



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

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

June 23 & 24, 2008

Salish and Kootenai Tribal Offices
Pablo, 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.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

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 Relations Committee:

- approved the April 19, 2008, meeting minutes, as written;
- voted to send a letter of support for federal funding for an Indian liaison within the Department of Corrections to Senator Baucus, Senator Tester, and to Representative Rehberg;
- agreed to facilitate a meeting between Committee staff and stakeholders, regarding tribal access to SAMSHA grant funding.

CALL TO ORDER AND ROLL CALL

00:00:03 SEN. SMITH called the meeting to order at 12:18 p.m. **Steve Lozar, Confederated Salish and Kootenai Tribal Council**, opened the meeting with a prayer. The Secretary noted the roll (ATTACHMENT #3). **James Steele, Chair, Confederated Salish and Kootenai Tribes (CSKT)**, thanked the State-Tribal Relations Committee for visiting and exchanged gifts with SEN. SMITH as gestures of good will. Chairman Steele introduced the CSKT Tribal Council members in attendance.

00:05:21 REP. PETERSON **moved** to approve the April 19, 2008, meeting minutes, as written. The **motion passed** on a unanimous voice vote.

PUBLIC COMMENT ON ISSUES NOT OTHERWISE ON AGENDA

00:06:51 **Cil Robinson, Montana Board of Crime Control (MBCC)**, discussed a project designed to assess and address the disproportionate number of Indian youth in the juvenile justice system and their under-representation in diversion programs. She said a Youth Justice Council is conducting the project and that there are tribal representatives on the Council. She discussed details of the project and said that the goal of the project is to find alternatives to detention through appropriate diversion programs for youth.

00:11:49 **Deb Dumontier, Fiduciary Trust Officer, Department of Interior, Bureau of Indian Affairs**, explained her position as a BIA fiduciary trust officer and said that she is available for questions, if needed.

LIQUOR LICENSES AND TRIBES

00:13:08 **Andy Huff, Staff Attorney, Governor's Office**, said that Shauna Helfert would explain the state's liquor licensing laws.

00:14:27 **Shauna Helfert, Department of Revenue (DOR)**, provided an explanation of the mission and goals of the Liquor Control Division; the organizational structure of the Division; different categories of licenses and the criteria for each type; and procedures and requirements (EXHIBIT #1).

- 00:21:41 Ms. Helfert explained that because of current licensing criteria, the CSKT may hold one license for one facility. **Carole Langford, CSKT Tribal Council**, said that currently the Tribe owns two facilities but only one liquor license. She asked if there is a way that would allow a government to hold two licenses or if the law could be changed. Ms. Helfert said that there is no loophole that would allow for that. SEN. LAIBLE said that legislation could be passed that would allow it to be done. Ms. Helfert said yes, that statute can be changed through legislation.
- 00:24:26 **Steve Lozar, CSKT Tribal Council**, said that the Tribe would like to see the law changed to allow for that. He said that the Tribe, as a sovereign government, formed a single limited liability company (LLC) to run the two operations and would like Committee support to allow the tribal LLC to use a single license to operate both facilities.
- 00:25:48 SEN. TROPILA asked if the tribe is requesting the law be changed to allow the Tribe to hold more than two licenses. Mr. Lozar said the Tribe is not asking for two licenses, but that the Tribe, operating as a single business, be allowed to operate both its facilities under one license. He said he is aware that the Montana Tavern Association may oppose the request.
- 00:27:45 REP. PETERSON said it is a simple matter to form an LLC and asked why the CSKT didn't form another LLC in order to have one for each facility. Mr. Lozar explained that the Tribe feels that it is a single entity and as such, should be able to license both tribally-owned facilities with a single or combined license. Ms. Helfert said that having separate LLC's would make no difference because the tribal government would still be the qualifying "person" that must meet the legal criteria.
- 00:30:50 SEN. SMITH asked Ms. Helfert to discuss the issue of energy drinks. He expressed concern that the drinks, containing high amounts of caffeine and some with alcohol, can be sold next to soft drinks. He asked if they could be separated. Ms. Helfert said that energy drinks with alcohol are a concern. She said currently they are classified as beer but that the law could be changed to reclassify them, as other states have done.
- 00:33:19 SEN. SMITH asked committee members and staff to introduce themselves, as well as visitors and area representatives and officials. The Committee members and staff introduced themselves, as did Representative Janna Taylor, HD 11.

UPDATE ON RACIAL PROFILING AND LAW ENFORCEMENT TRAINING/DATA COMPILATION

- 00:37:03 **Jim Smith, Montana Sheriff's and Peace Officers Association (MSPOA)**, updated the STR on the racial profiling prevention project being conducted by the Montana Department of Transportation (MDT), and the MSPOA (EXHIBIT #2). Mr. Smith's report included project goals, an explanation of project activities, and MDT racial profiling data. Mr. Smith discussed in detail the last two pages of the report.

- 00:46:48 Regarding "e-tickets", REP. PETERSON asked how race is being identified on the tickets issued. Mr. Smith said that the officer makes an educated guess, based on a variety of factors.
- 00:47:45 SEN. LAIBLE said the data reveals some interesting information, such as a high percentage of Native Americans who don't use seatbelts and that many of the accidents are related to alcohol. He asked if the information will be used to address other issues identified besides racial profiling. Mr. Smith said there are many different programs going on in Indian Country to improve highway safety but that seatbelt use has been resisted by many people of all races. He said that Indians believe that law enforcement should not be given one more reason to stop them. He reviewed statistics gathered in Missoula that indicated that Native Americans are not being singled out or treated differently. SEN. LAIBLE asked if the reason for the study is to be able to justify the large amount of tickets being written. Mr. Smith said that could be part of the reason but the main goal is to prove that people are being stopped for traffic violations and not because of their race.
- 00:52:49 **Sheriff Lucky Larson, Sheriff, Lake County**, said that he believes the working relationship with the CSKT is outstanding. He said he works closely with the CSKT Tribal Council and with the tribal chief of police.
- 00:55:39 **Doug Chase, Chief of Police, Polson Police Department**, echoed Sheriff Larson's statement, saying that his officers and CSKT law enforcement officers have a great working relationship and work closely on a day-to-day basis. He said he is dedicated to serving the public and believes that his department is following racial profiling requirements and that his department has had no complaints
- 00:57:29 REP. PETERSON said the STR has heard from law enforcement and asked to hear tribal concerns, particularly if a different view of the situation exists.
- 00:58:03 **Carl Pepion, Chief Judge, Fort Belknap Tribe**, said that while some areas are better than others, racial profiling is occurring. He suggested concentrating on these areas. He said that as an ex-police officer, he witnessed problems in Glacier County, and provided an example of being arbitrarily stopped himself and issued a ticket while off the reservation. Judge Pepion discussed a jurisdictional issue, saying that the state takes the fine money from non-Indian tickets, a practice he does not agree with. Judge Pepion also referenced other areas of jurisdictional concern, such as the administration of the IV-E [foster care] contracts for social services. He said that if a sovereign government has to waive its right to go into a state court, the state should have to waive its rights when dealing with tribal courts. He said there are many other concerns as well. Judge Pepion also suggested that tribes be consulted in advance when passing state legislation that would affect them, and to allow them to have a say.
- 01:05:15 **Ranald McDonald, CSKT legal counsel**, emphasized that cooperation between local law enforcement and the Tribe has improved over the years. He reviewed the history of how the cooperative agreement was reached and how it has been

used over the last 15 years. He said that the agreement stipulates that any officer could make any stop, but when jurisdictional status is determined, whoever has jurisdiction would notify the proper agency and the process used for handling the remainder of the stop. He noted that it did cause some controversy when first instituted, but now has been accepted. He said that all jurisdictions have now signed off on the agreement and that there is strong support from all entities involved.

01:09:23 Mr. McDonald also discussed liquor licensing issues, saying that there are problems with the current statutes. He said the Liquor Control Division views the CSKT as an individual licensee and will grant only one license to the Tribe. He pointed out that there are exceptions to state law that allow state governments to hold multiple licenses, such as for municipal golf courses, and suggested that a minor amendment to specify that tribal governments be included would solve the problem. Mr. McDonald referenced a South Carolina case, *Rice v. Rehner*, which established joint authority between the state and tribes regarding the regulation of alcohol sales on a reservation.

01:13:32 SEN. SMITH thanked Judge Pepion and Mr. McDonald for their comments. He said that the issue will continue to be studied and that cross deputization between departments has been discussed as one possibility. He said that he personally would work with any reservation interested in doing this. He also suggested that even more cultural awareness training be conducted, saying that it is very helpful to county deputies and new highway patrolmen.

VICTIMS OF FAMILY VIOLENCE ON RESERVATIONS

01:17:55 **Shirl Robinson, for Patty McGeshick of the Fort Peck Tribe**, said she has helped to organize the Montana Native Women's Coalition. A main concern of the Coalition is the need for more relationships between tribal governments and the state in order to facilitate communication, training opportunities, and networking. She discussed funding issues, saying that many state programs receive funding but that many tribal programs do not, so native women usually are sent off reservation for services. She said she would like to have a shelter with cultural resources, whether it was off or on reservation. She also discussed the need for training and said that ideally, training would take into consideration tribal and cultural ways.

01:22:48 **Susie Korn, Montana Native Women's Coalition**, said that she writes grants and said the program is far ahead of some of the others in the state. She said she has noticed that there is little cohesion between tribes and programs. She said that, on some reservations, an offender can continue to commit misdemeanor offenses and never be jailed. She said that her reservation has concurrent jurisdiction, which means that after the second conviction, the offender can be convicted of a felony and go to prison. She said she would like this to be the case all across the state.

01:24:45 REP. WINDY BOY said that domestic violence is a particular concern of his and that he has tried to tighten up domestic violence laws in the last three legislative sessions and that he would continue his efforts. He discussed the need for

services for both the victim and the perpetrator in order to break the cycle of violence.

- 01:28:31 REP. PETERSON said it is his understanding that tribes choose to have concurrent jurisdiction. Judge Pepion said that most tribes do not want to do this and that reservations would resist state control. He said that any efforts would have to be government-to-government. If it was done, each reservation would have to update its laws. Issues, such as funding for law enforcement officers and jails, would have to be addressed. He said that tribes may be willing to pay to use state jail facilities, but again, funding would have to be discussed. Judge Pepion emphasized that it is important to the tribes to be dealt with in a respectful and trusting manner.
- 01:36:39 SEN. LAIBLE said that tribal members are represented in the Montana Legislature and asked if there has been legislation to address the issue, and if so, why didn't it pass. Judge Pepion said he has been a judge for a very short time and didn't know about past history. He said it all comes back to the lack of jail facilities on reservations. He said that the federal government is paying for detention facilities in Havre and Wolf Point, but that it will not give the tribe the money to operate its own jail, which it would rather have.
- 01:39:00 SEN. LAIBLE said that tribes can assess a stiffer penalty under their own statutes and asked if the tribe can commit an offender to the state prison. Judge Pepion said that tribes have not been given the authority to do that and could not pay even if they were allowed to do so. He said it is a Catch-22 because the tribes have the money to prosecute an offender but no facility to send them to.
- 01:44:28 REP. HENDRICK asked how domestic violence offenders are being handled now. Judge Pepion said that for the first offense, there is a "cool off" period and they receive a six-month suspended sentence so long as they attend classes. The offender also pays a fine and is placed on curfew. A second offense results in jail time of 30-90 days. A third offense is more. Judge Pepion said that even for an offender charged with murder, he can only set a \$5,000 bond and let them go.
- 01:47:14 Judge Pepion discussed why Indian Country has such a high incidence of domestic violence, saying it stems back to behavior taught by the white man. He said prior to the appearance of the white man, Indian women were held sacred. White missionaries taught that women and children were property. Indian children were taken away and placed in mission schools. They were taught white man's ways and parents were not allowed to teach their native culture. Judge Pepion said that the Fort Belknap Tribe is trying to return its native history and culture to its people and that it is working with elders to do so. He said that reservations are dysfunctional because of the United State government's lack of understanding or tolerance of native beliefs and culture. He said that Indian women are hesitant to report domestic violence out of fear of retaliation and embarrassment. He said that abuse of Indians by non-Indians is also prevalent on reservations and referenced a 1984 Supreme Court case that said a county has no jurisdiction over non-Indian crime on a reservation. He said that a federal

court won't take a case unless it is a felony offense. Judge Pepion provided domestic violence statistics regarding women and child abuse from 2002-2006, saying that 90% of the victims return to their abuser simply because they have no other option. Housing, employment, and transportation are rarely available to these victims. Judge Pepion said that placing women and children in off-reservation shelters is not effective and that Fort Belknap is working to help victims through medical and legal processes. He said he is also requiring completion of parenting classes before dropping a protection order. He said that tribes can decrease domestic violence only if all of the surrounding issues are addressed.

REP. JAYNE asked what the STR or state can do to help. Judge Pepion said funding is most needed, but suggested that each reservation be worked with individually to identify its biggest needs. He said that funding, training, shelters, and education, are all badly needed.

- 02:09:30 **Winona Tanner, Chief Judge, CSKT**, said that there are positive things happening regarding family violence issues and there are positive solutions available. She provided an overview of the CSKT Tribal Court and how it is addressing family violence. She noted the court's structure, laws, and specific statutes regarding family violence. Judge Tanner said that an advocate is provided to victims and that the tribal code, including youth and family law sections, is available online.
- 02:14:16 **Joan Eliel, Montana Department of Justice**, described a federal pilot program funded through the Attorney General's Office, called the Hope Card project. Ms. Eliel said that the purpose of the program is to directly address gaps in tribal domestic violence services and enforcement of protection orders, in particular. She explained that the card will be provided to victims of domestic abuse and will contain information critical to that victim (EXHIBIT #3). The goal is to allow the information to be more quickly accessed by law enforcement officers in emergency situations in order to better serve and protect the victim. She said the program will be implemented statewide and that the primary goal is to reduce the time spent on a domestic violence scene in order to provide security and comfort to victims of domestic violence. Ms. Eliel said she hopes to expand the program to include tribal courts also.
- 02:20:32 REP. PETERSON asked if the Hope Card would provide all jurisdictions "full faith and credit" when dealing with a protection order. Ms. Eliel explained what measures have been taken to allow state law enforcement agencies to enforce protection orders under the program. She said that the federal full faith and credit law provides that the federal statute be enforced everywhere, but the difficulty is that not all jurisdictions understand that.
- 02:26:03 REP. WINDY BOY asked how the program is being funded. Ms. Eliel said that the Department of Justice is funding the program. REP. WINDY BOY asked if it is available to all tribes. Ms. Eliel said yes, but that currently the funding is for the pilot project only and that subsequent grants will be obtained to expand the program to other tribes. REP. WINDY BOY asked who will own the data

collected in the program. Ms. Eliel said that the state and the tribes would own the data.

- 02:27:11 **Arlene Templer, CSKT**, said that she has worked for the CSKT in human services for many years and that there has always been a good level of collaboration between the state and the tribe. She provided statistics relating to sexual and domestic abuse of women on reservations and described services provided by the CSKT. She also discussed the effects of abuse, saying that abuse can drastically affect a person's physical, emotional, and intellectual health and that a person has to feel safe before growth can take place. She agreed that government-to-government agreements would be the most effective way for the state to work with tribes on this issue and that each tribe must be allowed to decide its own best course of action.
- 02:35:53 Cil Robinson, MBCC, said it is important to know the connection between the juvenile justice system and the social services system, because many of the youth in the juvenile justice system are witnesses or victims of domestic violence. She said that research has shown that many of these types of kids have permanent brain damage resulting from this violence and that decreasing domestic violence would also decrease the number of youth coming into the juvenile justice system.

INDIAN LIAISON FOR DEPARTMENT OF CORRECTIONS

- 02:37:16 **Myrna Kuka, Blackfeet Tribe, Native American Liaison, Department of Corrections (DOC)**, described her duties as liaison. She said that she is also serving as Native Cultural Officer, advocating for young men in court appearances. She said that the grant funds ran out, but that efforts are being made to obtain more grant money. She said that she has not yet visited all reservations but intends to.
- 02:40:10 REP. HENDRICK asked if it would help if the STR provided a letter of support regarding the grant funding. Ms. Kuka said yes. REP. HENDRICK requested that such a letter be sent. SEN. SMITH agreed.

RECIDIVISM AND PRE-RELEASE CENTERS

- 02:41:28 **Craig Thomas, Executive Director, Montana Board of Pardons and Parole (MBPP)**, explained the Board's structure and term length, saying that there are two tribal members. REP. PETERSON said that he served on the Board for many years and that training on Native American culture is provided. Mr. Thomas explained the process for granting parole or probation, including the criteria considered when granting parole or probation and how offenders are assigned to pre-release centers. He said that most successfully complete their probation or parole terms and noted that Montana has one of the lowest recidivism rates in the country. Mr. Thomas emphasized that the Board relies heavily on information from case workers and staff and that each case is carefully digested by the board before the meeting with the inmate.
- 02:50:10 **Margaret Bowman, MBPP**, said that she has been on the Board for four years and is a CSKT tribal member. She said it is an interesting but tough job, and that

mental health issues and cultural difference issues are difficult to deal with. She that most Native Americans are glad to see a familiar face and to know that they will be given a "fair shake".

02:52:46 REP. PETERSON asked if there are plans to build a prerelease center in the Flathead area. Mr. Thomas said that centers are tentatively planned for either Polson or Kalispell.

02:53:46 Mr. Thomas added that Board members volunteer their time and are paid only \$75 per day when on Board business. He said they give much of themselves and are extremely dedicated, and usually hear over 100 cases a month in locations all over the state. He said he knows that there have been questions regarding the Board not releasing offenders back to the reservations and stated that there is no clear policy to not release an individual back to a reservation. He said that there are times when individual circumstances will not allow it.

02:55:59 Steve Lozar, CSKT Tribal Council Member, said it is good that there are Indians on the Board. He said that, as an advocate, he works with the Department of Corrections and has testified during parole hearings. He said that having tribal members on the Board makes a real difference.

UPDATE ON RESERVED WATER COMPACT DISCUSSIONS, WATER INFRASTRUCTURE ISSUES

02:59:10 Clayton Matt, Tribal Natural Resources Department, Water Rights Negotiation Team, CSKT, updated the STR on the status of negotiations and the importance of extending the Reserved Water Rights Compact Commission. Mr. Matt said that other tribes have taken many years to finalize agreements with the Commission and that the CSKT would like the same consideration. He said that a bill in the 2007 legislature to extend the Commission did not pass and negatively affected CSKT negotiations. He said it put the CSKT in a difficult position and that as a result, the Tribe is currently preparing litigation in addition to continuing work on an agreement.

Mr. Matt explained that the CSKT has to have legal claims filed within six months of the Commission's dissolution, which has had a detrimental effect on the negotiations process. He said that everyone with a claim will be affected if the process goes to court. He explained the current proposal and said he believes it will address the Commission's concerns and has a chance of being approved, if only additional time - if needed- is available for negotiations. Mr. Matt said that on behalf of the CSKT, he strongly supports an extension of the Commission.

03:07:29 REP. PETERSON asked if Flathead fee land owners' water rights will be protected. Mr. Matt said the current proposal will protect existing uses. He said the Tribe acknowledges other uses and is negotiating a process for examining and reviewing them as well. He said that the goal of the Tribe is to document and protect all existing uses.

03:10:09 REP. PETERSON asked who will be the administrative agency and who will determine the validity of claims. Mr. Matt said the CSKT is proposing a joint

process between the State and the Tribe. REP. PETERSON asked if that is a factor in needing an extension. Mr. Matt said the need for the extension is due to a variety of reasons, but mostly time. He said that he would like to have a settlement in place by the 2009 legislative session but did not think that would happen because information is needed that will not be available before the Commission expires.

- 03:12:37 SEN. STEINBEISSER asked how many more years the Tribe needed. Mr. Matt said the Tribe would like to have two to four additional years.
- 03:13:29 REP. WINDY BOY said that SEN. JUNEAU has submitted a bill draft request to extend the Commission. He said that it may be wise to also submit a STR Committee bill draft request. SEN. SMITH agreed. Mr. Matt said the CSKT was appreciative of the STR's consideration of the issue.
- 03:15:45 SEN. LAIBLE said that he recently read information regarding relinquishment of water rights to the federal government and asked if that could affect negotiations or approved water compacts. Mr. Matt said he was not aware of the information SEN. LAIBLE was referring to and deferred the question to Ms. Cottingham.
- 03:17:51 **Susan Cottingham, Staff Director, Reserved Water Rights Compact Commission**, said she would follow up with information on SEN. LAIBLE's information request. Ms. Cottingham updated the STR on water rights negotiations, saying that the Blackfeet compact was settled in 2007 and will be presented to the 2009 Legislature for approval. She explained what the negotiating process entails, how tribal, state, and federal governments are involved, and how non-Indian water rights are protected throughout the process. She said before a compact agreement is finalized, it must be approved by the tribe, the state, the U.S. Congress, and finally, the Montana Water Court. Ms. Cottingham noted that the process isn't necessarily a long one and that the negotiations with the Crow Tribe were completed in about eight months. She said she thought the same could be done with the CSKT and that there is no need to extend the Commission. She said having a set timeframe is useful and the Commission does not intend to pursue litigation. She said she would ask for additional time, if it becomes necessary, but that she does not think it will be needed. Ms. Cottingham said that attorneys are meeting soon to discuss the framework for dismantling the Commission and developing a plan to transfer employees. Staff will transition to the Department of Natural Resources and Conservation (DNRC) and will continue to assist with the process if the Commission is dissolved. Ms. Cottingham said the Commission plans to meet with the CSKT for a negotiation session in the next week and plans to hold frequent meetings with the Tribe until a compact is reached.
- 03:28:21 REP. PETERSON asked if the Water Commission is under the executive branch. Ms. Cottingham said yes, that it is administratively attached to DNRC. REP. PETERSON said Ms. Cottingham's comments implied that the Governor has the final say and asked why the Governor does not support extending the Commission. Ms. Cottingham said that the Governor wants the Commission and the CSKT to continue working within the current timeframe but said, while she

was not speaking for him, that she couldn't imagine that he would not support an extension, should one truly be needed.

- 03:29:43 REP. PETERSON said that the issue SEN. LAIBLE inquired about earlier was the Federal Clean Water Act, which deals with water quality issues. Ms. Cottingham said she was not familiar with that issue because she deals with water quantity issues, not water quality. She said she would have someone from the Department of Environmental Quality (DEQ) contact SEN. LAIBLE to follow up on his concerns.
- 03:31:09 Mr. Matt said water quality is of great importance to the CSKT and that the Tribe has even developed its own water quality regulations with the Environmental Protection Agency (EPA). He said the CSKT was one of the first tribes to do so in the nation. He said that he planned to follow up on the issue.
- 03:34:57 **Alice Stanley, Chief, Resource Development Bureau, DNRC**, discussed the infrastructure for drinking water (EXHIBIT #4) page 2:
- regional water systems servicing Indian communities;
 - tribal compact settlement terms that benefit regional water systems;
 - challenges to building a regional water system; and
 - efforts to improve funding availability.
- 03:45:04 REP. WINDY BOY said that in HB 8, language was created to deal with how to pay for new water projects through a water user fee. He said it is difficult to assess such a fee for projects that have not been built yet. He said he has tried to find a solution to this problem but has not yet succeeded. REP. WINDY BOY said another important issue is that these projects have been given little federal funding and that most of them have been delayed. He asked if the DNRC has considered this. Ms. Stanley agreed with REP. WINDY BOY's concern about water use fees for nonexistent water projects and that federal funding is needed to build the water projects. She said that HB 8 is the first step and that because it had such strong support from the legislature, it deserved to be funded. She said the bottom line is that the faster the projects are built, the less they will cost. She explained the diagram in her presentation regarding funding and said that HB 8 gives justification for seeking further funding.
- 03:50:53 REP. PETERSON asked about the status of the north central regional water system in Pondera County, as shown in EXHIBIT #4. He said that money was appropriated in 2002. Ms. Stanley explained the status of the project, saying that the community selects the authority, not vice versa. REP. PETERSON asked what the probability was of it ever being built. Ms. Stanley said there is a high probability, but she could not say when it may be built. REP. PETERSON commented that the cost will be mind boggling with a delay.
- 03:56:30 Chairman Steele provided copies of the CSKT 2007 Annual Report (EXHIBIT #5) and discussed several issues of importance:
- The CSKT is very proud that S&K Electronics was awarded a \$2.2 million military contract for night vision technology.

- It is not understood by the CSKT why extensions were granted to other tribes who requested them during gaming compact negotiations but that the CSKT's request to extend water compact negotiations was denied.
- The CSKT is pleased with the recent bison range management agreement reached with the federal government.
- The Tribe does not appreciate being pressured to reach a water compact agreement and feels it is being backed into a corner. However, litigation has been budgeted for and plans are being made, should litigation become necessary. The Tribe appreciates the STR's suggestion for a committee bill to extend the Commission.

04:04:42 Judge Pepion commented that when an agreement is reached, it should be tightly constructed to avoid future water rights disputes.

GAMING UPDATES

04:09:00 Andy Huff, Governor's Office, discussed the status of gaming negotiations on each reservation:

- Chippewa Cree - the amendments are finished;
- Crow - entered into an agreement to add horse racing to its Class III compact;
- Fort Peck - expect to hear soon from Fort Peck;
- Blackfeet - Class II gaming only at this time because couldn't agree on Class III video gambling machines. Negotiations are ongoing.
- CSKT - no agreement was reached in the 2006 negotiations, so Class II gaming only at this time;
- Northern Cheyenne updated its compact;
- Fort Belknap has new Class III compact and new casino under construction.

04:13:04 SEN. LAIBLE asked if the state requires all Class II gaming to have the same number of machines and pay outs. Mr. Huff said that the state is not involved with Class II gaming and that negotiations are strictly between tribes and vendors. SEN. LAIBLE asked for a list of the different classes of gaming.

04:16:40 Margaret Bowman, CSKT member, said that the state has not been sympathetic to tribes' concerns regarding gaming, particularly regarding a privately owned business that is allowed a much greater number of machines with higher payouts.

04:21:05 REP. JAYNE asked how gaming compacts are approved. Mr. Huff said that in most states, Class III gaming must be approved by the state legislature, but in Montana, the compacts must go through the Governor. As a result, Montana's gaming is modest, although most of the tribes seem to want to broaden the scope of tribal gaming allowed.

04:24:05 REP. JAYNE said that certain types of Class III gaming are allowed in Montana and asked what distinguishes between what is and isn't allowed. Mr. Huff explained that certain types of video gambling, with higher bets and payouts, is

not allowed. Also banned by state law are such "Las Vegas" types of gambling as black jack and roulette.

BREAK

REVIEW OF MENTAL HEALTH QUESTIONS/ISSUES - REP. WINDY BOY

- 04:41:51 REP. WINDY BOY reviewed the issue of tribal access to SAMHSA grant money, saying the issue was first discussed at the April 19, 2008, STR meeting in Great Falls. He said he presented a list of questions at the meeting that he wanted the Department of Public Health and Human Services to answer. He displayed the initial responses (EXHIBIT #6) and asked Toni Plummer-Alvernaz to continue the presentation. Ms. Plummer-Alvernaz, a contractor for health services with the Rocky Boy's Chippewa Cree Tribe, said that she had hoped to have the DPHHS responses by May 16. However, the responses were not received until late last week and she has had little time to fully evaluate them. She said that, after a preliminary review, she was not satisfied with the responses and outlined her concerns. She said that she may reformat the questions and refine language that may be submitted for a study bill or a committee bill for STR to review.
- 04:53:48 SEN. LAIBLE asked what is wrong with the system and what are the needs or gaps in services or missing links in services. SEN. LAIBLE asked if it is known now where the gaps are and what needs to be done. Ms. Plummer-Alvernaz said that anecdotally she does, but she does not have it concretely identified at this time. SEN. LAIBLE said it appeared that the gaps and shortfalls have already been identified and asked why a study is needed. He suggested that a pilot project be done instead. He said that goals and performance measures could be set and work could commence. Ms. Plummer-Alvernaz said she would be supportive of that but would need to iron out several issues with DPHHS before work could be done. She said that the Rocky Boy Tribe has a pilot project ready and performance measures in place.
- 04:57:14 REP. JAYNE asked Anna Whiting Sorrell to discuss if the budget to be presented to the 2009 Legislature could include this. **Anna Whiting Sorrell, Governor's Office**, said that the initial draft of the executive budget is due September 1 and that the final budget is due in November. REP. JAYNE asked, if the request were to be included in the 2009 budget, where would the money come from. Ms. Whiting Sorrell said that funding would come from the DPHHS Addictive and Mental Disorders Division (AMDD) funding and could be used only by tribes with specific treatment programs already in place.
- 05:01:25 In response to a question from REP. JAYNE about the amount of money needed, Ms. Plummer-Alvernaz said she could speak only for the Chippewa Cree project and that the amount needed would be about \$300,000 to \$375,000. As a side note, Ms. Plummer-Alvernaz said she has observed that when the state responds to issues regarding culturally sensitive information, it is frequently very generic and generalized and not tribal specific. She said the responses provided by DPHHS were not very helpful because of this. She suggested that state agencies consider this when dealing with tribes.

- 05:03:39 REP. WINDY BOY explained that the issue came about when implementing the Indian Country Meth Initiative (ICMI). He said that Dr. Eric Broderick suggested tapping into the state's SAMSHA block grant, and that as a result, a trilateral agreement was proposed, involving the tribes, the federal government, and the state. The six questions posed by REP. WINDY BOY were intended to facilitate discussion on how best to proceed with the tribe's accessing the state's \$6.5 million block grant.
- 05:07:42 REP. HENDRICK said that he understands that a "one size fits all" approach doesn't work for tribes and asked how the tribes are working together on this issue. REP. WINDY BOY said boiler plate language is being created that tribes can use but customize to their own needs. Ms. Plummer-Alvernaz said part of the concern of tribal governments was that the current Request For Proposal (RFP) process of DPHHS does not allow equitable competitiveness for tribal governments. The tribes are trying to come up with a process in the trilateral agreement that will create more equitable access to funding. She emphasized that this effort has been designed and driven by the tribes, not the state.
- 05:12:35 REP. HENDRICK asked if each tribe will compete for funding. Ms. Plummer-Alvernaz said only the four tribes that have accredited facilities.

DISCUSSION OF PROSPECTIVE COMMITTEE LEGISLATION FOR 2009 SESSION

- 05:14:34 REP. HENDRICK **moved** to draft and send a letter of support for federal funding for an American Indian liaison within the DOC to Senator Baucus, Senator Tester, and to Representative Rehberg. REP. PETERSON asked if the position would be completely federally funded. REP. HENDRICK said yes. No public comment was given. The **motion passed** 7-1 on voice vote, REP. PETERSON voted no.
- 05:18:09 REP. WINDY BOY **moved** to draft a committee bill to extend the Water Compact Commission. REP. PETERSON said that he opposed the motion because the tribes have had 30 years to get water compacts in place. He said if they have to resort to litigation, it would definitely move the process along. REP. JAYNE asked how long the extension request would be. **Pat Murdo, Research Analyst, Legislative Services Division (LSD)**, said that Senator Juneau has a bill request for an extension of the Water Compact Commission but that the committee might want to consider a separate bill to extend the time period for filing litigation claims. REP. HENDRICK said that he didn't have enough information at this time to vote on the issue. He said that this is a very important issue to the CSKT people and that he would like to meet with the involved parties before voting on a bill draft. He asked if such a meeting could take place at the August meeting. SEN. SMITH supported drafting a bill regardless, saying that it could be modified and finalized at the August meeting. SEN. LAIBLE said he needed clarification on what the motion was. The secretary read back the motion. SEN. LAIBLE said he would oppose the motion because of Ms. Cottingham's statement that the Governor is not in favor of the extension, nor is the Commission. He said the wrong message would be sent if a bill is drafted now.

- 05:25:42 REP. WINDY BOY **withdrew his motion**, in light of the Committee's concerns. He asked that staff investigate the issue further and report to the Committee at its August meeting. He said that input from other tribes could be gathered by then, and that a copy of Sen. Juneau's bill draft would also be available at that time.
- 05:26:49 REP. WINDY BOY **moved** to draft a committee bill to work with the tribes who already are working to obtain better access to the \$6.5 million SAMHSA block grant. REP. PETERSON asked how or if tribes access it now. REP WINDY BOY said that tribes cannot directly access it now, because the money goes directly to the state for redistribution. The tribes want the share that they are entitled to rather than the portion they now get.
- 05:32:36 In response to a question from SEN. LAIBLE on how the money would be allocated, Ms. Plummer-Alvernaz said that there is a disparity now in how the state determines its numbers, and that all that the tribes are asking for is direct access to a certain portion. Ms. Plummer-Alvernaz said that she has not had time to determine an exact amount, but that the Rocky Boy project will need approximately \$300,000. Additionally, she said, she would like committee support at the August meeting for the work group's efforts to develop language related to data gathering and other factors used for determining the block grant distribution. SEN. LAIBLE said that he would have to vote no at this time, simply because there is not enough information available to make an informed decision. He noted that it was not the fault of the working group that the information was received so late, but that until he knew more, he did not want to vote on the issue. SEN. STEINBEISSER agreed, saying it wasn't clear what the motion was asking for. REP. WINDY BOY withdrew the motion.
- 05:37:15 REP. WINDY BOY **moved** to invite all stakeholders and legislative staff to meet before the August STR meeting to review the information. He said that he may make a motion to draft a Committee bill at the August meeting. Ms. Murdo said that it may be difficult to get the tribes together.
- 05:38:11 Ms. Plummer-Alvernaz asked to change the motion to have legislative staff meet with the tribes first. Ms. Whiting Sorrell said that the Governor is committed to conduct a tri-party meeting in Billings on August 18, but in the meantime, she would work with REP. WINDY BOY and Ms. Plummer-Alvernaz. She noted that Joyce DeCunzo, AMDD Administrator, would be retiring on July 31 and that there would be some reorganization occurring within the Division as a result. The **motion passed** on a unanimous voice vote.
- 05:41:25 There was a motion to recess until 8 a.m. the following day, at which time the Committee would gather to take several tours of reservation facilities and programs.

June, 24, 2008 - Summary of Tours Taken by STR Committee and Staff, prepared by Jeremy Gersovitz, Staff Attorney

Members of the Committee reconvened at the KwaTaqNuk Resort at 8 am on June 24, 2008, in order to caravan to the newly renovated Elmo Community Health Center. They were given a tour of the facility by Assistant Director Nancy Vaughan and Tribal Council Representative Michel Kenmille. They expressed the need for funding for a therapeutic pool and for help trying to save the nearby Chief Cliff, which is on private property and is being quarried. The tribe considers the site a sacred site. Mr. Kenmille said the quarry operator has talked with the tribe about possible solutions. Among those that have been discussed were seeking inclusion on the National Register of Historic Places or acquiring the property.

Mr. Kenmille also mentioned the need for funding for a transitional living center for felons who have just been released from prison. The next stop for the group was the Kerr Dam and Hydroelectric Plant, which is operated by PPL Montana under an agreement with the Tribe. PPL's contract expires in 2015 and the Tribe is considering purchasing the PPL equipment and taking over the operation. Rich Bonnes, PPL's supervisor of operations and maintenance, took the group on a detailed tour of the facilities.

Jason Smith, an assistant to Tribal Chairman James H. Steele, Jr., served as a gracious and helpful guide, keeping the Committee on the move, next to the Salish & Kootenai Housing Authority and the Salish Kootenai College [SKC]. Housing Authority Executive Director Jason Adams provided information on low income housing tax credits and the Housing Authority's success in getting more tribal members into housing. A working lunch at SKC preceded a bus tour of campus with Salish Kootenai College President Joe McDonald and Lon Whitaker, Vice President for Business Affairs. Mr. McDonald expressed his college's appreciation for past appropriations for nonbeneficiary students and the future need for continued, perhaps increased, appropriations for nonbeneficiary students.

The next stop was for a meeting with the full tribal council where CKST Tribal Chairman Steele and other Council members commented on their desire for an extension of time for the Reserved Water Rights Compact Commission negotiations and asked for and received feedback from the Committee. Specifically, Chairman Steele criticized the committee for not moving forward on a committee bill concept put forward by Rep. Windy Boy to extend the Water Rights Compact Commission, a major issue of concern for the tribes. In response, committee members clarified that they wanted more information and that Rep. Windy Boy had withdrawn his motion. Rep. Gordon Hendrick pointed out that the committee wanted to check to see what a similar bill draft request from Sen. Carol Juneau contained. Rep. Ken Peterson noted that the alternative to extension of the Water Rights Compact Commission would be either completion of a compact or litigation. As an attorney, he said, he sees that there are benefits to the threat of litigation, which focuses the mind on the issue at hand. The meeting ended at the S&K Electronics Inc. plant, where the Committee also met with and received a tour from the company's president and general manager Larry Hall.

CI0429 8242dfxa.