

COMMISSION UPDATE - CSKT

11/15/02

CLAIMS EXAMINATION:

July 2, 2002 meeting in Helena – Tribes presentation agree to go forward with DNRC claims examination. Start with Jocko Drainage

July 17, 2002 – Negotiation session

August 14, 2002 – claims examination meeting in Helena, discussed claims and FTE's (avail. Oct. 1).

August 23, 2002 – We forward a packet of information to federal and tribal parties on claims examination for compacts and included a draft letter to Judge Loble and proposed draft order for the water court to order DNRC to commence claims examination.

September 17, 2002 – work group meeting, general discussion on logistics but not proposed on order.

September 18, 2002 – We set up a meeting for CSKT with Judge Loble so that they could discuss their concerns with sovereign immunity and that the order contain some type of language that prevents DNRC from forwarding its summary report to the Judge so that it would be impossible for a decree to issue (only talking about Jocko Drainage). Nason – summary report could not be forwarded anyway b/c not complete. Judge graciously agreed to consider language. Matt represents that we are considering Tribes proposal.

October 1, 2002 – We received a redraft of the proposed order from the Tribes and the federal teams including a limited waiver of sovereign immunity. Commission concern over waiver and confusion as to what claims would be examined. (Tribes focused on nature of claim [state-based v. reserved] while commission focused on land status.

October 7, 2002 – Conference call for claims examination work group. We expressed concern over, among other things, limited waiver of sovereign immunity, and stated that we would have to add language to address our position on waiver. Tribes wanted to see language on waiver. We stated that we would forward. Also discussed concerns over basing order on nature of rights v. land status.

October 8, 2002 am – fax Commission's waiver language.

October 16, 2002 – After having no response from the Tribes on the waiver language, we forward a set of comments on their redraft of the proposed order.

No response, although we understand that the federal team has made a redraft of our comments and is waiting to discuss it with the Tribes.

INTERIM/ADMIN:

July 17, 2002 – Negotiation Session – presented outline of interim plan to public. Copy

August 14, 2002 – Workgroup meeting in Helena. Progress made on filling out a process. Feds raise for first time that license must be unilaterally revocable at will by Tribes. Everyone agrees to study further and feds will try to come with alternatives. Tribes discuss possible criteria but nothing in writing. Tribes to provide written definitions and criteria for next meeting and state to provide language on enforcement.

August 19, 2002 – Draft outline from feds based on 8/14 meeting.

September 16-17, 2002 – Workgroup meeting in Helena. Tribes hand out own outline on plan. No alternatives on unilaterally revocable at will license – take it or leave it. Staff suggests alternatives on review boards and timing of review board in process. Tribes want tribal majority on board and at initial stage and review pending <35 gpm. Staff provides enforcement language for nontribal members. Tribes – no written criteria/definitions. State again expresses that unilaterally revocable at will not work.

September 19, 2002 – Staff sends letter to feds requesting position on licenses to be put in writing.

September 26, 2002 – Team Conference Call on unilaterally revocable at will license issue.

October 2, 2002 – Having heard no response, Commission sends letter to Tribes stating a) not considering proposal; b) unilaterally revocable at will licenses will not work; and c) because no changes, will have to notify DNRC to move forward with Axe litigation.

November 5, 2002 - Workgroup meeting in Helena. Feds propose jointly revocable for cause licenses BUT unilaterally revocable agreement and licenses TERMINATE if agreement is revoked. No written Tribal criteria or definitions of categories of use. Tribes have not taken staff's suggestion on review board and timing to council. Position same on review board - tribal majority and at initial stage. No progress on any other element of agreement. See list of outstanding elements. Agreed to take to public at negotiation session ASAP so that everyone hears same thing. Staff very concerned with proposal. Tribes have a different view. Carter – 708 redraft (dated 9/5/02). RWRCC handed out sample Wisc. ADR language.

November 7, 2002 – staff sends list of potential MOA/MOU provisions to feds at feds request (11/5).

November 14, 2002 – Outline of Interim Plan from federal team with language on null/void licenses if agreement terminates or expires.