COMMISSIONERS APPROVAL

FOSS

CHILCOTT

IMAN

STOLTZ

BURROWS

Members Present.....Commissioner Suzy Foss, Commissioner Greg Chilcott, Commissioner J.R. Iman, Commissioner Ron Stoltz and Commissioner Jeff Burrows

Date.....September 14, 2012

►Minutes: Glenda Wiles

►The Board met at 9:00 a.m. with Bill Schultz of the Reserved Waters Rights Commission and Attorney Jay Winer who gave a presentation on efforts to resolve CSKT's (Confederated Salish and Kootenai Tribes) Off-Reservation Water Rights Claims in the Bitterroot. (See attached). This nine Member Compact Commission was established under Sec 85-2-701, MCA to conclude compacts for the equitable division and apportionment of waters between the state and its people and several Indian tribes and the federal government claiming reserved water rights within the state. CSKT's are the eastern most tribe, located in Montana and they have certain Treaty rights which presume there is enough water in the streams to dip a net whether is comes up empty or full. The primary goals for Montana is the recognition of appropriate scope of SCKT off-reservation rights; protection of existing users; provision of biological benefits for western Montana fisheries and retention of flexibility for new permitting in off-reservation basins not currently closed to new appropriations. In regard to the Bitterroot Rivers Drainage the Reserved Water Rights, the Commission recognizes there is not enough water to build in a in-stream water rights because of the contract with DNRC on Painted Rocks and the contract with the US Bureau of Reclamation at Lake Como. Jay indicated nothing in Montana's proposal changes the ownership of the facilities or the contracted rights which include the Painted Rocks and Como and the Tribes are not becoming a party to any of the contracts. Thus No effect on PRWUA or BRID irrigation water. The Tribe could challenge the management practices of Fish Wildlife and Parks but Painted Rocks remains a DNRC's facility. In regard to the FWP Recreation Rights, the proposal is for the FWP and the Tribes to co-own those rights, but co-ownership means parallel ownership. Jay reiterated that all negotiations sessions are open to the public and widely noticed. Their intent is to have a draft of the Compact available for public review as soon as possible. There will be public meetings within the affected area.

►The Board met at 10:35 a.m. to discuss and make a decision on hiring the Road Operations position. Present at this meeting was Human Resource Director Robert Jenni and Road Administrator Robert Jenni. **Commissioner Stoltz made a motion to hire Dusty McKern as**

the Road Operations position. Commissioner Burrows seconded the motion. After discussion Commissioner Stoltz withdrew his motion. No vote was necessary at this time.

►The Board met at 10:45 a.m.to review and make approval of the Delegation Agreement drawn up by Deputy County Attorney Howard Recht for the purpose of placing the 911 Dispatch Service temporarily under the supervision and management of the Sheriff due to changes in personnel in the 911 Center. Since an emergency and disaster situation exists in the valley (Sawtooth Fire) the Commissioners felt it necessary to adopt this agreement during an open meeting today then ratify the Delegation Agreement on Tuesday, July 18th at 2:30 p.m. Chief Financial Officer Klarryse Murphy was placed on conference call to discuss issues financial issues within the budget. Klarryse stated she has no financial concerns over this agreement in regard to the FY2013 because the Commissioners cannot budget for unknowns and there are reserves in 911 and the Sheriffs Funds. If additional costs occur due to this temporary agreement, they can be handled by a Budget Amendment from those reserve funds. **Commissioner Chilcott made a motion to execute this agreement effective today at 1800 hours and then ratify the agreement on September 18th at 2:30 with the understanding that the Sheriff will be placing a Deputy in charge of the 911 Dispatch Center. Commissioner Stoltz seconded the motion. Discussion: Commissioner Iman reiterated the need to approve this agreement today due to Sawtooth Fire with ratification on September 18th, All voted "aye". (5-0)**

►The Board met at 2:00 p.m. to disseminate the Forecast Report by Engineers Robert Peccia & Associates in cooperation with the FAA for the Ravalli County Airport. Venues for the public will be a two-day check out of the written report; a CD at a cost of $5.00; access from Ravalli County Commissioners web page or Glenda can email the link.

The Flathead Reservation Water Rights Settlement Process

July 18, 2012

Q. What's this all about?

A. Water compacts for the six other reservations in Montana have been negotiated and approved by the Montana Legislature. Representatives from the state of Montana, Confederated Salish and Kootenai Tribes, and the United States governments have been meeting to develop a water rights settlement for the Flathead Reservation. This document addresses a number of the questions about this process.

Q. How will the settlement agreement potentially affect individual lands and rights?

A. One of the goals in developing a settlement is to protect existing, valid water users. For new water uses, the draft Ordinance provides for new domestic and stock water uses with an expedited permitting process and a permitting process for larger new water uses.

Q. How would water be administered?

A. The draft Ordinance and Compact would create a Water Management Board with two representatives appointed by Montana and two appointed by CSKT; a fifth member would be appointed by the other four.

The Board would oversee the implementation of the settlement within the Flathead Reservation. It would ensure that new water uses do not have an adverse effect on existing water users. Water use within the Flathead Indian Irrigation Project would be operated under an agreement being developed by the CSKT and the Flathead Joint Board of Control.

Q. How will recreational opportunities be affected (fishing, boating, camping, etc.)?

A. The draft Ordinance and Compact do not have any effect on recreational opportunities.

Q. What is the schedule for the settlement process?

A. Representatives of Montana, CSKT, and the United States are working to complete a final draft of the Ordinance and Compact and other documents that would be part of the settlement. There will be public meetings to explain the draft documents and an opportunity for the public to comment on the drafts. In the fall, the settlement parties will review all the comments and work to finalize a settlement agreement.

If the settlement parties agree on a final settlement, they will request that the Montana Legislature review it during the 2013 session. Final approval requires action by the Legislature, the United States, and the CSKT.

Q. Why is there an off-Reservation component and what are the major components of the Montana proposal?

A. Language in the Hellgate Treaty provides the CSKT with the right to "take fish" in the Tribes' "usual and accustomed" locations. The CSKT are the only tribes in Montana with this treaty language. Language in similar treaties in the Pacific Northwest has been interpreted to secure to tribes the right to use of water outside the Tribes' reservation to maintain fisheries flows.

The State of Montana has prepared a proposal to address this issue and the CSKT have prepared a response. Copies of the Montana and CSKT materials are on the websites. The parties are working to complete work on this issue.

Q. What happens if there is not a settlement?

A. Without a settlement, pressures on water use will only increase. For example, there is likely to be increased focus on increasing instream flows.

Without a settlement, the CSKT will file their water claims with the Montana Water Court. Water users will then need to participate in Water Court adjudication process to defend their water right claims, which is time-consuming and costly. The results of the litigation are uncertain and may pose risks for current water users and will take many years to sort out in the court process.

The Montana water adjudication process would likely result in different water priority dates for different water users on the Reservation. Delivering water based on a variety of priority dates could require expensive modifications to the canals and irrigation ditches.

The Montana water adjudication process cannot provide for fixing the irrigation project infrastructure or improving water supplies on the Reservation.

For more information come to the public meeting on August 1st at KwaTaqNuk in Polson, Montana. There will be an informal open house from 4 to 5:30, followed by a presentation on the elements of the draft settlement from 5:30 to 6:30; and public questions and comments following the presentation.

For further information visit these two websites:
Montana: http://www.dnrc.mt.gov/rwrcc/Compacts/CSKT/Default.asp and
CSKT: http://www.cskt.org/tr/nrd_waternegotiations.htm.