the Tribe needs more objective an assessment of where we are I guess the answer is yes

Chris Tweeten I think we need to open a dialog about that and we need to do it soon We'll be in touch with you to try and get that process started

Let's move on to the administration work group and the interim plan, which I suspect is the reason most of you are here today As you know from the opening statements and probably from your attendance at these meetings before, trying to work out some method of administering and authorizing water uses on the reservation while we negotiate the ultimate quantification of the Tribes right has been an issue that has been at the forefront of consideration for the last few months In fact it's the issue on which the parties have expended the majority of their efforts this year to try to reach some sort of an

arrangement that's going to provide some relief from the vacuum that exists in terms of permitting or allowing new water uses on the reservation in the current environment

We have previously circulated to the public back I think in June an outline that explained the areas of agreement that we had with respect to that process and those generally involved the fact that there would be a joint State Tribal process that would result in the issuance of what we've called a license that would authorize people to put water to use for municipal and domestic purposes from ground water sources. As of now there is no agreement with respect to new uses from surface water. There is also no agreement as of now with respect to a process by which people could change any existing rights that they might have. Although discussions have taken place on those issues we haven't reached any sort of consensus so the consensus that's been developed thus far is limited to new ground water uses for primarily municipal and domestic purposes.

As I said in my opening statement, we don't have an agreement with respect to the criteria that would be used to decide whether one of these new licenses would issue. But I don't, frankly, anticipate the development of those criteria will be highly controversial although I think it will take some word smithing to come up an agreement that everybody can buy into.

The major stumbling block that's separating the parties now with respect to this proposal is the question of the duration of these licenses. During the discussions, the United States put forth the proposition that in order to be in compliance with federal law these licenses had to be unilaterally revocable by the Tribe with or without cause. And we've talked since then about ways in which that requirement can be addressed. What the parties have talked about most recently is a system in which the licenses would continue to be in effect as long as the parties were at the table and continuing to discuss a final compact. But in the event one party decided to withdraw from those compact negotiations or those compact negotiations were otherwise terminated, the position has been advanced that the license would at that point have to terminate.

An alternative that's been proposed is that rather than having the license automatically terminate at that point the license would be terminable at will by the Tribe with or without cause. From the States perspective, that requirement raises significant concerns because we think it raises problems for the water users with respect to whether you actually have the kind of water use that's permitted or licensed in a way that's going to provide you with the kind of certainty that you need to go get financing from a bank for example. Or a municipality would need to get financing through a bonding process. That if the water right isn't in some sense permanent or at least can't ripen into a permanent water right with some assurance, we think there's serious question as to whether it has value for those purposes and as I said before, I think one of the objectives we brought to the table is to try to make sure that whatever interim agreement we come up with provides you with a way to put water to use that actually has practical values for you.

Through this discussion over the last few minutes, I've tried to put into perspective what the bone of contention is at this point from the State side. We want to hear from you later on in the meeting with respect to your concerns about this or your feelings about whether a revocable license such as the one being described in these discussions actually will serve your purposes well enough to justify the steps that need to be taken to put that kind of a process in place. That's one of the main reasons why we're here today.

With that background and understanding that our objective is to come up with an agreement that is going to be of practical use to the water users we'd like to, during the public comment period, hear what you have to say.

What we've agreed is that each of the parties will have an opportunity to make a brief presentation regarding the interim plan. I've just made the one on behalf of the State negotiating team. At this time, I'd like to give Tribes an opportunity to make their presentation and then we'll give the United States an opportunity to make theirs. At that point, we'll shift to the public comment section of the agenda and what we've agreed among the negotiating parties is that we'll break that public comment period into I think primarily three parts. Initially, we'd like to give people the opportunity for clarification if you need any and I suspect you might with respect to the interim plan. We don't want to get into a free ranging debate about abstract political issues but we do want to make sure that we've provided you with enough information regarding the interim plan discussions to give you an opportunity to comment intelligently about the issues. So we want to give you an opportunity to ask questions about the interim plan as it's been outlined by the three parties. They may be questions we can answer, they may be questions we can't and if we can't, we'll tell you that but we will make every effort to make sure that you have the information that you need to understand what the parties are talking about and to comment about it in a way that's going to be helpful to us. So that will be the first part.

The second part will be an opportunity for you, members of the public, to give us your feedback about the interim plan discussions. And then finally, as a third segment, we would set aside a period of time that may in fact be limited to receive your input on the settlement negotiations generally. So with that outline of where we're headed for the rest of the meeting, I'll turn to the Tribes. Clayton, if you have an overview of the interim plan discussions that you'd like to present, this would be the time to do it.

Clayton Matt I would. Given that the basis of, at least as you put it, the bone of contention comes from the federal position in the modified position, I would like to request that they have the opportunity to start by making that position of their statement clear.

Chris Tweeten If that's agreeable to the Federal team.

Chris Kenney I'm about to lose my voice so I'm going to make Scott do it anyway. Scott Miller is the solicitor member of the team, which is not to say I might not have an opinion from time to time.

Scott Miller If anyone wants to jump in from our team while I'm going through providing the federal perspective on the work group discussions, please feel free

Just to start here at the beginning with a little background, I think what the States asking for, which is an interim agreement for administration of water on the reservation, is very unique. It's the first time that we, the federal government, have had to deal with that. Typically in negotiations this is something that comes at the end and after the water rights are decided and we figure on how to administer them and that is part of the compact that, as we've heard today, is going to be a long process.

The reason it's part of a compact is because it requires a change in federal law and so as part of the compact process we go to the United States Congress, ask them to pass a new law that allows us to work toward cooperative management and administration and that is signed by the president of the United States.

We definitely understand from the federal perspective the desire for interim administration and therefore we've worked diligently and creatively to try and come up with something that will work for the reservation.

The status quo is clear. What's not happening today is why we're here. There are no new state permits for water on the reservation. The State has had the opportunity to litigate that question and the Supreme Court has made its decision very clear. And so really there's no other alternative for state permits at this point so that's why we've moved forward with this interim agreement, trying to come to an interim agreement.

We've worked forward from the beginning with a number of basic principals in mind. And those include that it should be built upon close cooperation of the Tribe and the State and the Federal government and the water users on the reservation. And that's important not only for an effective administration on the reservation but also it's important as an important starting point of these compact negotiations and frankly for the future of the reservation. Without cooperation between the Tribe and the State, I think we'd find continuing disputes and so we think that needs to be a basic principal of moving forward with an interim agreement. There's got to be close cooperation.

Second basic principal is, this is limited in scope, there are a lot of things we need to address and we will address them as part of the compact. This is an interim agreement. It is temporary and it's limited in scope and we've talked about an agreement to address ground water for domestic use, which includes single-family uses, community and municipal uses. This is never been intended to solve all the problems of water use on the reservation and it's never been intended to solve them permanently. Again, that's what the compact is going to have to do.

And lastly, the interim agreement, by its very nature which will be signed I think by the three chairman here, is going to have to respect each of the three parties positions both legal and policy Otherwise disputes will remain

With that background, a couple observations I think the Tribe has offered a lot and we've come a long way As Chris Tweeten was mentioning earlier, if I recall what you said, Governor Racicot, some seven years ago, first asked for the Tribe to start talking about interim administration Evidentially their initial answer was that they were not but not only have they changed that position but we have come along with a fairly substantial proposal at this point It's a long way from where we are today which is with nothing There is no interim administration There is no state permitting at all So I think that has to be recognized, how far the Tribe has come

From the Federal perspective, this hasn't been easy In many ways we're pushing the envelope of federal law and policy Federal Indian law is not known as very flexible law and again that's why we need to go to the US Congress when we're done with the compact for them to change the law And so we've had to be very creative to get to where we're are today It's taken a lot of time, a lot of attorney creativity from the Department of Justice and the United States Department of the Interior, a lot of discussions with our bosses and amongst ourselves

I think as Chris Tweeten mentioned, the basic outline of the proposal was given out at our last meeting and that still basically reflects where we're at today Despite making progress and flushing out many of the details of that proposal I think we've really come to a dead end or better yet a fork in the road And from our perspective, we can either move forward with what we have or we can go back to the drawing board and we can look for new opportunities that hopefully will resolve the issue but we've come as far as we can go with the current proposal The main sticking point, as Chris mentioned, is basically revocability In other words, what happens if there no longer is an agreement and there no longer are compact negotiations? What happens, for example, if the State or the Tribe or any party walk away from the table to these interim licenses From our perspective, it's not possible to guarantee that the Tribe will continue to recognize the permit if the Tribe or the State walks away from compact negotiations There will be an agreement, we hope but it will be an agreement so long as the parties agree If there's no longer agreement the licenses would no longer be recognized and in that sense the permanency and certainty that Chris Tweeten was mentioning is some thing that can't be achieved through these negotiations And frankly it's inconsistent with what hopefully will not happen but which might happen which is litigation The Supreme Court, as Chris Kenney mentioned a few minutes ago, has said for all of any of us know, the Tribes own all of the water and we certainly concur If at the end of the day we find out through litigation for example that there is no more water that was available, is it not reasonable to ask the Tribes to continue to recognize those and to be bound to recognize those though they may choose to

So it's basically, what the State is asking for I think is inconsistent with the nature of an agreement that's based on cooperation among the parties. If there's no longer cooperation then there's no longer agreement. We simply can't continue to recognize the licenses that are issued there under. It's also inconsistent with the nature of these negotiations which is we will work together to try and solve the problems on the reservation through a compact. If we end up going into litigation, frankly all bets are off.

And finally but not exclusively, it's not possible as a matter of Federal law. We've been very creative to get to where we are today but we can't go any further. In getting to where we are today, from the Federal perspective, we've compromised and compromised again. As Chris Tweeten mentioned, our initial position was and remains that the Tribe has to ultimately retain the authority to revoke these licenses for whatever reasons they deem appropriate. And the State and the Federal government have no ability to require them to do otherwise. We have compromised on that position and we have proposed, and I think we hoped for good reason that this compromise would solve the problem and we could be telling you what the agreement is today as opposed to what the disagreement is today and that was, as long as this agreement is in effect any license that's issued there under would only be revocable for good cause and that would be specified in the agreement. But again, if the agreement is terminated, all bets are off. And then again we've recently offered a third compromise, which would be if the agreement is terminated, the Tribes could choose to recognize those licenses. And again, neither the State nor the Federal government has the power to require them to. And so what we've compromised and compromised again and again we can't compromise anymore. We've reached the end of our federal law and the end of our willingness to compromise.

On another point, on an issue that's been raised in recent discussions, which I think deserves mentions, not involving revocability but simply cooperation versus separation. As I said the basic principal for this agreement has to be cooperation and we have not discussed recent State proposals in depth but we have a little bit and from the federal perspective we're concerned that the State seems to be pulling away from cooperation in this interim agreement. And we think that if we move forward with the interim agreement we really need to focus on dialog between the State and the Tribe and the water users as opposed to each party doing their own work, coming back, sharing their decision. We think that's a recipe for disagreement and so we just want to emphasize the importance of cooperation to make this agreement work.

Finally and importantly, we can't afford to sit back and talk for six more months on this. It's the State's position that they need legislation to make this agreement possible. We don't agree with their interpretation of state law but again, we respect their interpretation and we understand that everybody's got to respect each party's interpretation of their own law and policy in order to move forward. And if we're going to get state legislation, as I understand it, we need to have an agreement and some language ready in the next few weeks in order to provide that to the legislature. If not we'd be waiting I think another two years before the legislature's back in session and I don't think anyone wants to wait that long to finalize this agreement.

So in summary, I think we either need to move forward with what we have, it may not be perfect but we feel strongly that it solves the problems. We've all agreed to work together cooperatively and there's no reason to think we can't make this work as it is. The only other option is to go back to the drawing board and come up with a new proposal that would not require state legislation and would avoid the State's position with regard to revocability. With that I would ask for any other comments from the federal side otherwise we would turn it back over to the Tribe.

Chris Tweeten Clayton, if I might just briefly before you take advantage of the opportunity to talk about the interim plan, I do want to respond to one thing that Scott said.

And that was the last point you made regarding the assertion that the State is pulling back from cooperation and that somehow we are impeding or not participating in the exchange of information or ideas or showing some inclination not to do that.

I couldn't disagree with that point more. We have consistently followed through with every commitment that we have made to exchange documents, to exchange ideas, to put things in writing and we've exchanged those with the parties and in many cases seemingly have fallen into a black hole because we sent things to the federal team and we get nothing in return. For example, when the idea of revocability first came to the forefront and we were informed by the federal team that there was a federal statute that you believed required that these be revocable. We asked you to put that position in writing and give us an explanation of your analysis of the statute. That was done months ago. We have yet to receive a response to that letter. Another example, after the conference call we had to set the agenda for this meeting. We agreed that it would be helpful to circulate to the public some sort of an outline of what the status of the interim plan negotiations was. Our attorney took the time and went to the effort of putting together a proposal of a draft of an outline, which was circulated, to the Tribes and to the Federal team. We received no response to that document until there was a phone call, as I understand it, between you and Anne yesterday as you were getting ready to get on the plane at which point you told her that her proposal was unacceptable and you didn't see much point in discussing it further why it was not acceptable to the federal team.

Scott Miller If I could jump in.

Chris Tweeten Just let me finish. I think it's very easy.

Scott Miller I think you're misinterpreting what I'm saying, so if I could clarify first what I meant to say which was not that the State has not been cooperative in these negotiations of the interim agreement. I did not mean that and if you thought I did, I would stand corrected. I think you have been very cooperative as far as putting things in writing, from the federal perspective, I don't think we find that's helpful. We think we need a dialog. When folks put their position in writing, it makes it more difficult to move

forward. But that's not the point, either. When I said we're concerned about the State moving away from cooperation, that specifically and only with regard to what's being memorialized the proposal to be memorialized in the agreement process itself. And that is for example, and again we haven't discussed this in depth, as license applications are proposed instead I think what the State has proposed the State would go back with it's people they would evaluate that application and make a decision and come back and share that decision with the Tribe. And the Tribe would do the same thing. From our perspective, having folks work separately and coming back and sharing their decisions on a license application is a recipe for disputes. Instead we would propose that it's important to work together throughout the process and instead of going back and doing your own work to work on things together. So I stand corrected if what I've said was interpreted as the State not being cooperative as far as the discussions we've had on the interim agreement. That is not what I intended.

Chris Tweeten Well I appreciate that, Scott, because I think that was certainly the upshot that I think we understood from what you had to say so I appreciate you clarifying that. Clayton?

Clayton Matt When we met about a year ago in Missoula, again going back to a concept that we thought our proposal was viable which was part of the reason that led us to the conclusion that we should go down the path of these interim administration discussions and overall administration discussions. First of all at that point I think you made a comment earlier that you understood that we'd put it on the side at that time. At that time, we didn't and I guess that's the reason for our discussions today. We did not, not until today.

The purpose of the negotiation session today I think also you stated a couple of times was mainly to get this issue out on the table and get public comment. I think it's a lot broader than that. I think from the Tribal perspective it has to do with having the dialog, even if we disagree on points and having the opportunity to sit and visit with people and talk about the issues, broader issues than just this particular point that we don't agree on. And I think what's important about this process is, interim administration process is, a number of things one of which I think we need to focus on what the interim admin offers, not what it doesn't offer. It doesn't offer a final solution. It doesn't offer a long-term settlement. I agree with the United States on that position.

At that meeting in Missoula, the State invited the Tribe to begin those discussions and we were reluctant before but let's be very clear about that reluctance. We believe that we can negotiate with the Reserved Water Rights Compact Commission. The original intent as we understood it that Governor Racicot proposed to the Tribe and part of the reason that we said no at that time was because the State had intended on moving this interim administration discussions into the realm of 708 provision. And that legislative language is absolutely unacceptable for us to negotiate under an interim administration proposal. We believe that negotiations with the Compact Commission is the appropriate place for that. That was the reason I think moving it to the Compact Commission made the big

difference We're glad to but it is also very clear to us that as we begun down the path of interim administration discussion that while we made progress on many fronts it was happened in chunks It didn't happen very smoothly, it happened in chunks but I think that's part of the process You put ideas on the table, you go away you chew on them awhile you come back and you agree or disagree and then you put other ideas on the table and then you reiterate that That's just part of the process but it's pretty clear with my discussions with the negotiation team and the Tribal Council that they have also been very frustrated by this process At times, we've had the feeling that it has been made very difficult for us to continue with the process and as we continue to try to find solution after solution it seems like there is always one more problem with it We need to get on with this

I have a question and maybe you can answer it at this point or maybe you can answer it later and I think that you've been talking around it, let's get direct Is there going to be an opportunity for authorizing legislation that's going to be needed to make this happen because if there isn't an opportunity for that to happen then that makes our interim administration discussions at least in terms of our discussions today almost moot So I guess we better get clarification on whether or not there's an opportunity for that and what the status of that is today

Susan Cottingham Do you mean like is there a bill direct request?

Clayton Matt Could you explain the process and so everyone understands that and that where we're at with that?

Chris Tweeten I'll answer your question and then I'll let the legislators who are at the table here fill in if I've overstated, misstated or otherwise mislead people

I think the answer to your question is yes There is an opportunity there My understanding is that there are a number of different, well, let me talk about the process first

The process that's followed is that bill drafts need to be requested by legislators and there are certain deadlines that have to be met with respect to that My understanding is that there are bill draft requests that have been lodged with the appropriate office in Helena that could be used to cover a bill to implement an interim agreement So I think that part of the process is in place at this point

In order to make use of those my understanding is that the flesh of the agreement would have to be placed in to that bill draft request sometime in mid January Obviously that is a difficulty because we've got a lot of work to do because as Scott said, if we're going to get that done in that time frame That's the second step in the process You actually have to have the language of the bill submitted by a certain deadline Obviously, the preferable way to do that is to meet that deadline because you're within the rules and there's nothing

that can happen, no discretionary action that's going to be taken, to prevent the consideration of your bill in due course by the legislature

Once that deadline passes for putting the language together and sticking it on the bill draft request and getting it introduced, then you're in the realm where people are going to be making discretionary choices about whether rules are going to be waived and whether committees are going to take action to request bills and things like that. Those are options that still exist. We have history with this in the compacting process where we come into the legislature with compacts in March and April and gotten them introduced by suspending rules and gotten them through both houses of the legislature in the space of a week or ten days, obviously not the preferable way to do things. There are a lot of ways the wheels can come off in that process if you're doing it that late. But we've been successful in doing that in the past and I would hold out the opportunity to do that with respect to this agreement as well although I as I say, I don't think that's anybody's preference with respect to how we do this. But those opportunities are there so I guess in response to your question, what I would say is yes.

The answer is yes there is a process. The initial steps have been taken to hold the place in that process for this bill if we need to do that. If that's not successful and we need to go through some of these extraordinary measures to get it considered late, that possibility is available as well although I don't think that's anybody's preference, I think there is certainly an opportunity for us to attempt to do that.

Now we're fortunate, I think, to have on the Commissions negotiating team some influential legislators. We have the chairs of both of the natural resource committees sitting at the table this morning. I'm confident that if we came up with an agreement that had an adequate level of support in the community and that all of the negotiating teams were prepared to embrace that we could, with some expectation of success, go to the legislature and ask them to take some extraordinary steps to consider it outside the normal process and I think we'd have a reasonable chance to be successful at it.

Susan Cottingham I just wanted to clarify one thing. One of the things that the parties haven't really spent huge amounts of time on is what the shape of the legislation might look like. Whether it would amend certain statutes of law and I think that we thought that we really needed to have the sum and substance of the interim plan decided on before we could figure out how to amend state law to deal with that. So there are probably all different kinds of options of how that legislation would look. I don't know that any of us have agreed on that so there's still some work there yet to do even if we got the interim plan as to how we would, in my view, we should look at the simplest way to give us authority to do that interim plan and move forward. There's all different kinds of ways we could approach it in terms of an actual bill draft.

Clayton Matt Good [lead] into my next follow up question which was are we talking about, and I couldn't quite pick out from what you were saying Chris, actually getting this agreement into legislation or just some authorizing legislation?

Chris Tweeten I think that is what Susan was just speaking to I don't know if we have decided that yet I think there are several ways this could be approached We could talk about taking the agreement itself and giving it to the legislature and asking them to ratify it That would be one possibility We could amend and this is something that I think your attorneys have proposed, amending what you call the 708 provision, which is the existing interim agreement statute to make it conform to the shape of the agreement that we have I'll agree with you that it doesn't conform well to the shape of the agreement that we're talking about now That would have to be done or might have to be done before anybody from the State side could sign off on the agreement So that's another possibility There may be others that we haven't thought of or aren't prepared to talk about this morning But I don't think we're decided that yet

Clayton Matt Given the and I'll go through this and I think I'll reiterate a few things that Scott talked about but given that the human nature of the situation that we're faced with What in your view right now would trigger us moving forward and to actually say alright let's say it's authorizing legislation let's go ahead and do that I'm assuming you're saying that we're not ready to do that now What would trigger that?

Chris Tweeten Well, I mean, as you know we've expressed concerns about the proposal that's on the table for some time regarding the issue that I've talked about before this morning, which is the extent to which it actually meets the needs of the water users And as I said before several times again that's what I thought one of the main purposes of the meeting this morning was to get that kind of feedback from the people in the community about what they think about the interim plan and whether it's going to actually meet their needs and provide them with practical, useful authorization to put water to use I want to hear what they have to say and at that point we would take that feedback, we would go back to the people that we represent and give them a report as to what the views were that were expressed by the public at this meeting and get marching orders from them as to whether they think we ought to go ahead or not That's where we are

I would assume that the same thing is true from the Tribal side, that you would have to go back to the Tribal Council and report to them with respect to the sum and substance of this meeting and get marching orders from them as to what they think you should do We'll be doing something similar

Clayton Matt I guess [garbled] clear answer to what the trigger is I guess it means you got to agree before we can move forward with that and at this point what we're faced with is one single item that apparently we're in disagreement with but its important to make it clear that the interim agreement discussions that we've been through we've talked about a number of elements of possible interim agreement and we haven't completely settled on any on them or all of them but a few of them but if I could characterize those elements we've looked at and discussed an institutional framework and I think that's sort of been discussed in things we've talked about We've talked about an administrative process and I think it is important to recognize that as far as the

administrative process goes one of the disagreements is the point that Scott was talking about whether or not we talk about a jointly developed board and team and process or we talk about doing something separate and I think as we understand the States' proposal we're talking about doing something separate. We're proposing that we do it as a joint process.

There is also the issue of the status of the license and of course the scope. The scope being ground water single-family domestic municipal community that being the scope in terms of status of the license that we look at that in terms of both long-term and short-term perspectives and I think the long-term perspective is something that we really haven't discussed here and I want to elaborate on just a little bit.

The assumption is that there's a big risk if this agreement is revocable to the people who get a license and I'm not so sure that that's necessarily true because I think the parties would have to agree to walk away from it and I think given the amount of time and effort and desire on the parties to create this agreement in the first place, we're not going to try to walk away from this. We didn't enter into this with the intent on walking away from it.

Once we get this agreement in place I think the most active pro-active positive thing we can think about is the fact that the other thing that we have talked about and I think we've conceptually agreed to is that once there is a license and an agreement in place and there are licenses that are issued that those licenses would roll over into the final settlement. In that way there would be some permanency with those. What shape that is, exactly how that would happen, we don't know yet but I think there have been, as I understood, three party conceptual agreements that that would happen. So that is an important point to think about in terms of long-term permanency of these if that agreement happens.

Revocability is something that's an element of the issue we're talking about but I think in the bigger picture I think there is a permanency element to this that needs to be explained and I think it needs to be very clear that that isn't the issue, is just an element and in the bigger picture continuation of the licenses and having some permanency to them if that agreement goes through into the final settlement is what's intended.

Chris Tweeten Clayton, let me just add that I would agree with that. That certainly was our intention. I think the United States may take a different view of that. We've been told on a couple of occasions by members of their negotiating team that some sort of permanence in the final agreement was not a point of agreement on the part of the United States at least.

Scott Miller As our last statement reflected, we certainly anticipate that these would be recognized in the final compact. Revocability only is an issue if someone walks away from the table. We're spending a lot of time on something, on the interim agreement, we're spending a lot of time on something that from the federal perspective is based on a basic assumption of folks walking away from the table and certainly we don't expect that's going to happen.

How exactly the licenses will be dealt with in the compact is something we're going to have to negotiate but we have committed to deal with them and to recognize that we have issued licenses and that we're going to have to negotiate how exactly they'll be dealt with in the final compact. And as part of the compact again is where we can change federal law to make those permanent.

Clayton Matt So finally, given that and that's a little broader perspective, that there's a lot more work that's been and a lot more meat that's been put to this in terms of process and form and substance, that just this issue, however, I think it's an important issue, I think it's too bad that we've had to really focus all of our energy and attention on this one point and we think it's time to agree that the federal/tribal position on revocability, to agree with that, or move on to long-term settlement discussions.

The United States has come a long way in its thinking and we appreciate that and if you remember in the dialog we had when the United States, when we first sort of realized that the United States was taking the position they were on in a sense they were on the revocability of the licenses. I think even the Tribe said, "is there an opportunity to find an option to this?" We understand the position because of the trust responsibility and the inability of the United States and the Tribes to alienate federal resources. We think there was also a question to the United States, "are there options?" And they came back with what we think is a fair and balanced option.

Today, under the proposal, the licenses will not be unilaterally revocable by the Tribe without cause. They would only be revocable only by all three parties being in agreement with due process. They would be revoked only if the agreement was walked away from but that only makes sense also because once you walk away from the agreement, the authority to create those licenses in the first place is no longer there. That's the essence of it, we think it's time to agree with that and let's move on.

So I really think that terms of, as you put it, finding a solution to that and discussing that with the public, I was very encouraged frankly when I sat in on the meeting in Kalispell, a meeting in Polson and the meeting in Charlo. If you were looking for a general thumbs up or a thumbs down on this issue, it seemed pretty clear to me that you got a pretty viable thumbs up by the folks that were in attendance at those meetings and that was the intent of those meetings to get that initial response and whether you liked it or not or whether you thought it was enough of a response or you heard from enough people, I don't know but you did get some response and there were some thumbs up to that and I think that I would be surprised if there wasn't some general at least acknowledgement of that but at least that's where we're at. That's it, thank you.

Chris Tweeten Unless anybody around the table has anything further to add at this point, we'll move to the public comment portion of the agenda. Clayton, you had indicated some interest making some preparatory remarks about this?

Clayton Matt The negotiation sessions that we've involved in there's always and there will always be a public comment period. At the last negotiation session, there was a [quest] where we were chairing to on the spot open it up to not just comments but question and answers. I think that was an exception. I think anytime we open this up to not just comments but to a general question and answer session I think that that's an exception and I think I just want to make it clear that we're making that exception again today and it should not be viewed as a general rule, that the negotiation sessions would be opened up to a question and answer period. We would rather see the State, the Tribe and the United States or the State on its own accord come to the reservation if there needs to be public hearings held on certain issues and have some public meetings. We would invite you to do that. We've done it. We've been doing it for the last year and a half. We're going to continue to do it after this session and we invite you to come to the reservation and do that as well.

Chris Tweeten Thank you. At this point, we'll move to the first part of our public comment period, which is the opportunity for anyone in the audience to get clarification from the negotiating teams here regarding the presentations we've made on the interim plan. If you'd tell us your name for the record, we're recording this meeting.

Rick Smith My name is Rick Smith and I am a resident of the Flathead. I have a question for Clayton. Clayton, your explanation of the revocability that you just gave was different than my understanding of it. So maybe could you go through it again? My understanding was that licenses could be unilaterally revoked.

Clayton Matt That's not true and that's not what the United States said either.

Scott Miller That's correct, if you want me to explain in a little more detail? As long as the interim agreement is in effect there will be provisions the proposal is that a license can be revoked for good cause. If a licensee, for example, is not living up to the terms of the license then your license might be revoked. So as long as the agreement is in effect, there would be a process and there would be criteria that the State, the Tribe and the federal government can agree would result in revocation and actual revocation would require agreement as under the process that we have come up with. If, however the agreement is terminated, for example if the State decided they were going to go back and litigate the issues of the Tribes' water rights then the licenses could be revoked by the Tribe. The agreement, once it's terminated, again would simply there would be no agreement after the agreement is over. So the licenses at that point could be revoked but not so long as the agreement is in effect. As long as it's in effect, it could be revoked only for good cause.

Chris Tweeten Can I add just one thing? One thing that I would add to that to make it complete is that I think that we've been talking about an agreement with a definite term, an agreement that would expire of its own accord after a particular period of time and if that time came the agreement would expire and then that would trigger unilateral revocability on the Tribes part.

Scott Miller We have talked about at that we haven't talked a lot about that but that's based on a matter of state law as I understand is that both the Compact Commission and the negotiations would terminate at a certain date sometime in 2005 or something

Susan Cottingham I don't think this is linked to our termination, Scott, I think we just generally looked at wanting to have some term of years maybe to keep us all at the table, working hard on the license but whether the Compact Commission goes away or not I don't think effects

Chris Tweeten Whether the State is bound by the agreement

Susan Cottingham Yes

Scott Miller Maybe not but in any case, the State has proposed we'd have a date upon which the agreement would lapse I think we've all agreed that that's appropriate There's now reason however hopefully things will be going well and that date would be extended if we don't have a compact negotiated that will finally settle these issues But if that date came without that extension that would be another reason why the agreement would terminate

Chris Tweeten Let me add one thing to that as well The proposal that's just been outlined was advanced as an alternative to the original federal position, which was unilateral revocability without a cause The understanding was that this was a way that that provision could be finessed in such a way as to reach the same result without some of the drawbacks of having it simply unilateral revocable In point of fact, any party can put the continued existence of the licenses in jeopardy by withdrawing from the agreement That is in fact the provision that the United States relies on to reach the conclusion that this agreement would be consistent with the federal statute That I think is the background of how we got to that point

Clayton Matt Rick, are you clear now?

Rick Smith I am

Clayton Matt I just want to address one additional point and that is on the term We did discuss a term, we did not settle on what the term would be and also I think we discussed a term with the possibility of renewal not just there be a three year term and it ends That's not what we're talking about We fully intend on this interim agreement to be in place and if there is a term, it would be more of a trigger point to give us an opportunity to decide how are things working, are they working well, are there points that we really need to adjust a little bit to make them better I think we wanted to take that opportunity at those times to do that I think the real intent in this is to get the interim agreement in place and make it go through until we have a final settlement That's our goal

Walt Schock I've got a question on this interim agreement that you've proposed that you would issue [garbled] if I build a house, you would issue a permit to drill a well and if the negotiation falls apart, you would be able to revoke my well Does that mean that you would come up, cap my well [garbled] revoke my permit

Clayton Matt From the Tribal perspective, since you're looking at me, Walt, the answer is as far as the Tribe is concerned, we don't have an enforcement mechanism in place and that wouldn't be our intent I don't know what the State would intend to do or the United States but that's certainly not our intent

Walt Schock What would be the purpose then of revoking my permit and still let me use my well so what's the purpose of either revoking my permit or not having a permit at all to start with to drill a well?

Clayton Matt Excellent question because I think that has a number of ramifications to it or implications to it One is, what's the difference between doing that and the status quo? The difference is that if we've got the opportunity and you have a license and that license carries through when that license is issued you gain that priority date and if you keep that priority date on until whenever we find a final settlement and rollover into the final settlement The issue is if it's revoked, then if physically you ended up continuing to use the water, that's one thing, water management issues aside which I think are important and the reason for having better water administration on the reservation I think the thing you lose is then the priority date, the water right, the legal document that says that you can carry that through into the final agreement Conceptually then what would happen? We don't have an absolute answer for that right now Conceptually one thing that might happen is that if that happened and we finally get to a final settlement and there is a mechanism in place for people to apply for a water permits or licenses or whatever they are at that time then people would have the opportunity to re-establish those but it's absolutely our intent, Walt, to continue with this interim agreement until we have a final settlement I think that the Tribe has a pretty good track record of establishing agreements with other parties and other jurisdictions here around the state and continue with those and making them more I think we've done a pretty good job with that

Walt Schock Well, I certainly hope so, too So in essence what you're saying is you'd revoke my permit on this well, I could still use it and then whoever got control or authority later on down the line then I could reapply and I could use that well in the interim period

Clayton Matt If you happen to be doing something that interferes with a neighbor and a neighbor decides to take you to court that's their business The physical operation of that, I'm not sure if there's no entity or no mechanism out there for anybody to go out there and do as you say go out and shut your well off It's not going to happen and the Tribe certainly doesn't have that

Walt Schock At this point, there's no plan to put a mechanism in place to do that?

Clayton Matt Not to do that, no We want to put a mechanism in place to administer the right in the first place That's what we want to do

Walt Schock Thank you

Clayton Matt You're welcome

Allen My name is Allen [garbled] and I'm from St Ignatius I was born and raised here and this [garbled] has gone on most of my life I really want to make a comment here because I read the paper, they made their decision, I think they've made some good decisions, I have to abide by law and I'm wondering, my comment is good jobs for everyone involved but this man just made me recognize that most of this fight is driven by fear, unjustified fear There's nobody in our Tribe that's going to take no water from anybody That's my belief

I have a question for the legislature here The legislature here, we're having budget problems throughout our State of Montana in a lot of areas and I'm wondering how much resources are going to this battle, this Indian battle Indian fights should be in the past has carried on to this 2000 and now maybe 2003 Who's going to get the bill after this is over? Is the State of Montana still paying for Indian battles because the comment that I'd like to make is I'm involved with the University in Missoula, Helena, State of Montana, all over and I have not heard one person come to me and tell me that their representation did not trust our Tribes Most people come to our reservation to come here to live because it's a good place to be And so I'm wondering how many people do you represent because a lot of people that I know say that you do not represent them and I'm wondering how can the State fight against their own state Supreme Court decision? And I'm saying I wish we could put this money to good work on schools, roads in this county instead of fighting each other And finally I'd like to say if we want peace in this valley, we need to learn how to get along Thank you

John Brueggeman Mr Chairman, for the record my name is John Brueggeman, the state representative for house district 74 in Polson Are we going to break for lunch, I guess that would be the first question

Chris Tweeten I'd like to see how far we get before I respond to that question but at least it's a question

John Metropolis I do have a question, just a few Mr Chairman, my name is John Metropolis, I'm an attorney from Helena I represent the Flathead Joint Board of Control, which is essential operating authority for the three irrigation districts on the reservation Their constituents consist of about three thousand farmers and ranchers

I think my questions are three As I understood the explanation of the federal proposal of the interim agreement, the premise, which is extremely important, in this case is that the Tribes own the water, is that correct Mr Miller?

Scott Miller No, not exactly There are a number of premises for the revocability and I went through a number of them They go from the nature of the negotiations to the nature of an agreement and also I think in response to your specific question, that the Tribes may own the water In other words as Justice Nelson said a couple of weeks ago, for all any of us know they do own all the water and until we have a compact negotiation that settles that question, it just won't be settled so they may own all the water, yes

John Metropolis I too practice a little bit of Indian law and as I understand it the idea that Tribally owned property has to be fully within the Tribes or the US Governments [garbled] and what I'm unclear about though does that [garbled] or whatever one you think requires this revocability feature, does it require absolute control when it is uncertain whether the Tribe owns that property, as in this case, whether it is a possibility yet to be decided?

Scott Miller I think from the federal position the revocability is a necessary part of this agreement Not a part of the agreement anymore, actually it is a necessary part of termination of the agreement If there's some reason that's not clear, I'd be happy to continue to try to explain it but if you have any other clarification of that concept, if you have any questions on clarifying that concept, I'd be happy to answer them

John Metropolis I'll see if I can get more clarification for you later My second question is you mentioned process as far as we haven't seen criteria for issuing or not issuing permits or licenses, you mentioned that there would be a process from the draft that I saw there was some mention of appeals from decisions made by this joint board To what court or governmental entity would the appeal go and I would direct this to whoever has the answer

Scott Miller I think that's exactly how the appeal worked and the specifics of the due process have not been worked out

Chris Tweeten John, I think our initial thought was from the States team, that some sort of alternative dispute resolution process would be preferable to vesting that appeal in the jurisdiction of a particular court, which is in keeping with our position generally, which is that trying to negotiate jurisdiction is generally not fruitful and trying to find ways around getting parties to agree to the jurisdiction of the court of some sovereign is probably preferable to some party having to give up their negotiating position with respect to jurisdiction So we were thinking in terms of alternative dispute resolution, arbitration perhaps

Clayton Matt As I remember, arbitration was discussed and I think that if we can get beyond this other issue I think we'll have an opportunity to get full disclosure on all of

the elements that we have conceptual agreement on or at least the elements that we want to get out to discussion That would be one of them How due process would be followed and be absolutely clear that that was intended to be a due process

John Metropolis Yes, there's always a question about what court or entity that due process is rendered in and I'm just wondering if any of the parties have

Clayton Matt I don't have a final answer because we don't have anything in front of you to look at yet

John Metropolis My final question is and I think I know the answer to this, as I understand it, these licenses would be revoked in the event that any party walked away from compacting Is that correct?

Scott Miller I think it would be correct if you said could as opposed to would so that

Clayton Matt In not compacting walked away from compacting probably because if we did that then everything stops but I think what we're talking about is if the parties walked away from the interim agreement We're talking about an interim agreement not the compact This interim agreement will not be the compact

John Metropolis I understand that

Chris Tweeten But I think it's certainly true that if some party withdrew from the compact negotiations, the result would be the same

Clayton Matt But then everything stops and we're talking about probably [garbled]

Chris Tweeten I think that the point that Scott made was that the proposal is that at that point the licenses become unilaterally revocable by the Tribe That's why he says could rather than would

John Metropolis The party that would have the decision-making authority would be the Tribe?

Chris Tweeten That's correct

Clayton Matt Now that's the proposal That's a proposal and I don't think that we necessarily that the United States put that out there that's still something that would have to be considered exactly how that would play out What is clear is the federal proposal that is on the table and the question of whether or not the State's going to agree to it

John Metropolis Well, I appreciate the clarification I would say though that the federal proposal is not clear to me because I have not seen anything in writing Thank you

Chris Tweeten Are there other questions?

Wade My name is Wade [garbled] and I live in Big Arm During your work group process it says anybody done anything to look at how the federal government transfers lands to non-Tribal interests on this reservation In asking that question, I think I want to direct it to these gentlemen because it was actually the federal government that put non-Tribal people here And I want to know if they know what a land patent is?

Chris Tweeten I think that question goes beyond the narrow scope of what we're dealing with here in terms of the interim plan I don't think we want to get into any sort of a free ranging discussion about political issues generally If you have a question about the plan itself, I think the parties would be happy to try to address it

Wade Okay well let me rephrase it Are you going to do anything to look at the history as part of your plan, as part of your negotiations here because I think at some point in time, it's going to become very important to the overall results of what happens because if these issues aren't addressed as part of your procedures here and we are then and we as non-Tribal members lose our water rights, then it becomes very important And I think you need to look at the overall picture as part of your process, you're not just quantifying the water, not just setting up procedures and so forth I think it's very important to the overall process because I for one am going to have to follow that process And where do you go, it's going to lead me to the possibility I have to go to a class action lawsuit to protect my rights and my democratic process So I would encourage you then to include that as part of your process

Chris Tweeten In response to that, what I would say is that there's a significant amount of historical research that's already been done that we have in our files regarding a wide ranging number of issues Certainly in the overall context of providing background for the compact negotiations, we're going to rely on that For purposes of the interim plan itself, just because of the interim nature of it and the temporary nature of it and the fact that's it's just a transition while the negotiations go forward, I'm not sure that that particular information is going to be particularly helpful in reaching the interim plan But certainly in the overall context of the compact negotiations, we've looked at a wide-ranging number of issues

Wade [garbled] State has to keep in mind [garbled] because we have to look to you to protect our democratic rights or property values

John Schontz Good afternoon, my name is John Schontz and I have been involved with the Northwest Montana Association of Realtors in water issues on the Flathead for a while in terms of public education I have a question and it's one that is designed to avoid unintended consequences only because I've been through this years ago and the question has to do with municipalities particularly in the state who under interim agreement my obtain a water license and proceed to sell bonds to build infrastructure to deliver that water But I'm wondering if one of the advantages of living in a small state is there aren't

a whole lot of folks who deal with those legal issues from a bond counsel standpoint. In fact there's one I'm wondering if there wouldn't be some wisdom in bringing her into this discussion to make sure that down the road if a municipality or governmental unit wants to do a bonding program that you all have up front addressed that bond council question as to certainty.

Chris Tweeten John, I can respond to that from the State side. We have identified the same issue and we know the person to whom you're referring and intend to consult with her regarding what bond council would think about one of these licensed water rights as the basis for the issuance of municipal bonds because the bond council would have to give some sort of opinion as to whether the repayment mechanism for the bond is going to be there. This is going to be an issue for them and so certainly we intend to follow up on that.

Clayton Matt John, can you tell who that is?

John Schontz Can I tell you afterwards?

Clayton Matt That's fine. The other point and sort of layman's response to this and your concern is that on the reservation, tribal communities have learned and the Tribe has learned how to work and deal with each other for a long time and I think that you might even just go as far as talking to some of the communities that are here on the reservation to figure out how they figured out how to do that now. We've got communities that lease property, communities [garbled] that lease property from the Tribe for some very important elements of their community and people are financing development based on those. We've got cities that have watershed leases from the Tribe that have the same kind of condition that we're talking about in terms of revocability. We have communities that have airports that are leased from the Tribe. So there's all kinds of conditions like that that already exist and people are bonding and loaning and leasing and developing spending lots of money on those scenarios and I think that's a very good question but I think that also in a lot of ways we've already figured it out.

John Schontz Perhaps there's not some wisdom in running this by a bond counsel.

Clayton Matt And I'm just simply suggesting that there's also maybe some wisdom in taking a look around a figuring out how we've done it already.

Chris Kenney The federal government, when we put together the structure for this, we are mindful of the risk and the challenges of trying to fund and go through the financial considerations in this but we considered that's the [garbled] of the people out here but we do because we try and go as far as we could go to create a structure out of a situation in which you have no opportunity at this point to do that. The certainty you're looking for is what the whole negotiation process is designed to serve and it was never our intention to have an interim process substitute for the longer term settlement of the water rights.

claims So, we understand that there is risk We understand that those determinations have to be made From our perspective, that's the local folks decision to be made

Del Palmer I'm Del Palmer and I have a question According to the early doctrine that was compiled by Draper the Dawes act of 1904 that opened the reservation to settlement it says on page 199 that all the water in the streams within the boundaries of the reservation is reserved to the individual Indians in an amount sufficient to irrigate his crop I guess I would direct my question to you if that were the case at what point in time did the Tribes gain all ownership of the water under the ground, above the ground and beyond the reservation Is there a time or something in writing that you can produce to show us that the Tribe does own this water?

Chris Tweeten Mr Palmer, I don't think that question is within the scope of what we're taking questions on right now We're trying to limit the scope of these questions to clarification of the framework of the proposal, as it's been discussed by the parties We're not trying to get into a free ranging debate about these issues

Del Palmer I'll shorten that up and I'll just ask can you show me title to the water, where the Tribe owns the water on the reservation?

Chris Tweeten Clayton, if you want to take a swing at it, go ahead

Clayton Matt Well, I don't know that any answer that I give you is going to be satisfactory but let me suggest that first of all, I have no idea what document it is you are reading from and if you want to understand the legal premise of the Tribal position, I really encourage you to pick up our proposal and take a look at it because all of the justification, legal justification, historical justification for the Tribal and the United States position is in that So I really encourage you to take a look at it, it's there

Del Palmer Is there title there?

Clayton Matt You need to read that That will help you understand

Del Palmer I can't find it in there

Clayton Matt There's probably a number of things in there, I would be remiss if I didn't mention just one that's dated 1855

Unknown There isn't any written proposal, we're commenting on the proposal that isn't in writing Is that right?

Chris Tweeten That's right

Scott Miller There is the original outline that describes the general proposal that was distributed at the last meeting

John Brueggeman So I hope you would take that under consideration and I hope the folks here would also consider that Thank you

Chris Tweeten Thank you Representative Brueggeman Mr Mayor?

Randy Ingram I'm the mayor of Polson I thank you all for coming today I felt that in terms of since we're talking about the interim agreement, it might be nice to understand what's happening in the absence of the interim agreement in the City of Polson and to the City of Polson

For five years now, the City of Polson has had a moratorium on the extension of water mains [garbled] subdivisions added into this community that would require the extension of water mains for five years Obviously, with no further expansion of the community that creates significant problems with urban sprawl Subdivisions are going out into the county and drilling wells without permits [garbled] subdivisions that are in the City of Polson, which we can't refuse service to, that are within our service area and therefore we are required to provide them water We haven't been able to add any sources of water we haven't been able to drill any new wells and we haven't been able to process any changes We've had wells go dry, we've had many instances of our reservoirs going dry and pumps running 24 hours a day This presents obviously a significant public health and safety issue for the City of Polson As you can see, the status quo is not working for the City of Polson so I urge you and my counselors urge you to proceed with the interim agreement and get it done as quickly as possible

Chris Tweeten Thank you Mr Mayor

Walt Schock I'll introduce myself again because I'm wearing a little different hat this time I'm Walt Schock, I'm chairman of the Joint Board of Control and at this time I'd like to introduce some of my board members, I think we've lost a few of them but there's still some here [garbled] Jocko, Jerry Johnson from Mission, Doug Bates from Flathead, [garbled] Flathead, [garbled] Dixon, [garbled] Mission District, Bill Slack with us here today

The Joint Board of Control is a central operating authority for three districts located on the reservation The irrigation district and the Joint Board of Control are local governments created and operate under Montana law The landowners that are members of these districts own approximately 115,000 acres There are about 3,000 farms and ranches in the district and many of them rely on wells for a variety of reasons including household and irrigation uses Many of our families have owned their farms and ranches for nearly a hundred years and for myself, I'm approaching 50 years

They are our lives and water is our lifeblood The right to use water on our land is the most precious right we have And if that right is not secure then our land is not secure Without water, the land is utterly useless With water, irrigated agriculture is the

economic engine of this county creating about 40 million dollars a year in economic activity each year. Any law or agreement that undermines the security of our water rights undermines that economy and our ability to live on our farms and ranches for generations to come, which is our goal.

I want to say a few words about the interim agreement proposal outlined for the first time today. First, I know that we have not been informed of the contents of this proposal until today nor have irrigators or other local folks, so far as I know, been allowed to participate in the negotiations that led to this agreement. So our comments are preliminary and will be fleshed out in writing later. Second, the Flathead Joint Board of Control on behalf of the irrigators has always supported a negotiated agreement on these issues. We still do, but that support has always rested on the assurance that a negotiated settlement would protect existing water users, protect the security of water rights and maintain the States' authority for water use that are not part of the Tribes' water rights.

The result is that the Flathead Joint Board of Control supports negotiated settlement but not at all costs. A bad deal in the long run is no deal at all. If I heard the description of the proposal correctly, that interim agreement would not secure the right to use water for people and this right could be revoked by any party withdrawing from the agreement for any reason. This is not a sound basis for anyone to develop the use of water. Any investment in homes or irrigation equipment based on such a water right would always be in danger of being lost. This is not sound policy.

The Flathead Joint Board believes that an interim agreement should be simple, straight forward and not based on either of the parties trying to use all their leverage to overwhelm the other. In this case, we do not see why the Tribe or federal government would want to prevent in this valley their neighbors from being able to drill wells for homes, neighborhoods and towns. Why would they prefer to prevent their neighbors from having water until the Tribes actual water rights are determined? Nor do we see why they would want to prevent their neighbors from changing places of use or points of diversion for their irrigation. It does not appear that there would be any actual harm to the Tribe for these activities to go forward as it did for many years, that is on the understanding that if Tribes are found to have a right to the water at issue the permit might not be usable but if the federal negotiators or the Tribes insist on keeping people from using water and drilling wells just because they can then they [garbled] the playing field is not level and negotiations on that basis without compromise are unlikely to produce good long term results. Thank you.

Chris Tweeten Thank you Mr. Schock. Other comments?

Dave Degrandpre I'm Dave Degrandpre with the Lake County planning department and I just have a request for information, really. A comment was made earlier that the state legislature might have the opportunity to pass a bill on interim legislation but [garbled] shortly and it was said that the legislature would be to have public input positive public response in order to do that. Obviously the public doesn't have before

them a fleshed version of the proposal I think some months ago we received a bare bones proposal and I think in some respects it looks real good There were a lot of questions that came from it so I think it would certainly help for the public so that we could communicate to our legislators yea or nay what this interim agreement is to look like and have some of the questions answered so we can be informed to make comments Thank you

Lynn Moss My name is Lynn Moss and I'm a third generation rancher on the same location at Dixon on the reservation We've seen some changes and our Tribal government here has become more and more active and takes an increasing role in our lives With the position of the federal team here today, I was surprised to hear one member of the team say earlier, Mr Kenney, that the Tribe does own all the water or the federal government does hold all the water in trust for the Tribe and then later the solicitors say the Tribe doesn't necessarily own all the water on reservation, beneath it, coming in to it and so on

This is a big question Is there anyone here that doesn't realize that if further power is granted to the Tribal government in administering the water that the rights of the individuals who live in this area are not going to be compromised? Does anyone here not realize that? Because any new changes means that water use rights for instance, are being changed so the rights of individuals are changing

Another comment I have is, whoever owns the water and I don't believe in that term I think you can have a water use permit and certainly entities such as the Tribe and towns of course that have a right to some quantities of water certainly What if any entity owns all the water then are they not subject to litigation such as crop damage, any flood damage to any property, the whole issue seems to be ill defined here water ownership I don't believe it There's water use, there's permission to use it and it is granted by our state, tribal government and our federal Anything you want to tell me, do so

Chris Kenney Scott's and my position, our position is not actually inconsistent What I was trying to communicate was is that no one knows what the water use needs are on this reservation We know that the Tribe has a treaty from 1855 We know that the reservation was created for the Tribe and we know that there was a purpose for which that reservation was created Until such time as we can quantify and identify all the needs and purposes for which that reservation was created, the United States is not prepared to compromise or abrogate any of the water rights that the Tribe has because we don't think we're in a position to do that as a good trustee So in the abstract, we believe all the water is here for the benefit of the Tribe and until such time as we work with the Tribe and the State to quantify that we won't know

Lynn Moss So do you think its wisdom to try to quantify the water?

Chris Kenney I think that's what we're here for, yes

Lynn Moss I'll let you go at that I disagree

Chris Tweeten Thank you ma'am Other comments?

Rick Thank you Mr Chairman I think its really critical, like representative Brueggeman said, that we proceed with an interim agreement and I watched very carefully and this isn't a digression because I'm going to make a point The logging issue in the Bitterroot, Judge Malloy who is a federal judge I really like because he seems to give attorneys lectures on a regular basis, the "enviros" and the logging industry were just a million miles apart on how to handle the salvage logging in the Bitterroot There was no agreement at all In fact those discussions made these discussions look like a cakewalk and they are in the courtroom and the Judge said get out of here and told the attorneys to leave and sent the "enviros" and the industry to sit down and talk and in three days they worked out a compromise which was stunning to observe

Because these issues are so difficult getting, I know we're getting down to the fine hairs on this if you will is exactly why we need to have an interim agreement But these issues are hard They're brutal, they're tough but because of that, that's why we need to move ahead and that's why this community deserves an interim agreement Supporting an interim agreement my understanding as of today, with the revocability, it sounds fine to me It's an experiment, if it doesn't work then the interim agreement is over and we're back to where we were today So I would encourage this body to proceed with an interim agreement I want to thank you, I think some times you're in the forest and you don't see the trees You've come a long way and your efforts are really appreciated here It's difficult

One more comment, it's suggested about the facilitator I think that could be a good idea Clayton, Chris, it seemed to me and it was frustrating and you guys were talking about the same thing Now I'm aware and I'm not naive but maybe there's some layers there that I'm not aware of but it seemed to me that you were saying the same thing with different words and it's frustrating as a resident of the community for that to happen, perhaps a third or fourth neutral party to come in and help work out some of these issues I thank you all for your time Thank you

Chris Tweeten That you, Rick Clayton, do you want to say something?

Clayton Matt Maybe the problem is I'm not an attorney

John Metropolis My name is John Metropolis, I represent the Flathead Joint Board of Control, which operates the irrigation districts here, and I am an attorney

Chris Tweeten I trust you won't be covering the same ground that Walt covered earlier

John Metropolis I won't be I do want to thank the Compact Commission for the work that is done here and throughout the state We recognize the Compact Commission has

served the state very well and as you know, we have watched your work for a couple decades and the Compact Commission does serve a very valuable purpose and accomplished good things for the state including what's accomplished here at least in their own admissions. The Flathead Joint Board of Control also sees the value in reaching an interim agreement on this reservation for administration of water rights but it's got to be a good agreement because as stated earlier, a bad agreement just doesn't help and frankly I think it is clear that the premise for the limiting legal factor in the federal proposal is the acceptance that the Tribes own all the water and that needs to be examined very carefully because I don't think it's the sort of thing that the state as a policy matter, in the short-term or the long-term, should agree to and frankly, legally I don't think it can

I tried to take very careful notes at the beginning of this proceeding especially as Mr Matt was discussing whether and how to continue with this discussion. One of the things he said was that to continuing to discuss an interim agreement depended on hearing from the State as to the viability of the Tribes' original proposal submitted I think in June of 2001. I think that is actually a wise question to ask because the interim agreement is based on the same basic assumption and that is that the Tribe owns all the water. So discussing the viability of the proposed interim agreement is pretty much the same as discussing the viability of the Tribes proposed final agreement. I can tell you that it is neither legally nor politically viable. You will search through the Indian law cases, through the Federal Reserve Indian rights cases for language that holds that the Tribe owns the water to which it has a right. You will not find it. That's why it's not legally viable. Politically, the Montana Constitution requires, Montana Constitution states that the State owns the water in this state. I don't think the State can compromise that, not in an interim agreement, not in a final agreement and I can tell you that the reason for that is also in the Constitution, the sovereignty of the state is vested in the people and they need to have a vehicle to which to exercise their rights in a democratic government. Every citizen of Montana, whether they are a Tribal member or not does have that right. If the State relinquishes it's ownership of the water however, non-Tribal members on this reservation would not have that right so I think that's a very clear legal limitation on the States' ability to compromise here. Now that's not to say that an interim agreement and a final agreement cannot be reached but it does require compromise.

This position which Mr Miller said was kind of unique I think actually is unique in that the reason we are even discussing an interim agreement is because the Tribe sued the State three times, the last two times directly in the Montana Supreme Court. It is a very friendly forum to the Tribes and obtained rulings from the Montana Supreme Court, which requires we discuss an interim agreement. But it's important to note what those rulings actually held. They held that the State may not issue water rights or water use permits including changes of use and changes in point of diversion and [garbled] of groundwater. It's likely the State can't issue new permits prior to the final resolution of the Tribes' water right through compacting or negotiation. The Montana Supreme Court did not hold that the Tribe owns all the water. The Montana Supreme Court did not hold that the Tribe has the authority to administer water rights prior to the adjudication or

compacting of the water rights here So that series of cases shouldn't be stretched to reach too far and I note that federal Indian law, as Mr Miller noted earlier, is what controls here and that is what we need to look to

Now because we don't actually have the flushed out proposal before us, I want to go through what we do have point-by-point I will just note a few things It deals only with ground water, which does not help people who need surface water permits It does not help irrigators who need changes in use It does not help people who need to change their point of diversion

In the preamble to it, it also mentions only that it will be enforced, in effect while the parties are negotiating a compact I'm not sure it's wise in fact I don't think it is wise for any of the parties to add to their motivation to have to negotiate There are a number of tools available to resolve water rights issues Negotiation is the preferable tool, it is not the only tool Litigation is employed, negotiation is not excluded it's still available

Finally, as Mr Miller also noted, what we are talking about here is licenses only and I again was taking very careful notes and I think Mr Miller was very candid in stating that the federal proposal does not propose a way to provide the permanency and security which Mr Tweeten says the state and local water users need and I submit that the Compact Commission is absolutely right That's what we need That includes the irrigators that I represent who do use ground water, who do have wells and a revocable license is not sufficient Thank you

Chris Tweeten Thank you Mr Metropolis Are there any other comments from the members of the public?

Roy Blake My name is Roy Blake and I have been a lifelong resident here on the reservation I would say that in my mind there is only one entity that owns the water and that everybody else has a right to use it

My next comment was to be directed more to the federal people that it was under your whatever, good graces there that you open the reservation up and promoted or sanctioned the sale of the allotments that were established here I'm not sure of numbers but the last that I knew of that there was close to 85% of the inhabitable land that was here on the reservation is not under Tribal ownership I think that the federal government has an obligation to the people here also and not just as Tribal trustees that you have an obligation to the people that you have brought on here and with some of the actions you take you are keeping us in constant conflict

Bill Olson My name is Bill Olson and I am president elect of the Polson Chamber of Commerce for next year and I would just like to urge the Compact Commission to deliberate earnestly and come up with an interim agreement that will be beneficial to the area

Last year, we had an annual chamber banquet and Karla Gray, who is the Chief Justice of the Supreme Court of the State of Montana, was our guest speaker. What she imparted at that point was the necessity of citizens to participate in government. I had the pleasure of sitting at the table with her and that was her message and I think that is a wise message for everybody to contribute what they can. This year our guest speaker is Joe Glenn and I don't know he may be having more aspirations of becoming a cowboy than speaking at our chamber banquet so if anybody has an idea who a better speaker would be, please let me know.

I also felt that it was necessary in terms of informing you who the chamber is to provide you with our object and limitations. This is in our articles, the chamber of commerce in Polson is organized to achieve to objectives of preserving the competitive enterprise system of business, creating a better understanding and appreciation of the importance of the businessperson and a concern for his or her problems. To provide a more intelligent public opinion regarding city, county, state, national, legislative and political affairs and a greater appreciation of the value of the more liberal investment of substance itself on behalf of the interests of business. We're also organized with the object of promoting business and community growth and development by promoting economic programs designed to strengthen and expand the income potential of the trade area, promote programs of civic, social and cultural nature and designed to assist [garbled] and setting values for the community and discovering and breaking abuses which prevent promotion of business expansion and community growth and preventing controversies which are detrimental to the expansion and growth or adjusting them if they arise.

What are our limitations of the Chamber of Commerce? The Polson Chamber of Commerce shall in all of its activities be non-partisan, non-political and non-secretarian. So I can only offer the services of the Polson Chamber of Commerce in assisting you in your deliberations and I would invite you to call upon us if we could be of benefit in resolving any of the issues. Thank you.

Chris Tweeten Thank you Mr. Olson. Other comments?

Jan Emeyer I'm Jan Emeyer, I work with the Lake County [garbled] corporation and I work with several small communities and communities around the reservation in developing their infrastructure needs. Right now I'm working with Charlo, which has applied for and received a large grant from the state to replace a well that has gone haywire over the years. This negotiating process stalls the ability to drill that well and has the potential of placing it a hazardous situation. I would encourage this process to go forward. When [garbled] brought up the issue of bonding we got the idea of bringing in bond counsels [garbled] into this process to make sure that what ever you come up with we can borrow money out of [garbled].

I also work on other issues between the State and the Tribes on the sewer side of this thing. The Tribes have taken over licensing with the EPA over discharge permits on the reservation was a big fiasco for a long time but I think they worked it out. Now we can

get permits on the reservation for discharges on the lagoons. There is a history of State and Tribes working these things out and I think you guys are on the right path. I think you really need to go forward with this agreement. Thank you.

Bill Page I'm Bill Page and I'm over from Ronan on the western side of the reservation and there has only been a few comments made here [garbled]. I believe in the premise of the State to control the water to my land. This would not create the confusion and uncertainty that would exist for non-Indians on the reservation [garbled] recourse in any decision [garbled] water to my land on this reservation if the Tribe had sole control. Under the provision of the Homestead Act, it was my understanding as it was my parents and my grand folks, this land came with the provisions that water would be provided for the person growing agricultural crops. If this water is diminished [garbled] this will greatly reduce the value of my [garbled]. In the case of reserved water rights, there is always the potential for more water use on my [garbled]. Sometimes seven-tenths of an acre-foot is barely enough to sustain a good yield. If an interim agreement would accomplish the goal of what I just said here then so be it. Thank you.

Chris Tweeten Thank you, sir.

Rory Running My name is Rory Running and I didn't intend to speak at all but I just want to say I think we've all sat here and we need an interim agreement and I hear that we are really close and that revocability is a stumbling block and I just want to say that in listening to both sides, the way it's structured is, if one side walks away from a three-legged stool then the stool falls apart. I would suggest that I have heard everybody say that nobody intends to walk away that that's not their intention at all. If that's true then just change the number one to two sides have to walk away and then you balance out the game and keep everybody seated [garbled].

Mike Grendy My name is Mike Grendy and I live out by Big Arm. I've heard some comments here locally, coming back from the state water Compact Commission people that they feel like they are not getting support here. They feel like they really need to justify what the state law mandates of them. I want to stand here before you and assure you that you do have the support. You're not hearing from a lot of people here who are being compromised by the federal government here and want to take their property rights away from them. But I want you to realize that a lot of these people who are concerned about this, they don't come up and stand here because they are afraid of reprisal in some cases. They are business people, they [garbled] Tribal ground, they are afraid that anything they say about this proposal is going to come back to hurt them. But I want you folks to realize that you are supported here.

Now, we talked here a little bit about this interim agreement and a stalemate seems to be happening here because I don't think [garbled] because everything that gets proposed is negated by some comment. I think that these two groups can work together and quite frankly, Roy talks about a three-legged stool [garbled]. I think you folks ought to get a little more open-minded about this process and I think there's some personal bias and I

know for sure that there is one and I think maybe it's also time that some other federal agencies took another look at this process Thanks

Chris Tweeten Thank you Mr Grendy

Bill Meyers I'm Bill Meyers I want to summarize some comments that I made back in February of this year to about this state water commission and also submitted them to Fred Matt, to the US Senators, county commissioners I live in Lake County but I also have a reservation boundary These discussions affect everyone in western Montana and we all live, work and exist together Hence my comments address and propose a compromise both for the interim and long-term resolution

Cooperation between the parties is really essential but I think we're hearing over and over I have obtained and read the original proposal from the Tribe put forth a year ago exactly and I agree in large measure with the Tribes observation of the unitary resource However, while I appreciate and respect the effort and analysis put forth by the Tribes to generate their unique approach, I do not agree with their original conclusion of the proposed compact that they be given total control of the waters on or under the reservation The Tribes seem to have forgotten their own basic premise put forth on page two of the proposal, "we believe however that the water is to be shared among animals, plants and human kind for mutual benefit of all " Just preceding these statements are others, which imply that the Tribes are the only people holding water in high esteem and value, "the beauty and sacredness of water are of the highest value The intrinsic cultural and spiritual value of water is pervasive with our people Water has long been considered a medicinal substance, which is one reason it is considered sacred "

These values are not uniquely held by the Tribe I would submit to all that all of us who live here in northwestern Montana value the water and consider it perhaps the greatest resource of the area While we can't eat the scenery, we all can and do drink the water The fact is, most of our bodies are composed of water therefore we all have a stake in what happens to and with our water and therefore we should all have a say in how the water is used, allocated, protected, etc For the Tribes to propose total control over these waters to be placed in their hands is actually an insult to all of us who live here in peace and harmony as Americans Hence, the proposal place control of all the water in the hands of any one entity is contradictory to their own concept of sharing a unitary resource

Further, the Tribes are quick to cite the Hellgate Treaty but to not cite the treaty of the upper Missouri This treaty in article eight states "the United States may use materials of every description found in Indian country " And another quote is "the navigation of all lakes and streams should be free to all the citizens of the United States " This treaty is equally valid and clearly gives rights to citizens of the United States who are not members of the Salish Kootenai Tribes These rights pertain to water For this reason alone it would be unfair to non-members to have regulation of water on or under the reservation solely in the control of the Tribes

In addition, it is clear on the maps of common usage that water does not exist in a vacuum. It crosses reservation boundaries both on the surface and below the ground aquifer. One need only look at Flathead Lake and the Flathead River to see this. Much of the water being discussed in these two water resources comes from mountains many miles off the reservation for example Glacier Park, the Whitefish Range, the Swan Range and other drainages. Not only is the source off the reservation but the water taken then travels from the reservation downstream into the Columbia drainage and is utilized by millions of people all the way to the Pacific Ocean.

It should be clear to the Tribes that they are not the only human beings to benefit from, to enjoy and need this water for survival both on the physical and spiritual levels, thus, all the more reason to not place exclusive or predominant control of this essential resource in the hands of any one entity.

The issue of control and regulation cuts across jurisdiction and boundary lines. It also must be governed by the fact that there are within the reservation boundaries, fee lands that are owned by citizens who are not members of the Tribe. These owners of private property are due the protection afforded them under our state and federal constitution specifically regarding private property and the representation in republic based on the principals of democracy. It should be apparent, therefore, that control and regulation of the waters both surface and subsurface should not be exclusively vested in any one entity.

Currently, a variety of agencies at governmental levels are involved in the multi-faceted issues of water within the boundaries of the reservation, the United States, the Tribe, the State of Montana and several counties, Lake, Sanders, Flathead and Missoula. This is not something exclusive to the reservation as multi-jurisdiction regarding water is a fact of life in modern America. This was abundantly clear during the past summer a year ago 2001 when lack of accountability led to lower levels of Flathead Lake. It follows that an approach radically different from either the total control originally proposed by the Tribe or the two tiered separation quantification compact signed on other reservations may be in order.

One possible alternative is creating a new super-board or super-agency that would combine elements of all the governmental bodies we're talking about in one oversight entity. Seats could be allocated to the United States government, to the Tribe, to the State and to the four counties that currently actually control some of these water rights. Relevant areas of expertise from each government could provide insights to make a unified body beneficial to all. For example, at the federal level, the Bureau of Reclamation, Hungry Horse, FERC, Bonneville, all the related fish and wildlife services. While such a combined group might not be perfect, it would help resolve the present gridlock. The current situation prevents any progress and has effectively shut down the reservation. This creates a defacto redline district in view of potential revitalization efforts.

I urge that rather than the polarizing extremes of separation, quantification, and exclusion that efforts toward united and including all the various entities might be a much more productive and positive approach. In the final analysis, we must remember that we are all human beings, sharing this area and this vital resource. Ownership may never be resolved and I think we've heard that from several people here, as we all hold the water together. It's none of ours. It's all of ours together and the Lord God owns it. It is in all of our interest that we work together in a spirit of cooperation wherever and whenever possible. Although we might not agree on every issue, open discussion by all parties may promote better decisions and better represent all the interests. At the very least, creation of such a common multi-jurisdiction body would move us beyond the current impasse. Thank you for your consideration.

Chris Tweeten Thank you, sir. Are there any other comments from the public?

Gail Patton I'm Gail Patton. I'm a county commissioner for Sanders County. I've lived on the reservation all of my life in Hot Springs. I ranch there.

I'm very happy to see that we have negotiations. About twenty years ago we had to re-file our water rights by the state and I was middle aged then. I'm not too sure I'm going to live long enough to see these water rights straightened out. As a county commissioner, I work in Thompson Falls, in the courthouse. Every day at the clerk and recorders, we see people in there looking at the titles, liens on property, roadways and what we need, in the long run, we have to have certainty of property [garbled] it has to be for a hundred years, two hundred years. This property has to have its rights and water is one of those things that we have to be certain that we have. Thank you.

Chris Tweeten Thank you, sir. Anybody else?

On behalf of the Commission, I want to thank the people who attended and commented and also those of you who just attended and listened because I think it is important to us that we hear from you and that we know that the members of the public are following along with what we're doing. Thank you for coming out to participate in this process. I know from our perspective, it's been helpful.

The next item on the agenda is concluding remarks and summary. I don't know what summary is but I'm not sure it's possible to summarize what's been.

Chris Kenney I thought that was the responsibility of the chairman.

Chris Tweeten Well then the chairman is going to fail miserably. I can tell you where we're left as I said in a discussion I had with Clayton earlier in the morning. I think we need to take the results of this meeting back and talk to the people that we represent. We're going to do that promptly, obviously given the time constraints that we're under with respect to the interim plan issue particularly.

I also want to be able to provide the Tribes with some feedback with respect to their proposal regarding quantification of their rights because as I said before, it raises some troublesome issues for us that I think we need to communicate more directly and in more detail about. Hopefully we'll be able to do that in the not too distant future.

With respect to the interim plan itself, I think we need to be able to turn those discussions around within a matter of days and we certainly will do everything we can to do that.

As far as concluding remarks and summary, that's really all I have to say. Do any of the other teams have anything to add to that?

Chris Kenney Just a couple of thoughts. Sometimes these things don't go as smooth as you would like them to but I guess I would offer, as much as today has been difficult, we're going to continue to look at opportunities. We still think that what the United States has put on the table may be of value to someone in the valley. We recognize that there are risks. We recognize that there are issues associated with the proposal we had. We're trying to do the best we can given the structure under which we function. We will continue to look for ways to do it and I think that there may be some things we need to talk to the Tribe about. Nothing comes to mind right away but I can see possibilities where I didn't see possibilities when I walked in this morning.

I guess I just want the folks in the valley to understand that when they say that they need help and they need to get things reconciled, we hear that. We understand that. A bunch of us have been around here a long time. I've been coming to this reservation for almost fifteen years so I think I know something about it even if I am an outsider.

The second point I would like to make is that the larger negotiation is the certainty you're looking for and so to facilitate the larger negotiation should be everybody's goal. The interim situation, I think, is important and we understand the challenge of Charlo and Polson to try to make sure they can deal with the population growth that they have here and we would like to try to help that.

But we have never proposed that we do anything but work within the structure which the State of Montana created in the first place to reconcile these issues. It's a good system, it's the most unique system in the west to deal with federal reserved rights and we think it's a good system and we would like to see the system work. The United States wouldn't be here to negotiate this unless we were dedicated to the proposition that we could put a negotiated settlement together that everybody feels is going to be to their ultimate benefit and their children's benefit and their children's children benefit.

We'll be back and we'll continue to work.

Chris Tweeten Thank you Clayton?

Clayton Matt First, the Tribe wants to thank everyone for traveling here to attend these negotiations today and participate in them. I want to thank the public for coming and participating and I know that there a lot of you that I met and I've had an opportunity to discuss these issues with and I think that can help facilitate a lot greater understanding and if we haven't had a chance to talk, please feel comfortable to approach me. Let's talk about the issues because I think some of the comments that I've heard I think are very important to us but it's also very clear that there is also some real basic lack of understanding with the fundamentals of the principals of reserved water rights for example

Tribal reserved water rights are not something that will be granted to the Tribe. Let me say that again. Tribal reserved water rights and aboriginal water rights for that matter is not something that we are asking to be granted to us. We already have them, they exist and therefore the authority to administer our rights exists. In terms of ownership, the State of Montana claims ownership. As a sovereign nation, the Tribal government is simply claiming its ownership over its water. There is no difference.

As a water user, the Tribe also has a responsibility to quantify its water rights. We took that to court back in the early 1980's. There were several lawsuits filed in the State of Montana to challenge that very issue. We took it to court and said, no this shouldn't happen in state court and said this should happen in federal court. It went to federal court and the federal court and the United States Supreme Court said no, the states have the authority to quantify Tribal reserved water rights. In the State of Montana, they set up the Reserved Water Rights Compact Commission to do that. That's why we're here. The Reserved Water Rights Compact Commission in the first instance is set up as a recognition that those rights exist statewide.

We are trying very hard to find a way to find some balance and to find a way to offer solutions to this long-term settlement. There are two different ways of looking at this. We have short-term issues and long-term issues and the greater proposal that we have on the table that was put out in June of 2001 really addresses the long-term settlement issues. And I absolutely agree with the United States, that's where we need to look to find certainty. No one ever said and I don't think even the State has said that you're going to get absolute certainty in an interim agreement settlement. We're not trying to find a perfect solution, we're just trying to find a solution to get through a process.

The other part of the interim agreement settlement is that we were invited to participate in that. We are doing so gladly. However we do not need to. An interim agreement is not a necessity to the Tribe but we understand the necessity of it to the people on the reservation and therefore it's important to us and we hope you will recognize that and consider that. It really is in our view, at this moment, the choice that the State has to make to determine whether we move forward right now with the interim agreement or we drop that and move on with long-term discussions because we are at the point where it needs to happen now and we really encourage the State to really give that serious consideration.

There are concerns that we've heard from the audience today about the implications of that and I don't think we could ever find perfect language to eliminate all implications and all concerns. There's not a chance. I don't think we could find a way to do that. Given that, are we willing to live with some of that uncertainty and some of that imperfectness so that we can move forward and get this process done? We're willing to give it a shot, we've given it a shot, the United States had given it a shot. We believe the State has put its best foot forward and we think we're there. It just needs to move forward now. We really want to encourage that.

The Tribal larger proposal in the long-term, for a long-term settlement recognizes the existing water users and the water uses on the reservation. That's in black and white. Read it, please. In terms of legal authority, the proposal that's on the table, if you don't have a copy I believe we have copies sitting on the back table back here. Please, pick it up and read it and as you continue to read that and discuss that, please give me a call. Let's discuss some of the finer points of that if you'd like because I think it's very important to us that we really bring that back to the table to discuss.

From our perspective, even though we're talking about changing direction now and going off and quantifying the Tribal right which is what states water rights negotiations are set up for. We believe the principals of that proposal are still valid. It affords due process and it will be the vehicle that will bring us to long-term certainty that we're all looking for.

Thank you all for your patience. This is long and trying for you to sit here. Believe me we've spent probably ten times this amount of time preparing just for this one meeting and we will do that again for the next meeting. We will work as hard as we need to to come to that final agreement and hopefully for the interim agreement. Thank you all, again.

Chris Tweeten If nobody has anything further, we'll call this meeting adjourned.

Water Rights Negotiation Meeting between the
United States, CSKT and the State of Montana
Hosted by the State of Montana
At KwaTukNuk, Polson, Montana
December 18, 2002

Federal Negotiating Team

Chris Kenney
Rich Aldrich
Cheryl Willis
Scott Miller
Bernie Burnham
Robert Grace

CSKT Negotiating Team

Clayton Matt
Fred Matt
Brian Litscomb
Lloyd Ervin
Ron Trehan
Maggie Good
Pat Pierre
Joel Clairmont

State Negotiating Team

Chris Tweeten
Susan Cottingham
Anne Yates
Tara DePuy
Cindy Younkın
Bill Tash
Candy West

Chris Tweeten As far as opening statements are concerned, we'll turn first to the Tribes, Clayton?

Clayton Matt Thank you, Chris We've put a lot of time into our discussions and our negotiations and we want to welcome you again back to the Flathead I will start by saying welcome to the homeland of the Confederated Salish and Kootenai Tribes Welcome to all the travelers from Washington DC as well And welcome to all who are friends and neighbors here

We've spent a lot of time in recent weeks and months talking to a lot of you to help explain this process and help explain some of the issues Some of you are more well

versed in that today now than others. Some of you are still learning. We hope today to try to shed some more light on some of the process that we've been through to try to make as clear as possible where we are today. Welcome. We thank you for being here.

I think an important part of spending time at the meetings we've spent recently in past months is that we continue to build relationships between the Tribe and the local community and I think that lots of people who have lived here already understand the importance of those relationships because without that relationship, without those working relationships that already exist between the Tribe and the communities, between the Tribe and the municipalities, between the Tribe and all other water users on the reservation, things just would not work. So a lot of those relationships are already there. And I think that part of our job in these negotiations is to continue to try to reassure people that those relationships will continue to be strong and viable into the future. That is the intent of the Tribe.

Before I get into the main body of my opening remarks, I just wanted to talk just a little bit about the fact that when I talk it's not just me that's talking. We have a negotiation team that consists of the Tribal Chairman Fred Matt, vice chair Amy Hermall, Tribal Council representative Ron Trehan, Lloyd Ervin, Maggie Good, Joe Clairmont, Tribal attorney Ronald MacDonald, myself, Francis All, Pat Pierre, Abe Piture and Brian Litscomb. That constitutes the formal Tribal water rights negotiation team.

We spent a lot of time talking about these issues and we spent a lot of time talking about these issues with the Tribal Council. They are fully apprised and aware of the status of the issues we are going to talk about today and have authorized us to come here and make the statements that we are going to make today. So when we talk about these things we're talking about them because there is a deep interest and deep involvement by the Tribe in this process.

These negotiations are about the settlement of Tribal, aboriginal and reserved water rights for the Confederated Salish and Kootenai Tribes. And the Tribes have been more than patient in this process. And to that end we want to explain a little bit of history for some of you who have not attended of these negotiation sessions in the past.

Negotiations began proper in the 1980's actually. The Tribes met a few times with the State of Montana and then in that process after that process the State of Montana legislature charged the Compact Commission with some different priorities. And they went off and negotiated settlements in different parts of the state. In 1995 then the Tribes reestablished the Tribal water rights negotiation team and we began requesting that negotiation commence. In the year 2000 negotiations finally commenced. And this is the fourth session since they began. And in June of 2001, the Tribe proposed a framework for negotiation negotiating its water rights titled "A Proposal for Negotiation of Reserved and Aboriginal Water Rights in Montana."

The basis of our proposal is simple. As a sovereign Tribal government, the Confederated Salish and Kootenai Tribes take the position that the reservation water is a Tribal unitary resource that should be managed by the Tribe. The proposal recognizes that there are existing junior users and uses throughout the reservation and that the Tribe proposes that those uses be administered by the Tribal water administration program.

About a year ago in February at a negotiation session in Missoula, the Tribe agreed to move forward with the State and the United States and create three working groups. One working group to talk about administration issues, one to talk about claims examination issues and one to talk about data and technical issues.

The State then invited the Tribe at that time to consider discussing interim administration issues. The Tribe agreed to move forward based on two fundamental principals, one, the viability of the Tribal proposal and two, due consideration and concern to do what is best for the reservation community.

Today our goals are one, to move these negotiations towards long-term settlement discussions preferably based on the June 2001 proposal. We believe this is in the best interest of all parties and in the best interest of the community. We believe it can be accomplished within five years. We believe it is a fair approach and deserves serious consideration by the State. And two, we want to advance interim negotiation discussions. We should agree to advance these discussions based on current Federal position of revocability or we should move on to long-term settlement discussions. We believe it is time to fish or cut bait. Further, discussions on claims examination and data may depend on how we advance these issues. These negotiations are vital to the Tribe. They represent the past and the present and the future of our people and for all the people on the reservation. The State of Montana Supreme Court has recognized that the Tribe owns its water and that water rights are extensive and pervasive, prior and preeminent. We intend to keep it that way but we do not intend to hurt anyone in the process. So let's get on with some meaningful settlement discussions that will perfect the Tribal right to manage its resources. Thank you.

Chris Tweeten Thank you, Clayton. Chris, do you have an opening statement on behalf of the Federal team?

Chris Kenney I think the only opening statement the Federal team would like to make is I think it's helpful after some time is past is to remind folks that the United States' primary responsibility is trustee to the Tribe. The United States is responsible for protecting trust assets as those assets are identified.

Many years ago, the Department of the Interior and the United States realized that litigating and fighting over trust assets was harmful not only to the non-Indian populations within the Indian communities but it was probably not helpful to the Indian communities as well because of the time and expense involved and so the reason there is a Federal negotiation team here is to, and to reiterate Clayton's point, is to try to put

together a working relationship and partnership with the Tribes and the other folks in the Indian community on the reservation that will assure a working relationship that is successful and helps grow to improve the use of the resource in the future. That's what the federal team is here to do as a trustee and as a negotiation team and that's what we continue to do and we're hopeful that we can move forward and find some success in the near future. Thanks

Chris Tweeten Thank you, Chris. On behalf of the State team, first of all I want to thank the community here on the reservation in Lake County for the hospitality that they show us every time we come up here to meet. It's very much appreciated on the part of our team.

Our team exists as a representative of Governor Martz in the conduct of government-to-government negotiations. That's the policy of the State of Montana in dealing not just with the Tribes here on the Flathead Reservation but with Indian tribes throughout Montana. And it's been the policy of the governor's office for some time to conduct these negotiations on a government-to-government basis to try to resolve those issues that continue to divide the State government from the government of the various tribes across the State of Montana.

I appreciate Clayton's effort to put the discussions in a historical perspective and generally agree with most of what he laid out. We agree with the general objectives that Clayton laid out with some reservations. First, I think the primary objective of all the negotiating teams is the first objective that Clayton outlined which is to move these discussions toward a final settlement of the issues that continue to confront us with respect to the allocation of water on the Flathead Reservation. We also, I think, agree generally with the second goal, which is to advance the discussions with respect to an interim proposal.

I think, with respect to the history that Clayton outlined, there is one important aspect to that history that Clayton omitted and that is that several years ago, several years prior to the time when the negotiations began again in earnest in the year 2000, governor Racicot then came to the reservation and proposed to the Tribes that we engage in discussions over an interim plan. And at that point, we received a formal response from the Tribal government rejecting that overture from governor Racicot and it was only later, when the negotiations began in earnest, that the Tribes came around to the idea that an interim agreement might be something that they would want to talk about. We've been interested in pursuing an interim agreement for some time. Since the first litigation in the recent series of three cases that went to the Montana Supreme Court was decided by the court, it's been apparent to the State representatives that an interim agreement is important for the welfare of the people of this area of Montana. And we've been pursuing that ever since and we were pleased at the meeting in 2000 that the Tribes agreed to pursue discussions with respect to an interim agreement.

Historically, we then appointed our negotiating teams and went forward with those discussions, I think significant progress was made in trying to identify a framework for the permitting or licensing or allowing of water uses on the reservation during the period of time that this limbo status imposed by the Supreme Courts' decisions has existed and will continue to exist until we have a final quantification of the Tribes' water right. I think we've made significant progress in trying to identify what that framework might look like but there are issues that continue to divide us and the irrevocability issue is one that I think that we're going to be talking about later when we get around to presenting our various viewpoints with respect to the report of the working group in administration which is the one that has been working on the interim plan.

There are other issues though, in addition to irrevocability, that remain to be resolved and in fairness I think it needs to be pointed out that the State team has been pushing for a resolution of some of those issues on parallel tracks with the resolution of irrevocability issue. For example, we've been talking for some time about the need to identify criteria that would be used in deciding whether one of these State Tribal licenses would be issued. As of yet, those criteria have not been identified. We've indicated from our side what we think those criteria need to include, understanding that other parties may have additions that they want to make. But the other parties have not yet identified what those additions might be. And this is one example of some of the issues that we've been trying to press forward on at the same time. So if we are able to resolve the outstanding issue with respect to the question of whether we can have an interim agreement that provides for licenses for water uses that are unilaterally revocable, we're not done yet.

We have other things we need to resolve in addition to that and some of them are going to be simple issues and some of them may not be simple. So we remain hopeful that there is an interim agreement there to be reached if there is one that can be reached in a way that's fair to all parties and that provides realistic and tangible benefits to the water users in this area, we're going to do everything we can to find that agreement, to put it in writing, to get whatever legislative approval we need to put that agreement into practice so that water development can continue on the reservation in an orderly way while we continue our work in reaching a final compact.

We remain committed to those goals but you need to understand that our commitment does not extend to the point where we will make an agreement that we think is not in the best interest of the water users in this area or an agreement that we don't think can secure the necessary approval of the Montana legislature. We're not committed to making an agreement at all costs and we don't think that a bad agreement is necessarily better than no agreement at all. So we will work very hard to try to reach an agreement that protects your interests as water users and that provides you with tangible benefits and gives you a way to continue to develop water uses on the reservation and we'll do everything that we can to reach that agreement, that fair agreement that recognizes the interests of all parties is out there to be had.

So with that, I'll conclude my opening statement and will proceed to the next item on the agenda, which is work group presentations and discussion. And we'd like to take these in order and deal with the ones that are likely to be less controversial first and save the interim administration issue for the final agenda item in this category. We have a working group on data and technical issues and we have a report from them.

Susan Cottingham I guess, Clayton, we hadn't talked about who wanted to start on the technical one. Do you want to or do you want me to start?

Clayton Matt I can simply report that after there had been some review of some data we received a letter it's been some time since we received that and I think recently we finally sent a letter back to you suggesting some language that, proposing some language that would be the basis of your sign off basically on the review of data as we go through that process and if you're ready to respond to that today, that's fine, if not, as far as I understand, that's where we're at.

Susan Cottingham Let me make a preliminary response. I think we probably need to have some more discussions about it. The letter Clayton mentioned was after we had gotten some data from the Tribe back in the spring and reviewed it and then the State technical folks got together and we wrote a letter to the Tribe requesting a bunch more data, all of this involves hydrology and maybe to step back a little bit what we attempted to do initially was see if could take one watershed in this case the Jocko watershed and start developing joint technical information on hydrology and water use and land use and irrigation and what have you and try to get an understanding and some mutual understanding of that technical information. The Tribe itself has developed a computer model to work on hydrology and they began by giving us some information that we reviewed and then we asked for some more information and at that point I think the position stated by the Tribes that they want our technical folks to sign off on each step before we get the next set of information. And so in July when we wrote and asked for that we said we really are reluctant to do that. Our technical staff doesn't want to sign off piece meal on information. They want to be able to look at the whole picture. And that is how it stood.

We got another letter from the Tribe I believe last week basically reiterating the position that they would like for us to sign off on the data and the quality of the data that they gave us last spring before they give us the next round. I met with the technical staff and talked to our team and I guess it's fairly simple from a technical perspective that our hydrologist wants to be able to see the raw data the inputs that go into the natural flow calculations before he signs off. I don't think anybody's questioning the work that you guys have done with USGS, the quality of it. But it's hard for him as a hydrologist to say I'm okay with the outputs when I haven't been able to see the nature of the raw data and I don't think we're expecting that reams of raw data will be copied and handed off to us but if Stan Jones was just able to come and work with Seth or whoever and take a look at that data and see what the nature of it is how you did the quality control then we can move on to the next step. We're as anxious as you are to start doing that because we

really want to try to start figuring out how we can jointly cooperate on the technical data but I think there's a reluctance to say okay everything's fine when we haven't been able to see some of that raw data so if it's just a matter of coming up and looking at it and ascertaining what it's like I think we'd prefer to have it but as a backup alternative I guess if Stan could just come up and take a look at some of that We have made a step forward in the technical work and that we had requested a bunch of information from the BIA last spring and that got hung up a little bit in the approvals in DC with the whole trust case and the release of data but Bernie Burnham and Rich and others have been really helpful in moving that forward and so I think we're going to get some of that as well I don't want to belabor the point but I think we really, I have to listen to my hydrologist and he's more comfortable being able to look at some of that data and put it context before we sign off and then we can move on to the next step

Clayton Matt I can clarify a couple things The request you made for additional hydrologic information we looked at and there were five items that were listed and items two through five I think we looked and characterized as information that supports an understanding of methodology used for developing base line natural flow data for the Jocko model We don't generally have any problem with providing that The other piece of information that you wanted, the underlying data that was used to develop that in the first instance I guess we wanted to understand first of all why you need it and I think we heard a general explanation I guess there wasn't a lot of technical basis to that explanation but we did sort of imply that we might offer an opportunity for your hydrologist to come to Flathead and take a look at that and that way at least he has had an opportunity to see that And if you're saying that that would be satisfactory for that element of the data, I think we can accommodate that We need to re-verify that in terms of what we're asking for in the letter we're not asking for you to sign off on it before you see it What we do need though is some indication that there is some language that we can agree to that when you have finished reviewing the hydrologic component of the data that you can sign off on it then we can move on to the next data set And that's what we're after

Susan Cottingham I guess I'm having a hard time understanding why, I don't know, I haven't talked to your hydrologist, but I don't know that they would be amenable as scientists to sign off on something piece meal and I don't understand what the point of it is We respect that you have gathered good data we know it's going to be of high quality but our hydrologist wants to be able to have all the information at hand so that he can make a meaningful assessment of it from our technical standpoint and report to our team We seem to be hung up on the fact that you require sign off on each step of the data and I just have to listen to my folks who say why, why do we have to do that

Clayton Matt There are a couple of ways to look at this First of all, I kind of want to also look to the federal team and ask them to [garbled] briefly here in a minute because it's essentially the same process we went through with the federal team when we share data with them there was essentially a sign off that said we reviewed it we accept it at this point The difference is in the letter that we received from you there is a piece of

language in there that said you wanted to reserve the right to make changes at any time in the future I think that we're willing to say that the modeling exercise might result in some changes to hydrologic data as a joint exercise but I don't think that we want to allow Tribal data to be subject to change by the State at will just because you think that it might need change sometime in the future So we need to clarify that and come to some agreement with some kind of language that says that once you've reviewed it that obviously we think that there will be some changes in the future If there have to be changes based on modeling, but we want to not go as far as saying we reserve the right to make changes in the future, carte blanche That's not going to happen

Susan Cottingham That was not our intent to change the fundamental data We just want to be able to have some flexibility as we work on that water model as you say in the future to do that and to go back and say well maybe we could gather some additional data There was never any intention to change the Tribal data so I want to clarify that

Clayton Matt In the language we're proposing in the letter just simply addresses that If you could take a look at that and think about that that's what we're after and if we need to adjust the language a little we can take a look at that but we're looking at if we can look at some language that you would agree to, we would agree to, when you finish a data set then I think that would make us more comfortable and I'm trying to be specific about what that is at this point other than what we put in the letter

Scott Miller If I could offer two points from the federal perspective One, as you mentioned Susan, Bernie has worked very hard going through what has been a very complex and difficult process of getting federal approval for some of the documents that you requested and I think Bernie has got those now and is ready to share them tomorrow

On this point of the process the Tribe is offering, I can just report from the federal perspective That has worked very well with us We've had a number of our scientists working through the process suggested by the Tribes and I think it's worked quite well In fact it reflects, as I understand it, the general scientific process anyway You're going to start with the basic data and you're going to look at that and make sure that it makes sense and that its accurate and then you move forward step by step We have worked closely with the Tribe on some of their data and not only found it to be accurate but have found the process to be workable, productive and efficient

Susan Cottingham Well, we've had a lot of conversation since July about this but I guess we're getting closer to clarifying

Clayton Matt If you'd be willing to take a look at that language again we'd certainly be willing to consider having a hydrologist come to Flathead and look at that one element of your request Otherwise, as soon as we can conceptually understand that there will be a process we can put in place for stepping through this that we can agree to then we're ready to move on with the rest of the hydrologic methodology, which I think is basic

anyway You need to know that complete, we understand you need to know that to complete your hydrologic review of the hydrologic data of the Jocko model

The other thing that I wanted to remind you is that from the Tribal perspective, again as we move forward with any and all of these work groups, I think I made this pretty clear in the opening remarks, that is from our perspective, we're thinking about this and moving forward with this based on the concept that our proposal is a viable option here and we want to continue to move forward and what we're talking about is our June 2000 proposal that forms a basis of our negotiations So that is one of reasons that we are able and willing and want to move forward with this in its present form, also And that's going to be true with of these work groups I want to make that clear

Chris Tweeten Clayton, let me inquire about that because I'm not sure I understand it At the meeting in Missoula, last February, we responded to your proposal and we did that after careful consideration When you said in your opening remarks that you thought that your proposal deserved careful consideration and I want to assure you that it has received careful consideration on the part of the State negotiating team We've discussed it thoroughly amongst ourselves We've discussed it with the people in state government that we represent, and we've made it clear not just at that meeting but subsequently as well that we don't view that proposal as being a potential basis for a final settlement I don't think it's within the scope of the agenda today to discuss in detail the Tribes proposal beyond just reciting that historical background which is that we've made it clear from the beginning that from the first time we've addressed the proposal that we don't view it as being a framework that we think can serve as a basis for a final settlement

Now I guess I'd like to know where that leaves us in terms of discussion of these other issues in light of what you've said this morning because this is the first time we've heard from the Tribal team that proceeding with discussion of claims examination and data exchanges was in some manner contingent on the states willingness to continue to consider the Tribes proposal or to change our position if you will on the Tribes proposal

Clayton Matt Not contingent on our willingness to discuss these other issues but certainly we need to understand also very clearly what you mean by the statement you made because we also, as you're aware, have received a letter from you saying that you're not considering the proposal and so I guess when you say, make a statement that it's been considered and now it's not a viable, doesn't form a viable basis for negotiations, what does that mean?

Chris Tweeten Now Clayton, you recall when the proposal was first laid on the table, we responded with a series of written questions regarding the proposal And we had thought that we would be receiving responses, in fact we were told that we would be receiving responses to those questions at the meeting in Missoula From our perspective, we don't believe those questions have been answered The response that we got at the meeting in Missoula was for the Tribes to propose a framework for future discussion of

those questions but the questions themselves in substance have not been addressed and still have not been addressed

Based on our understanding of the proposal, we made it clear at that meeting and subsequently in the letter that you referred to that we didn't think the proposal would be acceptable to the State. I think I made it clear at the meeting in Missoula that that decision was reached after thorough and careful consideration of the proposal, of its fairness to all the parties, of its capacity to address the legal issues that were presented and to fairly address those within the context of an outcome that a court might award in a lawsuit. Because those are the kind of things that are of concern to us in first of all in convincing the legislature to approve a compact and then finally in getting the compact integrated into a water court decree. Those are the kinds of things the water court looks at and it's important that those issues be addressed and from our perspective, having viewed the proposal and considered it thoroughly and carefully at that time, we didn't feel that the proposal adequately addressed those problems. I think I made that clear at the meeting in Missoula, if it wasn't clear then it should have been clear as a result of a letter that we sent. In that letter you'll recall, the letter was prompted by the fact that it was being represented by representatives of the Tribes that the State was still considering the Tribes proposal despite the fact that we had told you at the meeting in Missoula that we did not think it would be acceptable. And we wrote that letter simply to clarify that, as of the time we sent the letter, the proposal was not being considered because we had considered it and we had given you our response to it and didn't think that further consideration was warranted. So, historically that is how we got where we are now.

Clayton Matt I've heard a couple things over time and not considering it now and saying that you considered it and just rejected it that it is not a viable option for a basis of our negotiations. I think you say that you asked the Tribe for comments based on questions. I think we did respond by saying if this proposal forms a basis for negotiation we believe that discussing administration long-term administration issues is the fundamental basis of that proposal and we haven't gotten onto long-term discussions as you're aware because we're spending all of our time on interim administration. While we think interim administration is important and we want to continue to discuss that, we also want to know and wanted to know very clearly whether or not this, our proposal, is going to continue to be rejected at this point.

Chris Tweeten Well, until we receive the information that we asked for in the questions that we posed, I think the answer is yes.

Clayton Matt So you want to consider the proposal?

Chris Tweeten We don't want to consider it or not consider it. We asked you to clarify the proposal and hopefully when the proposal was laid on the table at the meeting in Helena and you'll recall that it was our position at that time that it was premature for proposals for final settlement to be placed on the table and it was only at the Tribes insistence that that item was included on the agenda at the Helena meeting and that the

proposal was aired at that time. We received your proposal, we considered it. There were things about it that we thought needed to be clarified at that time. We asked you to clarify it in the expectation that it was a thoroughly developed and thought through proposal that the Tribe could simply and easily respond to those questions based on the process that was followed in developing the proposal. We didn't think the questions were that complicated, frankly. And we thought it was not unreasonable for us to expect that those issues had been considered and that responses would be forthcoming and in substance they were not and that's one of the reasons why we felt that it was important to consider the proposal on its face in light of the state of the information that we had then and give you a response which we gave you.

Clayton Matt So the state of the information will form the basis of whether or not you consider it or do you want to consider it? Do you want to continue to take the position that you will not consider it?

Chris Tweeten Well, Clayton, all I can tell you is that if I had received responses to those questions that address the concerns that we've got regarding the proposal, regarding its viability in the political climate that it needs to survive in, in order to become a final settlement. Not just with respect to the Montana Legislature but also with respect to the water court and with respect to congress, frankly. And to give us the assurance that we need that the proposal has a solid grounding in fact in law. If we'd received responses that addressed our concerns in those areas then we're reasonable people with open minds and we would consider taking another look at the proposal in light of those responses. But until we see those responses, I can't give you any assurance that our position is going to change.

Clayton Matt Well I guess we can't give you any assurances that there's going to be any different response unless I think at this point we're responding based on the fact that we're involved in these work groups. How do we move to long-term settlement discussions if that proposal, if you're not considering that proposal. Either you want to consider the proposal or you don't. And if you're not considering the proposal there's no value in us providing you with a response. If you want to consider it we'd be glad to provide you with a response. That's the direction we would like to move.

Chris Tweeten Well, Clayton, our experience has been that you build these compacts from the ground up based on the technical data. And that's why we thought it was premature for the Tribes to put their proposal on the table when they did because in our experience without an understanding of the hydrology without an understanding of the patterns of water use that exist in the area, the consideration of formal proposals in the abstract is not helpful.

Clayton Matt It's pretty clear that your consideration in negotiations is based on negotiations at other reservations in Montana, not at Flathead and what we're saying is this proposal forms the basis of negotiations for water rights here at Flathead. Do you want to consider it or not?

Chris Tweeten Well, I think I've answered your question

Clayton Matt No I don't I think we need to know if we can move forward from here today with long-term discussions based on that proposal or not

Chris Tweeten Well, unless we get, I'll go back to what I said before

Clayton Matt Does that mean you want to consider it?

Chris Tweeten I'm not going to bandy words with you, Clayton

Clayton Matt I'm not bandying words, either At this point, the point is we're either going to provide something you're going to consider or you're not There is no sense us providing something if you're not going to consider it

Chris Tweeten I think I just told you that if you give us the answers to the questions we'd consider them and take another look at your proposal

Clayton Matt Our proposal is alive and on the table and you won't consider it

Chris Tweeten Well, no, I'm not going to make that commitment to you until we see the responses to the questions The questions form the basis

Clayton Matt Why should we provide you with a response if we're not going to have consideration of it? We're not going to be jerked around that way

Chris Tweeten Well, Clayton, I'm not jerking you around I've told you that if you provide us with answers to the questions, we'll re-evaluate your proposal

Clayton Matt That means you won't consider the proposal

Chris Tweeten I'm going to go beyond what I've said If you provide us with answers to the questions that we posed, we'll re-evaluate the proposal in light of those responses

Clayton Matt We have to take the position and would take the position that that means you're going to consider the proposal and the proposal is a viable option for us to consider in negotiations

Chris Tweeten, Well, Clayton, you can spin it however you want, I mean we can't control that

Clayton Matt I'm not trying to spin it You clarify, do you want to consider the proposal or not? That's your decision

Chris Tweeten I'm not going to go beyond what I've said. If you provide us with the answers, we'll re-evaluate our position based on those responses.

Clayton Matt Well, we can clarify Tribal position today. We can do that. And I think as we step through discussions on these work groups I think we're going to get to the point where we're going to have to stop, take a break, I want to consult with the team, make sure I know where we're at and then I do have a response because either our proposal is being considered or not and if you're saying it's not being considered then we do have another option to put on the table.

Chris Tweeten Well, in the absence of responses to the questions we're not considering the proposal at this time. If you give us responses, we'll re-evaluate that position.

Clayton Matt Then we will give that consideration.

Chris Tweeten Okay.

Clayton Matt And I think at some point in time we're going to ask for a break here and we're going to step out, we're going to talk about it, we're going to decide exactly what that means because I don't think your statement is clear at all. I don't think the state is clear at all about whether or not it wants to consider the proposal and I think that's putting the Tribe in a position where on one hand you're taking the position that you won't consider the proposal but on the other hand if we provide a response you might. But then you're in a position of saying well since you're not considering it you will reject those and in the second instance. We need something more clear than that and we can create something more clear than that and we'll be prepared to do that unless you say you want to consider the proposal. That's where we're at.

Chris Tweeten I don't think there's anything magic about the word consider and perhaps you do but I don't.

Clayton Matt Well, I think the Tribal Council and the Tribal negotiators here that I've been talking to don't think it's magic either but I think that it our proposal is due serious consideration or a straight answer that says it's not being considered.

Chris Tweeten Let me just go back to what I said before. We gave it serious consideration based on the information that was provided to us and we haven't gotten substantive answers to those areas of concern that we posed to the Tribes after that proposal was laid on the table. If we get that information, we're prepared to re-evaluate that position.

Clayton Matt You tell us you're considering the proposal, you'll get that information Period.

Chris Tweeten Clayton, I'm not going to bandy words with you I mean the word consider is not magic for us And I've told you what we will do and if we get responses to the substantive questions

Clayton Matt I'm not sure what you'll do You might just turn around and say well we're not considering it because we don't like it

Chris Tweeten Well, we might say that if the responses are such that they don't address the concerns that we've posed then we're not going to make a commitment that just because you give us a piece of paper that lists responses to certain questions we're going to turn our position around and put the Tribes proposal back on the table If those responses adequately address the concerns that we pose, we're willing to re-evaluate our position but I'm not making a commitment to do that until we see the responses

Clayton Matt I think for the public we need to move on to these other discussions then we're going to take a break and I think we're going to talk about where we're at here in a few a minutes but maybe you can entertain me with an answer to one additional question In other negotiations, what is the concept that you have proceeded with in terms of negotiations with other tribes in the State of Montana? What is the concept of putting a proposal on the table if we put a proposal on the table that's all it really means is that it's a proposal and we expect that should receive consideration If our proposals can't receive consideration then what is the nature of the negotiation?

Chris Tweeten Well, Clayton, I question the premise of your question Your question seems to be premised on the idea that we didn't consider your proposal Obviously we did consider it We studied it We studied it seriously enough that we had a series of questions that we posed to you based on the proposal That was an attempt on our part to put some flesh onto the framework that the Tribes had laid out How could we have done that had we not considered your proposal? Clearly, we considered the proposal and the premise of your question that we didn't consider it I think is inaccurate

Clayton Matt But you're not now? But you're not now considering it, and that's the answer I think we [garbled] hear

Chris Tweeten Well, we're not at the present time because we haven't gotten the information we asked for

Clayton Matt Maybe now is a good time for us to take a break and we should probably visit

Chris Tweeten Certainly, that's fine with us

Caucus

Chris Kenney In the interest of dramatic flamboyance, I read from Ciotti 3 “There may be no water left to appropriate on the Flathead Reservation because the Indians own it all ”

The reason I read that is because as I heard the dialog between Clayton and Chris Tweeten, what kept occurring to me is that they’re not talking about the same thing I believe the United States, and we have said so in Helena, we have reservations about the white paper And mainly our reservations, I think, are basically process oriented But we have no reservations about the underlying premise of the white paper, I think, based on what we understand And our underlying premise is that until this negotiation and dialog with the State of Montana and the Tribes shows us the technical information and analysis of where the water use is and what the best use of water is on this reservation and how the best use to put the water and what we can do to help everybody on the reservation continue to have viable lives and economic lives on the reservation, we believe that the Tribes do own all the water based on the Tribes treaty and how the reservation was established and what purposes they have to put to the water The United States has no basis for assuming anything other than the Tribes own all the water on this reservation That’s what we believe going into this

And because of that, we believe that negotiating the Flathead Reservation, the Confederated Salish and Kootenai Tribes’ claims, is going to be a uniquely different process And what I think the Tribe is asking and what I propose is that the Tribe is asking for the State to consider some changes and difference in approach to how we negotiate this water rights claim I can’t, I’m not going to speak for the Tribe, that’s my supposition But that’s where the United States comes from and I think that is what I was hearing in this proceeding dialog and if those underlying understandings and premises are what we’re having confusion about then I think that’s what we need to discuss

Clayton Matt I do not get completely away from the data question which was one element we were talking about and kind of sprung us off into this other area and I think at the last negotiation session, probably at the last couple, we’ve talked about data sharing and I just want to make it absolutely clear that the Tribe took the position that it’s committed to data sharing but we also, I think through dialog at least through questions to you, to the State, understand that in terms of data sharing, data sharing in and of itself is kind of a misnomer because I think it’s pretty clear that the bulk of the data that can really be brought to bear on the problem we’re trying to solve here in our negotiations is held by the Tribe

There is some public data and information out there that I think the State is starting to look at and starting to gather and starting to collect But in terms of information that is really characterized as that can shared then back to the Tribe, there isn’t really that big body of information I think it’s important to understand that from the Tribal perspective, we took a position of wanting to share data and do a very deliberate approach because we only want to do this one time and we’re not going to get carried away with dumping a

truckload of data on you. We're going to do this as we need it and try to solve the problem as we go.

We made the statement in the opening remarks that one of our goals today is to advance our negotiations toward long-term settlement discussions. I think that is an important principal. When we put our proposal on the table back in June of 2001 and when we verbally presented that to you in the previous meeting in Helena we think it's important to recognize a number of things out there. One of the things to recognize in that whole exercise is that we're going to negotiate water rights at Flathead the way that makes sense to negotiate water rights to the Confederated Salish and Kootenai Tribes. This is not going to be necessarily negotiated the way you might be familiar with negotiating water rights at say one of the other reservations. That was good for them. This is what's good for us.

This proposal, we believe, is absolutely reasonable. The legal basis for it is explained in the proposal itself. The proposal, we think, addresses some fundamental points. One, that the United States owns the water in trust on behalf of the Confederated Salish and Kootenai Tribes and you just heard the United States position on that. And I think that what's important about that is that the Tribe is trying very hard to be reasonable in its approach, trying very hard to find a balance and perspective in a way that we can offer an opportunity to form a basis for the negotiation that will be good for everyone and in that the proposal recognizes the existing junior water users throughout the reservation. The Tribe has said that. And I think the important part about not considering it at this point is to say well it doesn't matter that you're considering it because we just don't really like what you're saying anyway. Then it says that because we own it and we're recognizing existing uses that we want to develop an administrative mechanism and a process for admin and water rights on the reservation that would be fair to everyone. Therefore the real meat in negotiation based on that proposal is to negotiate and find a process for negotiating the elements of a water administration plan on the reservation. So all of those questions that you had for us some of which were legal, some of which were technical, are answers came on two ways when we first answered that back in Missoula. First of all it was we don't have all the answers for you today and that was what we said then. And we'll say it again, we don't have preconceived answers for you today. We could go off and develop single-handedly a water administration plan for the reservation but our proposal says that we want to negotiate that. That can't happen if it's not under consideration. We think that that's a fair approach.

Given that that's not being considered and I think that we want to take a different approach to our discussions from here on and we want to suggest that we will move our negotiations in a different direction based on [garbled]. First of all, as far as the Tribe is concerned you can always return back to the table to discuss that proposal, we do not intend to remove that proposal from the table. As far as the Tribe is concerned that will continue to be a viable source and basis for negotiations for the Tribe. Since you are not considering it however, and I think it's important for us to look at maybe a different approach at this point simply because we need to meet that goal to advance these

negotiations toward long-term settlement discussions. For us, that's going to mean that we are going to go set the proposal to the side, keep it available if we want to return to it because we think it's an absolutely reasonable approach and I think it makes sense not only to the Tribe but to the people of the reservation who are going to have to depend on that in the future.

Then we have to go off now and quantify water rights on the reservation and develop a quantification proposal. As we do that we want you to be clear that we are not breaking off negotiations. We want that proposal to be considered and when you're ready to we'd like to hear from you on that.

We are also saying that interim administration is important and we think we need to get to the bottom of that and find a solution to that and we want to continue discussions on interim admin.

However on the other two points of the work groups, claims examination and data sharing, we are going to take a very serious look at whether or not we should even continue with those because if we take this other approach, they may not be necessary.

That is the basis of where we want head with this. And I think that it makes it very clear for the Tribe and for the public and hopefully for you. Thank you.

Chris Tweeten First of all I guess our understanding had been that back at the meeting in Missoula we had essentially understood that the Tribes were willing to put their proposal off to the side and proceed down this working group process. So your expression today of a willingness to do that to set your proposal to the side and look at other approaches I think is very positive and we appreciate that. We thought that's where we were back then and we certainly glad to hear that's where we may be headed today.

With respect to data and claims examination work groups and the necessity for continuing those efforts, obviously until we understand more about what this alternative approach is that you wish to discuss, we can't respond to your suggestion that those may not be necessary, that those processes can be set aside. Is there some timetable in which we might expect to know what this alternative route that you discussed will be?

Clayton Matt We're going to go off and quantify water rights and we're going to put a proposal together and we're going to give it to you and it might take two years to do it.

Susan Cottingham So Clayton, just to clarify, that means that in the meantime you're giving serious consideration to not having any of the working groups, we'll just put everything on hold, we would each do our own technical work.

Clayton Matt Let's be very clear and step back to the interim administration discussions. Interim administration discussions have to continue. In terms of the other two, we're going to give very serious consideration to not continuing with those.

Chris Tweeten Clayton, I don't understand why it makes sense for the Tribes to go and unilaterally develop a proposal with respect to a quantification of water rights. Wouldn't it be preferable to do that collectively and collaboratively in a negotiated process in which all three of the parties can have input rather than the Tribes come back and say, "we've done this work this is what we think now you take two years and go tear it apart and come back with your take on the same issue." Don't you think it will advance the ball faster if we do that jointly through the negotiated process rather than having the Tribes go and do it on their own and then come back and sort of give us a package that we can then either accept or reject, I'm not sure that's going to be productive.

Clayton Matt We proposed a solution and you're not considering it and I think that this is our alternative and we don't think it's going to be any less fast than any of the other alternatives because I think within a couple years we can have a proposal on the table.

Chris Tweeten Well, I'd like you to consider, let me find another word, I'd like you to think about whether it doesn't make more sense for us to develop that quantification if that's the route we're going to take, collaboratively.

Clayton Matt That's the route the Tribe is going to take and I think what's important about it and I want to make sure it's really clear even if we take this approach the viability of the proposal in the Tribes mind and those elements of the proposal that I just described still make sense to us. We're claiming ownership in the proposal you want to consider the proposal, fine. We'll go off and quantify the right and even the State of Montana Supreme Court has said the Tribe owns its water. We'll quantify that we own it. We have accomplished the same principal. We then have the opportunity to develop a water administration scheme for the administration of Tribal water resources. And we will do that and we will give very serious consideration to including existing uses. How we do that I think will be determined in the water administration package but if we can't continue to get on with long-term negotiations based on this proposal we're saying we need to get on with our settlement process and this is the alternative approach that we're going to take and I think it's time we get on with it.

Chris Tweeten Well, I have serious concerns about whether that's going to be a constructive way to approach these negotiations, frankly. Because I don't think a series of solutions unilaterally developed by the Tribes and then placed on the table in the way you're suggesting would be done, I don't think that's a process that is necessarily designed to or necessarily will produce consensus among the parties. It seems to me that's designed to produce a series of almost ultimatums on the part of the Tribe saying you may take this proposal if you don't like that we'll give you another one and you can take that or leave it and I don't think that's

Clayton Matt Let's step back here.

Chris Tweeten Let me finish. I don't think that

Clayton Matt And not paint the Tribe in a negative light here because it is not the Tribe that's the bad guy here We're certainly not saying that anyone else is the bad guy here but you can paint your own picture, don't paint our picture for us We're going to take the opportunity to do what state law says State law says that these negotiations are settled Tribal water rights Let's go do it

Chris Tweeten You can obviously do what you want and how that fits into the process of negotiation I guess remains to be seen I just want you to understand going in that speaking on behalf of the commission, I have serious concerns about whether that process is actually going to be productive, constructive and as to whether it's designed to lead to the kind of consensus that we're going to have to have to get a compact that has the support of the three negotiating teams, the support of the water users both Tribal and non-Tribal that are going to be affected by it and it can ultimately get the support of the Montana legislature, the congress and the Water Court I think we need to keep in mind that this is a long process that has many steps

Clayton Matt Absolutely, but we're defining the process and it is, as I said in our opening remarks, not our intent to hurt anybody so we'll see where that goes because it's not our intent to hurt the people here in this valley In fact, we intend to work together with the people of this valley So we just need to get on with it and we can't continue to wait for you to be ready to consider our other proposal because that is the solution, that really is the solution So that's where we're at

Chris Tweeten So is the outcome, Clayton, going to be that we either accept your original proposal or something that gets you to your original proposal or there won't be a compact?

Clayton Matt I don't know That'll be for you to decide We're going to go quantify our water and bring the numbers to you

Chris Tweeten But from the Tribes perspective

Clayton Matt From the Tribes perspective we're going to go quantify our water and bring the numbers to you

Chris Tweeten And what I've heard you say is that you're going to quantify your water right in such a way as to reach the conclusion that all the water within the reservation belongs to the Tribe, is that correct?

Clayton Matt Well, our proposal already says that

Chris Tweeten So, am I correct in understanding that after this two-year process that you're going to follow to quantify your water right, you're going to come back with a conclusion that all the water belongs to the Tribes?

Clayton Matt You're catching on

Chris Tweeten Well, I don't know how that advances the ball

Clayton Matt I think how that advances the ball is that we get through the quantification of the Tribal right and we develop an administration scheme that we think is fair to everyone. What that looks like will be dependent on how we develop that. And if you want to join us in doing that, our proposal is on the table.

Chris Tweeten Well, I guess

Clayton Matt If you don't want to join us in doing that then we're prepared to move forward and we just need to get on in doing that and if you want to paint the Tribe in some negative light that we're out to hurt people here in this valley, go ahead and try. But we're not there to do it.

Chris Tweeten Clayton, nobody said that. I don't think that's a fair characterization of anything that's been said this morning. So I

Clayton Matt We're not here.

Chris Tweeten Don't think it helps to put the discussion in that context.

Clayton Matt We're not here to threaten the local water users. We are here to protect the water resources in the reservation and manage them. So that's the reason we're doing it. That's it. And I think the United States supports the position in terms of at least as far as what you heard them say here a few minutes ago.

Chris Tweeten We've also considered as the United States has, the legal basis of the Tribes proposal and frankly we disagree with the premise based on our review and our research and the study that we made of your proposal at the time it was put on the table. So there is a fundamental disagreement with respect to the underlying basis of the Tribes proposal.

Clayton Matt We have a solution for getting to this, we've just offered it and I guess the next question is do you want to continue discussions on any of the other work items at this point because that's where we're headed in terms of the overall strategy.

Chris Tweeten I think it's probably appropriate to move onto the discussion of the interim plan at this point because I do think it's important and actually the whole purpose of this meeting being held at this time was to inform the people in the community with respect to the status of those negotiations and to get input from the public with respect to the discussions that we've had on the interim plan.

Clayton Matt In your opinion, I think these negotiations are much broader than that. Do you want to talk about claims examination issue before you get to that?

Chris Tweeten I think we can provide information for the public with respect to what the status of that is. And if there is a point to discussing it, I guess we can. Based on what you said, I'm not sure there is. If the Tribes position is that those things are going to be set to the side and not pursued.

Clayton Matt Your choice.

Susan Cottingham I guess what we were just going to say today was the claims examination one was the furthestest one along, I think. We have had some very productive drafts going back and forth it's taken awhile but everybody did agree that we wanted to go forward with the claims examination on the Jocko. The DNRC had provided a staff person to do so and we were just trying to come up with some language for a proposed order to the Water Court and as recently as yesterday there were more discussions about it and I think we're very, very close to having some language. So I guess in light of all this discussion today we'll have to see whether we want to go forward and at least put the order in to the court and see if they want to order it and then we can decide how. But that was the only work group that I thought we were pretty close to moving forward and getting that done but like I said I don't know where we are with that now if you guys want to put that aside for a couple years.

Chris Tweeten Does the federal team have anything to add at this point?

Chris Kenney Just a small point in clarification. I stand by our characterization of the Federal position on the Tribes water rights claims. I guess I would offer up that the purpose of negotiation is to try to find reasonable accommodation to what the senior versus the junior claims are on the reservation. I don't know how you do that if you don't have a continuing dialog to do that. And so what I would recommend and encourage the Tribe to consider is if they are going to try to quantify their right, and I think I understand what they're trying to accomplish in doing that, but if they sincerely want to continue to negotiate with the State of Montana and I'm sort of speaking for the State of Montana, you can correct me if I'm wrong but it seems to me that the negotiations are not going to be very productive if there isn't something of an ongoing dialog as that quantification process moves along.

From the other side of it though I think that if I take the Tribe at their word what they've always said is that their white paper provides a basis for a dialog and discussion and that all the elements in the white paper were negotiable. At least I thought I heard that at one time. And that the State can see a vehicle in order to continue to dialog without trying to decide whether you're considering it or not or whether you think you need to accept it whole cloth or not. I would encourage the State to consider the white paper as some kind of vehicle to at least keep the dialog open and going even if it's not a traditional concept that has reached the water rights negotiations in other parts of the state because I'm

confused by our desire to try to continue to be successful and our seeming desire to try to not get together to work and put these things together in a mutually consensual kind of way And so until we find some kind of vehicle our language that will allow us to discuss these things equitably I'm not quite sure that this is going to be a healthy process

The United States will continue to try to do its own quantification As trustee, we have our own understanding of what we think we're trying to protect and our budget hasn't gotten any better from the last time I told you about our budget so we will try to be doing our best to try to bring resources to it so that the United States can do what it considers its responsibility and that's partly to do the quantification process

Chris Tweeten In response to that I would say that I share many of the concerns that you've just expressed and I think for many of the reasons that you've just stated, I'm very concerned about the process that the Tribe has indicated it intends to now follow because I'm not sure its going to be constructive or productive for the Tribe unilaterally to go develop this proposal and come back and lay it on the table in two years and expect us to either take it or leave it I don't think that that's going to be helpful

Clayton Matt It might take us two years, in response, to develop that I don't think we've discounted any continued dialog I don't think that's the point at all

Chris Tweeten Well, without some understanding of the way in which you envision the other negotiating teams participating in the process of developing this quantification, its very difficult for us to respond to that right now

Clayton Matt I wouldn't expect you to have an immediate response to that right now In any case I think we just brought this out I think that we need to get started and as we move through this we'll talk about how we need to continue dialog

Chris Tweeten That's fine We have to report back to the people that we report to with regard to where things stand and after we've had a chance to discuss with them what the Tribe proposes to do we'll be in touch with you and we'll talk about where things go

Before we go to the interim plan discussion, there's one more process issue that we'd like to briefly bring forward and that is that's its become more and more apparent to us on the State side as we've had discussions over the interim plan and over the compact generally that our process for negotiating is not entirely functional and that ought to be apparent to anybody that's watched the discussion this morning We talk past each other a lot There are requests for information that are passed back and forth that are not responded to or are responded to in ways that are not particularly helpful And I'm not placing blame on anybody for that, I think there's probably some responsibility for that that lies with all three of the parties But the fact of the matter is I think it exists and I think it's evident to anybody that's watched this negotiation process as it's gone on

We have talked for some time and suggested for some time that the parties ought to consider some third party neutral to join us and to participate as a facilitator or mediator or whatever you want to call it in trying to help the parties find some direction to their discussions and trying to direct traffic between the parties with respect to communications back and forth to avoid the kinds of semantic debates and dialogs that we've had this morning as an example

We think its time to revisit that issue We think that having somebody available to the parties to provide some structure to these discussions and to make sure everybody understands what's going to be discussed and that information is passed back and forth in a timely way and that the information that's passed is actually responsive to the needs of the parties for exchange of information can only serve to help us in communicating with each other more effectively and reaching an agreement that's fair and equitable to all parties if there is such an agreement there to be reached

I don't expect to reach an agreement on this today but we just wanted to pose the issue and let you know that we think that if we are going to make progress we probably need to need the assistance of somebody like that And we'd like to engage in some discussions in the very near future on how that might be structured and who that person might be

Clayton Matt I'll take it under consideration In the past we didn't think it was necessary Maybe it's time we revisit that We'll certainly at least consider it

Chris Kenney The United States agrees with that as well I'll even make another suggestion or supplemental suggestion I know of a couple of firms One in particular that is very good at coming in a doing a general assessment of a negotiation through engaging the parties and this particular outfit also is very familiar with Indian water rights activities and federal process and it might be worth the expense and the effort to have them come in because I think it would be an objective third party assessment and would be something that would give us something to evaluate where we are I'm open to facilitation and mediation because I think that's probably going to be helpful but that interim step might even be more helpful particularly if the Tribe needs more objective an assessment of where we are I guess the answer is yes

Chris Tweeten I think we need to open a dialog about that and we need to do it soon We'll be in touch with you to try and get that process started

Let's move on to the administration work group and the interim plan, which I suspect is the reason most of you are here today As you know from the opening statements and probably from your attendance at these meetings before, trying to work out some method of administering and authorizing water uses on the reservation while we negotiate the ultimate quantification of the Tribes right has been an issue that has been at the forefront of consideration for the last few months In fact it's the issue on which the parties have expended the majority of their efforts this year to try to reach some sort of an

arrangement that's going to provide some relief from the vacuum that exists in terms of permitting or allowing new water uses on the reservation in the current environment

We have previously circulated to the public back I think in June an outline that explained the areas of agreement that we had with respect to that process and those generally involved the fact that there would be a joint State Tribal process that would result in the issuance of what we've called a license that would authorize people to put water to use for municipal and domestic purposes from ground water sources. As of now there is no agreement with respect to new uses from surface water. There is also no agreement as of now with respect to a process by which people could change any existing rights that they might have. Although discussions have taken place on those issues we haven't reached any sort of consensus so the consensus that's been developed thus far is limited to new ground water uses for primarily municipal and domestic purposes.

As I said in my opening statement, we don't have an agreement with respect to the criteria that would be used to decide whether one of these new licenses would issue. But I don't, frankly, anticipate the development of those criteria will be highly controversial although I think it will take some word smithing to come up an agreement that everybody can buy into.

The major stumbling block that's separating the parties now with respect to this proposal is the question of the duration of these licenses. During the discussions, the United States put forth the proposition that in order to be in compliance with federal law these licenses had to be unilaterally revocable by the Tribe with or without cause. And we've talked since then about ways in which that requirement can be addressed. What the parties have talked about most recently is a system in which the licenses would continue to be in effect as long as the parties were at the table and continuing to discuss a final compact. But in the event one party decided to withdraw from those compact negotiations or those compact negotiations were otherwise terminated, the position has been advanced that the license would at that point have to terminate.

An alternative that's been proposed is that rather than having the license automatically terminate at that point the license would be terminable at will by the Tribe with or without cause. From the States perspective, that requirement raises significant concerns because we think it raises problems for the water users with respect to whether you actually have the kind of water use that's permitted or licensed in a way that's going to provide you with the kind of certainty that you need to go get financing from a bank for example. Or a municipality would need to get financing through a bonding process. That if the water right isn't in some sense permanent or at least can't ripen into a permanent water right with some assurance, we think there's serious question as to whether it has value for those purposes and as I said before, I think one of the objectives we brought to the table is to try to make sure that whatever interim agreement we come up with provides you with a way to put water to use that actually has practical values for you.

Through this discussion over the last few minutes, I've tried to put into perspective what the bone of contention is at this point from the State side. We want to hear from you later on in the meeting with respect to your concerns about this or your feelings about whether a revocable license such as the one being described in these discussions actually will serve your purposes well enough to justify the steps that need to be taken to put that kind of a process in place. That's one of the main reasons why we're here today.

With that background and understanding that our objective is to come up with an agreement that is going to be of practical use to the water users we'd like to, during the public comment period, hear what you have to say.

What we've agreed is that each of the parties will have an opportunity to make a brief presentation regarding the interim plan. I've just made the one on behalf of the State negotiating team. At this time, I'd like to give Tribes an opportunity to make their presentation and then we'll give the United States an opportunity to make theirs. At that point, we'll shift to the public comment section of the agenda and what we've agreed among the negotiating parties is that we'll break that public comment period into I think primarily three parts. Initially, we'd like to give people the opportunity for clarification if you need any and I suspect you might with respect to the interim plan. We don't want to get into a free ranging debate about abstract political issues but we do want to make sure that we've provided you with enough information regarding the interim plan discussions to give you an opportunity to comment intelligently about the issues. So we want to give you an opportunity to ask questions about the interim plan as it's been outlined by the three parties. They may be questions we can answer, they may be questions we can't and if we can't, we'll tell you that but we will make every effort to make sure that you have the information that you need to understand what the parties are talking about and to comment about it in a way that's going to be helpful to us. So that will be the first part.

The second part will be an opportunity for you, members of the public, to give us your feedback about the interim plan discussions. And then finally, as a third segment, we would set aside a period of time that may in fact be limited to receive your input on the settlement negotiations generally. So with that outline of where we're headed for the rest of the meeting, I'll turn to the Tribes. Clayton, if you have an overview of the interim plan discussions that you'd like to present, this would be the time to do it.

Clayton Matt I would. Given that the basis of, at least as you put it, the bone of contention comes from the federal position in the modified position, I would like to request that they have the opportunity to start by making that position of their statement clear.

Chris Tweeten If that's agreeable to the Federal team.

Chris Kenney I'm about to lose my voice so I'm going to make Scott do it anyway. Scott Miller is the solicitor member of the team, which is not to say I might not have an opinion from time to time.

Scott Miller If anyone wants to jump in from our team while I'm going through providing the federal perspective on the work group discussions, please feel free

Just to start here at the beginning with a little background, I think what the States asking for, which is an interim agreement for administration of water on the reservation, is very unique. It's the first time that we, the federal government, have had to deal with that. Typically in negotiations this is something that comes at the end and after the water rights are decided and we figure on how to administer them and that is part of the compact that, as we've heard today, is going to be a long process.

The reason it's part of a compact is because it requires a change in federal law and so as part of the compact process we go to the United States Congress, ask them to pass a new law that allows us to work toward cooperative management and administration and that is signed by the president of the United States.

We definitely understand from the federal perspective the desire for interim administration and therefore we've worked diligently and creatively to try and come up with something that will work for the reservation.

The status quo is clear. What's not happening today is why we're here. There are no new state permits for water on the reservation. The State has had the opportunity to litigate that question and the Supreme Court has made its decision very clear. And so really there's no other alternative for state permits at this point so that's why we've moved forward with this interim agreement, trying to come to an interim agreement.

We've worked forward from the beginning with a number of basic principals in mind. And those include that it should be built upon close cooperation of the Tribe and the State and the Federal government and the water users on the reservation. And that's important not only for an effective administration on the reservation but also it's important as an important starting point of these compact negotiations and frankly for the future of the reservation. Without cooperation between the Tribe and the State, I think we'd find continuing disputes and so we think that needs to be a basic principal of moving forward with an interim agreement. There's got to be close cooperation.

Second basic principal is, this is limited in scope, there are a lot of things we need to address and we will address them as part of the compact. This is an interim agreement. It is temporary and it's limited in scope and we've talked about an agreement to address ground water for domestic use, which includes single-family uses, community and municipal uses. This is never been intended to solve all the problems of water use on the reservation and it's never been intended to solve them permanently. Again, that's what the compact is going to have to do.

And lastly, the interim agreement, by its very nature which will be signed I think by the three chairmen here, is going to have to respect each of the three parties positions both legal and policy. Otherwise disputes will remain.

With that background, a couple observations. I think the Tribe has offered a lot and we've come a long way. As Chris Tweeten was mentioning earlier, if I recall what you said, Governor Racicot, some seven years ago, first asked for the Tribe to start talking about interim administration. Evidentially their initial answer was that they were not but not only have they changed that position but we have come along with a fairly substantial proposal at this point. It's a long way from where we are today which is with nothing. There is no interim administration. There is no state permitting at all. So I think that has to be recognized, how far the Tribe has come.

From the Federal perspective, this hasn't been easy. In many ways we're pushing the envelope of federal law and policy. Federal Indian law is not known as very flexible law and again that's why we need to go to the US Congress when we're done with the compact for them to change the law. And so we've had to be very creative to get to where we're at today. It's taken a lot of time, a lot of attorney creativity from the Department of Justice and the United States Department of the Interior, a lot of discussions with our bosses and amongst ourselves.

I think as Chris Tweeten mentioned the basic outline of the proposal was given out at our last meeting and that still basically reflects where we're at today. Despite making progress and flushing out many of the details of that proposal I think we've really come to a dead end or better yet a fork in the road. And from our perspective, we can either move forward with what we have or we can go back to the drawing board and we can look for new opportunities that hopefully will resolve the issue but we've come as far as we can go with the current proposal. The main sticking point, as Chris mentioned, is basically revocability. In other words, what happens if there no longer is an agreement and there no longer are compact negotiations? What happens, for example, if the State or the Tribe or any party walk away from the table to these interim licenses. From our perspective, it's not possible to guarantee that the Tribe will continue to recognize the permit if the Tribe or the State walks away from compact negotiations. There will be an agreement, we hope but it will be an agreement so long as the parties agree. If there's no longer agreement the licenses would no longer be recognized and in that sense the permanency and certainty that Chris Tweeten was mentioning is something that can't be achieved through these negotiations. And frankly it's inconsistent with what hopefully will not happen but which might happen which is litigation. The Supreme Court, as Chris Kenney mentioned a few minutes ago, has said for all of us to know, the Tribes own all of the water and we certainly concur. If at the end of the day we find out through litigation for example that there is no more water that was available, is it not reasonable to ask the Tribes to continue to recognize those and to be bound to recognize those though they may choose to

So it's basically, what the State is asking for I think is inconsistent with the nature of an agreement that's based on cooperation among the parties. If there's no longer cooperation then there's no longer agreement. We simply can't continue to recognize the licenses that are issued there under. It's also inconsistent with the nature of these negotiations which is we will work together to try and solve the problems on the reservation through a compact. If we end up going into litigation, frankly all bets are off.

And finally but not exclusively, it's not possible as a matter of Federal law. We've been very creative to get to where we are today but we can't go any further. In getting to where we are today, from the Federal perspective, we've compromised and compromised again. As Chris Tweeten mentioned, our initial position was and remains that the Tribe has to ultimately retain the authority to revoke these licenses for whatever reasons they deem appropriate. And the State and the Federal government have no ability to require them to do otherwise. We have compromised on that position and we have proposed, and I think we hoped for good reason that this compromise would solve the problem and we could be telling you what the agreement is today as opposed to what the disagreement is today and that was, as long as this agreement is in effect any license that's issued there under would only be revocable for good cause and that would be specified in the agreement. But again, if the agreement is terminated, all bets are off. And then again we've recently offered a third compromise, which would be if the agreement is terminated, the Tribes could choose to recognize those licenses. And again, neither the State nor the Federal government has the power to require them to. And so what we've compromised and compromised again and again we can't compromise anymore. We've reached the end of our federal law and the end of our willingness to compromise.

On another point, on an issue that's been raised in recent discussions, which I think deserves mentions, not involving revocability but simply cooperation versus separation. As I said the basic principal for this agreement has to be cooperation and we have not discussed recent State proposals in depth but we have a little bit and from the federal perspective we're concerned that the State seems to be pulling away from cooperation in this interim agreement. And we think that if we move forward with the interim agreement we really need to focus on dialog between the State and the Tribe and the water users as opposed to each party doing their own work, coming back, sharing their decision. We think that's a recipe for disagreement and so we just want to emphasize the importance of cooperation to make this agreement work.

Finally and importantly, we can't afford to sit back and talk for six more months on this. It's the State's position that they need legislation to make this agreement possible. We don't agree with their interpretation of state law but again, we respect their interpretation and we understand that everybody's got to respect each party's interpretation of their own law and policy in order to move forward. And if we're going to get state legislation, as I understand it, we need to have an agreement and some language ready in the next few weeks in order to provide that to the legislature. If not we'd be waiting I think another two years before the legislature's back in session and I don't think anyone wants to wait that long to finalize this agreement.

So in summary, I think we either need to move forward with what we have, it may not be perfect but we feel strongly that it solves the problems. We've all agreed to work together cooperatively and there's no reason to think we can't make this work as it is. The only other option is to go back to the drawing board and come up with a new proposal that would not require state legislation and would avoid the State's position with regard to revocability. With that I would ask for any other comments from the federal side otherwise we would turn it back over to the Tribe.

Chris Tweeten Clayton, if I might just briefly before you take advantage of the opportunity to talk about the interim plan, I do want to respond to one thing that Scott said.

And that was the last point you made regarding the assertion that the State is pulling back from cooperation and that somehow we are impeding or not participating in the exchange of information or ideas or showing some inclination not to do that.

I couldn't disagree with that point more. We have consistently followed through with every commitment that we have made to exchange documents, to exchange ideas, to put things in writing and we've exchanged those with the parties and in many cases seemingly have fallen into a black hole because we sent things to the federal team and we get nothing in return. For example, when the idea of revocability first came to the forefront and we were informed by the federal team that there was a federal statute that you believed required that these be revocable. We asked you to put that position in writing and give us an explanation of your analysis of the statute. That was done months ago. We have yet to receive a response to that letter. Another example, after the conference call we had to set the agenda for this meeting. We agreed that it would be helpful to circulate to the public some sort of an outline of what the status of the interim plan negotiations was. Our attorney took the time and went to the effort of putting together a proposal of a draft of an outline, which was circulated, to the Tribes and to the Federal team. We received no response to that document until there was a phone call, as I understand it, between you and Anne yesterday as you were getting ready to get on the plane at which point you told her that her proposal was unacceptable and you didn't see much point in discussing it further why it was not acceptable to the federal team.

Scott Miller If I could jump in.

Chris Tweeten Just let me finish. I think it's very easy.

Scott Miller I think you're misinterpreting what I'm saying, so if I could clarify first what I meant to say which was not that the State has not been cooperative in these negotiations of the interim agreement. I did not mean that and if you thought I did, I would stand corrected. I think you have been very cooperative as far as putting things in writing, from the federal perspective, I don't think we find that's helpful. We think we need a dialog. When folks put their position in writing, it makes it more difficult to move

forward. But that's not the point, either. When I said we're concerned about the State moving away from cooperation, that specifically and only with regard to what's being memorialized, the proposal to be memorialized in the agreement process itself. And that is, for example, and again we haven't discussed this in depth, as license applications are proposed instead. I think what the State has proposed the State would go back with it's people, they would evaluate that application and make a decision and come back and share that decision with the Tribe. And the Tribe would do the same thing. From our perspective, having folks work separately and coming back and sharing their decisions on a license application is a recipe for disputes. Instead we would propose that it's important to work together throughout the process and instead of going back and doing your own work to work on things together. So I stand corrected if what I've said was interpreted as the State not being cooperative as far as the discussions we've had on the interim agreement. That is not what I intended.

Chris Tweeten Well I appreciate that, Scott, because I think that was certainly the upshot that I think we understood from what you had to say so I appreciate you clarifying that. Clayton?

Clayton Matt When we met about a year ago in Missoula, again going back to a concept that we thought our proposal was viable which was part of the reason that led us to the conclusion that we should go down the path of these interim administration discussions and overall administration discussions. First of all at that point I think you made a comment earlier that you understood that we'd put it on the side at that time. At that time, we didn't and I guess that's the reason for our discussions today. We did not, not until today.

The purpose of the negotiation session today I think also you stated a couple of times was mainly to get this issue out on the table and get public comment. I think it's a lot broader than that. I think from the Tribal perspective it has to do with having the dialog, even if we disagree on points and having the opportunity to sit and visit with people and talk about the issues, broader issues than just this particular point that we don't agree on. And I think what's important about this process is, interim administration process is, a number of things one of which I think we need to focus on what the interim admin offers, not what it doesn't offer. It doesn't offer a final solution. It doesn't offer a long-term settlement. I agree with the United States on that position.

At that meeting in Missoula, the State invited the Tribe to begin those discussions and we were reluctant before but let's be very clear about that reluctance. We believe that we can negotiate with the Reserved Water Rights Compact Commission. The original intent as we understood it that Governor Racicot proposed to the Tribe and part of the reason that we said no at that time was because the State had intended on moving this interim administration discussions into the realm of 708 provision. And that legislative language is absolutely unacceptable for us to negotiate under an interim administration proposal. We believe that negotiations with the Compact Commission is the appropriate place for that. That was the reason I think moving it to the Compact Commission made the big

difference We're glad to but it is also very clear to us that as we begun down the path of interim administration discussion that while we made progress on many fronts it was happened in chunks It didn't happen very smoothly, it happened in chunks but I think that's part of the process You put ideas on the table, you go away you chew on them awhile you come back and you agree or disagree and then you put other ideas on the table and then you reiterate that That's just part of the process but it's pretty clear with my discussions with the negotiation team and the Tribal Council that they have also been very frustrated by this process At times, we've had the feeling that it has been made very difficult for us to continue with the process and as we continue to try to find solution after solution it seems like there is always one more problem with it We need to get on with this

I have a question and maybe you can answer it at this point or maybe you can answer it later and I think that you've been talking around it, let's get direct Is there going to be an opportunity for authorizing legislation that's going to be needed to make this happen because if there isn't an opportunity for that to happen then that makes our interim administration discussions at least in terms of our discussions today almost moot So I guess we better get clarification on whether or not there's an opportunity for that and what the status of that is today

Susan Cottingham Do you mean like is there a bill direct request?

Clayton Matt Could you explain the process and so everyone understands that and that where we're at with that?

Chris Tweeten I'll answer your question and then I'll let the legislators who are at the table here fill in if I've overstated, misstated or otherwise mislead people

I think the answer to your question is yes There is an opportunity there My understanding is that there are a number of different, well, let me talk about the process first

The process that's followed is that bill drafts need to be requested by legislators and there are certain deadlines that have to be met with respect to that My understanding is that there are bill draft requests that have been lodged with the appropriate office in Helena that could be used to cover a bill to implement an interim agreement So I think that part of the process is in place at this point

In order to make use of those my understanding is that the flesh of the agreement would have to be placed in to that bill draft request sometime in mid January Obviously that is a difficulty because we've got a lot of work to do because as Scott said, if we're going to get that done in that time frame That's the second step in the process You actually have to have the language of the bill submitted by a certain deadline Obviously, the preferable way to do that is to meet that deadline because you're within the rules and there's nothing

that can happen, no discretionary action that's going to be taken, to prevent the consideration of your bill in due course by the legislature

Once that deadline passes for putting the language together and sticking it on the bill draft request and getting it introduced, then you're in the realm where people are going to be making discretionary choices about whether rules are going to be waived and whether committees are going to take action to request bills and things like that. Those are options that still exist. We have history with this in the compacting process where we come into the legislature with compacts in March and April and gotten them introduced by suspending rules and gotten them through both houses of the legislature in the space of a week or ten days, obviously not the preferable way to do things. There are a lot of ways the wheels can come off in that process if you're doing it that late. But we've been successful in doing that in the past and I would hold out the opportunity to do that with respect to this agreement as well although I as I say, I don't think that's anybody's preference with respect to how we do this. But those opportunities are there so I guess in response to your question, what I would say is yes.

The answer is yes there is a process. The initial steps have been taken to hold the place in that process for this bill if we need to do that. If that's not successful and we need to go through some of these extraordinary measures to get it considered late, that possibility is available as well although I don't think that's anybody's preference, I think there is certainly an opportunity for us to attempt to do that.

Now we're fortunate, I think, to have on the Commissions negotiating team some influential legislators. We have the chairs of both of the natural resource committees sitting at the table this morning. I'm confident that if we came up with an agreement that had an adequate level of support in the community and that all of the negotiating teams were prepared to embrace that we could, with some expectation of success, go to the legislature and ask them to take some extraordinary steps to consider it outside the normal process and I think we'd have a reasonable chance to be successful at it.

Susan Cottingham I just wanted to clarify one thing. One of the things that the parties haven't really spent huge amounts of time on is what the shape of the legislation might look like. Whether it would amend certain statutes of law and I think that we thought that we really needed to have the sum and substance of the interim plan decided on before we could figure out how to amend state law to deal with that. So there are probably all different kinds of options of how that legislation would look. I don't know that any of us have agreed on that so there's still some work there yet to do even if we got the interim plan as to how we would, in my view, we should look at the simplest way to give us authority to do that interim plan and move forward. There's all different kinds of ways we could approach it in terms of an actual bill draft.

Clayton Matt Good [lead] into my next follow up question which was are we talking about, and I couldn't quite pick out from what you were saying Chris, actually getting this agreement into legislation or just some authorizing legislation?

Chris Tweeten I think that is what Susan was just speaking to I don't know if we have decided that yet I think there are several ways this could be approached We could talk about taking the agreement itself and giving it to the legislature and asking them to ratify it That would be one possibility We could amend and this is something that I think your attorneys have proposed, amending what you call the 708 provision, which is the existing interim agreement statute to make it conform to the shape of the agreement that we have I'll agree with you that it doesn't conform well to the shape of the agreement that we're talking about now That would have to be done or might have to be done before anybody from the State side could sign off on the agreement So that's another possibility There may be others that we haven't thought of or aren't prepared to talk about this morning But I don't think we're decided that yet

Clayton Matt Given the and I'll go through this and I think I'll reiterate a few things that Scott talked about but given that the human nature of the situation that we're faced with What in your view right now would trigger us moving forward and to actually say alright let's say it's authorizing legislation let's go ahead and do that I'm assuming you're saying that we're not ready to do that now What would trigger that?

Chris Tweeten Well, I mean, as you know we've expressed concerns about the proposal that's on the table for some time regarding the issue that I've talked about before this morning, which is the extent to which it actually meets the needs of the water users And as I said before several times again that's what I thought one of the main purposes of the meeting this morning was to get that kind of feedback from the people in the community about what they think about the interim plan and whether it's going to actually meet their needs and provide them with practical, useful authorization to put water to use I want to hear what they have to say and at that point we would take that feedback, we would go back to the people that we represent and give them a report as to what the views were that were expressed by the public at this meeting and get marching orders from them as to whether they think we ought to go ahead or not That's where we are

I would assume that the same thing is true from the Tribal side, that you would have to go back to the Tribal Council and report to them with respect to the sum and substance of this meeting and get marching orders from them as to what they think you should do We'll be doing something similar

Clayton Matt I guess [garbled] clear answer to what the trigger is I guess it means you got to agree before we can move forward with that and at this point what we're faced with is one single item that apparently we're in disagreement with but its important to make it clear that the interim agreement discussions that we've been through we've talked about a number of elements of possible interim agreement and we haven't completely settled on any on them or all of them but a few of them but if I could characterize those elements we've looked at and discussed an institutional framework and I think that's sort of been discussed in things we've talked about We've talked about an administrative process and I think it is important to recognize that as far as the

administrative process goes one of the disagreements is the point that Scott was talking about whether or not we talk about a jointly developed board and team and process or we talk about doing something separate and I think as we understand the States' proposal we're talking about doing something separate. We're proposing that we do it as a joint process.

There is also the issue of the status of the license and of course the scope. The scope being ground water single-family domestic municipal community that being the scope in terms of status of the license that we look at that in terms of both long-term and short-term perspectives and I think the long-term perspective is something that we really haven't discussed here and I want to elaborate on just a little bit.

The assumption is that there's a big risk if this agreement is revocable to the people who get a license and I'm not so sure that that's necessarily true because I think the parties would have to agree to walk away from it and I think given the amount time and effort and desire on the parties to create this agreement in the first place, we're not going to try to walk away from this. We didn't enter into this with the intent on walking away from it.

Once we get this agreement in place I think the most active pro-active positive thing we can think about is the fact that the other thing that we have talked about and I think we've conceptually agreed to is that once there is a license and an agreement in place and there are licenses that are issued that those licenses would roll over into the final settlement. In that way there would be some permanency with those. What shape that is, exactly how that would happen, we don't know yet but I think there have been, as I understood, three party conceptual agreement that that would happen. So that is an important point to think about in terms of long-term permanency of these if that agreement happens.

Revocability is something that's an element of the issue we're talking about but I think in the bigger picture I think there is a permanency element to this that needs to be explained and I think it needs to be very clear that that isn't the issue, is just an element and in the bigger picture continuation of the licenses and having some permanency to them if that agreement goes through into the final settlement is what's intended.

Chris Tweeten Clayton, let me just add that I would agree with that. That certainly was our intention. I think the United States may take a different view of that. We've been told on a couple of occasions by members of their negotiating team that some sort of permanence in the final agreement was not a point of agreement on the part of the United States at least.

Scott Miller As our last statement reflected, we certainly anticipate that these would be recognized in the final compact. Revocability only is an issue if someone walks away from the table. We're spending a lot of time on something, on the interim agreement, we're spending a lot of time on something that from the federal perspective is based on a basic assumption of folks walking away from the table and certainly we don't expect that's going to happen.

How exactly the licenses will be dealt with in the compact is something we're going to have to negotiate but we have committed to deal with them and to recognize that we have issued licenses and that we're going to have to negotiate how exactly they'll be dealt with in the final compact. And as part of the compact again is where we can change federal law to make those permanent.

Clayton Matt So finally, given that and that's a little broader perspective, that there's a lot more work that's been and a lot more meat that's been put to this in terms of process and form and substance, that just this issue, however, I think it's an important issue, I think it's too bad that we've had to really focus all of our energy and attention on this one point and we think it's time to agree that the federal/tribal position on revocability, to agree with that, or move on to long-term settlement discussions.

The United States has come a long way in its thinking and we appreciate that and if you remember in the dialog we had when the United States, when we first sort of realized that the United States was taking the position they were on in a sense they were on the revocability of the licenses. I think even the Tribe said, "is there an opportunity to find an option to this?" We understand the position because of the trust responsibility and the inability of the United States and the Tribes to alienate federal resources. We think there was also a question to the United States, "are there options?" And they came back with what we think is a fair and balanced option.

Today, under the proposal, the licenses will not be unilaterally revocable by the Tribe without cause. They would only be revocable only by all three parties being in agreement with due process. They would be revoked only if the agreement was walked away from but that only makes sense also because once you walk away from the agreement, the authority to create those licenses in the first place is no longer there. That's the essence of it, we think it's time to agree with that and let's move on.

So I really think that terms of, as you put it, finding a solution to that and discussing that with the public, I was very encouraged frankly when I sat in on the meeting in Kalispell, a meeting in Polson and the meeting in Charlo. If you were looking for a general thumbs up or a thumbs down on this issue, it seemed pretty clear to me that you got a pretty viable thumbs up by the folks that were in attendance at those meetings and that was the intent of those meetings to get that initial response and whether you liked it or not or whether you thought it was enough of a response or you heard from enough people, I don't know but you did get some response and there were some thumbs up to that and I think that I would be surprised if there wasn't some general at least acknowledgement of that but at least that's where we're at. That's it, thank you.

Chris Tweeten Unless anybody around the table has anything further to add at this point, we'll move to the public comment portion of the agenda. Clayton, you had indicated some interest making some preparatory remarks about this?

Clayton Matt The negotiation sessions that we've involved in there's always and there will always be a public comment period. At the last negotiation session, there was a [quest] where we were chairing to on the spot open it up to not just comments but question and answers. I think that was an exception. I think anytime we open this up to not just comments but to a general question and answer session I think that that's an exception and I think I just want to make it clear that we're making that exception again today and it should not be viewed as a general rule, that the negotiation sessions would be opened up to a question and answer period. We would rather see the State, the Tribe and the United States or the State on its own accord come to the reservation if there needs to be public hearings held on certain issues and have some public meetings. We would invite you to do that. We've done it. We've been doing it for the last year and a half. We're going to continue to do it after this session and we invite you to come to the reservation and do that as well.

Chris Tweeten Thank you. At this point, we'll move to the first part of our public comment period, which is the opportunity for anyone in the audience to get clarification from the negotiating teams here regarding the presentations we've made on the interim plan. If you'd tell us your name for the record, we're recording this meeting.

Rick Smith My name is Rick Smith and I am a resident of the Flathead. I have a question for Clayton. Clayton, your explanation of the revocability that you just gave was different than my understanding of it. So maybe could you go through it again? My understanding was that licenses could be unilaterally revoked.

Clayton Matt That's not true and that's not what the United States said either.

Scott Miller That's correct, if you want me to explain in a little more detail? As long as the interim agreement is in effect there will be provisions the proposal is that a license can be revoked for good cause. If a licensee, for example, is not living up to the terms of the license then your license might be revoked. So as long as the agreement is in effect, there would be a process and there would be criteria that the State, the Tribe and the federal government can agree would result in revocation and actual revocation would require agreement as under the process that we have come up with. If, however the agreement is terminated, for example if the State decided they were going to go back and litigate the issues of the Tribes' water rights then the licenses could be revoked by the Tribe. The agreement, once it's terminated, again would simply there would be no agreement after the agreement is over. So the licenses at that point could be revoked but not so long as the agreement is in effect. As long as it's in effect, it could be revoked only for good cause.

Chris Tweeten Can I add just one thing? One thing that I would add to that to make it complete is that I think that we've been talking about an agreement with a definite term, an agreement that would expire of its own accord after a particular period of time and if that time came the agreement would expire and then that would trigger unilateral revocability on the Tribes part.

Scott Miller We have talked about at that we haven't talked a lot about that but that's based on a matter of state law as I understand is that both the Compact Commission and the negotiations would terminate at a certain date sometime in 2005 or something

Susan Cottingham I don't think this is linked to our termination, Scott, I think we just generally looked at wanting to have some term of years maybe to keep us all at the table, working hard on the license but whether the Compact Commission goes away or not I don't think effects

Chris Tweeten Whether the State is bound by the agreement

Susan Cottingham Yes

Scott Miller Maybe not but in any case, the State has proposed we'd have a date upon which the agreement would lapse I think we've all agreed that that's appropriate There's now reason however hopefully things will be going well and that date would be extended if we don't have a compact negotiated that will finally settle these issues But if that date came without that extension that would be another reason why the agreement would terminate

Chris Tweeten Let me add one thing to that as well The proposal that's just been outlined was advanced as an alternative to the original federal position, which was unilateral revocability without a cause The understanding was that this was a way that that provision could be finessed in such a way as to reach the same result without some of the drawbacks of having it simply unilateral revocable In point of fact, any party can put the continued existence of the licenses in jeopardy by withdrawing from the agreement That is in fact the provision that the United States relies on to reach the conclusion that this agreement would be consistent with the federal statute That I think is the background of how we got to that point

Clayton Matt Rick, are you clear now?

Rick Smith I am

Clayton Matt I just want to address one additional point and that is on the term We did discuss a term, we did not settle on what the term would be and also I think we discussed a term with the possibility of renewal not just there be a three year term and it ends That's not what we're talking about We fully intend on this interim agreement to be in place and if there is a term, it would be more of a trigger point to give us an opportunity to decide how are things working, are they working well, are there points that we really need to adjust a little bit to make them better I think we wanted to take that opportunity at those times to do that I think the real intent in this is to get the interim agreement in place and make it go through until we have a final settlement That's our goal

Walt Schock I've got a question on this interim agreement that you've proposed that you would issue [garbled] if I build a house, you would issue a permit to drill a well and if the negotiation falls apart, you would be able to revoke my well Does that mean that you would come up, cap my well [garbled] revoke my permit

Clayton Matt From the Tribal perspective, since you're looking at me, Walt, the answer is as far as the Tribe is concerned, we don't have an enforcement mechanism in place and that wouldn't be our intent I don't know what the State would intend to do or the United States but that's certainly not our intent

Walt Schock What would be the purpose then of revoking my permit and still let me use my well so what's the purpose of either revoking my permit or not having a permit at all to start with to drill a well?

Clayton Matt Excellent question because I think that has a number of ramifications to it or implications to it One is, what's the difference between doing that and the status quo? The difference is that if we've got the opportunity and you have a license and that license carries through when that license is issued you gain that priority date and if you keep that priority date on until whenever we find a final settlement and rollover into the final settlement The issue is if it's revoked, then if physically you ended up continuing to use the water, that's one thing, water management issues aside which I think are important and the reason for having better water administration on the reservation I think the thing you lose is then the priority date, the water right, the legal document that says that you can carry that through into the final agreement Conceptually then what would happen? We don't have an absolute answer for that right now Conceptually one thing that might happen is that if that happened and we finally get to a final settlement and there is a mechanism in place for people to apply for a water permits or licenses or whatever they are at that time then people would have the opportunity to re-establish those but it's absolutely our intent, Walt, to continue with this interim agreement until we have a final settlement I think that the Tribe has a pretty good track record of establishing agreements with other parties and other jurisdictions here around the state and continue with those and making them more I think we've done a pretty good job with that

Walt Schock Well, I certainly hope so, too So in essence what you're saying is you'd revoke my permit on this well, I could still use it and then whoever got control or authority later on down the line then I could reapply and I could use that well in the interim period

Clayton Matt If you happen to be doing something that interferes with a neighbor and a neighbor decides to take you to court that's their business The physical operation of that, I'm not sure if there's no entity or no mechanism out there for anybody to go out there and do as you say go out and shut your well off It's not going to happen and the Tribe certainly doesn't have that

Walt Schock At this point, there's no plan to put a mechanism in place to do that?

Clayton Matt Not to do that, no We want to put a mechanism in place to administer the right in the first place That's what we want to do

Walt Schock Thank you

Clayton Matt You're welcome

Allen My name is Allen [garbled] and I'm from St Ignatius I was born and raised here and this [garbled] has gone on most of my life I really want to make a comment here because I read the paper, they made their decision, I think they've made some good decisions, I have to abide by law and I'm wondering, my comment is good jobs for everyone involved but this man just made me recognize that most of this fight is driven by fear, unjustified fear There's nobody in our Tribe that's going to take no water from anybody That's my belief

I have a question for the legislature here The legislature here, we're having budget problems throughout our State of Montana in a lot of areas and I'm wondering how much resources are going to this battle, this Indian battle Indian fights should be in the past has carried on to this 2000 and now maybe 2003 Who's going to get the bill after this is over? Is the State of Montana still paying for Indian battles because the comment that I'd like to make is I'm involved with the University in Missoula, Helena, State of Montana, all over and I have not heard one person come to me and tell me that their representation did not trust our Tribes Most people come to our reservation to come here to live because it's a good place to be And so I'm wondering how many people do you represent because a lot of people that I know say that you do not represent them and I'm wondering how can the State fight against their own state Supreme Court decision? And I'm saying I wish we could put this money to good work on schools, roads in this county instead of fighting each other And finally I'd like to say if we want peace in this valley, we need to learn how to get along Thank you

John Brueggeman Mr Chairman, for the record my name is John Brueggeman, the state representative for house district 74 in Polson Are we going to break for lunch, I guess that would be the first question

Chris Tweeten I'd like to see how far we get before I respond to that question but at least it's a question

John Metropolis I do have a question, just a few Mr Chairman, my name is John Metropolis, I'm an attorney from Helena I represent the Flathead Joint Board of Control, which is essential operating authority for the three irrigation districts on the reservation Their constituents consist of about three thousand farmers and ranchers

I think my questions are three. As I understood the explanation of the federal proposal of the interim agreement, the premise, which is extremely important, in this case is that the Tribes own the water, is that correct Mr. Miller?

Scott Miller No, not exactly. There are a number of premises for the revocability and I went through a number of them. They go from the nature of the negotiations to the nature of an agreement and also I think in response to your specific question, that the Tribes may own the water. In other words as Justice Nelson said a couple of weeks ago, for all any of us know they do own all the water and until we have a compact negotiation that settles that question, it just won't be settled so they may own all the water, yes.

John Metropolis I too practice a little bit of Indian law and as I understand it the idea that Tribally owned property has to be fully within the Tribes or the US Governments [garbled] and what I'm unclear about though does that [garbled] or whatever one you think requires this revocability feature, does it require absolute control when it is uncertain whether the Tribe owns that property, as in this case, whether it is a possibility yet to be decided?

Scott Miller I think from the federal position the revocability is a necessary part of this agreement. Not a part of the agreement anymore, actually it is a necessary part of termination of the agreement. If there's some reason that's not clear, I'd be happy to continue to try to explain it but if you have any other clarification of that concept, if you have any questions on clarifying that concept, I'd be happy to answer them.

John Metropolis I'll see if I can get more clarification for you later. My second question is you mentioned process as far as we haven't seen criteria for issuing or not issuing permits or licenses, you mentioned that there would be a process from the draft that I saw there was some mention of appeals from decisions made by this joint board. To what court or governmental entity would the appeal go and I would direct this to whoever has the answer.

Scott Miller I think that's exactly how the appeal worked and the specifics of the due process have not been worked out.

Chris Tweeten John, I think our initial thought was from the States team, that some sort of alternative dispute resolution process would be preferable to vesting that appeal in the jurisdiction of a particular court, which is in keeping with our position generally, which is that trying to negotiate jurisdiction is generally not fruitful and trying to find ways around getting parties to agree to the jurisdiction of the court of some sovereign is probably preferable to some party having to give up their negotiating position with respect to jurisdiction. So we were thinking in terms of alternative dispute resolution, arbitration perhaps.

Clayton Matt As I remember, arbitration was discussed and I think that if we can get beyond this other issue I think we'll have an opportunity to get full disclosure on all of

the elements that we have conceptual agreement on or at least the elements that we want to get out to discussion. That would be one of them. How due process would be followed and be absolutely clear that that was intended to be a due process.

John Metropolis Yes, there's always a question about what court or entity that due process is rendered in and I'm just wondering if any of the parties have

Clayton Matt I don't have a final answer because we don't have anything in front of you to look at yet.

John Metropolis My final question is and I think I know the answer to this, as I understand it, these licenses would be revoked in the event that any party walked away from compacting. Is that correct?

Scott Miller I think it would be correct if you said could as opposed to would so that

Clayton Matt In not compacting walked away from compacting probably because if we did that then everything stops but I think what we're talking about is if the parties walked away from the interim agreement. We're talking about an interim agreement not the compact. This interim agreement will not be the compact.

John Metropolis I understand that.

Chris Tweeten But I think it's certainly true that if some party withdrew from the compact negotiations, the result would be the same.

Clayton Matt But then everything stops and we're talking about probably [garbled]

Chris Tweeten I think that the point that Scott made was that the proposal is that at that point the licenses become unilaterally revocable by the Tribe. That's why he says could rather than would.

John Metropolis The party that would have the decision-making authority would be the Tribe?

Chris Tweeten That's correct.

Clayton Matt Now that's the proposal. That's a proposal and I don't think that we necessarily that the United States put that out there that's still something that would have to be considered exactly how that would play out. What is clear is the federal proposal that is on the table and the question of whether or not the State's going to agree to it.

John Metropolis Well, I appreciate the clarification. I would say though that the federal proposal is not clear to me because I have not seen anything in writing. Thank you.

Chris Tweeten Are there other questions?

Wade My name is Wade [garbled] and I live in Big Arm. During your work group process it says anybody done anything to look at how the federal government transfers lands to non-Tribal interests on this reservation. In asking that question, I think I want to direct it to these gentlemen because it was actually the federal government that put non-Tribal people here. And I want to know if they know what a land patent is?

Chris Tweeten I think that question goes beyond the narrow scope of what we're dealing with here in terms of the interim plan. I don't think we want to get into any sort of a free ranging discussion about political issues generally. If you have a question about the plan itself, I think the parties would be happy to try to address it.

Wade Okay well let me rephrase it. Are you going to do anything to look at the history as part of your plan, as part of your negotiations here because I think at some point in time, it's going to become very important to the overall results of what happens because if these issues aren't addressed as part of your procedures here and we are then and we as non-Tribal members lose our water rights, then it becomes very important. And I think you need to look at the overall picture as part of your process, you're not just quantifying the water, not just setting up procedures and so forth. I think it's very important to the overall process because I for one am going to have to follow that process. And where do you go, it's going to lead me to the possibility I have to go to a class action lawsuit to protect my rights and my democratic process. So I would encourage you then to include that as part of your process.

Chris Tweeten In response to that, what I would say is that there's a significant amount of historical research that's already been done that we have in our files regarding a wide ranging number of issues. Certainly in the overall context of providing background for the compact negotiations, we're going to rely on that. For purposes of the interim plan itself, just because of the interim nature of it and the temporary nature of it and the fact that it's just a transition while the negotiations go forward, I'm not sure that that particular information is going to be particularly helpful in reaching the interim plan. But certainly in the overall context of the compact negotiations, we've looked at a wide-ranging number of issues.

Wade [garbled] State has to keep in mind [garbled] because we have to look to you to protect our democratic rights or property values.

John Schontz Good afternoon, my name is John Schontz and I have been involved with the Northwest Montana Association of Realtors in water issues on the Flathead for a while in terms of public education. I have a question and it's one that is designed to avoid unintended consequences only because I've been through this years ago and the question has to do with municipalities particularly in the state who under interim agreement my obtain a water license and proceed to sell bonds to build infrastructure to deliver that water. But I'm wondering if one of the advantages of living in a small state is there aren't

a whole lot of folks who deal with those legal issues from a bond counsel standpoint. In fact there's one I'm wondering if there wouldn't be some wisdom in bringing her into this discussion to make sure that down the road if a municipality or governmental unit wants to do a bonding program that you all have up front addressed that bond council question as to certainty.

Chris Tweeten John, I can respond to that from the State side. We have identified the same issue and we know the person to whom you're referring and intend to consult with her regarding what bond council would think about one of these licensed water rights as the basis for the issuance of municipal bonds because the bond council would have to give some sort of opinion as to whether the repayment mechanism for the bond is going to be there. This is going to be an issue for them and so certainly we intend to follow up on that.

Clayton Matt John, can you tell who that is?

John Schontz Can I tell you afterwards?

Clayton Matt That's fine. The other point and sort of layman's response to this and your concern is that on the reservation, tribal communities have learned and the Tribe has learned how to work and deal with each other for a long time and I think that you might even just go as far as talking to some of the communities that are here on the reservation to figure out how they figured out how to do that now. We've got communities that lease property, communities [garbled] that lease property from the Tribe for some very important elements of their community and people are financing development based on those. We've got cities that have watershed leases from the Tribe that have the same kind of condition that we're talking about in terms of revocability. We have communities that have airports that are leased from the Tribe. So there's all kinds of conditions like that that already exist and people are bonding and loaning and leasing and developing spending lots of money on those scenarios and I think that's a very good question but I think that also in a lot of ways we've already figured it out.

John Schontz Perhaps there's not some wisdom in running this by a bond counsel.

Clayton Matt And I'm just simply suggesting that there's also maybe some wisdom in taking a look around a figuring out how we've done it already.

Chris Kenney The federal government, when we put together the structure for this, we are mindful of the risk and the challenges of trying to fund and go through the financial considerations in this but we considered that's the [garbled] of the people out here but we do because we try and go as far as we could go to create a structure out of a situation in which you have no opportunity at this point to do that. The certainty you're looking for is what the whole negotiation process is designed to serve and it was never our intention to have an interim process substitute for the longer term settlement of the water rights.

claims So, we understand that there is risk We understand that those determinations have to be made From our perspective, that's the local folks decision to be made

Del Palmer I'm Del Palmer and I have a question According to the early doctrine that was compiled by Draper the Dawes act of 1904 that opened the reservation to settlement it says on page 199 that all the water in the streams within the boundaries of the reservation is reserved to the individual Indians in an amount sufficient to irrigate his crop I guess I would direct my question to you if that were the case at what point in time did the Tribes gain all ownership of the water under the ground, above the ground and beyond the reservation Is there a time or something in writing that you can produce to show us that the Tribe does own this water?

Chris Tweeten Mr Palmer, I don't think that question is within the scope of what we're taking questions on right now We're trying to limit the scope of these questions to clarification of the framework of the proposal, as it's been discussed by the parties We're not trying to get into a free ranging debate about these issues

Del Palmer I'll shorten that up and I'll just ask can you show me title to the water, where the Tribe owns the water on the reservation?

Chris Tweeten Clayton, if you want to take a swing at it, go ahead

Clayton Matt Well, I don't know that any answer that I give you is going to be satisfactory but let me suggest that first of all, I have no idea what document it is you are reading from and if you want to understand the legal premise of the Tribal position, I really encourage you to pick up our proposal and take a look at it because all of the justification, legal justification, historical justification for the Tribal and the United States position is in that So I really encourage you to take a look at it, it's there

Del Palmer Is there title there?

Clayton Matt You need to read that That will help you understand

Del Palmer I can't find it in there

Clayton Matt There's probably a number of things in there, I would be remiss if I didn't mention just one that's dated 1855

Unknown There isn't any written proposal, we're commenting on the proposal that isn't in writing Is that right?

Chris Tweeten That's right

Scott Miller There is the original outline that describes the general proposal that was distributed at the last meeting

John Brueggeman So I hope you would take that under consideration and I hope the folks here would also consider that Thank you

Chris Tweeten Thank you Representative Brueggeman Mr Mayor?

Randy Ingram I'm the mayor of Polson I thank you all for coming today I felt that in terms of since we're talking about the interim agreement, it might be nice to understand what's happening in the absence of the interim agreement in the City of Polson and to the City of Polson

For five years now, the City of Polson has had a moratorium on the extension of water mains [garbled] subdivisions added into this community that would require the extension of water mains for five years Obviously, with no further expansion of the community that creates significant problems with urban sprawl Subdivisions are going out into the county and drilling wells without permits [garbled] subdivisions that are in the City of Polson, which we can't refuse service to, that are within our service area and therefore we are required to provide them water We haven't been able to add any sources of water we haven't been able to drill any new wells and we haven't been able to process any changes We've had wells go dry, we've had many instances of our reservoirs going dry and pumps running 24 hours a day This presents obviously a significant public health and safety issue for the City of Polson As you can see, the status quo is not working for the City of Polson so I urge you and my counselors urge you to proceed with the interim agreement and get it done as quickly as possible

Chris Tweeten Thank you Mr Mayor

Walt Schock I'll introduce myself again because I'm wearing a little different hat this time I'm Walt Schock, I'm chairman of the Joint Board of Control and at this time I'd like to introduce some of my board members, I think we've lost a few of them but there's still some here [garbled] Jocko, Jerry Johnson from Mission, Doug Bates from Flathead, [garbled] Flathead, [garbled] Dixon, [garbled] Mission District, Bill Slack with us here today

The Joint Board of Control is a central operating authority for three districts located on the reservation The irrigation district and the Joint Board of Control are local governments created and operate under Montana law The landowners that are members of these districts own approximately 115,000 acres There are about 3,000 farms and ranches in the district and many of them rely on wells for a variety of reasons including household and irrigation uses Many of our families have owned their farms and ranches for nearly a hundred years and for myself, I'm approaching 50 years

They are our lives and water is our lifeblood The right to use water on our land is the most precious right we have And if that right is not secure then our land is not secure Without water, the land is utterly useless With water, irrigated agriculture is the

economic engine of this county creating about 40 million dollars a year in economic activity each year. Any law or agreement that undermines the security of our water rights undermines that economy and our ability to live on our farms and ranches for generations to come, which is our goal.

I want to say a few words about the interim agreement proposal outlined for the first time today. First, I know that we have not been informed of the contents of this proposal until today nor have irrigators or other local folks, so far as I know, been allowed to participate in the negotiations that led to this agreement. So our comments are preliminary and will be fleshed out in writing later. Second, the Flathead Joint Board of Control on behalf of the irrigators has always supported a negotiated agreement on these issues. We still do, but that support has always rested on the assurance that a negotiated settlement would protect existing water users, protect the security of water rights and maintain the States' authority for water use that are not part of the Tribes' water rights.

The result is that the Flathead Joint Board of Control supports negotiated settlement but not at all costs. A bad deal in the long run is no deal at all. If I heard the description of the proposal correctly, that interim agreement would not secure the right to use water for people and this right could be revoked by any party withdrawing from the agreement for any reason. This is not a sound basis for anyone to develop the use of water. Any investment in homes or irrigation equipment based on such a water right would always be in danger of being lost. This is not sound policy.

The Flathead Joint Board believes that an interim agreement should be simple, straight forward and not based on either of the parties trying to use all their leverage to overwhelm the other. In this case, we do not see why the Tribe or federal government would want to prevent in this valley their neighbors from being able to drill wells for homes, neighborhoods and towns. Why would they prefer to prevent their neighbors from having water until the Tribes actual water rights are determined? Nor do we see why they would want to prevent their neighbors from changing places of use or points of diversion for their irrigation. It does not appear that there would be any actual harm to the Tribe for these activities to go forward as it did for many years, that is on the understanding that if Tribes are found to have a right to the water at issue the permit might not be usable but if the federal negotiators or the Tribes insist on keeping people from using water and drilling wells just because they can then they [garbled] the playing field is not level and negotiations on that basis without compromise are unlikely to produce good long term results. Thank you.

Chris Tweeten Thank you Mr. Schock. Other comments?

Dave Degrandpre I'm Dave Degrandpre with the Lake County planning department and I just have a request for information, really. A comment was made earlier that the state legislature might have the opportunity to pass a bill on interim legislation but [garbled] shortly and it was said that the legislature would be to have public input positive public response in order to do that. Obviously the public doesn't have before

them a fleshed version of the proposal I think some months ago we received a bare bones proposal and I think in some respects it looks real good There were a lot of questions that came from it so I think it would certainly help for the public so that we could communicate to our legislators yea or nay what this interim agreement is to look like and have some of the questions answered so we can be informed to make comments Thank you

Lynn Moss My name is Lynn Moss and I'm a third generation rancher on the same location at Dixon on the reservation We've seen some changes and our Tribal government here has become more and more active and takes an increasing role in our lives With the position of the federal team here today, I was surprised to hear one member of the team say earlier, Mr Kenney, that the Tribe does own all the water or the federal government does hold all the water in trust for the Tribe and then later the solicitors say the Tribe doesn't necessarily own all the water on reservation, beneath it, coming in to it and so on

This is a big question Is there anyone here that doesn't realize that if further power is granted to the Tribal government in administering the water that the rights of the individuals who live in this area are not going to be compromised? Does anyone here not realize that? Because any new changes means that water use rights for instance, are being changed so the rights of individuals are changing

Another comment I have is, whoever owns the water and I don't believe in that term I think you can have a water use permit and certainly entities such as the Tribe and towns of course that have a right to some quantities of water certainly What if any entity owns all the water then are they not subject to litigation such as crop damage, any flood damage to any property, the whole issue seems to be ill defined here water ownership I don't believe it There's water use, there's permission to use it and it is granted by our state, tribal government and our federal Anything you want to tell me, do so

Chris Kenney Scott's and my position, our position is not actually inconsistent What I was trying to communicate was is that no one knows what the water use needs are on this reservation We know that the Tribe has a treaty from 1855 We know that the reservation was created for the Tribe and we know that there was a purpose for which that reservation was created Until such time as we can quantify and identify all the needs and purposes for which that reservation was created, the United States is not prepared to compromise or abrogate any of the water rights that the Tribe has because we don't think we're in a position to do that as a good trustee So in the abstract, we believe all the water is here for the benefit of the Tribe and until such time as we work with the Tribe and the State to quantify that we won't know

Lynn Moss So do you think its wisdom to try to quantify the water?

Chris Kenney I think that's what we're here for, yes

Lynn Moss I'll let you go at that I disagree

Chris Tweeten Thank you ma'am Other comments?

Rick Thank you Mr Chairman I think its really critical, like representative Brueggeman said, that we proceed with an interim agreement and I watched very carefully and this isn't a digression because I'm going to make a point The logging issue in the Bitterroot, Judge Malloy who is a federal judge I really like because he seems to give attorneys lectures on a regular basis, the "enviros" and the logging industry were just a million miles apart on how to handle the salvage logging in the Bitterroot There was no agreement at all In fact those discussions made these discussions look like a cakewalk and they are in the courtroom and the Judge said get out of here and told the attorneys to leave and sent the "enviros" and the industry to sit down and talk and in three days they worked out a compromise which was stunning to observe

Because these issues are so difficult getting, I know we're getting down to the fine hairs on this if you will is exactly why we need to have an interim agreement But these issues are hard They're brutal, they're tough but because of that, that's why we need to move ahead and that's why this community deserves an interim agreement Supporting an interim agreement my understanding as of today, with the revocability, it sounds fine to me It's an experiment, if it doesn't work then the interim agreement is over and we're back to where we were today So I would encourage this body to proceed with an interim agreement I want to thank you, I think some times you're in the forest and you don't see the trees You've come a long way and your efforts are really appreciated here It's difficult

One more comment, it's suggested about the facilitator I think that could be a good idea Clayton, Chris, it seemed to me and it was frustrating and you guys were talking about the same thing Now I'm aware and I'm not naive but maybe there's some layers there that I'm not aware of but it seemed to me that you were saying the same thing with different words and it's frustrating as a resident of the community for that to happen, perhaps a third or fourth neutral party to come in and help work out some of these issues I thank you all for your time Thank you

Chris Tweeten That you, Rick Clayton, do you want to say something?

Clayton Matt Maybe the problem is I'm not an attorney

John Metropolis My name is John Metropolis, I represent the Flathead Joint Board of Control, which operates the irrigation districts here, and I am an attorney

Chris Tweeten I trust you won't be covering the same ground that Walt covered earlier

John Metropolis I won't be I do want to thank the Compact Commission for the work that is done here and throughout the state We recognize the Compact Commission has

served the state very well and as you know, we have watched your work for a couple decades and the Compact Commission does serve a very valuable purpose and accomplished good things for the state including what's accomplished here at least in their own admissions. The Flathead Joint Board of Control also sees the value in reaching an interim agreement on this reservation for administration of water rights but it's got to be a good agreement because as stated earlier, a bad agreement just doesn't help and frankly I think it is clear that the premise for the limiting legal factor in the federal proposal is the acceptance that the Tribes own all the water and that needs to be examined very carefully because I don't think it's the sort of thing that the state as a policy matter, in the short-term or the long-term, should agree to and frankly, legally I don't think it can.

I tried to take very careful notes at the beginning of this proceeding especially as Mr. Matt was discussing whether and how to continue with this discussion. One of the things he said was that to continuing to discuss an interim agreement depended on hearing from the State as to the viability of the Tribes' original proposal submitted I think in June of 2001. I think that is actually a wise question to ask because the interim agreement is based on the same basic assumption and that is that the Tribe owns all the water. So discussing the viability of the proposed interim agreement is pretty much the same as discussing the viability of the Tribes' proposed final agreement. I can tell you that it is neither legally nor politically viable. You will search through the Indian law cases, through the Federal Reserve Indian rights cases for language that holds that the Tribe owns the water to which it has a right. You will not find it. That's why it's not legally viable. Politically, the Montana Constitution requires, Montana Constitution states that the State owns the water in this state. I don't think the State can compromise that, not in an interim agreement, not in a final agreement and I can tell you that the reason for that is also in the Constitution, the sovereignty of the state is vested in the people and they need to have a vehicle to which to exercise their rights in a democratic government. Every citizen of Montana, whether they are a Tribal member or not does have that right. If the State relinquishes its ownership of the water however, non-Tribal members on this reservation would not have that right so I think that's a very clear legal limitation on the States' ability to compromise here. Now that's not to say that an interim agreement and a final agreement cannot be reached but it does require compromise.

This position which Mr. Miller said was kind of unique I think actually is unique in that the reason we are even discussing an interim agreement is because the Tribe sued the State three times, the last two times directly in the Montana Supreme Court. It is a very friendly forum to the Tribes and obtained rulings from the Montana Supreme Court, which requires we discuss an interim agreement. But it's important to note what those rulings actually held. They held that the State may not issue water rights or water use permits including changes of use and changes in point of diversion and [garbled] of groundwater. It's likely the State can't issue new permits prior to the final resolution of the Tribes' water right through compacting or negotiation. The Montana Supreme Court did not hold that the Tribe owns all the water. The Montana Supreme Court did not hold that the Tribe has the authority to administer water rights prior to the adjudication or

compacting of the water rights here So that series of cases shouldn't be stretched to reach too far and I note that federal Indian law, as Mr Miller noted earlier, is what controls here and that is what we need to look to

Now because we don't actually have the flushed out proposal before us, I want to go through what we do have point-by-point I will just note a few things It deals only with ground water, which does not help people who need surface water permits It does not help irrigators who need changes in use It does not help people who need to change their point of diversion

In the preamble to it, it also mentions only that it will be enforced, in effect while the parties are negotiating a compact I'm not sure it's wise in fact I don't think it is wise for any of the parties to add to their motivation to have to negotiate There are a number of tools available to resolve water rights issues Negotiation is the preferable tool, it is not the only tool Litigation is employed, negotiation is not excluded it's still available

Finally, as Mr Miller also noted, what we are talking about here is licenses only and I again was taking very careful notes and I think Mr Miller was very candid in stating that the federal proposal does not propose a way to provide the permanency and security which Mr Tweeten says the state and local water users need and I submit that the Compact Commission is absolutely right That's what we need That includes the irrigators that I represent who do use ground water, who do have wells and a revocable license is not sufficient Thank you

Chris Tweeten Thank you Mr Metropolis Are there any other comments from the members of the public?

Roy Blake My name is Roy Blake and I have been a lifelong resident here on the reservation I would say that in my mind there is only one entity that owns the water and that everybody else has a right to use it

My next comment was to be directed more to the federal people that it was under your whatever, good graces there that you open the reservation up and promoted or sanctioned the sale of the allotments that were established here I'm not sure of numbers but the last that I knew of that there was close to 85% of the inhabitable land that was here on the reservation is not under Tribal ownership I think that the federal government has an obligation to the people here also and not just as Tribal trustees that you have an obligation to the people that you have brought on here and with some of the actions you take you are keeping us in constant conflict

Bill Olson My name is Bill Olson and I am president elect of the Polson Chamber of Commerce for next year and I would just like to urge the Compact Commission to deliberate earnestly and come up with an interim agreement that will be beneficial to the area

Last year, we had an annual chamber banquet and Karla Gray, who is the Chief Justice of the Supreme Court of the State of Montana, was our guest speaker. What she imparted at that point was the necessity of citizens to participate in government. I had the pleasure of sitting at the table with her and that was her message and I think that is a wise message for everybody to contribute what they can. This year our guest speaker is Joe Glenn and I don't know he may be having more aspirations of becoming a cowboy than speaking at our chamber banquet so if anybody has an idea who a better speaker would be, please let me know.

I also felt that it was necessary in terms of informing you who the chamber is to provide you with our object and limitations. This is in our articles, the chamber of commerce in Polson is organized to achieve to objectives of preserving the competitive enterprise system of business, creating a better understanding and appreciation of the importance of the businessperson and a concern for his or her problems. To provide a more intelligent public opinion regarding city, county, state, national, legislative and political affairs and a greater appreciation of the value of the more liberal investment of substance itself on behalf of the interests of business. We're also organized with the object of promoting business and community growth and development by promoting economic programs designed to strengthen and expand the income potential of the trade area, promote programs of civic, social and cultural nature and designed to assist [garbled] and setting values for the community and discovering and breaking abuses which prevent promotion of business expansion and community growth and preventing controversies which are detrimental to the expansion and growth or adjusting them if they arise.

What are our limitations of the Chamber of Commerce? The Polson Chamber of Commerce shall in all of its activities be non-partisan, non-political and non-secretarian. So I can only offer the services of the Polson Chamber of Commerce in assisting you in your deliberations and I would invite you to call upon us if we could be of benefit in resolving any of the issues. Thank you.

Chris Tweeten Thank you Mr. Olson. Other comments?

Jan Emeyer I'm Jan Emeyer, I work with the Lake County [garbled] corporation and I work with several small communities and communities around the reservation in developing their infrastructure needs. Right now I'm working with Charlo, which has applied for and received a large grant from the state to replace a well that has gone haywire over the years. This negotiating process stalls the ability to drill that well and has the potential of placing it a hazardous situation. I would encourage this process to go forward. When [garbled] brought up the issue of bonding we got the idea of bringing in bond counsels [garbled] into this process to make sure that whatever you come up with we can borrow money out of [garbled].

I also work on other issues between the State and the Tribes on the sewer side of this thing. The Tribes have taken over licensing with the EPA over discharge permits on the reservation was a big fiasco for a long time but I think they worked it out. Now we can

get permits on the reservation for discharges on the lagoons. There is a history of State and Tribes working these things out and I think you guys are on the right path. I think you really need to go forward with this agreement. Thank you.

Bill Page I'm Bill Page and I'm over from Ronan on the western side of the reservation and there has only been a few comments made here [garbled]. I believe in the premise of the State to control the water to my land. This would not create the confusion and uncertainty that would exist for non-Indians on the reservation [garbled] recourse in any decision [garbled] water to my land on this reservation if the Tribe had sole control. Under the provision of the Homestead Act, it was my understanding as it was my parents and my grand folks, this land came with the provisions that water would be provided for the person growing agricultural crops. If this water is diminished [garbled] this will greatly reduce the value of my [garbled]. In the case of reserved water rights, there is always the potential for more water use on my [garbled]. Sometimes seven-tenths of an acre-foot is barely enough to sustain a good yield. If an interim agreement would accomplish the goal of what I just said here then so be it. Thank you.

Chris Tweeten Thank you, sir.

Rory Running My name is Rory Running and I didn't intend to speak at all but I just want to say I think we've all sat here and we need an interim agreement and I hear that we are really close and that revocability is a stumbling block and I just want to say that in listening to both sides, the way it's structured is, if one side walks away from a three-legged stool then the stool falls apart. I would suggest that I have heard everybody say that nobody intends to walk away that that's not their intention at all. If that's true then just change the number one to two sides have to walk away and then you balance out the game and keep everybody seated [garbled].

Mike Grendy My name is Mike Grendy and I live out by Big Arm. I've heard some comments here locally, coming back from the state water Compact Commission people that they feel like they are not getting support here. They feel like they really need to justify what the state law mandates of them. I want to stand here before you and assure you that you do have the support. You're not hearing from a lot of people here who are being compromised by the federal government here and want to take their property rights away from them. But I want you to realize that a lot of these people who are concerned about this, they don't come up and stand here because they are afraid of reprisal in some cases. They are business people, they [garbled] Tribal ground, they are afraid that anything they say about this proposal is going to come back to hurt them. But I want you folks to realize that you are supported here.

Now, we talked here a little bit about this interim agreement and a stalemate seems to be happening here because I don't think [garbled] because everything that gets proposed is negated by some comment. I think that these two groups can work together and quite frankly, Roy talks about a three-legged stool [garbled]. I think you folks ought to get a little more open-minded about this process and I think there's some personal bias and I

know for sure that there is one and I think maybe it's also time that some other federal agencies took another look at this process Thanks

Chris Tweeten Thank you Mr Grendy

Bill Meyers I'm Bill Meyers I want to summarize some comments that I made back in February of this year to about this state water commission and also submitted them to Fred Matt, to the US Senators, county commissioners I live in Lake County but I also have a reservation boundary These discussions affect everyone in western Montana and we all live, work and exist together Hence my comments address and propose a compromise both for the interim and long-term resolution

Cooperation between the parties is really essential but I think we're hearing over and over I have obtained and read the original proposal from the Tribe put forth a year ago exactly and I agree in large measure with the Tribes observation of the unitary resource However, while I appreciate and respect the effort and analysis put forth by the Tribes to generate their unique approach, I do not agree with their original conclusion of the proposed compact that they be given total control of the waters on or under the reservation The Tribes seem to have forgotten their own basic premise put forth on page two of the proposal, "we believe however that the water is to be shared among animals, plants and human kind for mutual benefit of all " Just preceding these statements are others, which imply that the Tribes are the only people holding water in high esteem and value, "the beauty and sacredness of water are of the highest value The intrinsic cultural and spiritual value of water is pervasive with our people Water has long been considered a medicinal substance, which is one reason it is considered sacred "

These values are not uniquely held by the Tribe I would submit to all that all of us who live here in northwestern Montana value the water and consider it perhaps the greatest resource of the area While we can't eat the scenery, we all can and do drink the water The fact is, most of our bodies are composed of water therefore we all have a stake in what happens to and with our water and therefore we should all have a say in how the water is used, allocated, protected, etc For the Tribes to propose total control over these waters to be placed in their hands is actually an insult to all of us who live here in peace and harmony as Americans Hence, the proposal place control of all the water in the hands of any one entity is contradictory to their own concept of sharing a unitary resource

Further, the Tribes are quick to cite the Hellgate Treaty but to not cite the treaty of the upper Missouri This treaty in article eight states "the United States may use materials of every description found in Indian country " And another quote is "the navigation of all lakes and streams should be free to all the citizens of the United States " This treaty is equally valid and clearly gives rights to citizens of the United States who are not members of the Salish Kootenai Tribes These rights pertain to water For this reason alone it would be unfair to non-members to have regulation of water on or under the reservation solely in the control of the Tribes

In addition, it is clear on the maps of common usage that water does not exist in a vacuum. It crosses reservation boundaries both on the surface and below the ground aquifer. One need only look at Flathead Lake and the Flathead River to see this. Much of the water being discussed in these two water resources comes from mountains many miles off the reservation for example Glacier Park, the Whitefish Range, the Swan Range and other drainages. Not only is the source off the reservation but the water taken then travels from the reservation downstream into the Columbia drainage and is utilized by millions of people all the way to the Pacific Ocean.

It should be clear to the Tribes that they are not the only human beings to benefit from, to enjoy and need this water for survival both on the physical and spiritual levels, thus, all the more reason to not place exclusive or predominant control of this essential resource in the hands of any one entity.

The issue of control and regulation cuts across jurisdiction and boundary lines. It also must be governed by the fact that there are within the reservation boundaries, fee lands that are owned by citizens who are not members of the Tribe. These owners of private property are due the protection afforded them under our state and federal constitution specifically regarding private property and the representation in republic based on the principals of democracy. It should be apparent, therefore, that control and regulation of the waters both surface and subsurface should not be exclusively vested in any one entity.

Currently, a variety of agencies at governmental levels are involved in the multi-faceted issues of water within the boundaries of the reservation, the United States, the Tribe, the State of Montana and several counties, Lake, Sanders, Flathead and Missoula. This is not something exclusive to the reservation as multi-jurisdiction regarding water is a fact of life in modern America. This was abundantly clear during the past summer a year ago 2001 when lack of accountability led to lower levels of Flathead Lake. It follows that an approach radically different from either the total control originally proposed by the Tribe or the two tiered separation quantification compact signed on other reservations may be in order.

One possible alternative is creating a new super-board or super-agency that would combine elements of all the governmental bodies we're talking about in one oversight entity. Seats could be allocated to the United States government, to the Tribe, to the State and to the four counties that currently actually control some of these water rights. Relevant areas of expertise from each government could provide insights to make a unified body beneficial to all. For example, at the federal level, the Bureau of Reclamation, Hungry Horse, FERC, Bonneville, all the related fish and wildlife services. While such a combined group might not be perfect, it would help resolve the present gridlock. The current situation prevents any progress and has effectively shut down the reservation. This creates a defacto redline district in view of potential revitalization efforts.

I urge that rather than the polarizing extremes of separation, quantification, and exclusion that efforts toward united and including all the various entities might be a much more productive and positive approach. In the final analysis, we must remember that we are all human beings, sharing this area and this vital resource. Ownership may never be resolved and I think we've heard that from several people here, as we all hold the water together. It's none of ours. It's all of ours together and the Lord God owns it. It is in all of our interest that we work together in a spirit of cooperation wherever and whenever possible. Although we might not agree on every issue, open discussion by all parties may promote better decisions and better represent all the interests. At the very least, creation of such a common multi-jurisdiction body would move us beyond the current impasse. Thank you for your consideration.

Chris Tweeten Thank you, sir. Are there any other comments from the public?

Gail Patton I'm Gail Patton. I'm a county commissioner for Sanders County. I've lived on the reservation all of my life in Hot Springs. I ranch there.

I'm very happy to see that we have negotiations. About twenty years ago we had to re-file our water rights by the state and I was middle aged then. I'm not too sure I'm going to live long enough to see these water rights straightened out. As a county commissioner, I work in Thompson Falls, in the courthouse. Every day at the clerk and recorders, we see people in there looking at the titles, liens on property, roadways and what we need, in the long run, we have to have certainty of property [garbled] it has to be for a hundred years, two hundred years. This property has to have its rights and water is one of those things that we have to be certain that we have. Thank you.

Chris Tweeten Thank you, sir. Anybody else?

On behalf of the Commission, I want to thank the people who attended and commented and also those of you who just attended and listened because I think it is important to us that we hear from you and that we know that the members of the public are following along with what we're doing. Thank you for coming out to participate in this process. I know from our perspective, it's been helpful.

The next item on the agenda is concluding remarks and summary. I don't know what summary is but I'm not sure it's possible to summarize what's been.

Chris Kenney I thought that was the responsibility of the chairman.

Chris Tweeten Well then the chairman is going to fail miserably. I can tell you where we're left as I said in a discussion I had with Clayton earlier in the morning. I think we need to take the results of this meeting back and talk to the people that we represent. We're going to do that promptly, obviously given the time constraints that we're under with respect to the interim plan issue particularly.

I also want to be able to provide the Tribes with some feedback with respect to their proposal regarding quantification of their rights because as I said before, it raises some troublesome issues for us that I think we need to communicate more directly and in more detail about. Hopefully we'll be able to do that in the not too distant future.

With respect to the interim plan itself, I think we need to be able to turn those discussions around within a matter of days and we certainly will do everything we can to do that.

As far as concluding remarks and summary, that's really all I have to say. Do any of the other teams have anything to add to that?

Chris Kenney Just a couple of thoughts. Sometimes these things don't go as smooth as you would like them to but I guess I would offer, as much as today has been difficult, we're going to continue to look at opportunities. We still think that what the United States has put on the table may be of value to someone in the valley. We recognize that there are risks. We recognize that there are issues associated with the proposal we had. We're trying to do the best we can given the structure under which we function. We will continue to look for ways to do it and I think that there may be some things we need to talk to the Tribe about. Nothing comes to mind right away but I can see possibilities where I didn't see possibilities when I walked in this morning.

I guess I just want the folks in the valley to understand that when they say that they need help and they need to get things reconciled, we hear that. We understand that. A bunch of us have been around here a long time. I've been coming to this reservation for almost fifteen years so I think I know something about it even if I am an outsider.

The second point I would like to make is that the larger negotiation is the certainty you're looking for and so to facilitate the larger negotiation should be everybody's goal. The interim situation, I think, is important and we understand the challenge of Charlo and Polson to try to make sure they can deal with the population growth that they have here and we would like to try to help that.

But we have never proposed that we do anything but work within the structure which the State of Montana created in the first place to reconcile these issues. It's a good system, it's the most unique system in the west to deal with federal reserved rights and we think it's a good system and we would like to see the system work. The United States wouldn't be here to negotiate this unless we were dedicated to the proposition that we could put a negotiated settlement together that everybody feels is going to be to their ultimate benefit and their children's benefit and their children's children benefit.

We'll be back and we'll continue to work.

Chris Tweeten Thank you Clayton?

Clayton Matt First, the Tribe wants to thank everyone for traveling here to attend these negotiations today and participate in them. I want to thank the public for coming and participating and I know that there a lot of you that I met and I've had an opportunity to discuss these issues with and I think that can help facilitate a lot greater understanding and if we haven't had a chance to talk, please feel comfortable to approach me. Let's talk about the issues because I think some of the comments that I've heard I think are very important to us but it's also very clear that there is also some real basic lack of understanding with the fundamentals of the principals of reserved water rights for example

Tribal reserved water rights are not something that will be granted to the Tribe. Let me say that again. Tribal reserved water rights and aboriginal water rights for that matter is not something that we are asking to be granted to us. We already have them, they exist and therefore the authority to administer our rights exists. In terms of ownership, the State of Montana claims ownership. As a sovereign nation, the Tribal government is simply claiming its ownership over its water. There is no difference.

As a water user, the Tribe also has a responsibility to quantify its water rights. We took that to court back in the early 1980's. There were several lawsuits filed in the State of Montana to challenge that very issue. We took it to court and said, no this shouldn't happen in state court and said this should happen in federal court. It went to federal court and the federal court and the United States Supreme Court said no, the states have the authority to quantify Tribal reserved water rights. In the State of Montana, they set up the Reserved Water Rights Compact Commission to do that. That's why we're here. The Reserved Water Rights Compact Commission in the first instance is set up as a recognition that those rights exist statewide.

We are trying very hard to find a way to find some balance and to find a way to offer solutions to this long-term settlement. There are two different ways of looking at this. We have short-term issues and long-term issues and the greater proposal that we have on the table that was put out in June of 2001 really addresses the long-term settlement issues. And I absolutely agree with the United States, that's where we need to look to find certainty. No one ever said and I don't think even the State has said that you're going to get absolute certainty in an interim agreement settlement. We're not trying to find a perfect solution, we're just trying to find a solution to get through a process.

The other part of the interim agreement settlement is that we were invited to participate in that. We are doing so gladly. However we do not need to. An interim agreement is not a necessity to the Tribe but we understand the necessity of it to the people on the reservation and therefore it's important to us and we hope you will recognize that and consider that. It really is in our view, at this moment, the choice that the State has to make to determine whether we move forward right now with the interim agreement or we drop that and move on with long-term discussions because we are at the point where it needs to happen now and we really encourage the State to really give that serious consideration.

There are concerns that we've heard from the audience today about the implications of that and I don't think we could ever find perfect language to eliminate all implications and all concerns. There's not a chance. I don't think we could find a way to do that. Given that, are we willing to live with some of that uncertainty and some of that imperfectness so that we can move forward and get this process done? We're willing to give it a shot, we've given it a shot, the United States had given it a shot. We believe the State has put its best foot forward and we think we're there. It just needs to move forward now. We really want to encourage that.

The Tribal larger proposal in the long-term, for a long-term settlement recognizes the existing water users and the water uses on the reservation. That's in black and white. Read it, please. In terms of legal authority, the proposal that's on the table, if you don't have a copy I believe we have copies sitting on the back table back here. Please, pick it up and read it and as you continue to read that and discuss that, please give me a call. Let's discuss some of the finer points of that if you'd like because I think it's very important to us that we really bring that back to the table to discuss.

From our perspective, even though we're talking about changing direction now and going off and quantifying the Tribal right which is what states water rights negotiations are set up for. We believe the principals of that proposal are still valid. It affords due process and it will be the vehicle that will bring us to long-term certainty that we're all looking for.

Thank you all for your patience. This is long and trying for you to sit here. Believe me we've spent probably ten times this amount of time preparing just for this one meeting and we will do that again for the next meeting. We will work as hard as we need to to come to that final agreement and hopefully for the interim agreement. Thank you all, again.

Chris Tweeten If nobody has anything further, we'll call this meeting adjourned.

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