



State-Tribal Relations Interim Committee

58th Montana Legislature

SENATE MEMBERS

JOHN BOHLINGER--Chair
EDWARD BUTCHER
KEN HANSEN
CAROLYN SQUIRES

HOUSE MEMBERS

CAROL JUNEAU--Vice Chair
BRUCE MALCOLM
RICK RIPLEY
JONATHAN WINDY BOY

COMMITTEE STAFF

CONNIE ERICKSON, Research Analyst
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

Thursday, June 3, 2004

Tribal Council Chambers, Littlewolf Capitol Building
Lame Deer, 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.**

COMMITTEE MEMBERS PRESENT

SEN. JOHN BOHLINGER, Chair
SEN. KEN HANSEN
REP. BRUCE MALCOLM
REP. RICK RIPLEY

COMMITTEE MEMBERS EXCUSED

SEN. EDWARD BUTCHER
SEN. CAROLYN SQUIRES
REP. CAROL JUNEAU
REP. JONATHON WINDY BOY

STAFF PRESENT

CONNIE ERICKSON, Research Analyst
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

COMMITTEE ACTION

The Committee approved the March 5, 2004, meeting minutes, as written.

CALL TO ORDER AND ROLL CALL

Northern Cheyenne Tribal President Geri Small and Mr. Linwood Tallbull welcomed the Committee members and staff to the Reservation. The Teton Drum Group performed a flag song and honor song to welcome the Committee members.

On behalf of the Committee, SEN. BOHLINGER thanked President Small, Mr. Tallbull, and the drum corps for the welcome. SEN. BOHLINGER also presented President Small with a Montana State Flag and a CD-Rom copy of the Montana Code Annotated. He stated that the State Tribal Relations Interim Committee members were very pleased to be able to visit the Northern Cheyenne Reservation and to have the opportunity to learn more about the Tribe and the needs of the Northern Cheyenne people. SEN. BOHLINGER then introduced the Committee members in attendance and committee staff. The secretary noted the roll (Attachment #1).

TOUR OF RESERVATION

Following the welcome, Carrie Braine, tribal TERO director, led the Committee on a tour of the Reservation. The Committee visited the Boys and Girls Club, Food Distribution program, Youth services Center, Charging Horse Casino, Chief Dull Knife College, Lame Deer Public Schools, and Indian Health Service Clinic.

MEETING WITH TRIBAL PROGRAM OFFICERS

The Committee then returned to the Littlewolf Capitol Building to meet with tribal program officers.

Isadore White Wolf, Director, Workforce Investment Act (WIA), provided an overview of the program (EXHIBIT #1), and discussed the number of people served and several of the specific needs of the program. Mr. White Wolf said the WIA program has been in existence on the Reservation for many years and has been a valuable training program for the Northern Cheyenne youth. He noted that there is a severe job shortage on the Reservation and that there are many who want to work. Mr. White Wolf also discussed the childcare program which assists parents who work, new program and that he is also responsible for monitoring the welfare recipients work program. He said additional funding is needed for job training programs.

Gloria Waters asked if there will be cuts in the program or will additional funding be available.

SEN. BOHLINGER said a budget shortfall is anticipated in the 2005 session due to many issues such as K-12 school funding needs. There is a reluctance to cut human services but with the issues facing the Legislature, there are no guarantees. It is very likely that there will be no additional funding available.

Connie Erickson, Research Analyst, Legislative Services Division (LSD), added that the state agencies are in the process of developing their budget proposals for the next biennium, so that at this point in time it would be very difficult to predict what the funding levels will be. An additional factor is that there will be a new governor.

Eddye McClure, Staff Attorney, LSD, suggested that tribal officials contact individual agencies with their budget concerns.

Ms. Waters asked if there was a deadline for submitting a budget request for program funding. Ms. McClure said any funding requests should be submitted immediately because the budget will be finalized by October of 2004.

Ms. Erickson said that the state-level person that Mr. White Wolf works with would be the best place to start.

Glenn Little Bird, Senior, Director, Food Distribution Program, provided an overview of the food distribution program which outlined budget and funding issues, staffing information, and the number of families served by the program (EXHIBIT #2). Mr. Little Bird added that a family or individual is certified to receive food for twelve months and that an applicant is not eligible for the food program if he/she is receiving food stamps.

Mr. Little Bird also related concerns regarding the food distribution program:

- The Tribe has no funds available for needed improvements, such a new warehouse, new freezers, and new office equipment.
- The USDA has recommended training for the staff but there is no funding allocated for training or travel expenses for staff.

Mr. Little Bird said he would like to simplify the application process, particularly for the elderly and the handicapped. He said he is researching possible grants to assist with building a new warehouse. SEN. HANSEN asked if the Tribe would have to provide matching funds for a new warehouse. Mr. Little Bird said the Tribe would have to provide some sort of match, but didn't know if it would be in the form of money or property.

Ms. Erickson asked if the eligibility requirements for certification are state or federally mandated. Mr. Little Bird said the state provides a manual on certification requirements (Food and Nutritional Services Manual 501).

SEN. BOHLINGER asked Ms. McClure if the State-Tribal Relations Interim Committee could rewrite rules for certification for eligibility requirements. Ms. McClure said the federal government requires the states to set eligibility requirements and wasn't sure if the Committee could address the issues through administrative rules changes, but would investigate.

Mr. Little Bird said William Harding from Billings, Montana, is the state monitor whom he works with, that Mr. Harding is sympathetic to the problems being experienced by the Tribe, and that he is willing to work with the Tribe to help simplify the eligibility requirements.

Ms. McClure said she would contact the state Department of Agriculture to see what could be done.

Patsy Riddle, Acting Director, Human Services, said she has been in her position for a very short time and had not had time to familiarize herself with all of the needs but did know that funding is the biggest need. There are 56 children under foster care. Under the Indian Child Welfare Program, there are an additional 45-50 children receiving care. The Licensing Home

program has around 30 licensed foster homes.

Lynwood Tallbull, Director, Elderly Program, discussed the needs of the elderly in the Northern Cheyenne Tribe (EXHIBIT #3). Mr. Tallbull said the program uses a holistic approach and is designed to address each person's mental spiritual, emotional, and physical needs. Mr. Tallbull also said:

- Many services are not available in Lame Deer and transportation is consistently mentioned as a barrier to services in citizen surveys done on the Reservation.
- Funding has decreased over time and the cuts are of great concern.
- He has the capability of butchering and processing bison donated by the Fish and Game but cannot share the meat because it is not USDA-inspected. A meat inspector is needed to inspect and stamp the meat, which would allow the meat to be distributed to various programs such as Head Start, the public schools, and the commodity program.

SEN. BOHLINGER asked Ms. McClure to explain how the Committee could assist the Tribe in procuring a meat inspector to inspect the bison Mr. Tallbull processes. Ms. McClure said the state Department of Agriculture does the meat inspections in Montana. She asked how often the Tribe would need a meat inspector. Mr. Tallbull said once a month would suffice and ideally, he would process about 10 buffalo a month to feed the elderly, the Head Start program, and the schools. Ms. McClure said she would contact the Department of Agriculture and ask the Department to contact Mr. Tallbull to discuss his needs.

Kirk Denny, Montana State University Extension Agent, reported he has been an extension agent since 1995. Mr. Denny also said:

- The Reservation is largely an agricultural area, home to about 10,000 cows and 500 bulls. The producers on the Reservation generate approximately \$5 million in yearly gross income.
- The Tribe receives \$750,000 in grazing fees from these producers. The ranchers are one of the only local sustainable sources of income to the Tribe.
- Federal funding for the Extension Service has not increased in the last ten years and it is increasingly difficult to function effectively.
- *Trichomonas foetus*, which infects cattle and results in early term abortion, is becoming a serious problem on the Reservation. The average pregnancy rates have dropped to 82% and the impact of the economic damage threatens the long term sustainability of the ranchers. A partnership has been formed with Chief Dull Knife College to teach the local ranchers how to effectively manage this disease.

Ms. McClure asked if the Montana Stockgrowers have addressed this problem. Mr. Denny said he did not have specific knowledge of any proposed legislation by the Montana Stockgrowers but felt that this disease could not be legislated. He said education and management would be the most effective tool to control and reduce it. He said his greatest concern was that because this disease is not required to be reported by the producer or veterinarians, a producer may either infect neighboring cattle or be infected by purchased or neighboring cattle and that *trichomonas* has the potential to impact the entire state.

Mr. Denny said he has spent a great deal of time with the tribal producers on education and testing individual herds. The grant through Chief Dull Knife Tribal College will fund one free test per bull on the reservation and will provide \$1 per head cost share on pregnancy testing, as well

as providing the facilities to conduct the tests. This is an aggressive approach but will be effective.

Mr. Denny also provided a detailed report of the Extension Indian Reservation Program's activities and projects (EXHIBIT #4).

Tom Mexican Cheyenne, Community Health Director, spoke to the Committee about the Northern Cheyenne Tobacco Prevention Program proposal for 2004-2005, which included the programs needs, the purpose and goals, and the benefits (EXHIBIT #5). He also explained the spiritual significance of tobacco and said the use of tobacco is integral to the Indian culture (EXHIBIT #6) and that the tobacco grown for the spiritual use by the Tribe is nicotine-free and nonaddictive.

Mr. Cheyenne also said:

- creating smoke-free environments in businesses, such as the casino, need to be addressed, as well as educating the young people on the Reservation about the dangers of tobacco usage;
- funding is a constant and continuing concern. The Tribe is currently receiving approximately \$80,000 of funding annually and that level of funding is expected to be available for the next several years;
- the Tribe is working to develop a tobacco prevention and education program, beginning at the Head Start level;
- adoption of a school curriculum sensitive to the Native American culture, along with teacher education is also a goal; and
- chewing tobacco use is increasing on the Reservation and physicians are seeing more and more evidence of tobacco usage and damage in the young people.

Maxine Sharette addressed the Women, Infants, and Children (WIC) program, saying:

- the Northern Cheyenne Reservation was one of two pilot programs for the WIC program when it originally was started in Montana; and
- the numbers have increased from 400 participants to about 550 participants; and
- the program has been successful but it is still not capturing everyone who is eligible and who could benefit from WIC.

Currently the WIC program receives \$76,000 of state funding. The WIC budget does not cover the Tribes' indirect cost rate, which impacts the total amount available to use for assistance. The state will only pay about 25% of this amount and the Tribe has to pay the remaining amount. Ms. Sharette would like the State to pay the Tribes' indirect costs, in order to increase the amount available for direct assistance to the Tribe.

President Small said in the past, the Tribe used to pick up the shortfall but is not able to do that anymore because the tribal income level has decreased so dramatically.

Clyde Wolf Black , Northern Cheyenne Head Start Director, said due to the growing problem of diabetes and obesity on the Reservation, there was a need for a registered dietician to help the Head Start program educate parents and children on proper eating habits.

Carrie Braine, Tribal Employment Rights Office (TERO)/Traffic Safety Director, said there were several issues she wanted to bring to the Committee's attention:

- The Northern Cheyenne Tribe will be receiving a three-year grant from the Community Transportation Association of America to conduct a study on the transportation needs of the Tribe, both on and off the Reservation. People living on a fixed income are harmed by the lack of transportation because of the high prices of commodities on the Reservation. Access to goods and services is very limited because transportation is so limited. The study will help the Tribe determine how to create a transit system that will best serve the Reservation.
- The State of Montana and the Bureau of Indian Affairs is currently looking at an Memorandum of Understanding (MOU) that would place the tribal Community Transportation Enhancement Program (CTEP) dollars within the BIA and allow the BIA to account for the Tribal projects that would emanate from that. The Tribe has asked the State to consider this and to sign the memorandum. These discussions have gone on for about 5 years and the Tribe would like the Committee to encourage the Montana Department of Transportation (MDT) to sign the MOU. It would be in the best interest of the Tribe, would be of no cost to the State, and would actually alleviate responsibilities for the MDT and put the onus of responsibility on the BIA.
- The Montana Air Congestion Initiative (MACI) Grants should be handled in the same manner.
- The Tribe would like the Legislature to look at existing MOU's between the Tribes and the State of Montana in regards to employment in road construction and other projects that come through the Department of Transportation (MDT). There is a clause in those agreements that says "on or near" that is not being followed and the current Director of the MDT will not deal with any of the Tribes on projects that are near reservations for employment or for preference in that employment. Currently, the Northern Cheyenne Tribes' MOU with the State of Montana has expired and the Tribe has not determined if it will sign another with the State. The current Director of MDT has not lived up to the understanding of government-to-government relations and Ms. Braine said she has requested that the language be removed from the MOU. The MDT's attorney says the MOU needs the federal language but if it is not being followed, the Tribe does not see the need for the language to be in the agreement.
- The Tribe is also experiencing difficulty in working with the MDT on MOU over a MACI grant that has been in the works for nearly 5 years. All the funds involved are federal, with no match dollars from the State, and again, the Director has refused to come to the table. The MOU said both sides would participate in the agreement over who would construct the project and the Director has tried to impose the MDT choice of contractor. The Tribe has resisted this proposal by the MDT.
- The Tribe acknowledges that there is a contentious relationship with the Director of the MDT at this point and wishes it to be officially on the record.
- Other Tribal relationships with the MDT have gone very well and there are many who have worked cooperatively with the Tribe.

Representative Norma Bixby, Tribal Education Director, provided a letter from the Tribal Education Department formally requesting the State Tribal Relations Interim Committee to sponsor a bill to fund Indian Education For All (EXHIBIT #7). Rep. Bixby said it is clear that funding of Indian education has not been a priority and that it is time to take action to correct that problem. She said this issue has greatly contributed to the high dropout rate of Native

American students, their low academic success rates, the high Native American prison population, growing welfare system, and high number of children needing foster care. She said it was critical that Montana take a step forward and put some money into Indian education.

Rep. Bixby distributed and discussed an outline from the Montana Indian Education Association explaining the provisions of the Montana State Constitutions, HB 528, and the Montana Supreme Court rulings regarding this issue (EXHIBIT #8).

Rep. Bixby also provided a copy of the Montana Advisory Committee report to the U.S. Commission on Civil Rights titled "*Equal Educational Opportunity for Native American Students in Montana Public Schools*" (EXHIBIT # 9).

Rep. Bixby said she realized that the Legislature cannot fund Tribes directly but could fund budget requests through OPI. She reported that OPI will be requesting \$500,000 per biennium for Indian education and encouraged the Committee to support this request, adding that money isn't the only answer but is a large part of the remedy. She said the issues of lost identity, lost culture, and lost language because the Indian student has had to go through an educational system that does not address their needs as Indian children is of great concern to her and that funding the tribal colleges would greatly alleviate this problem. Rep. Bixby stated she was very aware of budget restrictions but that funding the school systems should be the number one priority of the State.

SEN. BOHLINGER commented that parents and grandparents should request that Indian education programs be a part of the public school curriculum. Rep. Bixby said that level of support would be very valuable.

Rep. Bixby said the counties don't have a very good working relationship with the Reservations. They count the numbers but provide very few services in return. She would like there to be some way to encourage these counties to work with the Tribes and to share some of the funding. The State of Montana does not always recognize that the Indians do contribute to taxes and to the economy. She said her program alone contributes over \$600,000 to the local economy and to the University System.

Ms. Waters thanked the presenters for bringing the Tribal concerns to the attention of the Committee.

FRIDAY, JUNE 4, 2004

MEETING WITH TRIBAL ENVIRONMENTAL OFFICIALS

On Friday morning, the Committee met with tribal environmental officials to discuss the impacts of off-reservation coal bed methane (CBM) development on the water and air quality on the Northern Cheyenne Reservation. In attendance were Dave Milligan, Dion KILLSBACK, Joe Walksalong, Jr., and Jay Littlewolf of the Tribal Environmental Office, Jason Whiteman on the Natural Resources Office and Joe Fox and Gus Harris, tribal council members. President Small has established an ad hoc committee to study the effects of CBM development on the Reservation and to make recommendations to her. Tribes have a special relationship with the

land. The question is how do we meld economic development with environmental concerns. There is general community support for CBM development on the Otter Creek tracts. The Tribe has an agreement with the state regarding tribal employment on the project. Other CBM projects affecting the Tribe are the CX ranch project 15 miles south of the Reservation along the Wyoming border and a possible project on the eastern and southern borders being considered by the Crow Tribe. Monitoring wells have been built along the southern border. EPA is treating the Tribe as a state with regard to CBM development. The Reservation is surrounded by natural resource development: Colstrip and the Roundup energy facility to the north, Decker Mines to the south, Sarpy Mine to the west and CBM to the east and south. The Tribe has a number of concerns about CBM development and other natural resource development near the Reservation.

Water Quality and Quantity

The Reservation is part of the Powder, Tongue, and Rosebud River basins. Water from CBM will be discharged into these basins. Millions of tons of water are required for CBM development. This water is high in sodium. The clay soil on the Reservation cannot absorb high-sodium water. Sodium also adversely impacts vegetation, especially culturally sensitive vegetation along waterways. Livestock can probably drink the water if it is not too high in sodium. Reservation communities are dependent on groundwater; CBM development will deplete ground water supplies.

The Tribe has applied to the federal government to be designated a "508 tribe". Under the Clean Water Act, an Indian tribe can receive TAS (treatment as a state) status. This allows the tribe to regulate all of the water within its borders. CSK is a 508 tribe and Fort Peck has also applied for TAS status. The NC Tribe has proposed water standards similar to the state's except for some slight numerical differences. However, the state is not recognizing the tribal standards. The state originally supported TAS for the Tribe, but the energy and political issues surrounding CBM changed the state's position. Now the state is challenging our TAS application. In addition, a major law firm in Washington, D.C. with Republican ties (Mark Racicot) is challenging TAS status for the NC Tribe.

Water quantity is also an issue. The Tribe is currently arguing with the state over whether CBM water is excess water under the reserved water rights agreement. The Tribe says it is excess water so they have a right to the water. The state says it is not excess water, so it is included in the original appropriation.

Air Quality

The Northern Cheyenne Reservation is a Class I airshed. The Tribe is concerned that dust from the off-reservation compressor plants, as well as sulfur dioxide and suspended particulates generated by other off-reservation development, will violate the Class I designation as well as impede the Tribe's ability to develop its own natural resources.

Reservation Impacts

The Tribe is concerned about the impacts on the Reservation of a transient population once CBM development (construction, pipelines, etc.) begins. Some areas of concern are infrastructure and law enforcement. We need to mitigate the impacts of off-reservation development. We need improved or increased access to state money for infrastructure needed because of resource development. The state should share with the tribes for the impacts of

resource development in the same manner that the state shares with cities and counties. Indians are citizens of this state and should receive the same benefits as other citizens.

Other Issues

Tribal cultural activities are not limited to the Reservation. There are many archaeological and historical areas of cultural significance off the Reservation.

Different tracts of land off the reservation have been transferred to the Tribe over the years. These lands are in trust status. In some cases, the Tribe owns both surface and mineral rights. In other cases, the federal government has retained the mineral rights. There is federal legislation pending that would allow tribes to receive royalties from these latter lands to help address development impacts. It would mean \$10 million per year for three years for the Northern Cheyenne. After three years, the tribes would receive a percentage of the royalties. Over a 10-year period, the NC Cheyenne would receive \$40 million.

The proposed Tongue River railroad is still an issue. It is all tied up with CBM development. The railroad would pass through the eastern edge of the Reservation, resulting in environmental and aesthetic impacts.

The Northern Cheyenne look at the long-term perspective with regard to economic development. Resource development is subject to a boom-and-bust cycle. The Tribe wants long-term, sustainable development.

The Committee asked what message it could take to the Legislature on behalf of the Tribe. The Tribe would like the state to honor the constitutional provisions regarding our natural environment and to give credence to MEPA. MEPA needs more teeth; that would alleviate many tribal concerns.

The tribal officials said that legislators and state agencies need to be educated on how the state and the tribes can form partnerships or negotiate agreements to address some of the challenges rather than resort to confrontation and litigation.

GROUNDBREAKING CEREMONY AND LUNCH

The Committee was invited to attend a groundbreaking ceremony for a new recreation area. There used to be softball fields and basketball courts on the north edge of Lame Deer, but that area was used for the new health clinic. Since 1999, there has been no recreational area for reservation residents. A cooperative venture of the Tribe, the BIA, and the IHS, this new complex will have softball and soccer fields and basketball courts. Eventually, the Tribe hopes to build horseshoe pits, picnic tables, walking trails, playgrounds, and concession stands so that the whole family can enjoy the complex.

The Committee ended its tour with lunch at the Shoulder Blade Center, a housing complex for elderly tribal members. During lunch, the Committee visited with tribal elders.

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