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

Wednesday, May 3, 2000

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KwaTaqNuk Resort

Polson, Montana

Reported by Abigail Dupuis, Certified Court Reporter
and Notary Public, Confederated Salish and Kootenai
Tribes, Box 278 Pablo, Montana 59855 (406) 675-2700

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All Present

- D Fred Matt, CSKT Negotiating Team Chairman
- Jami Hamel, CSKT Negotiating Team
- Lloyd D. Irvine, CSKT Negotiating Team
- Ron Trahan, CSKT Negotiating Team
- S Kevin Howlett, CSKT Negotiating Team
- Darryl Dupuis, CSKT Negotiating Team
- Robb Hunter, CSKT Managing Attorney
- Francis Auld, CSKT Negotiating Team
- Patrick Pierre, CSKT Negotiating Team
- Rhonda Swaney, CSKT Negotiating Team
- Chris Kenney, Federal Negotiating Team Chairman
- Norbert S Ries, Federal Negotiating Team
- Richard K Aldrich, Federal Negotiating Team
- Bernie Burnham, Federal Negotiating Team
- Chris Tweeten, State Negotiating Team Chairman
- Tara DuPuy, State Negotiating Team
- Susan Cottingham, State Negotiating Team
- Aimee Grmoljez, Legal Counsel for Governor's Office
- Faye Bergan, Legal Counsel for State Negotiating Team

I N D E X

1		
2	Fred Matt (Introduction)	6
3	Chris Tweeten (Introduction)	6
4	Chris Kenney (Introduction).	7
5	Tony Incashola (Introduction of Elders)	8
6	Pend d'Oreille Drum Group (Flag Song)	9
7	Chief Cliff Drum Group (Honor Song)	9
8	Yamncut Drum Group (Honor Song)	9
9	Tony Incashola (Opening Prayer)	9
10	Pat Pierre (Personal Comments)	10
11	Matt Michel (Personal Comments)	14
12	Felicity McDonald (Personal Comments)	15
13	Tony Incashola (Interpretation of Comments)	15
14	Louie Adams (Personal Comments)	17
15	Tony Incashola (Personal Comments)	17
16	Chris Tweeten (Opening)	18
17	Chris Kenney (Opening)	26
18	Fred Matt (Opening)	28
19	Robb Hunter (Memorandum of Understanding)	34
20	Rhonda Swaney (Technical Approach)	38
21	Robb Hunter (Legal Approach)	39
22	Fred Matt (Introduction of Elders)	40
23	Rhonda Swaney (Introduction of Technical Team)	40
24	Fred Matt (Introduction of Council Members).	41
25	Susan Cottingham (Technical and Legal Approach)	42

1	Chris Kenney (Technical and Legal Approach)	45
2	Rhonda Swaney (Scope of Negotiations)	48
3	Chris Tweeten (Scope of Negotiations)	50
4	Chris Kenney (Scope of Negotiations)	51
5	Ron Billstein (Watershed Approach)	51
6	Susan Cottingham (Watershed Approach)	54
7	Chris Kenney (Watershed Approach)	56
8	Clayton Matt (Technical Issues)	57
9	Dan Decker (Legal Issues)	60
10	Faye Bergan (Technical and Legal Issues)	63
11	Aimee Grmoljez (Legal Issues)	66
12	Susan Cottingham (Technical Issues)	68
13	Fred Matt (Interim Agreement)	69
14	Chris Tweeten (Agenda)	70
15	Fred Matt (Agenda)	70
16	Chris Kenney (Agenda)	70
17	Fred Matt (Agenda)	72
18	Fred Matt (Next Session Agenda)	74
19	Susan Cottingham (Next Session Agenda)	75
20	Chris Kenney (Next Session Agenda)	77
21	Fred Matt (Assignments)	79
22	Chris Kenney (Assignments)	79
23	Susan Cottingham (Assignments)	80
24	Rhonda Swaney (Summary)	92
25	Fred Matt (Public Comments)	104

1	Gale Patten (Public Comment)	105
2	Mike Grinde (Public Comment)	106
3	John Campbell (Public Comment)	108
4	Tom Smith (Public Comment)	109
5	Vernon Finley (Public Comment)	113
6	Mike Durglo Jr (Public Comment)	116
7	Gary Morigeau (Public Comment)	118
8	Joe Weaselhead (Public Comment)	119
9	Stephen Smallsalmon (Public Comment)	120
10	Leonard Michel (Public Comment)	121
11	Fred Matt (Closing)	123
12	Pat Pierre (Closing Comments)	124
13	Tony Incashola (Closing Comments)	128
14	Chief Cliff Drum Group (Honor Song)	130
15	Pend d'Oreille Drum Group (Honor Song)	130
16		
17		
18		
19		
20		
21		
22		
23		
24		
25	Certificate of Court Reporter.	132

1 FRED MATT Okay We're going to introduce the
2 players at the table up here, and then we'll have an
3 opening ceremony We brought a drum here today, and
4 we'll have Tony introduce them We will leave it up to
5 Tony to start that out

6 But, first of all, there again I want to thank
7 everybody for taking the time out of their busy schedules
8 to be here This is very important and probably a start
9 of a process that I hope that at the end everybody -- I
10 know maybe everybody won't be completely satisfied, but
11 that we get through in some sort of a timely fashion

12 And I'll talk about that a little bit later
13 So myself, I'll be the chair today For those of you
14 that don't know me, my name is Fred Matt I'm the
15 chairman of the Tribal Council. And then we have to my
16 right Rhonda Swaney, director of Natural Resources; Jami
17 Hamel, Vice-Chair, Darryl Dupuis, Robb Hunter, the head
18 of our Legal Department, Pat Pierre, one of our tribal
19 elders, Ron Trahan, councilman from St Ignatius, Lloyd
20 Irvine, councilman from Pablo, and Kevin Howlett And
21 then to my left is the state team Maybe you could
22 introduce yourself

23 CHRIS TWEETEN Thank you, Mr. Chairman My
24 name is Chris Tweeten, I'm the chairman of the Reserved
25 Water Rights Compact Commission Seated to my far right

1 is Tara DePuy, who is the Park County Attorney and a
2 member of the Compact Commission

3 To my immediate right is Susan Cottingham, the
4 staff director for the Compact Commission Seated to my
5 immediate left is Aimee Grmoljez, who is the legal
6 counsel for Governor Marc Racicot And to Aimee's left
7 is Faye Bergan, who is the legal counsel for the Compact
8 Commission for these negotiations

9 FRED MATT Okay, Chris

10 CHRIS KENNEY Good morning My name is Chris
11 Kenney I'm the Chairman of the Flathead Federal
12 Negotiation Team Not all my team is here today. We had
13 some folks with conflicts But to my left is Mr Bernie
14 Burnham, with BIA from Portland, who is a former member
15 to the team

16 To my immediate right is Mr Rich Aldrich, from
17 the Solicitor's Office of the Department of Interior
18 He's stationed in Billings And to my far right is Mr
19 Norbert Ries, who is, as I say, a former member to the
20 negotiation team who's with the Bureau of Reclamation

21 I have some visitors, Mr Steve Pollick from
22 BIA from Billings, who provides a lot of support to our
23 negotiation effort, Mr Darrell Ewing, who is with the
24 Office of Native American Affairs with the Bureau of
25 Reclamation, who also provides technical support to the

1 staff

2 And Mr John Dooley, who is the Native American
3 Affairs program manager for the Bureau of Reclamation in
4 Boise, Idaho, and whose administrative responsibilities
5 reach up into this part of Montana

6 FRED MATT Okay Thanks, Chris Okay So
7 we're going to invite Tony to start out

8 TONY INCASHOLA Thank you, Mr Chairman This
9 morning what we want to do is establish something that I
10 think we, as tribes, need to establish and let everybody
11 know that there are the confederacy of Salish people and
12 Kootenai tribes on this reservation

13 We have three drum groups here representing the
14 Salish, the Pend d'Oreille and the Kootenai And they
15 will each sing a song The Salish Drum -- or the Pend
16 d'Oreille Drum will sing the flag song, and then the
17 Kootenai Drum and the Salish Drum will sing honor songs

18 So first of all, I would like to welcome each
19 and every one of you here to this very important day
20 Welcome to this beautiful valley of ours to discuss a
21 very important issue that is important to all of us, that
22 is part of our lives, our lifeline.

23 And I hope that as we go into this session and
24 listen to the Honor Songs that we honor our ancestors,
25 all of our ancestors who have provided for us and because

1 of them we are here today It is not because of modern
2 technology of modern things, material things that we have
3 today

4 It's not because of that that we're here It's
5 because of the belief and the hard work of our ancestors
6 that have been here for many, many years And I hope by
7 the end of the day that people all in this room will go
8 away understanding a little bit about each other and
9 knowing the importance of unity, of trust, of respect, of
10 the things that were given to us by our ancestors

11 After the drums we will have statements from
12 the various tribal representatives, and then we will
13 continue with the agenda Thank you First we will have
14 an Honor song -- or a Flag song, rather

15 (The Pend d'Oreille Drum Group performed a Flag
16 Song)

17 (The Chief Cliff Drum Group performed an Honor
18 Song)

19 (The Yamncut Drum Group performed an Honor
20 Song)

21 (Tony Incashola opened the meeting with a
22 prayer.)

23 TONY INCASHOLA The first opening statement
24 I'd like to have Mr Pat Pierre, from the Pend
25 d'Oreille.

1 PAT PIERRE First of all, I'd like to thank
2 each and every one of you for coming today This is a
3 beginning of something that hopefully will be for the
4 good of all people As you probably have figured out by
5 now, that you are in Indian Country, Pend d'Oreille
6 Country, in the foot of the continental divide into
7 Washington State

8 It was all Pend d'Oreille Country at one time
9 And I am a descendent of the Pend d'Oreille people The
10 rivers that flow throughout Indian Country are not just
11 rivers, the creeks that come out of the mountains are not
12 just creeks, they are a life and a lifeline to each and
13 every individual

14 To the Indian people the days gone by that up
15 to now we still consider the three elements, the water,
16 the earth and the air, the wind, we call at the wind
17 These three elements are life itself The Indian people
18 have a continuous prayer, continuous prayer that all the
19 three elements will survive, the air and the water and
20 the earth will continue to be pristine so that we as a
21 people can live and go on in time. It is up to each and
22 every individual, not only in this room, but in this
23 nation to do their part to see that this happens

24 We Indian people look at the water as a very
25 highly spiritual aspect of life The water is healing

1 Whether it's a cold spring out of the mountain, whether
2 it's a creek running down the valleys, or whether it's a
3 river, it is healing

4 I have personally witnessed many people healed
5 in the waters, no doctors, no medication, just the water
6 itself So we look at water as something that's very
7 precious We don't look at water as just another
8 stream.

9 We honor the rivers, we honor the creeks, the
10 lakes, because that's how important it is to us as Indian
11 people And we hopefully pray that all the people
12 throughout this nation, especially in this country here,
13 the Flathead Nation, that you, too, will understand the
14 importance of the water

15 The water does not belong to the individual,
16 the individual belongs to the water The earth does not
17 belong to the individual; the individual belongs to the
18 earth So we keep that in mind as we go through this
19 time

20 We have set a table that each of you could come
21 to talk with us about this water And our prayer today
22 is that the streams throughout the reservation will not
23 become a battleground, will not be something that we will
24 have to fight for for the rest of time

25 We, as Indian people, these days are a peaceful

1 nation However, these negotiations that's going on
2 beginning today, let us not turn it into litigation The
3 individuals that will come to this meeting today need to
4 understand you are in Indian Country

5 You are talking about something that this
6 Indian Nation, this particular Indian Nation owns We
7 have every right to say, yes, this water belongs to this
8 Nation We will protect it to the best of our ability
9 We will stand and say, yes, we will protect this water
10 and the land and the air

11 We talk about the three elements continuously,
12 but the only way that we're going to come to an agreement
13 is through the forth element, and that fourth element
14 should surround this table, each and every one of us
15 share every day, each and every one of us walk in this
16 element every day

17 And that's spirituality Spirituality. How do
18 we look at this? How do we conduct ourselves in the
19 presence of one another here? With a good spirit or a
20 bad spirit? How do we come to this table and sit and
21 talk all day long and be at peace when we leave here?

22 Spirituality needs to be right here in the
23 midst of the people today and the days to come. That
24 fourth element is the most important part We, as Indian
25 people, live that daily, we walk in it; we sleep in it,

1 we talk in it

2 It is a part of our life, a very important
3 part Many of us here Indian people still practice our
4 traditional ways from way back when Back before
5 Christopher Columbus ever come to this country we had a
6 way of life that's still alive today

7 It's still alive And that's spirituality We
8 know how to conduct ourselves on the side of the Great
9 One We know how to conduct ourselves on the side of all
10 mankind, that we will continue to be a peaceful nation
11 We have provided the table for you to come and talk with
12 us Let these negotiations be good

13 This is not given to us This land was not
14 given to us This water was not given to us The air
15 was not given to us It is there for the people Let us
16 become good stewards of the land Let us become good
17 keepers of the land and continue to build upon the land

18 We Indian people, we look down the road. We
19 see seven generations coming. We want them seven
20 generations to share the things that we share today We
21 want those seven generations to know that they can walk
22 upon this land in freedom and not be oppressed by
23 different segments of this world

24 We want those seven generations to enjoy a
25 beautiful valley, a beautiful land, pristine streams, air

1 and earth. We learn to take from the earth and give back
2 to the earth that is life For everything we take we
3 give back so that we can come and take again

4 So today, with this statement, I pray that
5 everyone in this building that has come to this meeting
6 will not have any negative thoughts about what's going on
7 here, that we can sit here and be positive in what we
8 do We have the authority to be positive

9 We have the power to be positive So let's go
10 through this day like that Let us not turn our streams
11 and our lakes into battlegrounds, but let us work
12 together to keep it beautiful Thank you

13 TONY INCASHOLA Lemlencht Next, from the
14 Kootenai people, I'd like to ask Mr Matt Michel to come
15 up here and make a statement

16 MATT MICHEL (Speaker spoke in his native
17 language.)

18 Today I'm glad I'm here They told me to
19 come They told me I was an elder I'm only 76 years
20 old. I don't think I'm that old And to tell you the
21 truth, when I went to school, I was in the third grade, I
22 was still wearing moccasins See how poor the Indians
23 were back then?

24 Today we're going to talk about our water
25 rights How come Indian housing ain't going to pay for

1 our water? It's our water We got to pay so much every
2 month And our land, wherever we build our house, we got
3 to pay \$25 a year for our own land

4 That's what I can't understand What Pat
5 mentioned about our spiritual, what he said about
6 Columbus when he said he discovered the world, no,
7 thousands and thousands of years ago the Indians were
8 here It's their land

9 (Speaker spoke in his native language). Well,
10 I'm glad what Pat mentioned, that's what set -- (Speaker
11 spoke in his native language) Thank you

12 TONY INCASHOLA. Next, we have Felicity
13 McDonald, from the Bitterroot Salish Her nickname, we
14 call her Jim so everybody knows where she's from, the
15 Bitterroot here Her grandparents were down there, was
16 known as Bitterroot Jim, so today she's also known as
17 Bitterroot Jim Sometimes we call her Jungle Jim But
18 Bitterroot Jim, one of our elders

19 FELICITY MCDONALD. (Speaker spoke in her
20 native language)

21 TONY INCASHOLA: Did you ever take shorthand in
22 Salish? I'm going to try to catch some of the things.
23 This is what it looks like, anyway First of all, she
24 said that she is more comfortable in speaking in her own
25 language because you can express yourself a lot better

1 that way

2 She said when she was young she remembers a
3 petition going around, carried by Sam Resurrection,
4 trying to protect the water, our water rights way back
5 then Elders have always said that some day we would be
6 fighting over water

7 And it has come to that today The Creator
8 gave us that water The Creator gave us our resources to
9 care for Water belongs to those caretakers Water is
10 used in very various ways and is very important Without
11 water we would have no berries

12 Without water we would have no medicine
13 Without water we would not survive Today, our waters
14 are polluted Life for our animals depend on the water
15 that we have Why do we have to fight for our water? It
16 was given to us

17 It was reserved for us to protect for our
18 people We people have been here a long time before
19 anyone. Our fish is disappearing because of pollution
20 Lands are posted, preventing people from fishing Water
21 is a very important resource to us, to all of us.

22 When we elders pass on, our children will have
23 to continue our way of life I hope that fighting over
24 water is not one of them I have a lot of -- the home
25 here of the people, this is our land, this is our home

1 This is all we have left And she says thank you for
2 listening

3 I have one more gentleman who has asked to say
4 a few words He is also from the Bitterroot Salish
5 people, and many of you know him Mr Louie Adams

6 LOUIE ADAMS Lemlencht This is a historic
7 day Remember greed has no room here, because what
8 you're talking about is not only your lifeblood and not
9 only my lifeblood, but the lifeblood of all of us, of
10 everyone. Let's also remember the fish, the deer and
11 elk, the define creatures, all the little animals out
12 there that need this water

13 Remember the trees, the grass, the flowers
14 Like Felicity said, the medicines that we use. Let's
15 remember all of these things Lemlencht And, also, I'm
16 glad that my ancestors, the Salish, looked down the road
17 thousands of generations. That's the way I look at it
18 We want to prepare for thousands of generations down the
19 road

20 TONY INCASHOLA Okay That concludes And
21 I'd just like personally to thank my elders for their
22 input and their statements As a younger person growing
23 up here in this valley, I have nothing but praise for our
24 elders I stand before you because of those elders

25 The language that I retain, the culture that I

1 hold, the pride that I have is because of my elders And
2 my survival depends a lot on those elders As we
3 continue this process I hope we can put aside our
4 personal views and think about those seven generations
5 yet to come

6 Your children, your grandchildren, what are we
7 going to leave them? I hope we can leave them something
8 a lot better than we received from our ancestors We try
9 to improve every time What we got from our ancestors
10 was very beautiful. We need to maintain that and improve
11 that for future generations Thank you

12 FRED MATT Okay At this time I would like to
13 ask somebody from the State to have an opening statement,
14 time for you, and then the federal team. And then I will
15 finish up

16 CHRIS TWEETEN Thank you, Mr Chairman.
17 Again, for the record, my name is Chris Tweeten. I'm the
18 chairman of the Reserved Water Rights Compact
19 Commission

20 First of all, we want to thank the Confederated
21 Salish and Kootenai Tribes for hosting this meeting and
22 for making the arrangements to set this room up in a way
23 that accommodates the needs of the parties and also the
24 needs of the public

25 I think that gets our relationship off on a

1 very positive footing, and we very much appreciate that
2 I'd like to, Mr Chairman, if I may, take a few minutes
3 and provide some general background information for the
4 other parties and for the members of the public about who
5 we are and who we represent in these negotiations

6 The Reserved Water Rights Compact Commission is
7 an agency of the state of Montana that was created by the
8 Montana legislature in 1979 specifically for the purpose
9 of sitting across the table from the Indian tribes and
10 federal agencies in Montana in trying to negotiate
11 settlements of the tribal and federal water rights claims
12 in the state of Montana

13 This was done in the context of a statewide
14 water adjudication program that was created in 1979, the
15 objective of which is to quantify all of the water rights
16 that exist in Montana. In turn, this was a response to a
17 mandate that was in the 1972 Constitution that was
18 adopted by the people of Montana that required, among
19 other things, that there be a centralized record of all
20 the water rights in Montana

21 Previously, the water rights records had been
22 decentralized, and that has caused a significant amount
23 of trouble in terms of trying to figure out who is
24 entitled to use water in the state of Montana and in
25 resolving conflicting claims over water in Montana

1 So we're part and parcel of a larger program in
2 Montana that's designed to create a catalog of all the
3 water rights in existence in the state of Montana For
4 the past 20 years we've negotiated nine separate compacts
5 with federal agencies and Indian tribes, and we're
6 presently in negotiation with the Blackfeet Tribe, with
7 the Assiniboine and Gros Venture Tribes in Ft. Belknap,
8 and with the Tribes here at the Flathead Reservation

9 We're also in negotiation with the Forest
10 Service and the Fish and Wildlife Service over various
11 federal claims for water. So we have a very full plate
12 in terms of the work that's before the Commission The
13 Commission consists of nine members

14 Four of them are legislators appointed by the
15 legislative leadership, four of them are citizens of the
16 state of Montana who are not legislators who are
17 appointed by the governor, and one is appointed by the
18 Attorney General

19 The membership of the Compact Commission
20 consists of a very wide variety of representatives of the
21 people in Montana We have people involved in
22 agriculture, we have attorneys, we have one
23 schoolteacher

24 So we have representation from a variety of
25 different areas of expertise among the people of the

1 state of Montana The legislature, in 1979, chose to try
2 to negotiate these claims rather than to litigate them
3 because they understood the drawbacks of litigation over
4 federal reserved water rights They understood that
5 litigated outcomes out of disputes over federal reserved
6 water rights are generally not very satisfactory and they
7 are very expensive and time consuming

8 You end up with a quantity of water on a
9 priority date, but with no idea how that water's going to
10 be administered And ordinarily that's a recipe for
11 further litigation between the parties, all of which
12 consumes a tremendous amount of time and other resources,
13 including mine

14 The legislature felt that -- I think wisely --
15 trying to reach negotiated settlements would allow for
16 finding practical solutions to these conflicts over water
17 rights that would not only provide a date and a quantity
18 of water with respect to the federal and tribal claims,
19 but would also provide some means of integrating those
20 federal and tribal claims into the water use system that
21 exists across the state of Montana in a way that
22 minimizes the possibility for conflicts and litigation in
23 the future

24 And we're very optimistic that with a lot of
25 hard work and after what we think will be a fairly

1 time-consuming negotiating process we will be able to
2 come up with a settlement out of here at the Flathead
3 Reservation that will accomplish those objections, that
4 is, that we will provide an agreement as to the quantity
5 of water that the Tribe has the right to use, while at
6 the same time coming to some understanding about how that
7 water right is to be integrated with the existing water
8 rights that exist under state law in this area in a
9 manner that's going to minimize the possibility that the
10 parties are going to have to continue to litigate over
11 these issues in the future as they have in the past

12 Our process for negotiating is very much built
13 around public participation We recognize that under
14 state law we represent the water users and other citizens
15 of the state of Montana who are not affiliated with the
16 Tribe in this area, and as a practical matter we
17 understand that no negotiated settlement is likely to be
18 approved by the Montana legislature if it does not
19 adequately address the interests of the non-Indian water
20 using community in the valleys that encompass the
21 reservation

22 That's simply a fact of life that we have to
23 deal with and, as a result, we are very much committed to
24 the idea that we want to conduct public meetings in this
25 area to hear the concerns of the non-Indian water using

1 community and to take those into consideration as we
2 formulate our negotiating positions.

3 Our intention is to come to Flathead to conduct
4 as many public meetings as we need to conduct in order to
5 make sure that everyone who has use with respect to these
6 issues has been heard and that we've had an opportunity
7 to take their use into consideration in formulating our
8 negotiating positions

9 So I want to make it clear to the non-Indian
10 water users and other members of the public who are here
11 today that the public comment period that's on the agenda
12 for today's meeting is not your only opportunity to
13 communicate your views to the Compact Commission

14 Our staff is always available to talk to you
15 one on one And, as I said, we are committed to the idea
16 that we will be back on more than one occasion to meet
17 with the public to hear their concerns and to try to
18 achieve a comfort level between us and them as to our
19 ability to represent their interests in these
20 negotiations

21 We also have a memorandum of understanding with
22 the other agencies in state government that have an
23 interest in these proceedings We understand it's
24 important for us to make sure that the views of the
25 Department of Natural Resources and Conservation, the

1 Attorney General's Office, the Department of Fish,
2 Wildlife and Parks, and the Governor's Office are taken
3 into consideration in formulating our positions

4 And we have a formal memorandum of agreement
5 with those agencies and of which we undertake the
6 obligation to keep them informed as to the process and
7 progress of the negotiations, to solicit their input on
8 the issues, and to formulate positions that we think are
9 going to be acceptable to those other agencies, as well.

10 And I think that's a matter that should be of
11 some comfort to the Tribe and the United States, because
12 we understand that those other agencies in state
13 government are going to have some influence over whether
14 the legislature will approve a negotiated compact.

15 And we can give you our assurance that those
16 views will be taken into consideration up front and that
17 those agencies will not be coming in and opposing any
18 negotiated compact that we've reached on the grounds that
19 they didn't know what was going on and they weren't aware
20 of the issues that we were negotiating

21 So I hope that's a matter that's of some
22 comfort to the other parties with whom we're
23 negotiating. Mr Chairman, we're looking forward to
24 productive negotiations We understand the history of
25 the litigation that's gone on in this area over water

1 rights, and we're very much committed to the idea that we
2 can bring that litigation to a close and come up with a
3 compact that not only addresses the needs of the Tribe
4 with respect to water, but also takes into consideration
5 and addresses the needs of the other water users in the
6 area so that we can put a stop to this litigation and
7 actually allow the Tribe and the non-Indian water users
8 to live together in harmony

9 We are very much looking forward to the
10 opportunity to negotiate that agreement with you Thank
11 you, Mr Chairman

12 FRED MATT Thanks, Chris

13 CHRIS TWEETEN Excuse me One other point I'd
14 like to make for the members of the audience, there is a
15 sign-up sheet that is being passed around And the
16 purpose of that sign-up sheet is to formulate a mailing
17 list

18 If you want to be kept informed as to when the
19 next meetings are going to be held and receive other
20 mailings that might be sent out, please put your name and
21 address on that sign-up sheet as it goes around so we can
22 make sure that we include you on the mailing list and
23 make sure you receive that information. Thank you, Mr
24 Chairman

25 FRED MATT Okay And at this time the only

1 comment I would make is that, again, we're going to
2 continue to communicate to the Governor, that as we did
3 when he met with us a few weeks ago, that we intend to
4 pressure him to put the resources, make them available so
5 that we can go through this process

6 And we will continue to We'll probably sound
7 like a broken record, but I think it's really important
8 that we do this to keep these negotiations going And
9 you'll probably hear that more and more today, also.

10 Chris And they made it easy for me I think they
11 realize how spacey I can get sometimes, so both parties
12 on each side, their first name is Chris So, Chris

13 CHRIS KENNEY It's purely coincidental, I
14 assure you Thank you, Mr. Chairman Myself and my
15 colleagues, we're gratified and honored to be here
16 We've been working with the Flathead Nation over a number
17 of years, and we're pleased to see water rights issues
18 involved today when we can begin to talk about resolution
19 to those issues

20 I have just a couple of opening comments and
21 some contacts I think it's important for me to say the
22 United States is mindful and cognizant of all of its
23 responsibilities to quantify water in the west and all
24 the different contexts to which that resides.

25 But we're more than cognizant of our historical

1 and sacred responsibilities to the Tribes in terms of the
2 treaty relationship we have and the other agreements that
3 we've had over time And we take that responsibility
4 very seriously and it was because of that reason a number
5 of years ago, starting as far back as the Regan
6 Administration, and every administration since then, and
7 Congress has also made it clear that it's been the
8 federal government's position that we are looking for
9 negotiated settlements if that's at all possible

10 And so over the years the Department of
11 Interior, under the Secretary, has established a
12 structure to put teams in place to engage the tribes, to
13 engage the states, to try to find mutually beneficial
14 settlements that would help the tribes to continue to
15 provide water for their future evolution of their
16 homelands and to fulfill the needs that the tribes have
17 in the future

18 That's what we're here for, and that's what we
19 are intending to do Those teams are under the direction
20 of the Deputy Secretary, Dave Hayes, who came into the
21 department at one time as the counsel of the Secretary
22 who traditionally oversaw and administered the Water
23 Rights Program

24 And when he became Deputy Secretary he just
25 sort of kept that along with him and we didn't really

1 complain too much We thought it was sort of nice to
2 have the deputy secretary's interests on our side We've
3 had a number of settlements over the years

4 Over the last 20 years the United States has
5 negotiated over 15 to 16 water rights settlements. We
6 think that we have found an opportunity to reach a mutual
7 settlement to the benefit of all parties Just like the
8 Montana Compact Commission, we do also see advantages to
9 a negotiated settlement when we believe that the Tribes
10 believe that they have received the benefits and the
11 resources they need for their own homeland

12 And we think that's a possibility, because
13 we've seen that success story in other contexts So we
14 are hopeful and we're looking forward to it Our team is
15 here expressly for the purpose of resolving the Flathead
16 Nation Confederated Salish and Kootenai Tribes' reserved
17 water rights claims

18 That's what we hope to do. That's what we're
19 focused on And so we believe that this is a start of a
20 long and, we expect, fruitful process, that we will end
21 up where we think we need to be Thank you

22 FRED MATT: Thanks, Chris. I'd just like to
23 make a few comments and then, actually, I'd like to read
24 this prepared statement into the record. But as you can
25 see, for those of you that are here, how important water

1 is to our people and to all of the people on the
2 reservation

3 And to our people, as many have talked about
4 this morning, again there's a common theme that we share,
5 and that's our water is very sacred to our people and
6 have been. And we recognize that, and that's why we're
7 here today. And I also think that it just may be a
8 coincidence, but maybe not that we're setting at the
9 south bay of one of the most beautiful lakes in the
10 country

11 And we're proud of that. I think we work
12 really hard as a tribe to make sure that that water is
13 pure and that water is in the best condition that we can
14 possibly leave it, not only for those of us who are here
15 today, but for our children and our children's children
16 to come

17 But we not only go just right here within the
18 reservation boundaries, but we are concerned -- as will
19 be talked about today -- in our aboriginal territory,
20 which is head waters in our aboriginal territory. We are
21 concerned about the quality of water and what comes down
22 through the streams

23 To this day you can still -- in a lot of cases,
24 some people may debate that, but you can still take a dip
25 of water throughout the reservation in our streams and

1 drink it For those who drifted through this part of the
2 country a hundred years ago probably never thought they'd
3 ever see the day that we were concerned about purity, the
4 quality of water, and now the quantity of what's there

5 We've been through -- this country's been
6 through a lot of different -- they've been through the
7 gold rush days, they've been through the fuel rush days,
8 gas is running out, gold has run out, all those different
9 times, and I feel we're just at the brink of the water
10 rush days.

11 And I just think, personally in my heart, and
12 what has been said many times this morning by many
13 others, that the only way we're going to get through this
14 is if we work together, that obviously we take this
15 seriously and we work together to make sure that our
16 interests and our concerns are met

17 And that's not going to be easy We know
18 that. And we're going to have to give and take I think
19 we all know that But I think -- I really have a good
20 feeling in my heart that we can do that. So with that, I
21 would just like to read this into the record.

22 There again, I'm honored to be here today
23 amongst my colleagues to represent you, to speak on
24 behalf of the Salish and Kootenai Tribes And I do think
25 this is a historic occasion On behalf of the Flathead

1 Nation, we welcome all of you who are here today, the
2 visitors, to commence with these negotiations for
3 something that's very important as water

4 We are gathered here to quantify water rights
5 on behalf of the Tribes, the United States and the state
6 of Montana And I must remind our visitors here today
7 that the Salish and Kootenai people have lived here as
8 what has been said for thousands of years

9 And this very reservation was part of our
10 homeland, and is our homeland today, and will remain for
11 the rest of time This reservation was established in
12 1855 by the Hell Gate Treaty. And with that treaty we
13 reserved this land as our homeland, and along with the
14 land the water necessary to maintain ourselves and the
15 resources in it or on it

16 And we, by our tradition and culture, approach
17 these discussions again, which may have been said, and I
18 know I said, with our children in mind. I'm just here
19 for a short time and we're just here for a short time
20 But we want to make sure that what we do today is
21 something that will benefit generations to come

22 It is our intent to protect the right to a
23 healthy and adequate lifestyle with the water necessary
24 to fulfill the needs for our future and in all honesty
25 review the water as our most important resource, as has

1 been said many times here

2 I don't think it's an accident that it's been
3 said that water is our blood, lifeblood. Water is the
4 lifeblood of the earth and the resources are created --
5 put upon to sustain our lives None of us can live
6 without it. We give thanks daily to our Creator for the
7 gift of life and accept the responsibility to maintain
8 water resources on this reservation that are necessary to
9 sustain our lives

10 And while the term negotiation to many of our
11 tribal people mean that we may give up something, yet at
12 the same time presents an opportunity for us to amicably
13 resolve the issue of quantification And I think it
14 behooves us all to meet as nations and governments and to
15 work towards solving the issues before us today regarding
16 something so sacred as water

17 And, finally, the Confederated Salish and
18 Kootenai Tribes of the Flathead Nation look forward to
19 our future negotiations, as I mentioned And, lastly, we
20 look at litigation as the last alternative to resolve
21 these issues of quantifying our water The Tribes are
22 committed to prepare to work long and hard to reach a
23 negotiated water rights compact

24 And with that, again, I want to thank
25 everybody And I'm glad Chris and Chris stated their

1 name. We have a recorder here today, Abby, and she made
2 sure that -- because there is a record being developed
3 that we want to get your names as you make a comment

4 We have set out some ground rules, but these
5 ground rules are just so that we can kind of get through
6 the day in some sort of a timely manner and that we have
7 the opportunity for everybody to be heard and to
8 comment

9 We're going to go through an agenda that we
10 prepared, and at the end of the day we're going to open
11 up the floor for comments from the audience And there
12 again, it has been said it doesn't stop here today Your
13 comments are welcome and written and the State will leave
14 an address where you can send your comments to, as well
15 as the federal, as well as the Tribe

16 This is not being videoed The lens cover is
17 on the camera, but it's being taped so we can make sure
18 we have three different ways of making sure the record is
19 being established So with that, I would like to just go
20 right into the agenda Most everybody, the agenda was
21 handed out So if you don't have one, it's in the back,
22 on the back table

23 And again, part of what I believe that I'm so
24 proud of being up here with this group of ladies and
25 gentlemen. And they're really the working horses that

1 I'm involved with every day So as we go through the
2 agenda, I'm going to call on them to help me identify
3 some of the things that's on here So with that, I'm
4 going to ask Robb Hunter to go through the memorandum of
5 understanding for the audience Robb

6 ROBB HUNTER Thank you, Mr Chair For the
7 record, my name is Robb Hunter I'm the managing
8 attorney for the Confederated Salish and Kootenai
9 Tribes What I want to discuss with the parties here is
10 that as we go through negotiations and the negotiation
11 process, a while back the parties thought it was wise to
12 set out certain ways of doing business while we're in
13 negotiations

14 And, therefore, back in October of 1998, the
15 parties entered into a memorandum of understanding, which
16 is designed to set out protocols under which the parties
17 will operate during negotiation sessions. And these
18 protocols do not go to issues of substance, but merely go
19 to procedural and process aspects of negotiation
20 sessions

21 And what I'd like to do today is go through
22 these particular elements of the MOU with the parties and
23 have discussions as to the details of that process in
24 order to reach understandings between the parties so that
25 we don't have misunderstandings in these negotiations

1 today, as well as in the future

2 This MOU was entered into by the state of
3 Montana, the United States of America and the
4 Confederated Salish and Kootenai Tribes The first
5 element of that MOU is that the parties will hold
6 negotiation sessions on a rotating basis in Pablo, in
7 Helena and in Missoula.

8 And at each of these locations the chair of the
9 negotiation session will be rotated And the assumption
10 is that at the particular location the party from that
11 location will chair the meeting And so Fred is chairing
12 the meeting today When it goes to Helena the assumption
13 is that Chris will chair the meeting, and in Missoula
14 Chris Kenney will chair the meeting

15 If at any time you think we need more detail
16 into these elements I would ask that input be given. The
17 second element of the MOU is that negotiations are open
18 to the general public and that they will be recorded
19 Now we've had some ideas as to what recording entails,
20 and we do have a verbatim transcript being generated
21 today But we may in the future realize that that is not
22 necessary to capture the essence of what we agreed to

23 Negotiations will be closed and held in
24 executive sessions whenever the parties agree that there
25 is a need to protect confidential or privileged

1 information to the extent that such closure is consistent
2 with state, federal and tribal law. The chair, whoever
3 that may be in negotiation sessions, has the authority to
4 restrict the nonparty attendees in such a fashion as to
5 facilitate the negotiation process consistent with state,
6 tribal and federal law

7 Element number three in the MOU provides that
8 no statements or positions taken by the parties is
9 admissible in any subsequent trial or proceeding
10 pertaining to the protection, establishment,
11 quantification, or administration of the Tribes' reserved
12 aboriginal or appropriative water rights regardless of
13 whether that statement or position constitutes an offer
14 to compromise under State or Federal Rules of Civil
15 Procedure

16 However, the parties, if in fact this does go
17 to trial or other proceeding are not prohibited from
18 entering into evidence any data that is generated or
19 evidence that is produced in order to facilitate that
20 party's position during that trial or procedure

21 Element number four in the MOU states that the
22 parties will agree that all press releases or other
23 statements or discussions with the press regarding these
24 negotiations shall be jointly made between the
25 Commission, the Tribes, and the feds claim it was a

1 mutual mistake that they were left out of this
2 provision

3 Any press contact outside of these conditions
4 will be reported by the party who has contact with the
5 press to the other parties immediately When
6 appropriate, the Commission, the Tribes and the federal
7 government will appoint subcommittees to analyze
8 technical or other designated issues and make
9 recommendations back to the negotiating parties at a
10 negotiations session

11 The parties to these negotiations are limited
12 to the Tribes, the federal government and the state The
13 parties acknowledge that the attendance and full input by
14 the public is crucial for a compact to be reached on
15 water rights on the Flathead Reservation. Public
16 comments will be received during each negotiations
17 session and will be a part of the agenda for each
18 session

19 Each party will be tasked with the
20 responsibility to gather input for those constituents
21 they represent However, the agenda and anything that
22 goes on the agenda will be agreed to in advance by the
23 parties before that session is taken And that is the
24 gist of the MOU There are details to be worked out, and
25 I believe that the chairs might have discussed some of

1 these details earlier today.

2 FRED MATT Thank you, Robb Rhonda, do you
3 want to start on the technical aspects of it, and then,
4 Robb, you can explain the legal approach

5 RHONDA SWANEY Thank you, Mr Chairman The
6 technical and legal teams may be appointed under item
7 number six as just read by Robb -- or excuse me -- number
8 five And generally those subcommittees are directed to
9 work on specific issues For example, the memorandum of
10 understanding that Robb just went through was assigned to
11 the legal committee a couple of years ago

12 We intend that this procedure will be followed
13 in each negotiation session In terms of the technical
14 group that may be asked to work, I would like to
15 introduce those folks These are the tribal technical
16 team members Bill Foust, Seth Makepeace, Diane Cline,
17 Clayton Matt, Ron Billstein

18 And those are the folks that are here today
19 that are on the technical team. Tom Bateridge Excuse
20 me He wasn't sitting in his chair and I didn't see
21 him Some of the tasks that might be assigned to a
22 technical committee would be, an example, to look at the
23 hydrology of the reservation, come to agreement as to how
24 much water is here and can be appropriated

25 Another example might be agreement on how to

1 verify those claims, how to be filed Another topic
2 might be how to come to agreement on any number of things
3 that require compliance And we intend to -- we worked
4 long and hard for many years to begin to collect data
5 We're fully prepared to go ahead as soon as possible and
6 look forward to contributing the technical expertise
7 necessary to come to a compact agreement

8 ROBB HUNTER Each of the parties have legal
9 resources available to analyze those particular issues
10 that might be developed or might come to an issue as far
11 as the technical approach is concerned For the Tribes
12 on legal assistance, are myself, Robb Hunter, Mr Dan
13 Decker, former managing attorney for the Tribes and now
14 private practice, and Mr John Carter, who is part of the
15 Legal Department for the Tribes

16 We view our assistance to the process as
17 crucial in actually weighing the legal issues that will
18 develop and make sure for all of the parties and make
19 sure that the rights, as far as the parties are
20 concerned, are protected We're available to all of the
21 parties at any time to look at the legal issues and to
22 try to come to agreement as to those issues as they may
23 be

24 And, of course, the legal issues go all the way
25 from the recent Supreme Court -- Montana Supreme Court

1 decisions regarding water rights on this reservation and
2 the administration of those rights to some of the
3 technical issues that Rhonda just identified

4 FRED MATT: Okay Thanks, Robb And, also,
5 when we did the introductions we mentioned elders that
6 are on the team And Francis wasn't sitting at the table
7 at the time, but I want to introduce Francis Auld He's
8 really not my elder, but he is an integral part of the
9 team

10 As you can see, we really hold a high regard
11 for our elders and different people that add
12 significantly an element to these negotiations And in
13 the back of the room is Ig Couture and Joe Cullooyah At
14 this time, I think we will just take a short break and
15 let everybody -- I know Barry Baker is starting to fall
16 asleep So I think we will just take a short break and
17 you can get a cup of coffee.

18 (A break was taken from 10 37 a m to 11 00
19 a m)

20 FRED MATT: Before we continue, Rhonda asked to
21 introduce some of the elders in the back We didn't know
22 they were back there So go ahead, Rhonda

23 RHONDA SWANEY I would like to apologize to
24 the several members of the technical team who are the
25 most important members of the technical team. I'm not

1 used to this public forum any longer and, consequently,
2 I'm a little nervous So I'd like to apologize and take
3 the opportunity to introduce them

4 The folks who serve the Tribal Council and
5 advise on cultural matters include the Culture
6 Preservation Office, Marcia Cross, Germaine White And
7 we have a number of distinguished elders who are part of
8 the elders committee that advise us, as well

9 Stephen Smallsalmon, John Stanislaw, Joe
10 Cullooyah, Ig Couture. And both Ig and John are also
11 part of the negotiation team Louise Michel, Mary Eneas,
12 Helen Charlo Thank you. Noel Pichette, Mike Durglo,
13 Alice Camel, Jim McDonald, Margaret Finley, Janie
14 Wabaunsee, John Peter Paul, and Louie Adams. Thank you

15 FRED MATT Did you notice that John's still
16 raising cane? Rhonda thinks she's nervous Also, too, I
17 forgot the other members of the Council that's here
18 today Carole Lankford Oh, Maggie We weren't sure
19 She's from over the west side No Okay

20 And also, there again, the state and the
21 federal team, interrupt me or -- I know as we get through
22 this if you have comments or topics that we're covering,
23 I want to give you some time So just before we broke we
24 had Rhonda and Robb go through the MOU and the technical
25 team and stuff. So do you have any comments at this

1 time?

2 SUSAN COTTINGHAM Mr Chairman, thank you I
3 think we just wanted to augment a little bit about what
4 Robb and Rhonda said in terms of how the State deals with
5 its technical and legal work, and also to just maybe
6 review a little bit about how we have done it in past
7 negotiations

8 Not to say that's how we'll do it here, but
9 just to give some thoughts to folks on how to proceed
10 We have a twelve-person staff, legal, a couple of
11 attorneys, hydrologists, soil scientists, we use
12 geographic information systems very extensively We have
13 a couple of computer folks that work for us.

14 And all those folks do technical and legal
15 advice to the Commission and also in past negotiations
16 have worked with other technical and legal staffs from
17 the federal government and from the Tribe to put together
18 some joint technical work For instance, up in the Milk
19 River, I don't think -- up in the Milk River we have set
20 up a joint legal team and a joint technical team

21 The legal team does a lot of the drafting of
22 the actual compact together and then brings it back to
23 the parties when they have issues that they're struggling
24 with. The technical teams, for example, have spent a
25 number of years putting together a hydro water model that

1 models all the water used in the Milk River Basin and
2 comes up with various scenarios for what would happen if
3 the Tribe uses its full water claim and what impacts
4 there are to downstream users and so on and so forth

5 We spend a lot of time working with the local
6 water users to try to understand how things are working
7 on the ground, and then they come back to the negotiating
8 teams and sort of report what they found and a lot of our
9 meetings, for instance, up there end up being reports
10 from the various technical groups

11 And we have found that that's worked really
12 well because then all the parties are working from the
13 same information I think it's our hope that we can
14 begin to set up something like that here, see if our GIS
15 systems are compatible, you know, look at how our
16 computers are set up so that we can begin to see how we
17 can exchange some data and so on

18 I think one of the things I would hope we could
19 come to an understanding about as we move forward is how
20 those technical teams can relate to each other informally
21 on the phone without having to go through the formal
22 negotiating teams and yet knowing that once they come to
23 some resolution they would be coming back formally to the
24 parties to make some recommendations

25 So I think as we move through the day we'd like

1 to talk a little bit about how we might have our
2 staff-to-staff contact I know on some of the other
3 negotiations, we've worked very closely with the Bureau
4 of Reclamation They've had some good technical folks
5 helping us in the Crow negotiations, and I think it's
6 been very productive

7 So just to augment that, we think that given
8 the fact that all of the official negotiators, Tribal
9 Council and others are very busy with lots of business,
10 it's very helpful to be able to move forward if we can
11 have some informal contacts between the staffs to get a
12 lot of the ground work done

13 So I just wanted to add to that Oh, yeah,
14 thanks We do have a couple more staff members here that
15 weren't introduced We're as nervous as you are, I
16 suppose. Stan Jones is our hydrologist, and he's working
17 on our Forest Service negotiations and he has got a lot
18 of background in instream flow methodology

19 And so he's going to be our hydrologist Ariel
20 Anderson is our soil scientist, and he has begun looking
21 at the soils information up here on the Flathead
22 Reservation The person who is going to be our technical
23 team leader is a woman named Sonya Hogeland She
24 couldn't be here today

25 She had a long vacation planned many months

1 ago But she's going to be heading up our technical
2 team. She's our computer specialist She's a real whiz
3 at the GIS, and I think you will find her very easy to
4 work with.

5 And she'll maybe be working with Abby and
6 others to see if we can keep minutes or, you know, the
7 tasks list and things like that, helping the logistics
8 and how that moves along Faye Bergan, who is here, is
9 going to be the legal counsel for this negotiation And
10 then we have Bill Bryman, who's our ag engineer, will
11 also be working on this, as well

12 So sorry they couldn't all be here today. But
13 we have a series of four public meetings up on the Milk
14 River in 10 days and they're desperately getting ready
15 for that, as well So we've got a lot going on Thank
16 you, Mr Chairman

17 FRED MATT. And that was Susan Did you get
18 that? And on these mikes, I think the best way -- you
19 can't crowd them If you're just about a foot away, I
20 think it works the best So go ahead, Chris.

21 CHRIS KENNEY Thank you Just a couple of
22 comments I had some questions during the break about
23 the structure and process, so this is probably timely
24 One of the things that should be said is with regard to
25 the Flathead Nation's water rights claims, I mean the

1 Bureau of Indian Affairs is really the focused agency
2 They're the ones over the years that have
3 pulled together the resources, have done the studies and
4 pursued that in concert with the Department of Justice
5 When the Department puts together a negotiation team, in
6 addition to the chair that the Secretary puts in place,
7 then you're going to have other folks that are formal
8 members of the team

9 Those formal members are there for two
10 purposes There's either policy considerations because
11 Reclamation facilities are maybe impacted by a potential
12 settlement or Fish and Wildlife has a native species
13 concern, or what we look at as a team, one of the
14 considerations is what are the issues in addition to the
15 water that are going to have to be dealt with in the
16 process of settling

17 So you'll see a representative from each of
18 these agencies that are impacted. If the Forest Service
19 becomes an issue, then we will ask the Forest Service to
20 at least provide an agile member because we don't want to
21 have to explain to them after two or three years of
22 negotiation what's going on because they haven't been
23 party to it

24 So we're cognizant of trying to, as Mr. Tweeten
25 mentioned coordination with his fellow agencies, we try

1 to do that from time to time, if that's okay And so
2 that's the basis of the team And because of that I, as
3 chair, have access to any of the technical expertise that
4 the federal government that the Department of Interior
5 can bring to bear, assuming, of course, that I can get
6 access to this resource in the first place

7 Which with the downsizing this year we've lost
8 more and more resources So as these teams are put
9 together and we identify the need -- we've already
10 brought modeling folks together with the Tribes and
11 working on modeling issues and things like that So
12 those resources will be available to us as we identify
13 the need

14 With regard to legal resources, I didn't
15 mention earlier, but one of the important things about
16 the establishment of the team is it's not only the
17 Secretary of Interior that establishes it but he also
18 does it in coordination and conjunction with the attorney
19 general

20 We always have a member of the Department of
21 Justice on our team Dave Harder couldn't be here today,
22 and Dave Harder is intimately familiar with the claims
23 and the issues on the Flathead Reservation So in
24 addition, we've got Rich Aldrich, have a solicitor who is
25 appointed to this team to support the legal

1 determinations as far as any negotiated settlement

2 So we think we have the resources in terms of
3 people and expertise so when those teams get put
4 together, except for the fact that everybody works
5 80-hour weeks, we will probably be able to get everything
6 done.

7 FRED MATT Okay, thank you, Chris At this
8 time, again, Rhonda was going to cover item six

9 RHONDA SWANEY Item six is scope of
10 negotiations What we wanted to do here was just give
11 you a general overview of the things we plan to talk
12 about in negotiations in the coming months As many of
13 you know, and hopefully if you don't know you soon will,
14 the Confederated Salish and Kootenai Tribes have what's
15 called a Stevens Treaty

16 It was a treaty of Hell Gate negotiated by
17 Governor Isaac Stevens in 1855 and ratified by Congress
18 in 1859 That negotiated treaty followed the template
19 used by Governor Stevens in the negotiation of several
20 other treaties in the northwest. That template
21 recognized the special relationship the Indian people
22 have with fish and wildlife for subsistence and other
23 purposes.

24 Consequently, the treaty reserved the rights to
25 the Tribes for hunting and fishing on the reservation and

1 in usual and accustomed places Those usual and
2 accustomed places were everywhere the Tribes traveled
3 Interpreting the treaty, the courts have said -- these
4 kinds of treaties, the courts have said that in addition
5 to a guaranteed right to those resources we have implied
6 the right to the resources and support, such as water for
7 fish, water to support wildlife habitat.

8 Consequently, we're going to be talking in
9 negotiation sessions about our off-reservation and
10 on-reservation water rights We're going to talk about
11 consumptive and nonconsumptive uses Consumptive uses
12 are certainly those that are used in the water consuming
13 it, like agriculture, domestic water use, commercial,
14 municipal industrial uses.

15 And nonconsumptive uses are uses or rights to
16 water so the water is not consumed An example of those
17 are instream flows Another example is water for hydro
18 power development or hydro power use. Also recreation is
19 a nonconsumptive use. And we plan to talk about all of
20 these

21 We plan to talk about surface water and ground
22 water We plan to talk about water rights
23 administration Mr. Tweeten's already mentioned that
24 We agree we need to talk about that And, finally, we
25 feel compelled to address settlement contributions to be

1 made by all the parties So those are an example of the
2 kinds of things we plan to discuss in upcoming sessions

3 FRED MATT Okay Again, thank you, Rhonda
4 Watershed approach Ron Okay. Either that or you can
5 sit at the table and use the mike And, again, state
6 your name.

7 RON BILLSTEIN Okay. Thank you, Mr
8 Chairman. I'm Ron Billstein.

9 FRED MATT Ron, excuse me Thank you, Jami,
10 for keeping me on task Before you do, there again, does
11 the State have any response to the comments Rhonda had to
12 make?

13 CHRIS TWEETEN Mr Chairman, thanks for the
14 opportunity to comment Our charge as the commission is
15 quite broad and we will obviously be prepared to address
16 and discuss whatever issues the other parties want to
17 bring to the table

18 The interests that we ordinarily try to protect
19 are those of the non-Indian water users and there are
20 extensive, as you know, existing uses in the area that we
21 think are going to be a major concern in these
22 negotiations and something we need to discuss

23 We are certainly prepared to discuss
24 contributions to settlement, but the extent to which the
25 State is obligated to make contributions to settlement

1 depends on the extent to which we receive protections for
2 those things that are of concern to us that we bring to
3 the table

4 And that's traditionally the way our
5 contributions and obligations have been viewed in other
6 negotiations, and we expect that's the way they will be
7 viewed here, as well

8 FRED MATT Thanks, Chris

9 CHRIS KENNEY I think the only thing I would
10 offer beyond what Rhonda has already said -- because I
11 think she represented it well -- was the United States
12 has the same interest and understanding what we believe
13 our agreements were with the Tribe when we entered those
14 treaties and we want to pursue all of those purposes and
15 rights that we think the Tribe has

16 I think we're in substantial agreement with the
17 Tribe in that regard With regard to federal
18 contributions to settlements we take what we consider
19 those in terms of equitable concerns and whatever we
20 think will be of benefit to facilitate, make the
21 settlement work for everybody's benefit

22 FRED MATT· Okay Thanks Okay, Ron

23 RON BILLSTEIN My name is Ron Billstein I'm
24 a technical consultant to the Tribes for these
25 settlements And I'd like to talk a bit about what we

1 call watershed approach And I've been fortunate to work
2 with all the parties here on a number of other
3 settlements

4 Some have been fairly successful, fairly
5 streamlined Others have taken a good long period of
6 time to get accomplished and some are still moving
7 ahead And I'd like to think that we've learned a lot
8 during the course of these processes

9 And one of the questions that you ask is, you
10 know, how do you start a settlement? How do you get this
11 thing going? How do you get focused? How do you begin
12 the process? And I'd like to talk a little bit about
13 that

14 Of course, there are some global technical
15 issues that go across all kinds of watershed boundaries
16 on any reservation That deals with hydrology, both
17 surface and ground water, climate zones, water
18 requirements, soils, and those sorts of things.

19 Those will have to be done on an overall
20 reservation-wide basis But by and large, those can be
21 accomplished fairly readily and at the front end. But
22 we've found the best step then to take is to get into an
23 individual watershed-by-watershed analysis because each
24 watershed has its own unique problems and issues

25 And we find it's beneficial to concentrate on

1 those particular watersheds and ultimately reach an
2 agreement in principle on a watershed and then ultimately
3 come in later and integrate them all into an overall
4 settlement document

5 We were introduced with respect to the tribal
6 technical teams and legal teams and the state technical
7 and legal teams, as well as the federal side, and there
8 are a lot of resources there. But, believe me, when we
9 get into the heart of these settlements you're going to
10 find that those resources are going to be stretched in a
11 lot of ways

12 And you're not going to be able to study
13 everything concurrently. So that's another reason to
14 start to look at a watershed-by-watershed analysis.
15 Because we have limited resources, both legal and
16 technical, it's a way of trying to optimize those
17 resources to get some kind of an output with respect to
18 an analysis.

19 And the other part is with respect to the
20 non-Indian interests. I've been in a lot of settlements
21 in Arizona, in New Mexico, all the way up here. And the
22 non-Indian parties are going to be stretched, as well.
23 You would like to concentrate in that area of the
24 reservation or in that watershed that most affects you,
25 that holds the greatest amount of your interest.

1 It's going to be very demanding on you on both
2 a time-driven basis, as well as a cost basis, to try to
3 cover everything throughout this settlement. So, again,
4 by doing kind of a watershed specific analysis we think
5 that this is a way to insure greater participation by the
6 vast majority of the non-Indian interests

7 So we would like the state and federal teams to
8 consider this idea that, sure, there are certain global
9 technical issues and legal issues that we have to address
10 at the front end, but then that we concentrate on
11 evaluating and establishing a settlement agreement and
12 principles on the major watersheds on the reservation,
13 starting with, say, the Jocko Watershed, and then go over
14 into the Little Bitterroot Camas areas, and then finally
15 over into the Mission area

16 There may be some subsets of that, like the
17 main stem of the Flathead or the Flathead Lake area, but
18 it's a suggestion that we would like to bring up for
19 discussion at this time because they think that this
20 would expedite the settlements in the best way possible

21 FRED MATT Thanks, Ron Susan

22 SUSAN COTTINGHAM Mr Chairman, thank you,
23 Ron We have worked with Ron on other settlements and so
24 we're familiar with how a number of these have worked
25 And I think we're very amenable to a watershed approach

1 I think as Ron said, there are going to be
2 certain global issues that are going to stretch across
3 all of the watersheds. And, certainly, I don't think we
4 would come to a final agreement on a particular watershed
5 until we looked at the big picture and saw how everything
6 integrated

7 But we've used that approach in other
8 negotiations When we were working with the Crow, Faye
9 instituted sort of an agreement that we would start and
10 do all of our technical work, including looking at the
11 state claims examination process, which I think Rhonda
12 mentioned in Pryor Creek.

13 And what that did was we were able to work
14 closely with the tribal folks and federal folks and show
15 them exactly how that process worked. We looked at
16 hydrology, we looked at our soils, and what agreements
17 and disagreements we had

18 And then we all came to a comfort level about,
19 you know, where our data worked and where it didn't
20 work So I think those kinds of things are helpful Up
21 on Ft Belknap we have a separate working group on
22 People's Creek, which is not on the main stem of the
23 Milk, and that's working very well.

24 And, in fact, we are actually doing something a
25 little bit new up there. It's a small watershed. But

1 we're actually working with the water users and the
2 Montana Water Court to see if we can get their
3 understanding of exactly what their water rights are
4 going to end up being and get some stipulations there so
5 that everybody knows what the playing field is

6 So I think the approach is worthwhile. Like I
7 said, I think there will still be global issues and I
8 think everybody will want to take a look at how all the
9 watersheds work together and what give and take we've had
10 on either one But I don't see that that's a problem.

11 I think the point that Ron made that
12 everybody's resources is stretched pretty thin, including
13 the folks out there on the ground, and it sort of makes
14 sense to try to get a handle on it And, of course, the
15 watershed is the best way to do it So, Faye, any other
16 thoughts on that? Thank you

17 CHRIS KENNEY I want to -- in full disclosure,
18 I don't like splitting negotiations up for the reasons
19 that Susan suggested because segmentation of negotiations
20 leads to mischief sometimes However, I say that because
21 I believe strongly that watershed basis in this
22 negotiation is highly desirable for a couple of reasons

23 Number one, I think the complexity of the
24 Flathead's negotiations far exceeds anything else that
25 we've seen in the state of Montana and I think to try to

1 get our arms around it all at once would be challenging
2 at best and almost insane at worst

3 And the other reason I think it's a good idea
4 and I support it is because I think the watersheds on the
5 reservation tend to lend themselves to segmentation
6 With the caveat and one of the reasons I start with such
7 a strong statement is that I am concerned and I endorse
8 Susan's point that at some point you stop and you bring
9 everything together because it's all a piece of a whole
10 and I want to make sure we don't lose sight of that.

11 So I guess the other reason I think it's a good
12 idea is it gives us an opportunity to pursue and engage
13 our technical people in particular sooner rather than
14 later because I think we can talk about the Jocko or the
15 Camas Bitterroot, I think we can engage people relatively
16 early in that process because they are more management
17 So I would agree with what both of you guys said

18 FRED MATT Okay Thanks, Chris This next
19 item on the agenda, I'm going to ask Clayton Matt and Dan
20 Decker to go over the technical and legal issues
21 Clayton, you can either -- well, yeah, why don't you just
22 sit I'll just leave

23 CLAYTON MATT We had spent some time talking
24 about the -- amongst the team and with the federal
25 representatives -- lots of options that we can identify,

1 and I think some of them have been identified here this
2 morning

3 I think everything that we've done on the
4 agenda up until now sort of sets the stage for our
5 beliefs and our understandings about what negotiation
6 means to us And I think we set some ground rules Now
7 comes the time to begin to talk a little bit about what
8 technical and legal work we can start on

9 Some informal discussions we had in setting the
10 agenda, I know some things came out from the State staff,
11 and I would expect you'll have some input to offer And
12 I guess I would expect to hear some of the same things
13 here today, and I won't try to share those.

14 I will let you deal with those and bring those
15 out And I'm only going to deal with the one technical
16 item we talked about internally and if there are other
17 technical items we will try to tackle I guess we'll
18 expect to hear that from you, as well There may be --
19 I'm certain there are at least a couple of legal
20 questions that are going to come out of this And when
21 I'm done, Dan Decker is going to address a little bit of
22 the legal question on the one item and I think introduce
23 another item

24 One of the global issues I think we've got to
25 deal with to begin with, and I think regardless of the

1 positions we ultimately take on water rights on the
2 reservation, regardless of the positions that we've
3 settled on, the claim verification process seems like
4 something that needs to be done

5 And I think we're aware in observing the
6 negotiations throughout the state of Montana that you
7 have had with other tribal governments That seems to be
8 something that's already begun In many ways it makes
9 sense to us, as well. I know that there are some
10 technical issues we need to work out

11 We probably won't get them all worked out here
12 today. I assume a technical team could sit down and give
13 a talk about the approaches to accomplishing that So
14 the one item I wanted to get on the table right now is
15 that.

16 And certainly as a threshold to that there are
17 some legal questions, and I think there may end up
18 ultimately being some legal analysis associated with
19 that, as well So while we could begin to work on a
20 whole litany of technical issues, I think our engineering
21 expert under the firm MCHAM Ron Billstein laid out a few
22 of the issues to you and I heard some mention of some of
23 the other work that's being done I heard that maybe
24 you've already begun to look at some soils here on the
25 reservation.

1 Of course, there's hydrology and then go on and
2 on from there But where do we begin And that claim
3 verification seems to be at least one of the early needs
4 we have and we're throwing that on the table to begin
5 with and to see where we go

6 And, of course, as you finish up here today, I
7 guess that will in part depend on the amount of work we
8 get assigned here and will partly depend on what the
9 negotiation schedule is going to entail So that's all I
10 had for now, and I will turn it over to Dan.

11 DAN DECKER I'm going to pick up where Clayton
12 left off on claim verification It's important to us as
13 much from a legal standpoint as a technical standpoint
14 because it's been -- we've heard from the state team
15 repeated statements about the interest of protecting
16 existing non-Indian water users on the Flathead Indian
17 Reservation

18 And from that aspect it's very important to
19 these negotiations that those claims that you seek to
20 protect, that there is a verification of those claims and
21 the validity of the claims that have been made by the
22 non-Indian water users that you do want to protect.

23 And we know that there is a stance that the
24 state has to play and the Compact Commission has to play
25 with the state water courts in the process of verifying

1 those claims But we would hope that that would be a
2 process that could begin soon.

3 Also, we note that one of the first things that
4 will need to be discussed -- it's more a technical
5 aspect Clayton did mention it -- is working with and
6 recognizing the extent of the water resource, the
7 hydrology that is before the parties From there, then I
8 will move quickly I won't talk a whole lot about it

9 But one of the items certainly I think that if
10 all of the parties at the table are not aware today that
11 I will mention briefly is that when the governor was here
12 sometime ago he invited the Tribes to participate in
13 discussions for an interim administration plan, due to
14 the recent Montana Supreme Court decision, which
15 subsequently upheld a previous Supreme Court decision
16 which basically stated that the State did not have
17 permitting authority on this Indian reservation until or
18 at which time the Tribes' water rights had been measured
19 and quantified, and after that point, that possibly the
20 state would have some administration authority

21 We recognize up front that our interpretation
22 of that decision is slightly different than the State's
23 However, the State certainly recognizes that they do not
24 have the surface water permitting authority.

25 There was a proposal made to the Tribes And

1 the Tribes -- there's been an exchange of letters with
2 the governor. We wanted that discussion on
3 administration discussed in this forum. The governor
4 countered saying that due to state statute it needed to
5 be negotiated with the NRC

6 We countered, basically saying that the statute
7 was permissive and we still felt this forum was the most
8 appropriate forum. The governor then countered proposing
9 a special negotiating committee that would work directly
10 with his office

11 / And the Tribes have since countered very
12 recently that from our perspective that's not acceptable
13 because the State statute forces the Tribes to take a
14 step back because the State statute indicates that in
15 order to reach an interim agreement under the authority
16 of that statute that the State would have to have
17 exclusive permitting authority over non-Indian water
18 users.

19 And obviously on this reservation it's our
20 perspective that it's very reasonable to assume that
21 non-Indian water users might at some stage of the game
22 need to get water permits from the Tribe. However, with
23 all of that said, the point being that it's the Tribes'
24 position that rather than doing an interim discussion on
25 administration that we will just take up administration

1 in the course of these discussions Thank you

2 FRED MATT Okay And, there again, Chris, do
3 you have any comments or discussion on those?

4 FAYE BERGAN Thank you, Mr Chairman My name
5 is Faye Bergan I'm legal counsel for the Compact
6 Commission, and my chairman wanted me to respond
7 concerning claims examinations and some of the other
8 issues you've raised and what our role is in terms of
9 existing state-based water rights and what we have done
10 in the past to try to gather the types of information
11 that we were discussing here

12 The Compact Commission -- I think we should
13 clarify for everybody's benefit that the Compact
14 Commission does not adjudicate state-based water rights.
15 That is a role for the Montana Water Court And how we
16 have approached the issue, what is the nature and extent
17 of the state-based water rights and how they would be
18 incorporated in the compact for those protections of
19 state-based water users has varied slightly from compact
20 to compact

21 We, as far as the claims examination process,
22 the claims examination process is done by the Department
23 of the Natural Resources and Conservation under the
24 normal procedure They examine the water right claims
25 for state-based water uses and furnish the Water Court

1 with that information on the claims examination

2 Then it is the Water Court that uses the normal
3 adjudication process to review those claims and to
4 consider the claims examination information The claims
5 examination information is a very useful piece of
6 information for the parties to have

7 If the DNRC Regional Office conducts the claims
8 examination they use area photographs, water resources
9 surveys, they examine on-the-ground aspects of irrigation
10 claims We have in the past approached this a couple of
11 different ways

12 And as Susan mentioned, on the Crow Reservation
13 we selected a test basin so the tribe could see how the
14 claims examination works The DNRC went in and did the
15 claims examination and furnished that information to the
16 tribe for their review

17 The claims examination is done by the DNRC
18 It's a water court document In that particular instance
19 we went into the Water Court and asked for an order to
20 both allow the DNRC to come in and do these claims
21 examinations and to instruct the DNRC to prioritize the
22 claims examination in that particular basin.

23 The Water Court has been very good to work
24 with, has in all instances done as we've requested in
25 terms of claims examination and got the process started

1 as soon as it could The claims examination process on
2 Parker went quite well and the tribe -- the Tribe's
3 involvement there was to furnish DNRC the information
4 about what land was on trust -- what land was in trust
5 and what land was fee

6 And they reviewed the DNRC's information. We
7 made it available to the tribes so that if they wanted to
8 furnish DNRC with any information or studies they had
9 they could do so It would be public information. DNRC
10 would use that information just like it used any other
11 piece of information in examining claims.

12 They chose not to do that in that instance, but
13 that would be an avenue to examine here We do not
14 determine individual water rights claims, as I said, but
15 that is an important aspect of review of settlement to
16 see if practical solutions will work on the ground for
17 all the parties

18 For technical information we do extensive
19 background information for negotiations and to the extent
20 where we have been able to do that technical work jointly
21 with the tribes and the federal government it really
22 expedites the process because we end up with a product
23 everybody can agree is the technical background for these
24 discussions so we're not fighting over whose technical
25 report to use as well as what to do about the problems.

1 Sharing information really greatly speeds up
2 the process also so the parties are not reinventing the
3 wheel when somebody else has already done the work And
4 that's true for the federal government, for the Compact
5 Commission and for the Tribes

6 In other negotiations where information was
7 freely shared, technical information was freely shared,
8 it really expedited the process As far as technical
9 work we are very interested in getting started or
10 continuing our work on the soils for the Flathead

11 We have an extraordinary soil scientist on
12 staff, and it's an important background piece of
13 information that takes quite a bit of time to collect
14 And to the extent that we can share information on soils
15 I think that we would be going a long way to getting this
16 process started, from our perspective anyway

17 AIMEE GRMOLJEZ My name is Aimee Grmoljez
18 I'm representing Governor Racicot. And I just wanted to
19 respond briefly to the legal last point. I know that I'm
20 representing Governor Racicot in this
21 government-to-government meeting here today and his most
22 recent letter -- which he has not seen the Tribes'
23 response because I received it this morning myself and
24 he's on travel arriving back in Bozeman this afternoon.

25 I can just express that I know he will be

1 disappointed that an interim agreement is not looking to
2 be possible at this time for the fact that we were hoping
3 to possibly help pave the way for the compact to flow
4 more smoothly in the sense that a final compact may take
5 years and it's foreseeable that there may be some legal
6 hurdles to be challenged in the next few years

7 And so I guess that would be the extent of my
8 comment. And I have received a letter from the Tribe,
9 which I will convey to the governor at my earliest
10 convenience. If by chance there is a different response
11 after this meeting and it would be possible to look at
12 any further conversations on an interim agreement, of
13 course, we would be happy to do so. Thank you.

14 FRED MATT Thank you.

15 CHRIS TWEETEN. Mr Chairman, I think that's
16 all we have on this point.

17 FRED MATT Okay Chris, do you have
18 anything?

19 CHRIS KENNEY Yeah, I do. But I don't know
20 that it's exactly on this point, but it certainly goes as
21 the next discussion matter in the agenda. So I don't
22 know if that's appropriate or if there's other folks or
23 other things to be said about either technical or legal
24 issues. So before I say anything I guess I want to make
25 sure I haven't jumped outside the agenda.

1 SUSAN COTTINGHAM We're ready to move on Let
2 me just clarify a couple things I think we said before
3 our technical staff is pretty heavily loaded with some
4 other work, but I think there are some things we could do
5 to get started informally We mentioned some soils
6 information

7 Andy has been working on gathering some SES
8 data and if the Tribe has digitized any of the data they
9 have and is willing to share it with us or that we could
10 take a look at, you know, I think it would be one way to
11 sort of take a look and see how our GIS systems are
12 compatible or incompatible.

13 It might be one way to sort of test how we
14 might exchange some data And I think in talking to Stan
15 Jones we probably could also just have some informal
16 conversations with your water resources folks on what
17 hydrologic data is out there, what's been done And I'll
18 be honest with you

19 We have not done any hydrologic modeling up
20 here on this reservation But I suspect there has been
21 some done. We're familiar with various different kinds
22 of water models, and Stan could certainly talk to Seth or
23 whoever your hydrologist is that's going to be working on
24 it and see if we can sort of put together what's out
25 there and see if we could agree on how to proceed

1 So I think there are some specific things that
2 we could do to get started on the purely technical aspect
3 of it, and then perhaps at some point in the next couple
4 months the attorneys could have some discussions and the
5 negotiators could have some discussions about how we
6 might proceed on getting us more information on the
7 claims examination process, as well, since we realize
8 that's going to be of concern

9 FRED MATT Yeah, I was just -- it's probably
10 going to take a little time to go through item number
11 nine, so I was prepared to just make a suggestion that we
12 break for lunch and then do that afterwards But also
13 I'd like to respond a little bit

14 As I said earlier, I'm disappointed that the
15 governor is disappointed You don't have to put that in
16 the paper Make me look good But there again, as I
17 mentioned earlier, you know, one of the reasons why I say
18 that is, you know, I believe that when he was here we
19 asked him point-blank whether he would dedicate the
20 resources to get this done

21 And I think an interim agreement, in my mind,
22 would just stall the process I mean you talked about
23 stalling the process I personally think that that
24 would The more we roll up our sleeves and just get
25 through this the better for I think all of us that live

1 here, and that if -- you know, there are a lot of
2 unknowns that we all have

3 So the more we roll up our sleeves and work
4 through it the better I think we will be So I hope the
5 governor is not offended for me saying that I'm
6 disappointed that he's disappointed So anyway. So with
7 that --

8 CHRIS TWEETEN. Mr Chairman, excuse me As
9 you know, I have other business back in Helena that's
10 going to cause me to have to leave here at one o'clock
11 And I'm wondering if it might be possible to at least
12 embark on hearing some of the public comment before we
13 take a break for lunch so that I can partake in that
14 before I have to leave

15 FRED MATT Fine with me I particularly don't
16 have a problem with that

17 CHRIS TWEETEN Chris, how do you feel about
18 that?

19 CHRIS KENNEY No, I don't know that I have a
20 problem with that I wanted to go back to my point I
21 wanted to make earlier And that is, from what I've
22 heard this morning it seems to me that we need to have a
23 discussion, and I think your staff and us can do that
24 later

25 So I'm not concerned about time so much, but I

1 do think I would like to have some kind of discussion
2 today on technical teams and self-working groups and so
3 forth, because I would like to have a discussion about
4 the time lines of the State because it's not clear to me
5 exactly what the State thinks they need to do to better
6 prepare themselves in the valley

7 You've already made the statement that you need
8 to come up and have public meetings and things like that,
9 and it seems to me that that has to be done before other
10 things can happen because you have to be informed And
11 then it's not clear to me what the process will be

12 We've put technical teams together to make sure
13 that all three parties have some procedure set up so that
14 we know -- that I have enough time to find the right
15 technical people I need to have So I think we need to
16 have that discussion today, as well

17 The issues are important, obviously, and what
18 we take first and what we take second should be somewhat
19 informed by folks that sit down and understand those
20 things And so before the day's out I think we need to
21 make sure that at the very least we put some kind of
22 apparatus and structure together so that if we pursue all
23 the things we talked about today we don't have to sort of
24 go through a chaotic exercise trying to find the right
25 people at the right time, coordinating the right people

1 to talk to each other and know what their mandates are

2 So I haven't heard that at this point, and that
3 was going to be my point is I would like to enter into
4 that discussion at some point. I understand that you
5 have to leave, and I understand that it would be very
6 helpful for you to hear at least some of the public
7 comments, so I don't have any objection to that

8 FRED MATT Yeah, and there again, Chris, that
9 is what I thought we were going to go through in the next
10 part of the agenda

11 KEVIN HOWLETT Can we caucus before we break
12 away from the agenda?

13 FRED MATT Sure.

14 KEVIN HOWLETT I mean I understand his needing
15 to go, but I think we set that agenda for a reason and we
16 should talk about it.

17 FRED MATT Okay Well, we're going to take a
18 break and caucus, so give us five minutes

19 (A break was taken from 11.47 a m to 11 50
20 a.m)

21 FRED MATT Okay. I just want to thank Kevin
22 for -- you know, there's a very good reason why all of us
23 are here at the table, so if at any time in the process
24 any one of the teams feel a little bit uncomfortable
25 about maybe things we're doing we said upfront that we

1 were going to stop and discuss those kinds of things

2 And we -- what I'd like to comment on, by way
3 of a short discussion that we had, for Chris, I
4 appreciate the fact that you want to be here to hear some
5 of the comments, but there again, I was reminded that,
6 you know, this agenda has been approved and set well in
7 advance of this meeting.

8 And I don't want to sit here and debate whether
9 it's important that you be back in Helena for something
10 else or be here We kind of talked a little bit about
11 it. But we set this meeting agenda well in advance, and
12 we told the audience and those that are here that there
13 will be time for comments.

14 And it was the consensus of the time to stick
15 with the agenda There will be a record If you want to
16 hear the comments it will be on record And I just hope
17 you understand

18 MR TWEETEN Mr Chairman, as chairman of this
19 negotiating session it's your call as to how the agenda
20 is followed, and I understand that's your prerogative
21 And while I'm disappointed that you haven't receipted my
22 request, I certainly understand that it's your authority
23 to make that decision and we'll make the best of it

24 FRED MATT And there again, I would just offer
25 this up for the team in general, the feds and the state,

1 as we talk about dates and time frames, we're willing to
2 set aside the time, the necessary time and put that as a
3 high priority

4 When we set dates and times I intend to make
5 sure that they're followed and I will be there I think
6 the team feels the same way So at this time I think
7 what I'd like to do is break for lunch, and then after
8 lunch we will go to item nine

9 And we've got a couple of other items on the
10 agenda, nine and ten, and then open the floor for public
11 comment So we will reconvene this meeting at one
12 o'clock.

13 (A lunch break was taken from 11 53 a m to
14 1 10 p m.)

15 FRED MATT We're down to item number nine on
16 the agenda And as you can see, what's there is, you
17 know, there's some decisions I think we need to talk
18 about And then again, I asked Rhonda maybe if -- maybe
19 she quasi volunteered because she heard me kind of
20 mumbling over how I was going to accomplish this

21 So she's agreed to summarize what happened or
22 what we've talked about so far And I appreciate that
23 And then we will talk about the agenda maybe for the next
24 meeting a little bit, some thoughts or ideas that you may
25 have.

1 But I guess the first thing that I'd like to
2 ask the team is, from the state and the feds, if they
3 think that four times a year is too aggressive I know
4 I've heard Susan at least come out -- I think your office
5 said that maybe we might look at once a year But I'm
6 kind of hoping we will -- do you have any thoughts?

7 SUSAN COTTINGHAM I don't know that I've said
8 once a year, and I think that would be not aggressive
9 enough So I think initially what we were discussing at
10 lunch is I know you as a team and with your technical
11 folks have done a lot of thinking about the scope of
12 negotiations and what issues we want to raise

13 And to be quite honest, although I think there
14 are a lot of issues that are similar in a lot of these
15 compact negotiation, we realize that each one of them is
16 very unique and there is going to be a unique set of
17 issues up here as well

18 And we have not had the time so step back and
19 take a look at those, to meet with some of the local
20 folks to find out what's on their minds So I think one
21 of the things we do want to do over the next six months
22 is set up some informal meetings, set up some public
23 meetings, come up and talk to you guys, talk to the folks
24 from the project, talk to the folks from the
25 municipalities or wherever and see what issues are unique

1 up here, what things are on people's minds

2 So that's something that we're ready and able
3 to do and will probably do probably sometime by the
4 fall. Four times a year in the context of an aggressive
5 negotiation is not too aggressive at all, and I think we
6 could certainly look at a time frame like that

7 That's basically I think pretty much what we've
8 been doing with our current negotiation with Ft Belknap,
9 although there is a lot more technical work in between
10 with the staffs and so on and so forth So I think that
11 would probably be fine

12 Like I said, I think we're going to need some
13 time to get started I think there are some technical
14 aspects that we could probably commit to doing today, at
15 least on a parallel track to start getting the staffs
16 familiar with each other and what their work is

17 I guess I was going to ask Faye to talk a
18 little bit about the claims examination again But let
19 me just simply say for purposes of this point is we would
20 be willing to initiate a conversation with the water
21 judge about how we might get started on the claims
22 examination and see if he would be willing, because I
23 think that's something that's going to benefit everybody
24 and it seems to be something that you guys are real
25 interested in getting started on

1 And I think that's something we could initiate
2 pretty quickly So, no, I don't think, you know,
3 obviously, it depends on if we're saying we meet again in
4 four months and we're prepared to talk about X, we may
5 not be able to be prepared technically to talk about X,
6 but we can certainly get everybody together and see how
7 our technical teams are going and move forward

8 FRED MATT Yeah, that's what -- I failed to
9 mention that, you know, when I say four times a year
10 that's for the negotiating team. But I was assuming that
11 the technical people may, you know, meet more than that
12 to get some of the technical details maybe lined out and
13 worked on. So, Chris, do you have any thoughts on that?

14 CHRIS KENNEY Yeah, it's usually sort of a
15 function of time in between in which you accomplish when
16 you meet. I think four times a year is a nice target I
17 would definitely not want less than three times a year
18 I'm not quite sure how much more focus on -- I think we
19 need to have some kind of discussions as a negotiation
20 group to set the agenda for some technical folks.

21 I don't think we're going to have the time or
22 -- I need to do some consultation with my folks and sort
23 of set some agendas up and find out where the resources
24 are, because I think we need to have sort of an in-depth
25 discussion about how to put the soils people together,

1 who does that, and if that's the first thing we want to
2 do

3 I'm not clear in my own mind about the
4 prioritization The claims stuff, I mean I see the value
5 in all of it So I think probably we need to have --
6 well, let me just ask the question I don't see the
7 Compact Commission getting all of their scoping work and
8 laying that ground work in the next three months, if we
9 were going to meet on a quarterly basis

10 I mean I think you could you could, but it
11 doesn't sound realistic to me, given what I know what
12 else is going on But I would argue that we ought to
13 meet in not less than -- not more than three months to
14 sit down in a working session just to lay all this stuff
15 out and have all the technical people there and chart
16 some of that stuff out so that we can send them off with
17 instructions, because I don't want any technical teams
18 working unless they have clear instructions from this
19 group and they know exactly what they're supposed to be
20 doing and what they're supposed to bring back to the
21 group.

22 My vice is I don't want technical teams doing
23 ex parte negotiations unless we understand that that's
24 what they're doing for reasons that we understand So
25 until we establish that protocol I will be waiting to see

1 how this will play out So I would think we want to meet
2 earlier rather than later to sort of set that agenda up

3 FRED MATT Okay And then I think in part of
4 the -- as I looked over Rhonda's shoulder, part of the
5 summary was she took some notes on some of the things
6 that I think we -- what I had heard that we were kind of
7 throwing out there as things that need to be done as
8 claims verification, hydrology and the soils

9 I think you kind of said you have some people
10 that could work on that But with that, so I guess the
11 decision on the time frame we'll try to look at at least
12 four times in this upcoming year

13 CHRIS KENNEY And, you know, within the next
14 two or three meetings we will begin to see how the rhythm
15 is going to work and how the timing will work I don't
16 think this will be a problem for us I think it will
17 begin to dictate its own time frame

18 FRED MATT Okay So with that, Rhonda, do you
19 want to maybe go through the summary you have? What
20 Rhonda just shared with me is maybe something that we
21 ought to think about. Do you think we could look at
22 making some assignments before three months?

23 CHRIS KENNEY Well, I'm thinking about that
24 now, and I guess --

25 FRED MATT I personally think that we could

1 probably do that It may not be an aggressive
2 assignment, but we at least we could be working on
3 things

4 CHRIS KENNEY We could do some phone call
5 coordination We could get some folks to sit down and
6 talk and get to know each other and they could talk in
7 generalities

8 And then I would be prepared to support that
9 kind of activity But I guess I am -- I want to look
10 people in the eye when I tell them what I want them to
11 do And I can simply send instructions to do that, but I
12 think we can do that if we just make sure we make some
13 phone calls and talk back and forth I think that's
14 possible

15 FRED MATT: Okay

16 SUSAN COTTINGHAM: So let me clarify then The
17 suggestion would be that we take the next three or four
18 months, the Commission starts doing some of its own work
19 in terms of scoping But again, I mean Chris has pointed
20 out, it's not going to happen anytime real soon Getting
21 geared up for the public meetings and stuff is a lot of
22 work, and it would probably be fall before we'd be doing
23 some of that.

24 But in the meantime, in the interim, to gear up
25 for maybe perhaps more of a working session on how we

1 start off technically, we would have folks have some
2 informal conversations about what's out there, how we
3 might want to get started, and maybe even try to put an
4 agenda together for like a technical working session for
5 the next negotiating session

6 Does that -- you know, because I understand
7 Chris's concerns. I think it's hard to send folks off
8 and say, hey, talk about hydrology without much
9 guidance But I do think we need to have some more staff
10 time to figure out, you know, how they might suggest the
11 negotiators kick this off

12 CHRIS KENNEY And how large a scope? If we're
13 talking about a subbasin approach, would it be
14 appropriate to focus people on some things that we know
15 we have information that could be discussed and shared, I
16 think for instance, focus on maybe a smaller watershed
17 that's not quite so involved as the Mission, say, take a
18 look at that Camas Bitterroot or take a look at Jocko?

19 FRED MATT Jocko, yeah, I think that's a good
20 approach I think we talked about it, and I think the
21 Jocko would be one of the areas I think we could look at
22 and start from

23 CHRIS KENNEY I'm sorry I apologize

24 FRED MATT That's all right Oh, what I
25 mentioned was I think I agree, yeah, the Jocko maybe

1 would be a good area that we agree on

2 CHRIS KENNEY There has been some suggestion
3 that Camas would be simpler, but Dan Decker doesn't think
4 so.

5 SUSAN COTTINGHAM Well, again, I think without
6 us having some time to do the scoping about what the
7 watersheds are and which ones might be simpler or which
8 ones might be more complicated, I think some might be
9 better for hydrology, some might for soils Without
10 doing that, I don't want to commit to saying let's start
11 here

12 So maybe over the next few months the technical
13 folks and whoever can sort of try to put together a work
14 plan and a long-term time frame for how we might start
15 divvying some of that up and we can talk about it at the
16 next negotiating session

17 I'm just feeling a little bit at a disadvantage
18 because we haven't had the time to say, okay, here, we
19 know these are the issues in the Jocko, and here are the
20 issues in whatever And again, I still think a lot of
21 them are going to be more global issues than watershed
22 based.

23 So, you know, certainly one of the things that
24 we could do at the next negotiating session is just --
25 one of the things we could do is just make a presentation

1 about how we've gone about our technical work We have a
2 nice power point that shows the GIS stuff and shows you
3 how we look at the water rights

4 And maybe then the Tribe and feds could talk
5 about some of the resources that they have I know at
6 other reservations there have been lots of studies
7 ongoing, some of which could be shared and some of which
8 can't But we've sort of tried to scope what's out there
9 so we don't have to reinvent the wheel, and perhaps some
10 folks could take some time and look at what people have

11 I suspect there will be some tough decisions
12 about what things people are willing to share, and that's
13 going to dictate a lot about how expeditiously we can
14 move forward And in the meantime, you know, like I
15 said, we would offer to talk to the water judge and see
16 if we could get some sort of understanding of whether --
17 I mean what that involves is staff commitments from DNRC
18 if the judge is going to order claims examination to go
19 forward

20 If we're going to talk about how that process
21 works, it's going to involve some of their time rather
22 than ours But it's a useful process for all of the
23 parties, I think

24 FRED MATT Okay.

25 CHRIS KENNEY I guess I need to catch up. So

1 based on what Susan's comments just were, we wouldn't
2 really anticipate technical people talking to each other
3 until the next time we got together? Did I miss a step?

4 SUSAN COTTINGHAM Well, I would prefer that
5 the technical people try to maybe put together an agenda
6 for a working session on how we would proceed with
7 technical work rather than -- I think your concern was
8 actually having folks starting to exchange information
9 before we had come up with some guidance for them

10 CHRIS KENNEY Well, no, I didn't mean to
11 suggest that it would be quite that constrained But we
12 could, say, for instance, have the Tribe make
13 consultation with us to put together a suggested agenda
14 subject matter and send to you guys and figure out how
15 those guys can sit down and at least have some
16 discussions about what they think they know and don't
17 know within the next, say, 30 days to at least start the
18 dialogue and develop the working relationships and
19 exchange phone numbers or whatever they think they need
20 to do

21 I don't want phone technical teams off doing
22 their own negotiations, but I don't want to wait three
23 months for those folks to engage each other I can see
24 where that would go So, Mr. Chairman, maybe we should
25 offer to take it upon ourselves to provide something to

1 the State, because I think the State is the most resource
2 limited, even though I would like to go on record as
3 saying I'm not flush

4 But I think that we at least have some
5 committed manpower that we could sort of draw those
6 outlines up at least for the benefit of reacting to
7 something, if that's acceptable.

8 FRED MATT. I seen Clayton nodding his head

9 CHRIS KENNEY And I think we could do that in
10 a relatively short order and anticipate a September
11 meeting sometime for us, I mean a September negotiation
12 session It will be right at the end of the year so we
13 will be broke and can't come

14 FRED MATT Has anybody got any thoughts on the
15 date for the next meeting?

16 SUSAN COTTINGHAM I'm sorry Did you have a
17 question?

18 FRED MATT Any thoughts on the dates for the
19 next meeting?

20 CHRIS KENNEY I was thinking early September
21 It's still nice in Montana in early September Well, it
22 is, as opposed to Washington, D C

23 SUSAN COTTINGHAM We've got some conflicts in
24 the early part of September, believe it or not, so you
25 might have to stretch your trust in Montana a couple of

1 weeks, Chris

2 CHRIS KENNEY It's a great straight-liner, but
3 I'm not going to buy it

4 FRED MATT. How about the end of August? It's
5 even nicer

6 FAYE BERGAN Unless we're negotiating on
7 sailboats or something

8 SUSAN COTTINGHAM Let me try to understand the
9 next meeting would simply be to have a work session on a
10 technical work plan We're not going to be talking
11 substance, I mean because I don't really want to commit
12 to another session of major substance and a lot of
13 discussions until we've had some time to come out and
14 meet with -- do some public involvement

15 We're not going to be able to get that done
16 until September, at least So if the negotiating session
17 is simply going to be to get back together and have the
18 technical folks present a work plan and what they've done
19 in their informal discussions, then I'm fine September
20 would be fine.

21 CHRIS KENNEY That's what I'm talking about

22 SUSAN COTTINGHAM Okay

23 CHRIS KENNEY And by that time we could have
24 some reports People would tell us what they think they
25 know and they don't know We're not in a position to

1 make an informed decision at this point

2 FRED MATT So what do you think,
3 mid-September, the week of the 10th? Is there a
4 particular day that's good?

5 SUSAN COTTINGHAM Well, let me just say that I
6 know this isn't going to work for you guys because you're
7 Tribal Council, but for Chris's schedule he is committed
8 to being in Helena Monday, Wednesday and Fridays at five
9 o'clock and that's a long-term commitment

10 And so if we want to do it on Tuesdays and
11 Thursdays that's better, and I think it's obviously
12 better to do it up here, or we could do it in Helena, or
13 we could do something like -- I was trying to avoid the
14 situation we had today, we could start on Tuesday
15 afternoon and continue to Wednesday morning

16 Because it's not that he's not committed to
17 doing it, he just has something else he has to be in
18 Helena for So I don't know What are people's sense?
19 Do we want to keep on trying to meet up here closer to
20 the action?

21 FRED MATT Yeah According to the MOU, we're
22 supposed to rotate

23 SUSAN COTTINGHAM Yeah, and that's fine with
24 us We could host it in Helena next time if you wanted
25 to do that That would be easier Do you want to do

1 that?

2 FRED MATT Let's do that

3 SUSAN COTTINGHAM So in Helena sometime the
4 week of the 11th?

5 FRED MATT Yes Make the call, we will be
6 there

7 FAYE BERGAN: Let's pick a date now

8 SUSAN COTTINGHAM How about Wednesday, the
9 13th? Wednesday, the 13th

10 FRED MATT Okay Sounds good As long as it
11 isn't Friday, the 13th Okay

12 SUSAN COTTINGHAM Mr Chairman, I wonder if I
13 could ask, who should be the contact? I mean I'd like to
14 try to understand Should we be working through the
15 chairman? Is there one person, the attorney, is it the
16 staff director? How should we get the technical people
17 talking to each other?

18 FRED MATT Well, the way we normally do it is
19 all the correspondence would go through the chair, and
20 then we could --

21 SUSAN COTTINGHAM And would there need to be
22 correspondence on this, or could we -- could somebody
23 initiate a phone call to whoever the federal technical
24 person is going to be and to -- I don't know if it's
25 Rhonda or --

1 FRED MATT Well, I think --

2 SUSAN COTTINGHAM Do you want us to call you?

3 I mean --

4 FRED MATT Well, no. I mean I --

5 SUSAN COTTINGHAM You know, I just want to
6 make sure we get the protocols right here and that the
7 technical staff can start having some exchanges without
8 formal letters.

9 FRED MATT Well, I guess I look at the rest of
10 the team Do you concur that -- I mean it would be all
11 right with me if you talk to or call the technical
12 staff I have all the faith in the world that they can
13 answer any questions you have So, Kevin

14 KEVIN HOWLETT Well, I guess my only concern
15 would be that there be an identified person and there
16 would be a record of all of the exchanges or
17 correspondence or whatever I mean we're building a
18 record as we go So if it's Rhonda, that's fine But
19 let's get it centralized

20 CHRIS KENNEY I would prefer that you come to
21 me for this first time and then we will provide folks to
22 deal with it if the specifics arise, because we have some
23 coordination problems on the federal side because we are
24 so far flung And for the time being just get in touch
25 with me, because it's easier to get in touch with me, run

1 me down through my office

2 FRED MATT· Jami was just whispering in my
3 ear Clayton, he's kind of the one who knows about who
4 should have what correspondence or any information

5 SUSAN COTTINGHAM And then I'll coordinate our
6 staff work with, you know, the folks, so it will be
7 Clayton, Chris and I, at least initially, and we will
8 address your concerns, Kevin, about keeping a good
9 record Faye was just asking, do you want us to make
10 some initial approaches to the water judge about the
11 claims examination and whether he would be arranged to
12 issuing an order to DNRC, or do you want to wait and talk
13 about that at the next negotiation session and we could
14 do something informally until then?

15 I guess I'm not -- I know that it's of concern
16 to you guys, and I'm not sure how you want to begin Do
17 you want to just have a discussion about what it is, or
18 do you want us to actually initiate something? Because I
19 will tell you honestly it's probably going to take
20 several years for the claims up in this area.

21 It's a long process And you don't have to
22 give us a response today, either We can wait on it
23 But we could sure have some informal discussions with the
24 judge and DNRC, if that would help

25 FRED MATT Robb, do you want to just address

1 that?

2 ROBB HUNTER I think at this time the Tribes
3 would prefer that we deal with this informally before any
4 formal decisions are made on whether or not to go
5 forward. We would like to have more information on what
6 that entails and time lines As I think you suggested,
7 two years is probably not abnormal for this kind of
8 process But we would like more information before
9 actually saying yes or no

10 SUSAN COTTINGHAM Okay What if they at least
11 informally talk to DNRC and try to get an understanding
12 of the scope of the claims and how long it might take if
13 we embark on it? Yeah, we could have that as an actual
14 presentation at the next negotiating session about how
15 exactly the process works and how long it takes and try
16 to answer some of your questions Would that be
17 helpful?

18 FRED MATT I think so

19 ROBB HUNTER And I also would suggest that
20 maybe the legal team for the State contact the legal team
21 for the feds and the Tribes and maybe a joint
22 presentation at the next session might be in order

23 SUSAN COTTINGHAM A joint presentation on?

24 ROBB HUNTER: On this issue.

25 SUSAN COTTINGHAM Okay Now who -- Chris, are

1 we supposed to be working through you on legal team
2 issues if Robb is suggesting that the three -- Faye,
3 Robb, and who would be talking about the claims
4 examination and what we might present at the next
5 meeting?

6 CHRIS KENNEY I will get in touch with Scott
7 Miller, who is the negotiation legal counsel, and have
8 him work with Rich because Rich is familiar with the
9 Montana procedures And they will get back with you
10 Scott will be pleased to know he has something to do now

11 SUSAN COTTINGHAM Okay That's fine

12 RHONDA SWANEY Fred's asked me to go ahead and
13 summarize some of the things, the high points of today's
14 meeting So I'm going to attempt to do that We began
15 with statements from our elders Pat Pierre He pointed
16 out that water is our lifeline, our lifeblood, and that
17 water is one of the spiritual elements of our lives

18 His prayer is that streams on water on the
19 reservation not become a battleground that we must fight
20 for And he urges all of the parties not to turn
21 quantification into litigation He would like to see for
22 the next seven generations coming that they can share
23 when they've come what we have today

24 Matt Michel pointed out that Indians should not
25 have to pay for water It is ours The Indians have

1 been here for thousands and thousands of years Felicity
2 McDonald can remember when Sam Resurrection carried a
3 petition around to protect tribal water rights, and the
4 elders predicted that we would fight over water. Without
5 water we have no life, no berries, no medicine, those
6 things that are important to us Our very lives

7 Louie Adams pointed out that this was an
8 historic day, that greed has no place in these
9 discussions, that water is the lifeblood for everyone
10 Tony Incashola urged everyone to put aside personal views
11 and look to what we will leave our next seven
12 generations

13 Chris Tweeten, in the State's opening
14 statement, thanked the Tribes for hosting the meeting and
15 acknowledged the accommodations made to the public. He
16 gave the history and background to the Water Compact
17 Commission, that it was created by the Montana
18 legislature in 1979 to try to get some limits on water
19 rights to quantify all waters in the state.

20 And that goes back to a 1972 constitutional
21 mandate to house all water records in one place in the
22 state. So far the Compact Commission has negotiated nine
23 compacts and are currently in negotiations on four more
24 The makeup of the Commission was also introduced by
25 Chris

1 And he stressed the state's approach, which
2 should be negotiation rather than litigation, because
3 litigation is expensive, time-consuming and it doesn't
4 involve practical solutions. He stressed to the parties
5 that settlements will not be approved if the interests of
6 all the parties are not addressed, and that the State has
7 a need to conduct public meetings to hear views and take
8 into account in formulating the settlement what all water
9 users' needs are

10 He pointed out that the Water Compact
11 Commission has an MOU with other state agencies and that
12 they keep each other informed and that all the agencies
13 are committed to bringing litigation to a close so
14 everyone will be satisfied. He urged everyone who wants
15 to be on the State's mailing list to sign up on the
16 sign-up sheet so that information can be passed on to
17 you.

18 Chris Kenney, in the opening statement for the
19 federal team, pointed out that the United States is
20 mindful of responsibilities in the west, that they're
21 mindful of their responsibility in relationship with
22 their tribes and also their duty to protect tribal
23 rights

24 Their position is to come to a mutually
25 beneficial settlement. All water negotiation teams,

1 federal teams are under the direction of the Deputy
2 Secretary David Hayes The United States has negotiated
3 10 to 15 -- 15 to 16 settlements over the last 20 years,
4 and the team is here expressly to resolve the
5 Confederated Salish and Kootenai Tribes' water rights
6 claims

7 Chairman Matt pointed out how water is
8 important to our people It is sacred He pointed out
9 how hard the Tribes work to keep the lakes and water
10 clean for future generations and acknowledged that they
11 can still drink out of streams and they are clean enough
12 not to make us sick

13 We're on the brink of the water rush days The
14 only way to get through is coming to work together He
15 believes we can get through this because he has a good
16 feeling in his heart, and if we all do we will be
17 successful The reservation is our homeland. It was
18 established in 1855 by the Hell Gate Treaty

19 The Tribes not only reserved land but they had
20 to reserve water and other resources necessary in order
21 to sustain the homeland. The Tribes must do what they
22 must to protect generations to come Hopeful that
23 negotiations will give us all an equitable solution and
24 points out that the Tribes and tribal members look
25 forward to future negotiations

1 Litigation will be the Tribes' last resource
2 and the Tribes are committed to work long and hard
3 towards settlement. Robb Hunter, attorney for the
4 Tribes, went through point by point the MOU between the
5 State, the Tribes and the federal government. Point one
6 says that sessions will be held on a rotating basis in
7 Pablo, Helena and Missoula, and be chaired by a member of
8 the team in perspective cities of the team

9 Negotiations will be open to the general
10 public. And at least today there are a verbatim
11 transcript prepared. He pointed out that the teams may
12 go into executive sessions if the parties agree and it's
13 consistent with the state, federal and tribal law. He
14 also pointed out that the chair may restrict participants
15 to facilitate the meeting.

16 Point three, negotiation positions can't be
17 used in court. Four, press releases shall be jointly
18 made between the State and Tribes. The feds were left
19 out of that provision. And if consultation with the
20 press occurs, each party must immediately let the other
21 parties know. And it was signed by all three of the
22 parties. And I'm going to skip what I said and what Robb
23 said about the legal team.

24 Susan Cottingham pointed out how her staff
25 works, that she has twelve staff members, that they have

1 -- the legal staff has a lot of drafting duties and they
2 report back to the parties The technical teams do a lot
3 of technical work and report back to the parties And
4 she gave some examples of things that have been done in
5 other situations

6 Chris Kenney introduced the team members that
7 were here. He said that the teams are comprised of
8 different people for considerations, and because the
9 issues are different in each situation so they have to
10 have different experts The feds also have coordination
11 with federal agencies and he, as the chair of the federal
12 team, has access to all of the resources that are brought
13 to bear in negotiations

14 He is a representative of the Secretary of
15 Interior, also works with representatives of the Attorney
16 General's Office Chris went on to say -- well, I
17 covered the issues that we hoped to address in
18 quantification. Those are off- and on-reservation
19 rights, consumptive and nonconsumptive water uses,
20 surface and ground water administration, and settlement
21 contributions

22 Chris Tweeten went on to say that the Compact
23 Commission has brought authority and can certainly talk
24 about those things the Tribe wants to talk about, but
25 their purpose and intent is to protect non-Indian water

1 users. And he stated that contributions to settlement
2 will be based on how interests are protected

3 Ron Billstein addressed everyone to talk about
4 his experience in working on other compacts and
5 recommended a watershed-by-watershed comparison here and
6 in the end those could be integrated into a final
7 document He recommended that we go in the order of
8 Jocko, Camas and Mission, and pointed out that the area
9 of the lake and river may be necessary

10 Chris Kenney said that he didn't like splitting
11 things up like that, but in this case would agree to it
12 because of the complexity of the reservation and the
13 watersheds lending themselves to such segregation and
14 because the opportunity provided earlier engagement of
15 technical folks

16 Clayton Matt identified some of the issues that
17 we believe the teams can begin working on, and the issue
18 he had identified was claims verification Dan Decker
19 went on to point out that we can begin to work on
20 hydrology, as well, and summarized recent letters the
21 Tribes have exchanged with the governor of Montana

22 Faye Bergan, from the state, talked about
23 claims examination, as well, and how that works and
24 approaches used in other quantification arenas. She also
25 pointed out the usefulness of working together on

1 technical information or jointly developing it so that we
2 don't spend time fighting over whose report to use

3 She's very interested in getting started on
4 soils. Aimee, from the Governor's Office, talked about
5 the governor's disappointment that the Tribes are not
6 interested in an interim agreement. But, because she
7 believes that it will, working as we are on the compact,
8 will take years of negotiation and there will be many
9 legal hurdles to overcome, she stated the Governor's
10 Office remains happy to look at an interim settlement if
11 the Tribes should change their minds

12 Susan Cottingham pointed out the things that
13 she thought we could get started on: our soils, GIS and
14 computer systems compatibility, and availability of
15 hydrologic data Chairman Matt said he was disappointed
16 that the governor is disappointed and stated it was his
17 belief that attempting to negotiate an interim agreement
18 would actually stall completion of the compact
19 settlement

20 The parties then had some discussions on
21 whether or not to change the agenda and proceed to the
22 comment section. It was agreed that they would not; they
23 would continue to follow the agenda After lunch, there
24 was quite a bit of discussions, as we just heard about,
25 the frequency of meetings, it was agreed four times a

1 year I think would be sufficient and that communication
2 by phone can get started

3 Susan pointed out that they need to conduct
4 public scoping meetings and they won't be able to do that
5 until September Chris suggested that we begin focusing
6 on a smaller watershed, and I think Jocko was agreed
7 upon.

8 After discussions, it was agreed that an agenda
9 for how we proceed or a technical work plan be presented
10 at the next meeting That meeting will occur September
11 13th, which is a Wednesday, in Helena, and will be hosted
12 by the State What time?

13 SUSAN COTTINGHAM Do you want nine, is that
14 okay?

15 RHONDA SWANEY And the meeting will begin at
16 nine Susan will be the contact for all technical
17 matters for the State, Clayton Matt will be the technical
18 contact for the Tribes, Chris Kenney will be the
19 technical contact and the legal contact for the federal
20 team and he will put the legal team in touch with Mr
21 Miller, who will work on legal issues.

22 CHRIS KENNEY I will put him in touch with
23 your folks.

24 RHONDA SWANEY: Scott Miller And we will be
25 expecting at the next meeting a report on the technical

1 work plan, as well as a joint presentation on claims
2 verification That's all I have Did I miss anything?

3 SUSAN COTTINGHAM I think we will have you do
4 that at every session. That was pretty good I guess
5 the only thing, just right at the end there, Rhonda, I
6 wasn't sure we had agreement to start on the Jocko I'm
7 just feeling a little bit unclear on about how the
8 watershed thing might work So maybe we can just explore
9 that before the next session and talk about which one
10 might be the best, how we can do that. I thought that
11 was a great summary

12 CHRIS KENNEY And what about the straw map of
13 the state, as sort of a beginning agenda on technical
14 stuff and how we would put those folks together?

15 RHONDA SWANEY: Could you expand?

16 CHRIS KENNEY Well, the discussion was, how do
17 you get the technical folks to engage each other earlier
18 than waiting for the next session we get together And I
19 thought one way to do that -- because the State seems to
20 be resource limited -- we could make a suggestion of who
21 would get together and how they would get together and
22 what they would discuss and submit that to them and they
23 could put that together, at least get those folks some
24 sanction to get together and talk about what they think
25 they know and I don't know Maybe they all know each

1 other. I don't know all of them

2 SUSAN COTTINGHAM: And you and the Tribe were
3 going to take a first step?

4 CHRIS KENNEY And I kind of thought us, the
5 Tribes and feds, would be doing that for them

6 FRED MATT: Sure

7 CHRIS KENNEY And one could be sufficient, but
8 something that would give them something to take a look
9 at in terms of protocol, agenda and a time frame At
10 least we could get the technical folks some kind of
11 contact in which to engage each other

12 RHONDA SWANEY. And that will go back to the
13 parties before given to the technical folks, is that what
14 we're saying?

15 CHRIS KENNEY Well, I thought we could give it
16 to Susan and her folks and they could let us know if
17 that's going to work, and then we could give direction to
18 the technical folks to set up mutually convenient times
19 and let us know what happens.

20 FRED MATT Sounds good.

21 CHRIS KENNEY I mean I've got to find those
22 people. I need a little time to find them

23 FRED MATT Okay And then before the next
24 meeting we'll get a copy of the minutes out to all the
25 players so that we can review them Abby will do that

1 SUSAN COTTINGHAM. When you say minutes, Fred,
2 are you talking about the transcript or --

3 FRED MATT. Well, I think it was decided that a
4 full transcript might not be -- I mean, correct me if I'm
5 wrong, but a full transcript probably won't be
6 necessary. But we will have a short version similar to
7 what Rhonda has just done so well, and we will send it to
8 all the team members and somehow either approve or at
9 least before the next meeting

10 CHRIS KENNEY I think it's my obligation to
11 review that and either certify it or correct it and send
12 it back to you.

13 FRED MATT Okay Yeah.

14 CHRIS KENNEY And I think Chris Tweeten or
15 Susan

16 SUSAN COTTINGHAM. Yeah, we have not in other
17 negotiations spent a lot of time having the three parties
18 officially approve some minutes We just do some
19 internal minutes for our own thing And what we have
20 done in the past is just tape the session and then made
21 copies of the tapes for the other parties

22 But we can sure explore it I mean it's just
23 -- given the fact that we're all resource limited, it's
24 hard to spend a lot of time working on minutes when we
25 have a lot of other stuff to work on

1 FRED MATT Well, the only thing I'm concerned
2 about is we agree on what was said and we said what we
3 said

4 CHRIS KENNEY: Yeah, that's my concern, too

5 FRED MATT And Abby has agreed to have that by
6 the 17th.

7 CHRIS KENNEY Susan, can we start out that way
8 and if we find it becomes duplicative of --

9 SUSAN COTTINGHAM So the party that hosts the
10 meeting is to do the minutes?

11 CHRIS KENNEY Yeah

12 SUSAN COTTINGHAM I guess we can see how it
13 works I hope we don't have a lot of, you know, I didn't
14 really say that, and amend the minutes and amend the
15 minutes. But we'll play it by ear and see how it works

16 FRED MATT Okay Okay Do we think we have
17 enough on the plate for the next meeting?

18 CHRIS KENNEY I think I have more than enough
19 for the next meeting.

20 FRED MATT Okay That would be more So at
21 this time, most of the audience has been waiting And I
22 appreciate you sitting in the back and listening to the
23 -- up until what we've done so far You've been sitting
24 there patiently waiting to make a comment

25 And, there again, you know, we always want to

1 have that available for people to comment on the concerns
2 they may have, but I encourage those making comments,
3 again, to state your name And, also, I'd like to see --
4 do what you want, but it would be nice if you followed
5 that up in writing Or at least that's my thoughts

6 We will have it on record, but -- and all three
7 of the agencies here -- the Tribes and feds and the State
8 -- will have addresses to submit comments to. So I'm
9 going to, at this time, unless there is anything else
10 from the team -- yeah, there is not a whole lot of people
11 in the audience, but I just throw this out there

12 If you kind of keep it somewhat -- I hope
13 nobody's planning on doing an hour presentation, each one
14 of you, but we will just try to play it by ear I don't
15 want to cut anybody off, but keep it as brief as
16 possible So let's open the floor for comments

17 SUSAN COTTINGHAM And there is a microphone

18 FRED MATT And state your name.

19 GALE PATTEN I guess somebody's got to be
20 first Is this on?

21 FRED MATT Yeah, it should be

22 GALE PATTEN: I'm Gale Patten. I'm the Sanders
23 County Commissioner, but somehow or another I'm still
24 stuck with being a resident of the Little Bitterroot
25 water users over in Hot Springs and Lone Pine. My

1 concern and our concern is water storage

2 The rains and the snows come off the Pacific
3 and the water comes down the creeks and down the rivers
4 and back to the Columbia and back in the Pacific And
5 our problem is storage with the irrigation And two of
6 our main dams on that part of the irrigation project are
7 off the reservation, the Hubbard and the Little
8 Bitterroot Lake

9 And because we're used to this, we have a
10 couple wet years and a dry year and another dryer year
11 and a wet, maybe a little bit of moisture the next year,
12 and then another dry year, we would like to have enough
13 water in storage to skinny through or slip through three
14 dry consecutive years And our storage is very important
15 to the irrigation project Thank you

16 FRED MATT Thank you.

17 MIKE GRINDE· My name is Mike Grinde I live
18 in Big Arm A little history, kind of like Gale's
19 family, my family is a third generation I think Gale is
20 like a fourth or fifth that has resided here in this
21 area. Actually, all of the lands that I own were once
22 Indian allotment lands

23 And I have some concerns I totally respect
24 the Tribes' position on what's been mentioned here in
25 regards to the Hell Gate Treaty of 1855, but I certainly

1 want this group, especially the people from Washington
2 and so forth, to also keep in mind that the history of
3 this reservation also includes a couple of other major
4 events that basically put nontribal people here on this
5 reservation

6 The allotment lands that were created in about
7 1906 and so forth, many of those lands have now
8 transferred into nontribal ownership The federal
9 government, in about 1910, also homesteaded this
10 reservation I think it does -- and I think Mr Kenney
11 was kind of alluding to that earlier -- makes the
12 situation a little bit more complex in what a lot of
13 people have had to deal with on other reservations.

14 Because, quite frankly, it's also created a
15 population here that's a lot greater than the tribal
16 membership I think that all of us have to keep in mind
17 here as we work through this process that these two
18 events have created some rights that should be definitely
19 kept in mind to nontribal people

20 The federal government doesn't ask nontribal
21 people to come to this reservation and not also allow
22 them to carry certain rights as part of the ownership of
23 the lands that they've acquired They're very factual
24 events, and they're very relevant events to this
25 negotiation

1 And I hope that none of you ignore that as you
2 work through your reasoning In a way, Congress and the
3 presidents of the past have placed all of us on this
4 reservation, and there has to be some respect for that
5 I'm very pleased to hear Mr Matt express his desires to
6 resolve these issues associated with water rights and do
7 so so it's in the betterment of all tribal and
8 nontribal.

9 I think that's a very solid sign of
10 cooperation I do have two strong specific concerns
11 though that I think have to be part of this record As a
12 private landowner I firmly believe that ground water
13 rights must remain inherent with surface ownership
14 Otherwise, that land has no value

15 I also, as a nontribal landowner on this
16 reservation, have some very strong opinions about being
17 subject to tribal policies and regulations in that I
18 don't have any say in tribal government, their
19 regulations or their policies And I quite frankly look
20 at that as an infringement upon my constitutional rights
21 and bill of rights Thank you

22 FRED MATT Okay Anybody else?

23 JOHN CAMPBELL My name is John Campbell I'm
24 the water and sewer superintendent here for the city of
25 Polson. Polson's been in an extreme crisis We're right

1 in the middle of this whole thing Probably a lot of you
2 have followed our situation. I've worked with a lot of
3 members, from Clayton Matt clear back to '86 on the Hell
4 Roaring water supply.

5 My job, since Congress adopted the '86 Safe
6 Drinking Water Act Amendments and again in '96, has been
7 extremely challenging trying to keep the constant supply
8 quality and quantity for the city of Polson Polson,
9 right now, I think the city serves approximately 5000
10 people, both tribal members and nontribal members

11 This facility is one example And I'm really
12 happy to see this process start I'm thankful for
13 everybody coming here and taking their time and for
14 Chairman Matt, you know, the statements he made that he
15 would like to make this work for everybody. That's
16 exactly what I've been wanting to hear, and I think
17 that's a great start And I hope this process goes
18 quickly. We are in dire needs Thank you.

19 FRED MATT Thank you Okay, anybody else?

20 TOM SMITH My name is Tom Smith. I'm a
21 resident of the Charlo area, and I'm a non-Indian water
22 user And I'm speaking primarily so that the State and
23 the feds don't develop the false impression that there is
24 some model or block out there that all of the non-Indian
25 water users or all the non-Indian residents are in

1 opposition to the Tribal water rights claims or of the
2 minds that living here is the same as living anywhere
3 else in Montana

4 In the Hell Gate Treaty, the Tribes ceded
5 something like nineteen-twentieths of their aboriginal
6 territory and kept one-twentieth by the terms of the
7 treaty for their exclusive use and benefit And my
8 understanding is that they retained sovereign rights
9 which weren't exclusively ceded or unilaterally taken by
10 Congress

11 And water certainly seems to be one of those
12 So I and many other non-Indian residents of the
13 reservation regard it as something of a privilege to be
14 here and a different place than living anywhere else in
15 the 19/20ths of this ceded aboriginal territory

16 If non-Indians want to live in a place where
17 the legal parameters of their lives are the same as
18 anywhere else in the United States they can live anywhere
19 else in the nineteen-twentieths So it's a different
20 situation here

21 And I think the State and feds need to be aware
22 that there are not an insignificant number of non-Indians
23 here who are not in line with the Joint Board of Control
24 or with some of the other positions that may be expressed
25 here today. And that just needs to be kept in mind I'm

1 glad to see the spirit of cooperation that appears to be
2 here today.

3 I think things can be worked out well I think
4 that, on the other hand, it's probably in the interest of
5 the Tribes for the foreseeable future for family farms
6 and ranches to survive because if they're subdivided then
7 there's going to be 10 times as many non-Indians on that
8 land as there are now and 10 times as many competing
9 claims for water and other resources

10 I think the threat to family farms and ranches
11 though certainly can't be solved by Flathead Irrigation
12 Project or the water rights cases that are being dealt
13 with here. Family farms and ranches have been dwindling
14 in the United States for well over a century. That has
15 been accelerating in the last decade

16 This, as one of the factors for that, is a
17 pretty small one as things go Things like the so-called
18 Freedom of the Family Farm Act -- or Freedom to Farm Act
19 probably done far more damage to family farms and ranches
20 in this country than any of these other factors

21 And the hundred-year decline of farm good
22 prices relative to nonfarm good prices also has done far
23 more damage to the survival of family farms and ranches
24 than things like control of the local irrigation
25 projects. So I'd just make those comments.

1 And I also pose a question to the State.
2 They've defined their primary role here today in the
3 words of Mr Tweeten, as primarily protecting the
4 interests of non-Indian water users. I just would ask
5 whether that is really the right position for the State
6 to assume or even the legal one

7 You know, it certainly begs the question of
8 Indian people are citizens of this state as well as
9 non-Indians, and whether the State has a responsibility
10 of representing all citizens You know, that position
11 certainly brings that question to mind

12 In my opinion, it's probably illegal, as well
13 as wrong, for the State to define its primary role as
14 simply protecting the interests of non-Indian water
15 users And I expect that the State would respond to that
16 by saying that, well, the tribal government is the
17 legitimate representative of the tribal members here
18 And that's true

19 But that does not free the State from the
20 legal, moral obligation to represent all its citizens
21 And that may put them in a contradictory position in some
22 ways, but so be it That's the legacy of the illegal and
23 in some ways wrongful taking of Indian resources in the
24 last century, including the opening of the reservation in
25 1910, which was alluded to by this gentleman, which was

1 done in opposition -- over the opposition of tribal
2 members who were almost completely opposed to that

3 It was done just unilaterally So that
4 history, I don't think, is quite as simple as it was just
5 portrayed to be. And there is not time here to go into
6 more detailed discussion of that But I will leave it at
7 that Thank you

8 FRED MATT: Thank you Anybody else?

9 VERNON FINLEY My name is Vernon Finley I'm
10 a tribal member here I've been absent for most of the
11 discussion, but I was here for the opening remarks. And
12 I was kind of troubled as the last speaker was about the
13 position of the State To come into a negotiation from
14 an adversarial viewpoint right off the bat, I was kind of
15 disappointed in that

16 But one of the things that I wanted -- the
17 point that I wanted to make was for all of the
18 negotiators to look at what is at the core behind the
19 opening remarks, the discussion that started all of
20 this We heard some of our elders get up and speak and
21 some of their representatives then speak.

22 And one of the things that struck me the most
23 was the difference in perspective about all of it From
24 one perspective, the Tribal perspective, what they were
25 saying was it's a very simple matter It's a matter of

1 spirituality It's a matter of morality, of ethics
2 It's such a difficult concept to think.

3 Certainly, let's share the water here That's
4 something that we all should strive to do But how we
5 use it, that's what is the key difference that started
6 out this whole discussion I heard a group of people
7 say, is it so difficult when water enters your property
8 to let it leave your property at least as pure as when it
9 came in? Is that a difficult concept to grasp?

10 But it seems the difference in perspective that
11 we have to keep in mind is that from the Tribal
12 perspective it's always based on spirituality, from the
13 dominant culture perspective, it's based on economics
14 Yes, let's do what's moral and, yes, let's do what's
15 right, as long as it doesn't interfere with my ability to
16 make money

17 That's the basic difference It's okay, as
18 long as I make money, you know If we're talking about
19 who should have the say over the water, for the State to
20 assume that they have some moral or ethical superiority
21 over how to determine keeping the water pure, then let's
22 look at the Burkley Pit, let's look at 75 years of
23 Anaconda Copper running the politics in this state

24 And look at what they did to the water and look
25 at what they did to the natural resources The water

1 that is -- the shape that it's in right now that's
2 running through this reservation is as clean as it is
3 because the Tribe took a stand, because the Tribe told
4 the Flathead Valley it's not all right for you to run
5 your sewer lines straight into the river, it's not all
6 right for the people along the lake to go to their cabins
7 and to flush their toilets into the lake; it's not
8 right

9 And that's why the water is as pure as it is
10 Now that's the basic things that we're talking about
11 here The difference in perspective Now one of the
12 things that I heard from the elders was it has to be for
13 future generations It has to be at least as pure as it
14 is today for future generations.

15 That's not negotiable To the dominant
16 cultural perspective it's, let's quantify, let's quantify
17 exactly how much, exactly how much we have the right, how
18 much of the water can we pollute, how much of the water
19 can we put our spray into, how much of the water can we
20 destroy?

21 Let's quantify that amount. That's a totally
22 different perspective. There were two completely
23 different ways of looking at it Keeping the water pure,
24 that's a nonnegotiable If you want to talk about how
25 much water should we use, that's negotiable. If you want

1 to talk about how to use it and how to keep it pure, that
2 isn't negotiable

3 It has to be kept pure Now the rest of the
4 negotiations should focus on that It should focus on
5 what is negotiable and what isn't, what's quantifiable
6 and what isn't A number of gallons, that's a
7 quantifiable thing Whether something is pure in the
8 future as it is today, that's not quantifiable.

9 That's not negotiable And as long as you keep
10 those things in mind, as far as looking at the different
11 perspectives, then I think we've got a lot of room to
12 negotiate here Thank you

13 FRED MATT Thank you Anybody else? Well,
14 there again, I'd just like to thank everybody. Oops
15 We're out of time I'm sorry

16 MIKE DURGLO No, I'm not running for council
17 Good afternoon My name is Mike Durglo I'd just like
18 to share a little personal story of my own with you to
19 talk about water. When I was a boy I used to fish in
20 Mission Creek My brother remembers those times. We'd
21 go down almost every day to the creek and fish and bring
22 home sometimes a hundred fish.

23 And we could drink the water out of Mission
24 Creek at that time And I remember one time being chased
25 out of the creek A guy, a non-Indian landowner, was

1 shooting his gun We thought he was shooting at us. I
2 don't know He might have been shooting in the air But
3 it really scared me

4 And then when I bought a piece of land east of
5 -- on Ashley Lake a few years ago, I bought into a
6 lawsuit about water. As far as I know, even today I
7 don't know if that is settled And from what I
8 understand the man -- there used to be water on this
9 acreage, this 20 acres that I bought years ago, and from
10 what I understand had a secretarial water right

11 But the non-Indian landowner next to this piece
12 of land decided he was going to shut off that water And
13 from the stories that I've heard he took a shovel after
14 the guy that owned it and he assaulted this guy And
15 that's scary Something that we need to think about, I
16 think, that when we talk about seven generations from
17 now, is the world population is almost doubling every 20
18 years, maybe less

19 It's exponential growth And water in the
20 next 20 years will probably be worth more than gold. So,
21 you know, these things, when we come to the table to talk
22 about negotiating water rights and we talk about clean,
23 pure water, and we have -- I believe that we have one of
24 the most beautiful valleys in the U.S

25 I don't know. I haven't been through the world

1 that much, but I think we have a paradise here in this
2 valley And if we don't come together and work out
3 something, there's probably going to be more people that
4 are hurt physically

5 That's a scary thing to think about, our
6 children and our grandchildren fighting about water And
7 I think -- like Vernon was saying, I think there's enough
8 for everybody if we use it in a good way and if we use it
9 in the right way and we don't hog it, use all the water
10 I see sprinklers all the time going when it's raining

11 I don't understand that They just want to
12 make sure they get their share, I guess. I don't know
13 To me, it's wrong Pouring rain and it's ch, ch, ch, ch,
14 ch, ch, ch, ch, ch, sprinkler's going Crazy But
15 anyway, I think, you know, just like I said, if we think
16 about seven generations, that's a long time.

17 We ain't going to be around. Our grandkids
18 will. But I hope that, you know, we can come to some
19 kind of an understanding and we can share the resource in
20 a good way and that it comes to a good ending, I guess
21 Thanks

22 FRED MATT: Thanks Anybody else?

23 GARY MORIGEAU My name is Gary Morigeau, and
24 I'm also a tribal member I set my watch here for an
25 hour so I won't -- actually, I won't be long I just

1 want to emphasize a single point And that's the point
2 of the approach the State started with in their asserting
3 that they're representing only the non-Indian water users
4 in the valley

5 And I think the nontribal member gentleman
6 pointed that out first But I think it's an important
7 issue I don't think the State can -- and I would agree
8 -- legally take part in this negotiation if they don't
9 represent the entire state population, including Indians,
10 including tribal members from this reservation, including
11 Indians from other reservations

12 As an Indian from here, when I go
13 off-reservation I take in hunt and fish -- I can hunt and
14 fish in our aboriginal areas I also have to follow the
15 tribal rules and regulations that say I can't hunt except
16 with tribal members. So I can wear two hats. If I have
17 a friend, or even more importantly, my brother's
18 grandchildren -- excuse me He passed away -- I need to
19 show them what they need to learn Some of them are
20 nonmembers, I can't do that, unless I go buy a license
21 I can go out and hunt and fish. I can take them. I need
22 to do that Thank you.

23 FRED MATT. Thank you, Gary

24 JOE WEASELHEAD My name is Joe Weaselhead
25 I'm a tribal member I work for the Water Quality As I

1 see it here, people are -- the Tribe and nonmembers are
2 arguing about who gets administration of the water in
3 this valley. My views are this. Who works with the
4 water? Who works with the water? I know I do

5 I'm in water quality. I know my partner over
6 there, he works in Water Quality, and other people in our
7 department, wetlands, riparian lands, lakes What other
8 nontribal member organization here on the reservation
9 does this to assure the quality of the water everyone
10 drinks, swims in, fishes in? To me, I think the Tribes
11 are doing dang good That's all I got to say

12 STEPHEN SMALLSALMON Testing My name is
13 Stephen Smallsalmon I just got a few words to say You
14 know, the thing that's pretty bothers me is if we, the
15 Indian people and the white people would get together,
16 you know, and live together and understand each other,
17 you know

18 But here on this reservation we're still
19 fighting amongst each other, you know. And water that I
20 know is -- I remember when I was a small young person yet
21 and my dad used to say it was special, you know, it's a
22 holy water, you know And I remember when I used to go
23 down to the river we used to even pray before we even got
24 into the water.

25 And that's how important our water is today

1 And I'm with the elders And we talk about the rivers,
2 you know, about how they pollute it, you know, with the
3 mines And they still want to put in some more mines
4 What's going to happen later on in this world, you know,
5 now that we have to even buy water from the stores that's
6 bottled? And I hear a lot about the air and the water,
7 you know

8 And it's all polluted, you know. So if, you
9 know, the people, the nonmembers here, they should
10 understand us, you know, us Indian people And maybe we
11 could make a deal with them, you know. But otherwise,
12 you know, there is nothing to negotiate here, you know
13 This is our place, you know

14 So that's all I got to say And I asked the
15 Creator last night I wouldn't get mad So lemlencht.
16 Lloyd Irvine, I didn't hear you say that

17 LEONARD MICHEL Good afternoon My name is
18 Leonard Michel I'm also a tribal member from here. I
19 think one of the things we haven't touched on -- Vernon
20 did a little bit -- is economics on the reservation The
21 biggest thing we have here for our economics is
22 recreation

23 And I think they do more damage to our
24 resources, whether it's timber, our pasture land or
25 anything like that, it's -- you know, our rivers and our

1 streams and our lakes that's being destroyed because of
2 recreation and the lack of respect for it.

3 As these three teams get together here in the
4 next few years, I think what they got to look at is put
5 recreation at the back of the whole negotiating team
6 because it's something that's a want, it's not a need.
7 We don't need to recreate, to go out there with our boats
8 and jet skis and what have you and degrade the water

9 We got to worry about drinking it first So I
10 think it's very important that when the State comes in
11 with their team saying we got to look at recreation, we
12 don't I really feel we have a say so on this because
13 there is a lack of respect. Not on every one of them,
14 but the majority of them

15 In my own opinion, seeing the reservation the
16 way it's being destroyed, the rivers and creeks and lake,
17 they want more and they want it for nothing You know,
18 they buy a little recreation permit here and they want it
19 all back. You know, it doesn't work that way You go to
20 other places in the United States and you have to pay for
21 things

22 So when they come to a reservation, whether
23 it's my reservation or the Crow's or the Cheyenne's or
24 the Blackfeet's, you know, they want it for free They
25 come up with this attitude well it's not the Indian way

1 Well, we're forced into economic times as Indian people
2 and when we demand our fair share of those economics
3 people get their bags up

4 So it's very important I think to look at the
5 recreationists that they don't need to be out there
6 recreating There's more important things on that water
7 than recreating Thank you

8 FRED MATT Okay Anybody else? Okay There
9 again, I'd like to just thank everybody, especially for
10 those who pretty much hung in here all day to set here
11 This is a beginning of a process that -- there again, I
12 said in my opening remarks that I don't think that maybe
13 everybody will be totally satisfied, but we're going to
14 work real hard to try to accommodate everybody's needs

15 And one of the things that I'd like to mention
16 in my closing comments, there was something I wanted to
17 mention in my opening comments. But there again, those
18 of us that -- this person I'm going to mention, it's
19 still hard for a lot of us that set up here, a lot of us
20 that have worked and been involved with Mickey Pablo, as
21 most of you know, was a very hard worker, dedicated
22 person

23 And he'd be right in the thick of things In
24 fact, he would be right here probably doing a bang up
25 job But anyway, he's here with us in spirit, and I

1 think most of us feel that Some of things -- and I
2 appreciate Gary, I know he talked about his brother
3 Sometimes we can't help but feel a little bit of emotion,
4 but that's who we are and that's the way we do things

5 We recognize Mickey for all of the hard work
6 he's done for us as a tribe, and I just hope there is
7 just a little bit of a glimmer of his intelligence and
8 his way about him as I try to go forward and work through
9 this process So anyway, I want to thank everybody again
10 for being here, especially the folks who have traveled a
11 long ways to get here.

12 I appreciate it Pat Pierre wants to make a
13 closing comment too, and then we have the drum groups
14 going to close us out here today, too.

15 PAT PIERRE: I'd like to make a comment here,
16 maybe a couple, and I hope that some of you will take
17 what I'm going to say to heart In the past years this
18 nation, the United States of America, has been totally,
19 totally raped We have been taking the life source of
20 mother earth up

21 We have been taking oil, we have been taking
22 gas and we have been taking ore, minerals out of the
23 ground, which are all the life source to mother earth
24 In my opening comments I said I hope that the lakes and
25 the streams don't become battlegrounds, they don't become

1 something that we're going to be fighting over.

2 Because of this taking from the face of mother
3 earth and the innards of mother earth, we are draining
4 her life source. One day she's going to say, no more, I
5 can't give no more. Self-destruction. I said this 20
6 years ago. And if we continue to do what we're doing
7 now, if we continue to take and not give back, I predict
8 in 20 years there will be no more to take.

9 And what will happen when there's no more to
10 take? What will happen to you and to me? What will
11 happen to this nation, a beautiful nation, land of the
12 not-so-free to everybody? And I believe and I want you
13 to listen carefully, because I'm saying this today, that
14 one day we will not have anymore to take.

15 And that's simply because we're not giving back
16 for what we take. And every time -- we've been taught as
17 Indian people that when we take something we must give
18 back to mother earth. If we pick a flower we give an
19 offering of a prayer or something. If we pick some roots
20 for food or medicinal purposes we give back so that we
21 can come back and pick some more.

22 The dominant society out there hasn't done
23 that. They take and they take and they take. They make
24 a million dollars and, sure, they've got to have another
25 million dollars. They've got to have two million. After

1 we make two million, we've got to have three million
2 now And excuse the language when they say to hell with
3 the rest of the world, as long as I can get rich

4 I wanted somebody here to tell me that I'm
5 wrong I don't believe anyone can tell me that I'm
6 wrong, because this is the way the world is out there A
7 while ago Burkley Pit was mentioned That's a good
8 example We'll dig a big hole and make a mountain over
9 here and give it to all the water in the city

10 We don't care, as long as we can have another
11 million dollars That's taking and taking and not giving
12 nothing back They could at least push that mountain
13 back into the hole I worked in that mine, in those
14 mines, but I didn't work in the pit And I know what
15 that taking is all about I've seen it

16 So I think we need to think about these things,
17 the federal people, the state people, the Indian
18 nations We need to think about these things We need
19 to say, hey, let's slow down here I'm talking about
20 seven generations coming yet up the road But how are we
21 going to see the seven generations if we don't give them
22 something to come to?

23 If we don't get down to business and say, okay,
24 this is it, we better slow down, we better make sure them
25 seven generations are going to have something to come to,

1 that's up to us, every one of us individually here in
2 this room, it is our job to protect what we have It is
3 my job to protect my reservation.

4 I'm the man that will stand in the middle of
5 the highway and say, no, you can't make a four-lane
6 through the reservation You have raped mother earth
7 enough She can't stand no more scars I'm the man that
8 will do that, because I don't believe that we need to
9 continue to do what's happening out there

10 I believe that we need to stop and say, now,
11 let's slow down, let's think about these things Earlier
12 I said we have put up a table that you, the State, that
13 you, the government, can come and talk with us Our
14 table You come to my tee pee, a pretty fancy tee pee,
15 but it's my tee pee And walk into my tee pee

16 But let's slow down Let's think about these
17 things Let's think about what's going on out there We
18 can work hard as a tribal people to protect what we have
19 here, and that's exactly what we're doing I told this
20 team right here we're not going to compromise, we're not
21 going to be manipulated

22 We are going to stand firm I've been punching
23 this guy all day here, stay firm That's probably why
24 they put me next to him But I believe what I am saying
25 is true. Maybe not today, but down the road you'll see

1 You're going to say that I heard that old elder say that
2 over in Polson.

3 Let's not fight over what is free, what was
4 given by the Creator for the people's use This man that
5 spoke up over here, he's going to be a problem all
6 through the negotiation. Every meeting he's going to be
7 sitting there, he's going to be throwing in a monkey
8 wrench every chance he gets.

9 He's not the only one We have others on this
10 reservation that continuously fight us But we don't get
11 weary, we don't tire of that We are going to stand
12 firm We are going to be here when they're not. And,
13 say, if they don't like it here, we'll help them move

14 We'll help them go somewhere else so they don't
15 have to put up with a bunch of Indians, where they can
16 claim the water But I want you to just think about what
17 I'm saying This is all I'm going to say I'm going to
18 shut my mouth and wish you all a happy journey home and a
19 safe journey home

20 FRED MATT Thank you, Pat

21 PAT PIERRE Tomorrow I got to be in Helena

22 FRED MATT. Maybe you can ride with them

23 Tony.

24 TONY INCASHOLA Okay, we're going to close
25 with a couple of honor songs again But as these honor

1 songs are sung I'd like you to also remember these songs
2 are in honor of those people that have fought so hard,
3 gave up so much for our lives today, for our resources,
4 for our children

5 We also -- the honor songs are for those people
6 who have come here so willingly to try to look for
7 solutions, to work hard for solutions in honor of
8 everyone These honor songs are for those people These
9 honor songs are for our elders, who have given us the
10 guidance and the wisdom so that we are where we're at
11 today

12 These honor songs are for our ancestors, all of
13 have our ancestors, what they endured to be here so that
14 we're here. And let's stay focused on what we really
15 want Let's dig deep into our souls and our hearts and
16 ask ourselves why? Why are we here? What are we doing?
17 And I hope that the same answer comes from all of us

18 And that is for the future generations The
19 hard work that is ahead of us, the majority of us here
20 are not going to see the benefits of those. But
21 hopefully our children and grandchildren will see those
22 benefits.

23 And hopefully those benefits will be good
24 benefits, that respect will be restored among all people,
25 regardless of where we come from, who we are, and what we

1 look like That is all connected to what we're doing
2 here, as is the many things that were mentioned here
3 today that are connected to the water.

4 The life of the different things that depend on
5 water. The Creator has made that balance at the
6 beginning of life, and we have offset that balance We
7 need to restore that balance And the only way we can do
8 that is to look ahead for future generations, not
9 necessarily for us here today

10 We're not going to see the benefit But if we
11 can do our jobs and provide for future generations, then
12 we will see that unity and that respect come back So
13 these honor songs are for those people, for us here that
14 have stayed here all day to listen, to try to find a
15 glimmer of hope that we will get to a point where we will
16 all be happy

17 So as these honor songs are sung, think about
18 that Think about your families and your ancestors.
19 First I want to ask the Kootenai people to sing their
20 song, and then we'll go to the Pend d'Oreille Drum. The
21 Salish Drum was not able to come back So we're going to
22 close with the two drums

23 (The Chief Cliff Drum Group performed an Honor
24 Song)

25 (The Pend d'Oreille Drum Group performed an

1 Honor Song.)

2 (The meeting concluded at 2 55 p m)

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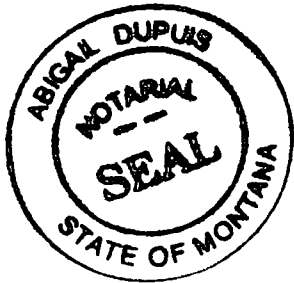
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1 STATE OF MONTANA)
2) ss
3 COUNTY OF LAKE)

4
5
6 I, Abigail Dupuis, Certified Court Reporter
7 and Notary Public in and for the County of Lake, State
8 of Montana, do hereby certify that the foregoing pages
9 constitute a full, true and accurate transcript of the
10 proceedings had in the foregoing matter, all done to
11 the best of my skill and ability

12
13 WITNESS my hand and seal this 23rd day of May,
14 2000



20 *Abigail Dupuis*

21 ABIGAIL DUPUIS
22 Notary Public, State of Montana
23 Residing at Pablo, Montana
24 My Commission Expires 08/31/00
25