

Sonja - let me know if
I've got anything wrong pls!
Joan I have the attachment

MEMORANDUM

TO: Susan Cottingham, Jay Weiner, Sonja Hoeglund, CSKT Negotiating Team; CSKT Minute Files
FROM: Joan Specking
RE: CSKT Minute Summary from July 11, 2007 Negotiating Session, Pablo, Montana
DATE July 11, 2007

Chair: James Steele, Jr.

Agenda (Attachment 1)

I. Opening Prayer and Opening Songs

A prayer and song were presented.

II. Introductions

Introductions were made around the room. (Attachment 2, Sign-in Sheet)

A council member explained that they are looking for a better way to impact future generations on the Reservation, live with each other and enjoy the things they need. Water is the main resource they have and it's about how to take care of it and how long it will be here for everybody. If they destroy the water they are losing out. There was another song presented. Clayton Matt noted that an addition to the agenda was being distributed also. (Attachment 3)

III. Opening Statements

- CSKT – Chairman James Steele Jr. greeted visitors and teams and said the Council was looking forward to the discussion, particularly regarding technical work on the Jocko River area. He explained that this has been a long process and said if the parties do not come to agreement they will all be in court; negotiations are far better than being in court. He said the Tribe is working on the technical part of their initial proposal as relates to surface and sub-surface waters. He recalled some history about the treaty of 1855 and said the Tribe intends to extend their self-determination over the Reservation as much as possible. He said there is often the perception that if negotiations fail it is the Tribe's fault. He added that the Salish Kootenai Pondera people are tough and they were put there to protect what the creator gave them. Many Montanans forget that the Salish Kootenai gave up a huge chunk of land.
- RWRCC – Chris Tweeten said he was pleased to bring his team and be there to continue discussions regarding settlement of water rights on the Reservation. He said many share the ideas regarding crafting something for the future. He said he appreciated the opportunity to share the cultural display offered this morning and the Commission is excited to get back to the table, resolve issues, and come up with a solution that is beneficial to everyone. They are anxious to hear about the technical work the Tribe has been doing over the months and are optimistic about solving the issues.

- United States – Duane Mecham expressed his appreciation to the Tribe for hosting the meeting and noted that the federal team is being reconstituted because some people have retired. He said, regarding the Indian water settlements, the federal government has a good track record and they do this by setting up teams to bring in the federal interests. The team is prepared to be as proactive as they can with active negotiations.

III. Tribal Presentation

Introduction – Clayton Matt. He noted the last meeting was in October of 2002 when they discussed an idea for technical work. The Tribe has prepared a quantification proposal and he hopes it will form a basis for ongoing discussions. He said Reservation residents need certainty in the process and the Reservation needs protection. They have been observing growth in this area since before the creation of the Reservation. The Tribal Council has competent staff to help protect the homeland. The negotiation process will help define water rights. Both sides have begun litigation preparations due to the Commission sunset deadline in 2009. The Tribes are required to file claims in the Montana Water Court and in litigation all junior users will be measured against the senior Tribal water rights. In that situation, the Water Court, not negotiation teams, will decide the fate of the water rights and they won't be able to negotiate technical solutions. A court process will most likely result in a convoluted and complicated system of administration that would be inefficient and would not provide certainty. They believe negotiations can provide certainty and resource security. Since the last session the parties attempted to negotiate an interim agreement which was terminated several years ago; claims examination by the State is ongoing on the Reservation; the Tribe has shared its baseline model for the Jocko and the Tribe has proposed a way of advancing negotiations with respect to the Flathead Irrigation Project. That proposal has generally been accepted by local water users except for how it will work administratively. The Tribe and the State of Montana have agreed in concept to a stay of Ciotti IV litigation although the Tribe has not yet seen proposed language. Last but not least, groundwater wells are still being drilled. Today's presentation will show in the broadest sense how the Tribe through the claim process could claim all the water. For negotiation purposes they propose to protect all existing uses; they believe they can find technical and administrative solutions to protecting those existing uses and they believe a unitary system of administration will be the best. Technical and administrative solutions should be the subject of their negotiations.

Cultural Overview – Marcia Pablo of the CSKT Preservation Office gave a presentation on the lands and other natural resources and their long term cultural relationship to the CSKT. She works with Kevin Askan, also of the Preservation Office to record historic and archeological sites using modern GPS and GIS equipment. Kevin gave a power point presentation showing archeological and historical sites on the Reservation, focusing on the Jocko River area. He put overlays of maps from 1895 with historic trails and place names on the CSKT surveys. Video and audio is recorded on cultural areas and findings by the Preservation Office. The maps showed river crossings and various sites used along the river. Tools and other items under the soil have been discovered in many of these locations. He explained some of the place names also. CSKT Preservation Office now has sites where they can make historic tools, etc. thus perpetuating the use of the various historic areas for the present and future.

Technical Presentation and Proposal – Clayton Matt introduced Ron Billstein and Wade Irons from HKM in Billings.

- Ron Billstein began his overview by explaining HKM's experience in water issues with successful compacts in Montana. He said that amidst reservations in Montana, Flathead is unique due to extensive surface and groundwater resources which will be significant in enabling the parties to reach creative solutions. Flathead Reservation also has an 1855 Stevens' treaty which makes it unique from other tribes in the area – it allows for fisheries flows. Primary consumptive use on the Reservation is for irrigation, so he directed most of his comments to that use. However, he said he understands that non-irrigation consumptive uses and future planning of those are very important to a lot of people. Using a map he showed categories of land on the Reservation and pointed out about 168,000 of historic irrigation, associated with Indian and non-Indian owned tracts, and as well as lands associated with former homesteads. He said the latter would probably be junior priority if the parties went to litigation. He pointed out that Walton right claims must show continuous ownership tracks as well as a history of use within certain time constraints, which could conceivably get people back to a treaty date priority date; however he said this could take a lot of time and money. He said there have been breakthroughs over the last several years in water rights negotiations; in particular one associated with the idea that federal projects or water uses could be assigned or allocated to a Tribal water right. It basically means a shared priority date at the treaty date level. It has been proposed in other settlements. On the Flathead Reservation the majority of irrigation use is associated with the FIIP. He indicated on the map lands served by the FIIP project which under a shared date would become part of the Tribal water right. The concept has been discussed with the Flathead Joint Board of Control; they would like to know how this would be implemented jurisdictionally and administratively. If this approach moves forward they've mitigated a huge amount of those issues. He discussed opportunities to rehabilitate the FIIP facilities which could free up water otherwise lost to non-beneficial uses and make the water available to everyone in the settlement. A big part of a solution will be getting financial resources from the State of Montana and the federal government to allow resource improvements. He said there will be detailed negotiations on each of these general points and that he is optimistic that it can be done in the next couple of years.
- Wade Irons showed mapped exhibits of current available water supply in the Jocko basin and in sub-basins in comparison with total composite water use in each sub-basin. His focus was the overall Jocko basin available water supply and he first presented a detailed explanation to the parties of categories of uses. Secondly, he showed the Tribes' initial claim if they went into litigation which included Tribal reserved rights for future uses; Indian owned historically irrigated acreage; Tribes' future irrigation reserve of water and feeder canal exports to supplement irrigation. He noted there is no non-Indian use under this scenario because all the water would go to the Tribe. Thirdly, he illustrated the Tribal proposal for unitary administration of water resources and their commitment to protecting existing verified water uses on the Reservation. The Tribe also needs to make more water available for expanded uses. Again, they would look to the State of Montana and federal government for monetary assistance for making improvements to free up water and make new water available to support the proposal.

Wade explained in detail the baseline conditions, the scenario if the Tribe was forced into litigation and third, the Tribes' current proposal. The Tribe would like to see a unitary

system with everyone sharing supplies and shortages. There is a limited amount of water available in the Jocko basin so there are only a few ways they can meet existing demands while at the same time freeing water and making new water available for future uses: some examples were reduction in export from Jocko basin through Tabor feeder canal; efficiencies to irrigation project and possibly efficiencies to improve farm lands. He illustrated improved efficiencies to the Jocko "K" Canal. He discussed bringing more water into the basin by reducing exports to the Mission basin. The proposal includes making improvements in the Mission basin. The existing conditions and the net effect of improvement were shown on his map. A driving objective of the Tribe is to free more water for ecological and cultural instream fisheries flows. He concluded by saying that what he has presented is conceptual but this proposal meets the objectives they talked about and is a good starting point for substantive negotiations on the technical side and on the administrative side.

V. Comments and Questions from Federal and State Teams

Clayton Matt said the Tribe has offered an opportunity and indicated that they don't have all the administrative or technical answers but they do have a lot of information to work on.

Chris Tweeten said it was really encouraging to be talking about water as there is always a tendency to discuss issues that cannot be settled. He agreed with Ron Billstein that there is a lot of resource to work on in terms of crafting a settlement and said the Commission is eager to study the proposal. He said they wouldn't ask substantive questions about the proposal at this meeting as they just received it and staff hasn't had time to consider questions. He also pointed out that there are four commission vacancies at this time (governor's appointees). He expressed appreciation for the proposal and hoped people would understand why the Commission is not prepared at this time to respond. He suggested the Commission staff get together with HKM to discuss the issues and he congratulated the CSKT for the substantial work done.

Duane Mecham said the federal team is encouraged by some of the conceptual points laid out as foundation building blocks. He echoed the State's encouragement that they work as quickly as possible on technical/legal aspects.

VI. Timeframe for Negotiations

Clayton Matt said if they are going to discuss time frames, unless things change it is set. Chris Tweeten said the legislature could extend the Commission in 2009. The drop dead legislative deadline is usually around the third week in February (2009). They need a draft prepared to go to the public far enough in advance of February 2009 to make the legislative deadline. Also, there would be the possibility of taking a compact to the 2011 legislature. They are talking about taking the Blackfeet compact to Congress first. The Commission is close to concluding the draft of Blackfeet which means some of the pressure on staff may lessen. They are prepared to bring staff resources onto this negotiation within the timeframe to move the process forward.

Clayton asked if they would be inclined to have a team meeting within the next several weeks. He said they are ready to set a schedule to start those discussions. Technical/legal teams would discuss background on issues and resolve as much as they could and they would bring their work to negotiating teams. They have models prepared for the rest of the Reservation and can

complete the models and get the information to the Commission rapidly. Each issue may include some significant discussion; there are administration and off-reservation issues; as well as the National Bison Range on the Reservation. It was suggested years ago that a U.S. Fish & Wildlife Service representative be included in meetings.

Chris Tweeten said Jay Weiner is taking vacation in August; however he would like to have another negotiating session after a legal/technical meeting, perhaps in mid-September or early October. Clayton asked to be emailed with a potential date.

VII. Other Issues

James Steele explained that the CSKT worked on SB450 the past session which would have extended the Commission. He explained the misunderstanding between the FJBC and their attorney who testified against the bill. Walt Schock submitted a letter to the CSKT explaining the misunderstanding (Attachment 4). Chairman Steele said he wanted to bring the issue up so they could all move on.

Clayton thanked everyone for coming and said they want to find a way to work together in negotiations. He said the people and the resource deserve it and if they don't settle, everyone suffers – the Tribe, the United States and individuals.

VIII. Public Comment

John Bruggerman remarked that what the Commission sunset bill did was to create leverage – and he said if there is progress being made he would be the first to carry an extension bill if necessary.

There were no other public comments.

IX. Schedule Next Meeting

The parties agreed to have a **negotiating session on October 11, 2007**, chaired by the Commission in Helena.

Meeting Adjourned.