

## MEMORANDUM

TO: CSKT Minute Files; Susan Cottingham; Jay Weiner; Sonja Hoeglund  
FROM: Joan Specking, RWRCC  
RE: CSKT Minute Summary from December 9, 2009 Negotiating Session,  
Polson, Montana, 9 a.m., KwaTaqNuk Resort  
DATE : December 9, 2009

Chair: United States

Agendas (**Attachment 1**) were available.

1. **Opening Prayer** (Opening Prayers are not recorded)
2. **Introductions**  
(**Attachment 2, sign in sheet**)
3. **Opening Statements**

Chris Tweeten said he was excited about moving forward and noted they are approaching the time when some hard decisions will have to be discussed and they now have some idea what mile markers there are. He said Duane Mecham would talk about getting to that point. He is optimistic that they will reach an agreement and are excited about being there.

Chairman James Steele Jr. mentioned the good news on the settlement for Cobell and said coming on the heels of that they are looking to a good water settlement in that spirit. He is hopeful they will get their negotiations settled and is looking forward to Duane's report on planning. They are all cognizant that the clock is ticking and want to get after difficult issues in an organized fashion and move forward so everyone understands which direction they are going. Duane introduced the new federal team member: David Red Horse newly with the BIA from the US Fish and Wildlife Service, who is replacing Mike Damrell from the Portland BIA Regional Office. The federal team has a series of updates but wanted to check with other teams for information.

Chris Tweeten reported that Dan Belcourt resigned from the Compact Commission to take a new position with the CSKT. Chairman Steele reminded people they may have a change as Tribal Council elections will be taking place soon.

#### 4. **Technical/Legal Working Group Update**

Duane asked Bill Greiman or Seth Makepeace for updates and they had none at that time. He recalled that they had a very good summary update from Seth at the last meeting and that the Team has done an extensive scheduling effort for the technical work. Seth said it was a work in progress. If people want an

update on the technical side feel free to contact any of the teams and they will provide it.

## **5. Update from Federal Team on Administration's Priorities for Indian Water Right Negotiations**

All of the federal negotiating teams were to attend an Interior department meeting for those involved in Tribal water settlements. On the federal side, the government has the goal as trustee that the Tribes get the water that they are entitled to under their treaties. A lot of legal questions arise when the topic of the full extent of the Tribe's water right arises. It extends to irrigation and municipal, and other things that are high priority for a Tribe and for these Tribes, it has been well documented that their treaty rights extend to uses such as preserving water for fish, for the environment, wetlands, and other purposes. The federal side wants to assist the Tribes to oversee and have better sovereignty over their water resources. A lot of discussion ends up being between the State and the Tribes and sometimes the federal government is in a supporting role or in a deciding role. The administration is very interested in settlements like this that have not progressed to final positions and has asked him as team chair to stay very aware and work closely with the State and the Tribes as they proceed. He will be working with Interior and Justice to present to them a full briefing – note there are 17 or 18 teams across the west negotiating water rights. They also have the BIA and other Interior agencies such as the BOR (Hungry Horse) involved. The department has designated a working group on Indian water rights settlements chaired by Letty Beland and has several assistant secretaries, the solicitor general and some agency heads such as head of the BOR. He and his team will present a full briefing on the CSKT water rights settlement. They will also coordinate any interest the Tribe or State has to meet with those departmental officials. The first goal is to get political appointees fully up to speed on issues that need to be addressed; secondly, get initial recommendations from the federal negotiating team, and thirdly, once that is accomplished to check back with that group and get the needed guidance for the federal team as they go forward. It will help the federal side be as nimble as possible going forward.

Clayton Matt said the Chairman had the opportunity to meet with David Hayes and Letty Beland at the fall NARF conference. Chairman Steele said there are some good people interested in Indian water rights which is encouraging after years of trying to get task force members to meet. Susan said they are really supportive of Duane's efforts to involve the Interior people early on rather than waiting until the end of negotiations. It is important for them to know this is a top priority. There is a western coalition of Tribes and states working on the issue of funding and there has been significant progress on an Indian water rights settlement fund with money coming out of the Reclamation fund and then passage of legislation last year authorizing a billion dollars towards Indian water settlements primarily related to drinking water settlements.

Duane said he will explain an ambitious negotiating schedule to take place over the next several months and he will want folks in D.C. to give immediate feedback. He thanked the other teams for their feedback. He said a key reason for the timing of this meeting was to work among the three parties to organize things for the next several months. The parties worked together to get an extension of the Compact Commission which gives a window the same as the term of President Obama's administration. The joint technical group developed a schedule for additional products, data and information that undergird the settlement. That put active negotiations on a hiatus but the parties realize the time has come to engage on the substance of negotiations. The teams gathered to focus on three key questions: What are the things they need to talk about for settlement; what are the arrangements under which they will talk about those, and what is the timeline for addressing the items? They want to take advantage of having public sessions and had a good discussion on that. He will outline those items.

He said they will be proceeding on three parallel tracts over the next several months and will have active three party discussions on these items. They will also have federal/Tribal discussions to work out some positions including: funding level for settlement; types of provisions in federal authorization legislation and if public outreach is adequate. They will try to keep people updated on those three parallel processes. They have mapped out the next six months with some detail and also focused on having legal/technical teams refine areas of agreement and disagreement. There will be a specific schedule for those meetings. The next agenda will focus on the unitary administration ordinance. There will be active discussions on that in January and it will be on the February agenda. They will have a discussion focusing on the progress made and the issues remaining to be resolved. Other items they anticipate include focus on the existing water use on the Reservation; and they will negotiate on how they grandfather those uses into the settlement. Additional water supplies will be discussed with current focus being on Hungry Horse. Future Tribal water needs and uses and future water rights that will be confirmed will be on the agenda. They anticipate a heightened interest by the public as to what they resolve; at least 30 days ahead they will announce the agenda items and they will be on the card the state sends out with the agenda. Their first negotiating session will be **February 24<sup>th</sup>** where they take up unitary administration. Their next sessions: will be **April 7<sup>th</sup>; April 28<sup>th</sup>, May 26<sup>th</sup>, June 30<sup>th</sup>, August 18<sup>th</sup>, September 29<sup>th</sup>, October 27<sup>th</sup> and December 1<sup>st</sup>**. To foster opportunities for input from the public if folks want to send comments and questions on the agenda items, they will have contact information to do that; or if they announce a future item for the next meeting people can comment. They will post the dates on the website for the Tribes and the state as well as contact information and will strive in February to have contact information at the negotiating session. They seek to provide 30 day notice of the meetings. The joint legal/technical meetings have scheduled dates

to take up the discussion items and figure out where they have agreement and/or need more discussion. He said he is looking forward to the active next phase.

## **6. Update from Negotiation Teams on Schedule for Negotiations**

Clayton said they have been talking about a draft ordinance with a lot of technical work behind the scene; now the information is coming together on a schedule. The technical/legal information is coming together and decisions have to be made so there will be a more ambitious schedule for future meetings and people will have an opportunity to weigh in. They hope to elevate public comments and also will have some public sessions with open discussions. The effort is needed and it will take some time. He thanked people for being there.

Chris said this was a good explanation of where they were going to head in six months or a year. The issues they will be focusing on are many and will decide whether or in what shape they can reach an agreement on administration; protecting uses on the Reservation; how uses will relate to water use around the Reservation and others. He said the legislature extended the Commission until June 30, 2013 but it is not that long given the work they need to get done. He said it is not as long as it seems because the state would like to have a compact to take to the public six months in advance of the 2013 legislative session – that would be a target date of July 2012 so they understand the need to be aggressive about tackling issues now. A lot of technical work has been done and has delayed substantive discussions because they wanted to give the technical teams time to gather information as needed. Technical work will continue and they are at the point where they need to get back to the table and discuss issues.

## **7/8. Question & Answer Period and Public Comments**

Rory Horning said he was glad to see them finally get into the issues. (Can't hear well). He applauded them for putting the unitary ordinance on the website but said it is lengthy to print and the public doesn't carry computers around; he said it knows it's expensive to get everyone there but it would be nice if they would start distributing copies at the meetings so people can sit and discuss it. (Clayton offered to provide a copy for anyone who asked – get a hold of him or Susan Cottingham.) Mr. Horning said the public shouldn't have to contact the parties that the public is already paying for with their tax dollars; the information should be available at libraries and city halls, etc. He said it would show that the parties are considering the public rather than asking the public to follow them around. While on the subject he said, it is really impressive to him that the parties have been stalling on negotiations until the technical team got around to do their stuff; why didn't they save the overtime to come down and sit back until they were done; it would have saved a lot of trips back and forth.

Duane said he never minded an opportunity to come there and the meetings have been held to coincide with technical briefings and ensuring the teams have joint coverage on all items. They have taken some very deliberate steps to build on the positive steps they have taken so far but they will certainly build on the existing mechanisms they have for public involvement and awareness and he appreciates the theme that was raised along those lines. He said he will be providing regular updates on their joint federal activities and Tribal/federal efforts so the meetings will be a mix of substance and updates. He noted the draft ordinance is the only version and if there is additional product they will have it in February and do their best to get those out.

## **9. Other**

Duane asked if there were further updates or subjects. James Steele Jr. noted that he had the honor and privilege of attending the President's meeting with the Tribes in Washington DC and to see the active participation of the federal team. It was very important to see that commitment from the President to meet with the Tribes every year. They have seen good movement from the top down in terms of administration. They are looking forward to seeing a sunset of the Interior Office of the Special Trustee (OST) which should have been done before and those functions put back in the BIA. For the Tribe they are dealing with land issues, right of way issues, etc. in addition to water. He hopes there will be money left in the federal treasury when they get closer to the settlement. Recently he met with the large land-based Tribes in the Northwest calling themselves the Council of Plateau Tribes – water will be an issue and he is encouraged by that coordination.

Duane said he appreciated the class of Two Eagle River School attending and thanked them.

## **10. Next Negotiating Session**

**February 24<sup>th</sup> 2010** is the next negotiating session and the Tribe will be chairing that meeting.

Susan said thinking through the schedule the Commission staff will send out a mailing of the dates they have chosen for 2010 and will send out contact information in case people don't check on the websites.

Meeting adjourned.