

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Monday, October 8, 2012
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator David O'Connell, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators David O'Connell, Robert Erbele, Richard Marcellais, Donald Schaible; Representatives Jim Kasper, Kenton Onstad, Wayne Trottier

North Dakota Tribal Governments' Task Force members present: Scott J. Davis, Executive Director, Indian Affairs Commission; Mark Fox, representing Tex G. Hall, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Roger Yankton Sr., Chairman, Spirit Lake Tribe

North Dakota Tribal Governments' Task Force members absent: Charles Murphy, Chairman, Standing Rock Sioux Tribe; Merle St. Claire, Chairman, Turtle Mountain Band of Chippewa Indians; Robert Shepherd, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

Others present: See [Appendix A](#) for additional persons present.

It was moved by Senator Schaible, seconded by Representative Trottier, and carried on a voice vote that the minutes of the June 25, 2012, meeting be approved as distributed.

Senator Marcellais reported on an incident as reported in the *Turtle Mountain Star* newspaper that the junior high school volleyball team from Turtle Mountain Community School was accused of stealing an iPod at a volleyball tournament in Minot. He said the members of the team were required by Minot law enforcement to open their bags in public, rather than in a locker room or private area. He said the iPod was not recovered, but the members of the team were humiliated. He said this is a very serious incident that he and members of the Turtle Mountain Band of Chippewa will be investigating further.

OIL AND GAS EXPLORATION, DEVELOPMENT, AND TAXATION WITHIN THE BOUNDARIES OF THE FORT BERTHOLD RESERVATION

At the request of Chairman O'Connell, Committee Counsel reviewed a bill draft [\[13.0218.01000\]](#) relating to requirements for agreements with the Three Affiliated Tribes for the taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation. He said the bill draft would change the allocation of revenues from oil and gas gross production and oil extraction

tax attributable to production from wells drilled on trust lands on the Fort Berthold Reservation from 50 percent to the tribe and 50 percent to the state to 80 percent to the tribe and 20 percent to the state.

Chairman O'Connell recognized Mr. Lynn Helms, Director, Department of Mineral Resources, who reviewed ([Appendix B](#)) oil and gas exploration and development within the boundaries of the Fort Berthold Reservation. Mr. Helms said that in June of 2008 there were 75 rigs operating in North Dakota but none on the Fort Berthold Reservation and none on trust lands. In October 2012, he said, 190 rigs were operating in North Dakota with 26 on the Fort Berthold Reservation and 26 on trust lands. As of October 1, 2012, he said, there were 706 producing wells on the Fort Berthold Reservation. Of these wells, he said, 112 were drilled before the agreement and 594 were drilled since the agreement. Of the 259 locations approved to drill on the Fort Berthold Reservation, he said, 244 are located on trust lands. He said based on projections, 1,426 of the 1,566 future wells expected in approved spacing units on the Fort Berthold Reservation will be drilled on trust lands.

Another aspect of oil and gas exploration and production on the Fort Berthold Reservation that should be remembered, Mr. Helms said is that the Department of Mineral Resources can complete a permit application in 15 days to 20 days, while it takes 180 days to 290 days for a drilling permit application to be approved by the Bureau of Land Management and the Bureau of Indian Affairs. Based upon Department of Mineral Resources' projections, he said, under the current tax agreement, the tribe will recognize \$9,574 million from all postagreement activity while the state will recognize \$10,362 million from all postagreement activity. If the agreement is revised to provide 80 percent of oil and tax revenue from trust lands goes to the tribe and 20 percent to the state, he said, the tribe will recognize approximately \$12,235 million from postagreement activity, and the state will recognize \$7,701 million from all postagreement activity.

Chairman O'Connell recognized Ms. Katherine Strombeck, Research Analyst, Tax Department. Ms. Strombeck reviewed a spreadsheet ([Appendix C](#)) concerning oil and gas production and oil and gas extraction tax collections from oil production within the Fort Berthold Reservation and approximate distributions of tribal production-related oil taxes. From fiscal year 2009 to present, she said,

\$345,951,301.50 has been realized from gross production and oil extraction taxes from oil production on the reservation. Of this total, she said, approximately \$129 million has gone to the tribe and \$217 million to the state.

Chairman O'Connell recognized Mr. Cory Fong, Tax Commissioner, Tax Department. Mr. Fong reviewed the *North Dakota Tax Information for Native Americans and Tribal Governments* booklet prepared by the Indian Affairs Commission and the Tax Commissioner's office (on file in the Legislative Council office). He said the booklet covers a number of tax types, including individual and corporate income taxes, sales and use taxes, motor vehicle excise taxes, motor vehicle fuels and special fuels taxes, alcohol and tobacco taxes, property taxes, and oil and gas taxes.

In response to a request from Senator Marcellais, Mr. Fong said the Tax Department will work with the Indian Affairs Commission to release press releases on the state's reservations to inform Native Americans of the availability of the booklet.

BIENNIAL REPORT ON THE IMPLEMENTATION OF THE OIL AND GAS TAX AGREEMENT WITH THE THREE AFFILIATED TRIBES

Chairman O'Connell recognized Mr. Jerod Tufte, Counsel, Governor's office, who presented the biennial report ([Appendix D](#)) on the implementation of the oil and gas tax agreement with the Three Affiliated Tribes. Mr. Tufte said the state's oil and gas tax agreement with the Three Affiliated Tribes has been a great success in terms of providing a stable, predictable tax environment in order to encourage development of oil and gas resources within the reservation. He said of the wells drilled since the agreement went into effect, 86 wells, or 18 percent, are on trust lands and the remaining 388, or 82 percent, are on fee lands. He noted the trend going forward is toward a much higher percentage of wells within the reservation being drilled on trust lands. He said tribal oil and gas tax revenues have grown steadily since the agreement was signed. He said distribution of production and extraction tax revenue to the tribe recently reached \$7 million dollars per month, and total revenues distributed to the tribe are in excess of \$115 million.

In conclusion, Mr. Tufte said the oil and gas tax agreement has worked well and the revenue projected to both the state and tribe continues to increase. By creating a more predictable tax environment within the reservation, he said, the oil and gas tax agreement has removed significant barriers to oil and gas development and helped spread the activity and prosperity found across the rest of the Bakken Formation into the Fort Berthold Reservation. He said the tribal government has been a good partner in implementing the agreement, and the state looks forward to a continued positive working relationship.

Chairman O'Connell recognized Mr. Fred Fox, White Shield segment, Business Council, Three Affiliated Tribes. Mr. F. Fox said prior to being elected to the tribal council he was Director of the tribes Oil and Gas Department. He said he was a proponent of the agreement to allow the Three Affiliated Tribes to catch up with development that was occurring off-reservation. However, he said, circumstances have changed. He said the current agreement is not equitable and should be revised to reflect current conditions on the reservation. He said it would be irresponsible for the tribe not to seek a greater share of oil and gas tax revenues realized from production on trust lands.

Chairman O'Connell recognized Mr. Mark Fox, Tax Director, Three Affiliated Tribes. Mr. M. Fox reviewed a summary ([Appendix E](#)) of tax revenues and disbursement for 2011 and January through September 2012. For 2011, he said, trust lands produced 59 percent of tax revenues while the tribe only realized 38 percent of the tax revenues. For January through September 2012, he said, 68 percent of tax revenues came from trust lands while the tribe only realized 40 percent of tax revenues.

Mr. M. Fox reviewed a letter ([Appendix F](#)) from Mr. Hall. Mr. M. Fox said the negative impact of oil and gas development on the Fort Berthold Reservation continues with damaged roads, traffic safety concerns, and increased criminal activity. In addition, he said, Fort Berthold is experiencing an immense housing shortage and environmental harm as a result of oil and gas development on the reservation. He said the tribe is deeply concerned with the state's failure to provide assistance directly to the Three Affiliated Tribes to help it address the negative effects of the developing oil industry, and that the tribal-state tax agreement has provided a disparate and inequitable distribution of tax revenue for the tribe.

In response to a question from Representative Kasper, Mr. M. Fox said the tribe has a difficult time with environmental enforcement on the reservation. He said the tribe needs more state help plus more revenue under a revised oil and gas tax agreement to deal with environmental enforcement on the reservation.

In response to a question from Senator O'Connell, Mr. M. Fox said the Three Affiliated Tribes has approached the Governor concerning renegotiation of the oil and gas tax agreement. He said the Governor's office has indicated that the specifications of the agreement are governed by legislation, and thus the Legislative Assembly should take the lead in setting the parameters of the agreement. However, he said, the Governor has indicated that to the extent possible, he is willing to allocate tax revenue from the reservation back to the reservation for reservation programs to alleviate some of the perceived inequity in the agreement.

Chairman O'Connell recognized Mr. Scott Eagle, Vice Chairman and Representative, New Town/Little

Shell Segment, Business Council, Three Affiliated Tribes. Mr. Eagle said as a result of oil and gas development on the Fort Berthold Reservation, the tribe is facing serious environmental, housing, and transportation problems.

It was moved by Representative Onstad, seconded by Senator Marcellais, and defeated on a roll call vote that the bill draft relating to requirements for agreements with the Three Affiliated Tribes for the taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Indian Reservation be approved and recommended to the Legislative Management. Senators O'Connell and Marcellais, and Representative Onstad voted "aye." Senators Erbele and Schaible and Representatives Kasper and Trottier voted "nay."

In response to a question from Senator O'Connell, Mr. Helms said the decline rate for Three Forks Formation wells is the same as that for middle Bakken Formation wells.

In response to a question from Representative Trottier, Mr. Helms said infrastructure development will not begin to level off until approximately 2020.

Representative Kasper said he agrees the tax distribution formula needs to be changed but the bill draft is not an appropriate mechanism. In addition, he said, the committee should have held additional hearings on the bill draft. He said this is a tax bill draft, and the Taxation Committee is the appropriate forum for the bill draft. Also, he said, the Governor is conducting negotiations on the agreement and may have recommendations for the Legislative Assembly. In sum, he said, he is reluctant to move the proposal forward at this time.

In response to Representative Kasper's comments, Representative Onstad said it appears the Governor is waiting for the Legislative Assembly to move in this area and that the Legislative Assembly is responsible for setting the parameters within which the Governor is to negotiate an agreement. He said bringing a bill draft forward would provide an opportunity for discussion of the issue during the upcoming Legislative Assembly.

Chairman O'Connell recognized Mr. Davis. Mr. Davis said if this issue is not resolved the specter of the Three Affiliated Tribes withdrawing from the agreement is real. He said the bill draft should be forwarded to keep the issue before the Legislative Assembly.

Chairman O'Connell recognized Representative Kasper. Representative Kasper said the committee could forward a resolution of support encouraging the Legislative Assembly to revise the statutes governing the agreement during the upcoming Legislative Assembly.

Chairman O'Connell recognized Committee Counsel. Committee Counsel said it would not be appropriate for the committee to forward a resolution urging or encouraging the Legislative Assembly to take an action because, in effect, the resolution would

be adopted by the Legislative Assembly urging itself to take some action. He said it would be more appropriate to include a recommendation in its final report to the Legislative Management that the Legislative Assembly review the oil and gas tax agreement with the Three Affiliated Tribes.

INDIAN EDUCATION

At the request of Chairman O'Connell, Committee Counsel reviewed a bill draft [\[13.0205.01000\]](#) authorizing the Superintendent of Public Instruction to develop and implement a pilot grant program for at-risk American Indian students and for the support of community-based services. Committee Counsel said the bill draft appropriates \$500,000 to the Superintendent of Public Instruction for the purpose of making the grant.

Chairman O'Connell recognized Mr. Greg Gallagher, Director, Standards and Achievement, Department of Public Instruction. Mr. Gallagher said the bill draft is a product of a year's discussion with the North Dakota Indian Education Advisory Committee. He said the bill draft reflects the input of the committee and is supported by the committee.

In response to a question from Senator Schaible, Mr. Gallagher said the reason the grant is competitive is to ensure the department receives the best proposals possible.

Chairman O'Connell recognized Mr. Bob Marthaller, Deputy Superintendent, Department of Public Instruction. Mr. Marthaller introduced Ms. Lucy Fredericks as the new Director of Indian Education for the department.

It was moved by Senator Marcellais, seconded by Representative Kasper, and carried on a roll call vote that the bill draft authorizing the Superintendent of Public Instruction to implement a pilot grant program for at-risk American Indian students and for the support of community-based services be approved and recommended to the Legislative Management. Senators O'Connell, Erbele, Marcellais, and Schaible and Representatives Kasper, Onstad, and Trottier voted "aye." No negative votes were cast.

EXTENSION OF THE COMMITTEE ON TRIBAL AND STATE RELATIONS

At the request of Chairman O'Connell, Committee Counsel reviewed a bill draft [\[13.0206.01000\]](#) relating to extension of the Committee on Tribal and State Relations. Committee Counsel said the bill draft would extend the expiration date of the committee from July 31, 2013, to July 31, 2015. He said the bill draft also deletes the requirement that during the 2011-12 interim, the committee study whether the members of the North Dakota Tribal Governments' Task Force should be voting members of the committee as this responsibility will have been completed at the close of this interim.

Chairman O'Connell recognized Mr. Davis. Mr. Davis said it is very important that the Tribal and State Relations Committee continue. He said the committee is very important for tribes and is a good exercise in government-to-government relations. Also, he said, the committee strengthens relations between the state and the tribes.

It was moved by Representative Trottier, seconded by Representative Kasper, and carried on a roll call vote that the bill draft relating to extension of the Committee on Tribal and State Relations be approved and recommended to the Legislative Management. Senators O'Connell, Erbele, Marcellais, and Schaible and Representatives Kasper, Onstad, and Trottier voted "aye." No negative votes were cast.

COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS

Chairman O'Connell recognized Mr. Andrew Frank, staff, Commission to Study Racial and Ethnic Bias in the Courts, North Dakota Supreme Court. Mr. Frank reviewed the final report and recommendations ([Appendix G](#)) of the commission. A copy of the final report and recommendations is on file in the Legislative Council office. He said the recommendations include general recommendations, findings and recommendations concerning juries, findings and recommendations concerning interpreters, findings and recommendations concerning crimes, findings and recommendations concerning juveniles, findings and recommendations concerning civil actions, and findings and recommendations concerning attorneys and court employees.

INDIAN VETERANS

Chairman O'Connell recognized Mr. Lonnie Wangen, Commissioner, Department of Veterans' Affairs, Fargo. Mr. Wangen discussed ([Appendix H](#)) placement of veterans' service officers on each of the state's reservations.

Senator Marcellais said there should be a Native American veterans' representative on each of the state's reservations. In his experience, he said, a Native will not ask a non-Native for assistance and in order to ensure veterans' services to the state's Native

American citizens, Native American veterans' representatives must be located where they are accessible to the state's Native American residents.

TRANSPORTATION IN INDIAN COUNTRY

Chairman O'Connell recognized Mr. Dave Leftwich, Deputy Director for Business Support, Department of Transportation. Mr. Leftwich reviewed ([Appendix I](#)) transportation projects on the state's reservations. He said the Department of Transportation and state government have invested \$180.1 million in federal funds and state matching funds for various road projects within the state's Indian reservations during the 2011-12 construction seasons. He reviewed specific transportation projects on the Fort Berthold Reservation, Spirit Lake Reservation, Turtle Mountain Reservation, and the Standing Rock Reservation. He also reviewed traffic safety projects. Recent safety projects, he said, include rumble strips, implementation of the Traffic and Criminal Software (TraCS) program, and a National Highway Traffic Safety Administration grant for safety campaigns specific to each tribe.

It was moved by Representative Kasper, seconded by Representative Trottier, and carried on a voice vote that the Chairman send a letter to Mr. Hall, expressing the position of the committee that the oil and gas tax agreement be discussed during the upcoming Legislative Assembly.

It was moved by Senator Schaible, seconded by Representative Trottier, and carried on a voice vote that the Chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management.

No further business appearing, Chairman O'Connell adjourned the meeting at 3:30 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:9