



Stan Stephens
Governor

Chris D. Tweeten, Vice-Chairman
Carl M. Davis
Everett C. Elliott
Gene J. Etchart

Jack E. Galt, Chairman

Dennis Iverson
Joseph P. Mazurek
W. Gordon McOmber
Gary Spaeth

STATE OF MONTANA

July 19, 1990

The Honorable C. Bruce Loble
Chief Judge
Montana Water Court
P.O. Box 879
Bozeman, MT 59771-0879

Dear Judge Loble:

In compliance with Section 85-2-705, Montana Code Annotated, the Montana Reserved Water Rights Compact Commission hereby submits to you its biannual report on negotiations with the federal agencies and Indian tribes.

The activities of the Commission and its staff continue to be focused on negotiations with the Northern Cheyenne and with the three tribes in the Milk River basin. Recent developments include the introduction of federal legislation to authorize the repair and enlargement of the Tongue River Dam and the appointment of one federal negotiating team for all three of the tribal negotiations on the Milk River.

Communications continue with the other tribes and federal agencies claiming reserved water rights in Montana as appropriate. Please do not hesitate to contact me for further information. We are looking forward to seeing you at the Commission meeting on July 27, 1990.

Sincerely,

Jack E. Galt
Senator Jack E. Galt *by MBR*
Commission Chairman

c: Commission Members
Richard Whitesell
Richard Aldrich
Robert Delk
Marcia Beebe Rundle

Marcia Beebe Rundle
Legal Counsel/Program Manager
1520 East Sixth Avenue
Helena, Montana 59620-2301
(406) 444-6341

TRIBE: Assiniboine and Gros Ventre Tribes of the Fort Belknap Reservation

UPDATE: July 15, 1990

During the past six months, technical staff representing the Compact Commission and the Water Policy Committee for the Fort Belknap Tribes have continued to meet and technical analysis has progressed. In response to requests from the Fort Belknap, Blackfeet, and Rocky Boy's Tribes, the U.S. Department of the Interior appointed one team to represent the United States in all the negotiations on the Milk River. The Fort Belknap Tribes have been instrumental in establishing cooperation among the Milk River Tribes in the process of negotiations of reserved water right claims.

MEETINGS HELD:

January 8, 1990 - A Commission member attended the January meeting of the Milk River Irrigation Districts to inform the irrigators about the Commission, reserved water rights, the progress of negotiations with the Fort Belknap Tribes, and to invite their involvement in the process. Subsequent to the meeting, the Commission wrote to the districts inviting the designation of members to attend meetings and to provide information to the Commission on behalf of the irrigators.

January 25, 1990 - The Commission Negotiating Team met to consider six legal conclusions that the Tribes had proposed be included in a Memorandum of Understanding to guide the negotiations and to consider the Tribes' proposal that subcommittees be created to develop a consensus on technical methodologies, if possible.

February 15, 1990 - Representatives of the Commission Negotiating Team, the Water Policy Committee of the Fort Belknap Tribes, and the federal negotiating team met to discuss the proposed legal conclusions and the proposal to create technical subcommittees. The federal team expressed its agreement with the proposal from the Tribes and the State that the same members be appointed to the federal teams for all the reservations in the Milk River basin. Technical subcommittee meetings were scheduled for the next month.

March 4, 1990 - Representatives from the Fort Belknap Tribes, the Bureau of Reclamation, the Bureau of Indian Affairs, and the Compact Commission met in Denver to discuss an arability classification system for the Fort Belknap Reservation. The technical staff who participated developed a joint recommendation for a soil classification system.

May 11 and June 11, 1990 - Representatives from the Fort Belknap Tribes, the Bureau of Reclamation, the Bureau of Indian Affairs, the U.S. Geological Survey, and the Compact Commission met in Helena to discuss the hydrology of the Milk River. A joint recommendation was developed for a methodology to determine the natural flow of the Milk River at Harlem, Montana. The method creates a synthesized flow record for the period from 1937-1986.

June 27, 1990 - A delegation from the Fort Belknap and the Rocky Boy's Reservations met with representatives of the Commission to express their concerns about the newly adopted guidelines and procedures for the federal negotiating teams. In response to their concerns, letters were sent to the U.S. Department of the Interior from the chairman of the Commission and the Governor.

TECHNICAL WORK IN PROGRESS:

The Commission staff is proceeding with the determination of the amount of feasibly irrigable land, analysis of existing and historic irrigation, and synthesis of the historic record for natural flows of the Milk River.

TRIBE: Blackfeet

UPDATE: July 15, 1990

In response to requests from the Fort Belknap, Blackfeet, and Rocky Boy's Tribes, the U.S. Department of the Interior appointed one team to represent the United States in all the negotiations on the Milk River. The Blackfeet Business Council affirmed by resolution its intention to cooperate with the other Milk River Tribes in negotiations. It is our understanding that representatives of all three tribes in the Milk River basin have been meeting over the past several months to discuss technical and legal issues relating to their reserved water right claims.

TECHNICAL WORK IN PROGRESS:

Identification of additional data needs and sources for technical analysis of the land and water resources on the Blackfeet Reservation is in progress.

TRIBE: Chippewa-Cree Tribe of the Rocky Boy's Reservation

UPDATE: July 15, 1990

Early in 1990, the Commission was informed that the Chippewa-Cree anticipated submitting a proposal to quantify their reserved water right claims by June 1. In June the Tribe reported that the proposal would not be submitted until later in the year. It is our understanding that representatives of the Chippewa-Cree continue to meet with the other Tribes in the Milk River basin to develop a consensus on water quantification, management, and development issues.

MEETINGS HELD:

June 27, 1990 - A delegation from the Fort Belknap and the Rocky Boy's Reservations met with representatives of the Commission to express their concerns about the newly adopted guidelines and procedures for the federal negotiating teams. In response to their concerns, letters were sent to the U.S. Department of the Interior from the chairman of the Commission and the Governor.

TECHNICAL WORK IN PROGRESS:

Identification of additional data needs and sources for technical analysis of the land and water resources on the Rocky Boy's Reservation is in progress.

TRIBE: Confederated Salish & Kootenai Tribes of the Flathead
Reservation

UPDATE: July 15, 1990

The Commission continues to maintain communications
with the Confederated Tribes when pertinent issues
arise.

TRIBE: Crow

UPDATE: July 15, 1990

There have not been any recent communications concerning negotiations between the Crow Tribe and the Commission because of the focus of the adjudication on the Milk River Basin.

TRIBE: Northern Cheyenne

UPDATE: July 15, 1990

During the past six months, negotiations and technical discussions with the Northern Cheyenne were among the top priorities for the Compact Commission. Beginning in January, numerous meetings between the Commission Negotiating Team and representatives of other state agencies were held to develop a response to the settlement proposal submitted in late 1988 by the Tribe. Two series of public meetings were held to inform local water users in Ashland and Miles City about the Northern Cheyenne proposal and to obtain comment. A formal response was mailed to the Tribe in May. Discussions among the parties continue to define areas of agreement and disagreement on numerous issues.

MEETINGS HELD:

Negotiating Team Meetings - January 5, 1990; January 23, 1990; February 13, 1990; March 12, 1990; March 29, 1990; April 9, 1990; April 26, 1990; May 11, 1990; June 6, 1990.

Seven meetings were held between January 5 and the end of April to gather input from the Attorney General's Office, the Governor's Office, the Montana Department of Natural Resources and Conservation, and the Montana Department of Fish, Wildlife and Parks, and to develop a response to the Northern Cheyenne proposal. Meetings were held in May and June to analyze the Tribe's reaction to the Commission's response and to plan a summer negotiating schedule.

Public Meetings - February 7, 1990 and April 16, 1990.

The Commission's Negotiating Team held public meetings in Ashland and Miles City on two occasions to explain the doctrine of reserved water rights, the statutory authority of the Compact Commission, and key aspects of the Tribe's settlement proposal. Public comments on water availability, rehabilitation of the Tongue River Dam, and potential conflicts with the Tribe's claim were received.

Meetings with the Northern Cheyenne Tribe - March 13, 1990 and June 21, 1990.

In March representatives of the Commission and the Northern Cheyenne met to discuss methodologies to

determine irrigable acres. The participants agreed to exchange soils information and to meet again at a later date. The participants also analyzed proposed Congressional legislation to rehabilitate and enlarge the Tongue River Dam.

In June the members of the Commission Negotiating Team, the Northern Cheyenne Water Policy Committee, and the federal negotiating team met informally to discuss the Tribe's response to the Commission's settlement proposal, to define the extent of the differences between the two proposals, and to decide how to proceed with negotiations. As a result, two meetings were planned for July.

The topics discussed at the first meeting on July 11, 1990 included the Tribe's proposal to satisfy part of their water right from Yellowtail Dam and possible formulas to calculate the respective shares of the state and federal governments in the cost of rehabilitation and enlargement of the Tongue River Dam. The second meeting is scheduled for July 26, 1990 and will include discussion of the quantification methodologies utilized by the state, federal and tribal technical experts.

Tongue River Dam Steering Committee - January 16, 1990; February 27, 1990; March 27, 1990; May 1, 1990; June 5, 1990; July 10, 1990.

The chairman of the Commission was invited to serve on this committee, which was established by the Montana Department of Natural Resources and Conservation to coordinate information on the rehabilitation and costs of the rehabilitation of the Tongue River Dam, which is a state-owned project. Discussions have included design specifications, Congressional legislation, and fish and wildlife enhancement and mitigation.

CONGRESSIONAL DEVELOPMENTS:

On April 26, 1990, Senator Conrad Burns and Senator Max Baucus introduced S2524, a bill to provide for the "repair and enlargement of the Tongue River Dam, to settle water right claims of the Northern Cheyenne Tribe, and to enhance habitats of fish and wildlife." No hearings have been scheduled to date.

TECHNICAL WORK IN PROGRESS:

The technical, legal and historical staff research is essentially complete. Completion of the final staff report is planned by August 1, 1990.

TRIBE: Turtle Mountain Band of Chippewa Indians

UPDATE: July 15, 1990

The technical, legal and historical staff research anticipated at this time is essentially complete. Completion of the final staff report is planned for this fall.

AGENCY: National Park Service

UPDATE: July 15, 1990

There have not been any recent communications concerning negotiations between the National Park Service and the Commission because of the focus on the adjudication on the Milk River Basin.

AGENCY: United States Department of Agriculture for the United States Forest Service, the Range and Livestock Experiment Station, and the Sheep Experiment Station

UPDATE: July 15, 1990

There have not been any recent communications concerning negotiations between the United States Department of Agriculture and the Commission because of the focus on the adjudication on the Milk River Basin. However, because the Department of Agriculture has submitted claims to the Tongue River for the Range and Livestock Experiment Station, staff analysis of those claims has been started.

AGENCY: United States Bureau of Land Management as
Administrator of the Wild and Scenic Missouri River

UPDATE: July 15, 1990

During the past six months, the development of a computer model of the historic water uses and water flows in the Missouri River basin continued. A meeting of the Missouri River Water Availability Study Technical Task Force is scheduled for July 30, 1990. Participants on the Task Force include representatives of the Commission and the Bureau of Land Management. It is expected that the data obtained from the model will provide useful information for the negotiations concerning the reserved water rights claimed by the Bureau for the Wild and Scenic Missouri River.

AGENCY: United States Fish and Wildlife Service

UPDATE: July 15, 1990

All the legal, technical and historical analyses anticipated at this time have been completed for over a year. Completion of the final staff report is planned for this fall.



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TRIBE: Assiniboine and Gros Ventre Tribes of the Fort Belknap Reservation

UPDATE: July 15, 1990

During the past six months, technical staff representing the Compact Commission and the Water Policy Committee for the Fort Belknap Tribes have continued to meet and technical analysis has progressed. In response to requests from the Fort Belknap, Blackfeet, and Rocky Boy's Tribes, the U.S. Department of the Interior appointed one team to represent the United States in all the negotiations on the Milk River. The Fort Belknap Tribes have been instrumental in establishing cooperation among the Milk River Tribes in the process of negotiations of reserved water right claims.

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TECHNICAL WORK IN PROGRESS:

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TRIBE: Blackfeet

UPDATE: July 15, 1990

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UPDATE: July 15, 1990

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UPDATE: July 15, 1990

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TECHNICAL WORK IN PROGRESS:

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TRIBE: Turtle Mountain Band of Chippewa Indians

UPDATE: July 15, 1990

The technical, legal and historical staff research anticipated at this time is essentially complete. Completion of the final staff report is planned for this fall.

AGENCY: National Park Service

UPDATE: July 15, 1990

There have not been any recent communications concerning negotiations between the National Park Service and the Commission because of the focus on the adjudication on the Milk River Basin.

AGENCY: United States Department of Agriculture for the United States Forest Service, the Range and Livestock Experiment Station, and the Sheep Experiment Station

UPDATE: July 15, 1990

There have not been any recent communications concerning negotiations between the United States Department of Agriculture and the Commission because of the focus on the adjudication on the Milk River Basin. However, because the Department of Agriculture has submitted claims to the Tongue River for the Range and Livestock Experiment Station, staff analysis of those claims has been started.

AGENCY: United States Bureau of Land Management as
Administrator of the Wild and Scenic Missouri River

UPDATE: July 15, 1990

During the past six months, the development of a computer model of the historic water uses and water flows in the Missouri River basin continued. A meeting of the Missouri River Water Availability Study Technical Task Force is scheduled for July 30, 1990. Participants on the Task Force include representatives of the Commission and the Bureau of Land Management. It is expected that the data obtained from the model will provide useful information for the negotiations concerning the reserved water rights claimed by the Bureau for the Wild and Scenic Missouri River.

AGENCY: United States Fish and Wildlife Service

UPDATE: July 15, 1990

All the legal, technical and historical analyses anticipated at this time have been completed for over a year. Completion of the final staff report is planned for this fall.

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STATE OF MONTANA

January 15, 1990

The Honorable W. W. Lessley
Chief Judge
Montana Water Court
P.O. Box 879
Bozeman, MT 59771-0879

Dear Judge Lessley:

In compliance with Section 85-2-705, Montana Code Annotated, the Montana Reserved Water Rights Compact Commission hereby submits to you its biannual report on negotiations with the federal agencies and Indian tribes.

For the past six months, the activities of the Commission and its staff have been focused on negotiations with the Northern Cheyenne and with the Fort Belknap Tribes. The Blackfeet, the Chippewa-Cree of the Rocky Boy's Reservation, and the Assiniboine and Gros Ventre of the Fort Belknap Reservation are currently working on development of a joint proposal to the Compact Commission.

Communications continue with the other tribes and federal agencies claiming reserved water rights in Montana as appropriate. Please do not hesitate to contact me for further information.

Sincerely,

Jack E. Galt

Senator Jack E. Galt *by MR*
Commission Chairman

c: Commission Members
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Legal Counsel/Program Manager
1820 East Sixth Avenue
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TRIBE: Assiniboine and Gros Ventre Tribes of the Fort Belknap Reservation

UPDATE: January 15, 1990

During the past six months, the Compact Commission and the Water Policy Committee for the Fort Belknap Tribes have continued to meet and technical analysis has progressed. In response to joint correspondence from the Commission and the Council, the U.S. Department of the Interior formally designated a federal team to participate in the negotiations. In addition, the Fort Belknap Tribes initiated meetings with representatives of the Blackfeet and the Chippewa-Cree Council from the Rocky Boy's Reservation to discuss a joint proposal from the three tribes to the Commission.

MEETINGS HELD:

July 28, 1989 - The Commission's negotiating team and the Fort Belknap Water Policy Committee met in Helena, with representatives of state and federal agencies and the technical experts for the Tribes in attendance. The concept of using a memo of understanding to structure the negotiations was discussed in detail. The Water Policy Committee and the Commission representatives agreed to make a joint request in writing to the Secretary of the Interior to appoint a federal team to participate in the negotiations. The Commission staff presented technical work completed to date on the soil and water resources on the reservation.

August 24, 1989 - Representatives from the Fort Belknap Water Policy Committee, the U.S. Department of the Interior, and the U.S. Department of Justice met informally in Billings, Montana. The participants discussed the possibility of developing a comprehensive state-tribal management plan for the Milk River in concert with the negotiations to quantify reserved water rights. The Commission requested permission to conduct field studies on the reservation as soon as possible.

September 25-29 - Three staff members and the chairman of the Commission's negotiating team conducted field studies on the reservation to verify SCS soil survey data and to field check satellite imagery. They also

visited existing and proposed reservoir sites and existing and proposed irrigation systems.

November 30, 1989 - The Water Policy Committee and the Commission's negotiating team met in Fort Belknap to discuss substantive provisions that the Tribes propose be included in the proposed memo of understanding. The participants agreed upon the need to establish a formal process for public participation in the discussions, particularly by the water users in the basin. The Tribes proposed that joint technical subcommittees be established to recommend appropriate criteria and develop methodologies to resolve technical issues.

December 11-12, 1989 - As part of the meetings in Washington, D.C. with Congressional and agency staff members, representatives of the Commission and of the Department of Natural Resources and Conservation discussed progress on rehabilitation of the Milk River Irrigation Project and potential development of water storage on tribal lands in the basin.

December 15, 1989 - The Commission's negotiating team for the Fort Belknap Reservation met to discuss the timeline for negotiations with the Tribes, the status of technical work, and the legal issues raised in the November 30, 1989 meeting with the Water Policy Committee.

TECHNICAL WORK IN PROGRESS:

The Commission staff continues to analyze technical data on land and water resources on the Fort Belknap Reservation. Design and analysis of irrigation systems will proceed this spring. Research also continues on legal and historical issues.

TRIBE: Blackfeet

UPDATE: January 15, 1990

On November 20, 1989, the Blackfeet Tribal Business Council adopted two resolutions dealing with reserved water rights. Resolution Number 45-90 designated five council members and the director of the Water Resources Department as the Council's representatives for purposes of negotiations with the Commission. Resolution Number 46-90 affirmed the Council's intent to cooperate with the Chippewa-Cree Tribe of the Rocky Boy's Reservation and the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation to work toward the development of a joint water rights proposal.

MEETINGS HELD:

September 7, 1989 - Councilman Lloyd Reevis and Steve Pollock, director of the Blackfeet Water Resources Department, attended the Commission meeting and reported on discussions between the three tribes in the basin to develop a joint proposal.

December 11-12, 1989 - As part of the meetings in Washington, D.C. with Congressional and staff members, representatives of the Commission and of the Department of Natural Resources and Conservation discussed progress on rehabilitation of the Milk River Irrigation Project and potential development of water storage on tribal lands in the basin.

December 15, 1989 - Councilman Lloyd Reevis and Roy Johnson, acting director of the Blackfeet Water Resources Department, attended the Commission meeting and provided the Commission with copies of the recently passed resolutions.

TRIBE: Chippewa-Cree Tribe of the Rocky Boy's Reservation

UPDATE: January 15, 1990

The Chippewa-Cree Tribal Council has agreed to cooperate with the Blackfeet Tribe and the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation to work toward the development of a joint water rights proposal for the Milk River Basin.

MEETINGS HELD:

December 11-12, 1989 - As part of the meetings in Washington, D.C. with Congressional and agency staff members, representatives of the Commission and of the Department of Natural Resources and Conservation discussed progress on rehabilitation of the Milk River Irrigation Project and potential development of water storage on tribal lands in the basin.

TECHNICAL WORK IN PROGRESS:

Identification of data needs and sources for technical analysis of the land and water resources on the Rocky Boy's Reservation is in progress.

TRIBE: Confederated Salish & Kootenai Tribes of the Flathead
Reservation

UPDATE: January 15, 1990

The Commission continues to maintain communications with the Confederated Tribes. A representative from the Water Resources Department of the Tribes attended the Commission meeting on April 28, 1989.

TRIBE: Crow

UPDATE: January 15, 1990

There have not been any recent communications concerning negotiations between the Crow Tribe and the Commission because of the focus of the adjudication on the Milk River Basin.

TRIBE: Northern Cheyenne

UPDATE: January 15, 1990

During the past six months, representatives of the Northern Cheyenne Tribe and the Compact Commission have maintained close communication with the goal of producing a settlement by mid-1990 for introduction to the 1991 Montana legislature. A federal negotiating team has been appointed. State and Northern Cheyenne representatives traveled to Washington, D.C. to discuss funding for the repair and enlargement of the Tongue River Dam.

MEETINGS HELD:

July 21, 1989 - Representatives of the Tribe and the Commission met informally in Helena to discuss technical studies. Issues included Tongue River Dam spillway design and updated soils information.

September 7, 1989 - The Commission's negotiating team met to discuss and formulate a response to the Tribe on some key points in the Compact proposal. Historical and legal research to date was summarized and staff was authorized to draft a response to the Tribe on key issues of priority date and reservation purpose.

October 25, 1989 - Members of the Commission's negotiating team met in Billings with technical staff to review work-in-progress and discuss various issues including priority dates and reservation purposes.

October 26, 1989 - The Commission's negotiating team and Commission staff traveled to Lame Deer for negotiations with tribal representatives. Discussions focused on issues of priority dates and purposes of the reservation as well as timelines for completion of technical work and plans for public meetings. The group also toured the Tongue River Dam.

December 11, 12, 1989 - Representatives of the Commission, the Department of Natural Resources and Conservation and the Northern Cheyenne Tribe traveled to Washington, D.C. to meet with Congressional and agency staff regarding the repair and enlargement of the Tongue River Dam which is considered to be essential to resolution of water rights issues between the Tribe and the State.

December 15, 1989 - The Commission's negotiating team met to hear reports on the discussions held in Washington and to follow-up on the October 25th negotiating sessions. The Commission's technical staff also presented workplans and timelines for completion of technical work.

TECHNICAL WORK IN PROGRESS:

Staff technical analysis of the October 1988 Northern Cheyenne Tribe's Compact Proposal has accelerated. Technical meetings have been held to discuss issues which need resolution. Technical work is currently focusing on identification of irrigable lands and water availability in the Tongue and Rosebud drainages.

TRIBE: Turtle Mountain Band of Chippewa Indians

UPDATE: January 15, 1990

Commission staff and members have been in communication with representatives of the Turtle Mountain Band of Chippewa Indians to discuss a mutually agreeable process for determining the federal reserved rights for the Turtle Mountain allotments in Montana.

AGENCY: National Park Service

UPDATE: January 15, 1990

There have not been any recent communications concerning negotiations between the National Park Service and the Commission because of the focus of the adjudication on the Milk River Basin.

AGENCY: United States Department of Agriculture for the United States Forest Service

UPDATE: January 15, 1990

There have not been any recent communications concerning negotiations between the Forest Service and the Commission because of the focus of the adjudication on the Milk River Basin.

AGENCY: United States Bureau of Land Management as
Administrator of the Wild and Scenic Missouri River

UPDATE: January 15, 1990

During the past six months, the Missouri River Water Availability Study Technical Task Force was created to agree on the design of a computer model of the historical water uses in the basin and the historical operations of the mainstem reservoirs and hydropower facilities. The Task Force is also addressing water quality concerns associated with the natural arsenic concentrations in the river.

Members on the Task Force include representatives of the Montana Power Company, the Compact Commission, the Montana Department of Fish, Wildlife and Parks, the Montana Department of Health and Environmental Sciences, the Montana Association of Conservation Districts, the U. S. Bureau of Reclamation, the Army Corps of Engineers, the U. S. Bureau of Land Management, the U. S. Geological Survey, and the Montana Department of Natural Resources and Conservation.

MEETINGS HELD:

September 27, 1989 - The Task Force met to discuss the purpose of the group and to assign technical tasks to members of the group.

October 11, 1989 - The Arsenic Subcommittee met to discuss the approach to be taken to incorporate water quality information into the computer model.

October 16, 1989 - The Technical Subcommittee met to develop the criteria to be used in the model and to agree on the data to be used as input.

October 27, 1989 - The Task Force met to discuss the results and recommendations from the subcommittees and to identify potential uses for the water availability information.

It is anticipated that data concerning historical uses will be useful for many purposes, including providing information for the negotiations on the reserved water rights for the Wild and Scenic Missouri River.

AGENCY: United States Fish and Wildlife Service

UPDATE: January 15, 1990

The Commission maintains communications with the representatives of the U.S. Fish and Wildlife Service. Because of scheduling difficulties, no meetings have been held the past six months.