

2019 SENATE ENERGY AND NATURAL RESOURCES

SCR 4017

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SCR 4017
2/28/2019
Job Number 32969

- Subcommittee
 Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to consider studying the dichotomy between the archaeological discipline on cultural resources and the knowledge and expertise of tribal elders and tribal historic preservation officers to educate local, state, and federal agencies and the public; and the facilitation of effective consultation and cooperation for historic and prehistoric site identification and registration and the betterment of North Dakota and its citizens.

Minutes:

3 Attachments

Chair Unruh: Opened the public hearing. All members were present.

Senator Joan Heckaman District 23, introduced the resolution, please see attachment #1. (1:14-3:40). Dr. Longie will talk about how Tribal Historic Preservation Officers select historic sites and how that is different from the state or the national historical societies.

Senator Richard Marcellais, District 9 (4:45-6:10) Testified in support, please see attachment #2.

Scott Davis, Executive Director, North Dakota Indian Affairs Commission (6:40-11:25) Testified in support. In light of my work, with the partnerships I've created, with the tribes and government agencies; we have a strong working relationship. We've covered a wide array of issues over the years, most pressing is the reinternment committee; this is Indian country, from time to time a farmer or a construction firm finds remains, by state law we are required to go through a process, one that involves a tribe immediately within notice. A study would show that we can take this a step further. One area that relates is the broad education, there is a fine balance, Dr. Longie will talk about the science and the history of our culture. Disclosing some of those sites is very sensitive to our people, when you think about looting and the black market for artifacts; we have federal law that protects us, but looting happens. Not only to the grave sites, but to sacred sites as well, I'm taking this issue seriously, these are our relatives, it's sacred to me. To treat this issue with respect and diplomacy, to have a good mindset about protecting those areas is important. I was adamant with industry about more steps, making sure we have tribal monitors making sure these sites aren't disturbed. I think we're achieving that, making sure our cultural resources are protected. An example, the

Emmons County wind farm, there was a good joint tribal-industry partnership. A study could help, I'm not going to fault my colleagues, they do a tremendous job, a tough job. Fern and Jeannie have done well working with the tribes, we have hiccups, but we find a way to come to an understanding.

Vice-Chair Kreun: As you go through process, can we move some of those sites, or do they have to stay at that location?

Scott Davis: We prefer to not disturb them at all, but when it happens, that relationship between the tribes and industry, when they are disturbed, it's a sacred time. You have to reinter those human remains, we've been able to first identify what tribe they were from, North Dakota has many tribes, from there the remains are taken for reburial. We had one this summer, a grave robbery, a looting, it was investigated by DCI and identified as a Dakota/Lakota Sioux remains, the remains were returned to the tribe. That's the process of human remains.

Senator Piepkorn: Are there artifacts found with remains? To help you identify tribal connection?

Scott Davis: Dr. Longie would be better suited to answer that.

Dr. Erich Longie, Spirit Lake Tribe (14:30-23:10) Testified in support. To add on to the previous speakers, we have come a long way in Indian tribal relations. I've been a THPO (Tribal Historic Protection Officer) for 5 years. We have a long way to go. We Dakota are very spiritual people. There is no separation of church and state, to demonstrate the difference, everything has a spirit, everything is sacred. An archeologist once said, frustrated, we go out in the field and every rock is sacred. We've been here a long time, we left a lot of stuff, built a lot of stuff. The other thing we believe is the spirit world is close, we honor our ancestors, we don't want to disrespect them, we don't want to disturb their place of rest, often times they come back. We don't want those places disturbed. Stone is sacred to us, we treat it the way you would treat a cathedral, we don't want it bulldozed over. This resolution will continue on the good work, and make it go one step further, and start recognizing the spiritual aspect of our belief system, and recognizing that our elders, we have a knowledge that nobody else has. The work that we have done with federal agencies could be expanded into this area. It's very disheartening when you work with federal agencies and their consultants and we go out and find a burial and you know it's going to get destroyed. We know the population is growing, we know there is progress, we know we can't save every site. But we want to save as much as we can. To do that we need to sit down and find some common ground. Help us understand that burning desire to build, build, build. We will help you see why everything is sacred to us. Once we do that, we can find some common ground, save some sites. I stand before you talking about Dakota spirituality, but I'm also a doctor in education, I not only walk your path, but I walk it better than most Indians. I march to your drum, but in our heart we are Dakota, our ancient beliefs are there, they influence everything we do. Yes, I have a degree, but I have an ancestor guiding me as well. We are the fastest growing population in North Dakota, higher than 6%. We are influencing elections, we look forward to the day where our grandchildren and your grandchildren can sit across from each other and not have the same arguments that we have today. This resolution will pave the path; it will affect my granddaughters.

Representative Ruth Buffalo, District 27 (23:20-27:50) Testified in favor. This resolution is very important, not only the education component, but thinking 7 generations ahead. I wanted to share an experience I had. I attended two educational sessions at the United Tribes Technical College, these sessions talked about cultural knowledge. They also touched on the importance of sacred sites. Growing up in Mandaree, we used to take annual trips to the medicine hole in the Killdeer Mountains. We had that oral history, further north of my mom's house, we used to see rocks in circles, we were told they were teepee rings, but they were more than that. I just recently learned this. I've always known that sacred sites were special, but it wasn't until attending these educational sessions and being an indigenous woman, to have learned that within the past two months. Sacred sites are special, yes, but I've also learned the stories behind why we need to protect those sites. Back when tribal people were put on reservations, they were prohibited from going to certain areas or locations that were deemed significant for prayer purposes. That provided a disconnect, not being able to freely practice their spirituality. I'm a little leery going into great detail, because that might not be reciprocated or respected, there's so much in saving these sites, they provide a lifeline to our future generations and the sustainability our culture. I say that with caution, because not everybody has a good heart, and they could take that information and find those sites and demolish them. I want to share the importance of education, it's long overdue. These sites are more than tourist stops, they are actually very ancient and they are needed to sustain future generations.

Calvin Grinnell, Historian, Tribal Historic Preservation Officer, Mandan Hidatsa Arikara Nation (28:05-31:20) Testified in support, please see attachment #3.

Senator Piepkorn: Your land is a hotbed for oil, how do you get along with oil companies when it comes to preservation and discovery of possible sites?

Calvin Grinnell: I served as a cultural monitor for a site north of Dunn Center, the well pad right in the middle of a ridge, the only way to get to the ridge was a path in the middle of a bison rendering site; we talked about it, and allowed archeologists to survey and take studies, dig a few pits. After that was done, we put fill over it, in that way, what was left stayed in the ground. We used that as the road to access that well pad. That's a way to mitigate.

Carel Two-Eagle, member of Standing Rock, testified in support (33:55-38:00) Standing Rock is my reservation, I'm a spiritual guide. I was raised in two cultures. For a long time, there was a view in the majority culture that we are living in teepees and wigwams, and we don't understand English, or money, or much of anything. That has finally begun to change. In our creation stories, before there was time, when the holy spirit began to wonder what it was, created the rock which became our grandmother, the earth. This means that everything is in some way related. We need to continue to improve the relationship, and get rid of the view that we're living in the 1800s. A while ago, I was asked to make a star quilt for a fundraiser; I made a magnificent quilt, with beadwork. We packed it up and shipped it out, the appraiser said this couldn't have been made by a real Indian, the fabric is too fine, the colors too bright, they sold the quilt, but broke our contract. My mother was so mad she sharpened her scalping knife; those are our artifacts. How, in this day and age, can people be so stupid about what's going on right here. We need to expand on the improvements in the view of people with degrees in archeology, that we know what we are talking about. We

find it counterproductive to have to go back to the courts for a ruling, but that seems to be the only place to go when times get tough.

No opposing testimony.

Fern Swenson (38:35-) Director of Archaeology and Historic Preservation Division, State Historical Society North Dakota. Provided neutral testimony. I am here to provide information about what the State Historical Society does and how we have worked with the tribes in the past, how we want to continue to work productively and respectfully. We work very closely with Scott Davis, he provides us guidance, and connects us with individuals that he thinks we should work with. He also coordinates the nominations for the Native American Hall of Honors at the State Historical Society. That was important when we did the expansion, to recognize contributions of Native Americans today as well as back in history. That has been positive for the state. The Innovation and Inspiration gallery at the Historical Society, we worked with an advisory group of Native Americans of each of the reservations, so that we made sure we addressed things important to the tribes. We received comments about how important the native voice was, their languages; we have native Americans speaking, in those exhibits as well as give stories, in listening devices. We also conduct oral interviews, we have specifically conducted several with the Mandan Hidatsa and Arikara Nation, in producing People of the Upper Missouri, which goes from present day back to AD 1200. Those elders that we interviewed have passed since those interviews took place. Just having those is important. Those two things have been highlights, I trained in anthropology, specializing in archeology. We oversee the national register process, under the National Park Service we have had elders request that we prepare a nomination for the Independence Church near Mandaree, we worked closely with Tilly and Reba Walker, that was a productive working relationship.

We've managed several Mandan Hidatsa Arikara sites as well as a couple of Dakota sites, we work closely with tribal governments. Double Ditch was slumping into the river; we appreciate your support in providing funding to save that. We work very closely with Calvin Grinnell and the Tribal Historic Preservation Office regarding the recovery of several burials, 198 burials, that's how critical it was to stabilize that site and those have been reinterred. Currently we are working on developing better interpretation at White Stone State Historic Site, we are working very closely with Standing Rock as well as Sisseton Wahpeton in making sure we represent the native voice in interpretive signs at that site. Hopefully some of the interpretation will go up this summer, and more development could happen at that site, based on coordination with people. Several people have mentioned burial sites, as the State Historical Society, under the century code, we worked closely with Scott Davis and North Dakota Tribal Reinternment Committee, so any time human remains are found on state or private property, we are involved, the Sheriff's department gets involved, and the reinternment committee. We are concerned with the burials to make sure that they are handled respectfully. We are the State Historic Preservation Office, we provide technical assistance to federal agencies, but we also manage the files that are critical in the review process in any federal undertaking. Any time something occurs on federal land or federal money is involved, or federal permitting; those agencies come to our office to look at the geographic information system, which gives the location of recorded sites in North Dakota. Currently 8% of North Dakota has been surveyed, it is a sample, we are the repository. In the geographic information system, we have several layers, archeological sites, historic sites, architectural sites, and within the past 8 years, we've developed cultural heritage forms, at

the request of some tribes. We control access to much of that data. The cultural heritage forms enable individuals to record our sites that may not be recognized as archeological sites, but are important to tribal members. There is a process in place where those sites are recorded. Right now we have about 400 of those cultural heritage forms. The tribal members that record those; we are far more flexible in recording those as to how much information is presented, it is up to the tribal members, what they want to present. The only thing we require is legal location. Without legal location we can't track anything. We have many more requirements for the other types of forms. If there are additional changes the tribes would like to see, we are open to having those conversations. Dr. Longie was visiting us last week, we provided information regarding all of Spirit Lake, so that he would have access to that data. We also provide file searches for MHA, and are willing to provide that information to other tribes. Anytime we are requested to go out to any of the reservations or look at any sites, we are happy to do that. It provides us further information as well. Any process could be improved, but I do think that we do have processes and procedures in place. We are trying to do our best to protect those resources. We have to follow the century code as well as federal regulations; it's a balancing act. Our background with working with elders, has been very important and rewarding to us and the state of North Dakota. I feel honored to have the opportunity.

Chair Unruh: Having dealt with your office and the tribal offices, I agree, it is an honor.

Vice-Chair Kreun: We look at these situations; how do we deal with other cultures when we run across situations like that?

Fern Swenson: We record those, whether they are building, or ruins, or homestead; those are recorded on a historic archeological form, or an architectural form. Any site could be recorded on multiple forms. If it has a building and a depression that relates to a house, and also archeological site, and a possible traditional cultural property; it could be recorded on all four forms.

Vice-Chair Kreun: Recorded, and then what happens?

Fern Swenson: If there is a federal undertaking, like a road or pipeline, then that site, if it's previously recorded, then it would pop up that something exists in that area. It doesn't mean that everything is preserved. We have an official process regarding why is it significant, is it due to a broad pattern in history, or is it because of an important person? Is it because of the architecture, or potential to yield important archeological information? It depends on the integrity of site for resources, there is a process in place; it's just not random.

Chair Unruh: Closed the public hearing.

2019 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SCR 4017
3/1/2019
Job Number 33051

- Subcommittee
 Conference Committee

Committee Clerk: Marne Johnson

Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to consider studying the dichotomy between the archaeological discipline on cultural resources and the knowledge and expertise of tribal elders and tribal historic preservation officers to educate local, state, and federal agencies and the public; and the facilitation of effective consultation and cooperation for historic and prehistoric site identification and registration and the betterment of North Dakota and its citizens.

Minutes:

No attachments

Chair Unruh: Opened committee work.

Senator Piepkorn: I move we do pass.

Chair Unruh: The motion fails for lack of a second.

Senator Piepkorn: I believe I can call in the Senate minority leader to supply a second.

Chair Unruh: That shouldn't be necessary, if you make your motion again, I'm sure we can find a second.

Senator Piepkorn: I move a Do Pass.

Senator Roers: I second.

Senator Piepkorn: We were trying to figure out where this study is going. The misunderstanding or disagreements between the tribal historic preservation officers and the state historical society, and not the federal government. Identifying these historical sites, it's kind of an evolving definition, that's what the study is trying to do, it's trying to smooth out the process between the tribal historians and the state historical society.

Chair Unruh: This is something I deal with frequently in my professional world. We as a coal mining company, disturb some historic and cultural historic sites. We've got a great relationship with the tribes, we've set aside a bunch of money in an education trust fund for

them to be able to continue to teach the members of their tribes their languages and it's neat to participate in that. The Historical Society has a great structure set up, I've seen it work, I've seen the tribal monitors in the field when we're taking a look at these sites, and I wasn't convinced that there was something broken that needed to be fixed. I felt like Ms. Swenson was reiterating that things work well as they are structured now. I don't think we are missing anything right now, as someone who has participated in that state action part of a project; when sites are disturbed they get mitigated. It is a thorough process, and one that's educational along the way, not just because of the trust funds, but for me personally as well.

A roll call vote was taken.

Motion fails 1-5-0.

Senator Cook: I move a Do Not Pass.

Senator Roers: I second.

A roll call vote was taken.

Motion passes 5-1-0.

Chair Unruh will carry.

Date: 3/1
 Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4017**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Piepkorn Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh		X	Senator Merrill Piepkorn	X	
Senator Curt Kreun		X			
Senator Donald Schaible		X			
Senator Dwight Cook		X			
Senator Jim Roers		X			

Total (Yes) 1 No 5

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/1
 Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4017**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Cook Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Merrill Piepkorn		X
Senator Curt Kreun	X				
Senator Donald Schaible	X				
Senator Dwight Cook	X				
Senator Jim Roers	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Sen. Unruh

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4017: Energy and Natural Resources Committee (Sen. Unruh, Chairman)
recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).
SCR 4017 was placed on the Eleventh order on the calendar.

2019 HOUSE ENERGY AND NATURAL RESOURCES

SCR 4017

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 4017
3/15/2019
33804

- Subcommittee
 Conference Committee

Committee Clerk, Kathleen Davis

Explanation or reason for introduction of bill/resolution:

To consider studying the dichotomy between the archaeological discipline on cultural resources and the knowledge and expertise of tribal elders and tribal historic preservation officers

to educate local, state, and federal agencies and the public;

and the facilitation of effective consultation and cooperation for historic and prehistoric site identification and registration and the betterment of North Dakota and its citizens.

Minutes:

Attachment 1,2,3,4,5,6,7,8

Chairman Porter: opened the hearing on SCR 4017.

Sen. Joan Heckaman: introduced SCR 4017 and presented Attachment 1.

Sen Marcellais: presented Attachment 2. He also hand carried testimony Attachment 3, from Jeff Desjarlais Jr, Turtle Mountain Bank of Chippewa Indians THPO (Tribal historic Preservation Officer).

Rep. Buffalo, Ft. Berthold Indian Reservation, a Mandaree, Fargo: stands in support of this bill.

11:42

Scott Davis, ND Indian Affairs Council: I am here in support of SCR 4017. I think this study is pretty important but requires some team work. In the interim in light of what happened 2 years ago, I took it upon myself to really reach out, in particular to industry on better practices when it comes to projects, either near or far away from tribal treaty lands. I've had those discussions in particular with Enbridge. When I've had those discussions I brought along my THPO from my tribe, Mr. John Eagle. We have been reaching out. No matter what happened 2 years ago of trying to educate industry, in this case, of best practices, I think we've been successful to a point. I use the large wind project down in Emmons County where they had on sight, our tribal THPO on site that whole summer. What a very good working relationship. There are significant findings down there. We as tribal members know that. The industry did a very good job of respecting and looking at those areas, making sure that those pads and areas were not impacting any of these cultural sites. It's a start. It's going to take time to continue that discussion. Part of this study can achieve that.

I also think that when you look at sacred sites that could error (?) us, how can we protect those but have that balance of nondisclosure, keeping it private. When you have signs conflicting with our tribal

knowledge, there's a very very sensitive part here what we're willing to disclose to the general public. That has to be protected. I'm not sure how we do that and what type of system is established for that. If industry is going to come through with a project of some sort, and there's a significant finding, how do we keep that area protected from looters and people who want to grab a shovel and see what's out there. I think those are things we're talking about. The other thing we worked on in the interim too was working with the PSC. I know the PSC has its process and brought the PSC to my first conference 2 Januarys ago on strengthening tribal state relations. The big focus was not only treaties and treaty lands but also _____(a single word?) and the permitting process that PSC has to go through and how does that process work in unison with the SHIPO (SHIPA?), our tribal THPOs, how does that process work. That's another area that's ongoing. The other part is notifying all the tribes. We've achieved that. Anytime there's a permit, on or near, statewide, the PSC does notify the tribal chair and the THPOs on those. We made sure that was covered as well.

The other thing mentioned when you identify sacred sites on our registry, we're in the midst of finalizing one south of Jamestown with Whitestone. That took some years of process of studying that. Quite honestly the Whitestone Massacre is to me, for my tribe, is like the Wounded Knee of ND. It is what it is, it happened. We're working diligently to identify that and make sure that monument and right verbiage is the right stories told on that. This is another part of the study, this process that we're looking at. Those are sensitive areas of history that need to be discussed, told and informed with our schools etc. These are somethings we hear the people behind me here talking about. I think this study can do some of this. I know how this works with the legislative process.

For whatever reason, if it does not happen, we will continue to do it anyway. I think my friend, Ron Ness, and his industry, would be open to having some type of an education type of process with our THPOs, with industry of better practices of what we're looking at. At the end of the day it's all about relationships. With industry, your local sheriff, with the tribes, with PSC; without relationships and good dialogue and respect, none of these things will be protected. We're working very hard to achieve that dialogue. Those are things we've been working on but again, this study could help some of these efforts.

17:34

Rep Heinert: I'd like to talk about Sen. Heckaman's circle of rocks she talked about. What do we do with the private landowner when something significant is on their land?

Scott Davis: that's always been a question. That's always been part of the how does the tribe access private property. How does that relationship begin? It goes back to relationships. Educating people, the sheriff's office, the local counties, Association of Counties. Certain sectors of our state that have associations is where we can start educating people. At the end of the day, it's up to the private owner whether or not he or she or the family will allow the tribal member to come in and look at what's there. In my discussions of what happened 2 years ago, people are aware of this, they're conscious of this, aware of this, what do I need to do to protect this and see what's out there and make sure it's not disturbed. I think we're getting to a better place.

Chairman Porter: Inside of the whole legislative process, you seem to have boots on the ground and actually doing the work and getting it done. What are we going to study that you aren't already doing? I would hate to think we get in the way. You are fully capable of bringing bill drafts through the governor's office, through the Dept. of Indian Affairs to us if you find a place that lacks the law as you're meeting with industry and private landowners. I'm lost in the aspect that it seems like everything that's in here, you've already got your arms around and are way ahead of what we would ever be able to do.

Scott Davis: I'm thankful for the bill sponsors for bringing this to a new level. In light of what happened 2 years ago and prior to that, we've been working on a lot of things. A good example is when a farmer or a rural project finds human remains. 9 out of 10 times they are our relatives. There's a process to that, a law behind that. Tribes are notified in a day. We get to the site within a day or as soon as we can, identify through a process, what tribe those human remains belong to. The tribes take over from there and they return, have a ceremony and go from there. Again I think this study brings it to another level, a different level. I think it could tighten up some things I've been doing. I have a very short staff, our THPOs have a short staff. Our manpower is a challenge on my end. Again I think even without this study, I'm in full support of this study, but I feel confident some way, shape or form this work will continue. With this bill coming about, I think it's elevated more awareness and need to get out. Now that I recognize how many more resources we have in this room to help push that, I think that's a great thing. I think collectively we can do this. This is personal to me. It's very sacred to me. Either way it's going to happen. For you to support it puts more teeth behind it.

The other idea I have Mr. Chairman is one of these bills will hopefully be in your lap in a week or so, is the tribal state tax interim committee. Again it's called taxation, it's leadership, it's a true government to government relationship with the leaders of your side, the House, majority and minority leadership, Senate side as well, the Governor, and Lt. Governor and all in between. That's another venue too where a more leader to leader high level leadership can have a discussion or a study or if there's going to be a stronger bill for the next interim on these issues could happen. We're not just talking about the general public but leadership in general from government to government leadership perspective could be another way to study these important topics in the interim.

Rep. Anderson: Is there a place you can go look to see what you're actually looking for. I know when I go through hunting in a refuge over by J Clark Sayer Refuge, even on some farmland, we run into spots and wonder what was there at one time. Most of the time we just clean it up and move through it. I have no idea why there's a pile of rocks or some other structure out there. Do you actually have a spot that you can look at that stuff? I would hate to be rolling over somebody's gravesite. But we have no way of knowing.

Scott Davis: I think the experts behind me will answer that.

Jeani Borchert, Environmental and Transportation Service Division: presented Attachment 4 in support of SCR 4017.

Rep Bosch: in 2006, your program agreement developed and updated in 2006, does it need to be changed or are there areas that need to be looked at again? Does this study facilitate that?

Jeani Borchert I think this study would enhance understanding of all the people we work with in the state as part of our process. Our programmatic agreement has to be updated every 5 years for Federal highway requirements. I think the tribes and DOT are pretty happy with how things have worked and are working in our consultation. But we do have issues with archeologists for example, that we work with in having the same understanding of the tribal knowledge. I think the tribes right to say this is a significant place, an important place to us. It might not be something an archeologist understands. We were taught when I was in school a long time ago, pretty much tribal knowledge was lost. They were enculturated because of a number of different things; their ties to the past were cut. Well we've come to find out in the ensuing years, that is not the case. Their traditions were continued, their knowledge of these sites and use of these sites, the importance to their people and culture, and their continued existence, is really important. I'm personally in support of this. I think it would be helpful. It will facilitate discussions that need to take place in a different forum.

Dr. Erich Longie, Spirit Lake Sioux: What is in place works well. This will help take us to the next step. We still have a strong connection to the spiritual world we are very spiritual people. If this was

our meeting, we would have started with a prayer. There's no separation between our daily life, our daily work and our spirituality, everything is combined. Our ancestors' beliefs and ceremonies is what sustained them when they were put on reservations. It's what helped them endure horrible conditions on the reservations and still exist to some extent on certain reservations. The ceremonies, rituals, beliefs were passed down to us and we still practice them. The ancient knowledge allows us to identify what is a grave, a stone feature, etc. We don't like to share this knowledge. An archeologist could walk by these sites and not know. A regular person wouldn't think about it. If we identify them there's a chance of it being destroyed or looted because they might think they can find something there. We're careful of what we say. At the same time, we realize with the population brought in by the oil boom, many sites are being destroyed because of progress. We realize we have to share some of this knowledge with you and inform you why these are important. Rock is sacred to us. We believe we evolved from rock as our creation stories tell us how we came from stone. Stone is very important to us. We believe we need to convey this to you. This study goes beyond what happens in the Capital, what Scott does, what's currently being done, to help preserve these sites. It joins us out on the reservation. It helps us to use our elder knowledge, our ancestral knowledge to help preserve these sites. In my 65 years in ND, with the exception of a few years in the Marine Corps, I've seen a lot of progress in tribal state relations. This study will help us understand each other better. I don't understand Christianity, or why they revere the cross. I wasn't raised with Christianity but I respect it. I was forced to go to church when I was young when you're forced to do something, you don't learn. I still respect all religions, all spiritualities. What we want to do is share some of our sacred ancient knowledge in hopes that our sites are preserved and not destroyed. I think it will help us understand each other better, talk things out instead of protesting. As long as I was alive I had to walk to the white man's ways. I am still Lakota, and spiritual. When I go home at 5 o'clock I go back to being Lakota. This is what I hope that study does, sit down, understanding our ways. Differences breed mistrust and prejudice. Address some of those misunderstandings and everyone will be happy.

Rep. Anderson: If you see something you have to get a tribal elder out to tell you what it is. Unless I know what it is I'm going to go right through it.

Dr. Longie: We work with a lot of farmers and when we explain it to them, they're willing to leave it alone. Exactly what I hope this study addresses. That we could somehow share this knowledge in a respectful manner, that will preserve it.

45:00

Calvin Grinnell, Tribal Historian for the Tribal Historic Preservation Office of the MHA Nation: Since 2009 I've served on the State Historical Society board, and the tribal council committee meetings held biennially by the ND DOT. I'm a 64-year-old member a US Marine veteran. I've been participating in my traditional cultural ways all my life as a Hidatsa water buster clan member, traditional pipe carrier and sun dancer. I've surveyed and monitored cultural sites on and off the Ft. Berthold Reservation numerous time in the 18 years I've worked with the Tribal Historic Preservation office. Many sites were adjacent to the highway roads which is why the Tribal Historic Preservation office meets with the DOT twice a year. This earth is holy, sweet grass is holy, black medicine is holy, water is holy. They will give back our strength again. We use these gifts from the Creator to bless and strengthen ourselves in the sweat lodge, the sun dance and in solitary fasting ceremonies, on isolated buttes and sacred places. Throughout the lands there are places marking our ancestors' graves, stone circles significant to our creation stories, linear rock alignments serving as barriers to disease and stone circles and piles of stones made by Grandmother, our name for Mother Earth. These places are very important to us, created by our ancestors to mark a place that had meaning to them, so that we their descendants would know where to pray, where to fast, where to conduct ceremonies, seek spiritual guidance and direction to strengthen ourselves. That's why this earth is holy and important to us.

Tracy Potter: presented Attachment 5 in support.

54:00

Dakota Goodhouse: Welcome to Heart River Country and Apple Creek Country. Presented Attachment 6 and 7 in support.

I'm just a citizen of ND, I don't represent Standing Rock, I don't represent the State, but I'm from Standing Rock. I work part time for the State Historic Preservation office at the Heritage Center. I'm a grad student. I am here in support and brought 2 papers for you to review when you have time. The issue Scott Davis brought up earlier regarding 2 years ago we all know what he's talking about. What I think was at the heart of the issue 2 years ago was not enough information was put into the report that was done for that survey. I can't tell you what's in it, I can tell you what's NOT in it. There are 12 primary resource documents I reference in the larger document about Remembering a Historic River that can be found online or through books or works you can purchase at the book store at the Heritage Center. These are easily available. The other thing I'd like to share is we need to talk more, do more research. The archeological record informs us but it's complimented by the historical record. The shorter paper is forgotten history at Ft. Abraham Lincoln State Park. That forgotten history also has a bibliography of a dozen primary resource documents that don't even come from our tribal resources. They come from your own resources; newspapers, magazines, journals and diaries of people who were at Ft. Lincoln when the Nez Perce were imprisoned there. If you visit Ft. Lincoln, I think you'll find that narrative is entirely missing in that museum and their interpretive program. It was a prison camp and not just for the Nez Perce but the Grasshopper Band of the Northern Sheyenne. That's a missing story. I think this resolution is a means to promoting talk and discussion about what's missing on both sides of state agencies and tribal historic preservation offices and elders. It isn't just the state or agencies. I'd like to share this example. I grew up in Ft. Yates on what we call Gulf Hill. When I got older I took a walk up there with my great grandfather, WWI vet, Francis Winters, and he shared with me about the hill. We used to say little people lived up there. It became more than just where I lived and I wonder why we put up water towers up there. It was a special place. Maybe we didn't share that important information. We took down those water towers and built a huge new one and now there's a cell phone tower up on top of Gulf Hill. The THPO officer wasn't aware it was a special place for my people, it was a sacred place where the Sheyenne used to go and pray. In English it meant The Hill That Stands Alone. We don't even have that narrative at the Sitting Bull Visitor Center. The Mandan used to live there too. I'd like to go there and find that information. I have to go online, www.Northdakotastudies.org and find the Sitting Rabbit map that shows the Mandan occupation all the way down to the border. I urge you to please support it, discussion and research needs to happen not just at the archeological level. We need to have these discussions regarding the historic records.

1:00:00

Carol Two Eagles: in support. I was raised off the reservation, but I was raised in the traditional ways. My so many times grandfather Two Eagles was one of those hanged at Mankato the day after Christmas in 1862. My grandmother Pearl taught me to sing sacred songs in a whisper so the government people wouldn't come and get us or kill us. None of you had to do that in order to worship. I carry a pipe and I sun dance. I did a vision quest and asked how I should walk with my prayer and I saw this place so I've been here for 11 sessions. I agree with changing the dichotomy, using different words. When I first came here I was told Indians weren't welcome here. There's been a lot of improvement. I've dealt with a number of private individuals regarding sacred sites trying to get them to the right people in the State and the Historical Society to get questionable areas evaluated so they don't destroy anything. I've had workers of developers come to me. They unearthed bones, pot sherds and other artifacts and when they told the boss they were told to cover them over. Those are the ones we need to deal with. The study won't force that but will give some support. Give this a Do Pass so we can continue to build.

Jeani Borchert – that term dichotomy – We had a meeting in February, with 10 regional tribes and Sen Heckamen was there. That terminology was discussed for about ½ hour and everyone decided dichotomy should be the word there. I think it's because they feel there's chasm between their understanding of their ancestors' sites on the ground and the archeological perspective maybe in the majority. The intent of the resolution was to bridge that gap. I spoke with Dr. Longie and we would work with different language. I don't think they intended it to be construed as an insurmountable obstacle or division but to recognize that they feel there's that divide.

Chairman Porter: you are certainly welcome to email changes to the resolution.

Ken Hall, Three Affiliated Tribes, Mandan Hidatsa Arikara people and former Council member: As a tribal council member, I feel this is long overdue. We always talk about who we are as a people. We ran conferences on the reservation- energy summits, where the industry came in. The first presentation was always to know whose land you're on. The industry has reached out to some of our elders, Dr. Page Baker has worked with some of the companies on Cultural Sensitivity. We are on original territory of the Mandan people here where we sit and stand. We had a president that once came as a candidate, once as a president, and that's great. But not one time acknowledge he was on original territory of the Mandan people. We're behind on that. Canada is leap years ahead of us because their federal employees are actually scripted. If they were to come to Bismarck, they would acknowledge their original territory. It starts with education and understanding. What do we do if we find something? As a council member, a lady from Hanover found some flint and sent it to me. 400 years ago, my tribe, and the 4 bands in Alberta Canada, we traded. This was an international trade corridor back then. These are things people should know about. There's a lot of rich history. ND could take the lead on this. Why not come here for rich history? I hope this gets a Do Pass. It's something our state needs. It's going to be valuable for our future generations.

Fern Swanson, Director of the Archeology & Historic Preservation Division at the State Historical Society: presented Attachment 8.

Rep. Devlin: I was hoping you would give whether or not we should do this study.

Fern Swanson: We are not in opposition.

Chairman Porter: further questions? Further support? Further opposition? Closed the hearing

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 4017
3/28/2019
34330

- Subcommittee
 Conference Committee

Committee Clerk, Kathleen Davis

Explanation or reason for introduction of bill/resolution:

To consider studying the dichotomy between the archaeological discipline on cultural resources and the knowledge and expertise of tribal elders and tribal historic preservation officers

to educate local, state, and federal agencies and the public;

and the facilitation of effective consultation and cooperation for historic and prehistoric site identification and registration and the betterment of North Dakota and its citizens.

Minutes:

Attachment 1

Chairman Porter: opened the hearing on SCR 4017 and presented a proposed amendment 01001 (Attachment 1). As we sat here and listened to everyone it didn't seem like we needed a legislative study. It seemed like we needed to have a resolution that tells the Indian Affairs Commission to put together a working group of all interested parties they are kind of doing; to have a working group that fixes a problem. This amendment takes out the Legislative study and inserts the affected agencies, Department of Transportation, the Public Service Commission, and State Historic Preservation office, and puts them all into Page 1, Line 23, tells them to coordinate and create this working group.

On Page 2, Line 8-9-10 should be removed so it's not a Legislative study; so it's a resolution telling them to form a committee and get to work. I'm not sure this has gone far enough. We'll have this worked on further and come back to it next week. Mr. Davis's intent was rather than make this a legislative study was to take it over as a working group with a resolution from us saying he should do it. I'll work on this further.

Rep. Keiser: It's like telling the highway department to study road construction. I don't support either one. The federal government has such strict guidelines on all of these sites and there's been so much work done both in and outside of the Courts. If they think it's important, my analogy is they should do it and we don't need to tell them to do it.

Chairman Porter: I don't disagree. We'll put that together and meet next week.
Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau A Room, State Capitol

SCR 4017
4/5/2019
34556

- Subcommittee
 Conference Committee

Committee Clerk, Kathleen Davis

Explanation or reason for introduction of bill/resolution:

To consider studying the dichotomy between the archaeological discipline on cultural resources and the knowledge and expertise of tribal elders and tribal historic preservation officers

to educate local, state, and federal agencies and the public;

and the facilitation of effective consultation and cooperation for historic and prehistoric site identification and registration and the betterment of North Dakota and its citizens.

Minutes:

Attachment 1

Chairman Porter: opened the hearing on SCR 4017, and presented Attachment 1 (Amendment 19.3139.01002). This bill is on tribal historical preservation and the cooperation between the State and tribal entities. This amendment moves this to the Indian Affairs Commission to do the work which was really happening already. It takes out the study and makes the Indian Affairs Commission report back to the Legislative Management. When it says that it means it'll be assigned to a committee to receive the report on what they're doing.

Rep. Roers Jones: I would move the amendment 19.3139.01002.

Rep. Lefor: second.

Chairman Porter: we have a motion and second on 01002. Any discussion? Voice vote, motion carried. We have an amended resolution.

Rep. Eidson: I would move a Do Pass on SCR 4017 as amended.

Rep. Roers Jones: second.

Chairman Porter: we have a motion and a second for a Do Pass as Amended. Further discussion? Roll call vote: 11 yes, 0 no, 3 absent. Rep. Eidson is carrier. Place on the Consent Calendar.

DE 4/3/19

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4017

- Page 1, line 1, replace "directing" with "urging"
 - Page 1, line 1, replace "Legislative Management" with "Indian Affairs Commission"
 - Page 1, line 1, replace "consider studying" with "study"
 - Page 1, line 2, remove "dichotomy between the"
 - Page 1, line 2, replace "on" with a comma
 - Page 1, line 2, after "resources" insert a comma
 - Page 1, line 4, remove the semicolon
 - Page 1, line 4, replace "the facilitation of" with "to facilitate"
 - Page 1, line 5, remove "and registration"
 - Page 1, line 14, after "regional" insert "and"
 - Page 1, line 14, after "private" insert "industry"
 - Page 1, line 18, remove "eligibility of"
 - Page 1, remove line 19
 - Page 1, line 20, remove "to the National Register of Historic Places"
 - Page 1, line 21, remove "state agencies, including the Department of Transportation,"
 - Page 1, line 22, remove ", the State Historic Preservation Office, and the Public Service Commission, should"
 - Page 1, line 23, replace "coordinate and consult" with "is urged to consider coordinating with state agencies including the Department of Transportation, State Historical Society, and Public Service Commission and to consult"
 - Page 2, line 3, replace "Legislative Management" with "Indian Affairs Commission is urged to"
 - Page 2, line 3, remove "dichotomy between the"
 - Page 2, line 4, replace "on" with a comma
 - Page 2, line 4, after "resources" insert a comma
 - Page 2, line 6, remove the semicolon
 - Page 2, line 6, replace "the facilitation of" with "to facilitate"
 - Page 2, line 7, remove "and registration"
 - Page 2, line 8, after "that" insert "if studied,"
 - Page 2, line 8, replace "Legislative Management" with "Indian Affairs Commission is urged to"
- Renumber accordingly

Date: 4-5-19
 Roll Call Vote #: 7

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SCR 4017**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.3139.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep Roers Jones Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep Bosch			Rep. Ruby		
Rep. Devlin			Rep. Zubke		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Eidson		

Total (Yes) _____ No _____

Absent _____

Floor Assignment voice vote Motion carried

If the vote is on an amendment, briefly indicate intent:

Date: 4-5-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SCR 4017**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 19.3139.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep Eidson Seconded By Rep Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	AB		Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep. Bosch	✓		Rep. Ruby	AB	
Rep. Devlin	✓		Rep. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser	AB		Rep. Mitskog	✓	
			Rep. Eidson	✓	

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep Eidson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4017: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SCR 4017 was placed on the Sixth order on the calendar.

- Page 1, line 1, replace "directing" with "urging"
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- Page 2, line 8, after "that" insert "if studied,"

Page 2, line 8, replace "Legislative Management" with "Indian Affairs Commission is urged to"

Renumber accordingly

2019 TESTIMONY

SCR 4017

SCR 4017
2.28.19
#1
Pg.1

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

SCR 4017

Chairman and Members of the Committee: I am Senator Joan Heckaman, D-23, here today to introduce SCR 4017 to you.

I grew up on a farm/ranch in eastern Eddy County. Currently, my nephew and family farm/ranch the same land my father and grandfather owned and farmed. As I think about the history of that farm, I grow increasingly concerned about the lost history that land and farm hold. I know from visiting with my mom that the post office often used the farm as a stopping off station between Jamestown and Devils Lake in the "Old Days". I also know that there is a rock circle on one of the hills on the farm because I saw it when I was exploring on my own when I was little. But I know nothing else now and will never be able to find out what stories that place and land have to tell, because all my relatives have passed away. History has been lost.

That is why I am here today. SCR 4017 would have Legislative Management consider studying the two different methods that tribal elders and leaders identify historic sites as compared to the State Historic Society and the National Registry of Historic Places. That became evident when I visited with the THPO (Tribal Historic Preservation Officer) from Spirit Lake, Dr. Erich Longie. During our conversation I asked him if there is anything the state of North Dakota can do to help preserve historic sites. At first, he said he didn't think there was, but in a few days, I got an e-mail from him discussing the topic again. There is a significant different in determination of historic sites between tribes and states. The federal government is also involved, but we can't legislate those issues, so we focus on things we can do. We can study and maybe come up with a way to join forces together to document the many historic sites in North Dakota. If we don't do it soon, that knowledge will be lost forever, just like on my family's farm.

I also happened to sit at the same table as Jeanie Borchert, DOT, who oversees the joint effort between DOT and tribes when roads are being planned. She has a wealth of knowledge to assist in this effort and I welcome her and everyone who shares the love of the history of North Dakota. She is also instrumental in historic documentation.

I hope we can work together to document the many important historic sites and come to a compromise on how and why these ways to record history differ, but also be stronger together in our efforts to keep history alive.

That concludes my testimony and I would stand for any questions.

SCR 4017
2-28-19
#2
Pg. 1

NORTH DAKOTA SENATE

STATE CAPITOL
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BISMARCK, ND 58505-0360



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Senator Richard Marcellais

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Testimony

Senate Concurrent Resolution 4017

Energy & Natural Resources Committee

Senator Jessica Unruh, Chairwoman

February 28, 2019

Chairwoman Unruh, members of the Energy & Natural Resources Committee, for the record my name is Richard Marcellais, Senator from District 9, of Belcourt I am here today to provide testimony on Senate Concurrent Resolution 4017.

Senate Concurrent Resolution 4017 a Legislative Management Study the history of our North Dakota Native American Tribes.

The tribes of North Dakota contribute greatly to our state, and we welcome you to explore reservation and experience Native American culture. Learn about each tribe's history, language and traditions by visiting attractions like reconstructed earth lodge villages or attend a powwow and celebrate the culture through song and dance.

Long before Lewis and Clark stepped foot in what is now North Dakota, French Canadian trappers were common visitors to Native American villages.

They mixed with and married into local families and gave birth to what became known as the Metis. The descendants of the Metis and their culture can be found in North Dakota in the Turtle Mountains and other areas in the northeast part of the state.

Thank You very much for the opportunity to appear in support of Senate Concurrent Resolution 4017. If there are any questions I will try and answer them.

TESTIMONY

I am Calvin Grinnell, historian for the Tribal Historic Preservation Office of the Mandan Hidatsa Arikara Nation. Tribal Historic Preservation Officer Elgin Crows Breast is on extended medical leave and could not be here today. Since 2009, I have served on the board of the State Historical Society of ND and attend the Tribal Consultation Committee meetings held bi-annually since 2007 by the ND Department of Transportation.

I am a 63-year-old enrolled member and a US Marine veteran; I have been participating in my traditional cultural lifeways all my life as a Hidatsa Water Buster Clan member, traditional pipe carrier and sun dancer. I have surveyed and monitored cultural sites on and off the Fort Berthold Reservation numerous times in the 18 years I have worked for the Tribal Historic Preservation Office. Many of these sites were adjacent to the many highways and roads that crisscross the state, which is why our Tribal Historic Preservation Office meets with the ND Department of Transportation twice a year.

The words to a song given to my people by powerful spiritual benefactors in one of our ceremonies says; “this earth is holy, sweetgrass is holy, black medicine is holy, water is holy; all these things are holy. They will give you back your strength again.” As the original indigenous people on this land, we still use these

SCR 4017
2.28.19
#3
Pg. 2

gifts from the Creator to bless and strengthen ourselves in the sweat lodge, the sun dance, and in solitary fasting ceremonies on isolated buttes and sacred places.

Throughout this land, there are rock cairns marking the graves of our ancestors, stones arranged in the form of turtles significant to our creation stories, linear rock alignments serving as barriers to disease, and stone circles and piles of stone made by Grandmother Who Never Dies, our name for Mother Earth. These places are very important to us; they were created by our ancestors to mark a place that had meaning to them so that we, their descendants, would know where to pray, fast and conduct ceremonies to seek spiritual guidance and direction to strengthen ourselves. That is why “this earth is holy” to us.

In conclusion, I support this resolution to study the perspectives of all involved tribal, scientific and governmental entities to seek cultural understanding and mutual respect. Thank you!

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

SCR 4017

Chairman and Members of the Committee: I am Senator Joan Heckaman, D-23, here today to introduce SCR 4017 to you.

I grew up on a farm/ranch in eastern Eddy County. Currently, my nephew and family farm/ranch the same land my father and grandfather owned and farmed. As I think about the history of that farm, I grow increasingly concerned about the lost history that land and farm hold. I know from visiting with my mom that the post office often used the farm as a stopping off station between Jamestown and Devils Lake in the "Old Days". I also know that there is a rock circle on one of the hills on the farm because I saw it when I was exploring on my own when I was little. But I know nothing else now and will never be able to find out what stories that place and land have to tell, because all my relatives have passed away. History has been lost.

That is why I am here today. SCR 4017 would have Legislative Management consider studying the two different methods that tribal elders and leaders identify historic sites as compared to the State Historic Society and the National Registry of Historic Places. That became evident when I visited with the THPO (Tribal Historic Preservation Officer) from Spirit Lake, Dr. Erich Longie. During our conversation I asked him if there is anything the state of North Dakota can do to help preserve historic sites. At first, he said he didn't think there was, but in a few days, I got an e-mail from him discussing the topic again. There is a significant difference in the determination of historic sites between tribes and states. The federal government is also involved, but we can't legislate those issues, so we focus on things we can do. We can study and maybe come up with a way to join forces together to document the many historic sites in North Dakota. If we don't do it soon, that knowledge will be lost forever, just like on my family's farm.

Part of the difficulty arises when sensitive historic information is identified, and tribes are fearful that the disclosure will result in disturbances to these sites. That brings the question of how we identify, record, and store the information without the fear of looting or disturbances to these historic sites.

I had the privilege of meeting Jeanie Borchert, DOT, who oversees the joint effort between DOT and tribes when roads are being planned. She has a wealth of knowledge to assist in this effort.

I do know that the State Historical Society has a Tribal Preservation Officer who works closely with the tribes, but I believe through this study we can clarify some ambiguities and have an enhanced preservation system in North Dakota.

I hope we can identify tribal concerns pertaining to historic preservation, continue the cooperation that occurs now between the tribes and state historical society, and continue to support the mutual trust through consultation, cooperation, and collaboration. This study will identify gaps in the preservation process.

Please remember that this is a "consider studying" resolution. It is not mandatory, nor can we ensure that if this resolution passes, that Legislative Management will select this study, but if we don't pass this, we know that there will be NO study.

I respectfully ask for your support in passing SCR 4017, so it has a chance to be selected as a study.

That concludes my testimony and I would stand for any questions.

NORTH DAKOTA SENATE



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Senator Richard Marcellais

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COMMITTEES:
Education
Government and Veterans Affairs

Testimony

*Senate Concurrent Resolution 4017
Energy & Natural Resources Committee
Representative Porter, Chairman*

March 15, 2019

Chairman Porter, members of the Energy & Natural Resources Committee, for the record my name is Richard Marcellais, Senator from District 9, of Belcourt I am here today to provide testimony on Senate Concurrent Resolution 4017.

Senate Concurrent Resolution 4017 a Legislative Management Study the history of our North Dakota Native American Tribes.

The tribes of North Dakota contribute greatly to our state, and we welcome you to explore reservation and experience Native American culture. Learn about each tribe's history, language and traditions by visiting attractions like reconstructed earth lodge villages or attend a powwow and celebrate the culture through song and dance.

Long before Lewis and Clark stepped foot in what is now North Dakota, French Canadian trappers were common visitors to Native American villages.

They mixed with and married into local families and gave birth to what became known as the Metis. The descendants of the Metis and their culture can be found in North Dakota in the Turtle Mountains and other areas in the northeast part of the state.

Thank You very much for the opportunity to appear in support of Senate Concurrent Resolution 4017. If there are any questions I will try and answer them.



TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

Natural Resource Office/THPO

PO Box 900

Belcourt, North Dakota 58316

Phone (701) 477-2640

Fax: (701)4773593

SCR 4017

3.15.19

Attachment 3

March 14, 2019
Energy and Natural Resources Committee
State Capitol
Bismarck, ND

RE: North Dakota Senate Concurrent Resolution 4017

Greetings Honorable Senators:

Let me introduce myself I am Jeff Desjarlais Jr. Turtle Mountain Band of Chippewa Indians Tribal Historic Preservation Officer.

I support the Concurrent Resolution 4017 for the following reasons, First I believe that we along with other tribal nations have the longest history in this State of North Dakota, we have both written and oral history passed down from generation to generation from our ancestors. Secondly Native American history should be told by the Native American tribes of this territory so that we can express our views and history of the land and tell our own stories. Lastly I believe tribal input into decision making needs more involvement in determining cultural resources and historical properties within North Dakota.

In speaking with the elders of our reservation (Turtle Mountain), they have extensive knowledge of the whole territory, they orate about different areas of North Dakota and events that have taken place that are not written in the history. They talk about historic event such as battles, trades, and areas where they went out to pray and signify these locations are sacred. The best way to protect these sites are to work with elders and historians of the Tribes to educate the public and give allowable information from the tribes to the public to acknowledge these sites for protection.

I sincerely hope the senate and house approve this resolution and give the Tribal Nations a voice in the great State of North Dakota.

Sincerely,

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

Date: March 15, 2019 at 9:00 a.m.

SCR 4017
3.15.19
Attachment 4

**North Dakota Department of Transportation
Jeani Borchert, Environmental and Transportation Services Division**

Senate Concurrent Resolution 4017

Good morning, Mr. Chairman and members of the committee. I am Jeani Borchert, I work in the Environmental and Transportation Services Division at the North Dakota Department of Transportation (Department). I am here to support Senate Concurrent Resolution 4017. Thank you for giving me the opportunity to discuss this proposed resolution and answer any questions.

Part of my duties at the Department are to consult with regional tribes in regard to cultural resources of value to them. The reason for this is that, as an applicant for federal funds and approval through the Federal Highway Administration, we ensure compliance with the requirements of the National Historic Preservation Act (54 U.S.C. 302706) and the implementing regulations (36 CFR Part 800). In 1992 there were amendments to the National Historic Preservation Act requiring Federal agencies to consult with tribes on sites they value within their aboriginal territories. The corresponding regulations came out in 1998 and the Department worked with FHWA to define an appropriate response.

Our method of tribal consultation has varied throughout the ensuing years, but in 2004 we began working with eight regional tribes to develop a programmatic approach to consultation. As a result we signed a Programmatic Agreement with nine regional tribes in November of 2006. Since that time our consultation efforts have expanded to around 16 regional tribes from North Dakota, Minnesota, South Dakota, Nebraska, and Montana.

Through the years leading this effort I have come to have tremendous respect for our Tribal partners. I've learned to look at the sites through an altered lens. As an archaeologist, I'm looking for artifacts, and datable features that allow me to place a site within a framework of time and related activities. With enough data, archaeologists may talk about not only the history of life in ND but culture change, the influences of change, and adaptations through time. In my limited understanding, the Tribal perspective is more personal, more impactful, and more comprehensive.

It is not my place to speak for the Tribes. There are people who have testified here who have done that quite well on their own. However, I have seen the veracity of our Tribal partner's knowledge of stone feature sites in particular and their vast knowledge of their culture and the practices and spirituality of their ancestors through their oral traditions. The Department supports our Tribal partner's right to identify and evaluate sites of significance from their own knowledge of past use and the significance of that use to their Tribes and to the State of North Dakota. This Resolution will support an effort for state agencies involved in the National Historic Preservation Act Section 106 process to come together with one well understood perspective and direction, facilitating the work we all do for this State.

Therefore, the Department asks for a do pass to this resolution.

Thank you, Mr. Chairman, I would be happy to answer any questions.

Testimony of Tracy Potter on SCR 4017, House Energy and Natural Resources Committee, March 15, 2019

I rise to encourage your do-pass recommendation on SCR 4017, but I would like you to consider a friendly amendment to improve the tone of the resolution. I don't like the word *dichotomy* and neither should you.

My professional career has often involved the topic of this resolution. At Fort Abraham Lincoln State Park, all of the reconstructions at the cavalry post and the Mandan Indian village required hundreds of thousands of dollars in archeological studies. And the interpretation at the Mandan village was informed by those studies and earlier surveys and studies. And, it was also informed by Mandan, living and dead. The best understanding of cultures and culture change over time comes from the synthesis of wisdom from many sources. And, every whereas in this resolution is encouraging synthesis. That's at the heart of it.

Describing the sources of information as in a dichotomy is not in that spirit. Dichotomy in my 1961 Webster's Collegiate is "a division or the process of dividing into two especially mutually exclusive or contradictory groups."

Archeological and tribal perspectives are anything but mutually exclusive or contradictory. At least they shouldn't be, and this resolution I hope aims to ensure that they are not. The search for knowledge, wisdom and truth needs every perspective.

I suggest the following amendment to the resolution title,

Page one, Line 2 and on Page two, Line 3, in both places:

replace "the dichotomy" with "ways to improve communication"

I believe that better represents the intent of the resolution.

Thank you.

Forgotten History At State Park *Omission Of Prison Camp Narrative*

By Dakota Goodhouse

On the night of October 21-22, 1804, the Corps of Discovery established camp above the abandoned Mandan Indian Village known today as On-A-Slant, located at present-day Fort Abraham Lincoln State Park. Their mission, one of exploration and science, but also one of peace and friendship.

Seventy-three years later, on October 5, 1877, the Nimiipuu (Nez Perce) concluded a running battle from their homelands in Idaho to Bear Paw Mountain, MT, heart-breakingly short a few miles to US-Canadian border. Their destination: Fort Walsh, to live amongst Sitting Bull and the Hunkpapa Lakota, whom the Nez Perce thought would assist them. Nearly 800 Nez Perce were captured by Col. Miles. 300 of the Nez Perce were imprisoned at Fort Abraham Lincoln in October, 1877, as they were prepared to be shipped to Indian Territory (OK). Some of them died, as prisoners of war, at Fort Abraham Lincoln.

Among the 300 Nez Perce prisoners of war was Tzi-Kal-Tza, or Daytime Smoke, an elder at seventy-one/two years, who survived the military's single-minded pursuit of his people, had actually fought to defend his people in the Nez Perce War, and was part of their subsequent capture at the Bear Paw conflict, and their relocation to Indian Territory (OK). Information at the Nez Perce County Historical Museum in Lewiston, ID, says that Daytime Smoke was the son of Captain William Clark.

The imprisonment of the Nez Perce survives in living memory today, which isn't so long ago as one would imagine. "My great-grandmother's sisters, two of them, died there," shared Mr. Woodrow Star, an enrolled member of the Nez Perce tribe. "I paid a visit to Fort Lincoln to visit my grandmothers' graves. None of the park rangers, not even the park manager, had ever heard of this."

After the fort was decommissioned in 1890, all veterans and citizens at rest there – including the POWs, were exhumed and reinterred at St. Mary's Cemetery. The Nez Perce were buried in a line, their names unrecorded. Their graves in Bismarck lie there still, in unmarked graves. The Nez Perce today, want to change this.

Fort Abraham Lincoln has seen a lot of reconstruction over the years. Blockhouses and the museum/visitor center have been in place in the 1930's. Earthlodges were originally reconstructed by the CCC in the 1930's too, then reconstructed as needed. In the late 1980's the commanding officer's quarters were reconstructed, built as General Custer would have known it in 1875. Four other buildings followed. The museum/visitor center was renovated to feature the Mandan Indian and military occupations.

The museum/visitor center displays feature archaeological findings both from the Mandan and military, Sheheke, (White Wolf; White Coyote) a Mandan who was born there, an artistic diorama of the historic Mandan village there, Fort Abraham Lincoln, General Custer, and the Civilian Conservation Corps. The Little Bighorn campaign and battle are also featured, as is the Corps of Discovery.

Guided tours of the commanding officer's quarters ("The Custer House") are offered throughout the tourist season. The guides are dressed in period attire and speak in the present tense as though it's 1875 rather than the modern day. The Custer House features various novelties that once belonged to Lt. Col. G.A. Custer and his wife. These are pointed out to the visitor by way of a prompt, "Take special notice of..."

The fort's history is summarized in a prologue and conclusion of every tour: it was built in 1873, a cavalry post to protect the Northern Pacific Railway survey crews, the Black Hills Expedition of 1874 (to confirm the discovery of gold) receives a mention, the Little Bighorn Campaign (Centennial Campaign), the plight of Elizabeth "Libby" Custer following the failure of her husband's command, the decommission of the fort, citizens dismantling the fort for construction materials in their homes, the CCC placing building markers, and the reconstruction of the fort.

What is entirely missing from the narrative in the interpretive programming and the museum information about the military occupation is the prison camp history. There is no mention either of the 1875 Treaty of Fort Abraham Lincoln, which was a big activity there at the fort. Lt. Col. Custer called on members of the Arikara, Hidatsa, Hunkpapa Lakota, Mandan, and Yanktonai Dakota to end their generations-long intertribal warring.

The interpretive training that seasonal staff at Fort Abraham Lincoln State Park receive is based on the practices of Freeman Tilden. There are six principles in this methodology. Tilden's principles are the basics of all interpretive programming found in the National Parks, state parks, museums, and other institutions across the country. Tilden's principles are:

1. Any interpretation that does not somehow relate what is being displayed or described to something within the personality or experience of the visitor will be sterile.
2. Information, as such, is not interpretation. Interpretation is revelation based upon information. But they are entirely different things. However, all interpretation includes information.
3. Interpretation is an art, which combines many arts, whether the materials presented are scientific, historical or architectural. Any art is in some degree teachable.
4. The chief aim of Interpretation is not instruction, but provocation.
5. Interpretation should aim to present a whole rather than a part, and must address itself to the whole man rather than any phase.
6. Interpretation addressed to children (say, up to the age of twelve) should not be a dilution of the presentation to adults, but should follow a fundamentally different approach. To be at its best, it will require a separate program.

The whole history of the park is not addressed, so the whole experience of the visitor is not "wholesome." This omission has shaped the experience of millions of visitors over the years the park has been active. It isn't just the interpretation or presentation of this tragic history that this is missing; the prison camp history of Fort Abraham Lincoln State Park receives a half paragraph mention in the ND Parks and Recreation Department's publication by Arnold O. Goplin, "The Historical Significance of Ft. Lincoln State Park" and then only that the 7th Cavalry escorted the Nez Perce to Bismarck, not Fort Abraham Lincoln. In another publication of the ND Parks and Recreation Department, "100 Years – Fort Abraham Lincoln State Park," the Nez Perce are missing entirely.

An informal visit to the North Dakota Parks and Recreation Department on Thursday, August, 25, 2016, and message for the director went unanswered. An email to the Fort Abraham Lincoln State Park received a reply on Oct. 15, 2016, but only to say that the park manager would respond "next week." There has been no further follow-up from the North Dakota Parks and Recreation Department.

Mr. Woodrow Star humbly requested any and all information that the North Dakota Parks and Recreation could share with him about his relatives imprisonment. The staff could not respond to Mr. Woodrow, because their information is woefully incomplete. Fort Abraham Lincoln State Park does not employ an actual historian to research and construct their interpretive program. In October of 2015, the park manager referred Mr. Star to me.

Here's follows a bibliography of non-native primary resources which specifically mention the Nez Perce in Bismarck and at Fort Abraham Lincoln in October of 1877.

Primary Resources:

Fred G., Bond. "Floatboating On The Yellowstone." 1st Ed. New York, New York: New York Public Library, 1925. 1-22.

Miles, Gen. Nelson Appleton. "The Nez Perce Campaign & The Siege And The Surrender." In Personal Recollections And Observations Of General Nelson A. Miles, 250-280. 1st Printing. New York, New York: Werner Company, 1896.

Zimmer, William F. "Part Two: August 1, 1877 to December 31, 1877." In Frontier Soldier: An Enlisted Man's Journal, Sioux And Nez Perce Campaigns, 1877, edited by Jerome Greene, 89-160. 1st ed. Helena, Montana: Montana Historical Society Press, 1998.

Journals:

Romeyn, Capt. Henry. "The Capture Of Chief Joseph And The Nez Perce Indians." Contributions To The Montana Historical Society, Vol. 2 (1896): 283-91.

Haines, Francis. "Nez Perce Indians." Army And Navy Journal, 1877, 290-91.

Magazines:

Henry Remsen, Remsen (Tilton). "After The Nez Perces." Field And Stream And Rod And Gun, December 1, 1877, 403-04.

"The Surrender Of Joseph." Harper's Weekly, November 17, 1877, 905-906.

Newspapers:

Bismarck Tri-Weekly Tribune, November, 21 & 23, 1877.

Cheyenne Daily Leader, November 25, 1877.

Inter-Ocean, November 23, 1877.

The Nez Perce themselves know their own history. They survived displacement from their homelands, imprisonment, and placement in Indian Territory (Oklahoma).

Goplen, Former Senior Foreman Historian for the National Park Service minimized this tragedy to half a paragraph and displaced the locality to Bismarck, ND. Fort Abraham Lincoln State Park staff have repeatedly ignored calls to address the omission of this history in an effort to preserve the lionized integrity of an egotistical and incompetent military commander. The Fort Abraham Lincoln State Park website focuses only on the Mandan Indian and military occupations and provides a link to Little Bighorn History. There is a pattern of omission of historical fact that is taking place at Fort Abraham Lincoln State Park. One can only hope that this changes.

Visit this park. It's still the greatest park in North Dakota. Ask the park manager to develop the interpretive narrative. It doesn't need to be apologetic. It needs to be informed.

Remembering A Historic River *Significant Mentions In Historic Resources*

By Dakota Goodhouse

The Lakḥóta people keep their collective memory alive in pictographic records called winter counts. One such winter count, the Brown Hat Winter Count, reaches back to what ethnologists and historians might call “myth-history,” to circa 901. This history reaches back hundreds of years and recalls the arrival of the horse in 1692, the first horse stealing raid in 1706, inter-tribal conflict, contact with traders, smallpox, starfalls, eclipses, comets, sun dances, white bison hunts, conflicts with soldiers, treaties, the arrival of settlers, the boarding school and reservation era, and survival.

If the Cannonball River were excluded from primary resources like journals, maps, and winter counts, our North Dakota history would be poorer for it. There is a continuous cultural occupation of this Missouri River tributary reaching back to circa 1300 through the tribal histories of the Mandan, Arikara, Cheyenne, Yanktonai Dakota, and Hunkpapa Lakota.

I scheduled a viewing of the Dakota Access Pipeline Class III survey report with the North Dakota State Historic Preservation Office at 4:00 PM on March 1, 2016. The report is in three thick volumes, and there was no possible way that I could view the entire thing in one sitting, however, I narrowed my search to the Cannonball River and Beaver Creek. According to the authors of this report, they admitted to no tribal consultation. They don't have to, because the pipeline does not physically cross the reservation border. The report doesn't mention much in the way of history and culture. What is mentioned, can't be shared, because it may lead to the disturbance or destruction of the resource.

What it doesn't say needs to be shared. The report does not mention the flood of 1825 opposite of the mouth of the Cannonball River - thirty lodges, or about 150-180 people drowned. There was no mention of The Charger's last camp on Beaver Creek either. The Charger was a major historic figure in the War of 1812, he fought in three conflicts in Ohio, met President Van Buren, met King George III, led as many as 700 Dakḥóta-Lakḥóta under Col. Leavenworth's command of the Missouri Legion in 1823 in the first ever US military campaign on Plains Indians against the Arikara. A major historic figure? A former US president and an English king certainly thought so.

These few things were brought to the attention an individual at the ND SHPO on March 1, 2016, along with where he could find this information. The following day, that individual responded that this info is also be found in the British Museum Winter Count, in London, England.

The north and south banks of the Cannonball River are rife with physical evidence of historic and cultural occupations of people who are still here. This physical evidence of village remains and midden mounds are complemented by surviving oral tradition; there are various mentions in historic journals from English resources (i.e. John Evans) to American resources (i.e. Manuel Lisa, Corps of Discovery, etc.). As to whether or not the historic occupations of the Arikara, Cheyenne, and Mandan Indians ever interred their deceased in the vicinity of the Cannonball River mouth, it is absolutely preposterous to say that there are no burial grounds nearby – to say so would be to suggest that no one ever died in any of the cultural occupations. Alfred

Bowers' Mandan informants told him that their ancestors buried their deceased "in earlier times."

The Sitting Rabbit map of the Missouri River, from the North Dakota-South Dakota border to the North Dakota-Montana border, was commissioned by Orin Libby in 1906. At the time, Libby was the Secretary of the State Historical Society of North Dakota (SHSND). Libby sought out Sitting Rabbit, a Mandan Indian man, to capture the geography of the Missouri River as they knew it. Sitting Rabbit didn't disappoint in his efforts. In fact, the Mandan Indian villages at the mouth of the Cannonball River, both the north and south bank villages, are called the Big River Villages. The Mandan Indian name of the Cannonball River is the Big River. This precious map is still in the collections of the SHSND. The SHSND has graciously uploaded this map for public viewing on their ND Studies website.

According to Col. A.B. Welch's "Seven Fires," Sometime around 1750, the Šahíyela (Red Talkers; Cheyenne) were compelled by the Lakǰóta to cross the Missouri River at the mouth of the Cannonball River. The Šahíyela were hard pressed to make peace with the Lakǰóta or be exterminated, so they embraced their old foe and became allies. A great inter-tribal adoption, cemented by marriages, was arranged. But not all the Lakǰóta were keen to make an ally of a former enemy.

The Brown Hat Winter Count (aka Baptiste Good Winter Count; Sičáŋǵu, "Brulé") in the winter count collections at the National Museum of The American Indian in Washington DC, has been made available in its entirety online. This winter count recalls 1762-1763 as the "people were burnt winter." The entry details a great prairie fire that caught up to their village. Many people and horses were killed in this fire. Survivors themselves were burnt about their legs and made it through this trial by jumping into Long Lake. This band of Lakǰóta had fought the Cheyenne in the Cannonball area. The Cheyenne had retaliated by crossing the Missouri River at the mouth of the Cannonball River and tracking the Lakǰóta along Long Lake Creek, where they set fire to the plains. The late Albert White Hat Sr. (Rosebud; Sičáŋǵu), recalled the oral tradition of the Sičáŋǵu as taking place in the Bismarck region. The conflict which resulted in the formation of the Sičáŋǵu began at the mouth of the Cannonball River. The identity of one of the tribes of the Očhéthi Šakówiŋ (The Seven Council Fires; "The Great Sioux Nation") tied to this location is significant.

The Beinecke Library Map, at Yale, CT, the only evidence of John Evans travels (his journals may have been destroyed or lost) provides the only testimony of his journey on the Upper Missouri River. This map was referenced and annotated by the Corps of Discovery. Evans recorded on his map a series of streams, many unknown to him by name; one of the outstanding streams he recorded was the "Bomb River," or the Cannonball River.

The Corps of Discovery mention the Cannonball River as "La Bullet" on October 18, 1804. Referencing Evans' map, Captain William Clark walked that evening in search of the remarkable places mentioned by Evans, but couldn't find them, though by then, the Corps' campsite was north of the mouth of the Cannonball River. Co-Captain Meriwether Lewis noted on this same date that the cannonball concretions were "of excellent grit for Grindstones," and had his men select one to "answer for an anker."

The Pictographic Bison Robe, at the Peabody Museum of Archaeology and Ethnology at Harvard University, MA, details the intertribal conflicts amongst the Arikara, Mandan, Hidtsa, Hunkpapa Lakota, and Yanktonai Dakota in the Heart River and Cannonball River area along the Missouri River during the 1790s. This same robe details one of many conflicts between the

tribes of the Upper Missouri River which concluded in the 1803 Battle of Heart River, which saw the expansion of the Huŋkphap̄ha territory. This conflict is remembered in the Drifting Goose Winter Count (aka John K. Bear Winter Count) as T̄ha Čh̄ante Wakp̄a ed okíčhize, or “There was a battle at Heart River.” The expansion of Huŋkphap̄ha territory is significant. This territorial boundary is recognized in the 1868 Fort Laramie Treaty.

Ensign Nathaniel Pryor, a sergeant of the Corps of Discovery during the expedition, recorded on September 9, 1807, that the Arikara and Mandan were at war. The Mandan had killed two Arikara at the mouth of the Cannonball River. Testimony of the conflict at Cannonball River was delivered to Pryor at the Grand River by the Lak̄hóta. Pryor’s previous experience with the Arikara and Lak̄hóta made him aware that the best policy was to place every confidence in their word; they had no reason to lie.

Manuel Lisa, a fur trader of the American Fur Company, recorded that tensions were high on the Northern Plains among tribes who were pro-English trade, those who were pro-American trade, and American Fur Company trappers in the fall of 1812. The Crow and Lak̄hóta had killed American trappers, the Hidatsa had stolen American Fur Company horses, the Arikara had indiscriminately killed trappers be they English or American, and the Cheyenne had robbed and whipped American Fur Company trappers on the Cannonball River.

Botanist John Bradbury made a journey to the Cannonball River in 1811. Bradbury noted late in the day on June 20, the “valley of Cannon-ball River, bounded on each side by a range of small hills, visible as far as the eye can reach; and as they appear to diminish regularly, in the proportion of their distance, they produce a singular and pleasing effect. The Cannon-ball River was muddy at this time; but whether it is constantly so or not, I could not learn. It is here about one hundred and sixty yards wide, but so shallow that we crossed it without swimming. We camped on a very fine prairie, near the river, affording grass in abundance, nearly a yard high. The alluvion of the river is about a mile in breadth from bluff to bluff, and is very beautiful, being prairie, interspersed with groves of trees, and ornamented with beautiful plants, now in flower.” Among Bradbury’s findings was a species of flax he identified as *linum perenne*. The Lak̄hóta know the native blue flax as Čhaŋhlógaŋ Nablága (“Hollow-Stem To-Blossom-From-Within”) and employ the seed in their food stock.

Bradbury returned to the Cannonball River on July 7, 1819, for the express purpose of procuring additional botany specimens.

The Blue Thunder Winter Count, the No Two Horns Winter Count, and the High Dog Winter Count, all of which are in the collections at the State Historical Society of North Dakota - the High Dog Winter Count is on display in the Early Peoples Gallery - all recall a devastating flood in the spring of 1825. The High Dog Winter Count remembers the flood as Mní wičhát’tÁ, or “Many died by drowning.” The Blue Thunder Winter Count remembers the flood as Mní wičhát’tÉ, or “Many died by drowning.” According to the High Dog Winter Count, this fatal winter camp was opposite of the mouth of the Cannonball River, and the site is remembered as Étu P̄há Šuŋg t’Á, or “Dead Horse Head Point.” The Steamboat/Thin Elk Winter Count, in the collections of the Buechel Museum at the St. Francis Indian School on the Rosebud Indian Reservation in South Dakota, records that it was thirty lodges of Ih̄aŋkth̄uŋwaŋna Dak̄hóta who drowned in the Horsehead Bottom flood. This flood story and location is also remembered in the Medicine Bear Winter Count at the Hood Museum at Dartmouth College, Hanover, NH. This information is repeated for the same year in the Chandler-Pohrt Winter Count which is located at the Detroit Museum of Arts, Detroit, MI.

Prince Maximilian von Wied-Neuwied travelled into the interior of North America during the summer of 1833. Wied-Neuwied has written probably the most about the Cannonball River than any previous or post visitors. An excerpt is shared here: "On the north side of the mouth, there was a steep, yellow clay wall; and on the southern, a flat, covered with poplars and willows. This river has its name from the singular regular sand-stone balls which are found in its banks, and in those of the Missouri in its vicinity. They are of various sizes, from that of a musket ball to that of a large bomb, and lie irregularly on the bank, or in the strata, from which they often project to half their thickness when the river has washed away the earth; they fall down, and are found in great numbers on the bank. Many of them are rather elliptical, others are more flattened, and others flat on one side, and rather convex on the other. Of the perfectly spherical balls, I observed some two feet in diameter."

The Long Soldier Winter Count entry for 1835-36 recorded an Arikara camp on the Cannonball River. The Húnkphap̃ha Lak̃hóta went to the Arikara camp to trade for wagm̃iza (corn). The Arikara, not wanting the Lak̃hóta around, perhaps owing to the part the Lak̃hóta played in the Arikara War of 1823, killed six of the Lak̃hóta.

John James Audubon visited the Cannonball River on June 5, 1943, and wrote of "the very remarkable bluffs." According to Audubon, the Cannonball River was formerly a good place for beaver. He saw Iǵúǵaothila (Rock Wren) on the bluffs, a prairie fire, and noted that the water tasted good.

In September of 1863, General Alfred Sully lead an assault on the Siouan encampment at Whitestone Hill as part of the punitive campaigns organized by General Pope to make Americans feel safe following the 1862 Minnesota Dakota Conflict, and to open the frontier for settlement - in particular, to open the frontier for veterans returning from the Civil War. Sully's command killed as many as 200 (mostly women and children) and took 256 prisoners (mostly women and children). Survivors, those who escaped, turned west and crossed the Missouri River at the Cannonball confluence.

A second entry on the Long Soldier Winter Count cites a conflict at the Cannonball River between the Lak̃hóta and Hóhe (Assiniboine) in 1862-63. Twenty Assiniboine came on the warpath, there was a battle there, and they hid behind the cannonball concretions. The circle tells us that the Assiniboine were surrounded and fired upon. The fox image which overlays the Assiniboine tells us they fought with guile.

On July 29, 1864, after spending two weeks hastily constructing Fort Rice, General Sully took his command of 2200 soldiers, which included a detachment of Winnebago Indian scouts, and ascended the Cannonball River on the south bank, his punitive campaign on the Isányathi Dak̃hóta anew. Known or unknown, Sully also marched against the Thíthuñwaŋ Lak̃hóta (Húnkphap̃ha, Itázip̃cho, Sihásapa, and Mnik̃hóžu), and Ihánkt̃huñwaŋna Dak̃hóta, two Siouan groups who had nothing to do with the 1862 Minnesota Dakota Conflict. Sully received a dispatch from Fort Rice at midnight on July 22 that the Dak̃hóta were on the Knife River. The next day Sully's command crossed the Cannonball River near present-day communities of Porcupine and Shields, ND.

A third entry from the Long Soldier Winter Count indicates that the Húnkphap̃ha were camped at the Cannonball River in 1866-67. Gall was taken by soldiers that winter to Fort Berthold where they stabbed him. Gall was left for dead and the camp moved on. What makes this tale remarkable is that Gall walked to the Húnkphap̃ha camp at the Cannonball River and recovered.

In 1878, the Huŋkpháŋa chief, Ištá SápA (“Black Eye/s”), met with William Wade, a cattle rancher on the Cannonball River, and shared this about the terrible 1825 flood: “...we camped on this bottom land just below here...it was the Wolf Month [February] and it had been warm for a long time. One night the water started coming in over the ground from the river and before we could get to higher ground we were surrounded by water and ice chunks. Our only chance was to get to high ground before we would all be covered up with water. We tried to carry our tepees and supplies but finally had to leave them and many of the women were drowned trying to save their children. Most all our old people drowned and many others. Most all our horses went under and you can still see their heads (skulls) laying [sic] along at the foot of the hills after so many, many years. Two Bears (Mato Nopa) a Yankton chief [sic], saved the lives of several women and children by carrying them from camp to the higher ground.”

William Wade’s daughter, Mamie, met her share of pre-reservation Dakhóta and Lakhóta people. Among them was Annie Skye. Skye relayed to the younger Wade that smallpox struck the Lakhóta in 1837. They were camped at the mouth of the Cannonball River when “out of a clear blue sky smallpox hit them. After the death of several of their number, who were put to rest up on platforms suspended in trees, they decided to move away from this infested locality.”

Dr. Harriett Skye, Annie Skye’s granddaughter, offers a contemporary perspective on current events near the Cannonball River: “I believe that as long as they remain peaceful and unarmed, and each day they are there, is a win. This kind of action confuses those who would come in with their guns and armor because their intent is to kill. They arrested people who were praying, but the powers that be know that the world is watching, but more importantly, know that our Ancestors are watching because they fought and died so we could be here. This struggle is everyone’s struggle to maintain our clean water. Water is life.” Dr. Skye was inducted into the North Dakota Heritage Center’s Native American Hall of Honor in September, 2016.

Dr. Elizabeth Fenn, Pulitzer Prize winning author of “Encounters at The Heart of The World: A History of The Mandan People,” writes that the Huff phase - located between the Cannonball River and Heart River in a time frame from about circa 1300 to about 1450 - was when and where the Mandan became the Mandan. They developed the Okipa ceremony in this location during this time. The South Cannonball site was unprotected, that is, there were no palisade walls, nor defensive moats surrounding their village there. The fortifications at the North Cannonball site may well represent a key transformation in plains village life, as drought caused strife in the Missouri River valley. This may have been cause for the Mandan to move closer together - and build fortifications - for safety. But we need archaeological study to sort these things out.

By the time Mandans moved north from the Cannonball area to Huff and the Heart River, they had embraced the key trait that made them Mandan: the Okipa ceremony, with its multi-day reenactment of their own rich history. The Cannonball area, according to Fenn, represents “the oldest Mandan cultural horizon.”

The late Vine Deloria Jr. essayed that for many Americans, “the first and most familiar kind of sacred lands are places to which we attribute sanctity because the location is a site where, within our own history, something of great importance has taken place. Unfortunately, many of these places are related to instances of human violence. Every society needs these kinds of sacred places because they help to instill a sense of social cohesion in the people and remind them of the passage of generations that have brought them to the present. A society that cannot remember and honor its past is in peril of losing its soul. Indians, because of our considerably longer tenure on this continent, have many more sacred places than do non-Indians.”

“A second category of sacred lands has a deeper, more profound sense of the sacred. It can be illustrated in...[when] Joshua led the Hebrews across the River Jordan into the Holy Land. After crossing, Joshua selected one man from each of the Twelve tribes and told him to find a large stone. The twelve stones were then placed together in a monument to mark the spot where the people had camped after having crossed the river successfully. In the crossing of the River Jordan, the sacred or higher powers have appeared in the lives of human beings...the essence of the event is that the sacred has become a part of our existence.”

“It is not likely that non-Indians have had many of these kinds of religious experiences, particularly because most churches and synagogues have special rituals that are designed to cleanse the buildings so that their services can be held there untainted by the natural world. Non-Indians simply have not been on this continent very long; their families have rarely settled in one place for any period of time so that no profound relationship with the environment has been possible.”

Deloria concluded: “The third kind of sacred lands are places of overwhelming holiness where the Higher Powers, on their own initiative, have revealed Themselves to human beings. We can illustrate this point in the Old Testament narrative. Moses spent time herding sheep on Mount Horeb. One day to his amazement [he] saw a bush burning with fire but not being consumed by it. Approaching this spot, Moses was startled when the Lord spoke to him. ‘Put off thy shoes, for the place where thou standest is holy ground.’ This tradition tells us that there are places of unquestionable, inherent sacredness on this earth, sites that are holy in and of themselves. These holy places are locations where people have always gone to communicate and commune with higher powers.”

Dr. Ray Wood, renowned expert in Plains Indian cultural and archaeological sites on the Upper Missouri River and whose first-hand field experience goes back before the dams of the 1950s, interprets the data from John Evans 1796 map in regard to the Cannonball River locality that what Evans recorded as “Jupiter’s Fort” is without a doubt a prehistoric Mandan village. According to Wood’s findings regarding the North Cannonball site, “Not only was it a defensive setting, but the village was also fortified by a curving ditch that isolated a level upland spur from the adjoining upland. The village today is badly disturbed by plowing, but from the air one can clearly see the fortification ditch and the numerous bastions protruding from it. Little wonder that Evans referred to it as a fort...” In his “Prologue To Lewis & Clark: The Mackay And Evans Expeditions,” Dr. Wood essays the number of remarkable Indian village sites north of the Cannonball River. Remarkable. Extraordinary. Outstanding. Significant.

The ND SHPO conducted a follow-up survey west of HWY 1806 and found that no significant sites were destroyed. The physical evidence, or lack thereof, cannot be disputed. According to the chief archaeologist’s published note, he and his associates were looking west of HWY 1806, perhaps because Mr. Tim Mentz conducted his own survey and called attention there with his findings. The North Cannonball site, and the mouth of the Cannonball River, the confluence of history and culture, is east of HWY 1806.

In 1999, the Cannonball Ranch was inducted into the North Dakota Cowboy Hall of Fame. It’s one of the oldest ranches in North Dakota. According the ND Cowboy of Fame, the ranch served as a gathering point as early as 1865. The ranch included a hotel, a general store, a ferry crossing, a steamboat landing and fueling station, a military telegraph station for Fort Rice, and a stage line to the Black Hills in the 1870’s and 1880s. The ranch also included two houses, a barn, a blacksmith shop, a bunk-house, an ice house, a laundry, and tennis court.

The North Dakota Cowboy Hall of Fame's strict criteria for eligibility to be recognized is that a ranch must have been "instrumental in creating or developing the ranching business, traditions, and lifestyles of North Dakota's western heritage and livestock industry."

In 2010, Walmart planned to construct a supercenter near Wilderness Battlefield (a Civil War battle ground) and people invested in the history of that site grew concerned. Eventually, enough people held that ground as sacred and historical that plans for the supercenter were dropped in January 2011. Coincidentally, Walmart and state officials had argued that nothing significant occurred on that site.

The sum of the north bank of the Cannonball River with a million years of geological history, 700 years of continual occupation, inter-tribal conflict, smallpox, botany, trade, steamboat traffic, US military history, and early ranching, have made that location significant.

Spiritual pilgrimages were conducted on the plateaus of the "Hummit." There would be little to no traces of these vision quests, and there shouldn't be. People went to pray, not leave evidence. In September of 2016, the Presiding Bishop of the Episcopal Church, Rt. Rev. Curry, made a pilgrimage of his own to the Cannonball. He listened and prayed with the community there. Curry's visit calls to mind Psalm 99:9, "Exalt the Lord our God, and worship at his holy hill; for the Lord our God is Holy." The mystery of creation can be seen there today as the early peoples beheld it.

The Cannonball River, and specifically the North Cannonball site, and its importance to the first nations, to North Dakota, must take into account its religious or spiritual significance, its role in inter-tribal conflicts, its role in the 1837 smallpox epidemic which struck the Húŋkpap̄ha, its role as the starting point in Gen. Sully's 1864 punitive campaign, and the historic Cannonball Ranch.

The Cannonball River, and all its attributes is important to all North Dakota citizens, to new citizens, and most importantly of all, the future. Let us put our minds together, to educate ourselves and one another about the things we hold dear, to resolve to respect our story, our histories, and our sites of significance.

Testimony
SCR 4017 Hearing on March 15, 2019
Energy and Natural Resources Committee
Fern Swenson, Director of Archaeology and Historic Preservation,
State Historical Society of North Dakota

Good morning, Chairman Porter and members of the committee. My name is Fern Swenson and am Director of the Archaeology & Historic Preservation Division at the State Historical Society of North Dakota (SHSND). I am here this morning to provide information regarding the many educational activities and products we have produced or provide in coordination with the Tribes of North Dakota. I will also present information about the State Historic Preservation Office (SHPO) function and processes, as well as the services and assistance we provide the Tribal Historic Preservation Offices (THPO) in North Dakota.

First, we work very closely with Scott Davis, Indian Affairs Commission Executive Director on numerous projects. We truly appreciate his guidance, dialogue, and friendship over many years of working together. Scott coordinates nominations, selections, and exhibits for the Native American Hall of Honors at the Heritage Center.

We have a close, long-standing working relationship with the Mandan, Hidatsa and Arikara Nation (MHAN). In coordination with MHAN we produced the documentary *The People of the Upper Missouri: The Mandans*. The film begins with a contemporary portrait of the Mandan, Hidatsa, and Arikara people and travels backwards through space and time to AD 1200 at the confluence of the Heart and Missouri rivers. The documentary integrates historical imagery, contemporary interviews with enrolled members of MHAN and interviews with historians and archaeologists interested in understanding their history.

We manage several large earthlodge villages that were once occupied by the Mandan, Hidatsa, and Arikara. You may recall the stabilization effort that was undertaken over the last several years at Double Ditch State Historic Site. It was critical to stabilize the site as erosion was actively destroying the site. The project has been completed except for some minor re-plantings and walking path repairs. The area of the stabilization was engineered in a manner that would minimize disturbance to the site as much as possible. MHAN was involved at every step of this project from planning, engineering, construction, through the reburial. During that project 198 human burials were recovered and reinterred near the site on state property in coordination with the MHAN Tribal Historic Preservation Office and the Mandan community of Twin Buttes. We sincerely appreciate your legislative support of the project. This difficult project surely represents the collaborative and respectful coordination between the state, SHSND, and MHAN.

Likewise, during the expansion of the Heritage Center, a Native American advisory group with representatives from each Tribal Nation provided much information and coordination regarding the Innovation and Inspiration galleries on numerous topics. Early on Alyce Spotted Bear offered the importance of hearing each of the Native languages in the gallery. This is perhaps one of the most significant aspects of the galleries - to not only hear personal stories but also the languages spoken. Recently the SHSND published *Traces: Early Peoples of North Dakota* that expands upon these exhibits presenting archaeological discoveries alongside other cultural information. The book is written for students, teachers, and readers who want to know more about the rich heritage of the earliest residents of North Dakota.

Staff at the SHSND have conducted oral interviews with numerous tribal members. Most recently we have conducted interviews with elders from Spirit Lake and MHAN. These were at the request of the elders at MHAN and Tribal Historic Preservation Office at Spirit Lake. Recording individual and traditional stories is extremely important and is rewarding and an honor to be involved in this collaboration process.

The two sites mentioned by Calvin Grinnell at the Senate hearing named Grandmother's Lodge II and the long linear feature were recorded and mapped by two research archaeologists from the SHSND at the request of Calvin. Papers at professional conferences were then co-authored by the research archaeologists and Calvin. Archaeologists and THPO offices routinely do work together and present complimentary information from tribal and archaeological perspectives. It does not have to be one or the other but it is or can be both perspectives effectively combined. It is certainly about open dialogue. The archaeologists at the SHSND visit sites whenever the request is made by tribal members and they have always been willing to take time to produce maps or look up information for their requests.

Next, we have undertaken National Register nominations at the request of elders and enrolled members at MHAN. Most recently was the request to have the Independence Congregational Church and cemetery listed in the National Register of Historic Places. Following the listing was an article in *North Dakota History* that discussed the significance of this property from MHAN elders' perspective and it was much appreciated. We were very pleased to hear that comment and publish the article for wider distribution. There are two other projects that are in the works based on more recent tribal requests.

As mentioned earlier, we work closely with Scott Davis and the North Dakota Intertribal Reinternment Committee. This committee typically is represented by individuals from the Tribal Historic Preservation Offices. The SHSND is tasked under the century code (NDCC 23-06-27 and NDAC 40-02-03) to deal with unmarked burial sites on private and state property. We have worked with numerous private property owners regarding human burial issues over the last three decades.

Now, regarding the role of the State Historic Preservation Office. The office is required to have expertise in archaeology (prehistoric and historic), history, and architectural history that meet the Secretary of Interior Standards for these disciplines. The major program areas of the SHPO are Review and Compliance (Section 106), National Register, Preservation Tax Incentives, Survey and inventory, planning, local government certification, grants, and technical assistance. Much staff time is spent on the Review and Compliance role, not only in providing recommendations and comments but also managing the support documentation for projects. The SHPO office is the sole repository for the state for these records. Currently we have approximately 70,000 sites (architectural and archaeological) recorded in North Dakota with approximately 8% of the state being surveyed. There are 18,000 cultural resource reports documenting investigations. Locational information is maintained in a Geographic Information System (GIS) and the forms and reports are linked to the GIS. The multiple site types (architectural, historic, prehistoric archaeological) are in layers within this system. In 2013, at the request of the THPOs we developed a cultural heritage form that would take into consideration locations of cultural and ceremonial importance to tribes that are potential Traditional Cultural Properties or other locations that might not be recognized by an archaeologist. That form was revised based on comments received and is now used on a regular basis. We have over 600 of these locations in the system and represent one more layer of data in the GIS system. Many of these locations are on private property and associated with surveys undertaken for wind farms or other energy development projects.

In managing these site forms and cultural resource reports, we frequently assist the THPO offices in matters such as conducting file searches. Just recently we provided Dr. Erich Longie with all of the files (sites, reports, and GIS layers) for Spirit Lake. We do this to cooperate for a common goal and out of mutual respect. I should mention here that the THPO is responsible for providing comments on all reservations, the SHPO does not have a role on tribal lands. We only assist when the THPOs have requested information, assistance or our opinion.

In sum, the SHSND has and will continue to work closely with the Tribes: through programming, exhibits, collections, and interpretive signs at the Heritage Center and State Historic Sites to the regulatory functions of the agency and SHPO office.

Section 106 Review Process - a Federal Agency is the lead and makes the final decision

PROJECT DETAILS

INITIATE Section 106 Process
Determine if an action is an undertaking
Coordinate with other reviews
Identify appropriate SHPO/THPO
Plan to involve the public
Identify other consulting parties

UNDERTAKING MIGHT AFFECT HISTORIC PROPERTIES

IDENTIFY historic properties
Determine scope of project (area of potential effect)
Review existing files/reports for previous investigations
Conduct cultural resources surveys as necessary to identify sites
Make a reasonable and good faith effort to identify sites
Evaluate historic significance
Consult SHPO/THPO, Indian tribes, and other parties
Involve the public

HISTORIC PROPERTIES ARE AFFECTED

ASSESS adverse effects
Apply Criteria of Adverse Effects
Consult SHPO/THPO, Indian tribes, and other parties
Involve the public

HISTORIC PROPERTIES ARE ADVERSELY AFFECTED

RESOLVE adverse effects
Develop and consider alternatives or modifications to avoid, minimize, or mitigate adverse effects
Notify the Advisory Council on Historic Preservation
Consult SHPO/THPO, Indian tribes, and other parties
Involve the public

PROCEED

THPO – Tribal Historic Preservation Office – each of the reservations in North Dakota have a Tribal Historic Preservation Officer
SHPO – State Historic Preservation Office

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Title.

Prepared by the Legislative Council staff for
Representative Porter
March 26, 2019

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4017

Page 1, line 2, remove "dichotomy between the"

Page 1, line 2, replace "on" with a comma

Page 1, line 2, after "resources" insert a comma

Page 1, line 5, remove "and registration"

Page 1, line 14, after "regional" insert "and"

Page 1, line 14, after "private" insert "industry"

Page 1, line 18, remove "eligibility of"

Page 1, remove line 19

Page 1, line 20, remove "to the National Register of Historic Places"

Page 1, line 21, remove "state agencies, including the Department of Transportation,"

Page 1, line 22, replace ", the State Historic Preservation Office, and the Public Service Commission, should" with "shall"

Page 1, line 23, after "coordinate" insert "with state agencies including the Department of Transportation, State Historical Society, and Public Service Commission, to coordinate"

Page 2, line 3, remove "dichotomy between the"

Page 2, line 4, replace "on" with a comma

Page 2, line 4, after "resources" insert a comma

Page 2, line 7, remove "and registration"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4017

- Page 1, line 1, replace "directing" with "urging"
 - Page 1, line 1, replace "Legislative Management" with "Indian Affairs Commission"
 - Page 1, line 1, replace "consider studying" with "study"
 - Page 1, line 2, remove "dichotomy between the"
 - Page 1, line 2, replace "on" with a comma
 - Page 1, line 2, after "resources" insert a comma
 - Page 1, line 4, remove the semicolon
 - Page 1, line 4, replace "the facilitation of" with "to facilitate"
 - Page 1, line 5, remove "and registration"
 - Page 1, line 14, after "regional" insert "and"
 - Page 1, line 14, after "private" insert "industry"
 - Page 1, line 18, remove "eligibility of"
 - Page 1, remove line 19
 - Page 1, line 20, remove "to the National Register of Historic Places"
 - Page 1, line 21, remove "state agencies, including the Department of Transportation,"
 - Page 1, line 22, remove ", the State Historic Preservation Office, and the Public Service Commission, should"
 - Page 1, line 23, replace "coordinate and consult" with "is urged to consider coordinating with state agencies including the Department of Transportation, State Historical Society, and Public Service Commission and to consult"
 - Page 2, line 3, replace "Legislative Management" with "Indian Affairs Commission is urged to"
 - Page 2, line 3, remove "dichotomy between the"
 - Page 2, line 4, replace "on" with a comma
 - Page 2, line 4, after "resources" insert a comma
 - Page 2, line 6, remove the semicolon
 - Page 2, line 6, replace "the facilitation of" with "to facilitate"
 - Page 2, line 7, remove "and registration"
 - Page 2, line 8, after "that" insert "if studied,"
 - Page 2, line 8, replace "Legislative Management" with "Indian Affairs Commission is urged to"
- Renumber accordingly