

DRAFT MEMORANDUM

TO: Susan Cottingham; Jay Weiner; Sonja Hoeglund; Stan Jones, Bill Greiman, CSKT Negotiating Team; CSKT Minute Files
FROM: Joan Specking, RWRCC
RE: CSKT Minute Summary from July 30, 2008 Negotiating Session, Arlee, Montana, 9 a.m.
DATE July 30, 2008

Chair: Duane Mecham

Agendas (**Attachment 1**) were available. Duane thanked Clayton for arranging the meeting location and said they would begin the meeting with the opening prayer.

1. Opening Prayer

An opening prayer and song was presented by Michel Kenmile (?) (He was not introduced)

2. Introductions

Introductions were made around the negotiating table. A sign-in sheet was passed around the meeting (**Attachment 2**)

3. Opening Statements

Tribal Vice-Chair Bud Moran welcomed everyone to the beautiful community center in Arlee. He said a lot of great things have been accomplished and there's more to go and he looks forward to getting the challenges completed quickly.

Clayton Matt thanked everyone for being there and welcomed all the visitors to the home and homeland of the CSKT. He acknowledged that, although it seems like slow progress there has been a great deal of progress in the negotiations and again today people will see more of that. For the last several months they have been meeting on a monthly basis, and through this process they have developed a mutually agreed upon court order allowing for the technical examination of existing uses on the Reservation; they are developing an agreement to review and examine existing uses based on permits; they are in production of a draft law that would become the unitary administration ordinance for the Reservation; they are doing a number of technical items, in particular a series of hydrographs that will begin to define instream flow levels and basic hydrologic needs of the Tribe beginning with the Level 1 Hydrographs, moving on after they have agreed to that to Level 2 Hydrographs; they are in the process of developing canal seepage studies; they are doing groundwater work and certainly last but not least they have shared a lot of Tribal data that has been developed over many years. If that had not been developed and shared they would have had to go back to the drawing board and develop that basic hydrology about the way the system operates for the Tribe to share that information has been important to the Tribal Council and to the process. As Bud noted there is a lot of work to do but Clayton wanted to open by acknowledging that there has been a lot of good work; there will be some struggle and debate but there is a lot of good work and they want to acknowledge that and he thanked the State teams and the federal teams for their hard work in this process. He asked if anyone else from the Council wanted to say anything.

Ruben Mathias, Council Member welcomed everybody to the meeting and said the issue is about all the people, including the people who move there (to the Reservation). A lot of people talk about what this means to everyone and how they can share this among each other. He looks at his people and knows they are not greedy and they have to live together and everything there belongs to each and everyone of them. What they do reflects on the future of their children. They would like to leave behind them a better tomorrow for their children. It is a big accomplishment that they are sitting there together speaking the same languages, although they have in their own hearts their own languages. He said each person there has their own

traditions and he hopes they can take care of the water for everybody. They are sitting on a deadline that will come to an end next year and he'd like to see this settled out before then. Yesterday it was different because of the language barrier; the footprints on this land are all those people from yesterday; today they have to walk lightly – they cannot let the past ruin their future.

Chris Tweeten thanked Duane and said they endorse everything the Tribes and Clayton and Ruben have to say. There is a lot of work being done; a lot of it is not visible to people. They are glad the Council is willing to focus on these issues and to help move forward by letting others know about things the Council is willing to accept. He noted concessions made on both sides and said that is how negotiations move forward. In this case, the pace they are moving forward exceeds a lot of other compacts they have negotiated and they appreciate that the Council is willing to be so flexible and talk about all different kinds of ideas as they work on a goal they all share: to get the negotiations concluded and to come up with a compact that is fair and equitable on all sides, resolves the issues they need to resolve and provides a framework going forward for management of this most important resource on and off the Reservation. He truly hopes they can reach an agreement that allows everyone to share in that resource and use it in a constructive way to feed their families and take care of the wonderful resources they have on the Reservation. They are encouraged about the way things are going and they will continue to work hard; their staff is working very hard as are the Tribe's staff and they are getting great cooperation from the federal people and he's confident that ultimately they will reach a good agreement to help everyone.

Duane Mecham highlighted that it has been almost one year since the Tribe presented to the other teams in a public session, their well thought out proposal for settlement. It focused on the entire Reservation; all of the primary interests of the Tribe with respect to water resources and gave them a platform to continue the discussions. He echoed Chris's statement of appreciation of the Tribal Council's participation; his colleague David Harder and himself work on a lot of these settlements and it's not often they have time with actual council members so it helps them keep grounded and keep the true reason they are there. As they go forward he will have some other comments to make later in the agenda but he wanted to highlight that the federal team are focusing on transition for a new administration and there are a few things they should get prepared for as they go from one administration to another and plan for continuity and progress on their settlement. He moved to the next agenda item and noted the unitary management of water rights is a central issue to all Indian water settlements; this Reservation and situation provide unique challenges and they have been seeking to deal with those through fairly specific proposals which none of the teams have finalized but it is important to have an update on that. Yesterday they had a full day drafting session on the issue. Clayton commented that they are coming up on the question and answer period and the discussion of the unitary management proposal and technical items would be the basis for questions and answers.

4. Discussion of Unitary Management Proposal

Rhonda Swaney passed out an overview of the process components (**Attachment 3**). She noted that the Unitary Management Plan (**Attachment 4**) was meant to be adopted as parallel legislation by the State and the Tribe. They haven't defined that it will be word for word the same, but the intent is that the State and the Tribe would agree on this scheme of joint water management that will take a look at enforcement, issuance of water permits, future groundwater permits, water development and those kinds of things. They did present the draft ordinance; the Tribe did not have a chance to go through it in detail but they brought a few copies and it will be posted it on the CSKT website, www.cskt.org. She said there was an eight hour drafting meeting yesterday and there are a lot of changes so they will keep updating copies of it on the website edition. In terms of the draft overview, they are in discussion between the State, the Tribe and the federal government about administration, which both sides have agreed is the first thing to come to agreement on and have directed the attorneys to begin drafting those documents. Article IV will be Administration in the compact. The

ordinance is what is going to be included in that Article IV, or will describe that administration process. The compact will also include negotiated volumes of water for the Tribe's water right, their aboriginal instream flow rights, their existing reserved rights for irrigation, municipal, domestic and commercial and future reserved rights; those waters that they feel preserve the purposes of the Reservation but aren't yet appropriated. The compact will call for protecting all existing uses and by that they mean those claims for water rights that were filed for the State Water Court and covered uses prior to 1973 and permitted rights incorporated after 1973 and certificates for groundwater appropriation or exempt wells. All those existing uses will be recognized and protected whether or not they are non-Indian or Indian. The compact will also include a damage claim component; they haven't yet agreed on how this will go forward, but there will be a federal contribution and perhaps a state contribution because losses have incurred. All compacts have had that.

Summary of Draft Ordinance

Rhonda explained the draft ordinance which describes the administrative process for enforcing water rights, recognizing existing water rights and governing future appropriations in the ordinance which is currently 58 pages long. The first thing it calls for is a registration of negotiated volumes of water. They mean to ask every Tribal water right user to **register their current use of water** and proposed future uses and they plan to provide that accounting to DNRC and exchange information so they not only have negotiated volumes of water as well as who is using it and where it is being used. They will use that information, as well as the information provided by the State on existing water uses, to come up with an inventory so all the water on the Reservation, where it is being used, who is using it and the volumes being used in order to protect waters that are left for future development if that is possible. Another important component of the ordinance is the **clear protection of verified existing uses**. Everyone who has attempted to comply with the law and filed under State or tribal law will get this protection for existing uses. They will also accept on face value certificates for small domestic wells of 35 gpm or less and those will be accepted on the term issued. In 1996 the Tribes won a court case saying DNRC could not continue to permit water use without first identifying the Tribe's senior reserved rights. Because they have entered into a verification agreement with the State for how to verify those permits, the Tribes and/or the water management board won't be taking a look at them and they will accept the State's verification. For the wells drilled after that court case the water management board will be tasked with looking at those and confirming the terms and conditions of certifications issued. What is meant by confirmation has not been defined yet and it is something they expect the water management board to carry out. A very important component of the draft ordinance is **amnesty filings**. Amnesty filings are for those individuals who have never attempted to comply with State or Tribal law; they have dug a well and have not filed a well log with anyone or done any other filing. The amnesty filing provision would include a period which would allow those people to file their uses with the water management board. The ordinance also allows the Tribe to defer future reserved rights; those rights not yet appropriated but necessary for the fulfillment of purposes of the Reservation such as domestic, municipal, commercial or irrigation. The way it is drafted now, they would have a certain period of deferral, then if those waters could not be appropriated because the Tribes are protecting existing uses, the loss of that volume of water would be included in a **damages portion** of the compact. Rhonda said she views the most important part of the ordinance as **management and enforcement** by the water management board. Again, it will be joint management: two members from the Tribe, two from the State and a fifth, non-voting ex-officio federal representative. The board's duties include enforcing the terms of all permits issued, including those in a final decree of the water court; permits verified and certificates issued for groundwater. The board will have power and authority to declare abandoned in the case where there is water available but they fail to use it over a period. The water board will review all applications for new permits; they will have an inventory of existing uses, and they will develop a water resources conservation and development plan intended to guide future development on the Reservation. The board will have a variety of powers defined in the attached ordinance. This joint management entity is modeled after existing joint management boards on the Reservation where they jointly

management a resource. She said **the irrigation project (FAID) is considered an existing use** and it will be protected. Because they are in negotiations with the U.S. Department of Interior and the Joint Board of Control on transfer of operation and management of the project it is intended that the new cooperative management entity (CME) which would operate and manage the project on a day-to-day basis, using the amount of water protected under this ordinance. Future appropriation, use of excess water, are outside the boundaries of that protected existing use and would fall under the auspices of the water management board. However the ordinance will not manage the CME. Rhonda asked for questions:

When water is taken out of agriculture land for development, what will happen with the water – will the board decide where it goes? Rhonda explained that the board will take care of transfers, abandonment, changes of use, etc., so if there is a change of use within the irrigation district, the Dept. of Interior will continue to determine if it is accessible and how the water is used.

What about abandonment and what would happen if a person sold property to someone who didn't use all of the water for 5 or 6 years and then that buyer lost the property back to the original owner – would the original owner get preferred rights to get all of the water returned the way he sold it? Rhonda said the ordinance doesn't cover that in terms of a preference....but the water management board is expected to take all the facts into account.

Someone asked how the water management board will generate revenue or get appropriations to operate or have staff. Rhonda said it is not currently in the ordinance and she anticipated there will be an agreement in the compact as to how the water management board is funded. At a recent meeting the State acknowledged the cost there would be for a water management board so they anticipate there will be a two or three-way contribution by affected governments. The board can set small administrative fees to off-set costs.

Will the water board be able to maintain ditches and canals for irrigation? Rhonda said the CME would have responsibility for Project operation and maintenance – repairs, rehabilitation, etc. The BIA will retain ownership of the facilities and the CME will keep them operating.

If there is a four member board with one non-member, how will ties be broken? Rhonda explained that a quorum of the four member board will consist of three of the members; if there is a tie, the matter under consideration is deemed denied, which the State does not agree with but this is still a proposal and the parties are continuing to negotiate.

Duane thanked everyone for their questions and asked if the State or Tribe had comments. Chris Tweeten said they appreciate the work Rhonda has done on this and that it was very well thought out and clear presentation on the status of the unitary management proposal. If the talks proceed the way they have been the parties may end up with something unique in the west. They have the possibility to create a very elegant management system on this Reservation and provide good protection for the interests of all the people. The parties will continue to work hard and there will be a number of iterations of this document before it becomes something they can consider and take back to their principles for consideration. Within a reasonable period of time they will continue to make progress and be at a point where the Council and the people the Commission reports to in Helena will be able to do a review and determine whether it is something both sides can live with. Duane agreed that this is a unique solution and a local solution which is a theme the Tribe has focused on. He thanked Rhonda for her presentation and for putting the plan on the CSKT website. Council member Bud Moran said that the Tribal Council has reviewed the ordinance and have forwarded it to different parties; it looks favorable and they hope that they get positive feed back from the State

and move forward with it. It is a major thing and they realize that. This is the homeland of everyone in the valley and they want to do the right thing.

David Harder, DOJ attorney, said he works on water rights negotiations in half-dozen other states and it is commendable at this point in the negotiations for the Tribe to have put forth the administration issues. Those are often the most difficult issues the parties have to deal with and often are put off until the end. It was important for the Tribes to put forward their view of solutions on the administration questions in the midst of the negotiations and get those hard questions out and put forward a way, from their perspective, through all those issues. That was profound and very important. There is not agreement on all those questions but via the Tribes' initiative and hard work there is an excellent start. That needs to be understood both in terms of what's being put forward substantively and at the time it is being done.

5. Technical/Legal Items for Discussion

Clayton said an analogy of the process is like weaving a rug you continue to tighten as you pull the threads and issues of policy and law are woven in with technical issues. In this case, to make the proposal work, there are a number of technical items that come into play so that there is a relationship between administrative and technical issues. **Permit verification** is one of those. They talked about the claim verification process which was an established process. There was not an established process for permit or certificate verification. They have been negotiating a Memorandum of Agreement (MOA) to find a way in which the permits would be verified. Once the MOA is complete, the Montana DNRC would start field work within one to two weeks. So there would be not only claim verification ongoing but permit verification as well. CSKT would provide DNRC with an initial list of permits above the 120 irrigation permits that have not been field certified. Clayton asked the State and the US to speak on this also. Jay Weiner said they put a lot of work into this, going to the piece of the Tribe's proposal that protects existing uses. The reason they are talking about permit verification is so everyone has an understanding of, and good references for DNRC and Tribal NRD and ultimately for the proposed water management board to be able to administer the water uses that exist. The permit verification process in State law is a piece determining a permit has been perfected consistent with its terms. The commission staff has been working with the Tribes and with DNRC and this effort would not have been possible without the resources of DNRC particularly in Missoula and Kalispell Regional Offices. Jay thanked those offices and noted that DNRC staff has been scanning permit files so people can go on the DNRC website and see what those permits are. When it is finalized then DNRC will field verify permits; and that information will lead to how those permits will be protected under a parallel State law as Rhonda discussed. It is an important step for water management and they appreciate the efforts of the Tribes. Duane said they throw a lot of terms around in the course of these discussions but what has become evident to him is that in seeking to work through the commitment the Tribes have made to protect existing uses, there are many classes of those. This is a significant subset of the types of existing uses and the approach will ensure they are properly catalogued and brought under the roof of protected existing uses. He thanked the State for the effort and manpower put into this to make it a reality.

Clayton went on to the second technical item and work on the **Level 1 hydrographs**. They are building a baseline for establishing surface water flows for Tribal water rights on the Reservation. In creating that baseline, they are establishing an approach and method for getting to **Level 2 Hydrograph** eventually as they develop deferred future uses. The Tribe has put together the technical information for the Level 1 Hydrographs and shared it with the State and the United States. They have initial feedback from the United States and are waiting to get something back from the State. What they are looking for is acceptance and agreement on the general approach so they can continue to move this forward. He invited additional comments from the other parties. Duane said the federal team has experts on contract and their biologists have looked at the Level 1 Hydrographs and found them generally helpful and acceptable methods. Jay said they recently received a whole lot of data and information from the Tribes

and it is a tremendous amount of technical work the Tribes have put into it. It is a relatively unique situation for Commission staff to have this wealth of data available and it is due to the time and money the Tribes have put into this. The amount of data that has gone into the Level 1 Hydrographs is monumental and it will help create a solid management plan for water resources on the Reservation. They are working as quickly as they can to examine the data; particularly hydrographs depicting how much water flows in a particular stream over the course of a year – they hope to use the hydrographs as a critical management tool. Level 1 Hydrographs are for existing use and Level 2 will reflect the future development for the Tribes. They hope to have an initial response at the next technical meeting in late August – at least what they can do with all the data and the best way to structure it to reach the major goals.

Clayton said when they do receive comments they would discuss them and make changes at that time. Clayton said one item on his list was data sharing but that Jay just covered it. They have shared stream flow information, GIS information, Hydross modeling work, a reservoir data set; and they are looking forward to sharing stream flow information in the Mission Valley in August and other areas thereafter.

The next item on Clayton's list was **canal seepage**. He invited Jay or Chris Tweeten to talk about that. And he also wanted to touch briefly on **Hungry Horse**. Jay explained that canal seepage is a study the RWRCC would fund using some of its contract services funding from the 2007 session. The study would be used to identify canals in projects where improvements can be made to save water. This could be one way to bridge the gap between Level 1 and Level 2 hydrographs - figuring out how additional water can be made available for uses the Tribes are willing to defer in a way that doesn't cause impacts to existing users. If there are ways to use water more efficiently or make infrastructure fixes or management changes those are important and the canal seepage study is one piece of that. Currently Commission hydrologist Stan Jones and DNRC hydrologist Ethan Mace are doing some extensive field work, thanks to the BIA, Tribes and the Joint Board of Control, and they are hoping to get that study contracted in the near future. The field work is to identify sites they think would be most valuable. Jay said the bulk of the actual field work would actually be done next irrigation season. Chris said the information developed in this study could be very useful to the Joint Board of Control and the CME in terms of managing the water on the Reservation in the future – it won't just help negotiators but will help water management.

Clayton said again there are intricate relationships between technical work and the administration proposal. They discussed the fact that administration includes a proposal for the Tribes' deferral of future development and that is part of the discussion of the Level 1 and Level 2 Hydrographs. Level 2 would be arrived at by administrative and technical efficiencies in the system – by looking at existing uses and making sure they are accurate. To the extent that they can make water available for Tribal deferred future uses, that means they will have accomplished what they want. If there is still water needed, possible supplemental sources may be where **Hungry Horse** comes in. It may be one source but they recognize that the process for achieving that as a possible solution could be long. They understand the lengthy process that the BOR typically requires and the technical work to determine whether or not water could be available in Hungry Horse. This also needs to include Tribal and State discussions over direct claims to water in the Flathead, but Hungry Horse could become a supplemental resource. The United States offered some work in this process and the BOR has done some initial modeling based on initial data; they have received some initial feedback. They are not quite finished doing initial modeling and they will be having additional discussions regarding Hungry Horse modeling. Clayton said they are aware there is a state component requesting some modeling. Duane said they have established a goal to share the BOR modeling work with the state hopefully in August or September as an initial step in the evaluation of Hungry Horse as a source. It is not prejudging the availability of it as a source but in the basin it is appropriate to consider it. He has reviewed the authorization legislation and it's clear from that and the legislative history that it was intended to have local benefits. Chris said one point regarding Hungry Horse is that there are people all the way down to Portland that have interests in water out of Hungry Horse; people look at it as a solution to problems all down the Columbia River

basin. It is not a simple issue and it won't be easy to sort out. They are hopeful they can sort it out in a way that will help the parties move forward. Duane said once they have the technical work done it would bear bringing to the group a full vetting of these issues and policy overlays.

6. Question and Answer Period

Duane invited people to ask questions on the material.

Rory Horning: Since the State had funding in 2007 for technical studies and yet they are holding off the canal seepage study until almost the RWRCC sunset; he is curious if they are holding off on other studies and wonders why they waited so long to use the money from the 2007 session. Chris said they committed other money to other studies being done as the money is not completely dedicated to CSKT. As far as the timing of the canal seepage study it is dictated by the Technical staff on each side and they did not have enough opportunity this year to work on it. It remains to be seen if that study needs to be done before the compact is finished and they may look at having a framework in the compact that will allow it to be done after the compact is completed.

Jay said they are also under contract to do an evapotranspiration study looking at where water is evaporating on the Reservation and because it will add further detail to the water models. The stream gaging is part of it; Project records are used, and evapotranspiration is part of accounting for where water is going. To add to Chris's point, one thing they look at is water augmentation – and one place they look for the bulk of the funding is the federal government. The process will take time, funding and engineering work and they hope to have the foundations laid out. They are working on as many pieces of data that they can to create a comprehensive water management plan which will make the compact work. Chris added that to see an example look at the Fort Belknap compact on the RWRCC website at <http://dnrc.mt.gov/rwrcc>. It is an example showing that if they had waited until they had answered all their questions a compact would not have been done. In that example they agreed on the target and agreed to further studies. If there are ongoing technical studies they don't necessarily see them as an obstacle to going forward. Council member Terry Pitts asked if they are indicating that an extension may be necessary to get that data? Chris said they are not saying that; they can get the compact finished before June 30th next year, and then coming up with a framework for technical work after the compact is complete may be part of the deal. The Compact Commission may not continue to exist for those technical studies to go forward. They are aware of the idea that when the Commission ceases to exist there are implementation responsibilities...they would transition to a permanent compact implementation staff. They have a framework that has been discussed with the budget office for this. Clayton said they acknowledge and understand what he is describing but they are concerned that if the technical work contributes to changes or additional thinking there will be a need to extend the negotiations to complete the process and allow the technical work to do its work.

7. Other

Duane had several thoughts about going forward. They have had a solid year of good activity. They may be at a juncture where they should consider how they may best use their time. He has not had a chance to share this idea with Clayton or the State folks. Looking forward to a federal administration transition and potential for transition on the State front and the sunset coming up, he did want to highlight that these negotiations will find a way to stay alive if they are valuable. With that thought, he said he would focus on some potential future steps. There has been a lot of hard work on the part of the Tribes to take initiative and create proposals to flesh out their initial proposal. There have been very active discussions on that, especially the Hydrographs. This has kept the Tribal folks very busy relating to Reservation water rights. It emphasizes that, given that they are agreeing to reach a settlement protecting existing rights, this is leaving gaps in the Tribal reserved water rights that will need to be filled. It is imperative as they go forward that they consider how those will be filled. They talked about Hungry Horse and it as a potential source. Conservation may be used. He said it

is going to be a key part of future discussions. From a federal perspective, he had a list of items they should be prepared to discuss. One is **Hungry Horse; also they have heard discussions and proposals about improvements to Project infrastructure** to have better management and increased water savings. They will need to have a focus **on on-Reservation infrastructure and water resources** and they would like to talk to the State in August about how some of those things can be fleshed out. Hungry Horse may be primarily a Tribal and federal activity but it certainly has to be woven into the compact because if a water source were secured from Hungry Horse it would need to be decreed to the Tribe in the compact. **They need to talk about the importance of a water infrastructure part of the compact** and by a September meeting, they could have enough modeling done and available that they could bring the BOR in to provide their initial examination and cue up an active discussion of associated legal, policy and technical issues. He said he could get a roster of key issues very much alive at the lower end of the basin. Another key item outstanding is a **potential for off-reservation water right claims**. The federal government has already filed for off-Reservation claims he believes. The federal reading of the Hell Gate Treaty makes a case for the federal government and the Tribe making a claim for off-Reservation rights for fisheries and instream flows to support the Treaty rights. The federal perspective on these settlements is that they need to be comprehensive and any water resource claim needs to be resolved by the settlement. They need to cue that up for discussion. On the **transition of federal administration**, Secretary Kempthorne made water settlements key in his administration. His chief council on these issues, Michael Bogert, is working to schedule time with them to talk about the transition going forward. He can help with getting ready for that so that is a future activity they need to plan for. In a final thought, the monthly meetings have been very helpful. He suggested that they **jointly consider, identify and cue up key aspects** of the settlement among the parties and the public. He said he is not looking for commitments but any initial feedback they might have. Clayton thanked Duane for his ideas. He said apparently they discussed some of this during the technical meeting and while they need to take Duane's ideas back and talk about it and he said there have been positive thoughts on what he is suggesting; i.e., focusing on some major items such as Hungry Horse, bringing BOR here on modeling; discussions of the off-Reservation component; getting Michael Bogert to a meeting; and to begin to focus some future meetings on major topics may be a good way to advance negotiations and be a way they can provide more information to the public. Chris said he thinks they have a lot of things to go over the next couple of months to bring all the issues into clear focus. One is drafting of the management ordinance as there will be additional drafting ongoing. He said they will take points of discussion back and consider them. Senator Tash told a short story about a high school class mate who helped fund his medical tuition working on Hungry Horse. He said it highlights the importance of the natural resources in this headwater state. He said what Ruben said earlier touched a chord with him, as in about 1910, their mothers went to school in St. Ignatius at the Catholic school.

Pat Pierre said as a Tribal elder they are looking at this negotiation thing differently. They are kind of looking at something that should not be as they consider all nature sacred – water – every stream that comes into the Reservation from the mountains; lakes, etc., is considered sacred as the ground they walk on. The Reservation now is considered sacred. When they talk about negotiations they don't seem to extend it to spirituality – the input from the Tribal Elders. The whole thing is different when they talk to Tribal Elders and what they do. When the Tribe, federal and state come to an agreement the Tribal Elders will say they have been sold out; he has already heard that. Everything in this country they took care of for thousands of years. Why do they now have to sit down and negotiate for water rights or anything else? The laws they abide by – no one came to the Tribes to see if they were in agreement with those laws because they did not want the Tribes to know that they were enacting a law that would keep the Tribes down. They wanted to keep the voice of the Tribes out of it....today when they are talking about water rights his fellow Elders say why do they do this? How about their laws? He asked about the Tribal law that they live by daily. They look at all the resources as something that is sacred and that it's up to them to take care of. They are here to be heard. If he took his fellow elders up, and when he got through quantifying water, he would quantify everything as a Tribal use. They look at water as sacred. Some people chose not to see but to the Indian people

every resource on the land is sacred. He said: today there is big industry taking land; minerals...when you take something from the earth you want to give something back. We sit at this table to protect what we have; what little bit we have left of once a great nation. We want to continue to protect it and use it wisely. He talked about the water flowing down and nourishing medicinal plants which they still use. He wants people to understand the sacredness of water – and they come to the meetings because they want to protect it and it's all they have left. He hopes the public out there can understand what he's talking about; it's about the rights of the earth.....

8. Public Comment

Ruben Mathias asked that the audience please not hold back on what they want to say and encouraged people to give their opinions or suggestions as the Council considers it. He said there is another component of this which has been alluded to: the politics of this. It was interesting that the federal government wants to recognize the local needs. He hoped, given the comments a couple of meetings ago that they represent the government; there will be three monthly meetings before the election – and that in the next two meetings the parties move along a lot of these iterations so that the public can be informed through the process about what is going on because after September it looks like this could become a political football. He hopes that would not happen but hopes that they are actually working for the betterment of their community. It is unfortunate that there is the political component.

Tony Incashola: This negotiation has been going for 20 years? And over the years when he was coming to these the only thing he wanted to say is that at last the meetings are getting a little longer than they used to be. He gave his appreciations for all the people involved in negotiations over the years and compromises. They are here now and talking and negotiating. People need to remember that everything will grow – population – because Montanans are good stewards and it draws attention to the outside and brings people in. Because of that, resources will be used even more. They must remember that there is no guarantee that water will increase as the population grows. They know global warming is having its effect. When they talk about the future generations keep in mind there is only X amount of water. They must compromise and adjust to what is available. They can't demand for more water and expect it to be there. They must understand that there is only a certain amount of water they can use. Other species need water such as fish. People need to learn to live with what's here.... When you control you destroy; when you respect you survive. As they go forward and create new policies and laws they are supposed to protect and enhance all people's lives; everybody's. Laws are supposed to protect. Those who are negotiating might not be here next meeting or next year; that only shows they can't own, they can only protect and use and make sure what they do is for future generations. That's what they can do with negotiating...he is very proud and happy with what his parents and grandparents left him. And he hopes he can take care of it for his children and grandchildren. Their ranches, farms and homes will come and go...look what's happening to the world today because of greed – look at the gas prices. Don't think of “them and us” we are all in this together. What brought people here – the environment, beauty and it's a good place to raise a family....there is everything they need in the valley. When they go forward he hopes decisions are made in the interests of people in the valley. The trust and understanding he's seen develop over the years between the State and Tribe has been good over the years. They need to keep this going and remember that they are in this together.

9 Set Next Negotiation Date

Duane said he has a conflict with the next meeting date on August 27th. Clayton said the Tribal Council would like to stick to the regularly scheduled date. Chris said the Commission is available. There was some discussion of a possible date with Michael Bogert attending.

NOTE: As of August 7th, Michael Bogert was not able to come and it was suggested the date be moved back to August 27th.

10. Closing comments by the Negotiating Teams

Regarding the song Michel Kenmile (?) sang at the beginning he asked that it be erased from the recording. That song, with respect to his past and future is probably older than all of the folks there combined together in age. Also in the future please he asked that the parties not record the songs or prayers. It was agreed to honor that request.

Clayton said he would be hard pressed to offer a better closing than Tony did. From a procedural standpoint, they also agree that the monthly meetings have been good and they are trying to explain what they are doing – from the technical standpoint there may not be a lot of tangible things for the public to see but there is a lot behind this that they are doing and there may come a time when the technical information will become more evident as they put the administrative draft together. The draft is something people can look at and read and understand.

Chris said he liked to think of himself as being articulate but when he hears the Tribal Elders speak about their Tribe he is continually humbled by it. Others do their best to understand but don't ever understand as well as those on the Tribal side do – they will continue to try to understand from the other side of the table. He pointed out the three flags on the wall – the Tribe, the State and the United States. He observed that it expresses that they are all in this together and he looks forward to meeting again and is sure they will have a lot to talk about as they go forward.

Duane thanked everyone for excellent participation and for the teams and the public questions and comments and looks forward to additional meetings.

Meeting adjourned.