

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Monday, June 30, 2008
Prairie Knights Casino and Resort
Fort Yates, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:15 a.m.

Members present: Representatives Merle Boucher, Duane L. DeKrey, Daryl Lies; Senators Stanley W. Lyson, Tim Mathern, Dave Oehlke

Native American Tribal Citizens' Task Force members present: Cheryl Kulas, Executive Director, Indian Affairs Commission; Myra Pearson, Chairman, Spirit Lake Nation

Native American Tribal Citizens' Task Force members absent: David Brien, Chairman, Turtle Mountain Band of Chippewa Indians; Avis Little Eagle, Vice Chairman, Standing Rock Sioux Tribe; Michael Selvage, Sr., Chairman, Sisseton-Wahpeton Oyate; Marcus Wells, Jr., Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation

Others present: See [Appendix A](#)

Chairman Boucher introduced Representative Rodney J. Froelich, Selfridge, and invited him to sit with the Tribal and State Relations Committee.

It was moved by Representative DeKrey, seconded by Senator Lyson, and carried on a voice vote that the minutes of the May 19, 2008, meeting be approved as distributed.

TRIBAL-STATE NATURAL RESOURCE ISSUES

Chairman Boucher recognized Mr. Roger Rostvet, Deputy Director, Game and Fish Department. Mr. Rostvet discussed efforts to identify and mark hazards in Lake Sakakawea and reviewed a memorandum ([Appendix B](#)) from the Attorney General's office discussing marking of potential dangers or hazardous conditions on lakes and rivers and the liability of the Game and Fish Department. He said the department had requested an opinion whether it has a legal duty to mark potential dangers or hazardous conditions on lakes and rivers in North Dakota and if it undertakes a program of warning boaters of dangerous conditions, whether any liability would result. He said the Attorney General had concluded the department probably does not have a duty to mark dangerous conditions in the absence of willful or malicious conduct and if the department starts marking hazards, the marking must be done in a nonnegligent manner.

Chairman Boucher recognized Mr. Lynn Helms, Director, Department of Mineral Resources. Mr. Helms discussed the production of oil and gas

from the Bakken Formation, including information on the geology, engineering of horizontal drilling, and estimated recoverable reserves of the Bakken Formation. He distributed a paper ([Appendix C](#)) containing the results and methodology of a project by the Department of Mineral Resources Oil and Gas Division and Geological Survey to estimate the original oil in place and recoverable reserves in the Bakken Formation within the state. He said the original oil in place of the Bakken Formation within the thermally mature portion of the state is estimated to be 149.2 billion barrels. He said the Bakken Formation's estimated ultimate recovery using current drilling and completion practices within the thermally mature portion of the state has been estimated at 1.4 percent of the original oil in place or 2.1 billion barrels. He said the discovery and development of technology to exploit the Bakken Formation is the single largest event affecting the state's petroleum industry since the discovery of oil in 1951. Another exciting development, he said, is the potential recovery from the Three Forks Formation, which underlies the Bakken Formation in the Williston Basin. He said new technology may double recovery from the Bakken Formation, but drilling Bakken wells is very expensive, approximately \$1 per second.

In response to a question from Senator Mathern, Mr. Helms said the average lifespan of a Bakken well is 38 years. However, he said, although initial production is 500 to 550 barrels per day, this production drops 50 percent during the first year to 250 barrels per day, 50 percent during the second year to 125 barrels per day, and approximately 10 percent per year after the second year.

In response to a question from Senator Oehlke, Mr. Helms said the thickness of the Bakken Formation varies and the formation also varies in its ability to produce oil.

In response to a question from Senator Mathern, Mr. Helms said the Three Forks Formation underlies the entire Bakken Formation and has an estimated 150 billion barrels of original oil in place.

In response to a question from Senator Oehlke, Mr. Helms said the current oil and gas tax incentives work well in that they encourage companies to explore in unproven areas without overcompensating companies for continuing to develop proven areas. He said he is anticipating that the oil and gas industry will request an extension of the current tax incentives during the 2009 legislative session.

In response to a question from Representative Froelich, Mr. Helms said under the oil and gas tax agreement negotiated with the Three Affiliated Tribes, there is no oil extraction tax on fee land within the exterior boundaries of the Fort Berthold Indian Reservation. He said trust lands are subject to the oil extraction tax which is shared between the state and the tribe.

In response to a question from Representative Boucher, Mr. Helms said the water requirements for an oil and gas well are large and the preferred source of water is treated city water because it does not contain algae, slime, or bacteria that may damage equipment or underground water supplies. He said the primary source of treated city water is the Missouri River which is abundant and also helps the state to perfect a water right to water in the Missouri River. He said current and potential water sales by the city of Parshall to the oil and gas industry have enabled that city to finance an entirely new water treatment system. He said this system is essentially financed by the city but paid for by the oil and gas industry.

In response to a question from Representative Boucher, Mr. Helms said the Department of Mineral Resources is projecting that the state's rig count will grow, especially at current oil prices. He said it will take approximately 19 years for the current number of rigs in the state to "drill out" the Bakken Formation in the state.

At the request of Chairman Boucher, committee counsel distributed a copy of the *Oil and Gas Tax Agreement Between the Three Affiliated Tribes and State of North Dakota* ([Appendix D](#)).

Chairman Boucher recognized Mr. Ryan Bernstein, Legal Counsel, Governor's office. Mr. Bernstein reviewed the status of the oil and gas agreement ([Appendix E](#)). He said the agreement was signed June 10, 2008. Under the agreement, he said, the total tribal and state tax rate applicable to production and extraction of oil from trust lands is 11.5 percent. He said the total state tax rate attributable to production and extraction of oil from nontrust lands is 11.5 percent with a 60-month exemption from the extraction tax, effectively 5 percent for 60 months and 11.5 percent thereafter. He said all state exemptions apply on the reservation except the 60-month extraction tax exemption on trust land and the Bakken exemption on both trust and nontrust lands.

In response to a question from Representative Froelich, Mr. Bernstein said the agreement provides an incentive to explore on the reservation. He agreed that the agreement provides an incentive to drill on fee land on the reservation as opposed to fee land off the reservation. He said the legislation provided the parameters under which the Governor was to negotiate the agreement but agreed that if the enabling legislation is revised, the limitation on the tax rate for fee lands could be increased and the tax rate for trust lands reduced.

In response to a question from Representative Boucher, Mr. Bernstein said the agreement only

applies to land within the external boundaries of the Fort Berthold Indian Reservation. He said Indian-owned fee land and tribal trust land located outside the external boundaries of the reservation are not subject to the agreement.

Chairman Boucher requested that Mr. Bernstein and the Department of Mineral Resources work with the Legislative Council staff to identify the amount of trust land owned outside the Fort Berthold Indian Reservation.

Mr. Bernstein said the agreement is effective immediately and applies to currently producing wells.

TAXATION IN INDIAN COUNTRY

At the request of Chairman Boucher, committee counsel presented a memorandum ([Appendix F](#)) prepared by Tax Commissioner Cory Fong concerning Native American motor vehicle fuels and special fuels tax refunds.

Ms. Kulas said the issue concerning Native American motor vehicle fuels and special fuels tax refunds has been largely resolved and Commissioner Fong will discuss the issue at the upcoming United Tribes Technical College Summit.

Chairman Boucher recognized Ms. Elaine McLaughlin, Tax Director, Standing Rock Sioux Tribe, Fort Yates. Ms. McLaughlin discussed tribal and state taxation agreements. She said the state and the Standing Rock Sioux Tribe have had a tobacco tax agreement since 1993 and a motor vehicle fuels tax agreement since 1998. She said the tribe receives approximately \$250,000 per year under the motor vehicle fuels tax agreement. Under the agreement, she said, the tribe receives 75 percent of revenue less a 2 percent administration fee paid to the state. She said the tribe is very pleased with the agreement. She said the tribe has sales, use, contractor, tobacco, and motor vehicle taxation agreements with South Dakota and realizes approximately \$1 million in Corson County South Dakota. She said the revenue is spent in the county where it is generated.

Representative Froelich said Sioux County has a good working relationship with the Standing Rock Sioux Tribe.

Ms. McLaughlin said the tribe does not enjoy a sales tax exemption similar to other governmental entities. She said the Legislative Assembly considered a bill in 2003 to provide sales and use tax exemptions for purchases by an Indian tribe which was not enacted. In an effort to promote positive government-to-government relations, she said, the committee should consider a bill draft to extend this exemption to Indian tribes.

In response to a question from Senator Mathern, Ms. McLaughlin said the Standing Rock Sioux Tribe does not impose a sales tax on the reservation. However, she said, a sales tax has been under consideration from time to time.

Chairman Boucher recognized Ms. Noreen K. Cavanaugh, Tax Director, Spirit Lake Nation, Fort Totten. Ms. Cavanaugh said the Spirit Lake Nation

has had a motor vehicle fuels tax agreement with the state in place for approximately one year. She said the agreement has benefited the tribe enormously. She said the tribe does not have a tobacco tax agreement with the state, but an agreement is under consideration. She agreed the committee should consider a bill draft to extend the sales tax exemption to purchases made by tribal governments.

TRANSPORTATION IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Darcy Rosendahl, Department of Transportation. Mr. Rosendahl discussed the feasibility of the department entering an agreement between the state and Indian tribes for state maintenance of roads ([Appendix G](#)). He said the department's primary responsibility is to maintain the state highway system and the department is facing several challenges. He said inflation continues to be one of the greatest challenges facing the transportation industry, and the department is facing serious staffing shortages as a result of losing employees in western North Dakota to the oil and gas industry.

In response to a question from Ms. Kulas, Mr. Rosendahl said North Dakota Century Code (NDCC) Section 24-02-02.3 provides that the director may enter agreements with tribal governments. He said this section provides that "[n]otwithstanding the provisions of chapter 54-40.2, the director may enter into agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges. Each agreement may not exceed twenty-five thousand dollars."

Senator Mathern said the \$25,000 limitation may be too low and the committee may wish to consider removing this limitation.

In response to a question from Senator Oehlke, Mr. Rosendahl agreed that one of the considerations for the \$25,000 limitation may be to prevent the state from competing with private construction companies that are willing and able to provide this service.

Chairman Boucher recognized Ms. Pearson. Ms. Pearson requested that the Legislative Council staff contact the Department of Transportation regarding the location of a boundary sign that was removed for bridge construction near the Spirit Lake Nation and upon completion of the bridge was located in a different location.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Mike Schwindt, Director, Child Support Enforcement, Department of Human Services. Mr. Schwindt provided an update ([Appendix H](#)) of the interactions between the tribes and the state on child support enforcement services.

INDIAN AFFAIRS COMMISSION

At the request of Chairman Boucher, committee counsel reviewed a bill draft [[90139.0200](#)] relating to the members and the powers and duties of the Indian Affairs Commission.

In response to a question from Ms. Kulas, Ms. Pearson said the term Spirit Lake Nation as used in the bill draft is the correct name of that tribe.

It was moved by Representative DeKrey, seconded by Senator Lyson, and carried on a roll call vote that the bill draft relating to the members and the powers and duties of the Indian Affairs Commission be approved and recommended to the Legislative Council. Representatives Boucher, DeKrey, and Lies and Senators Lyson, Mathern, and Oehlke voted "aye." No negative votes were cast.

INDIAN EDUCATION ISSUES

At the request of Chairman Boucher, committee counsel distributed a packet ([Appendix I](#)) of material concerning licensure of American Indian language instructors. The packet includes qualifications for a Montana American Indian language and culture specialist; South Dakota Lakota, Dakota, or Nakota proficiency language authorization application; and the North Dakota American Indian instructors' licensure statute.

Chairman Boucher recognized Dr. Kathryn Froelich, Division of Education Chair, Sitting Bull College, Fort Yates. Dr. Froelich discussed the licensure of North Dakota American Indian language instructors. Dr. Froelich said there are nine schools, most of which are kindergarten through grade 12, on the Standing Rock Indian Reservation. She said the mission of Sitting Bull College is to promote Native American language and culture, specifically Lakota language and culture. Since the Standing Rock Indian Reservation is located in two states, Sitting Bull College has to meet South Dakota and North Dakota proficiency tests for licensing Native American language instructors. She said the South Dakota and North Dakota standards are different and Sitting Bull College would like a uniform process to train and eventually license Native American language instructors.

Chairman Boucher recognized Ms. Sacheen Whitetail Cross, Tribal Education Manager, Standing Rock Sioux Tribe, Fort Yates. Ms. Whitetail Cross discussed a position paper ([Appendix J](#)) concerning updated native language instructor credentials.

In response to a question from Representative DeKrey, Ms. Whitetail Cross said the Standing Rock Sioux Tribe and Sitting Bull College are not asking that the state "mirror" South Dakota's Native American language instructor licensure provisions as South Dakota is in the process of reviewing its statutes. However, she said, North Dakota and South Dakota should work together to enact uniform or complementary statutes that the tribe could comply with.

Chairman Boucher recognized Ms. Jennifer Neuhauser, Assistant Director, Office of Accreditation and Teacher Quality, South Dakota Department of Education, Pierre, South Dakota. Ms. Neuhauser reviewed the South Dakota Native American language instructor certification process.

In response to Ms. Neuhauser's presentation, Representative Froelich said all of the Indian tribes in South Dakota are members of the Lakota Nation whereas North Dakota has several distinct nations and languages, including the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation and Turtle Mountain Band of Chippewa Indians in addition to Lakota-speaking nations.

In response to Representative Froelich's comment, Ms. Kulas said the issue is not the different languages being taught or for which certification is sought in North Dakota, but to establish a methodology for determining proficiency to teach an Indian language and to be certified as a language instructor.

Representative Froelich suggested the Indian Affairs Commission work with the Education Standards and Practices Board and the Department of Public Instruction to craft legislation to resolve this issue.

Chairman Boucher recognized Dr. Janet Welk, Executive Director, Education Standards and Practices Board. Dr. Welk reviewed the process to license Indian language instructors in North Dakota. She said the board generally accepts the recommendation of a tribe that the individual seeking certification is a proficient Native American language instructor. She said the board also requires the individual seeking certification complete a three-semester hour course in classroom management. She said the board does not have any requirements concerning instructional strategies.

Chairman Boucher recognized Mr. Michael Moore, Chair of Native Studies, Sitting Bull College, Fort Yates. Mr. Moore said one difference between the South Dakota and North Dakota certification standards is that South Dakota requires an examination while North Dakota's statute provides that qualification is determined by an indigenous languages board established by a tribal government.

Chairman Boucher recognized Dr. Cynthia Lindquist Mala, President, Candeska Cikana Community College, Fort Totten. Dr. Lindquist Mala cautioned the committee on revising the North Dakota statute. She said the committee should defer to tribal councils or leaders to certify individuals who are qualified to teach Native American languages.

Chairman Boucher recognized Dr. Jim Davis, President, Turtle Mountain Community College, and President, North Dakota Association of Tribal Colleges, Belcourt. Dr. Davis said it is critical for the state to recognize and certify Native American language speakers as instructors to teach the upcoming generation native languages. He said the retention and dissemination of native languages is essential to maintain native culture.

Chairman Boucher recognized Dr. Laurel Vermillion, President, Sitting Bull College, Fort Yates. Dr. Vermillion said Sitting Bull College is facing two issues relating to the certification of Native American language speakers. She said the first issue is the North Dakota/South Dakota issue, a result of the unique location of the Standing Rock Indian Reservation in two states. She said the second issue is what makes a good language teacher. She said an individual must not only be a Native American language speaker, but must have teaching skills in order to be an effective Native American language instructor. She said Sitting Bull College has received positive feedback from many native language speakers who were fluent in the language but did not have the teaching skills necessary to convey the knowledge. She said these individuals were pleased with the education they received at Sitting Bull College in order to teach the language. She said Sitting Bull College is exploring whether to add a two-year or possibly four-year degree in native language instruction.

At the request of Chairman Boucher, Ms. Kulas said the Indian Affairs Commission will review the status of Native American language instruction and resources available at the state's five tribal colleges and report to the committee at a future meeting.

At the request of Chairman Boucher, committee counsel reviewed a packet of material ([Appendix K](#)) concerning the implementation of House Bill No. 1395 providing financial assistance to tribally controlled community colleges. Committee counsel said the State Board of Higher Education is recommending that the language requiring a report on the ethnic status of students be deleted from the reporting requirement.

Dr. Davis said implementation of House Bill No. 1395 is proceeding very well.

Dr. Lindquist Mala said Candeska Cikana Community College received \$17,500 from the State Board of Higher Education. She said less than 10 percent of the students at Candeska Cikana Community College are non-Indian. She said the college is applying the House Bill No. 1395 funds to student support services.

Dr. Vermillion said Sitting Bull College received \$35,000 under the provisions of House Bill No. 1395.

Chairman Boucher recognized Mr. Tom Disselhorst, United Tribes Technical College, Bismarck. Mr. Disselhorst said he was appearing on behalf of Dr. David Gipp, President, United Tribes Technical College. He said United Tribes Technical College received \$350,000 under the House Bill No. 1395 program, all of which has been spent. He said Turtle Mountain Community College and United Tribes Technical College received two-thirds of the available funding under this program because of the number of non-Indian students enrolled at those colleges. He said United Tribes Technical College is utilizing these funds for programs promoting the

appreciation of diversity, scholarships, and funding a financial aid counselor.

Senator Mathern requested that the Legislative Council staff prepare a bill draft to delete the ethnic status reporting requirement for tribal college assistance payments.

Chairman Boucher recognized Mr. Tom Decker, Director, School Finance and Organization, Department of Public Instruction. Mr. Decker said the issue of the reduction in federal Indian school equalization program funds at the Trenton Indian Service Area had been presented to the interim Education Committee. He said there is no state remedy for this problem as there are no foundation aid funds available to replace the federal Indian school equalization program funds. He said the Department of Public Instruction is seeking further information and clarification on this issue and will report at a future committee meeting.

Ms. Kulas said the Indian Affairs Commission is working with Standing Rock community schools and will report to the committee at a future meeting on the availability of foundation aid payments for these schools.

INDIAN VOTING

Chairman Boucher recognized Ms. Vonnie Alberts and Ms. Glenda F. Rush, Three Affiliated Tribes, and North Dakota Native Vote project, New Town. Ms. Alberts discussed the Native Vote project. She said Native Vote is a project sponsored by the National Congress of American Indians designed to

educate Native American voters and to encourage voting on reservations.

STAFF DIRECTIVES

Senator Mathern requested the Legislative Council staff prepare a bill draft to remove the \$25,000 limitation contained in NDCC Section 24-02-02.3.

Representative DeKrey requested the Legislative Council staff provide the legislative history of NDCC Section 24-02-02.3 to the committee.

Senator Mathern requested the Legislative Council staff prepare a bill draft to extend the governmental sales tax exemption to tribal governments.

Ms. Kulas requested the Legislative Council staff review the intent of legislation authorizing tribal and state taxation agreements as some individuals have indicated that revenue realized from motor vehicle fuels tax agreements should be used to match federal highway funds.

Chairman Boucher announced that the next meeting will be held at the Spirit Lake Nation in Fort Totten.

No further business appearing, Chairman Boucher adjourned the meeting at 3:15 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:11