

Nov. 18, 1985

Confederated Salish and Kootenai Tribes & MT Reserved
Water Rights Compact Commission

Governor's Reception Room, Helena; Gordon McOmber,
presiding

| Name | Representing |
|----------------------|----------------------------------|
| Chris Tweeten | RWRC |
| Gordon McOmber | RWRC |
| Scott Brown | RWRC |
| Urban Roth | RWRC |
| Audrey Roth | RWRC |
| Marcia Rundle | RWRC |
| Joseph Dupuis | CS&KT |
| Nancy Granger | RWRC staff |
| Bob Deik | BIA |
| ANNA LEE COWAN | BIA - Flathead Agency |
| Teresa Wall-McDonald | Flathead Agency, BIA |
| JAMES PARO | CSKT |
| THOMAS BATERIDGE | CS&KT |
| DICK TAYLOR | US B.R. |
| Ed Thomas | US BR |
| CLAY SMITH | AG (MT) |
| Mona Jamison | Gov. office (lawyer) |
| Peg Trochell | CS & KT |
| Clayton Matt | staff RWRC |
| Brian Dietterick | staff RWRC |
| David Nettles | FLATHEAD Member of Bd of Control |
| James Frutson | Attorney - Joint Bd of Control |
| Leo Berry | J. B. of C. F. I. P. |
| Chuck Stipe | CS & KT |
| David Cross | ASSOC. PRESS |
| Bob Anez | CS & KT |
| Ron Theriault | CSKT |
| Kevin Howlett | Boundary Water Crossing |
| Lauren McKenzie | CSKT |
| Daniel Decker | Dept. of Int. Sol. Off. |
| Richard Aldrich | member RWRC |
| Audrey Roth | |

Scott



Ted Schwinden
Governor

State of Montana

Reserved Water Rights Compact Commission

Jack E Galt, Vice Chairman
William M Day
Everett C Elliott
Daniel Kemmis

W Gordon McOmber Chairman

A B Linford
Joseph P Mazurek
Audrey G Roth
Chris D Tweeten

Urban L Roth Special Counsel

December 6, 1985

Mr. James Goetz, Attorney
Goetz, Madden & Dunn PC
P.O. Box 1322
522 W. Main
Bozeman, MT 59715

Dear Mr. Goetz:

A complete copy of the verbatim transcript of our recent negotiating session is enclosed. Copies have also been distributed to Mr. Therriault, Mr. Howlett, Mr. Decker, Mr. Aldrich, and Mr. Delk. I assume that other representatives of the Confederated Salish and Kootenai Tribes or the United States may obtain copies from you or one of the other five individuals.

Complete copies will also be distributed to each member of the Compact Commission, Mr. Roth, Ms. Rundle, Ms. Jamison, Mr. Fasbender, and Mr. Smith. I shall retain the original copy in the Commission's confidential file. Please be assured that each representative of the state who receives or reviews this transcript will treat it with strict confidentiality.

We consider the first 26 pages of this transcript a record of the open portion of the session. We are obliged, therefore, to make them available to anyone who requests a public record of the November 18, 1985, session.

We will review this transcript as soon as possible and submit to you our proposed amendments. We invite you to do likewise in order to incorporate into the record of the next negotiating session amendments to both this transcript and the transcript of our meeting of September 11, 1985.

D Scott Brown, Program Manager
Marcia Beebe Rundle, Legal Counsel

32 South Ewing
Helena Montana 59620
(406) 444 6601

Letter to Mr. Goetz
Page two
December 6, 1985

I take this opportunity also to inform you that on December 3, the Commission deliberated the issue concerning open versus closed negotiating sessions, as well as the issue concerning DNRC's action to certify to the Water Court a case involving an application for change within the Flathead Reservation. I expect Mr. McOmber and Mr. Roth will be communicating with you quite soon in regard to those issues.

We look forward to another session early in 1986.

Sincerely,

D. Scott Brown
Program Manager

DSB:lp

Enclosure: Confidential Transcript

cc: Commission members
U. Roth, Special Counsel
M. Rundle, Staff Attorney
R. Therriault, Councilman
K. Howlett, Councilman
D. Decker, Attorney
R. Aldrich, Field Solicitor, USDI
R. Delk, Rights Protection Office, BIA

CONFEDERATED SALISH & KOOTENAI TRIBES

NEGOTIATIONS - November 18, 1985

Transcripts Mailed:

(12/5/85)

James Goetz
Ron Therriault
Keven Howlett
Dan Decker
Richard Aldrich
Bob Delk
Urban Roth
Jack Galt

(12/16/85)

Commission Members
Gordon McOmber
Marcia Rundle
Scott Brown
Route one to Staff
Larry Fasbender
Mona Jamison
Clay Smith

Files

Confederated Salish and Kootenai Tribes

Transcripts - Mailing List

Commission Members

Larry Fasbender

1 routed to Gary Fritz and Richard Moy

Jim Goetz

Michael Pablo

Ron Therriault

Dan Decker

Richard Aldrich

Patrick Barry

Scott Brown

Marcia Rundle

Staff

Mona Jamison

John Paulson

Leo Berry

rec'd at
Session
11/18/85
Multiple
Ownership

TITLE STATUS REPORT

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

| LOT 1 OF 13 | | RESERVATION NAME | | NAME OF ORIGINAL ALLOTTEE | | | | PAGE NO | | | | | | | |
|---|----------|---------------------|-----|-----------------------------|-------|-------------------------|--------|-----------------|-----------------|--------|--------|--------|--------|-------|---------|
| 92 | | 203 FLATHEAD | | MARY A ASHLEY | | | | 1 | | | | | | | |
| ALLOTMENT AND AMENDATORY ACTS | | | | ALLOTMENT SCHEDULE APPROVED | | PATENT | | NUMBER | DATE | | | | | | |
| April 23, 1904 (33 Stat 302) | | | | June 20, 1908 | | TRUST RESTRICTED FEE | | X Unnumbered | October 8, 1908 | | | | | | |
| DESCRIPTION OF REALTY INTERESTS CURRENTLY UNDER JURISDICTION OF B I A | | | | | | | | | | | | | | | |
| SECTION | TOWNSHIP | RANGE | MER | COUNTY | STATE | NE | | NW | | SW | | SE | | ACRES | REMARKS |
| | | | | | | N E | S E | N E | S E | N E | S E | N E | S E | | |
| 9 | 18N | 19W | P | LAKE | MONT | | | | XX | | | | | 8000 | |
| | | | | | | | | | | | | | | 8000 | TOTAL |

LEGAL (NARRATIVE) DESCRIPTION

S1/2NW1/4 of Sec. 9, T 18 N., R. 19 W., Principal Meridian, Lake County, Montana, containing 80 00 acres, more or less

TITLE STATUS REPORT

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

1

| | | | |
|--------------------------|----------------------|---------------------|---------|
| ALL INVENTORY PAGE NO | RESERVATION LCODE | RESERVATION NAME | PAGE NO |
| 92 | 203 | FLATHEAD | 4 |

INDIVIDUAL OR TRIBAL OWNERSHIP AND SHARES

| SI CODE | IDENTIFICATION NUMBER | NAMES | FRACTIONAL INTERESTS | | | | DECIMAL INTERESTS | SOURCE DOCUMENTS | |
|------------|--------------------------|------------------------------|----------------------|-------------|------------------|-------------|----------------------|------------------|--------|
| | | | AS ACQUIRED | | CONVERTED TO LCD | | | TYPE | NUMBER |
| | | | NUMERATOR | DENOMINATOR | NUMERATOR | DENOMINATOR | | | |
| 203 | U5252 | GLORIA J FELSMAN STORACI | 1 | 432 | 52920 | 22861440 | 11 | D113 | 65 |
| 203 | U5253 | SHARON FELSMAN DILLASHAW | 1 | 432 | 52920 | 22861440 | 11 | D113 | 65 |
| 203 | U5254 | HAROLD LLOYD FELSMAN | 1 | 360 | | | 11 | 66839 | 41 |
| 203 | U5254 | HAROLD L FELSMAN | 1 | 648 | | | 11 | 13768 | 57 |
| 203 | U5260 | JOSEPH JOHN FELSMAN | 1 | 360 | | | 11 | 66839 | 41 |
| 203 | U5260 | JOSEPH J IELSMAN | 1 | 648 | | | 11 | 13768 | 57 |
| 203 | U5260 | JOSEPH JOHN FELSMAN | 1 | 3240 | 105840 | 22861440 | 12 | 1738 | 58 |
| 203 | U5263 | EUGENE MARK FELSMAN | 1 | 2592 | 8820 | 22861440 | 11 | BI55A | 72 |
| 203 | U5264 | DENNIS LLOYD FELSMAN | 1 | 2592 | 8820 | 22861440 | 11 | BI55A | 72 |
| 203 | U5265 | DOUGLAS LEE FELSMAN | 1 | 2592 | 8820 | 22861440 | 11 | BI55A | 72 |
| 203 | U5266 | TERRY FRANCIS FELSMAN | 1 | 2592 | 8820 | 22861440 | 11 | BI55A | 72 |
| 203 | U5267 | MELISSA ELLEN FELSMAN | 1 | 2592 | 8820 | 22861440 | 11 | BI55A | 72 |
| 203 | U5268 | ANN BETH FELSMAN | 1 | 2592 | 8820 | 22861440 | 11 | BI55A | 72 |
| 203 | U5463 | JEANETTE D GLOVER DAVIS | 1 | 480 | | | 11 | BI178A | 71 |
| 203 | U5463 | JEANETTE DARLENE DAVIS | 1 | 1920 | 59535 | 22861440 | 11 | BI394D | 77 |
| 203 | U5465 | PAMELA LEE GLOVER | 1 | 480 | | | 11 | BI178A | 71 |
| 203 | U5465 | PAMELA LEE SCHNEITER | 1 | 1920 | 59535 | 22861440 | 11 | BI394D | 77 |
| 203 | U5466 | EUGENE LINDY GLOVER | 1 | 120 | | | 11 | D41 | 63 |
| 203 | U5466 | EUGENE LINDY GLOVER | 1 | 480 | 238140 | 22861440 | 11 | BI394D | 77 |
| 203 | U5470 | GENEVA MARIE GLOVER JOS | 1 | 360 | | | 11 | D32 | 68 |
| 203 | U5470 | GENEVA MARIE JOSEPH | 1 | 1440 | 79380 | 22861440 | 11 | BI394D | 77 |
| 203 | U5538 | GENEVIEVE D HANSBROUGH | 1 | 378 | | | 11 | D81 | 66 |
| 203 | U5538 | GENEVIEVE D C MATT | 1 | 2268 | | | 11 | D223 | 67 |
| 203 | U5538 | GENEVIEVE C MATT | 1 | 648 | | | 11 | D38 | 69 |
| 203 | U5538 | GENEVIEVE COURCHANE MATT | 1 | 63 | 468720 | 22861440 | 10 | 21923 | -- |
| 203 | U5776 | MARTINA M A VOGEL | 1 | 324 | | | 12 | BI433A | 76 |
| 203 | U5776 | MARTINA ACEVEDO VOGEL | 1 | 2592 | | | 12 | BI544D | 78 |
| 203 | U5776 | MARTINA ACEVEDO VOGEL | 1 | 2016 | 90720 | 22861440 | 12 | BI195D | 79 |
| 203 | U5909 | ANTHONY ARNOLD LIBERTY | 1 | 324 | | | 11 | D106 | 64 |
| 203 | U5909 | ANTHONY ARNOLD "BUD" LIBERTY | 1 | 2592 | | | 12 | BI544D | 78 |
| 203 | U5909 | ANTHONY A "BUD" LIBERTY | 1 | 2016 | 90720 | 22861440 | 12 | BI195D | 79 |

TITLE STATUS REPORT

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

| | | | |
|-----------------|----------------------------|---------------------------------|--------------|
| ALLOTMENT 92 | RESERVATION CODE 203 | RESERVATION NAME FLATHEAD | PAGE NO 5 |
|-----------------|----------------------------|---------------------------------|--------------|

INDIVIDUAL OR TRIBAL OWNERSHIP AND SHARES

| FIS CODE | ENTR CATG NUMBER | NAMES | FRACTIONAL INTERESTS | | | | DECIMAL INTERESTS | SOURCE DOCUMENTS | |
|-------------|---------------------|--------------------------|----------------------|-------------|------------------|-------------|----------------------|------------------|--------|
| | | | AS ACQUIRED | | CONVERTED TO LCD | | | TYPE | NUMBER |
| | | | NUMERATOR | DENOMINATOR | NUMERATOR | DENOMINATOR | | | |
| 203 | U5914 | LOUIS JACK LIBERTY | 1 | 324 | | | 11 | D106 | 64 |
| 203 | U5914 | LOUIS JACK LIBERTY | 1 | 2592 | | | 12 | BI544D | 78 |
| 203 | U5914 | LOUIS JACK LIBERTY | 1 | 2016 | | | 12 | BI195D | 79 |
| 203 | U6007 | RUSSELL JAMES MCCLURE | 1 | 336 | 90720 | 22861440 | 12 | BI744A | 76 |
| 203 | U6009 | MARGENE A MCCLURE ASAY | 1 | 336 | 68040 | 22861440 | 12 | BI744A | 76 |
| 203 | U6011 | GERALD SPENCER MCCLURE | 1 | 336 | 68040 | 22861440 | 12 | BI744A | 76 |
| 203 | U6152 | GEORCE DUFFY MCQUEEN | 1 | 648 | 68040 | 22861440 | 12 | BI744A | 76 |
| 203 | U6152 | GEORGE DUFFY MCQUEEN | 1 | 5184 | | | 11 | D110 | 67 |
| 203 | U6152 | GEORGE DUFFY MCQUEEN | 1 | 4032 | 45360 | 22861440 | 12 | BI544D | 78 |
| 203 | U6153 | BARBARA J MCQUEEN TALLOW | 1 | 648 | | | 12 | BI195D | 79 |
| 203 | U6153 | BARBARA MCQUEEN TALLOW | 1 | 5184 | | | 11 | D110 | 67 |
| 203 | U6153 | BARBARA MCQUEEN TALLOW | 1 | 4032 | 45360 | 22861440 | 12 | BI544D | 78 |
| 203 | U6263 | CHARLENE L T MATT | 1 | 336 | 68040 | 22861440 | 12 | BI195D | 79 |
| 203 | U6673 | MARY LUCY MATT FELSMAN | 1 | 648 | 35280 | 22861440 | 12 | BI744A | 76 |
| 203 | U6826 | THOMAS MAYNARD PLOUFFE | 1 | 180 | 127008 | 22861440 | 11 | BI55A | 72 |
| 203 | U6839 | ALBERTA C FELSMAN | 1 | 360 | | | 10 | 23128 | -- |
| 203 | U6839 | ALBERTA C F PRIEFERT | 1 | 648 | | | 11 | 66839 | 41 |
| 203 | U6839 | ALBERTA CARMLITA FELSMAN | 1 | 3240 | 105840 | 22861440 | 11 | 13768 | 57 |
| 203 | U6906 | DIANA M BAGNELL ADAMSON | 1 | 2430 | | | 12 | 1738 | 58 |
| 203 | U6906 | DIANE BAGNELL ADAMSON | 1 | 12960 | | | 12 | D4 | 65 |
| 203 | U6906 | DIANE BAGNELL ADAMSON | 1 | 10080 | 13440 | 22861440 | 12 | BI544D | 78 |
| 203 | U6968 | THRESA J M B ROULLIER | 1 | 180 | 127008 | 22861440 | 12 | BI195D | 79 |
| 203 | U6976 | GLADRA J M MIZA | 1 | 1512 | 15120 | 22861440 | 11 | BI356A | 72 |
| 203 | U7211 | GENEVA FRANCES STEVENS | 1 | 48 | | | 12 | BI330D | 77 |
| 203 | U7211 | GENEVA MADSEN STEVENS | 1 | 336 | | | 12 | BI744A | 76 |
| 203 | U7211 | GENEVA MADSEN STEVENS | 1 | 336 | 612360 | 22861440 | 10 | 22960 | -- |
| 203 | U7294 | CHARLES LOUIS TELLIER | 1 | 336 | 68040 | 22861440 | 10 | 22981 | -- |
| 203 | U7994 | RACHEL ANN MICHEL | 1 | 216 | 211680 | 22861440 | 12 | BI744A | 76 |
| 203 | U7994 | RACHEL ANN MICHEL | 1 | 216 | | | 10 | 22557 | -- |
| 203 | U8429 | JOHN BAPTISTE BUTLER | 1 | 1764 | 12960 | 22861440 | 10 | 22399 | -- |
| 203 | U9039 | GLORIA G JONES WHEELER | 1 | 216 | 105840 | 22861440 | 11 | BI590A | 83 |
| 203 | U9217 | MARIE PAULINE FELSMAN | 1 | 2592 | 8820 | 22861440 | 10 | 23152 | -- |
| | | | | | | | 11 | BI55A | 72 |

TITLE STATUS REPORT

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

| | | | |
|------------------------|---------------------|----------|---------|
| ALL INDIAN # NUMBER | RESERVATION CCUE | NAME | PAGE NO |
| 92 | 203 | FLATHEAD | 6 |

INDIVIDUAL OR TRIBAL OWNERSHIP AND SHARES

| RE CCUE | IDENTIFICATION NUMBER | NAMES | FRACTIONAL INTERESTS | | | | DECIMAL INTEREST | SOURCE DOCUMENTS | |
|------------|--------------------------|------------------------------|----------------------|-------------|------------------|-------------|---------------------|------------------|---------|
| | | | AS ACQUIRED | | CONVERTED TO LCD | | | TYPE | NUMBERS |
| | | | NUMERATOR | DENOMINATOR | NUMERATOR | DENOMINATOR | | | |
| 203 | U9213 | TWILA MARIE FELSMAN | 1 | 2592 | 8820 | 22861440 | 11 | BI55A | 72 |
| 203 | U9671 | GERALDINE PATRICIA BUTLER | 1 | 1764 | 12960 | 22861440 | 11 | BI590A | 83 |
| 203 | N7599 | STEPHEN (GUY) RICHARDS | 1 | 2430 | | | 12 | D4 | 65 |
| 203 | N7599 | STEPHEN GUY RICHARDS | 1 | 12960 | | | 12 | BI544D | 78 |
| 203 | N7599 | STEPHEN GUY RICHARDS | 1 | 10080 | 13440 | 22861440 | 12 | BI195D | 79 |
| 203 | N7600 | ROBERT (ARTHUR) RICHARDS | 1 | 2430 | | | 12 | D4 | 65 |
| 203 | N7600 | ROBERT ARTHUR RICHARDS | 1 | 12960 | | | 12 | BI544D | 78 |
| 203 | N7600 | ROBERT ARTHUR RICHARDS | 1 | 10080 | 13440 | 22861440 | 12 | BI195D | 79 |
| 203 | N7601 | WILLIAM (KENNETH) RICHARDS | 1 | 2430 | | | 12 | D4 | 65 |
| 203 | N7601 | WILLIAM KENNETH RICHARDS | 1 | 12960 | | | 12 | BI544D | 78 |
| 203 | N7601 | WILLIAM KENNETH RICHARDS | 1 | 10080 | 13440 | 22861440 | 12 | BI195D | 79 |
| 203 | N8267 | THELRESE LEANN BAGNELL | 1 | 4860 | | | 11 | D114 | 65 |
| 203 | N8267 | THERESE LEANN BAGNELL | 1 | 12960 | | | 12 | BI544D | 78 |
| 203 | N8267 | THERESE LEANN BAGNELL | 1 | 10080 | 8736 | 22861440 | 12 | BI195D | 79 |
| 203 | N8324 | DAVID CHARLES COURCHANE | 1 | 378 | | | 11 | D81 | 66 |
| 203 | N8324 | DAVID CHARLES COURCHANE | 1 | 2268 | | | 11 | D223 | 67 |
| 203 | N8324 | DAVID CHARLES COURCHANE | 1 | 648 | 105840 | 22861440 | 11 | D38 | 69 |
| 203 | N9993 | BETTY J HASS | 1 | 1512 | 15120 | 22861440 | 12 | BI330D | 77 |
| 203 | N9995 | DONNA S BATCHELOR | 1 | 3024 | | | 12 | BI330D | 77 |
| 203 | N9995 | DONNA L STEPHENSON BATCHELOR | 1 | 3024 | 15120 | 22861440 | 11 | BI229A | 83 |
| 203 | N9996 | HOWARD W MARTIN | 1 | 9072 | 2520 | 22861440 | 12 | BI330D | 77 |
| 203 | N9997 | SUSAN M ZINK | 1 | 9072 | 2520 | 22861440 | 12 | BI330D | 77 |
| 203 | N9998 | JACK MARTIN | 1 | 9072 | 2520 | 22861440 | 12 | BI330D | 77 |
| 203 | N9999 | JANICE MARTIN | 1 | 9072 | 2520 | 22861440 | 12 | BI330D | 77 |
| 203 | N10000 | PAMELA M ANDERSON | 1 | 9072 | 2520 | 22861440 | 12 | BI330D | 77 |
| 203 | N10001 | KENNETH MARTIN | 1 | 9072 | 2520 | 22861440 | 12 | BI330D | 77 |
| 203 | N10579 | CARL RICHARD BLOCK | 1 | 288 | 79380 | 22861440 | 12 | BI162A | 82 |
| 203 | N10624 | PATRICK A MALLOY JR | 1 | 1764 | 12960 | 22861440 | 11 | BI590A | 83 |
| 203 | N10625 | SHELIA POSE MALLOY GUERDETTE | 1 | 1764 | 12960 | 22861440 | 11 | BI590A | 83 |
| 203 | N10626 | JUDITH MALLOY HEBERLE | 1 | 1764 | 12960 | 22861440 | 11 | BI590A | 83 |
| 203 | N10734 | CHARLES VERN MADSEN | 1 | 144 | 158760 | 22861440 | 11 | BI397A | 83 |
| 203 | N10735 | BIRNE LFIH MADSEN | 1 | 144 | 158760 | 22861440 | 11 | BI397A | 83 |

TITLE STATUS REPORT

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

| | | | |
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| I TRIA NUMBER | PRESERVATION | | PAGE NO |
| | CC# | NAME | |
| 92 | 203 | FLATHEAD | 7 |

INDIVIDUAL OR TRIBAL OWNERSHIP AND SHARES

| SES CC# | IDENTIFICATION NUMBER | NAMES | FRACTIONAL INTERESTS | | | | DECIMAL INTERESTS | SOURCE DOCUMENTS | |
|------------|--------------------------|------------------------|----------------------|-------------|--------------------|-------------|----------------------|------------------|-----------|
| | | | AS ACQUIRED | | CONVERTED TO I C D | | | TYPE | NUMBERS |
| | | | NUMERATOR | DENOMINATOR | NUMERATOR | DENOMINATOR | | | |
| 203 | N10736 | LESLIE GAIL MADSEN | 1 | 144 | 158760 | 22861440 | | 11 | BI397A 83 |
| 304 | U5234 | MARTINA AZURE ASHLEY | 1 | 60 | 381024 | 22861440 | | 11 | BI56A 73 |
| 304 | U14309 | LORRAINE M A COURVILLE | 1 | 60 | 381024 | 22861440 | | 11 | BI56A 73 |
| | | | | | 22861440 | 22861440 | | | |

TITLE STATUS REPORT

| ALLOTMENT OR TRACT NUMBER | RESERVATION | | PAGE NO |
|---------------------------|-------------|----------|---------|
| | CODE | NAME | |
| 92 | 203 | FLATHEAD | 8 |

THIS TO THE REAL ESTATE herein described is held in trust/~~restricted~~ status subject to the following conditions, reservations, exceptions and encumbrances

- 1 Rights in favor of the United States under patent(s) and/or Acts of Congress as follow
This land is within the Mission Unit of the Flathead Indian Irrigation Project. A lien, prior and superior to all other liens for the amount of costs and charges due to the United States for and on account of construction, operation, and maintenance of the irrigation system or acquisition of water rights by which said lands have been or are to be reclaimed and the lien so created is hereby expressly reserved in accordance with the provisions of the act of May 18, 1916 (39 Stat 123-140), the act of May 10, 1926 (44 Stat 465-466), and the act of March 7, 1928 (45 Stat 200-210), as supplemented by the act of July 1, 1932 (47 Stat 564-565)

- 2 The 1279/23328 interest of Gregory Teel Dupuis, 203-U5170, is subject to a reservation of all minerals, including coal, oil and gas, to the United States of America in trust for the grantors, their heirs and assigns, as set forth in documents on file in this office under numbers 203-21928, 1/648, 22003, 1/2916, 22026, 1/2916, 22173, 1/5832, 22176, 1/2916, 22238, 1/36, 22888, 1/384, 22904, 1/192, 22972, 1/72 and 23123, 1/384

- 3 The 1/108 interest of Rachel Ann Michel, 203-U7994, is subject to a reservation of all minerals, including coal, oil and gas, to the United States of America in trust for the grantors, their heirs and assigns, as set forth in document on file in this office under number 203-22399, 1/216 and 22557, 1/216

- 4 A 1/4860 interest of 203-N8267 is subject to the dower right of Mary Ann Booth Bagnell, non-Indian, acquired through probate D114-65.

- 5 The interests of 203-U5263, U5264, U5265, U5266, U5267, U5268, U9212 and U9213 are subject to the dower right of Mary Lucy Matt Felsman, 203-U6673, acquired through probate B155A-72

- 6 The interest of 304-U14309 is subject to the dower right of Martina Azure Ashley, 304-U5234, acquired through probate B156A-73.

NOTES

The 1/84 interest acquired by Kenneth M. Jaeck, a non-Indian, through probate 2441-50, is unrestricted. Current ownership is not of record in this office. A check of the appropriate county records should be made.

The 1/972 interest acquired by Robert M. Richards, a non-Indian, through probate D4-65, is unrestricted. Current ownership is not of record in this office. A check of the appropriate county records should be made.

The 1/4860 interest acquired by Mary Ann Booth Bagnell, a non-Indian, through probate D114-65, is unrestricted. Current ownership is not of record in this office. A check of the appropriate county records should be made.

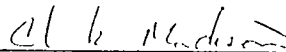
The 1/216 interest acquired by Dora Eva Bright Case, a non-Indian, through probate D31-71, is unrestricted. Current ownership is not of record in this office. A check of the appropriate county records should be made.

TITLE STATUS REPORT

| ALLOTMENT OR TRACT NUMBER | RESERVATION | | PAGE NO |
|---------------------------|-------------|----------|---------|
| | CODE | NAME | |
| 92 | 203 | FLATHEAD | 9 |

As of the 28th day of August, 1984, at 8 00 o'clock A M, the foregoing, consisting of 9 pages is a true and correct report of the status of the title to the real estate described herein according to an examination of the official land records maintained in this office

This report does not cover encroachments or questions of location boundary and user, which an accurate survey may disclose. Rights or claims of parties in possession, or claiming to be in possession, easements liens, rights or encumbrances including but not limited to irrigation charges unpaid probate fees and/or claims leases and permits which are not filed for record in this office any other rights which might be disclosed from a physical inspection of the premises



Chief Title and Records Section
Billings

At a Office

rec'd at
Session
11/19/85

| Ownership | ACREAGES | | | | COUNTIES IN WHICH LANDS ARE LOCATED | | | | |
|----------------|-----------------------------|-------------------------|---------------------|----------------------------|-------------------------------------|-------------------|------------|------------|------------|
| | Previous Balance (Acres) | Acquisitions (Acres) | Disposal (Acres) | Present Balance (Acres) | County | Type of Ownership | | | Total |
| | | | | | | Tribal | Individual | Government | |
| Tribal * | 578,306 98 | 3,722 22 | 122 50 | 581,906 70 | Lake | 257,633 43 | 31,403 44 | 230 93 | 289,267 80 |
| Individual | 46,621 06 | 177 18 | 1,634 64 | 45,163 60 | Sanders | 224,232 91 | 10,476 09 | 492 19 | 235,201 19 |
| Government **/ | 723 12 | - | - | 723 12 | Missoula | 92,166 26 | 2,227 23 | - | 94,393 49 |
| TOTAL ACRES | 625,651 16 | 3,899 40 | 1,757 15 | 627,793 42 | Flathead | 7,874 10 | 1,056 84 | - | 8,930 94 |
| TOTALS | | | | | | 581,906 70 | 45,163 60 | 723 12 | 627,793 42 |

Free Land - Approximately 600,000 acres

rec'd at
 11/19/65

A Partitioned Allotment

CONTINUATION SHEET NO 7

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF INDIAN AFFAIRS

Allotment No 1090 Name of allottee Eneas Finley (Allotment) (Name) (Other) Probate No 42005-29

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|------------|-------------------|--------------|--------------------------------------|--|------------------------|----------------------|
| (1) | DOB | | CONSOLIDATION OF INTERESTS AS TO THE | S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SEC. | 17, T 16 N., R. 19 W., | |
| (2) | | | | | CONTAINING 1.25 ACRES | 1270-D |
| (3) | M-334 | 3/24/27 | U-4110 | Mary Virginia McDougall Carver Jeffries Luce Supak Ingram | <i>mother</i> 1/3 | |
| (4) | M-332 | 7/19/29 | U-5202 | Florence McDougall Earling | 1/3 | |
| (5) | M-333 | 3/8/32 | U-5801 | Violet McDougall Kannenberg | 1/3 | |
| (6) | | | | | | |
| (7) | | | | | | |
| (8) | | | | | | |
| (9) | | | | | | |
| (10) | | | | | | |
| (11) | | | | | | |
| (12) | | | | | | |
| (13) | | | | | | |
| (14) | | | | | | |
| (15) | | | | | | |
| (16) | | | | | | |
| (17) | | | | | | |
| (18) | | | | | | |
| (19) | | | | | | |
| (20) | | | | | | |

Allotment No M129Q-B

Name of allottee Eneas Finley

(Allotment)

(Name)

(Other)

Probate No 42005-29

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|-------------------|-------------------|---------------------|--|----------------------|---------------|----------------------|
| (1) | DOB | | CONSOLIDATION OF INTERESTS - MINERAL RIGHTS ONLY IN THE N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 17, T. 16 N., R. 19 W., containing 6.25 acres | | | |
| (2) | | | | | | |
| 01-UC4729 (3) | 3-23-26 | Blackfeet U04729 | Estella (Stella) Katherine Whitegrass Finley | | 720/12,960 + | dower right |
| 01-U10047 (4) | 11-4-54 | U10047 | Harmon Keith Goodgun | | *720/12,960 | |
| 03-U04978 (5) | 5-23-52 | U04978 | Harriet Jane Finley Sherman | 1/12 + 270/12,960 | = 1350/12,960 | |
| 03-U05292 (6) | 5-23-47 | U05292 | Kenneth James Burland | | 270/12,960 | |
| 03-U05293 (7) | 4-28-24 | U05293 | Louise Finley | | 2160/12,960 | |
| 03-U05534 (8) | 6-10-37 | U05534 | Theresa Mary Quequesah Hammer | | 240/12,960 | |
| 03-U05576 (9) | 11-4-49 | U05576 | Elizabeth Ann Stasso | | 2160/12,960 | |
| 03-U06137 (10) | 4-6-49 | U06137 | Patricia Ann McLeod Quequesah | | 80/12,960 | |
| 03-U06487 (11) | 2-26-42 | U06487 | Peter Patrick Finley | | 270/12,960 | |
| 03-U06670 (12) | 1-30-32 | U06670 | Mary Susan Quequesah Parker | | 240/12,960 | |
| 03-U06852 (13) | 12-27-39 | U06852 | Pierre Paul Quequesah | | 240/12,960 | |
| 03-U06853 (14) | 5-17-41 | U06853 | Joseph Quequesah | | 240/12,960 | |
| 03-U06857 (15) | 4-27-52 | U06857 | Alexander Junior Quequesah | | 240/12,960 | |
| 03-U06858 (16) | 10-9-53 | U06858 | Sophie Quequesah Mays | | 240/12,960 | |
| 03-U06859 (17) | 4-23-35 | U06859 | Martina Quequesah Stinger | | 240/12,960 | |
| 03-U07574 (18) | 12-17-41 | U07574 | Peter Andrew | | 540/12,960 | |
| 03-U07575 (19) | 7-2-45 | U07575 | Louise Andrew Malatare | | 540/12,960 | |
| 03-U07576 (20) | 3-30-57 | U07576 | Susan Marie Lefthand | | 540/12,960 | |

Interests are subject to dower right of Estella Whitegrass Finley Blackfeet U04729

CONTINUATION SHEET NO . 10

Allotment No 1290

Name of allottee

Eneas Finley

Probate No 42005-29

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|----------------------------|--------------------|------------------|--|----------------------|-------------|----------------------|
| (1) | | | CONSOLIDATION OF INTERESTS - MINERALS | ONLY Continued: | | |
| 03- ₍₂₎ U07577 | 12-18-58 | U07577 | Mary Katherine Lefthand | | 540/12,960 | |
| 03- ₍₃₎ U07798 | 8-9-49 | U07798 | Dwayne Lawrence Fisher | | 45/12,960 | |
| 03- ₍₄₎ U07799 | 11-18-61 | U07799 | Delores Ann Fisher | | 45/12,960 | |
| 03- ₍₅₎ U07800 | 9-06-28 9-20-62 | U05309 U07800 | George Joseph Fisher, Sr David Loren Fisher | 1/576 = | 45/12,960 | |
| 03- ₍₆₎ U07801 | 10-15-63 | U07801 | Joseph Michael Fisher | | 45/12,960 | |
| 03- ₍₇₎ U08150 | 7-29-65 | U08150 | Lewis Quequesah, Jr. | | 32/12,960 | |
| 03- ₍₈₎ U08334 | 10-2-65 | U08334 | Anthony Blaine Fisher | | 45/12,960 | |
| 03- ₍₉₎ U08359 | 8-3-65 | U08359 | Sharon Lynn Quequesah | | 32/12,960 | |
| 03- ₍₁₀₎ U08771 | 11-1-66 | U08771 | George Joseph Fisher, Jr. | | 45/12,960 | |
| 03- ₍₁₁₎ U08947 | 2-28-68 | U08946 | Jessie Leona Quequesah | | 32/12,960 | |
| 03- ₍₁₂₎ U08970 | 9-15-68 | U08970 | Charlene Marie Finley | | *720/12,960 | |
| 03- ₍₁₃₎ U09096 | 9-23-69 | U09096 | Jackie Marie Quequesah | | 32/12,960 | |
| 03- ₍₁₄₎ U09265 | 2-21-71 | U09265 | Donald Eugene Quequesah | | 32/12,960 | |
| 03- ₍₁₅₎ U09619 | 5-21-71 | U09619 | Rhonda Jean (Patterson) Quequesah | | 120/12,960 | |
| 03- ₍₁₆₎ U09580 | 3-22-73 | U09580 | Gerri Francine Sias | | 120/12,960 | |
| (17) | | | | | | |
| (18) | | | | | | |
| (19) | | | | | | |
| (20) | | | | | | |

Interests are sub ect to dover right of Estelle Whitegrass Finley Blkft U04729

Allotment No 1290-A Name of allottee Eneas Finley (Allotment) (Name) (Other) Probate No 42005-29

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|-------------------|--|---------------------|--|----------------------|------------------------------------|---------------------------------------|
| (1) | DOB | | CONSOLIDATION OF INTERESTS FOR THE S $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ & N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 17, T. 16 N., R. 19 W, Containing 6.25 Acres 1290-A | | | |
| 01-U04729 (3) | 3-23-26 | Blackfeet U04729 | Estella (Stella) Katherine Whitegrass Finley | | 720/25,920 | + dower right |
| 01-U04729 (4) | 11-4-54 | UI0047 | Harmon Keith Goodgun | | *720/25,920 | |
| 03-U04978 (5) | 5-23-52 | U04978 | Harriet Jane Finley Sherman | 1/24 + 270/25,920 = | 1350/25,920 | |
| 03-U05292 (6) | 5-23-47 | U05292 | Kenneth James Burland | | 270/25,920 | → |
| 03-U05293 (7) | 4-28-24 | U05293 | Louise Finley | | 2160/25,920 | |
| 03-U04309 (8) | 9-6-28 | U05309 | George Joseph Fisher | 1/2 + 1/576 = | 12,960 13,005/25,920 | |
| 03-U05534 (9) | 6-10-37 | U05534 | Theresa Mary Quequesah Hammer | | 240/25,920 | |
| 03-U05576 (10) | 11-4-49 | U05576 | Elizabeth Ann Stasso | | 2,160/25,920 | |
| 03-U06137 (11) | 4-6-49 | U06137 | Patricia Ann McLeod Quequesah | | 80/25,920 | |
| 03-U06487 (12) | 2-26-42 | U06487 | Peter Patrick Finley | | 270/25,920 | |
| 03-U06670 (13) | 1-30-32 | U06670 | Mary Susan Quequesah Parker | | 240/25,920 | |
| 03-U06852 (14) | 12-27-39 | U06852 | Pierre Paul Quequesah | | 240/25,920 | |
| 03-U06853 (15) | 5-17-41 | U06853 | Joseph Quequesah | | 240/25,920 | |
| 03-U06857 (16) | 4-27-52 | U06857 | Alexander Junior Quequesah | | 240/25,920 | |
| 03-U06858 (17) | 10-9-53 | U06858 | Sophie Quequesah Mays | | 240/25,920 | |
| 03-U06859 (18) | 4-23-35 | U06859 | Martina Quequesah Stinger | | 240/25,920 | |
| 03-U07574 (19) | 12-17-41 | U07574 | Peter Andrew | | 540/25,920 | only claim with copy of probate |
| (20) | Interests are subject to dower right of Estella Whitegrass Finley, Blkft. U04729 | | | | | |

CONTINUATION SHEET NO 12

Allotment No 1290-A

Name of allottee

Eneas Finley

Probate No 42005-29

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|------------------------------|--------------------|-------------------|---|----------------------|----------------------|----------------------|
| (1) | DOB | | CONSOLIDATION OF INTERESTS FOR THE S $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ & N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 17, T. 16 N., R. 19 W., Containing 6.25 Acres 1290-A | | | |
| (2) | | | | | | |
| 03-U07575 (3) | 7-2-45 | U07575 | Louise Andrew Malatare | | 540/25,920 | |
| 03-U07576 (4) | 3-30-57 | U07576 | Susan Marie Lefthand | | 540/25,920 | |
| 03-U07577 (5) | 12-18-58 | U07577 | Mary Katherine Lefthand | | 540/25,920 | |
| 03-U07798 (6) | 8-9-59 | U07798 | Dwayne Lawrence Fisher | | 45/25,920 | |
| 03-U07799 (7) | 11-18-61 | U07799 | Delores Ann Fisher | | 45/25,920 | |
| 03-U07800 (8) | 9-30-62 | U07800 | David Loren Fisher | Part of | 45/25,920 | |
| 03-U07801 (9) | 10-15-63 | U07801 | Joseph Michael Fisher | | 45/25,920 | |
| 03-U08150 (10) | 7-29-65 | U08150 | Lewis Quequesah, Jr. | | 32/25,920 | |
| 03-U08334 (11) | 10-2-65 | U08334 | Anthony Blaine Fisher | | 45/25,920 | |
| 03-U08359 (12) | 8-3-65 | U08359 | Sharon Lynn Quequesah | | 32/25,920 | |
| 03-U08771 (13) | 11-1-66 | U08771 | George Joseph Fisher, Jr. | | 45/25,920 | |
| 03-U08946 (14) | 1-28-68 | U08946 | Jessie Leona Quequesah | | 32/25,920 | |
| 03-U08970 (15) | 9-15-68 | U08970 | Charlene Marie Finley | see, exhibit | * 720/25,920 | |
| 03-U09096 (16) | 9-23-69 | U09096 | Jackie Marie Quequesah | | 32/25,920 | |
| 03-U09265 (17) | 2-21-71 | U09265 | Donald Eugene Quequesah | | 32/25,920 | |
| 03-U09619 (18) | 5-21-71 | U09619 | Rhonda Jean (Patterson) Quequesah | | 120/25,920 | |
| 03-U09580 (19) | 3-22-73 | U09580 | Gerri Francine Sias | | 120/25,920 | |

Interests subject to cover right of Estella Whitegrass Finley, Bkft U04729

Allotment No 1290

Name of allottee Eneas Finley

Probate No

(Allotment) (Name) (Other)

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|-----------------|-------------------|--------------|--|--|-------|----------------------|
| (1) T1290 | | | CONSOLIDATION OF INTERESTS - That portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per BAO Document 203-21965, described as a right-of-way, containing 0.91 acre. more or less. | | | |
| (2) | | | | | | |
| (3) | | | THE CONFEDERATED SALISH AND KOOTENAI TRIBES | | ALL | |
| (4) | | | | | | |
| (5) T1290-C | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., Per Doc. No. 203-21965, containing 23.97 acres, m/l. | | | |
| (6) | | | | | | |
| (7) | | | THE CONFEDERATED SALISH AND KOOTENAI TRIBES | | ALL | |
| (8) | | | | | | |
| (9) 1290-E | | | SURFACE RIGHTS ONLY - CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., Per Doc 203-21965, containing 1.25 acres, m/l | | | |
| (10) | DOB | | | | | |
| (11) 203-U04782 | 6-26-51 | U04782 | Diana L. Christopher Pete Daniels | | ALL | |
| (12) | | | | | | |
| (13) 1290-F | DOB | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., Per Doc. No. 203-21965, containing 1.51 acres, m/l. | | | |
| (14) 203-U05371 | 10-20-49 | U05371 | James William Fyant | | ALL | |
| (15) | | | | | | |
| (16) T1290-G | | | CONSOLIDATION OF INTERESTS - Portion of Sec 17, T 16 N., R 19 W., P.M.M., Per plat Doc. No. 203-21965, containing 1.29 acres, m/l. | | | |
| (17) | | | | | | |
| (18) | | | THE CONFEDERATED SALISH AND KOOTENAI TRIBES | | ALL | |
| (19) | | | | Subject to life estate of Romain e Lomah Adams | | |
| (20) | | | | | | |

5-2-73

Allotment No 1290

Name of allottee Eneas Finley (Allotment) (Name) (Other)

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|-----------------|-------------------|--------------|---|----------------------|-------|--|
| (1) 1290-II | DOB | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per plat Doc. No. 203-21965, containing 3.28 acres; m/l. | | | |
| (2) 203-U04782 | 6-26-51 | U04782 | Diana L. Christopher Pete Daniels | | ALL | |
| (4) 1290-I | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., Per Plat, Doc. No. 203-21965, containing 14.65 acres; m/l. | | | |
| (6) 203-A02462 | 4-02-18 | A02462 | Harriet Adams Whitworth | | ALL | |
| (8) 1290-J | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 10.49 acres; m/l. | | | |
| (10) 1290-J | | | THE CONFEDERATED SALISH AND KOOTENAI TRIBES | | ALL | |
| (13) 203-U04781 | 4-29-49 | U04781 | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 1.25 acres, m/l. | | | |
| (15) 203-U04781 | 4-29-49 | U04781 | Rebecca Vanderburg Mason, deceased Linda Christopher Howard | | ALL | All Subject to life estate of Rodney Mason, Non-Ind. |
| (16) M1290-E | | | " " " " " " | | | MINERAL RIGHTS ONLY in 1.25 Acres, See Plat. |

Allotment No 1290

Name of allottee Eneas Finley (Name)

| Account No | Identification No | Allotment No | Name of Heir | Relation to Decedent | Share | Verified by Examiner |
|-----------------|-------------------|--------------|--|----------------------|-------|--|
| (1) 1290-II | DOB | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T 16 N., R. 19 W., P.M.M., per plat Doc. No. 203-21965, containing 3-28 acres; m/l. | | | |
| (2) 203-U04782 | 6-26-51 | U04782 | Diana L Christopher Pete Daniels | | ALL | |
| (4) 1290-I | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., Per Plat, Doc No. 203-21965, containing 14-65 acres; m/l: | | | |
| (6) 203-A02462 | 4-02-18 | A02462 | Harriet Adams Whitworth | | ALL | |
| (9) 1290-J | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 10-49 acres; m/l. | | | |
| (11) 1290-K | | | THE CONFEDERATED SALISH AND KOOTENAI TRIBES | | ALL | |
| (13) 203-U04780 | 9-6-28 | U04780 | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc No. 203-21965, containing 1-25 acres, m/l: | | | |
| (15) U04781 | 4-29-49 | U04781 | Cecilia Vanderburg Mason, deceased Linda Christopher Howard | | ALL | All Subject to life estate of Rodney Mason, Non-Ind. |
| (16) M1290-E | | | " " " " " " | | | MINERAL RIGHTS ONLY in 1.25 Acres, See Plat. |

5-6-7a

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|-----------------|-------------------|--------------|---|---|--|----------------------|
| (1) 1290-II | DOB | | | | | |
| (2) 203-U04782 | 6-26-51 | U04782 | Diana L. Christopher Pete Daniels | of Sec. 17, T. 16 N., R. 19 W., P.M.M., per plat Doc. No. 203-21965, containing 3.28 acres, m/l | ALL | |
| (4) 1290-I | | | | | | |
| (5) 203-A02462 | 4-02-18 | A02462 | Harriet Adams Whitworth | of Sec. 17, T. 16 N., R. 19 W., P.M.M., Per Plat, Doc. No. 203-21965, containing 14.65 acres, m/l | ALL | |
| (6) 1290-I | | | | | | |
| (7) 1290-I | | | | | | |
| (8) 1290-I | | | | | | |
| (9) 1290-I | | | | | | |
| (10) 203-U04780 | 9-6-28 | U04780 | Rebecca Vanderburg Mason, deceased | of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 10.49 acres, m/l | ALL | |
| (11) 203-U04781 | 4-29-49 | U04781 | Linda Christopher Howard | of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 1.25 acres, m/l | ALL | |
| (12) 1290-K | | | | | | |
| (13) 203-U04780 | 9-6-28 | U04780 | Rebecca Vanderburg Mason, deceased | of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 1.25 acres, m/l | ALL | |
| (14) 203-U04781 | 4-29-49 | U04781 | Linda Christopher Howard | of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 1.25 acres, m/l | All Subject to life estate of Rodney Mason, Non-Ind. | |
| (15) M1290-I | | | | | | |
| (16) | | | | | | |
| (17) | | | | | | |
| (18) | | | | | | |
| (19) | | | | | | |

MINERAL RIGHTS ONLY in 1.25 Acres, See Plat

Allotment No 1290

Name of allottee Eneas Finley (Allotment) (Name) (Other)

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|-----------------|-------------------|--------------|---|--|--|----------------------|
| (1) 1290-II | DOB | | CONSOLIDATION OF INTERESTS - Portion | of Sec. 17, T. 16 N., R. 19 W., P.M.M., per plat Doc. No. 203-21965, containing 3-28 acres; m/1: | | |
| (2) 203-U04782 | 6-26-51 | U04782 | Diana L Christopher Pete Daniels | | ALL | |
| (4) 1290-I | | | CONSOLIDATION OF INTERESTS - Portion | of Sec. 17, T. 16 N., R. 19 W., P.M.M., Per Plat, Doc. No. 203-21965, containing 14-65 acres; m/1: | | |
| (5) 203-A02462 | 4-02-18 | A02462 | Harriet Adams Whitworth | | ALL | |
| (8) 1290-I | | | CONSOLIDATION OF INTERESTS - Portion | of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 10-49 acres; m/1: | | |
| (9) 1290-I | | | THE CONFEDERATED SALISH AND KOOTENAI TRIBES | | ALL | |
| (12) 1290-K | | | CONSOLIDATION OF INTERESTS - Portion | of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 1.25 acres, m/1: | | |
| (14) 203-U04780 | 9-6-28 | U04780 | Cecilia Vanderburg Mason, deceased | | ALL | |
| (15) U04781 | 4-29-49 | U04781 | Linda Christopher Howard | | All Subject to life estate of Rodney Mason, Non-Ind. | |
| (16) M1290-I | | | " " " " | MINERAL RIGHTS ONLY in 1.25 Acres, See Plat. | | |

5-6-74

Allotment No 1290

Name of allottee Eneas Finley
(Allotment) (Name) (Other)

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|--------------------|-------------------|--------------|---|--|--|----------------------|
| (1) 1290-H | DOB | --- | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per plat Doc. No. 203-21965, containing 3-28 acres; m/l: | | | |
| (2) 203-U04782 | 6-26-51 | U04782 | Diana L. Christopher Pete Daniels | | ALL | |
| (4) 1290-I | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., Per Plat, Doc. No. 203-21965, containing 14.65 acres; m/l: | | | |
| (6) 203-A02462 | 4-02-18 | A02462 | Harriet Adams Whitworth | | ALL | |
| (9) 1290-J | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 10.49 acres; m/l: | | | |
| (10) | | | THE CONFEDERATED SALISH AND KOOTENAI TRIBES | | ALL | |
| (12) 1290-K | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 1.25 acres, m/l: | | | |
| (14) 203-UC4780 | 9-6-28 | UC4780 | Cecelia Wanderburg Mason deceased | | ALL | |
| (15) UC4780 U04781 | 4-29-49 | U04781 | Linda Christopher Howard | | All Subject to life estate of Rodney Mason, Non-Ind. | |
| (16) M1290-I | | " | " " " " | MINERAL RIGHTS ONLY in 1.25 Acres, See Plat. | | |
| (17) | | | | | | |
| (18) | | | | | | |
| (19) | | | | | | |

Allotment No 1290

Name of allottee Eneas Finley (A Allotment) (Name) (Other)

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|-----------------|-------------------|--------------|---|--|--|----------------------|
| (1) 1290-II | DOB | | | | | |
| (2) 203-U04782 | 6-26-51 | U04782 | Diana L. Christopher Pete Daniels | of Sec. 17, T. 16 N., R. 19 W., P.M.M., per plat Doc. No. 203-21965, containing 3.28 acres; m/l | ALL | |
| (4) 1290-I | | | | | | |
| (5) 203-A02462 | 4-02-18 | A02462 | Harriet Adams Whitworth | of Sec. 17, T. 16 N., R. 19 W., P.M.M., Per Plat, Doc. No. 203-21965, containing 14.65 acres; m/l: | ALL | |
| (8) 1290-I | | | | | | |
| (9) 203- | | | | | | |
| (10) 1290-I | | | | | | |
| (11) 203- | | | | | | |
| (12) 1290-K | | | | | | |
| (13) 203-U04780 | 9-6-28 | U04780 | Cecelia Vanderburg Mason, deceased | of Sec 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 1.25 acres, m.Y | ALL | |
| (15) U04781 | 4-29-49 | U04781 | Linda Christopher Howard | | All Subject to life estate of Rodney Mason, Non-Ind. | |
| (16) M1290-I | | | | | MINERAL RIGHTS ONLY in 1.25 Acres, See Plat. | |
| (17) | | | | | | |
| (18) | | | | | | |
| (19) | | | | | | |

Allotment No 1290

Name of allottee Eneas Finley (Name)

(Other)

| Account No | Identification No | Allotment No | Name of Heir | Relation to Deceased | Share | Verified by Examiner |
|------------------|-------------------|--------------|--|----------------------|--|----------------------|
| (1) 1290-H | DOB | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per plat Doc. No. 203-21965, containing 3.28 acres, m/l. | | | |
| (2) 203-U04782 | 6-26-51 | U04782 | Diana L Christopher Pete Daniels | | ALL | |
| (4) 1290-I | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., Per Plat, Doc No. 203-21965, containing 14.65 acres, m/l. | | | |
| (5) 1290-I | | | | | ALL | |
| (6) 203-A02462 | 4-02-18 | A02462 | Harriet Adams Whitworth | | | |
| (7) 1290-I | | | CONSOLIDATION OF INTERESTS - Portion of Sec. 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc No 203-21965, containing 10.49 acres, m/l. | | | |
| (8) 1290-I | | | | | ALL | |
| (9) 1290-I | | | THE CONFEDERATED SALISH AND KOOTENAI TRIBES | | | |
| (10) 1290-I | | | | | ALL | |
| (11) 1290-K | | | CONSOLIDATION OF INTERESTS - Portion of Sec 17, T. 16 N., R. 19 W., P.M.M., per Plat Doc. No. 203-21965, containing 1.25 acres, m.I. | | | |
| (12) 203-U04780X | 9-6-28 | U04780X | Deceased Wandering Mason, deceased | | | |
| (13) 203-U04781 | 4-29-49 | U04781 | Linda Christopher Howard | | All Subject to life estate of Rodney Mason, Non-Ind. | |
| (14) M1290-E | | | " " " " " " | | MINERAL RIGHTS ONLY in 1.25 Acres, See Plat. | |
| (15) | | | | | | |
| (16) | | | | | | |
| (17) | | | | | | |
| (18) | | | | | | |
| (19) | | | | | | |

rec'd at
session
11/18/85

LEGAL ELEMENTS OF A LAND STATUS STUDY

Checklist re priorities:

| <u>TYPE</u> | <u>PRIORITY DATE</u> | <u>AUTHORITY</u> |
|--|---|--|
| 1. In-stream flows | Time immemorial | <u>U.S. v. Adair</u> , 723 F.2d 1394 (9th Cir., 1983) |
| 2. Tribal reserved rights for lands which have never left trust status | Date of creation of Reservation | <u>Winters, Walton II</u> , 647 F.2d at 48 |
| 3. Indian allottees and Indian successors to allottees | Date of creation of Reservation. The Indian allottee will have a ratable share of the Tribal <u>Winters</u> right based on the allotment's number of practicably irrigable acres, whether put to irrigation or not. | <u>Walton II</u> |
| 4. Non-Indian successors to allottees | Date of creation of Reservation. If diligently put to beneficial use by the first non-Indian successor and only to the extent of the actual acres irrigated and if not abandoned. | <u>Walton II & Walton III</u> ___ F.2d ___ (9th Cir. January 21, 1985) |
| 5. Homesteaders and Non-Indian successors to homesteaders | Generally date of first appropriation under state law | <u>California-Oregon Power Co. v. Beaver Portland Cement Co.</u> , 295 U.S. 142 (1935), <u>U.S. v. Anderson</u> , 736 F.2d 1358 (9th Cir., 1984) |
| 6. Lands reacquired by the Tribes from: | | |
| (a) Non-Indian successors to allottees | Date of creation of Reservation if not lost to nonuse | <u>U.S. v. Anderson</u> supra |
| (b) Homesteaders or successors to homesteaders | Date of appropriation by homesteader or successor under state law or, if no appropriation, date of reacquisition | <u>U.S. v. Anderson</u> , 736 F.2d 1358 (1984) |

Marcia
Legal

DRAFT

MEMORANDUM

TO: Commission Members
FROM: Scott Brown, Program Manager
RE: Summary of negotiating session conducted with
representatives of the Confederated Salish and Kootenai
Tribes, on November 18, 1985
DATE: June 17, 1986

Commission Chairman Gordon McOmber presided over the third formal session of renewed negotiations between the Reserved Water Rights Compact Commission and the Confederated Salish and Kootenai tribes of the Flathead Reservation. The meeting was held in the Governor's Reception Room on November 18, 1985.

A verbatim transcript of the proceedings was prepared; however, at the request of tribal representatives, that transcript is a confidential document and will not be released to the public. It follows that this summary should also be treated with confidentiality.

Following introductions, Mr. McOmber expressed a desire to tour the Flathead Reservation and its irrigation project in the spring; he characterized the issues involved in these negotiations and on the Flathead Reservation as being very complex; he reminded tribal officials that five years have passed since the Compact Commission was created, thus it is time

to produce some mutually satisfactory conclusions and expedite the process; he introduced the Commission's negotiating team; and he introduced observers from the Department of Natural Resources and Conservation and the Attorney General's Office.

The agenda was adopted without alteration. Corrections to the transcript of the September 11, 1985 session were submitted for the tribes' review.

Mr. McOmber emphasized the need to speed up the process of providing transcripts immediately following negotiating sessions and he asked for a discussion concerning news releases.

Mr. Goetz advised against either party issuing a news release concerning these negotiations unless bilateral agreement has been reached on what is to be released (Page 6).

Mr. McOmber agreed and turned the meeting over to Mr. Roth.

Mr. Roth reported that the Commission had, as agreed in September, discussed the question of open versus closed negotiating sessions. In accordance with past experience, the Commission encourages open negotiating sessions and believes that such a practice is highly advantageous to successful negotiations. On an ad hoc basis, however, the Commission will consider requests by tribal representatives to close all, or

portions of, any session. The Commission retains the right to oppose a closed session if it deems such action is unnecessary (Page 7).

Mr. Goetz, referring to a written record of earlier negotiations between this Commission and the Confederated tribes (July 17, 1980), reasoned that the Commission had previously decided in favor of closing negotiating sessions. He then reminded the Commission of the Tribal Council's position that settlement discussions and the information exchanged must be treated confidentially if negotiations are going to proceed (Page 8).

Mr. Roth responded with some reasons why open sessions are important to the Commission and stated that open sessions have had no chilling effect on other successful negotiations.

Messrs. Howlett and Therriault, both Tribal Council members, offered reasons why their council adamantly opposes open negotiating sessions (Pages 9 and 10).

More discussion followed. The discoverability of data was discussed, as well as whom would be permitted to be present for the state, in the event of closed sessions.

The tribes' representatives opposed Mr. Roth's suggestion that the Governor's and Attorney General's observers should not be excluded, as they advise the Commission on certain policy issues.

Mr. Howlett and Mr. Decker prefer to deal with one entity--the Commission. They suggested that every state agency cannot be satisfied in the final analysis.

Mr. Goetz concluded that the release of confidential material to state agency personnel could probably be worked out in much the same manner as joint press releases. He hoped that such arrangements could be worked out as negotiations proceed.

There was no definitive agreement whether or not state agency personnel would be permitted to attend closed sessions. Mr. Tweeten and Mr. Roth argued that the need to keep other agency representatives informed, both at the state and federal levels, is exemplified by events that preceded the Fort Peck-Montana Compact (Pages 17-22).

The parties caucused.

Upon reconvening, Mr. Roth reaffirmed the Commission's policy with respect to handling the tribes' requests for closed meetings. He asserted further that the Commission reserves the right to include in closed sessions necessary state agency representatives. In the event of any litigation which might arise from the decision to close a negotiating session, the Commission expects the tribes to join as amicus curiae (Pages 22 and 23).

Mr. Goetz agreed to proceed with this meeting and to review the Commission's proposal with the Tribal Council. He expressed reluctance to allow general state employees to remain in future closed sessions. He offered to draft a confidentiality agreement for discussion at a subsequent meeting (Pages 23 and 24).

Mr. Berry, representing the Joint Board of Control, stated that the work of the negotiating parties has a significant impact on the economic well being of irrigators on the Flathead Reservation. Therefore, he wished to state for the record the Joint Board's

(that's all Scott had to type)

SB:lp

Document Summary

Document Name:ASCOTT1 Edition: .004 Protect:No (Yes or No)
Author: BR
Title: MEMO TO COMM MEMBERS RE: SUMMARY OF NEG.
Comments: SESSION CONDUCTED W/ REP. OF CON. SALISH 11/18/85 6/17/86
Lines/Page: 54
Total Pages: 5
Widow Length: 01 (Pagination)
Zone Length: 05 (Hyphenation)

Pitch: 1 (1=10 chars per inch, 2=12 cpi, 3=15 cpi)
Justify Right:Yes (Yes or No)
Font: 001 (1=Non-Proportional)

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| Printed | 86/06/18 | 13:07 | PROUE | |
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AGENDA

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
AND
THE MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

Monday, November 18, 1985, 10:00 a.m.
Governor's Reception Room, State Capitol, Helena, Montana

W. Gordon McOmber, Presiding

1. Opening statements and introductions
2. Adopt agenda
3. Adopt transcript of September 11th session
4. Discuss procedure to expedite availability of transcripts
5. Discussion: open versus closed sessions
6. Action on proposed agreement regarding Rule 408
7. News releases
8. Discuss technical data needs
9. Discuss opportunities for sharing costs
10. Report by the RWRC concerning non-Indian federal reserved water rights claims affecting these negotiations
11. Report by the Tribes concerning claims for instream flows
 - a. within the reservation
 - b. outside the reservation
12. Discussion: Existing non-Indian water uses within the reservation
13. Report by the Tribes concerning Kerr Dam and other existing or potential hydropower facilities
14. Matters of special concern
15. Review actions taken at this meeting and agree on topics for discussion at the next meeting
16. Closing statements
17. Adjourn

(The Bureau of Indian Affairs will be responsible for transcribing this meeting.)

In the Matter of)
)
Reserved Water Rights)
Negotiations Between the)
State of Montana, Water)
Compact Commission and the)
Confederated Salish and)
Kootenai Tribes)

Governor's Reception Room
State Capitol
Helena, Montana

November 18, 1985

Chairman Gordon McOmber

Present on behalf of the Confederated Salish and Kootenai Tribes

Ron Therriault
S. Kevin Howlett
Daniel Decker
James Goetz, Counsel
David Cross
Joseph Dupuis
James Paro
Clayton Matt
Thomas Bateridge
Peg Trochlell

Present on behalf of the State of Montana

Gordon McOmber, Compact Commission
Scott Brown, Program Dir., Compact Commission
Urban Roth, Compact Commission
Audrey Roth, Compact Commission
Chris Tweeten, Compact Commission
Marcia Rundle, Compact Commission
Nancy Grainger, RWRCC staff
Clay Smith, Attorney General's Office
Mona Jamison, Governor's office

Present on behalf of the United States

Bob Delk, BIA

Anna Lee Cowan, BIA, Flathead Agency

Theresa Wall-McDonald, BIA, Flathead Agency

Dick Taylor, Bureau of Reclamation

Ed Thomas, Bureau of Reclamation

Richard Aldrich, Department of Interior Solicitor's Office

Other

James Knutson, Flathead Irrigation Project Joint Board of Control

Leo Berry, Attorney, FIP Joint Board of Control

Lauren McKinsey, Boundary Waters Clearinghouse, MSU

Bob Anez, Associated Press

Nov. 18, 1985

Confederated Salish and Kootenai Tribes & MT Reserved
Water Rights Compact Commission

Governor's Reception Room, Helena; Gordon McOmber,
presiding

| Name | Representing |
|----------------------|----------------------------------|
| Chris Tweeten | RWRCC |
| Gordon McOmber | RWRCC |
| Scott Brown | RWRCC |
| Urban Roth | RWRCC |
| Audrey Roth | RWRCC |
| Marcia Kundle | RWRCC |
| Joseph Dupuis | CS&KT |
| Nancy Granger | RWRCC staff |
| Bob Deik | BIA |
| ANNA LEE CUSH | BIA - Flathead Agency |
| Teresa Wall-McDonald | Flathead Agency, BIA |
| JAMES PARO | CSKT |
| THOMAS BATERIDGE | CS&KT |
| RICK TAYLOR | USBR |
| Ed Ferriss | USBR |
| CLAY SMITH | AG (MT) |
| Mona Jamison | Gov. office (lawyer) |
| Rep Trechell | CS&KT |
| Clayton Matt | staff RWRCC |
| Brian Dietterick | staff RWRCC |
| David Metzler | FLATHEAD Member of Bd of Control |
| James Juntson | Attorney - Joint Bd of Control |
| Leo Berry | J. B. of C. F. i. P. |
| Chuck Stipe | CS&KT |
| David Cross | Assoc Press |
| BOB ANER | CS&KT |
| Ron Theriault | CSKT |
| Kevin Howlett | Broning Water Conservancy |
| Lauren McKenzie | CS&KT |
| David Decker | Dept. of Int. Sol. Off. |
| Richard Aldrich | RWRCC |
| Arthur Rosta | |

PROCEEDINGS

10 00 a.m.

CHAIRMAN McOMBER Good morning, ladies and gentlemen. My name is Gordon McOmbler. I'm chairman of Montana's Reserved Water Rights Compact Commission. Okay, we're on the record now. We're going to talk about this recording equipment, these court reporters a little bit today. My name is Gordon McOmbler, I'm chairman of Montana's Reserved Water Rights Compact Commission, I'm here today to discuss reserved rights with the Confederated Salish and Kootenai Tribes of the Flathead Reservation. It's important for the record that you all make yourselves known and that also that you can be identified by the recording secretary, so I'm going to first run around the table, and then start back here and go around the room, and start off with my name is Gordon McOmbler, as I indicated. Urban, do you want to identify yourself.

Yes, Urban Roth, member of the Commission; or special counsel to the Commission, I'm sorry.

Audrey Roth, member of the Commission.

Rich Aldrich, Solicitor's office in Billings.

Dan Decker, attorney with the Confederated Salish and Kootenai Tribes.

Ron Theriault, member of the government of the Confederated Salish and Kootenai Tribes.

Kevin Howlett, member of the Tribal Council.

Jim Goetz, attorney for the Confederated Salish and Kootenai Tribes.

I'm Chris Tweeten, I'm a member of the Compact Commission.

Marcia Rundle, I'm an attorney with the Compact Commission.

Bob Anez, Associated Press.

David Cross, fisheries biologist for the Confederated Salish and Kootenai Tribes.

Chuck Stipe, I'm chairman of the Joint Board of Control for the Flathead Irrigation Project.

Leo Berry, an attorney representing the Joint Board of Control.

Jim Knutson, member of the Board of Control, Flathead.

I'm Dave Nettles, I'm on the technical staff of the Reserved Water Rights Compact Commission.

Brian Dieterich, I'm a hydrologist for the Compact Commission.

Clayton Matt, I'm the Water Administrator for the Confederated Salish and Kootenai Tribes.

Peg Trochlell, I'm the water use analyst for the Tribes.

Mona Jamison, legal counsel to Governor Schwinden.

My name is Clay Smith, I'm with the Montana AG's office
I'm Ed Thomas, with the Bureau of Reclamation, the regional office.

I'm Dick Taylor, Bureau of Reclamation, Hungry Horse project.

Tom Bateridge, I'm a hydrologist working for the Tribes.

I'm Jim Paro, director of natural resources for the Tribes.

Theresa Wall, I'm representing the Flathead Agency rights protection.

Anna Lee Cowan, I'm a realty specialist with the BIA at Flathead Agency.

Bob Delk, BIA, Billings.

Nancy Grainger, soil scientist, Compact Commission.

Joe Dupuis, I'm with the Tribes.

I'm Scott Brown, Program Manager for the Compact Commission.

I'm Gayle Parrish, transcriber for the meeting.

I'm Elsie Armstrong, the Compact Commission's secretary.

CHAIRMAN McOMBER Sorry we couldn't have some better weather for you; this sort of thing happens periodically in Montana, specifically in Helena. It seems that spring always comes and when it does come, we still want to get up to your Reservation, and we'd like you to show us the Reservation and to look at your irrigation system and the whole project. We will, however, put that off until better weather.

This compact that we're looking at, this Tribe and this Reservation, is a very, very complex reservation to deal with. We find there are a great many people and entities involved and some issues that do not appear like some of our other negotiations. We hope, however, to overcome those problems and come up with a compact that's mutually agreeable to the Tribes and the State of Montana. It's our hope that at this meeting or after this meeting, the Commission can go back, rather the negotiating team can go back to the entire Commission with some questions to be addressed, some options to look at, and some answers that will expedite this process from here on.

We've been in existence over five years and it's time we got down to the bedrock and started producing some conclusions that are mutually acceptable and that lead us directly to conclusion of a compact.

I should tell you that Larry Fassbender just came in; he's director of Montana's Department of Natural Resources.

For some of you may not understand the procedure, the Commission is made of nine members. The negotiating team consists of the Chairman, the Vice Chairman, the respective Counsel, Urban Roth, Marcia, the on-staff counsel of the Commission, and Mr. Brown, and in addition to that any members that can come to the meetings. We have as observers and advisors representatives from the Governor's Office, the Department of Natural Resources, and the Attorney General.

That's so that when we make some conclusive decisions, that those agencies will be aware of what we're doing and if they have any problems we'll iron them out at that time.

We'll get on with the rest of the program now. The next item on the program is the adoption of the agenda. Do you have any suggested changes or alterations to that, Mr. Goetz?

JIM GOETZ· No, we don't, Mr. Chairman.

CHAIRMAN McOMBER Okay, then, without objection we'll consider that the agenda has been adopted, and is subject, of course, to modification later on.

Our last meeting with you was September the 11th, at which time a transcript was taken and copies of that have been distributed. At this time we'd like to make any changes, suggested changes, that you feel is proper and Scott, I think you have some suggested changes that we should add to the transcript of the last meeting. Are any of them substantive changes?

SCOTT BROWN· No, none of them is substantive. They're misspellings, a few additions in some cases where I think it makes it clearer, it was probably an error on the part of the transcription. But I think as you'll look at these suggestions, you'll see that they're not very substantial changes.

CHAIRMAN McOMBER Have you any suggested, ah . . . ?

RON THERRIAULT Have we seen the changes; have the changes been given to our people as yet?

CHAIRMAN McOMBER They're right here; we brought them this morning. If you'd like, you can look at them and we'll address this question at the next meeting or at the close of this meeting. Have you other copies of these, Scott?

SCOTT BROWN Yes, I have, and that's what I would propose as we have done in the past, that we would propose those changes, you review them, and we can make them part of the record at the subsequent meeting.

CHAIRMAN McOMBER Is that agreeable?

MARCIA RUNDLE The alternative is if you don't, if you have no objections to those proposed corrections, which really are typographical,

by and large, we can add them to the transcript at this meeting as corrections of the prior transcript.

CHAIRMAN McOMBER Further discussion on that? Okay, on to the next one, the availability of transcripts. We've had a little bit of a problem with the timely arrival of the transcripts from the last session. We've -- I should tell you that since our last meeting we've met with, we've had seven negotiating sessions with other tribes and federal agencies and we kind of lose track of where we are sometimes, but we have worked with Mr. Aldrich to expedite the process of getting those transcripts available at an earlier time, it's been up to six weeks and that's just too long. So, we've impressed very strongly upon people that transcribe our half of these meetings that we need those transcripts typed much earlier than they were made available before. And I see Bob Delk just brought in transcripts from a meeting with the Turtle Mountain and the Northern Cheyenne and that was only about two - three weeks ago.

BOB DELK The 3rd of October.

CHAIRMAN McOMBER So, any problems with, we're hoping that when it's your turn to provide the transcript that you'll see what can be done to speed up the process.

Okay. Scott, what are you doing back there? You should be up here at the table with us. We need your advice on some stuff here.

Before getting down to the open versus closed sessions issue that Urban's going to talk about, I'm going to mention number 7, "news releases." I, we've adopted a policy of not issuing news releases right and left. As a matter of fact, the only ones that have been released were notification of meetings and during the Legislature when an attempt was being made to get the last compact through the Legislature successfully -- a successful attempt, I might add -- we put out a few notices to try to get the people in and interested. We basically react to questions from the media and they're here today and of course pretty much write what they want to, but we haven't taken it upon ourselves certainly to play a partisan role in any news releases. Do you have any concerns, Jim or Dan, on this?

JIM GOETZ Well, Mr. Chairman, I think this ties in with the open meetings discussion and I think it might be the case after a particular meeting for a joint agreement on a news release, but other than that I think on both sides it's wise not to unilaterally issue news releases either in the interim or after meetings. I think if we can agree on what should be released, we may want to on an ad hoc basis.

CHAIRMAN McOMBER Very well then. At this time, then, I'm going to sit down and let Urban take the lead in this discussion on open versus closed sessions. Urban, you can do whatever you wish at this point.

URBAN ROTH Members of the Commission, Jim and members of the Tribal Council. We've discussed the question of whether or not to have open or closed meeting pursuant to your request since our last meeting and the Commission has taken this policy stand and that is that in accordance with the past practices developed with Mr. McOmbler, we will encourage open meetings. We believe they're advantageous to successful negotiations. We think they're necessary to successful negotiations. However, on an ad hoc basis, we would be willing to consider a request by the Tribes to close all or any portion of a negotiating session. However, we would retain the right to oppose a closed session if we didn't feel that it was advantageous to the negotiating process. So in a nutshell that is the policy stand taken by the Commission, and it's a stand which I think we conveyed to you in a large part during their last meeting and it's re-articulated at this time as our official Commission policy on the open meeting question.

JIM GOETZ Urban, for the record, we talked about this earlier, but Mr. Chairman, may I ask whether the Commission is taking a position that it feels constrained by the Montana Open Meeting Law to open these meetings, or is this policy determination on the Commission's part?

URBAN ROTH We haven't taken a definitive stance as to what the law says or does not say. This an official position taken by the Commission. And a preferable one, legally.

JIM GOETZ Mr. Chairman.

CHAIRMAN McOMBER Yes.

JIM GOETZ In preparation for this issue, we looked at some past minutes and I'd like to pass these around to the members of the Commission because I think there are some things that are of significance in them. These are minutes of this Commission's negotiations with the Confederated Salish and Kootenai Tribes when we were previously in negotiation on July 17, 1980 and I've got the cover page of the transmittal letter and xeroxed pages 5, 6 and 11. (handout presented at this time) I'd like to refer you to first of all page 5. Right at the bottom of the page, that's when Chairman Loble was chairing the Commission, and as you can see on the bottom of page 5, he gets into this issue.

On the third line down, where he begins talking desirability and legality of closing the negotiation process to the public, "and I would add to that the word 'confidentiality'. This is a matter that is of great interest to you, I know. It's a matter of great interest to every tribe and it is to us. We think it's going to be very difficult, impossible really, to negotiate in the public eye and in the eye of the press. We hope that can be avoided. That's the first facet. The second facet is the keeping of information confidential. Say you give us information. We don't want to discourage that, so everything is confidential. I want to tell you a problem we have." and then he continues and I'll end the quote there. But Mr. Loble then refers to legal counsel, at that time David Ladd, and at the bottom of that page, Mr. Ladd gives his analysis as to why the Open Meetings Law doesn't apply, and I don't know that that's particularly germane here because as Mr. Roth has pointed out, it's a policy determination at this time. But Mr. Ladd concludes on the bottom three lines, "so in conclusion, I think we will be able to close the meetings. I think in fact that it's essential that the meetings do be closed to the press." And then finally, I've xeroxed page 11 where Mr. Scott Brown indicates on the bottom of the page that the negotiations between Saskatchewan and Montana with the International Joint Commission were very closed. The reason I've taken the trouble to go back and look at these previous minutes is because this Commission has in the past had an official position that the meetings be closed for legal and policy reasons, and I think what Mr. Loble said has some merit. That if you're really, if you really want to negotiate meaningfully, that you can't do that with the press present and in the eyes of the public. And the Tribes, we made it clear last time, we've recently been in litigation with other elements up on the Reservation. If you want us to be forthcoming with our positions, with the wealth of data that we've accumulated on the Tribes' resources, I think we've got the right to expect that that proprietary data will be maintained in confidence. And we've got the right to expect that our positions will be held confidential. And it's our position that you can't negotiate meaningfully in the public eye. That's, I've taken it up with the Tribal Council and that's their position. So I urge the Commission, you've conceded that you don't necessarily feel bound by the Open Meeting Law, so I urge you to take another look at your policy and heed the words of the previous chairman, Mr. Loble, of the Council that meaningful negotiations can't take place when the press is present and when the public is allowed into the meetings.

URBAN ROTH Are you finished?

JIM GOETZ Yes.

URBAN ROTH. I guess our response is sort of *res ipsa loquitur*. The matters speak for themselves. In negotiations with the Fort Peck Tribe, as a matter of fact in negotiations with all of the other federal agencies and tribes, the negotiating sessions have been open. There has not been a chilling effect upon the negotiations; as a matter of fact, I believe that there has been a beneficial impact. I don't see that there is any problem with confidential information. You can provide it to us under a proprietary label, label it confidential, and the information itself will retain its confidentiality. If there comes a time when that particular information must be discussed in negotiations, then we can close the session on an ad hoc basis if that in some way would prejudice the Tribes. But to have a policy that is sort of an aberration for the Confederated Tribes, as far as our general policy of conducting open meetings, we don't believe it's justified because many of the topics we discuss don't involve proprietary information, they merely involve stating positions with regard to particular issues. And I don't see that there's any prejudice involved there where the Tribes publicly declare what their position is on some of these very, very important issues, and they are issues that are important not only to those persons who reside on the Flathead Reservation. They're important to perhaps largely all of Northwestern Montana, and certainly they have a profound impact and profound interest to other segments of Montana's population. So to just put a blanket label of confidentiality or proprietariness on all of our discussions I think is arbitrary. It's not justified, and we would certainly oppose it. We're not trying to, of course, reach impasse at this early stage in negotiations. By the same token, I hate to see the Tribes take an intransigent position on a subject matter that has not in any way intimidated any of the parties in reaching negotiations with regard to the Fort Peck Compact and has not chilled any of the free flow of information, ideas and negotiation positions in regard to either the federal agencies or other Indian tribes.

CHAIRMAN McOMBER Were you through?

URBAN ROTH Yes. Yes, sir.

KEVIN HOWLETT I'd like to just offer some comments. One is that we're not dealing with the Fort Peck Tribes. We're dealing with a whole set of different scenarios, if you will. So to continually allude to what you might have done with the Fort Peck Tribe, I think is probably not totally applicable. I think there's maybe a misunderstanding about the public involvement in this, and if and when we ever come to a compact, you know, we're going to have to hold public hearings and discuss the contents of that compact, but our position is that we want the opportunity to develop that positioning with the assurances

that it is of a confidential nature and that, you know, we're not trying to hide anything from the public, because it will all come out in the end, what we agree, if indeed we come to an agreement. Just as you will have to hold public hearings and the Legislature and people will have to be involved. I think that our positioning is logical and I concur fully with Mr. Goetz's observation.

RON THERRIAULT Mr. Chairman.

CHAIRMAN McOMBER Yes sir.

RON THERRIAULT I think that initially, it was probably said, but I don't know if it was said clear enough. Obviously, we're here to negotiate in good faith, or we wouldn't bother coming over in this kind of weather. Most sane people wouldn't, then again, that may be why we're here. But the part that I'd like to point out is that we are a sovereign nation and we're dealing with the State of Montana. There are representatives of the United States government that represent some of the parties that wish to be part of this negotiation. If they're going to be involved, they can be involved through the people who represent them from a supervisory or a governmental point of view. But we feel, much as has been stated by Mr. Howlett and Mr. Goetz, that when the time comes for actually putting something down on paper and coming to an agreement, there will be plenty of time then for notification of the public -- our public as well as your public. But the information that has to go between us, be passed between us, to negotiate some type of an agreement, I don't think it's in our best interest to lay all of that out open for the press or anyone that wishes just to sit in. And we're not dealing -- again alluding to Mr. Howlett's statement, all Indians are not the same. Whatever those at Fort Peck wanted or any other tribe wanted is fine. But unfortunately, history made that problem also. We're not all the same, we have our own set of values and our own reasons. We like to be as cautious as your, you would like to be cautious, but we like to have something come out of these negotiations that's in the best interest of all people, including us, and the State of Montana and the United States. But we'd like to control how it goes also.

JIM GOETZ Mr. Chairman.

CHAIRMAN McOMBER Jim

JIM GOETZ Mr. Roth talked about the Fort Peck situation and I second Mr. Howlett's comments that we're dealing with a very different political situation there. I'm not sure what they're, how organized the

opposition to the tribes was in Fort Peck, but we're facing a different situation I believe down here. And I, the argument was made that there was not a chilling effect on the Fort Peck negotiations. I can represent to you that, in our view, there already has been a chilling effect on these negotiations. There was one matter that we had intended at the last meeting to bring up at the meeting and when we saw the composition of the room and we decided not to bring it up and it hasn't been brought up yet. It's a matter that we think should be brought to the Commission's attention, but we're not about to bring it up in the public eye. So there's an example in our view of a chilling effect already because of the composition of the room during the, those negotiations. If you're going to sit around and talk about things that are not very meaningful, then it doesn't make any difference who's in the room. But if you really want to sit down and negotiate and talk, I second again what Mr. Loble said, and that is, that he said it's impossible really to negotiate in the public eye and the eye of the press. Just like negotiations to settle a lawsuit. It seems to me if you're going to meaningfully negotiate, it's got to be strictly confidential.

CHAIRMAN McOMBER Counselor?

URBAN ROTH Well, we've stated our policy position, Mr. Chairman. If you wish to caucus and re-evaluate, I certainly have no objection to it. They've, you know, you've given reasons why you won't bow to an open meeting suggested by us. But all of those things that you think are confidential are all items of information that were exposed and will be exposed in other negotiations. If we were in litigation, whatever information you give us would be immediately available to us in the first round of discovery. We can get basically all of the data, we can get your contentions, we can get all of the facts upon which you rely to support those contentions, all of your witnesses, basically everything you have. It would then be exposed to the public. What we're trying to do is settle a lawsuit, basically here, without the cost, expense and acrimony of litigation. And, it seems to me that if indeed you would not be prejudiced in a lawsuit by exposing all of that information to the public eye, I don't see how you will be prejudiced in the context of negotiations.

JIM GOETZ Mr. Chairman, the lawsuit -- Mr. Roth is quite right, through pre-trial discovery, this information could be brought up. That's a long way down the pike, and it is even if this negotiations reach impasse and there is litigation, it's a long way down the pike. Right now, we're in a position of attempting in good faith to negotiate an agreement with the potential of litigation if we don't reach a negotiated agreement. That's a much different posture for us to be in in

terms of releasing data and tipping our hand in terms of strategy and where we have data.

And the other point is where you don't have data, where there are gaps in your preparation, it's a valuable piece of information for a potential opponent to have. And those things are not going to be coming out tomorrow in any kind of a litigation context or not even next year, but some of that information if we're negotiating in good faith will be coming out in these meetings. And we don't think, and we don't want those to be public so that people who might be working against our interest would have the advantage of that information immediately. Mr. Roth suggests that we caucus to see if we want to modify our position. I suggest the Commission caucus to see if the Commission wants to modify its position.

URBAN ROTH· Are you saying, Jim, that you're unwilling to bend on this issue? Have we reached impasse at this point; that's what I want to know. I think we're entitled to know that.

JIM GOETZ· Well, you tell me.

URBAN ROTH Are you saying that unless we maintain a closed meeting on all aspects, that you won't negotiate with us?

JIM GOETZ· I don't know if I'm saying that or not without caucusing. We have, of course, to go to the Tribal Council to get our instructions, but the same question might be fairly asked of you. You're coming in here telling us what your position is, and then saying since we won't bend and since we won't caucus, are you telling us that we've reached impasse because we won't negotiate? I mean, my understanding of negotiations is a two-way street. You're saying, 'You go caucus and you decide if you'll accept our position. If you will compromise, or come back and tell us if we've reached impasse.' Now, is that your idea of negotiations?

URBAN ROTH Well, Jim, first of all, I think you misunderstood what I said. I believe I said to Mr. Chairman McOmber, should we caucus to re-evaluate our position, not your position.

Now secondly, with regard to our position, I think if you'll listen to it carefully and not be closed-minded to it, you'll realize that what we did was reach a compromise in position, and that is that our basic policy is to conduct open meetings. Now, your position initially was, 'We don't want any open meetings'. Okay, so what we did was go half-way. We said, we'll talk about closing all or part of a session if you convince us that it's in the best interests of negotiation to close all or any part of a meeting. Now that's a compromise to your position

that was advanced. It isn't adhering to, steadfastly, to the initial position that we advanced. So to characterize us as being intransigent, I think, is unfair. Moreover, it's inaccurate. What we've done today is come back with a middle position which apparently your, is unacceptable to you, or else at least you're unwilling to respond to it in the fashion in which it's extended.

JIM GOETZ Well, I think we should caucus, but in order to make the caucus productive, I think you ought to look at your position too. I don't think you're really changing your position from any of your other negotiations. That is, clearly in Fort Peck you had closed sessions when there was proprietary data and when there were sensitive negotiations discussed.

A second point is that in order to have us, for us to have something meaningful to talk about in caucus, I think you'd better clarify what your position is in terms of this ad hoc closure. That is, the position you've conveyed to us is that the Commission will be willing to consider closing the meetings at the Tribes' request on an ad hoc basis. Did I understand that position clearly?

URBAN ROTH That's correct.

JIM GOETZ Okay,

KEVIN HOWLETT But they also have the right to refuse, as I understand under their policy.

URBAN ROTH We have the right to talk about it, to talk about the need for closure. I mean if we say anytime you want the meeting closed, why, we'll agree to that, is in essence agreeing that every meeting would be closed.

JIM GOETZ Mr. Chairman, the point is, though, that when you we'll consider on an ad hoc basis that unilaterally, at least it implies that unilaterally the Compact Commission will make the decision whether you will allow the meeting to be closed without telling us at all what kind of standards or principles will govern your decisions. And I think we need to hear about that too.

URBAN ROTH Well, I think it actually comes down to just that; on an ad hoc basis, is it proprietary, is it prejudicial information we're talking about that you're conveying to us, or is it merely discussion. To permit you to say, to take a position where we would permit the Tribes to unilaterally label something as confidential and proprietary and as interfering with negotiations in essence would give you the unilateral

right to close each and every meeting. And I think a better stance is to discuss the necessity for closing all or a portion of a meeting. If there's sensitive information that's going to be conveyed or communicated or talked about, perhaps that's information that could be delayed until the end of the negotiating session. We would close that particular portion of it, and the remainder could be left open.

DAN DECKER· Mr. Chairman.

CHAIRMAN McOMBER Dan.

DAN DECKER It's my understanding from what you've said that basically the position by the Commission is a policy decision. They don't feel necessarily legally bound to keep the meetings open. I think that what you've done is you've asked the Tribes for the Tribes' position. The Tribes feel that these discussions are very sensitive, and for those reasons have basically taken the position that we'd like to see the meetings closed. I think an example of how important these issues are on the Flathead Reservation is obvious by the number of people in the room today. I think it should be very obvious to you of the Tribes' concern, the size of the meeting, the number of people here. I've heard comments from Commission members, people that have attended other meetings, on the largeness of this meeting and how that's different from other meetings. There must be over thirty people in here without even counting. Or right around thirty people. That's a large meeting to be discussing sensitive issues that the Tribes are concerned about.

To get to the point of discussing, one of the points that Urban is making is that we can discuss these issues as they come up. There ought to be enough trust to realize that if we feel those issues are sensitive, it gets very difficult to explain why those issues are so sensitive without exposing some of the very things that we might not to put on the table in the public eye. So in that light I concur with the Council, with Mr. Goetz, and think the Commission ought honestly look at that, consider that, that if the Tribes consider the information that sensitive, that you ought to really be concerned with that, take a look at it, and re-evaluate.

CHAIRMAN McOMBER· Who do you regard, who do you think should attend a closed session? Who would that be restricted to?

DAN DECKER The Commission, the United States, and the Tribes.

JIM GOETZ Mr. Chairman, that . . .

URBAN ROTH What about, that raises, excuse me, go ahead Jim, I'm sorry.

JIM GOETZ That raises a question in terms of how you treated confidential data and minutes in the past. For example, if you have a closed session, I assume that your minutes are sealed or circulated on a limited basis in terms of those aspects that are confidential. Do you have, have you developed any procedures that in the past on this.

GORDON McOMBER Well, as I recall, when we've had a policy meeting, you know, that has been closed, those minutes are confidential. But since I've been here, which has been only three years, I don't recall a meeting with a tribe or a federal agency when we have closed the meeting while both sides were in attendance.

URBAN ROTH We have gone off the record on occasion, but we have not cleared the room of reporters or members of the public.

An additional question comes up whether or not in those negotiating sessions members of the Attorney General's staff, the Governor's staff, and DNRC would be permitted to be present. In the past we've been accused of not getting, feeling the pulse of some of our state agencies which some felt could have been one of the reasons why some of our negotiations did not culminate in success. Many of the tribes have insisted that in each and every negotiating session, that a member of the Attorney General's staff, a member from the Governor's office, and a member from DNRC be present so that they're assured that there won't be that lack of communication that they felt existed in the past. So, again, closed to whom? is a real vital question to whether or not these negotiating sessions are closed or not.

KEVIN HOWLETT Mr. Chairman.

CHAIRMAN McOMBER Mr. Howlett.

KEVIN HOWLETT It seems to me that the State of Montana has deliberated long and hard on who would be represent it in this effort to come to settlement with the tribes, and they've made their selection and that's the people we would deal with. I'm not at all comfortable dealing with every entity in the State of Montana. They've had time to deliberate who they wanted represented on the Commission and that's who I think that we would deal with.

URBAN ROTH Well, that doesn't deal with political reality.

KEVIN HOWLETT Well, we deal with political reality.

URBAN ROTH· Well, you have one entity and that's the Tribal government, to satisfy. We have at least three agencies to satisfy, two, three branches . . .

KEVIN HOWLETT You cannot satisfy every agency in the State of Montana; we are dealing with the State of Montana as an entity, as a government-to-government thing.

URBAN ROTH· That may be true . .

KEVIN HOWLETT And they choose who they want to represent them. But we're not going to deal with every department in the State of Montana.

URBAN ROTH But we have to have communication with every single department that has some interest in these negotiations.

CHAIRMAN McOMBER Dan?

DAN DECKER Mr. Chairman, I believe Mr. Howlett has basically stated what I wanted to say earlier, which is that supposedly, whether Mr. Roth agrees or not that that is political reality, supposedly the way that the Commission was designed by the State Legislature was so that all of those agencies would have representation on the Commission. So when we say that we will negotiate with the Commission, we say that with the assumption that those seats were filled properly and that all of those agencies will be properly informed of the proceedings. Now, if there are communication problems between the Commission and those agencies, supposedly those positions on the Commission are to take care of those difficulties. We, also as Mr. Howlett said, deal with some of those things too, but supposedly the Commission is comprised in a representative form of those agencies that you're concerned about.

CHRIS TWEETEN Mr. Chairman.

CHAIRMAN McOMBER Yes.

CHRIS TWEETEN Dan, do I understand then that if we have a closed negotiating session in which only members of the Compact Commission and its staff are present, the Tribes won't have any objection if the Compact Commission then communicates the material that's laid on the table at that meeting to the other state agencies that are interested?

DAN DECKER What I was saying was supposedly those agencies are represented on the Commission. I think that while we're in negotiations, we'd like that material held confidential with the Commission.

CHRIS TWEETEN Then the Tribes' position is that I'm not permitted to, for example, take the Tribes' position to the Attorney General and consult with him before the next meeting with the Tribes. Is that what you're saying?

JIM GOETZ May I speak to that, Mr. Chairman?

CHRIS TWEETEN I just don't understand what the Tribes' position is.

GORDON McOMBER Jim, do you want to respond?

JIM GOETZ I view Mr. Tweeten as being a Commission member, and he's supposed to make the decisions. It's not, we don't view his role as to report back to the Attorney General. Now, I don't, I want to make another point clear, that we're talking, when we talk about, well, I'll just hold there, and that's fine.

CHRIS TWEETEN I'm troubled by that, frankly, because we're all familiar with the problems that cropped up in the Fort Peck compact negotiations. And those problems were a direct result of the lack of communication between the Compact Commission and the Department of Natural Resources and the Attorney General's office, and that problem's been rectified. And as I perceive the Tribes' position, what you're asking us to do is go back to the situation that existed before we corrected the problem, and asking the State to come to the table and negotiate through the Compact Commission a compact without being able to assure itself beforehand that what we're negotiating is acceptable to the Department and to the Attorney General. We're setting ourselves up for the same fall that occurred in the Fort Peck negotiations, and I think that's a mistake.

JIM GOETZ Mr. Chairman.

CHAIRMAN McOMBER Jim.

JIM GOETZ I, that sounds like a point well taken to me, and I think that can be worked out in the context of a confidential negotiation with discussion during the course of the negotiations as to what can be released either through a joint press release or discussed outside the meetings and what is strictly confidential in terms of data collection. I think we could work out those arrangements as we go along in the

negotiations. Moreover, this, any agreement that might be reached is going to be a tentative agreement until it can be approved by the respective governing bodies, and there's nothing that says at that point that the ultimate agreement can't become public and the rationale underlying the agreement can't be discussed publicly through a series of public meetings and public hearings. And if people are worried about what's happening in these negotiations, I think they can be assured that nothing's going to, we know that nothing's going to happen in terms of an ultimate resolution without legislative approval and without Tribal Council approval. So it's got to have those, that full public hearing at the appropriate time. What we're talking about here is the negotiation process that leads to that agreement, that then will become public.

CHAIRMAN McOMBER Jim, I think you should, I know you people, you're different than the other tribes, and you'd like to be treated differently, and certainly we have no problem with that, but we have a responsibility that we have to address and keep in mind, and what you're suggesting, and as Chris here explained to you, is exactly what got us in that jackpot with the Fort Peck Tribes. We got right up to the church steps and then discovered that there were some people that objected because there hadn't been that communication as we went along. And their objection was, hey, now you, you write the damn compact, and just ready to sign off on it, and they you tell us about it. The facts of life are that those people were in a political position to torpedo that compact as soon as it was introduced to the Legislature. So we have to keep an ongoing dialogue with those agencies. Hell, the Governor can veto that, and if he isn't fully informed as we go along, you know, it's just not a practical political way to do things.

You know, I'm a little distressed at this discussion. I, you know, we've been at this for four or five years and hopefully we're moving towards some kind of a solution, and it seems to me we can find a way around this without, you know, getting to an ultimatum where we're trying to hang the blame, each is trying to hang the blame on the other for cutting off negotiations.

Now, Jim, you said something here a minute ago that interested me on, you were mentioning news releases. Couldn't we jointly prepare an agenda and decide prior to the time the meeting is called what issues would be in effect open to the public and what issues you wanted to keep closed?

URBAN ROTH Mr. Chairman. I wanted to explore something that Jim said with regard to participation by the AG, DNRC and the Governor's office a little bit further. I'm not sure I understand your response to Mr. Tweeten's remarks. Are you suggesting that you would draft a

confidentiality agreement that would handle participation, not participation, but attendance, by those facets of the government, or do you want to exclude them on the basis of the total public exclusion?

JIM GOETZ Well our position is that the Commission itself should be present. Does that respond to your question?

URBAN ROTH Well, I know that's your position, but are you saying that the representatives from the Governor's office and the DNRC and the AG's office should not be present?

JIM GOETZ That's what I said. I think that that's probably something I should caucus on with my clients. I think that probably in light of what you suggest, if we had a confidentiality agreement, that certain persons could be consulted and the information from the meetings conveyed to the persons that we could agree on. I think we could probably live with that.

URBAN ROTH Well, let's pursue that a little further. Could it be conveyed to them during the negotiating sessions, during the caucus?

JIM GOETZ Well, if we had the agreement so that we know who your, who is included and who is excluded, and we are agreeable to that, then the answer is yes. In other words, we would expect good faith compliance with the confidentiality agreement.

URBAN ROTH All right, then, if that, if you might be agreeable to that, and I understand you haven't taken a position because you're going to caucus, then what's the substantive difference between having those representatives present but not participating in the negotiations so that the information conveyed to them a) is accurate. I don't have a b), unfortunately. I'll just stop with a). (laughter)

JIM GOETZ Well, b), that's a good point. I think we would have to caucus to see whether in fact maybe I spoke too hastily to say that we want them excluded. I think it's a question of, certainly there are some people in state government that have to be involved in these negotiations and we have no problem as long as we discuss it and know who's involved. That's something I think we would have to caucus on. Mainly we're worried about public and non-state people and the press involved because we think that could really throw cold water on meaningful negotiations. So I have to confess that on this question of state representation, we haven't fully thought that out. We certainly have the other side of the coin in that we have to keep the Tribal Council fully informed and would want to feel free to communicate information

and they obviously make the policy for the Tribe so they have to, on critical matters they have to get back to us too. So I'm sensitive to that issue, and again that's something we can caucus on, but that's assuming that we reach agreement on a, the other issue, the public and the press.

URBAN ROTH Then let's go the one step before we caucus. Let's go one step further, and that's pursuing what Chairman McOmber mentioned. Is it feasible, is it mechanically feasible to bifurcate the agenda between the public and private matters in advance so that you can sterilize whatever remarks you might have with regard to the public agenda and when we go into private session, why we could pursue those matters that you feel are confidential.

JIM GOETZ Well, that's something we can discuss. Our position, at least at this stage, is no. It occurs to me that if you want to do that, you can take it the next step and say, well, let's have one meeting where we discuss sensitive matters and the next meeting non-sensitive matters. Nobody attends the next meeting because nothing's going to happen. We could send one representative to talk for a day and not disclose anything. But that's, we're willing, I mean, we don't want to reach impasse, so we're willing to consider anything, but I sure didn't read the Commission's comments as being very adaptable to our desires on this, and that's our problem. Now I, now the other thing I haven't heard is how you treat matters in confidence both in your minutes and if data is turned over to you. I mean, I gather you haven't developed any procedures through your previous negotiations for those kinds of problems.

URBAN ROTH Well, the question hasn't arisen until now. But again, all we have to do is fashion a confidentiality agreement that's agreeable to you and agreeable to us, and that will be the format upon which we'll operate. I don't see that mechanically that's a difficult problem. What's a problem right now is a matter of policy that's governing our negotiations. And what we're attempting to do is negotiate ourselves out of impasse where we compromise on your position, compromise on our position, and continue with the negotiating process. So I don't see the mechanics of policing the confidentiality of the proprietary information as being a particular stumbling block. I think it's the underlying policy upon which that kind of an agreement is predicated that's the stumbling block at the present time.

CHAIRMAN McOMBER I would suggest that when you caucus you talk to the Department of Interior. They were the gentlemen that insisted on this agreement, this paper of understanding we arrived at with the

other state agencies. And as a matter of fact, negotiations with all entities of the tribes was shut off until the Secretary of the Department of the Interior was sent a copy of that understanding, that agreement. So you are not the only ones that's going to be involved in this kind of an understanding.

JIM GOETZ Mr. Chairman, which agreement is that now?

CHAIRMAN McOMBER We arrived at a memorandum of understanding with the Governor's office, the Attorney General's office, and the Department of Natural Resources to the effect that representatives of those entities would attend all meetings from the beginning.

URBAN ROTH That was sent to Secretary of the Interior Clark.

DAN DECKER Mr. Chairman.

CHAIRMAN McOMBER Dan.

DAN DECKER Am I not correct in stating that that was part of the Governor's response to Secretary Clark to show that Montana had and was trying in effect to clean up the difficulties that existed with the Fort Peck Compact?

CHAIRMAN McOMBER That was assurance that the Governor's office, the Attorney General's office and the Department of Natural Resources would be involved in the sessions to prevent another fiasco that occurred with the Fort Peck Tribe because those entities were not involved from the beginning to the extent that they should have been. So it was in effect a guarantee that they would be involved. I think Rich could

DAN DECKER That was an MOU between the state agencies and the Commission, right?

RICH ALDRICH Yes

CHAIRMAN McOMBER Was there anything else you gentlemen would like to mention before we break for a caucus?

URBAN ROTH Not I, Mr. Chairman, thank you.

CHAIRMAN McOMBER Very well then, we'll break for a caucus. Scott, what have you got for us for a room.

SCOTT BROWN I asked to have Room 209 provided for us, so, and there are coffee and doughnuts there also, so . . .

DAN THEPRIAULT That's where we'll caucus.

SCOTT BROWN You are the guests.

URBAN ROTH The coffee and doughnuts, though, are in the hall.

DAN THERRIAULT Can you smoke in there?

MARCIA RUNDLE I think you can smoke anywhere but in this room.

CHAIRMAN McOMBER You can smoke anywhere Mona'll let you.

URBAN ROTH Are we staying here?

CHAIRMAN McOMBER Are we back on the record? Well, gentlemen, I trust you've come to a nice conclusion for us. Jim, do you want to lead off?

JIM GOETZ Well, we're waiting to hear what your nice conclusion is.

CHAIRMAN McOMBER You're serious about that?

JIM GOETZ Yes.

CHAIRMAN McOMBER Very well, then. Urban?

URBAN ROTH Consistent with our, with the position that we articulated previously in this meeting, we would handle your request for a closed meeting on an ad hoc basis. In the interests of continuing our negotiations today, we're willing to declare this meeting closed to the public, members of the public, and the press. However, we reserve the right to have employees of state government present who we feel can assist us in the negotiating process by giving us data or analyzing data that we have, we receive and giving us their opinions as to positions and generally assisting us in the negotiating process. In consideration of that concession, we would expect that in the event there was any litigation that arose out of this decision that the Tribes would join as amicus curiae to support any closed meetings. In addition, this is an ad hoc decision in accordance with the policy that we articulated at the opening of this meeting, and we would like to take the matter

back, of course, to the Commission and get their reaction to the continuation of this policy of dealing with your request to close the meetings on an ad hoc basis. But generally having a policy of encouraging public meetings and public attendance and anyone has interest in those negotiating sessions. That's basically what we would respond to your request this morning.

JIM GOETZ. Mr. Chairman?

CHAIRMAN McOMBER Mr. Goetz.

JIM GOETZ Let me see if I understand that you're willing, you reaffirm your general posture that you want the meetings open subject to ad hoc closure at the request of the Tribes, but to accommodate our position in these negotiations, you're willing to close the balance of the meeting today.

URBAN ROTH That's correct. Subject to the exceptions that have already been noted.

JIM GOETZ Uh, which would be in consideration that if there's any litigation on the open meetings question, the Tribes would join as amicus curiae supporting the Commission's decision.

URBAN ROTH And b) that employees of state agencies would remain here at our request to assist us in the negotiating process both in interpreting data that is presented to us and compiling data for us and then in assisting us deciding rather profound issues that are involved in these negotiations. Realizing, of course, we are the agencies, who is, we are the Commission that is delegated by State law to negotiate a compact with you and the ultimate decision as to at least the initial formation of the compact is ours.

JIM GOETZ May I have a moment?

CHAIRMAN McOMBER Yes sir. We'll go off the record.

CHAIRMAN McOMBER Back on the record. Jim?

JIM GOETZ Yes, Mr. Chairman. We find the proposal to go forward with the present meeting generally acceptable. We would want to go back and review your general position with the Tribal Council. One of the critical considerations for us is the question of whether we can work out a clear and binding confidentiality agreement. We have some reluctance at this point to allow general state employees to be in this

meeting, but we've reviewed the agenda items and that is to be in the meeting in the absence of a clear common and binding confidentiality agreement, but I think we can go through today's agenda without that so we can commit to working between now and the next meeting on that matter.

On the litigation, if there is litigation, your request is that the Tribes join as friends of the court to support the State's position, and I'm reluctant, and I don't think I have the authority or we have the authority here to commit the Tribes to that. I can only say that I have polled the Tribal Council members here present and the Executive Secretary, and they would generally support a 'friend of the court' position and advocate that with the Tribal Council. The only other thing I can say is that they have demonstrated absolutely no reluctance in the past to go to court. So that's the best we can do on that amicus issue, and I think you can understand the position in terms of authorization.

URBAN ROTH Are you going to start formulating the confidentiality agreement.

JIM GOETZ Yes. I will start working on that after this meeting.

URBAN ROTH Will it be as expeditious as your work on the 408 agreement?

JIM GOETZ I've got a 408 agreement here today, except I left it in my car.

URBAN ROTH Could we see it sometime?

JIM GOETZ Yes, sometime. If I can find my car.

CHAIRMAN McOMBER Okay, we'll bring this up with our Commission too and re-assess the situation inasmuch as you'll put off making the final decision, we'll do the same. And we may be talking to you about getting together on this even prior to the next meeting to assure that you know where we are before the next meeting. Okay?

RICH ALDRICH Mr. Chairman.

CHAIRMAN McOMBER Yes sir. Mr. Aldrich.

RICH ALDRICH I think I need to say a couple of things for the record here, partially in response to the comments that you made before the caucuses about the role of the United States, the Department of the

Interior, in urging that the State provide the attendance of representatives of the Governor's office, DNRC and the Attorney General's office at these meetings to avoid problems that developed in the Fort Peck situation. The United States still stands by that position and we would urge you to do that. I think that within the context of a confidentiality agreement we can do this. I would also want to say for the record that the exception that Mr. Roth stated with respect to state agency employees would also apply to employees of the United States who are necessary to whoever occupies the role of negotiator for the United States to provide consultation, expertise, background information, and we would expect to be able to call on any of our resources as are necessary.

CHAIRMAN McOMBER I assume, Jim, you'd want the same thing for your people.

JIM GOETZ Mr. Chairman, yes we would. The, one of the real concerns we have is the binding, the power of a confidentiality agreement. We feel that the more people that have access to the information, the more likely there are going to be leaks and the more difficult it is going to be to track the leaks. So I want the Commission to know that we have real concerns about the mechanics of that agreement, and which people are going to have access to information, but that's something I view we can work on between now and the next meeting.

CHAIRMAN McOMBER Understood. I'm going to suggest in a minute here that we take about an hour and a half for lunch, and then come back and get into the balance of the agenda.

JIM GOETZ And my understanding is this afternoon will be closed.

URBAN ROTH Closed, with the exceptions we've noted.

JIM GOETZ Yes.

CHAIRMAN McOMBER Any citizens here like to say something before we break for lunch? Mr. Berry?

LEO BERRY Mr. Chairman, for the Commission members who don't know what the Joint Board of Control is, it's a governmental entity that represents approximately 2,000 irrigators on the Flathead Reservation and under a project, a joint project irrigates about 127,000 acres. Obviously, the workings of the Commission in negotiating with the Tribes will have a significant impact on the future economic wellbeing of these

irrigators, and they have a direct interest in the workings of the Commission.

As such, the Joint Board would go on record as opposing the Commission's decision here today to close the meeting on a general basis and on an ad hoc decision. We appreciate the concerns the Commission has and that the Tribe has regarding proprietary information, but our concern in attending the meetings was not necessarily to gain some kind of legal advantage in potential litigation as a result of having access to that type of information. More our concern is that the people of the area, and I think the Commission ought to be concerned, that the people in the area have a confidence level in the Commission, and the workings of the Commission, that their interests are being represented. That there ought to be a mechanism established whereby the Commission will meet with the Joint Board and other members of the public to have an opportunity for those members of the public to explain their positions to the Board. I think there are a number of items that could legitimately be discussed in the absence of proprietary information or strategic positions that the Tribe might take that would be beneficial to all parties. And I would support the position of the Commission that in the long run, not only in terms of writing a compact but securing legislative approval of the compact, the more parties that feel comfortable with not only the compact but the process by which the compact was arrived at, the better off all parties will be. And the ultimate goal to be, to avoid that litigation, and it's certainly the open intent of the Board that that be done, and by closing the meeting I think you, as to all issues, this particular meeting, constitutes an undermining of the ability of the people to have a complete understanding of the process and the positions the Commission will take.

CHAIRMAN McOMBER Thank you, Mr. Berry I would point out that the Commission has a policy of public information meetings in the areas where that would be impacted by a compact. We followed through with the Fort Peck people, we set plans now with the Park Service and you can be assured that we're available if you would like to discuss our goals and objectives and even our conclusions when the time comes. So you should be aware that it is the policy of the Commission to conduct public information meetings.

I'm going to, how about 'til 1 30, meet back here at 1 30. Okay, recess for lunch.

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CHAIRMAN McOMBER Well, if everyone that had the right password is in, we'll call this meeting to order. Mr Goetz has indicated that because of the weather and the long distances, he'd appreciate it if we

got out of here around 4:00 and I'm sure we have some people from the Commission that would be very happy to bring this to a close as soon as possible.

So we'll get right into business, down to business, and the next item on the agenda is action on proposed agreement regarding Rule 408.

URBAN ROTH Mr. Chairman, Mr. Goetz has provided me with a copy of the proposed agreement. I've done some editorializing on it and Marcia Rundle has just had an opportunity to look at it. Mr. Goetz, I will hand you the edited version.

JIM GOETZ Mr. Chairman, Urban, you've got the Confederated Salish and Kootenai Tribes through the office of its Attorney General.

URBAN ROTH Excuse me, I should have marked that out. Just elevated your status.

CHAIRMAN McOMBER Do you wish to take a little break while you review that?

JIM GOETZ No, this will just take a minute. Excuse me . . .

CHAIRMAN McOMBER I think we'll just go off the record for a minute until they decide what's to be done here.

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CHAIRMAN McOMBER Okay, Jim, back on the record. And Item No. 6, action on proposed agreement regarding Rule 408, what have you gentlemen decided?

URBAN ROTH Your honor, the Tribes have proposed a form of 408 Agreement which has been edited and which in its present form is acceptable as I understand it to the Tribes. It will be retyped by your staff, Mr. Chairman, and be circulated to all parties for their signature and returned before the next meeting.

JIM GOETZ That's my understanding. And as edited, that agreement is acceptable to us, Mr. Chairman.

CHAIRMAN McOMBER Very well, then. I assume no further action is needed on that at this time.

Jim, you indicated earlier that maybe you wanted to talk about news releases as part of the open meeting discussion. We've passed that one, do you have any comment to make on news releases at this time?

JIM GOETZ· Well, Mr. Chairman, only that we would be willing to entertain a suggestion that from time to time if the meetings are closed or even if they're open, that if we can reach agreement on a news release, to issue one jointly so that the public is generally kept informed as to the status of the negotiations and what's going on. I don't know that we have a particularly strong feeling one way or another as to whether that should be done. I take it that it hasn't been done in the previous negotiations?

CHAIRMAN McOMBER We've issued releases, notification of the meeting, but I, and then when we finalized the Fort Peck compact we issued a joint release with Norman Hall, and I can't think of any others, Scott, since I've been here, joint releases.

SCOTT BROWN I think very early there were some joint releases, but I remember them vaguely. On very preliminary matters; nothing substantive such as we're, we seem to be talking about here.

CHRIS TWEETEN Mr. Chairman, it seems that it would depend largely on whether anything newsworthy were to happen in any of the negotiating sessions, too. As long as we're discussing preliminary matters and no conclusions have been reached, I'm not sure the value of making a news release that says the parties met and negotiated, period. It all depends on what's available to the news.

URBAN ROTH· I think what Mr. Goetz's point is, though, that if a news release is issued, that it be a joint news release rather than one unilaterally issued by us and one unilaterally issued by the Tribes. Isn't that the point you were making?

CHRIS TWEETEN I certainly agree with that.

JIM GOETZ Yes.

CHAIRMAN McOMBER Very well, then, I guess you have our assurance that we won't release anything of substance without concurring with you. You have no problem with just a notification of the meetings, and that sort of thing?

JIM GOETZ No, we don't.

CHAIRMAN McOMBER Okay. At the last session it was agreed that technicians, or technical people of yours, the Tribes', and the state's would get together and develop a list of technical data needs and we can get in that, that's number eight on the agenda, it gets us to

number nine, the costs, and I guess it's all in my mind, it's all, it goes together, and Urban, if you have any comments to make before Scott makes his presentation, now's the time.

URBAN ROTH Yes, I think there is something that I would like to touch on and that is that fundamental to the data that's developed in these negotiations or contemporaneous with these negotiations is what standards the Tribes are going to use in an attempt to quantify their reserved water rights in these negotiations. Obviously, if we have a PIA standard or an irrigable acreage standard, then some kinds of studies that may not be necessary. So we would like at least a preliminary indication of what quantification standards you're proposing to utilize in quantifying your water right.

JIM GOETZ Mr. Chairman, the first thing I think we should point out is that we're not, we're not just talking about agricultural use here. And your standard, Urban, your question seems to go to what standard can be used to quantify practical irrigable acreage. We're talking, among other things, about potential hydro use, in-stream flows for fishery purposes, and perhaps other uses. And they would, there would be different standards for quantification of different needs. And one of the presentations we'll have here is a presentation on fishery studies by Mr. Cross, and he will at that time discuss their methodology on that in-stream flow methodology for fisheries.

URBAN ROTH Jim, we've avoided obviously in negotiations a true PIA study because it's very, very expensive, and what we've done is dilute that down to probably what's called an irrigable acreage standard with some component of the practicability thrown in. With regard to the agricultural component of your water right, is that what you propose to do with that?

JIM GOETZ Well, Mr. Chairman, we're in the process of negotiating with the BIA for the commissioning of a Practicable Irrigable Acreage study, and my understanding is that that was discussed at the technical meeting. And maybe Mr. Delk can speak to this, but my understanding is that even if the Commission wants a shortcut by doing something less ambitious than that, that the Bureau wants to do a PIA study in connection with its trust responsibilities. So it seems as though that will be done. I guess we're amenable throughout these negotiations to talking about shortcuts if we think they're valid and if we think there's a reasonable compromise involved. But maybe Mr. Delk should . . . Do you want to talk to that, Bob?

URBAN ROTH· Can I, may I ask you a question before he starts? Are you, when you say practicably irrigable acre standard, are you referring to the kind of work that goes into that standard in actual litigation?

JIM GOETZ That's right. That's what my understanding about the study is.

CHAIRMAN McOMBER Mr Delk, did you wish to comment?

BOB DELK. No, unless there's some question you wish clarified.

URBAN ROTH Well, how far have the negotiations gone? Have you actually funded it?

BOB DELK No.

URBAN ROTH. What will the study cost? What's the proposal cost?

BOB DELK A lot. I don't know, I'm not trying to be coy. I really don't know.

URBAN ROTH· More than two million, three million.

BOB DELK· No, no Less than that, I think.

URBAN ROTH And what are the prospects that the funding will be procured for it?

BOB DELK· Very good.

URBAN ROTH And when would that study, when do you, when will you expect a definitive answer as to when you'd know if the study is going to be funded?

CHAIRMAN McOMBER Excuse me just a minute. The system isn't picking you up, Bob. Mr. Delk, would you mind stepping up closer to the table that we may record you for posterity.

BOB DELK I was hoping to avoid that. (laughter)

Our plan, our schedule is to begin this field season. I don't see any problems with getting funding in '86 to do this. It's a high priority item for us.

URBAN ROTH And when you say "this season," what's . . .

BOB DELK Spring. April, perhaps a little earlier, 1986.

URBAN ROTH Are you going to contract this out, or . . .

BOB DELK Yes.

URBAN ROTH Okay. Is it going to be bid, or . . .

BOB DELK Yes.

URBAN ROTH Are you looking at one entity to perform the whole PIA or would you be looking at various disciplines to bid various aspects of the study.

BOB DELK No, one contract. One firm.

URBAN ROTH An exclusive contract.

BOB DELK I'm not sure what that means.

URBAN ROTH Will you, in that, one component would be the economics?

BOB DELK Yes.

URBAN ROTH Do any of the other Commission members . . .? Thank you, Bob.

CHAIRMAN McOMBER Thank you

JIM GOETZ Mr. Chairman, I think that I made myself clear, we're willing to entertain suggestions on shortcutting the process. But this is a description of where we intend to go with the PIA study. Now I'd like to hear from Scott Brown about what what you were able to do on the Fort Peck and perhaps elsewhere, and how effective that's been.

URBAN ROTH I have one more question, Mr. Chairman, if I may.

CHAIRMAN McOMBER Certainly.

URBAN ROTH What time period would you expect the contract to encompass?

BOB DELK Probably it would be early '88.

URBAN ROTH· Completion?

BOB DELK Yes. For paperwork purposes, we'd probably run the contract through fiscal '88, that would be September 30. That's based on two full field seasons.

CHRIS TWEETEN Mr. Chairman, I have a question based on the estimated completion date.

CHAIRMAN McOMBER· Go ahead, Chris.

CHRIS TWEETEN Will the United States insist on the completion of this study before any compact that the Tribes and the State might agree to would be agreeable to the United States?

BOB DELK I'll defer that to Rich.

CHRIS TWEETEN I was directing it to Rich.

BOB DELK Oh, good.

RICH ALDRICH· I think that the intent of doing the study is, we recognize that if negotiations were to break down then we will be back in court with an expectation of filing claims and being in a position to prove up on those claims. The intent of doing the study is to provide a firm litigation position, and as far as I'm concerned, and I think as far as the Bureau, the BIA is concerned, we can proceed with these negotiations and perhaps do without the need for completion of the study if we can reach a compact.

CHRIS TWEETEN Do you know what the position of the Justice Department is on that question?

RICH ALDRICH At this point, no, I do not.

GORDON McOMBER Jim, we were concerned, or I was at least, on the standards and the issues that you intended to base your claims on from the point of view of what studies are needed to provide that information as opposed to starting out on numerous studies that may be duplications or not vitally needed, so we're interested on what studies are going to be needed to arrive at, you know, the conclusion of where you'll go from there.

I should tell you at this stage in the game, I'm sure you're aware that we have a life expectancy of a little over a year now. And the Commission is going to have to make a pretty hard decision on getting

involved in these studies that take more than that year, that year and a half, and Scott's report indicates that some of them are going to take considerably more than a year. You know, I'd just like you to keep that in mind as we go on. Are you set with what you have to say, Urban?

URBAN ROTH Yes. I think Mr. Goetz has asked Mr. Brown to give some detail on how they shortcutted the PIA standard on the Fort Peck Reservation.

SCOTT BROWN Would you like me to comment on this?

CHAIRMAN McOMBER Yes.

SCOTT BROWN You may recall that I went into some detail as to that so-called shortcut at our last meeting in Pablo, and so I won't reiterate that. But first I'd like to say that whether the Tribes' so-called PIA Analysis is done or not, we may not be shortcutting things greatly by using existing studies or studies that we expect to come out of the Soil Conservation Service's soil surveys. If you'll recall the information I gave you concerning the Fort Peck negotiations, referred to the SCS studies, it's my understanding from our technical meeting in Missoula about two months ago that our SCS studies are perhaps as much as a year to two years away from being completed as well. So that shortcut may not offer the kind of shortcut that we're thinking about.

Now having prefaced my remarks with that, I would say that whichever information the Tribe presents to the Commission is certainly going to require considerable discussion on the economics and the applicability of whatever soils data we have, almost any point you want to discuss is a point of negotiation, it seems to me, whichever forms the basis for the agricultural standard if that's what we would choose to base part of the water right on, irrigability. And I might mention that I view a court-imposed PIA analysis as really something different from what you're doing too. After that, let's imagine that the BIA contracts with someone for the Tribes, conducts that PIA, quite often that stimulates a sort of litigation position on the part of the State. You will have to be choosing discount rates and certain types of soils that are irrigable and I can go on and on; Tom, you could probably add to the list too. It's just going to open up avenues for disagreement, and I'm not, you know, so I don't know which, I don't have any advice for these two parties at this point to which is really a shortcut, because neither is completed. It would seem to me that the soil survey data would certainly be less expensive and would give both parties access to joint agreements on what is irrigable and what economic considerations will be included in the negotiations. And I would invite, in fact I

would very much like for Tom to comment and see what feeling he has on using either or both of these methods for arriving at an agricultural standard.

TOM BATERIDGE. Mr. Chairman, I don't think I have anything to add. I agree with Scott that the SCS information will not be completed for approximately the western half of the Reservation for another year or so, possibly longer.

URBAN ROTH Is there any way to generate some meaningful data prior to that time? Scott or Tom.

SCOTT BROWN Well, there's already considerable data for much of the Reservation, but certainly not for some critical portions of the Reservation, am I correct?

TOM BATERIDGE Yes, the soil information exists for the eastern part of the Reservation but not for the western part. And I don't believe that there's any way to speed that up, it takes so long to do a soil survey.

SCOTT BROWN Much of the land that we would at this point imagine to be irrigable, you know without committing anything, in fact, and not owned by the non-Indians who reside of the Reservation is in fact on the western part of the Reservation, isn't that right?

TOM BATERIDGE. That's possible, yes.

SCOTT BROWN So that's why it's a crucial part of the irrigation, or excuse me, of the Reservation.

URBAN ROTH What you're saying is that the western part is not under irrigation at the present time, to a large extent?

SCOTT BROWN It's been my impression but I wish someone more familiar with the Reservation would comment on that. What little study we have conducted indicates to me that much of the Flathead Valley itself is owned by non-Indians and is currently under irrigation. The potential for future irrigation seems a little greater over in the, is it the Little Bitterroot Valley and the western part of the Reservation?

TOM BATERIDGE (inaudible) side of the Flathead River.

SCOTT BROWN Uh huh. Where, if I'm not mistaken, there's a larger percentage of tribal ownership than in the eastern part. That's been my impression, correct me if I'm wrong.

I just don't have anything other than that to offer; that's, I know that advice is lacking. Unfortunately the information is simply not available, and whatever shortcuts we may be talking about are still a year to two years away.

URBAN ROTH Regardless of which method, whether a full-blown PIA or some of the shortcuts that you utilized on the Fort Peck, right?

SCOTT BROWN That's what it seems to be to me, yes.

URBAN ROTH. What about water availability? That aspect of it, is that a problem?

SCOTT BROWN Well, as I had reported to the Tribes' technical consultants in September, we have very little information on water availability. Certainly not a sufficient amount of information to conduct these negotiations the way I think we want to conduct them. And at the same time, we were given a comprehensive report by some of the Tribal representatives as to what studies they're conducting now to determine surface water and groundwater availability. And I would like Tom or someone, if you would, please, to capsule that. I capsule it in a report to my principals, but I think it would be useful for you to summarize that if you would, please.

TOM BATERIDGE Mr. Goetz, shall I do that?

JIM GOETZ Yeah, go ahead.

GORDON McOMBER Come on up here, would you Tom, please?

TOM BATERIDGE The Tribes, in cooperation with the U.S. Geological Survey, have been analyzing water availability now for about three years. We've been collecting data, both surface water and groundwater, and the compilation and analysis of that, the final compilation and analysis of that, has not been done yet. We will be working on that in the next few months and probably some of that kind of information will become available within a year. The kind of data that it will be, will be information on, in general, on the water availability on surface streams in the Reservation. And the extent of the groundwater aquifers and to some extent information on available water in the groundwater, in the groundwater aquifers.

SCOTT BROWN. Again, we recognized at our technical meeting in September that there isn't sufficient information in order for us to come to any hard and fast conclusions about water availability on the Flathead Reservation. The Tribes have undertaken studies, are two years into studies that will be continued beyond the next year, but to make those data statistically valid, you need three or four or preferably five to ten years of data. You can start to simulate flow data on three years, and with some statistical validity, but you don't dare do it. . . So again, we're about a year away.

That's been my conclusion. Tom, if you dispute any of those conclusions, please let me know.

TOM BATERIDGE I think that is correct. And as of now, we have collected data for three years, and so that data is now being analyzed. Based on the premise that it takes at least three years worth of collection.

SCOTT BROWN We have a number of hydrologists in here.

BOB DELK I agree, but, these guys don't want to hear this, but westside hydrology is simple, compared to eastside hydrology. We could make some assumptions right now on water availability that probably -- the side that seemed to be coming out on the short end then would say, "Oh, there's not enough data to make that decision." From a purely management point of view, the legalities involved, there's enough information to make some water availability assumptions right now. If you made those assumptions and came out with a whole bunch of water, you guys might say, "Ah, we need more data." If we made those assumptions and the Tribe came out on the short end of the stick, then the Tribe would say, "We need more data." So that's the problem, as I see it.

And I don't think we'll ever have enough to satisfy everyone. In the twenty or so years I've been messing with this stuff, there's never enough. There's always somebody that wants a little bit more. So I think, I don't think the issue here is water availability data. We're talking about something different.

SCOTT BROWN. That's basically the way our discussion proceeded in September. We realized that there is some data to get a start, perhaps a policy decision on the part of the principals for the two parties to decide whether there is sufficient data or not.

JIM GOETZ Mr. Chairman, one of the issues is the land status issue, and I don't know how, I've prepared an overlay of the, what I call the Walton II/Walton III/Anderson set of rights in connection with type of

ownership. I don't know whether you've gone through that or not, but the purpose of the overlay is to show the kind of categories that we perceive are necessary in terms of the study, and I can put that up if it's, unless it would be too elementary. I just don't know how far you got into that issue.

URBAN ROTH Well, I think we'd like to see whatever you've prepared.

JIM GOETZ And we have then a presentation on that also which I think fits into this data needs issue. Where is the screen?

SCOTT BROWN I'll set the screen up. Where would you like to put it?

(Presentation - see attached copy)

JIM GOETZ Basically, the way we've analyzed the various issues. First we've got an in-stream flow claim. Our position is that the priority date is time immemorial based on, among other authorities, U.S. v. Adair, Ninth Circuit case, 1983. That's kind of a separate issue from what I'm driving at here.

The second point is the Tribal reserved rights for lands that have never left trust status. Obviously, we had a date of creation of Reservation priority date according to Winters/Walton II. Then we start getting into what we view as the complexity of the ownership question. Under number three, Indian allottees and Indian successors to allottees, so we have to study which allotments on the Reservation belong to Indian successors. The priority date in our view, this is all tentative, I should say, based on our legal research to date, the date of the creating of the Reservation. The Indian allottee will have a rateable share of the Tribal Winters right based on the allotment's number of practicable irrigable acres, whether put to irrigation or not. The use or non-use is according to Walton II. And then moving up to number four, which is a very complex area, there are many non-Indian successors to allottees on the Flathead Reservation. And barring any complications with what we call "force fee", which is something we're looking into, that is, assuming that the transfer from the Indian to the non-Indian allottee was legitimate, that's a priority date under Walton II or Walton III as the date creating the Reservation if the first non-Indian allottee diligently put the water to beneficial use, but only to the extent of the actual beneficial use and if not abandoned somewhere down the line. And again, we're looking into the question of force fee, whether those initial transfers were legitimate. Then we have the category of land called homesteaders and non-Indian successors to homesteaders. And

generally the date of first appropriation under state law under these authorities is the date that governs that. My point is that on all these, we think there has to be historical research in the way of a title search, in the nature of a title search, in order to calculate that. And then under 6, there are lands reacquired by the Tribes from a) non-Indian successors to allottees and the date of the creation of the Reservation if not lost to non-use per U.S. v. Anderson is the priority date. And b), lands required from homesteaders and under Anderson, the date of appropriation by homesteader or successor under state law or, if no appropriation, date of reacquisition seems to be the priority date.

Now, there are these kinds of categories and more of land status or land ownership on the Reservation that need to be studied and the ownership traced, and I've brought along just a little bit of legal language. This is from United States v. Anderson, which is a Ninth Circuit case decided several years ago. But you can see down under "Discussion, part 2" they talk about three general categories of Reservation land involved all lands now owned in fee by non-Indians, lands which never left trust status, and lands removed from trust status subsequently reacquired and returned to status. And then they say, the latter category, the lands reacquired, if you look at the top of the page, then has a number of subcategories; that is land being acquired and returned to trust status 1) lands opened to homesteading which were never claimed; 2) lands allotted to individual Indians who later sold their parcels to non-Indians; and 3) lands open for homesteading which were required, acquired by non-Indians. So the only reason I bring this along is to show you some of the legal support for the kind of variations of land status that we're talking about.

And then the Walton III decision deals in part with this similar question that the language I've got highlighted is quoted from the Walton II decision indicating that a non-Indian successor acquires a right to water being appropriated by the Indian allottee at the time title passes. And that's a date of Reservation priority date if there is application with reasonable diligence after the passage of title. And then you look down at the text and it, Walton III clarified Walton II to make it clear that that exercise of due diligence has to be by the initial non-Indian landowner. And so these are the kinds of questions that we think have to be studied in terms of the land status report.

And we have some -- Dan, is Clayton going to talk at this point on the land status or is -- we have some BIA people to talk here about the various allotments, patterns of land status on the Reservation, so maybe they can go ahead and make their presentation.

ANNA LEE COWAN. My name is Anna Lee Cowan and I'm a technician with the BIA. I've been asked to give some general information on

Indian trust lands including conveyance of trust lands, heirship problems on trust lands, and the involvement of trust responsibility of the Bureau of Indian Affairs.

There are two acts of Congress which allotted lands to Indians on the Flathead Reservation the General Allotment Act of 1887, which was amended in 1906, and the Second Allotment Act of 1920. The Flathead Reservation was opened to homestead entry under the act of Congress approved April 23, 1904. Under the General Allotment Act of 1887, an enrolled Indian of the Flathead Reservation was allotted either 80 acres of irrigable land or 160 acres of non-irrigable grazing land. Under the Second Allotment Act of 1920, an enrolled Indian who did not receive any land under the first Act was allotted 40 acres of irrigable land or 80 acres of grazing land. Also under the Second Allotment Act, there was a timber reservation clause by which the Tribes would receive the first cut of timber of this, the tracts involved in the Second Allotment Act. All allotting of Indian lands closed as of February 21, 1922.

The definition of a trust allotment is a parcel of land owned by an Indian with a legal title in the name of the United States of America in trust for the allottee. The beneficial or equitable title is with the Indian allottee. Trust lands owned by a tribe are also held under the trusteeship of the United States. This is versus fee land.

And fee land is that in which the fee title conveys absolute ownership without the, with the entire property and unconditional power of disposition. Trust lands may not be alienated or taken out of trust without the approval of the Secretary of the Interior or his delegated official. It is the trust responsibility of the BIA to regulate all conveyances of real trust property for the purpose of making sure the conveyance of land is in the best interest of the Indian grantor. Conveyances of Indian land include deeding from one Indian person to another, or trust-to-trust; deeding fee land to trust status, and then trust land to fee patent land.

In a deed passing title of land from trust to trust or from one Indian to another, an application is prepared by the prospective Indian grantor. The application is presented to the Superintendent through a committee for approval. If the conveyance is deemed in the best interest of the grantor, the application is approved. A title status report is requested from Titles and Records, and compared with agency records. Sale funds are placed on deposit within the Bureau by the purchaser. Upon approval and recording of the deed by Title Plant, funds are then paid out to the grantor. On Flathead, our Realty Department averages about 130 cases a year of trust-to-trust transactions. It takes about three to four weeks to accomplish one if everything goes right. It may take eight to ten weeks if a survey is required. Right now, Title Plant in Billings is currently putting land ownership onto the computer, so that has caused us quite a little delay. I have here some sheets that

show acreages of Tribal and individual land that has gone from trust to -- and government and Tribal -- that have gone into fee status. (maps shown at this point)

In a conveyance of fee land to trust status. Upon approval of the application by the Superintendent, the applicant approves, the applicant provides an updated title insurance policy to the Superintendent. The application and title insurance policy are examined by the Area Realty Specialist and forwarded to the United States Field Solicitor for preliminary opinion. This is then returned to the agency with instructions to complete the transaction. The applicant deposits funds with the Bureau for recording fees, payment of taxes if they are unpaid to date, he supplies paid receipts for special improvement districts applicable, and any other required documentation to clear title. The deed is executed and recorded in the appropriate county. The entire file is then again sent through channels to the United States Field Solicitor for his final opinion. Upon final approval, the deed is then recorded in the area office Title and Records. From the time the person makes an application to the deed recordation, the time involved is about six months to one and a half years, if everything falls in place. Flathead Realty averages about 15 to 20 of these cases in a year. They had 50, excuse me, they had 30 applications in Fiscal Year '85 to place some fee land into trust status, but there was a great, large backlog from the vacancy of that position previously, so needless to say, the 30 did not get completed.

To obtain a fee patent for an Indian person, the Indian owner files an application with the Superintendent for a fee simple patent. Upon his approval, the title status report is requested from Titles and Records. This report discloses any encumbrances, rights-of-way applicable to the tract, operation and maintenance liens for irrigation projects, timber reserves for the Tribes, mortgages, and any other notations affecting clear title. An estimate of value is prepared by the Bureau Appraiser giving information as to the location, topography, makeup of the surrounding area, and the probable highest and best use of the property. The Area Realty Officer reviews the request, the Area Director approves the application, and he forwards all data to the Bureau of Land Management for issuance of the fee patent. This takes about six months, if everything goes well; all documentation received on time. In fiscal year '85, approximately 1,000 acres went from trust land into fee status.

There are often exchanges of land between individuals in the Tribes, or between the Tribes and the fee landowner. The steps involved to accomplish these are the same as I have just related to you. There's also regulations established for advertised sale of Indian lands, but in the past several years advertised sales have been practically non-existent on the Flathead. It's too time-involving, too cumbersome,

and there aren't very many people that want to have their land bid on and accept the highest bid.

This next part is going to involve fractionated interests, and I'd like you to see one tract of land here (passed around photocopy at this point). This is just one piece, of which we have several. Through heirship, fractionated interests in an allotment have become very minimal in many cases. An allotment that has been handed down through three or more generations, an 80-acre allotment, may now have 90 to 100 owners, and we do have a few of these. This is the case here, I think, where there's 100. Some of the owners may receive as little as one or two cents from an annual rental. And further, according to the regulations, any one of these owners may live on this inherited allotment. When an Indian dies intestate, without a will, there's a possibility he may leave seven or eight heirs who will inherit his undivided interest in the allotment, and perhaps a home on the allotment for all the heirs to share equally.

Then we get into just a bit more on inheritance. Inheritance of trust property follows the state laws wherein the trust land lies. Montana intestate law as of July 1975 is that if the decedent is survived by a spouse and a child or children of the one marriage, the spouse receives all. In many cases, the spouse is non-Indian, so the Bureau, by operation of the law, causes this inherited interest to pass into fee status. So we have several parcels that are partially in fee, partially in trust. It gets more complicated if the decedent had children from a previous marriage. The spouse receives a share, and the children receive the remainder of the share.

This has been the case in -- I've brought two samples of this one, of partitionment. When a fractionated interest in a tract, when the fractionated interests in a tract become so small, partitionment becomes very difficult if not almost impossible, as all of the owners must agree. Partitionment is the exchange by deeds or trust patents of several undivided interests among all the owners so that each owner will become sole owner of one portion of the allotment. For instance, a very simple example, say two people own undivided interest in a 40-acre tract. Upon agreement of a plat, you divide it into Parcel A and Parcel B. Number 1 person conveys his interest in B and Number 2 person conveys his interest in A. So therefore, Number 1 person gets all of A and Number 2 person gets all of B. This one sample I sent around has 12 parcels of fee land, excuse me, 12 parcels of trust and 2 besides that have gone into fee out of an 80-acre tract. That takes many, many deeds to accomplish.

And the Indian Land Consolidation Act of January 12, 1983, which was amended October 28, 1984, was implemented to help resolve problems caused by fractionated interests by allowing any interest of 2 percent or less and that the owner's interest earned him less than \$100 in

any one of the five years prior to his death, that interest will escheat to the Tribes. This is now being tested in the court case of Irving v the United States. The federal District Court upheld the law, but the South Dakota Eighth Circuit Court of Appeals has reversed the decision. This case is now before the Supreme Court. I hope this little presentation has given you some idea of the problems on trust property. Thank you.

CHAIRMAN McOMBER Thank you. Are there any questions for the lady? I gather it's possible then to have one unit of land that has, that is partially owned by an Indian, say, with an Indian reserved right and partially owned by someone without a reserved right?

DAN DECKER Yes. On the same parcel.

THERESA WALL-McDONALD Just for purposes of comparison and illustration, you might want to look at these two maps that we have brought. (presents maps at this point)

JIM GOETZ For the record, this is Theresa Wall, who is a Rights Protection Officer of the, for the Bureau of Indian Affairs.

THERESA WALL-McDONALD You may want to gather around here. This gray map is dated January 3, 1908. What it shows are some of the very first allotments that were done on the Flathead Indian Reservation. But all of these light-colored areas were allotted to Tribal members. In tracking the correspondence that went along with this period of allotments, it was suggested that there would be less than eighty 100-acre parcels of irrigable land that would be open to homesteaders on the Flathead Indian Reservation. If you had an overlay of the irrigation districts' boundaries, you would see that much of this land right here is now under the Flathead, Mission or Jocko Irrigation Districts. The Flathead Irrigation Project's principal facilities are in this area.

But I think the point to be made is that in tracking down title searches or trying to secure the date when someone first put water to use, you would have to track all of these parcels where you can see that many of them are in fee status and were all originally Indian allotments but now many of them have gone out of trust status and now are owned by non-Indians. Now the pink land is the fee land and the green is the trust. It would be the green land that the Bureau of Indian Affairs has jurisdiction over right now.

URBAN ROTH And the blue land are State sections, right?

THERESA WALL-McDONALD Yes.

SCOTT BROWN Now some of the fee land, though, remains in the hands of the Tribal member.

THERESA WALL-McDONALD Yes.

CHRIS TWEETEN Do you have any idea what percentage that is?

SCOTT BROWN Yeah, I'd be interested in knowing.

DAN THERRIAULT The most important part's mine. (laughter)

SCOTT BROWN You know that for sure. Okay.

CHRIS TWEETEN Would it be safe to say it was more than half or less than half that was in Indian hands?

DAN THERRIAULT I don't think it would be safe to even venture on that one, unless you had a chance to research that.

CHRIS TWEETEN So that data hasn't been collected yet?

DAN THERRIAULT I don't believe it has.

SCOTT BROWN That's what you're saying; that's a nightmare.

DAN THERRIAULT That is a nightmare The simple little piece of land that I have in fee has 38 changes from the time of allotment to the individual to the present date, 38 people purchased it and they've moved it back and forth. It's a nightmare

SCOTT BROWN The Mission Valley is a complicated area to research, it's real common for people in fact to find easily a dozen contracts for deeds backed up on one another.

URBAN ROTH If, you have a list of your enrolled members who reside on the Reservation, do you? If one compared that, say, to a temporary preliminary decree, one could extrapolate some information as to the number of the claimants who owned fee patented lands who were Tribal members as opposed to those who were non-Tribal members. Get a ...

DAN DECKER It gets rather complicated.

URBAN ROTH I mean, could you do that, I guess, is the question.

DAN DECKER I guess it's unsure, because the data we have explained to you, you could have an 80-acre parcel with 600 people in that and they all own an undivided interest, and what the BIA does, because a non-Indian cannot possess trust land, is take a portion of that allotment and say so much of the acreage should be fee acreage, but in point of fact, they don't know which acre is fee and which acre is trust.

JIM GOETZ My understanding is, Clayton, that some Tribal members would have filed, is that true, with the State?

CLAYTON MATT Yes.

JIM GOETZ So you may have some Trust members on your preliminary decree.

URBAN ROTH Well, yeah, I guess what I asked was whether or not they had a list of the Tribal members and then if they were claimants, you see, at least you could separate the non-Tribal from the Tribal claimants. But as Mrs. Cowan, is it, pointed out, unfortunately the claimant might be just the figurehead for a number of owners of the tract, correct?

ANNA LEE COWAN Yes.

URBAN ROTH Well, we could just give them all an 1855 priority date and that would be an easy solution. (laughter)

DAN THERRIAULT I don't even look like Santa Claus. (laughter)

DAN DECKER The other piece of information I think that is important is to re-emphasize what Theresa was saying; that the legislation dealing with the Flathead Reservation, the areas that were allotted, they were approximately the areas where the irrigation projects exist. So those lands that are served by the projects now were predominantly allotments. So we're talking about successors in interest questions.

CHRIS TWEETEN Jim, you mentioned a title search? Am I correct in assuming then that if you're going to do a title search for the purpose of sorting out all the Walton powers type of thing, it's going to be necessary to go through every name that's on the title and comparing that with the Tribal roll that existed at that time to determine whether every

name on their was representative of a member of the Tribe who was in the chain of title at that time?

JIM GOETZ In part. It's not just a title search, though. You've got to, there's got to be a determination of whether water was put to use in a diligent manner and not abandoned, so it's partially title work and partially kind of hydrological type,

CHRIS TWEETEN And historical hydrological work.

SCOTT BROWN And that means that every person has to provide documentation. And we would be going to those people to obtain documentation as to when their water was put to use and try to trace that.

JIM GOETZ Well, part of that I think is a survey of individuals, but part of it is just looking at the historical records of the BIA and the aerial photographs and other historical information to see when that water was put to use.

CHAIRMAN McOMBER Jim, you've said something about, twice you mentioned, legal transfers? What did you mean by that, is there some skullduggery?

JIM GOETZ Yeah, there's an issue on force fees Maybe Dan could explain it better than I can.

DAN DECKER There's a piece of legislation that essentially extended the statute of limitations for the court of claims for cases where there was an illegal loss of Indian lands where claims could be presented to Interior for compensation and were commonly referred to as 2415-types of claims. The thing that has become evident from that, I guess the major question, as an example that exists out there, many allotments were put into fee status without Indian owner request or approval of such on policy basis, and anybody who was half Indian or less was therefore competent to manage his affairs as anybody else. So his land was automatically put into fee status and became taxable. Some of those tracts of land were lost to tax deeds and in other ways. Those, that particular issue of the policy types of patents not only occurred in Montana but North and South Dakota and many states where reservations were open to homesteading where the Allotment Act was changed where the non-Indians couldn't acquire those allotments. There's currently a case for example in South Dakota on the policy patent question, and essentially the theory is that it, title passed unlawfully if there was an abuse of discretion under that policy. Then that case is being advanced by the Native American Rights Fund on an injectment of

title theory. But there are various theories available. But anyhow, the theory boils down to that if there's an unlawful transfer of land, naturally there can't be a legal transfer of the water right.

CHAIRMAN McOMBER Are you questioning the ownership of the land in addition to the water?

DAN DECKER That's what 2415 means, yes.

MARCIA RUNDLE Were those issues raised in your court of claims case?

DAN DECKER. No. That's why I said it started with the premise that this was the statute of limitations extension for the court of claims, because those particular issues were not addressed. Rich might have something to add to that, in case I missed something.

RICH ALDRICH. No, I think you covered it all.

The basic premise is that you have litigation that is currently pending, my understanding is that they're seeking damages for the unlawful possession of the land over the period when they were patented down to date, together with the reversion of title in whoever the proper title holder would be, Indian title holder would be. They're also at various issues as to whether there was, could be, an implied consent to the original patent, such as mortgaging, joining in a deed, various kinds of transactions on the part of the Indian way back when the lands were initially patented.

CHAIRMAN McOMBER Now this seems to a layman like myself almost insurmountable. Are there any, does anybody have any ideas on how to work out this problem?

JIM GOETZ Well, Mr. Chairman, that's one of the reasons we wanted to present this, is because we're interested in hearing from the Commission whether you've got any ideas to shortcut, but at this point we see a Walton II kind of a study as necessary to determination of land status and water rights status. And we haven't frankly come up with a good formula for shortcutting this procedure. And one of the things we would like to talk about is the cost-sharing of that study because it's a mammoth undertaking. Mr. Matt had an additional brief presentation on this issue. Clayton, do you want to?

CLAYTON MATT If you guys would have just kept talking, you'd have finished it. (laughter)

My name is Clayton Matt, and I'm the Tribal Water Administrator. One of the projects I'm currently working on, probably the, as you're aware now, one of the only projects I could be working on, if I'm working on it, is the Walton project which we've called it because of the Walton analysis in the Walton III. And I trust we understand very clearly all of the land status complications we have on the Reservation now, so we won't go back over that too much except to explain that part of determining the historical land status on the Reservation, we're going to be looking at several different, several different places for information. And one of the first places we've gone is to the Bureau of Land Management records, and I'd like to show you some of the information we'll be looking at to try and determine more precisely the history of the land status on any particular tract of land. What they've provided us with is what they call a Master Plat and Historical Index to the Master Plat, and I've provided you with a single page from each of those. And the index that we're to use to try to decipher the information. I'll let you pass that around to look at that. (shows maps at this point) In addition to that, there are three other areas which we've selected initially for the Walton research and those areas include information regarding the Flathead, development of the Flathead Irrigation Project, secretarial water rights on the Reservation, and of course what I'll term SB76 claims or all claims filed with the State of Montana on the Reservation under the Montana Water Use Act. And I think generally you understand the purpose of the Walton research. Our attempt here is to try to determine what water was used at the time the land was allotted and how much, what water was used at the time initially, beginning with allotments now, how much water was used at the time any particular allotment transferred into fee status and how much was put to use within a short period of time after. The due diligence question comes into there, and I don't think any amount of time had been selected on that.

In addition to that, we've tentatively selected several other areas of information that we'll be reviewing ultimately, and I would like to get the run down of that list of information for you. At this time, beginning with the historical land status of the Flathead Irrigation Project, secretarial water rights, which I'll give you in a little more detail; the land status information, of course part of which history we can, should be able to determine using the BLM plat. We'll also be using the BIA records, some of which, of the information is explained earlier. Patents, whenever there's, we feel there's more information we need and which we hope to acquire from the same office which we are acquiring historical and Flathead County records.

Current information which we feel would be important would have to be relied on through the Bureau of Indian Affairs records. Flathead Irrigation Project records, which we'll be looking at to begin with, will

include water rights certificates issued by the Flathead Irrigation Project. They appear to be something that was issued by the Project after I think the Homestead Act was extended to land within the Reser. . . , within the boundaries of the Flathead Irrigation Project, and they appear to be something that they issued after any particular homesteader 'proved up' on a homestead. And at any time if I say something that you need to jump in on, anv negotiator, you should do so.

Applications for delivery of water we'll be looking at, contracts for takeover of, of private ditches. Early on, the Flathead Irrigation Project appeared to have, have signed or worked into some sort of contracts with individuals who were building private ditches whereby the Project may ultimately acquire those ditches and the individuals using water from those ditches would turn the ditches over to the Flathead Irrigation Project. More related to the operation and maintenance of the Project are land classifications and maps which lay out the land classifications presently. And over the last three years, the Tribes conducted extensive research into the operation of the Flathead Irrigation Project and those records are in the Tribal offices. We'll be looking at those as well.

Secretarial water rights -- I think the Compact Commission recently visited the Tribal offices and acquired some of that information. And I won't go into that too much except to explain the basic information includes the findings of early commissions which sound to have done something which we're going to try and do now, and that was to determine the amount of water that was being used. And they did that during the early development of the Flathead Irrigation Project. And they determined that on individual allotments. They made the findings based on surveys and interviews of individuals throughout the Reservation. And of course the SB76 claims, we'll be using. In addition to that, we've got more information, which I'll list out here for you, and if any-time you have questions about any of this, I'll try to answer those for you.

The Tribes have been making all along objections to claims filed on the Reservation and I think that information and documentation -- in-house documentation of that -- we'll be eventually compiling on a tract-by-tract basis on the Reservation. Some of the information which we'll go through here won't be, we won't be able to tag to any particular piece of land, which will become obvious here soon.

Claims filed during the period of time when individuals were filing water rights, filing their claims with the state, many individuals chose to file a similar claim with the Tribes, and we've got those records on hand at this time. On revokable permits, the Tribes have issued to individuals, both Tribal members and non-members on the Reservation for the use of water. And 3), watershed leases which the Tribe has on three watersheds presently used for municipality purposes.

Groundwater well logs covering the, most of the Reservation, collected primarily from the Montana Bureau of Mines and Geology, the State Department of Natural Resources and the Public Health Service. The Public Health Service has been drilling wells for years on the Reservation for individual Indians on allotments for their homes and for other community purposes. From time to time, I conduct research on what I call "contested cases" where there are individuals on the Reservation both between Tribal and between non-Tribal members who have some dispute over the use of water. And at this point we've documented several of those. Illegal diversions -- we have some files pending on diversions which we've found recently and we have files on illegal diversions which the Bureau of Indian Affairs did research on for the Tribes several years ago.

Water resource surveys -- I think you're familiar with those, and the documents which the State put together. And some of the court of claims information which I think you're apparently familiar with. And of course the 2415 claims, I think Dan spoke of those a minute ago. Water supply information, soil surveys, some geologic information, in-stream flows information which may include both fisheries and some small-scale hydro. Some of the information such as the next piece of information are things which we have not yet conducted or begun to conduct such as channel stability. And other water use information to, which will be conducted by, which will be gathered by interviews and other survey instruments. And cultural, anthropological and archaeological information, historic research, other historic research which we are presently conducting includes both on- and off-Reservation water use. Off-Reservation water use would be related to the aboriginal claim of the Tribes. Personal interviews with individuals around the Reservation who are mostly Tribal members -- we intend to look at but we have not yet started. Land use plans such as forestry plans, wilderness plans and other general land use plans which we'll be looking at, recreation use -- I think we have begun or at least will be conducting a creel survey which we'll go to shortly. Future, what other future water use plans of the Tribes, and I have listed here historical air photos which we'll be using to help us in determining where water was used through periods of time. I think the Bureau has most of the historical information as far as air photos and the interpretation of those air photos and field verification of the things such as secretarial water rights, which is a very important part and a very time-consuming part of this Walton research.

DAN THERRIAULT Are you sure you've got enough to do? (laughter)

URBAN ROTH· Jim, can you have him make a typed list of the sources of information that you're researching, make that available to us? We can get it from the taped recording, I suppose, but I'm afraid we won't get it all and people won't have that list to keep in mind. Perhaps some of the information. . .

JIM GOETZ· We'll keep that in mind.

CHAIRMAN McOMBER I've got a couple of questions. I think, Mr Goetz, you indicated that when the land passed, a lot of the land passed from an Indian in effect to a non-Indian, the non-Indian acquired the water rights under State law. Then if that land passed back to an Indian, that Indian would then have the priority date as of the time the Reservation was established, did I understand you right?

JIM GOETZ. Under Walton II, Mr. Chairman, the, if an allotment passed out of trust status from an Indian to a non-Indian, then the non-Indian also takes the water rights, assuming the transfer is . . .

CHAIRMAN McOMBER I understand that.

JIM GOETZ To the extent that the water had been put to use or to the extent that that landowner puts it to beneficial use in a diligent way. And then, should that land then later be reacquired by the Tribes, then the Tribes obtain the date of reservation priority date. But they're not confined by the beneficial use concept, that is, I believe their practicable irrigable acreage potential is part of their water right then.

CHAIRMAN McOMBER But if the right has been acquired by an non-Indian under state law, and wasn't a Walton powers right, and then re-acquired by an Indian, what priority date were you looking at then?

JIM GOETZ. Then the Tribe takes a priority date under the Anderson case based on the date of actual beneficial use under state law if it had been put to beneficial use, or if there was no beneficial use at the time of the reacquisition, then the date of reacquisition is the date of the priority. That's a homestead kind of thing.

CHAIRMAN McOMBER· Do you credit due diligence only to the first owner after a transfer?

JIM GOETZ· That's right.

DAN DECKER That's what Walton III says.

CHAIRMAN McOMBER. So if, a second or third successor in interest, he had the original amount of water, if he'd been using the original amount of water for a couple of generations, and then he increased that amount, you wouldn't regard that as due diligence?

JIM GOETZ That's right.

CHAIRMAN McOMBER Okay, one more question, on the project, how are those rights held -- on the Bureau of Reclamation project. I know that's a little different. I think Clayton was talking about some of those rights, and I gather it was on the Project and hadn't been put to use. Are the rights held collectively by the Tribes or the BIA or the Irrigation District the same as they are in Bureau of Reclamation projects, or are those rights held individually?

JIM GOETZ I'm not clear what rights you're speaking to.

CHAIRMAN McOMBER Rich, you know what I'm talking about, maybe you can straighten me out here.

RICH ALDRICH Without having looked at a lot of the data on the rights on the FIP, my understanding is that the water rights for the Flathead Irrigation Project are very similar in regard to the Bureau of Reclamation water rights. And the United States holds title to the facilities and the landowners have got the right to make use of the facilities. Arguably under, and I can't think of which case, there is a Supreme Court case that holds that the waters are appurtenant to the lands and therefore have to be owned by the individual water users within the irrigation district and that the United States does not itself own the water rights. However, with respect to the adjudication in Montana, the United States and the irrigation districts generally, on reclamation projects, are filing jointly for the water right on behalf of all the water users within the projects. I don't know whether I danced around your question, Gordon, or whether I gave you an answer in there somewhere.

CHAIRMAN McOMBER Well, I was looking for a way to simplify the process.

RICH ALDRICH I'm not sure that there is a way to simplify it.

CHAIRMAN McOMBER Dan?

DAN DECKER Mr. Chairman, maybe I will end up complicating it more, but that, as Rich explained, probably about as best as it can be

explained, the United States claimed the water on behalf of the entire project, for all the water users, as of the date, using basically the appropriation act dates that would call for the construction of the facilities so they had dates of basically 1908, I can't remember the exact date of those acts, the Joint Board of Control, however, filed on behalf of all the District water users under the project and they filed for an 1855 priority date for all the waters used. So there's a discrepancy there between the Districts, how they have filed for the waters under the Montana adjudication system, and how the United States filed for water. And obviously they can't have an 1855 priority date for all the waters currently being used, because of the Walton decisions.

CHAIRMAN McOMBER I'm going to suggest we take a stretch, everyone's about half asleep here, and maybe a run up and down the halls will wake us up a little bit. And, Jim, you indicated you want to be out of here fairly soon, so we need to wrap this one up and then you want to talk about a couple of those others before we go.

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CHAIRMAN McOMBER Okay, back on the record? Back on the record. Let me see, we're on technical data needs. Does anyone want to belabor that some more at this time, or do you want to move on to cost sharing?

JIM GOETZ I think we're ready to talk about cost sharing from our standpoint.

CHAIRMAN McOMBER Very well.

RICH ALDRICH Mr. Chairman, before we leap into that, I'd like to make one introduction. Bob Fenton, who's now outside the door, is here representing the BIA Area Office from Portland, and there is some division of responsibility involving water and water rights, and the Flathead Irrigation Project. Bob? Excuse me. This is Bob Fenton, the Area Hydrologist from Portland, Bureau of Indian Affairs. I was just explaining that there is some question, not question, but some problem with the jurisdiction between the Portland office and the Billings office as pertains to Flathead, FIP and water rights, and that they've got the irrigation project supervision, Billings has water rights as it pertains both to the Tribes and to the Flathead Project.

CHAIRMAN McOMBER Okay. Glad to have you here, sir.

SCOTT BROWN May I make a comment?

CHAIRMAN McOMBER Certainly.

SCOTT BROWN We're leaving this discussion of technical requirements, but I think I owe it to all the technical people to say we certainly haven't exhausted the discussion on those issues. There are other studies that need to be undertaken and I guess we'll just discuss those at another time.

CHAIRMAN McOMBER Well, Scott, this memorandum that you prepared for Commission members and Urban, in regard to that meeting, has that been circulated?

SCOTT BROWN No. It was agreed at our technical session that each, that I would go back and report to you and that Tom would go back and report to the Tribal representatives and we have not, I suspect the memorandums are similar, but we've not shared each other's information.

CHAIRMAN McOMBER That's a pretty comprehensive list of issues there, Scott. I thought they should have a look at it, but if they've prepared their own, fine.

Okay, Mr. Goetz, do you want to comment on your ideas of cost sharing? Do you want Urban to start, or what's your idea?

JIM GOETZ Well, I can start, Mr. Chairman. And our idea is basically, we want money. This, we've accumulated a great deal of data, I think you can see, and assembled a competent and extensive resource staff at the Tribes, and we've, we began these deliberations about a year ago with your request that you, we share our data with you. And we're going to be getting into those issues. One of the things we're interested in is that it not be a one-way street, that we shouldn't have to invest as much as has been invested in these efforts and then just turn it over to the Compact Commission on a silver platter without a quid pro quo.

One of the things that's, that we're getting into is the, what we call the Walton study of land status and land ownership, which is going to be a mammoth undertaking, very expensive, and one in which we think the State would have an interest in sharing the data. And we would like to explore with the State the possibility of sharing that, the cost and effort on that research. And there are aspects of the research that I think are more properly addressed, or more easily addressed at least, by the State in any event. For example, surveys of present landowners, we would expect that some of the non-Indian landowners will be more cooperative to your efforts to talk to them that

they would be to the Tribal efforts. So that's where we stand, and that's the major project, I think, that we need some assistance on.

URBAN ROTH Jim, have you made any estimate as to the cost of that study?

JIM GOETZ We haven't, and nor have we on the timing. We're in the process of doing that, to see. We're undertaking some separate analyses by townships to see how long it takes and what kind of staff needs there are going to be to, and also the assessment what quality of data we're going to get in any event during the course of that study. So we're not prepared at this time, I don't think -- I guess we're not, to really tell you what we think that's going to cost.

URBAN ROTH Well, Jim, we haven't had a Commission meeting since we, with regard to the Flathead Reservation, since our September meeting. And obviously this entails a discussion that has to be undertaken by the Commission as a whole. We have a limited budget, we have many other Tribes and federal agencies with whom we have to negotiate and spread the money around. So whether or not it's feasible for the Commission to underwrite any portion of a study like that, I can't tell you. From what you're saying, I perceive the cost as something in the area of two, maybe three - four hundred thousand dollars. Am I unrealistically high or unrealistically low?

JIM GOETZ I, that's either unrealistically low or in the ballpark, in my opinion.

URBAN ROTH Probably the \$400,000 figure's in the ballpark. (laughter) Yeah. And particularly if would incorporate into that interviews with landowners and historical studies, why it's probably, \$400,000 is probably in the ballpark.

We also want to discuss within the Commission your suggestions as to how we might finesse that requirement. And just haven't been able to do it, Jim, so until we do we can't really respond to your request for cost sharing.

JIM GOETZ Well, Mr. Chairman, maybe we could put that over until the next meeting along with, if we can get any definition on the costs that we estimate, we could report back on that.

CHAIRMAN McOMBER Agreed? Any problems with that? Okay, I'm going to hurry you along here unless you want to prolong the activities. Number 10, report by the Reserved Water Rights Compact Commission concerning non-Indian federal reserved water right claims

affecting these negotiations. And we're talking about non-Indian federal rights. Scott, what do you, you've got some information on this, I know. I'm going to bypass Urban for a minute here, and let you comment on that if you will.

SCOTT BROWN Can I pass this on to Marcia? She's the negotiator for those negotiations with the National Park Service and the Fish and Wildlife Service, and . . .

CHAIRMAN McOMBER Well, we've talked about the involvement of the federal agencies.

URBAN ROTH I think Marcia's already indicated some reticence to make a full report with regard to the negotiations with the other federal agencies' that impact on the Reservation at this time.

MARCIA RUNDLE Well, certainly we agreed at the last meeting that we would tell you where we were at in our negotiations with the federal agencies. We did meet last week with the US Fish and Wildlife Service, and they did submit claims for the Buffalo Range, which we have with us, which I have not yet reviewed, but we could certainly share the documentation with you that they presented to us at that time. I don't think Rich has any objections to that.

They also expressed some concern that Pablo Reservoir and Ninepipes Reservoir might fall through the cracks because there's some uncertainty about, no one's absolutely terribly clear about management authority, who owns rights, where those reservoirs fit in to the whole scheme of things. I know I'm certainly not clear on it. I did look at your map when it was spread out there, and it indicated that those reservoirs are surrounded by Tribal trust lands. I had understood previously that those lands were held by the State, so obviously we're getting conflicting information. And if you could give us any information that would help clear it up, I would sure appreciate it.

DAN DECKER What you've just stated is correct. The land, for the most part, all the storage reservoirs for the Reservation for the irrigation project are on Tribal land. So when you're talking Pablo Reservoir and Ninepipes Reservoir, yes, that's where we're at.

URBAN ROTH How do you perceive the act by which the Tribes were paid \$400,000 for the reservoirs and the facilities for the irrigation project? Was that, does that impact upon that situation at all, where there's a permanent easement was in essence paid for for those facilities?

DAN DECKER Mr. Chairman?

CHAIRMAN McOMBER Yes.

DAN DECKER The money was indeed paid for irrigation project purposes, so that's different than the fish and wildlife question. And without going back over the specific executive orders setting up the wildlife refuges, it's hard to comment on that. There are exceptions for agricultural purposes, for example, as on Tribal lands there are adjacent to those reservoirs, for example. So at some point some of the refuge questions are subservient to prior rights of the Tribes who agriculturally developed those areas. But it would take some kind of analysis to go back through the acts of Congress, executive orders, and so forth, to give you a real accurate response.

MARCIA RUNDLE Is there currently management authority in the State on those reservoirs for fish and wildlife management purposes?

DAN DECKER No. The State manages nothing on our Reservation as far as fish and wildlife is concerned.

CHAIRMAN McOMBER What about the land adjacent to Ninepipes? Now the State Department of Fish and Wildlife . . .

DAN DECKER No, the federal Fish and Wildlife . . .

CHAIRMAN McOMBER Are you sure about that? Well, they looked at some kind of a state . . .

KEVIN HOWLETT They may exercise some regulatory patrol over the bird seasons and things like that, and that's a whole separate issue from this water thing, and we're in some pretty deep discussions about. The State of Montana for hunting and fishing purposes, you know we have that 288 agreement for concurrent jurisdiction. Hunting and fishing rights were withheld from that agreement, so the jurisdiction is with the Tribes.

CHAIRMAN McOMBER: Well, I'll tell you what I'm getting at. A few years ago I was director of Montana's Department of Agriculture. And the people up there had a problem with weeds on the banks of Ninepipes, and we dealt with Montana's Fish and Game Department to handle that situation. We helped them work out a program and they had a fellow up there who was on the payroll of Montana's Fish and Game Department plowing the weeds around the bank, around the edges of the lake.

DAN DECKER I know one of the guys that plows weeds, and he has a contract with the U.S. Fish and Wildlife Service. Whether or not the State was working in cooperation with the federal Fish and Wildlife Service . . .

RICH ALDRICH Well, where we left our discussion in Billings last week was that the State agreed to go back and work with Fish, Wildlife and Parks to see what tracks there may be in their files to determine management responsibilities and authority. I agreed to do the same thing with the Fish and Wildlife Service. I think what we would appreciate is that if the Tribes have any information that would help on this -- we just want to make sure that insofar as fisheries, the fisheries resources, the fish and wildlife resources of Pablo and Ninepipes are concerned, we make sure that some appropriate entity is asserting the claim for it, whichever, whoever it is. Just so we make sure that they are adequately protected.

DAN DECKER I guess one of the points here -- it might, it's not exactly on point because of the water question, but in regards to what the Tribes call a recreation permit. And in order to use Tribal lands on the Reservation for recreation purposes, you have to have a Tribal recreation permit. There's a Solicitor's Opinion that basically says that to use Pablo or Ninepipes Reservoir, the individual has to have a Tribal recreation permit. So as far as the issue of regulation for recreational, or fish and wildlife purposes, you know, there is . . .

CHAIRMAN McOMBER Well . . . Yes, the gentlemen down here?

DAVID CROSS Well, Mr. Chairman, I'd just like to point out that the Tribe does have a fisheries management plan that covers all the reservoirs including the Ninepipes as far as fisheries management.

CHAIRMAN McOMBER Would you identify yourself, sir?

DAVID CROSS I'm David Cross, I'm the fisheries biologist for the Tribes.

CHAIRMAN McOMBER Okay. Well, I don't wish to belabor this, and Rich is right, we agreed to go back and take a look at the situation and what I'm sitting here with information obtained informally, so we won't belabor that. And again, I'd say Rich is right, we want to find out, be assured that someone takes a proper action to claim reserved rights there. Jim?

JIM GOETZ Mr. Chairman, I'm wondering why Marcia was reticent to talk about this issue?

MARCIA RUNDLE I wasn't reticent to talk about the issue, Jim. It's just that we just met with them last week, we have just barely started preliminary discussions. We received some documentation at the time which we will share with you, although I have not even read it yet. We received it Thursday morning, and Thursday noon I left for Virginia. I sent it home to Helena with some other people, and I haven't the foggiest idea of what the figures are in that or anything else. But we will gladly share it with you; you can have it. I can't discuss it in depth with you, because we don't know, even what's on the paper.

SCOTT BROWN There were no specific figures given for either Ninepipes or Pablo. The figures that were given are for the Bison Range. The only thing that was stated with respect to Ninepipes and Pablo are that the Fish and Wildlife Service doesn't want it to fall through the cracks.

RICH ALDRICH That either the Tribe or the State or Fish and Wildlife Service needs to make an appropriate claim to protect the resource. Wherever it comes from. There's no real problem; just so something is done to do it.

URBAN ROTH Mr. Chairman. Does the Tribe still have that cooperative agreement with the Department of Fish, Wildlife and Parks and Fish and Game Division or have those lapsed, or whatever?

DAN DECKER There never was one.

KEVIN HOWLETT We have a proposal for some management activities on the south half of Flathead Lake, and that's what it is, it's a proposal, it's not responded to. But we don't have a cooperative agreement from them.

CHAIRMAN McOMBER This gentleman back here.

JIM PARO Mr. Chairman, my name is Jim Paro, Director of Natural Resources for the Tribes. There is a cooperative, a three-way cooperative agreement between the Tribes, the Fish and Wildlife Service, and the Bureau of Indian Affairs as to who will do various kinds of fish and wildlife management on the Reservation. And that is in the process of being reconsidered in light of the Tribes' progress in doing its own management. So that's in the works, but it does exist. As far as the

reservoir sites, the State Fish, Wildlife and Parks has an interest there because they have lands surrounding those areas which they manage as refuges. But . . .

CHAIRMAN McOMBER That's what I just said, and I thought the map said something else.

JIM PARO Well, it's around the area of Tribal lands which went to the Fish and Wildlife Service for waterfowl management through an executive order, so the Fish and Wildlife Service manages that for waterfowl. We will manage it for fisheries, probably under this new cooperative agreement. And Fish, Wildlife and Parks will continue to manage their own land, I guess.

CHAIRMAN McOMBER That's what I probably said. I don't communicate very well sometimes. The fellow told me they told me they owned the land, land owned by the State, land adjacent to the Reservoir area, which they were responsible for. Okay. We don't want to belabor that any more, either, so let's go on to the next one, the report by the Tribes concerning claims for in-stream flows. This is pretty important to us; we haven't discussed this in-depth with the Commission and we're vitally interested in it, so you have the floor.

JIM GOETZ Mr. Chairman, I'd like to introduce Dave Cross again, who's the Tribal fisheries biologist and he has a slide presentation and will update you on what you're doing on the Reservation on the in-stream flow data collection matter.

(Slide presentation at this point by David Cross)

DAVE CROSS Mr. Chairman, Commission members, my name is David Cross and I am the principal investigator for the lower Flathead system fishery study presently being conducted on the Flathead Reservation. The lower Flathead system fishery study began in January of 1983, and is scheduled for completion in December of '87. The study is being funded by Bonneville Power Administration. With the passage of the Northwest Electric Power Planning Conservation Act, which enabled the Northwest Power Planning Council, the Council was directed to establish a fish and wildlife program for the Columbia Basin. As a portion of that particular study, the Tribe submitted program measures 804-A3 and B6 of the Columbia Basin fish and wildlife program. And that is the lower Flathead system fisheries study.

The study is divided up into three main sections the main river, its tributaries, and there are five major tributaries that we are reviewing, and Flathead Lake, the south bay of Flathead Lake. The lower

river is controlled by Kerr Dam and is influenced by the discharges from Hungry Horse, which is in the upper Flathead system. The Kerr Dam is operated as a hydro peaking plant primarily, which means that the river is yanked up and down like a yoyo as far as its discharge. Species of concern in the lower system are the brook trout, brown trout, cutthroat trout, rainbow trout. We also have bull trout, largemouth bass, northern pike, yellow perch, and lake whitefish.

In order to establish the connection between the tributaries, the major tributaries and the main river stocks, the study constructed two major weirs, one on the north, at the Mission Post Creek drainage, which is this one here, and one on the Jocko River. At these weirs we stopped adult migrating fish; fish that are moving upstream to spawn. They are tagged and then released upstream and their movements from that point monitored.

To date, the study has determined that the impacts of Kerr Dam are primarily due to the water being jerked up and down. We have stranding of fish, as you see here. This continues on a daily pattern, by the way. We have large areas of the substrate of the river exposed on a daily basis. This large zone, you can see where the bank is, where the trees are, and you can see where the river is, this zone is what we call the varial zone. And in this particular zone in a normal river which is not fluctuating up and down, this is the critical insect-producing area, the aquatic insect-producing area, the primary food for all fish species. And in our system here it's being devastated on a daily, sometimes hourly basis exposed to freezing weather or very, very high temperatures. The result is that this varial zone supports very, very little aquatic life, particularly the insects that the fish need to feed on. Another shot of the exposed areas during drawdown and the stranding of fish. It also strands redds -- that is the nest of salmonids. Trout -- all trout species -- lay their eggs in the gravel. And they require specific depths and velocities as well as gravel size. What happens as the river is yanked up and down is this velocity over a particular area, spawning area, continually changes. Water depth continually changes. Therefore, the fish may be inhibited from spawning or if it does successfully spawn, the eggs are dewatered, exposed to either excessive heat or excessive cold, and killed. The other, one of the major species on the lower river is the northern pike. This happens to be a northern pike spawning area right here. They particularly like still water and a lot of vegetation. The eggs that they produce are adhesive, and when the juvenile is born is has what they call a cement organ on the head. And it will cement itself for a period of about six to twelve days to a piece of vegetation. In other words, neither the egg nor the fry once it is hatched is capable of escaping water changes. This was taken at 8:00 in the morning, 4:00 in the afternoon, same site. Obviously, any eggs or fry that were

in there are now dead. We have extreme recruitment problems on the lower river due to the water fluctuations.

Additional problems that we've identified are uncontrolled grazing on the stream banks, poor land use practices where the agricultural zone comes right up to the bank and has removed the riparian protection that's there. This pump house will go one of these days, and probably that tower back there as well. Irrigation diversions are a major problem on the Reservation. I cannot grow fish in a stream like that; it can't be done. This is the diversion on the Little Bitterroot River. This is where they divert the entire river, and leave 50 miles of river basically as, the only thing that fills it is irrigation returns, and whatever seepage can enter into it. The result is that that lower section is probably, if not the most degraded system in the state, it is probably within the top five. And we've got 50 miles of it. Irrigation returns are another area of environmental damage. Obviously silt-laden water coming into the system. The one you just saw -- let's go back to that one -- this is on Mission Creek; this one is on Crow Creek; this is Mission Creek entering into the Flathead River. And as you can see the sediment plume entering the main river. Obviously eggs downstream from this are going to get a lot of problems. This is the Little Bitterroot River where it enters into the Flathead River. It is perhaps the major source of sediment in the lower Flathead River system.

Another area that we've found to be causing degradation of the aquatic environment is poor land use management. This is on Mission Creek, and here a rancher has disced his land, as you can see, right up to the boundary of the stream, in order to get that, just that little extra production out of it. The end result is he's probably going to lose about 10 or 20 acres of land here during the next high water event. The protection for those streambanks and that agricultural land he had out there is now gone, and the river will claim that in hardly any time at all. This is extremely poor management.

The end result is that the gravels that look fairly decent for spawning superficially, once you get into them you can see what happens. This is where we've taken a gravel sample here, and you can see the fine sediment that's suspended in the water now. That was in the gravel. The result is that fish eggs, which need constant water moving by them to bring them oxygen and to remove waste products, sack fry, which have to have clean water and oxygen, again to survive, cannot survive and cannot make it through the gravel to become adult fish.

The final result of our studies right now indicate that the lower Flathead system has been extensively impacted both by hydro-electric development and by the present agricultural practices and land use patterns in the Reservation. And the study, when it is completed, will provide not only the Tribal Council but all interested parties with a

series of management options that will assess the pros and cons of any particular management strategy out there for fisheries and allow the Tribal decision makers to form decisions as far as what their decision will make on the fisheries, what impact it will have on the fisheries. Are there any other questions I can answer? That's in a nutshell -- we've been studying for 3½ years, I could go on for two hours. So, it's very brief. There are annual reports for 1983, 1984 and we are presently at the draft stage in the 1985 annual report. And those are available through our office.

SCOTT BROWN Dave, you made a comment at our technical session that maybe is worth repeating here. Our negotiations require us to consider what amount of in-stream flow, if any, is part of the Tribes' reserved water rights. I guess I had assumed back in September that some portion of this study or these studies might be used to help determine the in-stream flow right. What . . . Would you repeat your comment?

DAVE CROSS Yes. That's one area I did not hit during this talk, because we don't have any photos of it. The study is presently set up to evaluate instream flows on the lower Flathead River using instream flow methodology. The IFIM, Instream Flow Incremental Methodology, which has been developed by the Instream Flow Group, in Fort Collins, Colorado.

We had planned to conduct the instream flow studies this year. We ran into a problem that Bonneville's firm power sales required Hungry Horse to release very, very high discharges all summer long. The earliest Montana Power Company would have been able to drain a hole in the lake or draft a hole in the lake to give us the low flow that we needed to look at would have been October 25. I made the decision that poor weather, the possibility of poor weather at that time, precluded my sending my staff out to try and do it in a two-week period from that time, so we cancelled it. We will attempt to run IFIM in March and April of next year but we think ice is probably going to keep us out then, and so it probably is going to be August - September of next year. Additionally, our study will attempt to subcontract out IFIM studies on the Jocko River, Post Creek, and Mission Creek, and there is a questionmark on the Little Bitterroot right now. After discussing it with our consultant, we're not sure the IFIM will buy us very much out there.

CHAIRMAN McOMBER Who are the Instream Flow Group?

DAVE CROSS The Instream Flow Group is the Fish and Wildlife Service. It's also supported by, I believe, BLM and several other agencies.

CHAIRMAN McOMBER Do we have that methodology, Scott?

DAVE CROSS A wetted perimeter study has been conducted on Crow Creek and the Tribes have negotiated with FIP for that flow below the most diversions; below the dam.

CHAIRMAN McOMBER Does the Bureau of Reclamation ever get involved in any of these instream flow studies?

DAVE CROSS They have not gotten involved in the studies that we are conducting, no.

CHAIRMAN McOMBER They should be a valuable source of information to you because of the streams that have been dewatered periodically over the years because of agricultural diversions. It seems to me if you're going to take a real hard look at instream flows, you should look at some streams where the flow has been substantially reduced over a period of time.

DAVE CROSS There is not a stream on the Reservation where the stream flow has not been substantially reduced over a period of time. Every stream that we have has either an irrigation dam on it -- in fact, I think they all do -- and each one of them has at least four or five diversions. So they are all significantly impacted by irrigation demands. There's not one on the Reservation that's not.

CHAIRMAN McOMBER This study -- what I was getting at -- was it developed by looking at streams that had been dewatered?

DAVE CROSS The IFIM?

CHAIRMAN McOMBER Uh huh.

DAVE CROSS The IFIM study was developed in Fort Collins to look at a variety of different methods and it was developed to answer the question "What if." What if we change the flow to this, what's it do to habitat for a particular life stage, for a particular species? It allows us that evaluation. It allows us to see what the tradeoffs may be between one flow and another flow, and to make an informed decision. It does not tell you what is the perfect flow.

CHAIRMAN McOMBER· Okay. I keep bringing those things up because they come up in our negotiations with another agency and I'm trying to glean some extra information here. Are there any more questions? Okay, thank you very much then. We'll move on to, Jim, what do you have? You have some more for us here, I assume.

JIM GOETZ· Well, item b) is outside the Reservation and Mr. Decker was going to speak to that.

DAN DECKER I'm not sure where to begin, I'll try to hone down what I was going to say quite a bit. So if you have some questions you'll probably have to raise them because I'll probably put it more in a nutshell than what you're looking for. On the off-Reservation flows, it seems to me that the critical question that was proposed to the Tribes by the Commission at the last meeting was what usual and accustomed places meant. There's quite a long series of court cases dealing with that language in our treaty and in treaties that we refer to as Stevens treaties. In fact, the first case interpreting that language was in 1904 which was in the Winans case, which was basically the grandfather case for the reserved rights doctrine. And Winans is quite extensively cited in the Winters doctrine case of Fort Belknap.

Essentially there is a quote from a very recent case that I think I'll read. And essentially the Ninth Circuit Court made a statement in a recent case involving the United States v. Washington, I guess the quote we refer to now is Phase III of that case, it says "The District Court characterizes dispositions as but the most recent link in a long chain of opinions construing the following 27 words: 'the right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the territory.'" And that's out of their April 29th decision. The cite for that is 759 Fed. 2nd 1353-85. Essentially what that gets to in that case, one of the things that says, is that in the language in finding that, one of the principal things that they cited in their case, and going through that whole chain of cases, but one of the principal things that was said was that the 1854. . .I'll back up a bit. And they were referring to specific tribes that negotiated with Governor Stevens, said "six treaties negotiated by Governor Isaac Stevens between the United States and several Pacific Northwest Indian tribes in 1854 and 1855 entitles the tribes to a specific allocation of the salmon and steelhead trout in the treaty area. So the more, the cases all seem to go back to the fact that usual and accustomed places seem to go to wherever it was in the treaty area, and none of the cases have been really site-specific.

A further example of that is the U.S. v Washington case of 1979. It was a United States Supreme Court case, and I'm sorry that I don't have the cite for that with me. But essentially one of the principal

provisions there to the principal parts of that case essentially states that language of Indian treaties securing a right of taking fish in common with all citizens of the territory was not intended merely to guarantee Indians of the Pacific Northwest access to usual and accustomed fishing sites and an equal opportunity for Indians, individuals Indians along with non-Indians to try and catch fish; but instead secures to the Indian tribes the right to harvest a share from each run of [anadromous?] fish in that case that pass through tribal fishing areas.

And another reference was made that fish taken by treaty fishermen off the reservation at locations other than usual and accustomed sites of Indian fishing are to be counted as part of the Indians' share when they were talking about dividing the harvest, so the last case, talking about Indians' fishing rights, said that, even referred to off-Reservation areas that weren't, I suppose, by that court, necessarily specific sites.

So with that in mind, we had handed to the Commission, or handed out at the last Commission meeting a list of temporary preliminary decrees where we have issued objections to on a fisheries basis. So as far as the usual and accustomed question, I guess really what we're looking at are the treaty areas involved in our 1855 treaty, and the aboriginal claims that go along with that are necessary to protect in-stream flows so that the Tribes' treaty-guaranteed right of being able to take the harvestable portion of those fish is protected.

Without getting into a lot of other things, there's a long series of court cases dealing with U.S. v. Washington, Washington Fishing Vessel, some cases in Idaho that further go to habitat protection, and that then goes back goes back to in-stream flows. There are further cases that talk about guaranteed temperatures of water so that specific strains of trout, for example, are protected. This last case that was before the Ninth Circuit said that it didn't matter whether or not they were native species or not, that the tribes still had that guaranteed right of taking fish. It was the taking activity that was the property right, and therefore they could take the fish regardless of the species or who planted them in the river, for example. So in that case, they said assuming that Washington, for example, planted all the fish in the river, the tribes would still be, because of their property right, entitled to take a pro rata share of that. So the species of the fish is not important, I guess this is saying, and where the fish come from is not important, what is important is that the tribes have the ability to exercise their right, going to protection of the environment and habitat in each case.

As part of that, basically where the Tribes are beginning right now with the off-Reservation claims are that we have just recently because of time and money and all those other things that are involved, we are now evaluating basically the "Murphy rights" kinds of material

that the State has compiled. Many of the streams that we have off-Reservation claims on in western Montana, for example, are also considered "Murphy rights" streams under the State Department of Fish, Wildlife and Parks. And we recently collected some of their data and final reports, and are looking at that kind of information. The State Fish, Wildlife and Parks has, under those "Murphy rights", basically done wetted perimeter types of studies and so that's what we're looking at right now. We've been able to get ahold of the reports, but there seems to be some confusion in the state agencies as to exactly where the data's at. There seems to be a void of where the original data's at. But that's what we're initially doing right now, regarding authorization. If there's any other questions.

KEVIN HOWLETT Dan, when you say "treaty area", for the purposes of record you could define treaty area.

DAN DECKER There's two things: the aboriginal territory doesn't necessarily agree with the ceded lands area. And that's one of the things that makes it hard to define. Aboriginal rights are basically wherever you can anthropologically prove, archaeologically prove, historically prove, whatever that the right was exercised in a given area. An example of how broad that may be would be the fact that when the Yellowtail Dam was put in on the Big Horn River, there was more archaeological and anthropological evidence of Salish cultures being of Flathead Tribe in that area than there were Crow. So there's a decision yet to be made by the Tribal Council how far they want to extend them. And the Council has been in discussions over that, but that's the kind of evidence that one would have to go to to prove that aboriginal claim. I don't know if that helps. The ceded land area is essentially western Montana. The aboriginal property rights can extend beyond the ceded area. I think that's what in a nutshell, very clearly.

KEVIN HOWLETT So it's not just the waters on the Reservation that we're concerned about in terms of instream flows. It's a whole lot of things that go beyond the boundaries of the Reservation.

DAN DECKER Maybe a point should be made there. The Flathead Tribes -- although I didn't bring a copy of the treaty with me -- have the exclusive right of taking fish on the Reservation. And that means that we could preclude anybody else from fishing on the Reservation, since we have an exclusive right there. Some tribes with the same treaty language have done as much, basically, that only Tribal members may exercise fishing on the Reservation. And so the off-Reservation right is not an exclusive right and that's where you get in common with

citizens' right. So we have an exclusive right to take fish on the Reservation and any common right to take fish off the Reservation.

CHAIRMAN McOMBER Is that the extent of your presentation, then?

JIM GOETZ Do you want that treaty language for the record, Urban?

URBAN ROTH I think it's been quoted before; if you'd like to quote it for the record, that's fine.

JIM GOETZ No.

URBAN ROTH I think we're all familiar with it, Article III.

DAN DECKER: Yes.

CHAIRMAN McOMBER Do you have anything to say?

URBAN ROTH I don't have anything to say. I mean, we understand where they're coming from.

CHAIRMAN McOMBER Okay, as far as modifying this right, did I understand you to say you're looking for so-called "Murphy's rights" for kind of a guideline, how much you were . . . ?

DAN DECKER That's basically where we're at, where we're beginning with some of the off-Reservation stuff. The other thing we'll have to consider is whether we want to supplement that with different kinds of information. The other thing that we were also beginning to look at is the USFS -- U.S. Forest Service -- information. Whether or not their claim or materials might be adequate to protect the fisheries.

CHAIRMAN McOMBER: Okay, then. Chris or Marcia or Scott, do you have anything at this stage in the game? Okay, on to the next one, then. Non-Indian water uses within the Reservation.

JIM GOETZ Mr. Chairman, it's 4 00 now and I'm wondering if we, we do have two short items under #14, matters of special concern, that I think we need to have taken care of today. And these items #13, #12 and #13 look like they're pretty extensive to me. I'm wondering if we can put those off until the next meeting in light of the weather.

CHAIRMAN McOMBER: Well, it doesn't look like we're going to get a compact today, so that's no problem. Any reason why we shouldn't do that?

URBAN ROTH No, no. I think I'd like to find out what their matters of special concern are that can be disposed of today.

CHAIRMAN McOMBER Okay, we'll put 12, items 12 and 13 to the next session and get down to matters of special concern.

JIM GOETZ Well, one of the matters of special concern -- I'm not sure I've got it with me. Dan, do you have the statute?

DAN DECKER Yes.

JIM GOETZ There's, there was an amendment to the 1985 legislative assembly to the water law which is House Bill 859. Essentially what it does is give the Department of Natural Resources and Conservation the authority to certify a case over to the Water Court. And it apparently deals with those kinds of questions where's there an application for a change in use of a water right from one point to another, one type of use to another. And I gather that the purpose of this is that where a water user comes in at the present time and asks for a change in use predicated on a pre-1973 water right, which is now under adjudication in the State Water Court, the DNRC, instead of ruling on that, could certify it over to the Water Court to determine whether there is a valid pre-1973 right to begin with. Now that procedure is fine, except that they're starting to employ that on the Flathead Reservation. And so while the statute, and our interpretation of the statute, says that any pre-1973 water adjudication is suspended by the Water Court pending these negotiations, this appears to us to be a back-door attempt at circumventing that suspension and allowing the Water Court to adjudicate certain water rights on the Reservation. We've been made aware through mailings by DNRC that some of these claims have been certified over. And we think it's improper, and rather than make a big deal out of it, I think the proper thing to do would be for the Commission to talk to DNRC and put a stop to those claims that are on the Reservation and we don't think are proper under the suspension statute. We think maybe you can handle it administratively and see what's going on. We can tell you, we can give you, Scott, can give you copies of these claims that have been certified over. Now whether you have any control over the Water Court is another question. But we do think it's improper and we don't want to be back in court again on that issue.

URBAN ROTH We'll take note of it and discuss it. The pertinent question is whether we have any control over the Water Court, and of course the answer is 'No.' And do we have any control over DNRC; the answer is 'No.' So . . . (laughter)

JIM GOETZ. Well, you pointed out earlier that DNRC is your staff for the purposes of these negotiations.

URBAN ROTH Well, they serve us in one capacity, perhaps, but are not subservient to us in any other, nor in that particular aspect. We're beggar boys looking with somebody with a handout, for a hand-out.

JIM GOETZ Well, we'll give these to Scott and we'd appreciate it if by the first of December or so you could get back to us with something.

CHAIRMAN McOMBER We're meeting the 3rd; we'll take it up at that time.

JIM GOETZ. The other area is, I don't know if we mentioned it, I think we did mention it at the last meeting, that there is a major commission overhaul or committee overhaul of the Flathead Irrigation Project by some members of federal agencies and Mr. Decker can report further on that. I understand their report is now available.

CHAIRMAN McOMBER. Was the one you're talking about in the paper yesterday?

DAN DECKER Yes. Essentially that's, basically what I wanted to do was make the Commission aware that this report is out. We just received copies of the report late Friday night, naturally. And the Executive Summary alone I imagine is close to 100 pages; it's a 1,500-page document so we really haven't had an opportunity to review it to see what it says. The main thing we wanted to do was let you know that the study was out.

CHAIRMAN McOMBER Okay.

MARCIA RUNDLE: Can you give us a summary of the recommendations, or can you tell us even . . .

DAN DECKER Well, quite frankly, I haven't reviewed the Executive Summary myself.

URBAN ROTH The newspaper article purports to summarize it.

JIM GOETZ That's all we . . . did we have some other items of special interest?

DAN DECKER No, I think that was it.

CHAIRMAN McOMBER Okay, Mr. Goetz, you indicated you wanted to get started home, and that's certainly understandable. As at our last meeting, we do like to arrive at an understanding on what's been agreed upon; if any chores are to be taken care of, actions to be taken or so forth. And if it's all right, we'll go off the record for just a minute while we take a look at those and then we'll go back -- while we list those -- and then we'll go back on the record. Have you kept a list there? Marcia's been doing that.

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CHAIRMAN McOMBER Okay, back on the record. Urban? Do you want to lead, and we'll check you.

URBAN ROTH As I recall, one of the items is, we'll get back with you with regard to some kind of a response on cost-sharing. The question of news releases, we've agreed in principle as to a policy that would govern those releases and that is other than preliminary notices, all news releases as to the ongoing activities of negotiations will be jointly authored and agreed upon by the parties. We will review our policy with regard to public vs. private meetings if it appears necessary. I believe you indicated that you would provide Mr. McOmber with a copy of the projector slide on your analysis of priority dates. There's obviously reaction required by the Commission with regard to some of the information and positions you've taken during these discussions, but I don't know other than a reaction on the part of the Commission they require the Commission to do any specific task. We'll have to react to them, is what it amounts to. And that's about all. Mr. Chairman?

CHAIRMAN McOMBER There's that area of special concern.

URBAN ROTH Well, that's with regard to our responsibilities. In regard to their responsibility, Mr. Goetz has offered to draft a proposed confidentiality agreement before our next meeting.

CHAIRMAN McOMBER We were going to discuss their special concern with regard to DNRC, right? It was their special concern, and we agreed to talk to the Commission about attempting . . .

URBAN ROTH Oh, the certification issue.

CHAIRMAN McOMBER Scott, did you have any more there?

SCOTT BROWN No, I think the ones that I have now are ones that they'll probably communicate to us.

MARCIA RUNDLE We did agree to retype the 408 agreement and prepare it for execution and presumably send it to Justice to be executed prior to that meeting.

CHRIS TWEETEN Will the Justice Department have to review that as to form before they will commit to sign it?

RICH ALDRICH I'm sure they will.

CHRIS TWEETEN Can they review the rough draft that's been prepared today, or will they need a fully executed and typed copy

RICH ALDRICH: I think that all we need is something that's cleaned up a little bit, but it doesn't have to be executed or anything.

CHAIRMAN McOMBER Okay, and the remaining items on the agenda would be on the agenda for the following meeting. Anything else? Well, we've chaired this one and provided the meeting place; the next one is then up to you. And I would tell you at this time we're rather inundated with follow-up chores from the last seven or eight meetings we've had, and so it's not our wish to call any more meetings before Christmas.

DAN THERRIAULT Christmas Day?

SCOTT BROWN Christmas Day would be okay. (laughter)

URBAN ROTH Are you going to play Santa Claus?

DAN DECKER We'll be there, but we won't be Santa Claus.

CHAIRMAN McOMBER Okay, anything else for the good of the order? If not, this negotiation session stands adjourned.

4-10 p.m.

LEGAL ELEMENTS OF A LAND STATUS STUDY

Checklist re priorities.

| <u>TYPE</u> | <u>PRIORITY DATE</u> | <u>AUTHORITY</u> |
|--|---|---|
| 1. In-stream flows | Time immemorial | <u>U.S. v Adair</u> , 723 F.2d 1394 (9th Cir., 1983) |
| 2. Tribal reserved rights for lands which have never left trust status | Date of creation of Reservation | <u>Winters, Walton II</u> , 647 F.2d at 48 |
| 3. Indian allottees and Indian successors to allottees | Date of creation of Reservation. The Indian allottee will have a ratable share of the Tribal <u>Winters</u> right based on the allotment's number of practicably irrigable acres, whether put to irrigation or not. | <u>Walton II</u> |
| 4. Non-Indian successors to allottees | Date of creation of Reservation. If diligently put to beneficial use by the first non-Indian successor and only to the extent of the actual acres irrigated and if not abandoned. | <u>Walton II & Walton III</u> F.2d ____ (9th Cir. January 21, 1985) |
| 5. Homesteaders and Non-Indian successors to homesteaders | Generally date of first appropriation under state law | <u>California-Oregon Power Co. v Beaver Portland Cement Co.</u> , 295 U.S. 142 (1935), <u>U.S. v. Anderson</u> , 736 F.2d 1358 (9th Cir., 1984) |
| 6. Lands reacquired by the Tribes from: | | |
| (a) Non-Indian successors to allottees | Date of creation of Reservation if not lost to nonuse | <u>U.S. v Anderson</u> supra |
| (b) Homesteaders or successors to homesteaders | Date of appropriation by homesteader or successor under state law or, if no appropriation, date of reacquisition | <u>U.S. v. Anderson</u> , 736 F.2d 1358 (1984) |

Water Compact

MEMORANDUM

TO: Members and representatives of the Confederated Salish and Kootenai Tribal Council

FROM: Scott Brown, Program Manager, *SB*
Reserved Water Rights Compact Commission

DATE: July 17, 1980

A copy of the transcript of the meeting between the Confederated Salish and Kootenai tribes and the Reserved Water Rights Compact Commission, June 18, 1980, in Billings, is enclosed.

In addition to those persons who attended the meeting, copies of the transcript have been sent to the remaining members of the Compact Commission, Evelyn Stevenson, Rhonda Camel, Vic Stinger, E.W. Morigeau and Gary Fritz. Mr. Fritz is the administrator of the Water Resources Division.

I am disappointed that the recorder did not pick up everything that was stated in the meeting; however, in spite of the incomplete record, I do not think that the importance or effectiveness of our first meeting has been diminished in any way. In the future, I shall provide a better tape recorder.

Best regards!

SB/kdd

Enclosure

Open meeting & public participation discussed

reach some agreement. I think there's good possibilities of that. I don't know all of the hydrology on that, but . (unintelligible).

Loble I think that's right. By the way, you mentioned hydrology We have a hydrologist who is going to work for the Compact Commission.

Brown: His name is Steve Holnbeck There is some question that we're going to get the funding, but we're 95% certain that he will be coming on soon -- July 15.

Loble: We might as well let it all hang out. We can talk about funding a little bit. There's a little confusion about our appropriations -- for the Compact Commission. Senate Bill 76 had a general appropriation, the whole bill didn't specifically mention the Compact. Some question has been raised as to whether that general appropriation made for the administration of Senate Bill 76 applied for our particular Compact Commission.

So far, the Department of Natural Resources and Conservation has been very good to us. As a matter of fact, their money for administration of Senate Bill 76 comes out of the fee claims -- the fee for filing claims for water under Senate Bill 76. Everybody who wants to have a water right has to file. It's \$40, I think, and that's where the money is coming from. And that's not coming in fast, so what they're doing is borrowing against the general fund. In order to try to pin down just where the Commission stands in this matter, we're in the process of seeking an opinion from the Attorney General, Mr. Greely, on the Commission itself We're hoping that he will say that we're in the same status as everybody else under Senate Bill 76. So far, we don't have any real serious problem about funding. We're able to pay our Program Manager and our attorney and our hydrologist and the wages I get, and Dan gets, and members of the Commission. But I wanted you to know about that.

I think you may understand, and I should have added this in a preliminary way, that the Department of Natural Resources and Conservation -- the members of that act as our staff We are independent, we are not under the control of the director of the Department in any way, nor are any of our employees -- they're under our control Nevertheless, they're in it. And there's no question about it because they have the expertise. Our Program Manager's office is at the DNRC. Dave Ladd, our attorney, has an office out there, and they help us an awful lot. The people who are assisting us -- just so you know who they are, the DNRC. There's Rich Moy. What's his title?

Brown: He's Bureau Chief of the Water Sciences Bureau. They have probably most of the technical experts we'll be using as we acquire data and verify data.

Loble Gary Fritz . . .

Brown: He's Administrator of the Water Resource Division. He's Rich's supervisor and administrator of the entire division, which includes water rights, engineering, the Water Sciences Bureau, water planning, . . I guess that's about it. Gary is directly involved in all water-related issues in the state.

Loble: We do anticipate that they may show up from time to time. Those are the principle ones. There may be others.

Let's go to two on the agenda Desirability and legality of closing the negotiation process to the public. And I would add to that the word confidentiality. This is a matter that is of great interest to you, I know. It's a

matter of great interest to every tribe, and it is to us. We think it's going to be very difficult -- impossible, really -- to negotiate in the public eye and in the eye of the press. We hope that can be avoided. That's the first facet. The second facet is the keeping of information confidential. Say you give us information -- we don't want to discourage that -- so everything is confidential. I want to tell you a problem we have.

Montana has an open meeting law that says that all meetings of boards and commissions be open to the public. There are some exceptions, and I'm going to ask Dave Ladd, our attorney to say a little more. We're currently in the process of researching it, and we hope that you will, too, so that we'll be able to come up with a definitive answer. The second aspect of it is confidentiality. There's a Constitutional provision in the 1972 Constitution that provides that, roughly, the public shall have access to all the data and freedom of information. I know that, in my legal work, with clients there has always been some apprehension, particularly, you may have some company with an industrial project that they want to keep quiet. Some of them have been apprehensive about that Constitutional provision -- that it might override, and they made an application, say, to do something on state land that they might have to disclose to the state agency -- they would not be able to keep it confidential. We don't have an answer to that right now. We are going to look into it, and the attorneys for the Northern Cheyenne Tribe are going to look into it, and I think you will as well. Dave, would you expand on that a little, please?

Ladd: The statute in Montana is a Public Participation in Government Statute, basically with two sections. The first section deals with notice and due process considerations -- that sort of thing. That applies mostly to commissions that have the ability to take final action, make a determination in contested cases, and similar actions. I think we can safely say that that part would not apply, since the Compact Commission has no final authority. We can't make any decision that will really affect contested rights without ratification. The second portion is the open meeting statute, and that directly does deal with the Compact Commission because it covers any commission, committee, or other governmental body that runs on public funds. Of course, we're totally supported by public funds, so that's applicable. There is, however, an exception in there that meetings may be closed if the talks relate to litigation or collective bargaining. We, of course, don't directly fit within that exception, but we're coming close to concluding that our talks do, indeed, relate to litigation since the Compact Commission is a part of the whole adjudication scheme in the state. I think what we'll decide is to look on these talks as settlement talks and then we'd be able to avail ourselves with that exception -- the talks relating to litigation.

The confidentiality question is a little less clear. I'm not aware in initial research, that there's any case law interpreting that, or frankly, any case law on Montana open meeting statute, or at least any that's relevant. There's a couple of cases that don't deal with the (unintelligible) of the statute. I think if we look at the confidentiality thing in the same light, considering these to be sort of settlement discussions, that an exception will have to be implied or created for such settlement talks. It would be meaningless for, say, any government department to totally open up its files concerning active litigation. So, while there is no exception in the Constitution dealing with confidentiality, I think that that issue would have to be resolved that way. So, in conclusion, I think we will be able to close the meetings. I think, in fact, that it's essential that the meetings do be closed to the press.

As I see it now, there may be a reason to have one in Kalispell, and there may be a reason to have one in (unintelligible). Basically, in terms of the working session, I know from the tribe's standpoint and the administrator's standpoint, the negotiating sessions in Helena would be more smoothly run because there won't be 4000 people coming through the front door and wanting to talk to Tommy or to somebody else. Now you may have the same problem in Helena -- it's your telephones that are ringing as opposed to theirs.

Brown Well, we could get around that by getting out of our office -- going across town or something.

Houle: Well, on the whole issue, I don't see how you can do any serious negotiating with the public interfering. I agree we ought to hold a meeting beforehand and explain what we're going to do, and tell them once we get something done, we'll hold public hearings on them. I have trouble seeing each meeting being interrupted by public input. I think it would be counter-productive, to say the least . . . (unintelligible).

Loble: You mean periodically have a public meeting?

Baenen: It seems to be the consensus -- that public meetings basically not be related to the negotiating process.

Loble: Okay.

Kemmis: Well, I wouldn't have any objection to the suggestion that 20 minutes be set aside in case anyone does show up. As long as it is fairly strictly controlled and it's clear that the rest of the time it's only the negotiating people that will be allowed to participate, I think maybe that's a good pressure release valve.

Loble Yeah, I basically would be opposed if some people show up, and say, well we are here. I don't know -- something about that I just don't like to say, but I think we can be flexible about this.

Baenen: Yeah, we're certainly, as they say, plowing new ground or something like that.

Loble Yeah, we are. Maybe there won't be as much interest in it as we think.

Houle And both sides have public officials available to them.

Loble: . . . (unintelligible). would be the desirability of periodic joint . . . (unintelligible). Scott was involved in some negotiations. Where was that?

Brown: Between Saskatchewan and Montana with the International Joint Commission. They were very closed meetings because of the nature of those negotiations. Even more confidential than that were the negotiations between United States and Canada. The IJC operates under strict confidentiality -- even more so than the Fort Peck tribes. But the two chairmen simply got together after each session and released a brief news release. You might have to both here -- you might have to do that as well as . . . If you're going to allow the public in, you're going to have newsmen in. That's something that we haven't really talked about here. You're going to have newsmen there, and