

**DRAFT MEMORANDUM**

TO CSKT Negotiating Team, Jay Weiner, Susan Cottingham, Sonja Hoeglund, Bill Greiman, Stan Jones, CSKT Files  
FROM Joan Speckung  
RE Draft Summary of October 22, 2008 CSKT Negotiating Session, KwaTakNuk Resort, Polson  
DATE October 22, 2008

Chairman Duane Mecham  
Agenda **(Attachment 1)**

- 1. Opening Prayer**  
Opening Prayers are not recorded
- 2. Introductions**  
See sign-in sheet **(Attachment 2)**
- 3. Opening Statements**  
Duane Mecham asked for opening statements from the parties

Chairman James Steele he said he had a wonderful meeting with the governor and his staff Friday and visited about a variety of topics including the sunset of the compact, and the staff gave assurances it would be supported. They have a letter from the Missoula County Commission supporting an extension to the sunset for the Compact Commission. They are proceeding to get political support from communities on or near the Reservation to extend the Compact Commission in the next legislative session. In light of the current political season, the chairman of the local Republican party made a comment saying the Tribe's "slick" attorneys had beat up on the DNRC attorney and he would like to say he takes great exception to that comment and if they have issues with the Tribes and water rights the chair needs to come talk to the Tribes and not use a political forum where he is supposed to be moderating and neutral and make snide remarks at the Tribes. He would appreciate it if the people who are members of the Republican party let the chairman know. Chairman Steele's office hours are 7 am to 5 30 pm Monday through Thursday and he is available on Fridays any time the Republican chair wants to talk. He does not appreciate the chairman of the local Republican party making disparaging comments toward their attorneys or the Tribes and speaking in a very uneducated manner. He is proud of the attorneys and what the Tribes are doing. If he has issues with the Tribes come talk to Chairman Steele, if they want to do it to his face that's one thing but don't do it behind the Tribes' back. He said he appreciates Michael Bogert being there for the federal team and he thanked everyone.

Chris Tweeten said the State team is glad to be there and glad to be meeting on a monthly basis and making technical and legal progress. They are continuing to make progress.

Duane Mecham said the federal team is looking to the transition and explaining to new people the status of this negotiation. The Interior Department has a special office within the Secretary's office called the Secretary's Indian Water Rights Office that manages and rides herd on all these negotiations. Sarah Higer has a hand in managing that effort and the team will be working closely with her during the transition to make sure they keep a momentum and continue with this effort. Duane said this is one of the most active negotiations they have, not all negotiations are active throughout the west but this one is one of the top two or three active teams in negotiating the fundamentals of a settlement or compact. He reaffirmed the views that they are making good progress. He sat in on some technical sessions and was impressed by the ability to make progress and the progress that they have made.

Michael Bogert, counselor to Secretary of the Interior Kempthorne, said the Secretary of the Interior asked him to extend his warmest regards and great respects to Chairman Steele and his Tribal leadership. He said it is a privilege and honor to be there and join the Chairman and the Tribal leadership as well as Chris Tweeten and Susan Cottingham who they have been able to speak of as friends and colleagues. He said Chairman Steele has his commitment, upon

their departure, that they will endeavor to educate their successors as to the importance of the progress and the importance of this matter to the Chairman, the Tribal leadership and their people – that they will have a good team that they will leave behind that they certainly have confidence in. They look forward to getting as much done as they can in the time they have left and certainly leave behind the prospect of great optimism and progress for their political successors. They appreciate the welcome and he noted again that the Secretary wanted to extend his warmest regards.

Duane said they would launch into some updates and key items that they have been actively working on.

John Carter gave an explanation of what unitary management is for people who have not been following it closely. The Tribes and the State and the United States have chosen to approach this water rights negotiation in a much different manner than they have others in Montana. To date in Montana water negotiations with Indian Tribes within Reservations have been done in a split system whereby the Tribe would be responsible for what are deemed to be Tribal water rights and the State would be responsible for what were ultimately negotiated out to be state-based water rights. On some Reservations there would be a third administrative framework being the United States, such as on the Crow Reservation, where there is a federal irrigation project and the U.S. didn't want to come in under State or Tribal systems. In compacts to date there have been two, sometimes three, management bodies all trying to manage the Reservation water. While there have not been any major conflicts between those unitary bodies to date, the potential is there and the jurisdictional questions become very complicated when there is a state-based claimant adverse to a Tribal claimant, possibly with a federal interest thrown in. What the parties here started to do, partly based on the hydrology is to approach water rights negotiations as a unitary management system for a unitary resource. The Tribe's proposal, which is the issue they are working with now, is for a single administrative body comprised of both Tribal and State people working under a uniform set of laws implemented by the State and the Tribes. Theoretically there would be final jurisdictional recourse by the federal magistrate court rather than Tribal court or State court. What they are working on right now is the language for the type of administrative law that would apply. The Tribes submitted a draft body of law, which can be seen on the Tribe's website, setting up a single management system comprised of State and Tribal people implementing a body of law that would be uniformly implemented on the Reservation for all people, Tribal, State or federal. It has never been done before, it is a unique system, they are breaking new ground and consequently it is not an easy process. The State has provided some very useful comments and some that the Tribes can't quite understand and they are now in the process of sitting down with the State and the United States attorneys and working out inconsistencies and confusion and trying to get it down into a functional system. That is where they are right now in the issue of unitary management. Whatever that ordinance or state body of law ends up being, it has to mesh with the compact. The parties have decided to work out kinks in the ordinance then move directly into the quantification approach which would then flesh out the inconsistencies in the existing draft ordinance. They have another meeting next Tuesday with the lawyers and will be working on comments, questions, and concerns and when they get through that they will be working more directly on quantification.

Jay Weiner said John did a nice job of explaining where they are in the process of trying to identify the micro-structural pieces in the ordinance that they can clean up now to deal with confusion, redundancy of terms, etc. to get the ordinance to the point where what is left are bigger pictures issues that need to be synchronized with the compact. They then can focus on the quantification piece in the compact, the administration rules that will be in the compact, and then come back to the ordinance and make sure it is appropriately reflective of what they agreed to in the compact. Jay noted that the State has not in any way accepted federal magistrate court jurisdiction as the appropriate forum for a case. It is part of the Tribe's proposal and is one of the things the parties are discussing and it is still on the table for negotiations.

Duane said he and other federal attorneys are working on reviewing the proposal and to take Mr Bogert up on his offer they are seeking as a team to queue up to get a clear policy from the Department that this approach is the proper approach Having that confirmed in this administration will help them move over through the upcoming (federal) transition

## **5. Hungry Horse Update**

Wendy Christensen provided a map of the upper Columbia River Basin so people can see where things are located **(Attachment 3)**

Duane explained that Hungry Horse is operated as one of several federal facilities collectively known as the Federal Columbia River Power System (FCRPS) Some of the dams are run by the Corp of Engineers, some by Reclamation and the power is marketed by the Bonneville Power Administration (BPA) The three agencies seek to coordinate closely and one of the ways they have coordinated is on the Endangered Species Act (ESA) consultations on how to run the facilities to assist salmon migration in the lower part of the Basin and avoid adverse impacts The efforts to comply with ESA have been challenged over a long period of time and the latest effort is in Oregon federal court The CSKT and State of Montana have joined that litigation as intervener-defendants supporting the new (2008) federal plan or Biological Opinion (BiOp) for the federal dams Nonetheless there are opportunities and a strong basis for considering Hungry Horse for use in Montana as a water resource They have made clear on the federal side that no decisions can be made until they have made a thorough evaluation and negotiation on the potential uses of Hungry Horse One way to evaluate the use of Hungry Horse is through some good tools they have for modeling the current operation of Hungry Horse and the agencies who did that baseline, or reference operation modeling, which is in the BiOp, did a good job of showing over wet, dry or medium water years what the expectation of that operation would be

Leslie Stillwater, with the BOR, is one of the chief modelers for Reclamation and she provided a technical presentation of the current operation and the state of their evaluation to date, saying this is a very interesting project to work on They have done some preliminary modeling or simulations of the Hungry Horse/Flathead system The reason they pursue modeling studies is because it supports their decision makers The model does not make the decision for them but it makes them more informed as they pursue the negotiations The purpose of the simulations she was showing is that they are trying to investigate the effects of diverting Tribal water and they want to look at the effects on the reservoirs and rivers of the Hungry Horse and Flathead system They will also try out alternative operation scenarios They really have not determined the best approach for delivering Tribal water so they want to investigate what legal mechanisms would play out in the hydrology and other opportunities for delivering Tribal water The other good thing about modeling and the reason they simulate it is that they can look at all water year types and the entire range of hydrology The last 10 years of record might not demonstrate the next 10 years of hydrology The model she is using is Modsim, a timestep model in which she has constructed Hungry Horse, and Flathead It does what hydrologists call a water budget, it is water distribution, they will also look at water rights and storage contracts because that affects the delivery of water She is applying the daily hydrology from 1929 to 2001 The physical scope of the water is that it runs from the headwaters of the system to Albeni Falls She showed a schematic of her model to give hydrologists and modelers in the audience the resolution of the model She said once they get down below Flathead they don't especially have good resolution right now, they have discussed whether or not they need to improve that and don't know if they will have to right now A modeling study needs two scenarios, a reference or baseline scenario and then an action scenario The action scenario will be diverting water for the Tribes The reference scenario is simulating the 2008 FCRCS BiOp and it is something that has probably not been demonstrated in a study before She explained the major rules that govern the reservoir operations for it Starting about July, 2008 when they are at their maximum fill, they draw Hungry Horse down to about 3550 feet elevation by the end of September It used to be the end of August This is in 80% of the years (normal and wet years) In dry years they draw Hungry Horse down to 3540 by the end of September She also included what they think might be an option for the drought management plan which is being developed now They don't really know

what will come out of that but they made a few guesses and used the possible drought management plan where they are not drawing Flathead down as far in very dry years. That ends up effecting four years in her model study period 2008-2001. There is another rule she applied which was only applied for this study and was an operating scenario applied in 2001 as an agreement among the agencies that operate and manage the reservoir. The purpose for drawing Hungry Horse water down until the end of September is to augment flows in the lower Columbia River Basin for fish flows. That is Reclamation's commitment to the Columbia system. She is also modeling the delivery of Tribal water which is compared back to the reference scenario. The Tribal scenario is the same, but with drawing the reservoir down an additional 128,000 acre-feet because the upper river Tribal diversion requests amount to about 128,000 acre-feet of depletion in the system. She explained that this is their first cut and the first scenario they are trying out in the model. The way they are protecting the augmentation flows is that they are forcing Hungry Horse to be drawn down an additional 128,000 acre-feet by the end of September. The intention of the particular scenario is to deliver Tribal water. There are other possible scenarios also. The three options that come to mind are 1) give the Tribal diversion requests a very high priority natural flow right. 2) Provide the Tribes with a storage contract for space in the reservoir which would fill on a pro rata basis with the remainder of the space that belongs to Reclamation. 3) A service contract means the diversions would be met with stored water no matter what, it's an agreement the water will be there for delivery. HKM provided the additional diversion requests the Tribe is making and she reproduced the final number which is the total and it is about 229,000 acre-feet per year of diversions. She said they must also recognize that when water is diverted some comes back to the river as return flows. For example, even though they are diverting an additional 229,000 acre-feet of water, they are returning 101,000 acre-feet of water per year – so there is a total depletion of 128,000 acre-feet per year. Some of the diversions are actually being pumped out of Flathead Lake, some are at Crow Creek, Mission Creek and Jocko River. These are the affects on Hungry Horse. She showed the total quantity of water reaching the location below Albeni Falls July to September. They can show no serious impact, in fact they show a slight benefit with the rules created. But they are removing water from the system so if they look at the same location in April-June there is a tiny bit of impact in delivery water below Albeni Falls (with this particular scenario). Leslie asked for questions.

A gentleman asked what she meant referring to "Tribal water" and if it was all the water on the Reservation or just water used by the Tribes. Leslie said she believes it is additional water being requested by the Tribes. Clayton said from a Tribal perspective, and he thinks from the state and federal team as well, the bigger picture is what they need for their settlement at Flathead. In anticipation that they may need supplemental water on the Reservation they are looking at Hungry Horse as a potential source of supplemental water. The key is that they are looking at it as supplemental and that is the broader concept they are trying to apply here. When they test this, and this is the very first test, there may be other alternatives to solving the problem and this is providing a good snapshot and they can go from there. That is sort of the policy level explanation of what they are doing and why they are doing that. Wade Iron, HKM, said with the negotiations there is commitment from the Tribes to continue to serve all verified irrigation users across the Reservation. At the same time the Tribes have their own desires for how that water should be used and a big component is to leave adequate flows in the streams that flow into the Flathead River since they can be effective ecologically in supporting bull trout and other fisheries. What Leslie was describing is one way to try to find a solution to two competing needs. The general concept is that there are irrigation demands and asking how they can be met in a different way that allows more water to be left in the streams, not to be diverted by the Project diversion infrastructure. A way to do that, conceived through these evaluations, is to import additional flow out of the Flathead River and put it in the existing infrastructure where it can serve those lands currently being served from other sources. They refer to this as supplemental or augmentation flow into the Flathead Reservation that does not exist today. They are fortunate in this setting that they have upstream a relatively large bucket of water that they call Hungry Horse. So they are just beginning now a series of evaluations that ask if or how they could operate Hungry Horse in a way that would make the additional water available to accomplish the two competing needs and at the same time recognize that there are ongoing serious biological and environmental studies related to how Hungry Horse

needs to be operated so the downstream salmon migration can be supported and also the bull trout in the local vicinity of Hungry Horse. When they talk about the BiOp, it is sensitive to the biological needs of the river system.

Someone asked if the model was hypothetical. Wade said it is just one scenario that will be evaluated. They have looked downstream in the scenario and see a pretty minor impact. At the same time, on the downside, they see drawdown in Hungry Horse and Flathead Lake that may not be palatable to local interest groups. They are saying "what if we try this" and they will keep saying that until they come to a mutually acceptable operation of Hungry Horse and the Flathead system that will achieve objectives on both sides of the aisle, on the Flathead negotiations, the ongoing concerns of the downstream Columbia system, and the upstream impacts at Hungry Horse.

Terry Pitts, Councilman, noted there is depletion of around 120,000 that is lost with this surface model. He asked if there is a study and a model and projection for the groundwater affect. Leslie said it would be a nice goal and she talked to Seth Makepeace about the groundwater model and it is a reasonable consideration. Terry said there should be a model or projection for the groundwater as well. Leslie said at this time the groundwater model is not in a forum that can be applied to this type of dynamic modeling. Probably the estimate that has been made is good enough for the type of study they are doing right to look at reservoir draw-downs and total reach flows in a certain area.

Duane explained that Leslie and Wade were referring to a number of interests and concerns that have to be dealt with in this evaluation, one of them is downstream interest expectations and commitments that have been made in the BiOp. In the federal government they have two agencies that handle the ESA. The Fish & Wildlife Service has jurisdiction over bull trout and NOAA Fisheries has jurisdiction over salmon stocks listed below Grand Coulee. Duane said there is a separate effort initiated by the State of Montana to evaluate the use of Hungry Horse as mitigation water for development within the Clarks Fork basin generally, this effort does not cover that but they are aware of both and plan to ensure that there is coordination on both.

Gerald Mueller with the Clark Fork Task Force said they were told at the last meeting that the 2008 BiOp is under appeal. He asked if anyone knew how much additional water the plaintiffs are asking for. Duane said they don't know. The plaintiff's position is that more flow is always better. There are limits on how many benefits you can get from increasing flows and from storage, if you use it in one year you won't have the next year to augment flows. Generally the plaintiffs would be seeking from the federal judge injunctive relief – a court order directing the Corp and Reclamation to increase releases of water during the salmon migration. They have not quantified the request yet. The NW Power & Conservation Council has been very diligent providing information to the federal agencies about the benefits of flow augmentation and creating a balance within the Basin. They might see the court return to the previous BiOp where Hungry Horse was drawn down the end of August rather than the end of September, those sorts of things could come into play.

Rhonda Whiting, NW Power Conservation Council, (can't hear, no microphone)

Duane noted that in the past Michael Bogert had to deal extensively with flow augmentation issues. There are very different issues that keep local parties very interested in all these activities.

Susan Cottingham said in all of these negotiations they always try to look at existing reservoir storage and the possibilities of using that to augment Tribal water rights or to sort of solve the allocation problem they are always facing. In this case they obviously look to Hungry Horse and in many ways it is a lot more complicated than some of the other reservoirs. It really is just a scenario, they are just taking a look at what would happen if they did this. As Leslie and Wade pointed out there could be any number of other ways they could look at it or in the end they might decide that it doesn't get it where they need to be, it might be too expensive to

pull the water out of the Flathead and do more pumping. There is also the effort of the State of Montana to look at Hungry Horse storage as well. Nothing is a done deal, it's really just trying to look at some options for how they might provide some more water for this whole settlement process, as Clayton pointed out. As a non-hydrologist it seems like the downstream impacts are pretty minimal but the bigger impacts are the drawdown at the Reservoir and more localized impacts and the concerns that happen there. Those are the things that they'll try to work through. She thanked Reclamation for all their hard work.

Clayton said from the Tribe's perspective they have talked about what this is from the analysis point of view but they also talk about the larger picture of what progress they are making. This is also an effort to continue to show that there is a lot of work and it takes a lot of effort to do these kinds of analysis, it takes a lot of people and time. If they had waited until the end of their settlement to start an analysis on supplemental water they would be another year or two behind. Taking the time to do these analyses early to give them some input into their thought processes and decision making is helpful now and to present that as they go along also shows the progress they are making on several fronts in the negotiations. If there are questions after today, he said contact any one of the parties and they will do their best to answer.

Duane said he appreciated the questions.

#### **6. Other Technical/Legal Items for Discussions**

Clayton mentioned that Duane said NOAA would be interested in reviewing the Hungry Horse materials and he asked if there were any other federal agencies that would be interested. Duane said the US Fish & Wildlife Service, and in terms of initiating contact with them on these negotiations, he has been waiting to assess the viability in terms of usefulness of this as a potential source on the Reservation. At that point they have a couple of options: have the coordination happen between Reclamation and the other agencies or if it becomes a more detailed discussion they would bring in representatives of those agencies on their federal team.

Duane introduced Bill Greiman who has been working on technical aspects of instream flows and how those could be translated into a quantifiable water right. Bill explained that the technical team was tasked to come up with a process to quantify and evaluate the water left in the stream after the Project uses the current stream flows. The idea is that the Project water as used now would be protected but the Tribes would like to have a way to quantify and evaluate the current instream flows so they would have a normal or somewhat natural hydrographic form. As a demonstration he used the Jocko River below K Canal. He took the average of all the peaks and then averaged each of the day's flows and explained that he could take the resulting hydrograph and move it up and down based on the type of year. If he had a water year that's 125% of average, they could move the hydrograph up to a higher flow, etc., and that would get the volume of water for the year. They have to look at the average dates of runoff also. He would be able to show the peak flow and when it occurred. He has the average flows, the dates and the seasonal average flows. He can take the average flow number and find out what kind of a year it was percentage-wise. He can create a hydrograph that shows the different flow years and how this method would evaluate flow conditions. Bill explained in detail how he can work the various flows from a technical point of view, and said that it is a workable concept that delivers what they were requested to do and they will continue to work on the concept and continue to see if they can do it for all the streams they have data for.

Duane said he had heard discussions of predictions and asked how they would incorporate snow pack conditions. Bill showed how they can adjust the hydrograph based on a specific condition. Jay said the purpose of this exercise is that as part of the Tribe's proposal to the State there have been two components as it relates to what Bill just went through: the commitment to protect existing uses and the desire to protect as a baseline the existing water that is left in the stream. That is occasionally referred to as shared shortages and it has been referred to as protecting existing uses and protecting fisheries and one of the things they started looking at is how they can make the concepts work and be implemented in practice. No two water years are the same. One initial thing they looked at was average dry and wet years and found that information was not necessarily adequately specific to accomplish protections.

of existing use and of water in the stream Bill has done a "unitless" representational hydrograph concept which allows forecasting tools to be used also Jay explained more about how this would work, based on forecasting tools and that it lets them look at regular intervals and as Bill explained how they can look at the flows during the year They can have a mathematical way to make sure there is an instream flow that has a natural looking hydrograph does not impact current Project operations

Clayton said what is represented here is that the Tribe recognizes that in addition to protecting existing uses, there are streamflows that exist today and the baseline of that is what they are trying to protect Recognizing the complexities of hydrology on the Reservation, the State is offering a method of how to apply that on an annual basis It is complicated and they want to make it clear that this is a work in progress They have a lot of discussions to go through to determine what the applicability and accuracy and completeness of the approach is It may work well in all the drainages or they may have to come up with a different tool, but this is where he understands the technical teams are right now and he appreciates the work the state technical team has put into this and the State, Tribal and federal teams are reviewing it relative to the Tribal proposal

Chris emphasized that regarding Hungry Horse it is not just the negotiating teams and the government and the folks downstream who are interested in this but DNRC is also studying this to see what affect it has on water availability down stream from the Reservation There are a lot of folks working on this issue and to a large extent their work will complement each other

Seth Makepeace summarized other technical projects the teams are working on He said it demonstrates that it is a challenge to take these tremendous numerical efforts and distill them so they are communicated properly With Hungry Horse he reemphasized several points the modeling did not show tremendous effect below Albeni Falls but it showed influence at Hungry Horse Reservoir and this has been an issue that the State of Montana has fought diligently on in behalf of state and Tribal citizens of the state They have two scenarios to look at - one is to draw water from the reservoir to be supplemental water on the Reservation, the other mechanism is natural flow or water from the Flathead River system which would be backstopped or supplemented in the very driest years out of Hungry Horse reservoir Those two are two different types of water rights and two different types of legal policy and administrative processes and it's important to note that They think that using the natural river flows will have much less influence on Hungry Horse reservoir draw downs It will have a greater impact on the river but a very low percentage That is a modeling scenario they talked about in their technical team meeting the other day but they hope that will come forward It is important to emphasize that the Flathead River system is a large river system in western Montana and this supplemental water the Tribes are talking about is a part of the Tribe's Flathead River water right It is not the entirety There is a FERC flow schedule below the river which is almost 40% - dedicated to FERC for instream flow The supplemental water would be in addition The other point regarding Bill and his peers - the technical team was charged to protect existing verified uses, one of which is the natural or bypass flows going down the river systems Bill has been putting together some very good technical tools to do that which demonstrates they can actually manage water to support existing verified uses and yet still allow what currently and historically gone down the stream systems They are finding a good correlation between the types of water years and the peak flow magnitudes and Bill has built a set of tools that key off those two factors that they can project and predict the water year type and predict the peak flow and then create a hydrograph that they think will occur through the year Bill and the technical team have looked at that in the Jocko and they are looking at the Little Bitterroot and Mission valleys now This will help with the quantification effort and also the water management procedures that go into the compact Seth said those are the focused areas for technical work right now

Chris said in the NPS Glacier compact they dedicated virtually all of the flow of the North Fork of the Flathead to instream flow along the western boundary of the park from the Canadian border down to West Glacier Virtually all of the discharge goes into the river as

instream flow so some of that water is already dedicated to instream flow then for use as storage water, etc

#### **7. Question and Answer Period**

Duane opened the question and answer period and noted there would be a comment period later

Rory asked about the State's response to the unitary water management proposal and how the public gets a copy of that Jay said it would be put on the RWRCC website Otherwise he can contact the RWRCC for copies

#### **8. Other**

Clayton said as of yesterday they have added to the official Tribal website a website dedicated to the water rights negotiations Rob McDonald said there is a sign-up to be entered into an email address for updates and people can leave comments They will take suggestions as to what people would like to see Right now there is a power point presentation and some of the basics

Duane brought up a topic he said needs to be considered in negotiations It is "waiver" language The key issue for all water settlements is finality It is in everyone's interests that water rights claims be resolved in one fashion or another with finality Montana initiated the adjudication for all water rights claimants to come forward and verify and quantify their existing water rights The finality can be reached through litigation whereby a trial judge issues a decree defining the federal reserved water rights if that is how the parties end up proceeding It can be appealed and eventually the appeals would be exhausted and there would be a final decision The settlement process presents parties with an alternative path His experience is that settlements sometimes take as long and as much effort as litigation but in the end the settlement will have a definitive solution and finality for the water right claims In the settlement process they end up compromising what they might have claimed in litigation and accepting a solution or a claim that might be considered less than what they could have resolved through litigation So it is necessary as part of a settlement package to have a waiver arrangement whereby the United States and the Tribes waive the claims they might have otherwise made in litigation in substitute for what they have accepted in the negotiations This is a component of every settlement and has become a hot topic this calendar year with a lot of activity in Congress Duane has forwarded to the parties a draft of legislation he is guessing the entire federal government approved which are federal recommendation from the executive branch of government for inclusion in federal legislation that authorizes and implements these settlements They have not had a chance to engage that language and this might be a good opportunity to begin using the new CSKT website and put this on the website Note that there have not been discussions about it yet and Duane's intent is that they have considerable discussions His intent is to queue the issue up Clayton said they had just received the information and need to spend a little time looking at it Jay noted that the waiver issue is generally between the Tribes and the United States and the State does not tend to get directly involved, although the sweep of the new proposed federal waiver does seem to implicate some State interests so it may have a more active role John Carter said that goes with the State's contribution to the settlement

Michael Bogert said there is no doubt that for a settlement of this magnitude that the technical folks have just outlined, it takes everybody in the room to listen and ascertain what their interests are All of the key ingredients and human elements are here It is a new process for him and he said he is greatly privileged and honored to be there and see the public discourse Transparency in these decisions is of great value This is not a process that they necessarily had back in Idaho when they worked on Nez Perce settlement It is enlightening to him and they will take this back to their people in D C

He said in this administration, no matter who is elected, the water rights process that must ensue in order to bring a framework forward and make progress knows no political stripe There was some oversight on Capital Hill and the chairman of the House Committee on Indian



Affairs said the issue of water knows no political allegiance. They can assure themselves that their political successors charged with policy decisions will soon understand that it is decisions made outside of Washington D C that ultimately have the most impact and power on guiding the federal decision makers down the path to achievement and finality. He said they have great confidence in great people like Duane Mecham who is heading up their settlement team in advancing the goals they are all seeking.

Regarding getting to a place they can call finality, he said everyone there has to share in the risk of some uncertain outcome with a settlement but in order to get there it will call upon everyone there to take stock of both political and ideological values and perspectives that they bring to the negotiations in terms of people's interests. He does not profess to know if everybody has shared what their interests are but he's assuming that has been a part of a productive well-reasoned discussion. There is no question that in order for this process to achieve success, people will have to challenge themselves as to what their interests are and whether the values they bring can be compromised and challenged. To the extent that the Tribes have to value the finality of a settlement the good news is that they are having discussions of waivers. To Clayton and the Elders it is important that they discuss what it means to have the settlement come to an end and to no longer have the specter of litigation hanging over the United States. For the State the issues will be how they enforce the agreement – if something goes awry in the future – there is much riding on the ultimate finality and vision and implementation of these settlements. He recommends that the parties begin to have the discussions as soon as they can. Regarding the transition, the Secretary has asked them to advise those coming into the office of the importance of all of the issues. They will advise their political successors that there has never been a more critical time, not only for this Tribal government and others, but there could be anywhere from 19 to 20+ settlements come in to the pipeline. They will advise their successors how important it is that they not lose any continuity and the momentum they have developed, they will make sure they have the latest up to date information on the progress. They will do the best they can in the time they have left to elevate the policy decisions that have to be made with the investment they have made thus far with this administration. He gave their commitment that they will provide the best policy advice and counsel to all of their Interior agencies that have a stake in this outcome. He said to Clayton and the Elders and Tribal leadership that they have his commitment to do as much as they can in the time they have left. They will advise their successors of the importance of this matter.

Clayton thanked Michael for being there. He said none of them have crystal balls for the transition or for waiver discussions. For those on the Tribal team, they have to do one settlement and they want to do it right. He wanted to be crystal clear that they are keenly aware of the issue of finality and what it means and as they settle this, however it gets settled, if it becomes the final settlement conceptually for all time for their water rights, but with an eye towards what other settlements have done, finality is always a question. To the degree they can create finality, it creates some certainty for Tribal membership and residents of the Reservation and all water users in western Montana. Some of the things such as administration, while settlement might be final, water management on the Reservation will never be final and it will be ongoing forever. They want to do this right and do it in such a way that while they have a final settlement, they have a settlement that is forward looking and looks to how they can manage the resource on the Reservation for the good of the membership, their future generations and all residents of the Reservation.

## **9. Public Comment**

Carol Dubay, a member of the Tribes said she had lived most of her life there and she remembered the day when there were salmon in the lake and the Tribe was well-fed and the water was beautiful and her father would say there was no place on the shore of the lake where he couldn't put a boat in. She said her father passed on the legacy to always take care of the water. She wondered if the future generations will have food and will the water stay beautiful and pristine for them. She believes that instead of just looking at technical points they need to look at this whole area they all inherited from the Creator and they need to remember that the salmon hold the key to creation. When they talk about downstream in Columbia River, she remembers Pat Lefthand and how many times he and Mickey Pablo left a legacy to her to never,

never forget about the water that nourishes the fish that nourish the people. When they talk about upstream in the Hungry Horse area and the waters that flow into the Reservoir that was dammed, remember that for time immemorial, for thousands of years, the people that are native to these valleys and mountains and rivers and lakes carefully protected and took care to care-take it. They were only here to use it and care-take it. Each person there has to be aware that they are only in a little piece of time and what has been done in their lifetime counts for good or for not good. People cannot just think about themselves. People have to think way into the future just like all the native people have always done and she feels offended, she is offended – all her life she has watched the water go down and the houses go in. She remembers she would sit and cry because there was hardly a place where her Tribal people could put a foot on besides the Flathead Lake without having to worry that some white man had come in and taken the land so he couldn't put in a boat. There is nothing that made her madder because the Tribe took care of the water that went into the lake. They were talking about drawing down Crow Creek and out of Flathead Lake and are they thinking about the fish when they draw down. Is each person doing modeling really thinking about the future of the fish? Patrick Lefthand particularly left her with a legacy, "Don't forget about the fish." She talked about the fish going downstream in Alaska, the pollution in the waters, global warming being a reality and traveling from Alaska to be at the meeting because she is really worried about this earth, the whole earth. She said the whole valley is the most beautiful place on earth and here they are sitting talking about modeling and little details and technical issues but they better be thinking about the big picture because they are all humans on this earth and they all want to pass something good on to the future. They negotiate, when they talk to each other, and she said for them not to stop talking until everybody gets the word out so that when they are through, it lets everybody say something and talk from their hearts because as native people they work from their hearts and that is what the Creator asked them to do, to take care of things with their hearts.

\_\_\_\_\_ (can't hear) said quantification of Tribal water rights seems to focus on factors such as culture and beliefs, how do the Tribe's view of water fit into an agreement?

Clayton said that was a great question. It is important to try and understand the holistic view that was just described is something that, while in their negotiations and presentations they often have to discuss technical issues, the foundation to everything they do for a settlement through negotiations or a claims settlement through litigation from the Tribal perspective is based on their history, this place, who they are and all of the integrated cultural pieces that are important to a settlement. They have talked a lot about that and he is certain as they get through this, at many of their sessions the Tribal Elders have talked about how important that is. They have worked very hard to make sure that is integrated into this. It is difficult to say there is a single cultural element, his water here now is what they are claiming for cultural purposes, because they are told is that everything they do with water and everything that water touches has a cultural component to it, whether it is for humans, plant life or animals. He thinks that is the cultural, spiritual ancient history they bring with them – the history of this place and the thoughts from their ancestors they bring with them. It is broader than a drop of water they are claiming for cultural purposes, it is broader than that and it is a cover over everything. He said the Tribal Council is very interested in hearing about that. In the middle of the technical points that is always in their mind.

\_\_\_\_\_ (Tribal Council Member) said he would like them to know that each time the Tribal Council meets they start each of those meetings with a prayer and ask Grandfather for guidance, they ask with words but mostly with their hearts. And water rights are no exception. It is very important and they try to make their decisions that affect the very being of Tribal membership and they take that very seriously and they try to do that always honoring Tribal beliefs and values. The best way to answer that question is to look at how they address water with passion. It is the very blood that courses through the center of this Reservation and all the arteries that come down from the mountains and he thanked Ms. Dubay for showing some of that passion. As Caleb Shields, former Tribal Chair of the Assiniboine and Sioux Tribes at Fort Peck, spoke last week, they are called to activism – maybe not the same as in the 60s – but certainly with the same commitment to what's right, the environment and the truth and the

passion they heard a few minutes ago That cultural perspective is always in their Tribal hearts and always will be

Nikos Pastos said Carol Dubay is his mother and he is proud to stand there with her and their people He said his comments were submitted with respect to all the humans in the room and he thanked the Tribe for driving a hard bargain and for their perseverance They have incredibly talented people and there are a lot of other needs for the talents of these people so they are putting in personal time and he wanted to thank them When they are talking about the sacred waters \_\_\_(can't hear) wrote about the history of relations with all the beings of the earth the water they count on for their food is so sacred that it is worth living for and worth celebrating He is the treasurer for a public interest group called the Center for Water Advocacy They were formerly known as the Center for Tribal Water Advocacy and are working in nine western states with natural resource management and western Tribes The message he has from the Center for Water Advocacy is that there are many significant Tribal leaders who are monitoring this negotiation As a non-profit they wouldn't come there unless invited but at an international and inter-Tribal level they want to let the federal government and the State know that there are many other Tribes monitoring the negotiations He said this seems to be the most important issue for him and his life He said he does not like to see it as a conflict He does not think they have to have water negotiations that end in conflict but if it is a conflict it is something they will live for and not really compromise something for their children He thanked everyone for their diligence and said to know that their families and many other Tribes are standing by in support of the Tribal government

Chris Tweeten asked to return to the question regarding cultural values and said they listen very carefully, on the State side of negotiations, to the cultural concerns that they hear from the Tribal elders, the Tribal Council and the Tribal representatives He said they understand as best they can the importance of those issues to the Tribes and they try as best they can, to be sensitive to the attempts to preserve those cultural values and not to damage them with respect to these negotiations There are other cultural values that are at stake here and he wants to emphasize that, regardless of what people think of the allotment of the Reservation and the passing of lands into non-Indian ownership, there is a cultural aspect to that as well He said there are a lot of people on the Reservation who are afraid that their lifestyles that their families handed down to them from generation to generation may be affected by the water settlement For that reason they are very appreciative of the stance the Tribe has taken with respect to preserving and not impairing existing uses of water He said he agrees fully with the comments Clayton made that the water is there for people to use during the time they are there The tradition of western water law is that one does not own water as a commodity, it entitles one to use water beneficially and not a right such as a mineral interest The use of water for agricultural purposes on the Reservation is deeply rooted and it provides them with sustenance and with a lifestyle they can pass down to their children for generations He said he is really pleased that the Tribe has taken a position that it is important to maintain those existing uses and not to interfere with them in the context of settling the water rights He said he wanted to emphasize that cultural values and issues are universal throughout the Reservation and people understand that others have their own cultural values that they want to pursue and they are pleased, he thinks, when the parties go through these negotiations committed to preserving all the cultural values with respect to the use of water on the Reservation

Rory Horning, said he was a member of the Lake County Republican Central Committee and extended a personal apology if there was anyone in the Tribe who was offended by the comments made by the Chairman of the committee, and as of his term on that body there has been no edict from the Republicans regarding the attorneys or anything about this process That is his personal opinion and he is not authorized to personally apologize for them

Clayton said he appreciated Chris's comments about the breadth of the issue of cultural issues on the Reservation and thanked him for acknowledging that the Tribal government has taken the position to protect existing uses on the Reservation The analogy of the opening of the Reservation is important for that and an analogy is also here, that was determined to be an

illegal taking and from that respect the takings process is something in terms of the final settlement is something that is very important to the Tribes in terms of how they look at water resources on the Reservation and how that is associated with the settlement. Certainly they are keenly aware of that history and what other meaning the Reservation has. Chris said he wasn't intending to make any comment one way or another with respect to the allotment of the Reservation, he said whichever position one takes on that dispute he doesn't think it affects the fact that cultural values are present and that they are important to people and they all need to take them into consideration as the negotiations go forward.

Pat Pierre as the representative of the Tribal Elders he said he wanted them to know that a group of young people came from their Tribal High School and are there in attendance and he appreciates that. He thanked Chris for his comments on the value of the water and Tribal people. He said as far back as he could remember all the resources on the Reservation were Tribal, including water and all the natural resources. Throughout the years that he has been on the Reservation he has seen many things take place that have not been good for the Tribes. Today and everyday of their lives they fight for their existence. They used to fight hand battles but along the way they learned your (the white) system so it is not legal now. Throughout the years it has been an uphill battle for Tribal people. There is no place that he can see where they leveled off and lived the good life as far as being free. This country is supposed to be the land of the free but to them it has never been the land of the free because they have never been free and they are not free today and others are not free today. People are governed by the federal and the state and they make the laws and people have to abide by the laws. There is no law in the State of Montana on this Reservation on anywhere else that that is enacted with first coming to the Tribes and asking if the law is good for them. It is enacted without their input. All the laws they are abiding by today were pushed on them. You can see if you look back where they were holding back and saying no. They are the sovereign nation and the State of Montana is a sovereign nation. They are sitting in the room together and he doesn't like to say "against" each other because he wants some place down the road where they can all be around the table and be able to sit and talk to one another and come to an agreement on how they will take care of this particular piece of land. How they can get together and talk about how to best take care of it for generations that they need to look to. There are generations of people yet coming that need to have a place to call home and they can be proud of it because somebody protected it for them. And that somebody today is him, the Tribal Council and all the people who are concerned. Chris said awhile ago – water to the Indian people is a sacred substance. It is medicinal and has been used such for years and years. He uses it medicinally because it is sacred and it does what it asks you to do. He still depends on Mother Earth to keep him healthy. Mother Earth is the provider of everything. And who is responsible for taking care of Mother Earth – they all are because she is the provider of everything they all use, eat, wear, walk on. Everyone must agree that they have to protect the resources and that is what they are doing today. They are not asking for anyone to come help them protect what they have here because they know how to protect Mother Earth. History did not start in 1492. It goes way beyond on this continent. They can sit and talk about resources, water in particular, and they can go to the Tribe and ask how best to protect it and the Tribe will show them. The federal government has a responsibility but do they know what their responsibility is? Are they praying for guidance every day? A long time ago, before this place was over run, the Tribal people used to send people into the mountains to the head of every stream that the water would continue to flow because they totally depended on medicinal plants. In 1936-37 that is the last time he heard that took place. Individually he does it, but he can't get to all the heads of the streams anymore. Now it is up to the young people – they will take their place among their people to protect what they have here. It is a responsibility that will be passed on to take care of Mother Earth. The Tribal Elders ought not to be sitting at the table with all the people and why are they talking about their water. Everything on the Reservation belongs to the Tribal people. They have people on the Reservation that fight the Tribes continuously, he hopes they move away. Every white person that lives on the Reservation knew they were settling on a Reservation, they chose to be there. They chose to be there they should choose to abide. They have laws, rules and regulations that a lot of people right there fight against. They say the Tribes have no right to make rules. They do and it is the Tribe's land and they need to protect it. That is why they are sitting at the table with the State of Montana. Or if they just rolled over,

the State of Montana could come in and take over everything on the Reservation including water and shut your spigot off They as a Tribe don't want to see that happen They want to protect existing water uses and rights They want to protect what they have there They don't have much to protect anymore The Reservation is a speck of dirt compared to the nation they once ruled, this is all they have left so they will go all out to protect it They can come to the table and sit there time and time again and if they don't come to an agreement they will keep coming back and sitting at the table, his table, until they agree with what the Tribe has said and they have said that's the way it is going to be They have spoken, now keep coming until the parties agree The Tribes are not giving up anything any more Everything has been taken from them A thief does not really own what he has stolen He said he would be sitting at the table every time they gather and he will keep reminding them that it is up to everybody on the Reservation to protect it

Carol Dubay said she came a long way and she asked everybody who came from afar and who lives here – (can't hear) they are right, the transition they are facing and this government and world is in great jeopardy She prays a lot these days, she is asking for them to think about ways to communicate and really talk together from their hearts and know that the hoop of the nations never included the native people They suffer to live in their own lands How do you think they feel, every day? Others have no idea how that feels She asked people to please find a way to pray together for guidance so they can save this beautiful land Anybody can have a good suggestion – please pray for the peace they need in this world The pollution is out of hand If she's not here she wants to hear they are praying together Let's hear they will do their best to do better

**10. Set next Negotiating Session Date**

November 19<sup>th</sup>

**11. Closing Comments by the Negotiating Teams**

Clayton thanked everyone for being there and though it is a long process they are making progress It is important to them because of their history and protection of the resources for future generations In the short term they are hopeful to extend this negotiation process past the sunset date

John Carter said there are two ways to complete negotiations, one is with the Compact Commission and the other is yet to be defined The Tribe has worked hard to bring forward legislation to extend the life of the Compact Commission for another 4 years As it presently stands the Commission ceases to exist as of the end of June 2009, then theoretically the parties are in court Bill draft LC0057 was introduced by Senator Carol Juneau to extend the life of the Commission for another 4 years He urged people to support that bill when it comes up

Duane expressed his appreciation for all the comments during the public comment section and adjourned the meeting

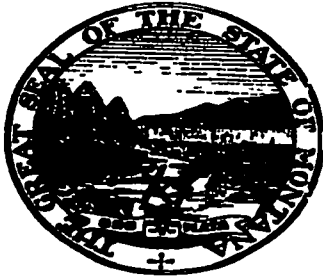
**Agenda**  
**Confederated Salish and Kootenai Tribes**  
**State of Montana Reserved Water Rights Compact Commission**  
**And**  
**United States**  
**Water Rights Negotiation Session**

**9:00 a.m.**  
**Wednesday, October 22, 2008**

**KwaTakNuq Resort**  
**49708 US Highway 93**  
**Polson, MT 59860**

- 1 Opening prayer**
- 2 Introductions**
- 3 Opening Statements**
- 4 Unitary Management Proposal Update**
- 5 Hungry Horse Update**
- 6 Other Technical/Legal items for Discussion**
- 7 Question and Answer Period**
- 8 Other**
- 9 Public Comment**
- 10 Set next Negotiating Session Date**
- 11 Closing Comments by the Negotiation Teams**

**If you plan to attend and will require special facilities or accommodations relating to a disability, please contact Joan Specking at (406) 444-6829 by September 19, 2008**



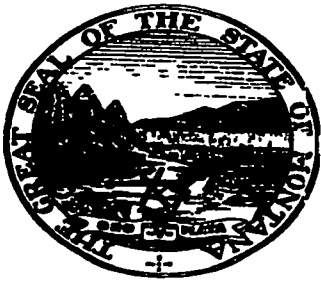
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MEETING CSKT Negotiating Session  
DATE 22 October 2008

Attachment 2  
October 22, 2008

## PLEASE PRINT

Name	Organization	Address	City/ST/Zip	Phone/Email
<u>Bernie Arone</u>	<u>Chaucoos Falls</u>		<u>PABLO MT</u>	
<u>ALVARETTA MARIN</u>		<u>37649 Valley Cr</u>	<u>Arlee MT 59821</u>	<u>726-3167</u>
<u>SONJA HOEGLUND</u>	<u>DNRC-RWRCC</u>	<u>Po Box 201601</u>	<u>HELENA MT 59620 1601</u>	<u>406 444 6843</u>
<u>Bill Greiman</u>	<u>"</u>	<u>"</u>	<u>"</u>	<u>" 6607</u>
<u>Dave McAlpin</u>	<u>State House of Reps.</u>	<u>800 Woodworth</u>	<u>Missoula</u>	<u>mcдавe94@gmail.com</u>
<u>Wanda Dashnea</u>		<u>Box 732</u>	<u>Poleon</u>	<u>406-319-2410</u>
<u>Tom Smith</u>		<u>3845 E. N. Reynolds Rd</u>	<u>Poleon</u>	<u>853-1534</u>
<u>John Enew Stone</u>	<u>Two eagle river sdos</u>	<u>P.O. Box 160</u>	<u>Pablo</u>	<u>675-0292</u>
<u>Jennifer Cates</u>	<u>Two eagle river school</u>	<u>Po Box 160</u>	<u>Pablo</u>	<u>675-0292</u>
<u>LaReza Lafley</u>	<u>Two Eagle River</u>	<u>PO Box 160</u>	<u>Pablo</u>	<u>675-0292</u>
<u>James Mestas</u>	<u>2 eagle river</u>	<u>Po. Box 52</u>	<u>ARLEE, MT. 5982</u>	<u>(406) 72619267</u>



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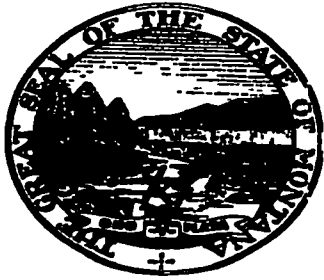
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Name	Organization	Address	City/ST/Zip	Phone/Email
✓ Tera Moore	TWO Eagle River	Pablo	MT 59855	675-0292
? Nathan	<del>Two Eagle</del>	Mikes house	MT 59855	675-0292
? Wanda Spiller	Two Eagle	Ronan	MT 59864	544-6797
? Corwin Roth	TWO Eagle	Elmo	MT. 59915	849-6806
✓ Rodney Bird	Two Eagle River School	Box 160 Pablo	MT. 59855	675-0292
✓ Celest Caga	Two Eagle River School	Box 160 Pablo	MT 59855	675-0292
✓ Rhonda Whiting	NWPC	4001 Concord Dr	MT 59808	546-7907
? Kayla Gardipe	Two Eagle River School	Ronan	MT. 59864	880-0824
✓ Kathy Howard	Two Eagle River School	41946 Pablo	MT 59855	529-8583
? JAYLEN CARPENTIER	TWO EAGLES	RONAN	MT, 59864	—



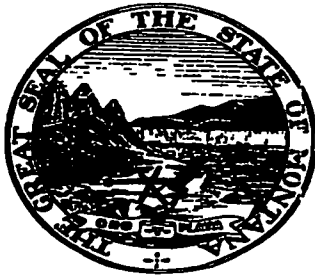


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Name	Organization	Address	City/ST/Zip	Phone/Email
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Donothy Bradley	Compact Commission			
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✓ Leslie Stillwater	USBR	1150N Curtis	Boise ID 83700	208 3785202 lstillwater@pn.usbr.gov



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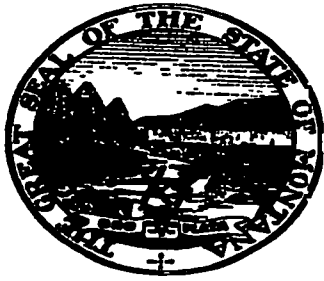
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Gerald Mueller	Clark Fork Task Force	440 Evans	Missoula, MT 59801	543-0026
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Amy M. Kelson				
Karen Horning	EDGEWATER LEADY	#1 5th Av. W.	Polson	883-5203
Tracy Ost	CSKT NRD	301 Main	St. Polson 59860	883-2888
✓ NIKOS PASTOS	CENTER FOR WATER ADVOCACY	801 RECK AVENUE	ANCHORAGE, AK 99504	PHONE: 459-3484 E-MAIL: WATERLAW@UCF.NET
✓ Rene Dubay		38806 Dubay Rd	Polson	rdubay@montana.edu
✓ Wilbur Mehl	CSKT	1008 5th St W	Polson, MT	871-8988



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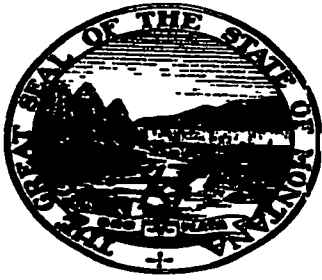
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Rhonda Swaney	CSKT	Box 278	Pablo, MT 59855	406-676-2700 x1297
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Bert Tiskus	Valley Journal			676-8989



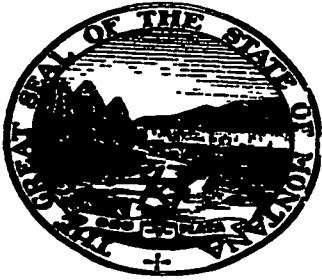
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Nathan Shoups	CSKT	P.O. Box 278	Pablo MT 59855	675 270 0 EXT 1276
John Carter	CSKT	"	"	675-2700 #1164
Clayton Matt	CSKT			
STEVE LOZAR	CSKT	PO Box 278	PABLO MT 59855	675-2700
Patrick A. Pierre	CSKT	PO Box #5	Arlee MT 59821	406 546-3302
IGNACE V. COYTHAE		Box 172	Elmo, MT 59915	871-1246
Charles Moniqueau	CSKT Council	Box 27	Pablo	
Terry Potts	"	"	"	



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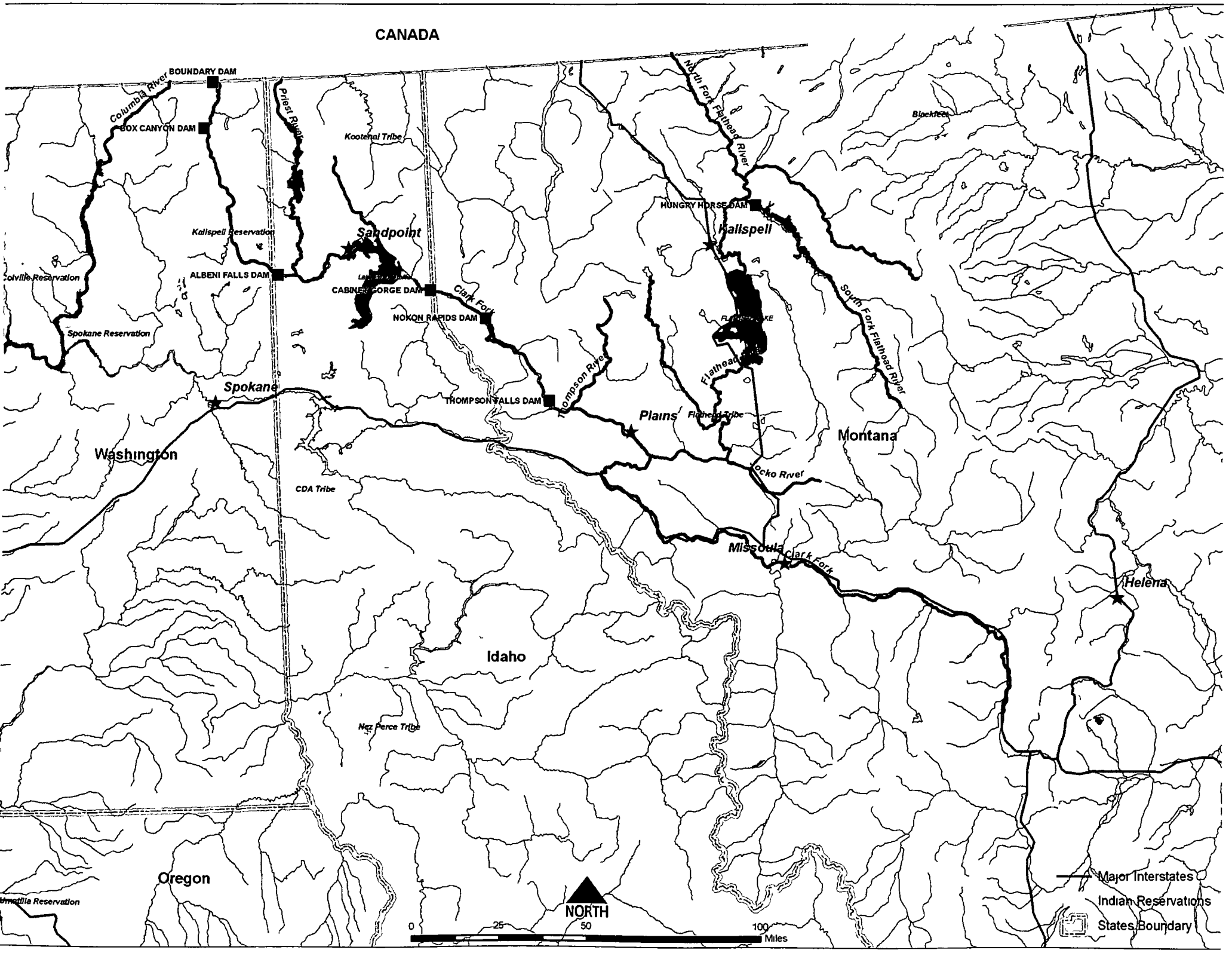
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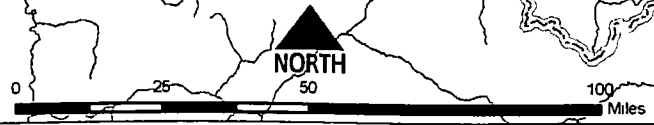
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JAY WEINER	RWRCA/ABO	HELENA, MT	59625	444-6844 / jweiner@mx.gov
Susan Coughlin	DWRCC	Helena		
Chris Tweeter	RWRCC			
Daniel Belcourt	RWRCC	Missoula		

CANADA



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