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**MEMORANDUM**

TO: Susan Cottingham, Jay Weiner, Sonja Hoeglund, CSKT Negotiating Team; CSKT Minute Files  
FROM: Joan Specking  
RE: **DRAFT** CSKT Minute Summary from March 12, 2008 Negotiating Session, Pablo, Montana  
DATE March 12, 2008

Chair: Chris Tweeten  
Agenda (**Attachment 1**)

*Please note that this entire recording is very difficult to hear.*

Chris Tweeten welcomed people to the meeting.

**1. Opening Prayer**

Patrick Pierre, Tribal Elder, presented the opening prayer, and song.

**2. Introductions**

Chris noted the sign-in sheet circulating. (**Attachment 2**) Introductions were given.

**3. Opening Statements**

Chairman Steele welcomed everyone to the Joseph McConnell facility and thanked the community for participating in the meeting. He said the Tribe and Council get a lot of questions about what is going on with water rights, but there are also legislators, mayors, county commissioners, and city council members who people should be talking to about the water rights as they have a responsibility to answer questions also. Although this is a negotiation between the State, the United States and the Tribes, there are a lot of local entities on the Reservation that need to know what is going on and he is encouraged by the participation and urged people to take the opportunity become informed as to what the issues are.

**Duane Mecham (*very difficult to hear recording*) took opportunity ...overlap water negotiations and future operation of the BIA Project. He noted that Travis Teegarten and Jennifer are the leads for the federal government on operations and they assist in the technical work on water rights.**

Chris said from the State perspective they were pleased to be at the meeting; their joint technical people have been working through issues and he is confident that will be of great assistance further down the road.

**4. State and Federal Initial Response to the Tribes' Unitary Management Proposal**

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Duane explained that at the last session the proposal was presented. The federal government has taken this under advisement and has a water rights working group in the Department of the Interior. Duane said it is appropriate to continue the discussion with the Tribes but the United States has no experience with unitary management and needs to work through details before fully committing and work with the transfer team. They are ready to proceed with future working sessions. He said this was the general response he had. *(This was extremely difficult to hear)*

Chris said the Commission process is similar with the one the United States has and that the State consulted with other agencies including the Attorney General's office, Fish Wildlife and Parks, the Governor's office and Department of Natural Resources office in trying to determine if the proposal is something they should continue to negotiate on and what the issues are relating to the proposal. *.can't hear....*It is different and the State is not sure it is workable yet. The traditional approach in the other six compacts has involved dual administration with the Tribal water right managed by the Tribe and the State water rights managed by the State and it is efficient to manage water and they think this would work well for the CSKT compact. They understand the CSKT position that water is a unitary resource that could benefit from unitary management.....unitary administration is different and is not being done on a large scale anywhere else in the country so the State would be breaking new ground by going in this direction; having said that, he noted that the Commission is interested in going forward with discussions even though such management has never been tried. The State is interested in reaching a compact. There are some things in an administration system they think are absolutes to be involved regardless of the system. The UM approach must be fair, predictable and administrable. People need to know....and when they get it they have a clear understanding of what their rights are as to the water they want to use. It must merge efficiently with water administration, how to manage irrigation projects, municipal water use,..how they will go about administering the water. They aren't able to say with certainty that the new unitary system created from the ground up will meet those objectives.... but this is a negotiation.... Breaking new ground is something they have done frequently in resolving water right claims and has happened in the other compacts. They are prepared to go forward and discuss with the Tribe and United States the idea of creating a unitary administration system....maybe it is workable....parties to discuss and arrive at a management system...

**Duane said from the federal perspective their goal is not to end up the water administration business in a three party system. But they are willing to work toward assisting the Tribe in their sovereign rights and governance over their resources. They hope the efforts will be seamless with the transfer teams (FIP) efforts. Will help in seeing if it can work as they see details about how it can work. *Can't hear.....***

*Microphone started to work:*

Clayton Matt said a few years ago they were at a similar juncture in terms of consideration of a Tribal proposal and they today appreciate the comments about the willingness to continue negotiations based on this proposal. He said they fully understand that many of the issues that were outlined in the proposal are yet to be negotiated and they look forward to hearing more detailed questions and ideas they have for how to achieve this proposal. Chairman Steele's opening comments, and as Chris Tweeten noted, what will be important is that the public,

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including local municipalities and local governments continue to take a really hard look at this and ask about it. He anticipates that the Tribe and the State and the United States would develop a process of meeting; they have technical groups working out some of the technical issues and looking at data and he suggested the same process be used to start to hammer through the issues and get it to the point where they actually start drafting language for this ordinance as soon as they agree on some of the conceptual points. He said it is important as they look down the road to the 2009 sunset date and they need to move to achieve this in a way that helps meet the July 2009 sunset date of the Commission. But in the event that there is a drawn out process, they encourage the State to really look at the possibility of extending the deadline of the Compact Commission as there are a lot of issues to work through in the administration issues and also in the technical issues and as they work through them they want to make sound decisions not rushed decisions due to a deadline that could be extended by the legislature very easily. He asked if Chairman Steele or Rhonda had remarks and then he would like to hear ideas procedurally how they want to move forward with this proposal at this point.

Chris Tweeten said they aren't prepared to talk in detail about sideboards about how an administrative system might work but by April may be able to frame some issues such as how such a system would be come law. There are a lot of different ways...that this system can become law and they need to discuss exactly how that will be done from the perspective of both sides. There are other issues that need framing – in the next several weeks before the next meeting they will be able to communicate with the Tribe about what the State thinks some issues are and what the Tribe thinks, and come up with an agenda...the issue of how they relate with the public ...and their compact meetings are always open and they encourage people to come share their concerns and communications – they hope that will continue as well. There will come a point when formal public meetings around the reservation will probably be done. No one wants the sunset date as a barrier to an agreement they think is achievable. When the next legislative session approaches it will be time enough to take a look to see how they are progressing - and to see if it is or isn't possible to get a compact by 2009. Nine months from now they will have a better perspective on whether they need extension or not than they do now.....he said that is the way they see things sitting right now.

Clayton Matt said the technical teams have been discussing a variety of issues including a possible schedule to begin a review process and have tentatively set an April 9<sup>th</sup> date to begin that process... and he said he takes that as a tentative approval to continue the process and it is hoped they can meet that date.

Chris said he just heard about the April 9<sup>th</sup> date that morning and he is not able to respond specifically on the April 9<sup>th</sup> date. He said he doesn't not know what date it will be but they need to have some exchanges of information before April 30<sup>th</sup> (last Wednesday in April)...he said they are committed to the process and they will talk staff to staff before the next meeting. Clayton said Jay had considered the April 9<sup>th</sup> date and Chris said they would get back to him on that date.

*An audience member said they could not hear the speakers.....*

## 5. Technical/legal items for discussions

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Chris gave the microphone (*not working*) back to Clayton who said in the process there are a variety of technical items the Tribal and State and some federal technical staff have been discussing. At a recent meeting in Helena the staff had broken up some of the duties. It was hoped that the technical teams would report on that at this time. As Jay Weiner was not at the meeting Chris said the State did not have anyone to respond.

Seth Makepeace reported they had a meeting on March 3-4 between the Helena, CSKT and federal technical teams. They had a very productive meeting and focused on three areas: 1) they went over the State GIS spatial database for water rights, pre-1973 and post-1973, post Ciotti. This got them to a better understanding of what is out there and available and a common understanding. They are working on a process to get that data shared. 2) There has long been understanding that canals on the Reservation are losing water at fairly elevated volume. Existing information suggests that. In technical efforts, they often think of a water budget of flows in and out of the system; currently a significant amount is canal seepage, how much irrigation water is lost, how the water influences wells or wetlands so they are trying to talk through a big financial contribution to actually better understand canal seepage on the Reservation. A scope of work is being developed. They are not sure if they will get that process off the ground this year or next year because the State is not sure of that (they are working through the State contracting process) but it could be an important State contribution.... 3) This topic builds from some materials on the shared shortage; they are trying to work through a hydrologic process to define stream flow hydrographs that are both protective of the Tribes' aboriginal and reserved water rights and yet will protect existing verified uses.... They see this as a sequential activity where they define current non-diverted water use as it passes down the stream now, that non-diverted water.. *can't hear*... a second level would be what hydrology of stream flows look like if they had somewhat improved water management such as stream flow forecasting with snow pack; reservoir management; taking water measurements and day to day irrigation project management. That does not produce new water but it gives a better idea of use of the available water supply. That would have to come together with wet, dry and average water years. A 3rd level of hydrologic activities would be improving irrigation projects to a more efficient mode of operation – not new water but more efficient use of water....*can't hear*.... 4th level is the natural flow for fisheries and what flows support fish resources They are working through the existing frame work and are looking at how they can craft management to make the water supply fully achieved.....*can't hear*.. they have had productive talks and look forward to more participation from the federal contracting groups.

**Duane Mecham: (*very difficult to hear*) He said the federal group is new to this. Funding has been used to support litigation and filing claims. They will try to free up funds and resources to do as much as they can.....settlement....BIA contracts...hydrology and instream flow...resources and explore effort....bring new people up to speed to support the effort. Technical coordination with Travis Teegarten who is the lead on transfer talks and they want him to provide technical support on project management...Jennifer \_\_\_\_\_ of the USFWS assists in technical work. BOR has some funds for groundwater work with the Tribes. *Can't hear*.....explain HH as water resource. Observed State and Tribe on 3<sup>rd</sup> and 4<sup>th</sup> work together...**

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Susan Cottingham said they are really pleased with the joint technical work and they have always felt it is important for everyone to come from a joint scientific understanding. Studies will help with future management. The University of Idaho and canal seepage contracts are moving forward. The State is trying to put together some contracted services money to help with specific pieces of the puzzle on canal seepage studies; they are trying to do their best to get the contracts done. They are really trying to move quickly....*can't hear*.

Clayton asked, regarding the canal seepage study, what Chris or Susan's thoughts were on the study being done this year as opposed to next year, considering the sunset date. Susan said they were working on the RFPs. The study may be more useful this year but may be too rushed and may overlap into next year and then fold into the plan....*can't hear*. Clayton asked if it would influence the decision on extending the Compact Commission. It has to be given some serious consideration if they are thinking of doing technical work in 2009. Chris said they will cross this bridge when they get there and that's where they are. They have no more to say about it.

Chairman James Steele said they are in the middle of drafting legislation for extension. If they don't talk about it, they are committing a lot of resources to get their claims together and that takes resources and time.

Clayton said he appreciated Chris's comments but on the technical side they would argue that the work be done well and that the studies not be done in haste; they should be done well and done right so he urged that be given consideration and said to let the Tribe know if there is anything they can do to help.

Chris agreed that the studies need to be done well.

Clayton asked Duane to elaborate on possible support coming from the BOR in the area of ground water. Duane said there could be ground water drilling help in developing ground water for each basin and that the BOR has a drill-rig available but it isn't cheap. The BOR is committed to getting the rig up there and assisting. He said they also want to explore Hungry Horse as a settlement option and they plan to have outreach on that. Clayton asked how much time a drilling rig would be available. Duane said 7-10 days the drill-rig would probably be available and they will explore cost share with the Tribe to extend availability. At the last meeting the Tribe and the State jointly submitted a request for land data. He hopes to provide the data and not get caught up in the Federal Privacy Act issues which have been addressed. They expect to have that finalized by the end of April. Duane said regarding the cost share on the ground water work that the BOR has a certain amount of money rather than shut down when the money is gone maybe the Tribe would want to keep the rig longer.

Clayton asked if the State can contribute funds. Susan said they can't commit State resources but have not seen the ground water proposal – they get to this question every time but they never get the study proposal. She said she thought it was a Tribal/federal issue.

Duane said with the recent development they maybe could assist the State.

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Clayton said they just heard about this rig and they may contribute but don't have an answer yet. As they talk about it internally they will include that in their discussions.

### 6. Other

### 7. Public Comment

Francis Auld commented on the observation of the process between the U.S. the Tribes and the State of Montana. He reminded them of who they are of the Tribe; he is a Kootenai member. He said the Salish and Kootenai carry two set of traditions, values and languages that are opposite of one another. He said he has done this for some time and there might have been some efforts made between the parties; sugar coating and in reality he does not see progress in any type of realistic negotiating; lawyers talking in circles until the next meeting. Why was it so easy to work with the six other tribes? They don't know. He is very disappointed in this process; he was appointed by his community to observe....there has been no movement. The Tribe brought a proposal and the proposal may have gone into file 13, they don't know. As a Kootenai member he would like to request that they break off negotiations with the State. Time is in the 11<sup>th</sup> hour and there has not been one step of progress. What they have presented has been laid aside and is just extended until the next meeting. They don't need to negotiate any more. They urge their people who legislate not to renew the Compact Commission.

Clayton Matt reminded people that the Tribal Council is the final negotiator and it is up to them; he appreciates Francis's comments.

Chairman James Steele said through the whole process the weight walking away from these or any negotiations. He said he knows the State is fully aware of the Tribe's determination and desire to see the best interest for the Tribes accomplished. There was mention of other Tribes and compacts, and he said other compacts were not in their best interest and can't apply those compacts here-f they applied them they would be short changing themselves and the citizens on the Reservation. The things that were discouraging to him coming into the process were that the Tribe had a proposal on the table and it was not really considered and it was tough to deal with. They then went through the interim agreement process which they joined as an intermediate discussion; and the agreement in principle did not come to fruition. In the last session they asked the legislature to extend the Compact Commission and the governor's office, etc., opposed that bill although it had bipartisan support in the Senate; when they got to the House they were treated shabbily in the House Resource committee and after an attorney for a group on the Reservation got up and spoke without authorization to do so, the bill died in the committee. He said regarding talking about the extension of the Commission – whether they walk away from negotiations today or whether the Commission sunsets next year, everyone who has water interests – tribal or non-tribal- needs to find an attorney and it can't be someone out of the phone book who doesn't work on water issues. People will be hard pressed to find someone who isn't already up to his eyeballs in water stuff; or someone who knows about Indian law and water. To Francis and the other Tribal members present, the Tribe will be committed one way or another, whether they are in negotiations or litigation it will take resources time and money. The Tribe has demonstrated in past years that they are willing to fight for what is in the best interest of the Tribe. They will fight for what is in their best interests: if that is through the negotiation process they will do that; if it comes to going to court they will do that. He reminded everyone about

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court: their brothers and sisters in Wyoming, the Arapahos and Shoshones chose to go to court in the 1970s and they are still in court and the big benefactor in the middle were the attorneys and lots of pay for those attorneys in federal and state court time. So it's an option to walk away from the table but they also need to weigh the consequences. If they are prepared to accept those consequences then they need to do that but at this time; speaking with his heart, he said he thinks it is a positive indicator that the state is willing to talk about a unitary form of administration; that is encouraging. They would like to see some movement on that and if they can put together some good agenda items and discussion for the next meeting that they could make some positive discussions down the road on that issue. The other part of it they are working on is how the Joint Board of Control fits into this or doesn't fit in this and their relationship with that entity continues with issues on irrigation projects. He said to Francis that they would at least talk about it with Council and where they are with negotiations and their professional staff to advise and guide them and see where they are.

Chris Tweeten said *..can't hear..* regarding the extension there are two sides and they understand the Tribe's position and the Council has determined a position for the Tribe. The governor and other elected officials in the State of Montana have had discussions too and arrived at a decision as well. He would hope they could respect each other's positions. With respect to the viability of continued negotiations, the State's policy since 1979 has been to resolve these issues between the State and Tribes outside of the courts and the negotiated process is conducted by the Reserved Water Rights Compact Commission and on the Tribal side the recognized Tribal government. Other compacts were not easily reached. It took years for each one and they require a lot of detailed discussion on the part of the parties. ....*can't hear....* It is the Tribe's choice whether or not to continue and the State will respect that choice but millions of dollars have been spent in Wyoming and we may regret it if we stop now....The State is committed to continuing negotiations and we hope the Tribe is as well.

Louise Stasso said she is Kootenai and Salish. She grew up on the west shore of Flathead Lake at Elmo. Her parents spoke Kootenai and Salish as their first language. She said Flathead Lake is very polluted and the non-Indians need to understand this is Indian land; this is Tribal land. In 1914 the federal government illegally opened the Reservation to homesteaders. When the Hellgate Treaty was signed in 1855 this was Washington Territory, not Montana. All of Montana is Indian land. Today, the American Indian still lives in poverty and is the most oppressed especially those who are 50% Indian or more. It is this group she said she advocates for. She stated she is for litigation because litigation will outlast Mother Earth. We have been warned by science that climate change is here and we will no longer have a Mother Earth. The Wind River Tribes have been in litigation for 30 years since 1975.

Ronald \_\_\_\_\_ ? *can't hear...* all these years on Reservation...negotiations - it's time the non-Indian people on Reservation were removed – we were promised this reservation which was millions and millions of acres – water polluted. We can't even swim in it. We want our land back.

\_\_\_\_\_ ? *Can't hear name...* A lesson in history. Let me take you back to 1492 and they called us Indians because we were so nice to him. Columbus didn't know where he was going or where he was when he got there. No one talks about the second visit with 17 ships, a

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small army and attack dogs which he used very effectively. Indians were the first slaves in this country. And pilgrims were greeted by an ex-Indian slave with the word welcome. 1832 decision stated we were a sovereign but dependent nation. In the 1860s a Sioux chief said the white man made many promises but he only kept one: he said he'd take our land and he took it. In 1855 they had a treaty where they gave basically western Montana to the white man and reserved our little land in the Bitterroot but were forced out of the Bitterroot in 1891 and were forced up here (Flathead). Every time they have negotiated with the white man they have lost. In 1935 they gave them a constitution with approval of Secretary of the Interior. We have won little wars but we have always lost the little wars. It's hard to negotiate something when we don't know what we have; we don't know exactly where it comes from and we don't know what the needs will be in the future. You (the State and United States) are asking us; mandating us; to negotiate with you over water rights which we hold very dear. We hold nature to be very dear. Like Louise said, what about water rights in view of global warming. We will lose; you will win. Because we are few and you are many. To negotiate with you is futile because we are going to lose. You have too much on your side. It's futile to sit here and say we can work out the best deal. What is the best deal? What are our water needs in 2050? We don't know. To give an example he noted the housing survey done in the 1950s. They were short 250. They are a growing population. The only thing that keeps this reservation from looking like the Bitterroot is the Tribal land that has not been developed. In the 1970s they had Konaseshi from U. of M. say the timber was not worth anything compared to the water. To his knowledge they have not sold one gallon of water. Now they are negotiating with people who want their water. Are they going to win? You have more money....etc. He looks at and says no, he does not want to negotiate. You can take it from him if you want but he will not negotiate one gallon of water. (*clapping*).

Ronald Finley? *Can't hear name.* He thinks what is being heard goes back to negotiations between two cultures. If we are lucky we might be here 100 years but the land will be here forever. The land and the earth will continue to be here long after we destroy ourselves. What is the audacity for us to think we own any part of it? So we negotiate and talk about things they are talking about different things and perceptions. Their ancestors were humble people and grateful to be here. From the other perspective, man controls all the rest of it. People talk about man destroying the earth; the earth will continue to be here and will heal from the wound. The driving force behind it and the elders, many of who are gone now....*can't hear*.....take care of the water. Use the water that comes through the property. Make sure that when it leaves your property it is as clean as when it arrived. Drink one of these bottles of water over here and see how long you own it. That was the elders concern; take care of the water. The concern from the other perspective was the right to make money...the negotiations with the other tribes came down to money. There were so many millions of dollars they signed on. They are trying to negotiate from only one perspective. Negotiations with Wyoming came down to money. Don't take the money, take care of the water. He is a bit skeptical about the State's ability to do that because of the history that other people talk about...the State's history of protecting us. We will open the Reservation because you'll have all these benefits available to the Indians. ....but giving over their jurisdiction. Look at the population of the state prisons and what percentage of Indians there is. Now the State comes forward and says it has a better idea of how to take care of the water. Two words: Berkeley Pit. He is skeptic about the ability to protect the water. The other thing is the protection of farming. All the country of Idaho, Montana, Alberta, etc. was all the territory of the Tribes. Negotiations led to losing territory. At some point we have to say, no.



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Whites have to realize they are on the Reservation; inside the boundaries of a sovereign nation. And not because the Secretary of the Interior says it is so. They are sovereign because of the languages they speak and the way they carry themselves on this earth is different than the way other nations carry themselves. Recognize where you are living. Recognize you are in the boundaries of a sovereign nation. Do that and we'll show you what good neighbors we can really be. Let's take care of it together. It's time for a good fight because .....we're going to go through court...if we don't have representation that is willing to fight..... We don't need representation any more that is afraid to fight because we might lose. I hope that if you really want to move negotiations forward, looking at things from a scientific...money perspective that's fine-- negotiate from the perspective that the other side is coming from also. He said he looks forward to fighting the happy fight. (*clapping*).

\_\_\_\_\_? ...can't hear name... Kootenai from the Reservation. They have been here since the beginning of time. We are still here. Our ancestors have shown us how to survive. Beautiful place but look at it today. This is because of you. You guys should be figuring out solutions to what you have done. We can't drink the water because of you....and you expect us to .....can't hear... sign on the dotted line. We have to stand up as Indian people. Our ancestor put us here 10,000 years ago. 10,000 years ago. Our water is like our church. You guys all have a church...you don't want people going to your church and telling you how to run it. Now you will come in here and tell him how to run his life and church. We are a sovereign nation....anything ....by state crumbles. They always want more to take from us. When do we say enough. He said he is tired of running and his people are tired of running. At one time they were Kootenai 10,000 strong. He hopes this touches your heart. He will never tell others how to run their house or raise their children but others can come there and tell them. They have managed for 10s of thousands of years and he is through; these people are through. Realize why you are here today; use your heart for once. All we want...is to survive. He doesn't want to be at a bargaining table; every time they go there they lose. Today's oil, mines, tools, machinery, not worth anything because whites sucking it out and now you come here and tell us you to distribute water; we have been doing it for thousands and thousands of years. (*clapping*)

### 8. Set next negotiating session (tentatively April 30, 2008)

That was acceptable to the parties.

### 9. Closing comments by the negotiation teams

No closing comments.