



State-Tribal Relations Committee 60th Montana Legislature

SENATE MEMBERS

FRANK SMITH--Chair
DONALD STEINBEISSER--Vice Chair
RICK LAIBLE
JOE TROPILA

HOUSE MEMBERS

GORDON HENDRICK
JOEY JAYNE
KEN PETERSON
JONATHAN WINDY BOY

COMMITTEE STAFF

PAT MURDO, Lead Staff
JEREMY GERSOVITZ, Staff Attorney
DAWN FIELD, Secretary

MINUTES

August 21, 2008

Room 137, State Capitol
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

SEN. FRANK SMITH, Chair
SEN. DONALD STEINBEISSER, Vice Chair
SEN. RICK LAIBLE
SEN. JOE TROPILA
REP. GORDON HENDRICK
REP. JOEY JAYNE
REP. KEN PETERSON
REP. JONATHAN WINDY BOY

STAFF PRESENT

PAT MURDO, Lead Staff
JEREMY GERSOVITZ, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The State-Tribal Committee:

- approved the June 23 & 24, 2008 meeting minutes as corrected; and
- voted 5-3 to send a letter supporting extension of the State Reserved Water Rights Compact Commission.

CALL TO ORDER, ROLL CALL, AND GREETINGS

00:00:02 SEN. SMITH called the meeting to order at 9:08 a.m. Lenore Stiffarm, Fort Belknap Tribe, led the Committee and meeting attendees in an opening prayer. Following the prayer, the minutes from the June 23 and 24, 2008, meeting were approved as written on a unanimous voice vote. [*Later revised*]

PUBLIC COMMENT ON ISSUES OTHERWISE NOT ON AGENDA

00:06:24 **Carl Venne, Tribal Chairman, Crow Tribal Nation**, updated the Committee on the proposed Many Stars coal-to-liquids plant/project on the Crow Reservation. Chairman Venne said that up to 4,000 people would be hired throughout the construction phase of the plant, with 900 permanent jobs when the plant becomes operational. He said the need for training is great and suggested that training be offered at the tribal and state colleges. The Tribe is also working with the U.S. Department of Defense and the U.S. Department of Energy to procure contracts for producing jet fuel and diesel fuel. Projections indicate that 50,000 barrels of fuel per day will be produced, with the goal of eventually increasing production to 125,000 barrels per day. The total cost of construction of the mine and the plant will run about \$7 billion dollars and economic benefits will reach well beyond the reservation. Chairman Venne said the project would provide security and a solid future for the Crow Nation for generations to come, as well as provide economic development opportunities to surrounding communities and counties. Chairman Venne said the project would include carbon sequestration technology and other new technologies.

00:10:59 Chairman Venne said that Big Horn County is one of the poorest counties in the nation and that as leader of the Crow Tribe, he doesn't want to have to depend on the state or federal governments for the well-being of the Crow people. He said that current projections indicate that income from the proposed plant could amount to \$300 million annually and that the Tribe's goal is to be free of state and federal programs within 10 years. He added that backing from the state and the federal governments would be needed to complete the project.

00:13:58 **Del Laverdure, Chief Legal Counsel, Crow Tribal Nation**, discussed several needs of the Tribe and made specific requests for state assistance, including:

- education and training programs in the state and tribal colleges to facilitate a trained workforce;
- state legislation to eliminate the uncertainty surrounding subsurface ownership related to carbon sequestration and to eliminate the gap between current law and regulatory control; and
- government-to-government policy discussions between the Crow Tribe, the State of Montana, and the United States government to deal with the complex issues involved in reaching an agreement.

- 00:20:16 **Sen. Carol Juneau, Chair, Montana Indian Education Association**, distributed invitations to an upcoming Indian education summit to be held in Helena on October 5 and 6 (EXHIBIT #1).
- 00:24:33 **Lenore Stiffarm, Member, Mental Health Oversight Advisory Committee and Central Area Service Authority**, discussed involuntary commitments for Native Americans to the Montana State Hospital. She said that tribes have been advised that all involuntary commitments must be done through the county attorney's office of the county of residence of the person being committed. But certain tribal and state involuntary commit laws do not mesh, she said, adding that some tribes don't have tribal involuntary commitment codes in place. She asked that the STR Committee and the Attorney General work collectively with the tribes to rectify this problem. She provided material to the committee staff related to involuntary commitments (EXHIBIT #2).
- 00:27:48 On another issue, Ms. Stiffarm said that she serves as chair of the Gros Ventre Treaty Rights Task Force Committee on the Fort Belknap Reservation and that the Gros Ventre people oppose the Fort Belknap water compact as it is currently written. She read aloud several excerpts from the compact that are of concern to the Gros Ventre people and listed their concerns. She said she would leave a letter with the STR Committee, which included 10 points of concern and said that the Gros Ventre people would like the STR Committee to meet with the Gros Ventre Treaty Committee. She said this is a critical issue and that she would like the STR Committee to consider it (EXHIBIT #3).
- 00:31:15 **Sonja Nowakowski, Research Analyst, Energy and Telecommunications Interim Committee (ETIC)**, in response to the Crow Tribal presentation on its coal plant, provided an overview of the ETIC's carbon sequestration study. Ms. Nowakowski said that the ETIC contemplated legislation and will consider a proposed study resolution at its next meeting. She said the ETIC also studied coal-to-liquids issues specific to water usage and hosted a panel discussion of the issue at its November 2007 meeting. She said that a great deal of information on energy issues relating to Montana is available on the ETIC website and that she is available for questions.
- 00:32:53 REP. PETERSON asked Mr. Laverdure to give the Committee a more specific description of the types of legislation needed to help the Crow Tribe move forward on the coal-to-liquids project. Mr. Laverdure said legislation is needed to clarify pore space ownership and that the checkerboard pattern of land ownership on the reservation is also a problem. He said that ownership must be clear before contracts for sequestration could be signed. Mr. Laverdure said that legislation to increase education and workforce training funding for tribal and state colleges would also be valuable, particularly if the funding could be earmarked for the Crow project. He said that tax incentives would also be very helpful, such as waiving permit fees, reducing construction-related taxes, and phasing in of other taxes. He said that any expense that could be delayed on the front end of the project would be very helpful.

- 00:36:53 REP. PETERSON asked if there is a law in Montana that requires sequestration now and referred to the Kyoto Treaty not being followed. He said he wondered if the Crow Tribe should pursue carbon sequestration. Mr. Laverdure said that the Crow Tribe is taking a proactive approach on sequestration, which he said is the responsible thing to do, considering the increasingly important public policy issue of global warming. He predicted that carbon dioxide will be a regulated substance eventually and that the Crow project would be ahead of the curve. Regarding the Kyoto Treaty, Mr. Laverdure said that he attended a conference in April and that representatives from China and India were in attendance as well. He said the question there was: why do some countries have to sequester carbon when other countries, such as the United States, do not. He said that world energy consumption is expected to double and that the focus should be on old plants being brought into compliance. He asked that the state and federal governments take a position because the Crow project is the first of its kind in the nation.
- 00:41:25 Chairman Venne said that the Crow people have the same dreams as others of good jobs, education, and homes, but that ever-increasing costs make it more and more difficult for them to realize their dreams. He said that the federal government is not meeting its obligations and noted that the Crow Tribe is receiving only about \$1 million of the \$66 million of federal funds it is legally entitled to under most treaties. He said it is a rare opportunity for a tribe to become self-sufficient and achieve the same standard of living as the rest of the state. He said the Crow people should be allowed to prosper from their natural resources and help the nation with its energy needs.
- 00:46:30 REP. PETERSON said that he fully supports the project but would discourage the use of carbon sequestration because the project will not emit a large amount of carbon and the sequestration process is very expensive. Chairman Venne said that the Tribe is considering selling the carbon to oil fields in eastern Montana and that the goal is to capture more than 90% of carbon emissions.
- 00:47:53 SEN. STEINBEISSER said he also supports the project. He asked what price crude oil would have to maintain in order for the project to be economically feasible and how the Tribe plans to deal with objections from environmental groups. Mr. Laverdure said the project is doable if the price of crude oil doesn't dip below \$80 per barrel. He said that all Montanans are environmentalists because the state is appreciated by all citizens, and that the Tribe doesn't anticipate a great deal of opposition because the carbon will be sequestered. Chairman Venne said the project will also have the option of producing fertilizer, wax, and other products.
- 00:52:24 REP. JAYNE asked how the STR Committee could assist. Mr. Laverdure said that legislation to clarify sequestration issues and direct dollars for education and training would be most valuable.
- 00:55:58 REP. JAYNE asked if the Tribe has proposed language for legislation. Mr. Laverdure said not at this time, but that he would do so and would appreciate assistance from the Committee in drafting a bill proposal.

- 00:56:59 SEN. SMITH said that transportation costs would be great. Mr. Laverdure agreed that the cost of pipelines from the Crow Reservation to the oil fields would be significant but that there would be big benefits to the oil industry through enhanced oil recovery.
- 00:58:56 SEN. SMITH asked about air quality concerns. Mr. Laverdure said that a consultant has been hired to take ambient air quality samples in order to track air quality.
- 00:59:38 Ms. Nowakowski said that the ETIC considered a bill draft to clarify pore space ownership for carbon sequestration (LC4502) but did not approve it. She said a great deal of comment was received on the bill draft which indicated that certain liability issues need to be dealt with, as well as mineral owner concerns. She said she could provide copies of the bill draft, if needed. She discussed other issues also, including the ETIC's investigation of grant money for sequestration projects and noted that HB 3 from the special session contains certain tax incentives. She said that she could provide copies of that bill also, if necessary.
- 01:03:28 SEN. TROPILA thanked the Crow Tribe and the Confederated Salish and Kootenai Tribes for the hospitality shown the Committee members and staff during their visits over the interim.

DROPOUT RATES ON INDIAN RESERVATIONS

- 01:04:10 **Christopher Lohse, Internal Research Director, Teach for America,** discussed a detailed study of student achievement as it applies to Native American students (EXHIBIT #4).
- 02:19:15 In response to a question from REP. WINDY BOY regarding statistics of off-reservation schools, Mr. Lohse said the statistics demonstrate that it is poverty, not whether or not the child is Indian, that dictates the achievement level of a student. He agreed with REP. WINDY BOY's point that parenting and family support are essential to a child's success, whether or not the child falls within the poverty level. He said that school choice is another determining factor in a child's academic success.
- 02:26:51 REP. JAYNE asked for more information on the advanced placement grant of \$70,000. Mr. Lohse explained that the schools that received advance placement grant money saw a dramatic increase in the numbers of students enrolling in advanced placement classes, which would have a ripple effect through the economy if it could be maintained on a large-scale basis.
- 02:29:00 REP. JAYNE asked about the differences in learning for children between two and five years of age. Mr. Lohse said that study results indicate that the manner in which parents communicate with children in these years is critical. REP. JAYNE said she was not completely swayed by the low-income argument and thought that the fact that the child's native language was not used in school could contribute to academic performance. Mr. Lohse agreed that could be the case and said that few studies have been done on Native American language

acquisition. He maintained that income is a salient factor in academic achievement and that this statistic is borne out in studies of other races as well.

- 02:34:24 SEN. LAIBLE asked about the tribal education system on reservations, specifically if an appropriate amount of money is being spent, if the content is culturally appropriate, and if special accreditation standards may be necessary, in order to lift Indian families out of poverty. Mr. Lohse said that the flexibility to address some of SEN. LAIBLE's concerns already exist because of the high level of local control allowed in Montana. He said that besides a great deal of flexibility in the curriculum, funding is very important. He suggested an examination of how to reorganize existing funding sources to better address the needs of children, such as decreasing class size. He said other issues, such as double taxation, need to be remedied and that changes could be made if there was a great deal of cooperation between the state and tribes. He said that some issues are tribal specific and would have to be addressed as such, and that executive and legislative support would likely be needed.
- 02:41:22 SEN. LAIBLE asked if it would be possible to create a pilot program for the reservation with the greatest need to address the issues discussed by Mr. Lohse. He suggested that the project be a collaborative effort with the Office of Public Instruction (OPI) and encouraged an "outside the box" approach. Mr. Lohse said it would be quite possible and that statutory guidance for such a project already exists through the No Child Left Behind Act (NCLB). He said possible elements of such a program could include independent savings accounts for children with incentives for good performance. The money could then be used for higher education, for a down payment for a home, or a retirement account.
- 02:46:46 REP. PETERSON said that reservations, when created, were more or less designed to be internment camps, and he asked the rhetorical question of why reservations should not be desegregated. He said he was born and educated through the fifth grade on a reservation and that it was a very rich experience. He said the current movement seems to be to isolate Indian children. Mr. Lohse said that the United States Supreme Court ruled that race cannot be used to desegregate schools, but that class could be, but that he would not support such a remedy on reservations. Additionally, he said that it is very important to Native Americans to have a homeland and that most native peoples would agree that it is essential to the preservation of their culture to have a homeland.
- 02:51:53 REP. PETERSON asked if the amount spent per child and academic achievement is similar between reservation schools and non-reservation schools. Mr. Lohse said no, that factors such as economic, home, and community circumstances significantly influence academic performance and that a school could have a great deal of resources but still may not produce successful students if families and communities have not been strengthened.
- 02:57:38 REP. WINDY BOY commented that statistics can be manipulated and that statistics from various sources, such as the Bureau of Indian Affairs (BIA) and the United States Census Bureau, are sometimes contrary to local statistics kept by tribes. He also commented that culturally relevant materials are very important

and that if Montana's designation as an "English only" state was eliminated, culturally relevant programs could be strengthened, which would greatly improve Indian children's academic achievement. He said that in his father's generation, Indian children were punished for speaking their native tongue. He said that there has been a societal shift since then to support use of native language as a way to improve academic achievement.

03:04:22 REP. JAYNE commented that it was her last interim committee and she wanted to be on the record regarding the unemployment rate on Indian reservations in Montana. She said that the executive and legislative branches have refused to acknowledge that the unemployment situation is a crisis on reservations. Most reservation unemployment rates are around 60-70%, and that should be considered a state of emergency, she said. She added that the situation has not changed in the eight years she has served as a legislator. Mr. Lohse said it is recognized by some in the current administration that there is an unemployment crisis on reservations.

03:06:51 SEN. LAIBLE responded that high unemployment, poverty, and school dropout rates have been discussed at almost every STR meeting and that as a legislative body, it is the Committee's responsibility to begin the process of finding solutions. He said that pilot programs in schools and skill and trade training within the prison population, as well as other possibilities should all be considered. He said it has been discussed at length but that he has yet to see any legislation, and that it is time to act. Mr. Lohse said he was appreciative of that perspective and that NCSL (National Conference of State Legislatures) panelists have identified a list of policy recommendations at the back of his report. He said the recommendations would serve as a good basis for changes.

03:14:04 Ms. Stiffarm said that as a long-time educator and researcher, she was very appreciative of Mr. Lohse's report but felt that it was limited by his uses of the capitalist economy and standardized achievement scores. She said this gives an unfair representation of American Indian students. She suggested that a better approach would have been to examine the contradictions in world views, in terms of indigenous knowledge and western knowledge. She provided several examples of how different a person's perspective and knowledge base can be, depending on their cultural experience, upbringing, and education. She made several suggestions on how to better study the issue of Native American student achievement:

- use OPI and NCLB money to examine the uses of standardized exams and reframe them to allow more students to succeed;
- continue with academic preparation but include life skills; and
- look at accreditation standards to allow indigenous languages as a first language.

Mr. Lohse said that while he agreed to some degree with Ms. Stiffarm's concerns, he felt that the uses of standardized testing is defensible because it is often the best instrument available, even in the poorest or most segregated communities, because it is best at predicting eventual success and educational efficacy.

PUBLIC COMMENT

03:33:31 **Dolores Plumage, Blaine County Commissioner**, said she is the first woman and Native American to be elected as a county commissioner in Blaine County. She discussed her concerns regarding segregation and integration, particularly as experienced by Native Americans. She said she would like more county involvement in state-tribal relations and discussed situations in which she has been involved as a county commissioner with Indian families and the schools. She said that the Native American people have to take responsibility for their language and make choices that will strengthen and develop their people and that more honest discussion is needed to fix some of the problems. She said it is time for Montana to change its attitudes and that she is worried about the future of Montana's tribes.

LUNCH BREAK
04:26:07

SEN. SMITH called the meeting back to order at 1:33 p.m.

04:27:31 REP. PETERSON asked to reconsider the vote to approve the June meeting minutes as written. He asked to have the June meeting minutes reflect the comments made to the STR by Chairman James Steele of the Confederated Salish & Kootenai Tribes (CSKT) regarding the Committee's discussion and vote regarding a bill draft proposal to extend the State Reserved Water Rights Compact Commission. He said he would like his and REP. HENDRICK's response to be on the record. The motion was reconsidered and it was moved and approved that the minutes would be amended to include the additional information, as requested by REP. PETERSON.

UPDATE ON RACIAL PROFILING & LAW ENFORCEMENT TRAINING/DATA

04:29:29 **Wayne Dusterhoff, Sheriff, Glacier County**, discussed statistics in his jurisdiction and said that the BIA is understaffed to the point of being ineffective and that, as a result, his staff is stretched to the maximum. He said he doesn't have the manpower to do everything that needs to be done but he does provide training for his officers. Sheriff Dusterhoff said Indian misdemeanors are heard in tribal courts whenever possible and that he feels his agency does everything possible to follow the letter of the law.

04:35:36 SEN. LAIBLE said that the Glacier County Sheriff Department should not take on the BIA's responsibilities. Sheriff Dusterhoff said that as county law enforcement officers, his department is required to provide services in the county. SEN. LAIBLE asked if this issue has been discussed with the BIA. Sheriff Dusterhoff said he has discussed the problem but was told that the BIA has no funding. He said there are jurisdictional problems also because the state does not have the right to go on the reservation to enforce the law, unless given permission to do so. He said that even if he was allowed to go on the reservation, the BIA could not be billed for county services.

04:37:51 SEN. STEINBEISSER asked if the BIA is providing insufficient services to all reservations. Sheriff Dusterhoff said yes, that in his opinion the BIA does not provide the number of officers needed and that it falls back on the tribes and local law enforcement agencies to fill in. He said there has to be an agreement between the tribe and the county in order to have the most effective level of service.

- 04:38:51 REP. WINDY BOY explained that at one time, grants were available from the federal government for law enforcement services. The grants covered three to five years, and then it was up to the local jurisdictions to pick up the staffing and duties. However, because tribes do not have a local tax base, it was difficult to maintain the same level of law enforcement services without the grant funding.
- 04:42:05 **Greg Szudera, Sheriff, Hill County**, said the issue of racial profiling is very sensitive and that he is fearful it could interfere with his officers' ability to do their job of preserving the peace. He said that training provided to his officers has been very effective but that it is still a struggle for his officers to compile the data. He said an extra secretary was hired to compile the data. Sheriff Szudera said he is concerned about the high number of inmates in his jail and discussed a one-day snapshot of the jail population. He said it is important to him that no racial profiling is done but that because his jurisdiction sits between two reservations, with schools and bars in very close proximity to reservation borders, many of those who are stopped by his officers are from the reservations. He discussed financial concerns also, saying that out of 10 cars in his fleet, nine have over 100,000 miles on them and that he feels he is sending his officers out to do an already difficult job in unsafe vehicles. He said that salary issues are also problematic for local law enforcement agencies and that it is difficult for him to hire qualified officers because he can't pay them a competitive salary. Sheriff Szudera said he sympathizes with legislators because he knows they too face difficult choices but that law enforcement officers need to have the latitude to do their jobs.
- 04:55:36 **Delores Plumage, Blaine County Commissioner**, discussed Blaine County and agreed that funding is in short supply. She said that Blaine County Commissioners are negotiating with the town of Harlem to renew a contract for law enforcement services. Commissioner Plumage also discussed issues of concern, such as differences in how the open container law is enforced at community events and differing levels of patrol coverage provided at certain events. She said that she personally has experienced instances of what she considered racial profiling by local officers and that many local residents are fearful of them. She said that she has encouraged the residents to put their situations into writing and that she has discussed her concerns with the sheriff. She said she has tried to act as an advocate for citizens and has facilitated meetings between citizens and law enforcement officers but she still thinks inequity exists.
- 05:09:16 **John Murray, former college teacher, wildland fire fighter**, said he is the tribal preservation officer for the Blackfeet Tribe. He said that even though smiling children can be found on the Blackfeet Reservation, the human condition is deplorable. He discussed statistics from the Indian Health Service emergency room and said that it has the highest violent trauma rate in the nation. He discussed the crime rate on the reservation, saying that he supports having an agreement with county law enforcement in order to have more law and order. Mr. Murray discussed a personal situation involving his son and daughter-in-law as victims of violent crime on the reservation.

- 05:17:31 Sheriff Dusterhoff said the problems on the Blackfeet Reservation extend beyond racial profiling and have become so severe that a violent crime task force has been created. He said that federal law creates a barrier to local law enforcement efforts and that people know the system and use it to avoid being arrested. He said his officers don't go looking for people to ticket or arrest based on the person's race but are simply trying to fulfill their obligation to provide public safety for all citizens. He said it is an economic and social problem as well as a racial problem and that jurisdiction issues also need to be addressed before major improvements can be made.
- 05:22:03 REP. PETERSON asked for clarification on Sheriff Szudera's area of jurisdiction. Sheriff Szudera said his jurisdiction includes anything that occurs off reservation, and that he responds to calls on the reservation also but has no jurisdiction if the crime involves an enrolled tribal member or a descendant of a federally recognized tribe. He said that if that is the case, federal law takes precedence but that the odds of the federal government prosecuting a crime are very small, unless the crime committed is major. Sheriff Szudera provided an example of drug dealers in the area who know the limitations of local law enforcement. He said it is frustrating to his officers and citizens alike.
- 05:27:28 **Jim Smith, Montana Sheriffs and Peace Officers Association (MSPOA)**, thanked REP. WINDY BOY and other leaders who brought this issue forward. He said his role in the study is to keep the conversation going, that he has made presentations on several reservations already and plans to address the Montana County Attorneys Association. He updated the STR Committee on the racial profiling study results gathered to date (EXHIBIT #5).
- 05:42:54 REP. JAYNE asked why officers just don't ask the person what race they are. Mr. Smith said that officers have been instructed not to ask about race.
- 05:47:02 REP. JAYNE asked if certain counties are experiencing more problems than others. Mr. Smith said he did not know of specific complaints coming in and that the training has helped.
- 05:47:52 REP. PETERSON asked how the data gathered in the study will be extrapolated into a meaningful report that shows whether or not racial profiling is occurring in Montana. Mr. Smith said that the data for each county will be available for use in that county, so as to compare who is being stopped to the general population.
- 06:01:19 REP. WINDY BOY said the intent of the study was not to point fingers or place blame, but to see if there was a problem, and if so, identify solutions. He said that if officers are doing their job properly, they have nothing to worry about.

TRIBAL HISTORIES PROJECTS

- 06:06:04 **Mary Sheehy Moe, Deputy Commissioner for Two-Year Education, Office of the Commissioner of Higher Education (OCHE)**, said the tribal history project is an important key to the understanding and appreciation of Montana's tribes, especially for the children. She introduced the panelists.

06:07:07

Julie Cajune, Salish Kootenai College, said that Montana schools have a constitutional obligation to teach tribal history, as told from a tribal perspective, and that state agencies will also find the information useful. She said the materials are valuable tools for understanding: Montana's tribes as sovereign nations, government-to-government relationships, how federal Indian policy has evolved, and jurisdictional issues. She said the materials created by the Salish Kootenai College are formatted for use by young people, specifically for elementary and high schools but noted that the University of Montana and Montana State University are also using the materials in various programs. Ms. Cajune reviewed the tribal history materials created by the Salish Kootenai College:

- *Heart of the Bitterroot: Voices of Salish & Pend d'Oreille Women* CD disc - stories of four women and a companion study guide (EXHIBIT #6);
- *Challenge to Survive: History of the Salish Tribes of the Flathead Indian Reservation* - Units I, II, and III (EXHIBITS #7, #8, and #9);
- *Gift of the Bitterroot: A Salish and Pend d'Oreille Story* - (EXHIBIT #10); and
- *The Lower Flathead River* - (EXHIBIT #11).

Ms. Cajune thanked the Montana Legislature for funding the tribal history project and said she is very proud of Montana's unique and visionary Constitution, which recognizes American Indian people, guarantees the preservation of their cultural integrity, and guarantees that all citizens have that information. She said additional materials are in progress and that private funding is being pursued because the state's two-year deadline will not allow adequate time to accomplish all of the goals of the project. She said that she hopes the STR Committee would find the materials meaningful and insightful. (*Materials archived in the Legislative Services Division Library as of May 2009.*)

06:18:47

Dr. Richard Little Bear, President, Chief Dull Knife Tribal College, thanked the Governor and the legislature for funding the project and said it has been very important for the tribes to produce a tribal history from their perspective. He reviewed how the tribal college used the funds to purchase needed equipment to complete the history and said it has been very exciting to be a part of the project. Dr. Little Bear said a book on the history of the Cheyenne people, completed in the 1970s, is still relevant and helpful, but that the tribal history project allowed the history to be filled in with even more detail. He said much was learned from the process, such as writing, listening, and editing skills, photography, and more; and that the history is also being produced in DVD format. Dr. Little Bear provided STR Committee members with copies of the book, *WE, THE NORTHERN CHEYENNE PEOPLE*, produced by Chief Dull Knife College (EXHIBIT #12). (*Archived in the Legislative Services Division Library as of May 2009.*)

06:27:56

Carol Murray, Blackfeet Community College, said that the Blackfeet Tribe is one of the largest in North America and has a very broad and deep history. She said as a long-time educator, she is very cognizant of how education occurs in the state and community and tried to produce material that would be genuinely helpful. She said the equipment portion of the grant was used to purchase computers for a learning center at the college, in order to keep students interested and in school. Ms. Murray said that students were taught how to

produce DVDs and that the Blackfeet history was produced in that format. She said that the DVD will be available through OPI in September of 2008 for use in Montana schools. Ms. Murry said that 12 teachers worked to produce additional teaching materials and a seminar was held with area teachers using the new materials and that the feedback from the teachers was very positive. She also displayed and explained several posters depicting Blackfeet history, created by local Blackfeet artists.

06:46:02 **Hubert Two Leggins, Big Horn College**, said that he coordinated the tribal history project at the Big Horn College and on behalf of the Crow people. He thanked the STR Committee (and the legislature) for the funding for the project. He said that a K-12 curriculum has been developed, which includes a textbook, DVD, posters, and teacher resources. He said that the funding paid for out-of-state research in areas formerly occupied by the Crow Tribe, which was quite extensive. He said the Crow language was also researched and that he was able to trace it back over 5,000 years. He said that the project has sparked interest from other states and that he is very thankful to have had the opportunity to do the research. Mr. Two Leggins said that much of the information is available on the college website.

06:54:02 **Ellen Swaney, Director of American Indian Minority Achievement, OCHE**, said it was an honor and a privilege to have oversight responsibility for the tribal history projects. She asked that the tribes not present at the meeting have the opportunity to present their tribal history projects at a future STR Committee meeting. Ms. Swaney reviewed mandates of the project, saying that money was split among all of the tribes and that the work had to be done within two years. She said the quality and innovative work that resulted is very impressive and that it is gratifying to see the work continue, through private funding efforts. Ms. Swaney noted that all of the projects will be available through the Montana State Library and OPI, and that much of it will also be available for sale through local retail outlets.

OIL AND GAS COMPACTS

06:57:11 **Andy Huff, Governor's Office, Indian Law and Policy Legal Advisor, Chippewa Cree Tribal Member**, distributed copies of the Fort Peck Tribe's oil and natural gas tax agreement (EXHIBIT #13) and said that the agreement was signed in March of 2008. He reviewed details of the agreement, saying it is one of the most unique and innovative agreements in the nation. He said that an agreement with the Crow Tribe is close to completion and that discussions are underway with the Fort Belknap and Chippewa Cree Tribes.

07:00:43 **Lee Baerlocker, Department of Revenue**, provided a breakdown of oil and gas taxes, which included definitions, requirements of an oil and gas revenue sharing agreement, types of property subject to the agreement, taxes, rate, and distribution information (EXHIBIT #14).

07:03:59 REP. PETERSON said that he has been told that the current high price of oil is driving production in the Bakken formation oil fields but that the oil may not be economical to produce if the price falls. He asked what the obligation of the State

is if this occurs. Mr. Huff said that the agreement is strictly a tax revenue sharing agreement and that there is no other obligation attached.

REVIEWS, ACTION ON PREVIOUS COMMITTEE DISCUSSIONS/TOPICS

- 07:05:48 **Susan Cottingham, State Reserved Water Rights Compact Commission**, said that she assisted STR Committee staff in preparing the timeline and other information for the STR Committee. She said she would answer any questions the Committee may have.
- 07:06:55 REP. HENDRICK, HD 14, said he is the state representative for part of the Flathead nation. He said that he had prepared a letter, as their state representative, that will be sent to Governor Schweitzer, Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC), Mike McGrath, Attorney General, and to James Steele, Jr., Chairman of the Confederated Salish and Kootenai Tribes. REP. HENDRICK read the letter to the STR Committee, in which he stated his support for legislation to extend the State Reserved Water Rights Compact Commission and the right of the Flathead nation to file water claims (EXHIBIT #15)
- 07:10:01 **Carolle Lankford, CSKT Tribal Council**, asked the STR to support legislation to extend the State Reserved Water Rights Compact Commission. Ms. Lankford said the CSKT does not want to engage in litigation because of the expense involved, but will do so if forced to. She estimated the cost of litigation would be approximately \$4 - 6 million per year and said that it would significantly impact the tribe's budget and people. She thanked REP. HENDRICK for his support and asked that the rest of the Committee give its support also.
- 07:12:00 REP. HENDRICK said he does not want his efforts to harm any progress made to date and is open to direction or suggestion on how best to proceed. He said his main objective is to have a backup plan in the event that negotiations fail and an agreement is not reached before the deadline. He said it was brought to his attention that the June 30, 2013, date in his letter should be changed to a two-year extension.
- 07:13:38 SEN. SMITH expressed concern that the appeals process be lengthy enough to adequately allow the CSKT to respond. REP. HENDRICK agreed.
- 07:14:20 SEN. LAIBLE asked Ms. Cottingham to give her perspective of the situation. Ms. Cottingham said that REP. HENDRICK's proposal would not only extend the compact commission for two years, but would also extend the ability of the tribes to file claims if negotiations are terminated from six months to 60 months. She noted that SEN. JUNEAU's proposed legislation included similar provisions. She said that no one realized how difficult and complicated this process would be and she would support an extension for the CSKT if an agreement is not reached soon, but she said it is premature at this point to pursue an extension. She said that negotiations are ongoing on a regular basis with significant progress being made, and that it is still quite possible to reach an agreement before the 2009 deadline. She said the Commission has draft legislation in place in the event an extension is needed and that it would be requested in time to allow an extension.

Ms. Cottingham emphasized she does not oppose an extension, but she thinks an extension is unnecessary at this time. She cautioned that an extension could become a problem for the Montana Water Court. She said she is respectful of the CSKT Tribal Council's concerns about litigation costs and said no one involved favors litigation as the best means to settle the matter.

- 07:21:44 REP. PETERSON commented that the water rights negotiations process has been ongoing for 30 years. Ms. Cottingham said the compact commission was created in 1979 but that active negotiations with the CSKT have been ongoing since about 2000. REP. PETERSON asked when the Commission expires. Ms. Cottingham said the Commission expires July 1, 2009.
- 07:23:43 REP. HENDRICK said he would like Committee support for his letter and proposal but that he plans to move forward as an individual legislator if support is not given. SEN. LAIBLE **moved** to accept the letter as drafted to be sent to the Governor's Office, but noted that he did not support the letter at this time, based on the testimony given by Ms. Cottingham. REP. PETERSON said he would not support the letter and that the best course of action would be to "hold their feet to the fire" to keep negotiations moving along. He said the pressure of a deadline would be motivation to get things done.
- 07:26:16 **Lenore Stiffarm, Chair, Gros Ventre Treaty Task Force Committee**, entered into the record a document outlining the concerns of the Gros Ventre Tribe regarding the Fort Belknap compact and its opposition to the provisions in the compact (EXHIBIT #16).
- 07:35:43 SEN. TROPILA asked Ms. Cottingham to respond to Ms. Stiffarm's concerns. Ms. Cottingham said that she was aware of the Gros Ventre people's concerns but that the state's position is that the tribes are sovereign nations, so the state would not become involved in internal matters. She said that in this case, the Fort Belknap Tribal Council was the designated authority with which the Compact Commission negotiated and that the process is well under way. She said that the agreement was approved at the state level and is now before Congress. She said that if the compact is approved by Congress, the compact must be approved by a tribal vote and that the Gros Ventre concerns could be raised at that point.
- 07:40:10 Ms. Plumage said she has concerns about water compacts, specifically land transfers that are part of the compact. She said there has yet to be any funding forthcoming from the government for the projects agreed to under the compact. She said she supports the efforts of the Salish and Kootenai Tribes and that until it is known who the next President of the United States will be and what appropriations there will be, it will be difficult for Tribes to move forward.
- 07:43:30 SEN. SMITH asked if the extension proposed by REP. HENDRICK would apply to the Fort Belknap compact. Ms. Cottingham said the Fort Belknap compact has already been approved by the state legislature and, if approved by Congress, over \$256 million would be authorized for projects. The compact would then go back to the Tribe for approval. If the Tribe approves the compact, it then goes to the Montana Water Court for approval and the tribes would not have to file claims

because they would have already been settled through the agreement. The 60-month period for filing claims is only if there is no compact. Regarding the land transfer issue raised by Commissioner Plumage, Ms. Cottingham said that that issue has not yet been decided by Congress and the state has no position on it.

- 07:46:29 SEN. SMITH asked if Fort Belknap has an appeals process. Ms. Stiffarm said yes, but that so much has been done behind closed doors that it has been very difficult to discuss concerns. She said that the Tribal Council has been invited to meet with the Task Force and has refused to do so. She said that the Gros Ventre people are getting increasingly frustrated.
- 07:52:41 SEN. LAIBLE said there was a motion on the floor. REP. PETERSON called for the question. SEN. LAIBLE said based on what Ms. Cottingham said, there is a placeholder bill to extend the compact, that progress is being made, and that time has not run out yet. He said he didn't think the letter was necessary and did not want his name on the letter, if approved by the STR Committee.
- 07:54:52 Ms. Cottingham said there are two place holders, one from the Compact Commission through the DNRC and one by Senator Juneau.
- 07:56:07 REP. JAYNE said she did not see a problem with the Committee forwarding the letter and that the rationale for sending it is valid.
- 07:57:35 SEN. LAIBLE's motion to approve the letter requesting the extension passed on a 5-3 roll call vote, with SEN. LAIBLE, SEN. STEINBEISSER, and REP. PETERSON voting no (ATTACHMENT #4). Ms. Murdo said the letter could be forwarded to the Governor and others, so long as it was clear that it was not supported fully by the STR Committee.
- 08:00:19 **Jeremy Gersovitz, Staff Attorney, LSD**, said that the members received a report on court cases and a time line dealing with the water compact issue in their meeting packet and that he would be happy to answer questions (EXHIBIT #17).
- 08:01:18 REP. WINDY BOY asked that the agenda be corrected to show that Julia Doney is the President of the Fort Belknap Tribe and not the Chippewa Cree Tribe. Ms. Murdo said it would be done.
- 08:01:50 REP. JAYNE said there is a difference between Sen. Juneau's bill draft and REP. HENDRICK's letter. REP. HENDRICK said that there may have been a misunderstanding but that he was working with CSKT issues only.
- 08:04:25 Ms. Murdo said Sen. Juneau's bill draft is same as it was in 2007 but extends the compact commission to 2013 and for 60 months for filing claims. Mr. Gersovitz said that the members received in their meeting materials an overview of all proposed legislation of interest to the STR Committee (EXHIBIT #18) and Senator Juneau's proposal (LC0057) is explained there. He said that it is an enlargement from 6 to 60 months in which the CSKT may file claims for reserved rights if a settlement is not reached.

08:06:34 After discussion by the STR, Ms. Murdo said that both Sen. Juneau's proposed legislation and REP. HENDRICK's letter provide for an extension of the commission and an enlargement of the time frame for filing of claims. SEN. LAIBLE asked that it be clear which members of the Committee are supporting the letter. Ms. Murdo said the language would be clear.

REVIEW OF DRAFT FINAL REPORT & DIRECTIONS TO STAFF

08:09:23 Ms. Murdo said she is still working on the final report and that members would have input before the report is finalized.

NOTICE OF UPCOMING EVENTS

08:10:20 Ms. Murdo said legislator training has been scheduled for November 12-14 and that State-Tribal Relations training is scheduled for December 11, in Helena. She said that interested persons could register for the training through OPI.

ADJOURN

08:11:56 With no further business before the State-Tribal Relations Committee, the meeting was adjourned at 5:20 p.m.

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