



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
JOSEPH TROPILA

HOUSE MEMBERS

GORDON HENDRICK
JOEY JAYNE
KEN PETERSON
JONATHAN WINDY BOY

COMMITTEE STAFF

PATRICIA MURDO, Lead Staff
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

October 16, 2007

Multi-Purpose Building
Crow Agency, 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.

An electronic copy of these minutes 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.

COMMITTEE MEMBERS PRESENT

SEN. FRANK SMITH, Chair
SEN. DONALD STEINBEISSER, Vice Chair

SEN. RICK LAIBLE
SEN. JOSEPH TROPILA

REP. GORDON HENDRICK
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED/ABSENT

REP. JOEY JAYNE
REP. JONATHAN WINDY BOY

STAFF PRESENT

PATRICIA MURDO, Lead Staff
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The State-Tribal Relations Committee:

- approved the June 15, 2007, meeting minutes as written;
- approved a letter in support of Congress acting to ratify the Crow Tribes' water compact;
- approved the revised work plan;

TAPE 1 - SIDE A

CALL TO ORDER AND APPROVAL OF MINUTES

SEN. SMITH called the State-Tribal Relations Committee to order at 2:10 p.m. in the Multi-Purpose Building. **John Pretty on Top** led a prayer in the Crow native language. Legislator and staff introductions were made and the audience of interested persons introduced themselves also.

REP. PETERSON **moved** to adopt the June 15, 2007, meeting minutes, as written. The **motion passed** on a unanimous voice vote.

PRESENTATIONS ON INDIAN GAMING ISSUES

Scott Russell, Crow Tribal Secretary, thanked the Committee for visiting the Crow people. He said that the gaming issue is of great concern to the Crow people because of the inequality between state and tribal gaming laws, mainly the number of machines allowed on reservations (700 total) versus state licensed machines (18,000). He said the Tribe wants to be at the table with the State of Montana on gaming issues. Mr. Russell said he has visited other reservations regarding gaming issues and is a member of the Montana Tribal Gaming Association, which was formed to address the disparity of machines allowed to tribes. He said that tribes have Class II gaming and want Class III and want to work with the State as Montana citizens to develop gaming on reservations. Mr. Russell closed his remarks by saying that he felt the visit had been productive and that it was his hope that the Committee had gained a better understanding of the Crow people as a sovereign nation.

Heather Whiteman Runs Him, Crow Legal Counsel, gave a PowerPoint history of Indian gaming in Montana (EXHIBIT #1). She discussed:

- the regulatory framework and creation of the Indian Gaming Regulatory Act (IGRA) in 1988;
- the three classes of gaming allowed under IGRA;
- post-IGRA developments in Indian gaming;
- the benefits of tribal gaming;
- disparities in Montana gaming;
- Montana's stake in keeping tribal gaming under wraps;
- a comparison of Montana's State-Tribal gaming compacts with Indian gaming compacts in other states; and
- potential solutions.

Mr. Russell said that Indian gaming benefits Montana and will be a large part of the future. He said he was elected Tribal Secretary to help his people and sees many opportunities for the Tribe but feels that restrictions by the State are holding the Tribe back from success. He discussed how the State of Michigan has used Indian gaming as a strong economic development tool and said that Montana should be able to do the same thing.

Andrew Huff, Governor's Indian Nations Council, (TAPE 1 - SIDE B) noted that he is Chippewa Cree tribal member. Mr. Huff discussed an October 11, 2007, memo from the Office of the Governor summarizing the current status of state-tribal Class III gaming compacts in Montana (EXHIBIT #2).

REP. PETERSON asked, under IGRA, if states and tribes can negotiate different and more extensive gaming on reservations than what is allowed in the State. Mr. Huff said no, the scope of gambling has to fall under what is allowed in the rest of the State.

SEN. LAIBLE asked what is the rationale for changing the terms of compacts and why there can't be more games with bigger pay outs. Mr. Huff explained that gaming licenses are limited to some degree by alcohol licenses, which are strictly regulated by population, and that the Governor is against the expansion of gambling, so the goal is to stay within the current limits set by the Legislature.

SEN. TROPILA said that alcohol licenses are limited to an \$800 pay out per machine. He asked why there are different pay out amounts for different machines. Mr. Huff said that IGRA was established for the purpose of tribal economic development. Indian gaming was given certain advantages for higher pay outs because there would be no economy advantage to tribes if pay outs were equal. SEN. TROPILA asked if it would behoove Ms. Whiteman Runs Him and Mr. Russell to appear before the Indian Gaming Advisory Council to request changes. Mr. Huff said it probably would. SEN. TROPILA asked Mr. Huff to arrange for that to happen.

SEN. LAIBLE asked Ms. Whiteman Runs Him asked how far apart the State and the Crow Tribe are in negotiations. Ms. Whiteman Runs Him said that the State's offers on numbers of machines and the limits on payoffs are very different from what the Tribe wants.

REP. PETERSON said that some states allow wide open Indian gaming and asked how that is allowed under IGRA. Mr. Huff said that most states did not have legalized or Indian gaming and could develop policy from the ground level. Because Montana had an established gaming industry when IGRA was passed, decades of law and policy already in place had to be considered.

Ms. Whiteman Runs Him discussed several difference between Indian gaming in Washington and Montana, and that Washington has agreed that tribes have exclusive rights to certain games. Montana law is the biggest hurdle to negotiations because there is great reluctance to make changes, she said.

Mr. Russell said that IGRA was designed to give economic advantage to tribes but that it did not take into consideration that some reservations are dry. He said alcohol makes a big difference and that someone would probably choose gaming in Hardin, where alcohol is available, over gaming on the Crow Reservation which is a dry reservation. This puts the Tribe at an economic disadvantage. Mr. Russell said the Crow Tribe doesn't necessarily want to serve alcohol but there could be a more level playing field if bigger pay outs were allowed.

Del Laverdure, Chief Legal Counsel, Crow Nation, said the main difference is that Montana treats Tribes like another private business, whereas other states treat Tribes as a sovereign government. He said Montana Tribes should have the right to open up Class III gaming but instead are treated like just another business license. Mr. Laverdure asked the Committee to

work to loosen up the State's definition of what is prohibited and said Class III games could be regulated, which would create real tools for economic development.

SEN. SMITH asked Ms. Whiteman Runs Him to comment on her perspective of the State's negotiation efforts. Ms. Whiteman Runs Him said from her perspective and experience on this issue in other states, that the State is not negotiating fairly.

REP. HENDRICK asked, since alcohol is not served on the Reservation, if pay outs would have to be higher in order to attract more people. Ms. Whiteman Runs Him said that was correct. REP. HENDRICK asked for a specific amount for pay outs. Ms. Whiteman Runs Him said she did not have a threshold number and that funding is not available for research to make that determination.

SEN. LAIBLE said it appears that the State has set the threshold of how many machines are allowed and what the limits are. He said the concern is that if the threshold is raised for one tribe, then all will want the same and that casinos with liquor licenses will be very opposed to changes because their perception is that the value of their license will be diminished if tribes are given more. He asked if there is any creative compromise to work around that issue. Mr. Huff said that there are some creative solutions and that he is not done negotiating with the Crow Tribe. He said he is trying to think of ways to bridge the gap. Ms. Whiteman Runs Him said she remains hopeful that a good solution will be found.

SEN. LAIBLE asked if the Crow people are prepared to offer suggestions for legislation that would accomplish their goals. Mr. Laverdure said that the Tribe has been asked repeatedly to be "creative" on creating economic development and other issues. He said in his opinion, this usually means a curtailment of the Tribe's rights as a sovereign government, which is frustrating to the Crow people. He said that historically, the Tribe has given and given and is now asking for its fair share and would like the Committee to consider the Tribe's position on this issue from that point of view. Mr. Laverdure said that Class III gaming legislation will be introduced in the 2009 session, in spite of a similar bill failing in the 2007 session. He said he is aware it will be opposed and noted that it is difficult for the Tribes because there is only one Indian representative on the Indian Gaming Advisory Board.

John Peterson, Regional Director, National Indian Gaming Commission, St. Paul Minnesota, reported that Indian gaming produces \$26 billion of gross gaming revenue in the United States and that \$4 billion of that amount comes from his nine-state region. Mr. Peterson said he would answer questions.

TAPE 2 - SIDE A

SEN. LAIBLE asked why Montana is in the situation it is in. Mr. Peterson said that Montana is not alone and that South Dakota and Wisconsin, for example, are dealing with similar issues. He briefly discussed several actions taken by those states to address problems. He said gaming on the Crow Reservation is what Indian gaming is all about because it is a small operation and is doing what it was intended to do, which is to promote economic development, provide employment for members, and to increase revenue for the tribe.

SEN. LAIBLE asked about the effect of internet gaming on the gaming industry, particularly on reservations. Mr. Peterson agreed that unregulated internet gaming is a problem and predicted that, eventually, action will be necessary to mitigate the effect.

SEN. TROPILA said that the tavern industry will oppose legislation to change gaming and pointed out that the Legislature will not meet again until 2009. He suggested the Crow Tribe begin working now with Mr. Huff, the Advisory Council, and Gene Huntington of the Gambling Control Division to attempt to deal with opposition. He said he thought the position of the Montana Tavern Association (MTA) could be changed if the Tribe started working with them now.

SEN. SMITH announced that the meeting materials will be available on the committee webpage: www.leg.mt.gov. He asked if there was any public comment. There was none. SEN. SMITH said the Committee would take a short break.

SEN. SMITH called the meeting back to order at 3:35 p.m.

INDIAN HEALTH ISSUES

Pete Conway, Billings Area Director, Indian Health Service (IHS), reported that there are 65,000 IHS users in Montana and that he works with tribal programs and communities on budget, programs, and eligibility issues. The Montana and Wyoming Tribal Leaders Council is a valuable resource and IHS also looks to the State of Montana as a partner in health care. Mr. Conway made several additional points, such as:

- Medicaid funding is critical to funding reservation programs;
- there is a big misconception that IHS provides full care to Indians;
- a key issue is eligibility requirements and greater understanding is needed regarding contract health service programs and what can be charged off to Medicaid; and
- recruitment and retention efforts of medical personnel are important because all are in short supply in Indian country.

Garfield Little Light, Billings Associate Area Director, IHS, thanked the Committee for the invitation to speak before the Committee on issues of concern to IHS. He discussed the Medicaid redesign of 2004 and said it included State recognition of the unique differences of the Tribes from the general population. He said it would be helpful for the Committee to look at IHS and the Tribes as different entities and said they collaborate on certain things but function separately.

Mr. Little Light said one of the goals in the redesign process was to try to identify how the Tribes could more easily access State and federal programs, such as overcoming geographical obstacles that affect access to care. Mr. Little Light referenced the final report from the *Montana Public Health Care Redesign Project, June 2004*, and said that Rep. Windy Boy's HB 452 incorporated some of what was in the redesign report. He noted that the Department of Public Health and Human Services (DPHHS) was given the responsibility to implement HB 452 and that of seven recommendations, only one has been implemented to date. He said that the recommendation implemented was a Chippewa Cree Tribe pilot project to administer its own Temporary Assistance to Needy Families (TANF) program.

Mr. Little Light also discussed a contract agreement with the State to share information about Medicaid to ease the billing process and services provided. He explained how the current system works and said he would like to extend the contract relationship to include the CHIP program. He discussed statistics of Indian children and said that many are not able to be enrolled in CHIP. He asked how or if changes could be done legislatively that would help.

Mr. Little Light said that many in attendance at the meeting could testify to the problems with IHS and noted that it is neither an insurance program nor an entitlement program. He said that Congress funds IHS based on the requirement that the Tribes are in compliance with federal regulations and that there is an expectation that Indians will use private insurance and Medicaid and Medicare benefits before using IHS. He explained how the base funding mechanism for IHS facilities is designed and said that cost of living and inflation is not taken into consideration, so the funding has steadily decreased from 80% to approximately 60% of need. (TAPE 2 - SIDE B) Mr. Little Light said that some patients have to be sent to Billings or out of state for more sophisticated medical diagnosis or treatment. The funding for this type of care is a line item appropriation from Congress and is not funded at the need level either.

Mr. Little Light discussed the gap between Medicaid funding and the actual amount needed and said the shortfall amounts to approximately \$1.2 million a year. He said that bills for contract care are still accumulating and that the shortfall for that program will not be known until November.

Mr. Little Light said there are certain actions that could be taken that could be of help and suggested that the Committee ask DPHHS to report on the status of recommendations contained in HB 452. Regarding the Chippewa Cree TANF pilot project, he said he has been assured by the State that a similar agreement can be reached for the Crow Tribe if it is willing to work with the State and the counties. Regarding Medicaid, Mr. Little Light said that a big reason that Medicaid applications are denied is many applications are incomplete and that contacting the applicant is difficult because many do not have good contact information. When staff has difficulty contacting the applicant, frequently the application is set aside and considered incomplete and denied. Mr. Little Light said he is working with DPHHS to find ways to improve this situation.

Ada White, Department Head of Crow Tribal Health Department, thanked the Committee for visiting the Crow Reservation and also thanked REP. PETERSON for his many years of service to the Crow people. Ms. White said her comments would be in response to those made by Mr. Conway and Mr. Little Light of IHS:

- contract health services and health care services in general have been woefully underfunded and allowing access to state-funded programs such as Women, Infants, and Children (WIC) and tobacco cessation programs would help;
- there is a lack of cultural sensitivity by program administrators and staff to those requesting assistance;
- there is difficulty in accessing programs and services because of transportation issues due to the fact that many program offices are not located on the reservation and require travel to Hardin; and
- there is a need for better communication between program staff and clients because many clients do not have the educational background to fully understand what they are being told and there is sometimes a language barrier as well.

Ms. White suggested that state programs provide onsite people to assist with some of these issues, including eligibility, and said that the tribal health staff are challenging themselves to better educate and improve their knowledge of the system in order to provide better care to their clients and to increase participation in these programs.

Ms. White said that tribal leadership is very interested in working to make services more available to the tribal population and specifically in creating a tribal insurance program. She asked IHS if it would be possible to use the current contract health service funds to purchase health insurance coverage for the Crow Tribe. There are some steps being taken to improve the situation but some creative thinking will be needed to find ways to make changes. Ms. White acknowledged that part of the problem has been the reluctance of the Tribe to work cooperatively with the State and federal governments but said this attitude is changing.

Mr. Little Light responded that contract funding cannot be used to fund insurance programs. Ms. White asked him to discuss how the Navajo Tribe was able to set up an insurance program. Mr. Little Light explained that the Navajo Tribe has a mechanism to self-insure and designed an insurance program that supplemented what is available through IHS. It is basically a catastrophic health insurance program and has experienced problems and the Navajos are trying to work these problems out.

Ms. White said that the tribal chair has been discussing the possibility of a joint agreement with the State for some type of health insurance.

Mr. Little Light said the State has the option of contracting out the CHIP program. He suggested the State could contract with the Tribes so that CHIP could be run through the Medicaid program which would get full federal match for Medicaid. This would help the State as well because it would not have to fund the state Medicaid share of 30%.

SEN. TROPILA asked if that is up to DPHHS to make that decision. Mr. Little Light said yes and explained how it could be done through a waiver process.

SEN. SMITH asked if the Tribes did insure its people, if the money would stay with the Tribe or would it go to a different department. Mr. Little Light said that issue is still being ironed out but **TAPE 3 - SIDE A** any extra savings would stay with the reservation.

TAXATION ISSUES

Del Laverdure, Chief Legal Counsel, Crow Tribal Council, said he has worked on Indian tax issues for eight years and hopes to work with the Montana 2009 Legislature on taxation issues affecting the Crow Tribe. He gave a PowerPoint presentation, "*TAXATION OF TRIBES BY THE STATES*" (EXHIBIT #3) which included:

- several quotes relating to state taxation of Tribes;
- an overview of government and taxes;
- federal, state, and local tax revenues between 1800 -2000;
- Montana tax revenues for fiscal years 2006-2009;
- a Montana budget summary;
- an in-depth discussion of Montana's government budget for FY 2009;
- public perception today regarding tribal governments and taxes;
- Indian tax law thesis;;
- a discussion of historical cases relating to Indian taxation;
- federal Indian policy, dating back to 1492;
- maps showing Indian land ownership and resource ownership at various periods in American history;
- federal Indian law as applied to the Crow Nation;
- modern court cases involving Indian taxation issues;

- judicial determination during the Indian self-determination era, dating 1970 - now; and
TAPE 3 - SIDE B;
- a conclusion and summary.

SEN. LAIBLE asked about the Native American economic impact on surrounding communities and if Mr. Laverdure thought the Crow Tribe should receive a portion of that revenue back. Mr. Laverdure said that taxable activities on reservations usually are split with the state and that it seemed fair to him that the reverse should be true. He suggested a compact could be designed to share off-reservation created by the Crow Tribe between for example, the City of Billings and the Crow Tribe. In response to a question from SEN. LAIBLE regarding revenue created by the Crow Tribe, Mr. Laverdure said the Crow people should decide what revenue goes where within the reservation, that there would be a tax but the Crow should decide how much, and would result in a more solid Crow economy.

SEN. LAIBLE asked how much revenue leaves the reservation that shouldn't, in Mr. Laverdure's opinion. He cautioned that some would say that if the Crow Nation wants the revenue, then it would also have responsibility for all of the costs that the State now pays. Mr. Laverdure said the economic situation on the Crow Reservation could not get any worse than it is currently. He said that while he is reluctant to do it, the Tribe is in active negotiations for revenue sharing for oil and gas taxes because of the dire need for revenue. He also discussed the cigarette tax, saying that cigarette tax revenue generated on the Reservation should stay on the Reservation. SEN. LAIBLE asked for an estimate of what amount leaves the Reservation. Mr. Laverdure said almost everything leaves the Reservation and supports the Hardin and Billings economies.

REP. PETERSON commented that the reason Billings doesn't have a resort tax is because the outlying communities would probably want a share of that tax, since much of it would be generated by people from those areas. He asked if Mr. Laverdure was asking to share in those type of revenues. Mr. Laverdure said that the Crow people generate a great deal of revenue that benefits other communities and that none of it ever comes back to the Reservation, adversely affecting the Crow people. Services are not being provided and needs are not being met under the current tax structure.

REP. PETERSON discussed federal law regarding civil jurisdiction over Indian Tribes, should the tribe elect to do so. He gave the example of the Salish-Kootenai Tribe, which elected to have civil law enforcement provided by the county. He said if the Crow Reservation wants those type of services, it could elect to do the same thing. Mr. Laverdure said that his opinion is that the Crow Tribe can perform those services as well as anyone and just wants the revenue to staff and provide those services. The Tribe does not want to opt for another government to provide services and does not want to give up any authority. REP. PETERSON said that Crow members have been elected to the Big Horn County Commission and that the current Big Horn County Attorney is a Crow member. He suggested that if an agreement were to be reached, the county officials who are also Crow members could make sure that cultural sensitivity and other issues of importance are addressed. Mr. Laverdure said Big Horn County has been reluctant to deal with the Crow people for so long that the Crow people finally said "enough", and voted to fill these positions. He noted that this has been a very recent development.

REP. PETERSON asked how the issue of Indian tax inequity can be addressed legislatively. Mr. Laverdure said a bill was introduced in the 2007 Legislature to exempt tribally owned fee lands within a reservation from state and local taxes. He said the bill came close to being

passed and the needed changes could have easily been made, but were not, so the bill died. He said that bill may be resurrected and that other options, such as income tax for those working on tribal governments, may be pursued.

TAPE 4 - SIDE A

LAND AND AGRICULTURAL ISSUES

Jeremy Not Afraid, District Conservationist, Natural Resource and Conservation Service (NRCS), Crow Agency Field Office, presented a PowerPoint presentation on agricultural topics of concern and interest (EXHIBIT #4). Mr. Not Afraid discussed:

- the Environmental Quality Initiative Program (EQIP) Program on the Crow Reservation;
- the Crow Reservation Special Initiative for rangeland protection;
- cost-shared practices;
- and previous projects with the Crow Tribe.

Mr. Not Afraid also discussed Conservation Districts and how the Districts impact the Crow Reservation. He said under tribal law, the Tribal Conservation Districts do not have access to DNRC grants and other funding sources. He asked the Committee to look into this on behalf of the Tribe.

SEN. SMITH said Rep. Windy Boy carried a bill to allow this but it failed. He said it may be time to try again. Mr. Not Afraid said he would like to help.

TELECONFERENCE UPDATE ON WATER POLICY COMMITTEE

Krista Lee Evans, Lead Staff, Water Policy Interim Committee (WPIC), provided a history of WPIC and how it was created by HB 304 in the 2007 Regular Session. Ms. Murdo handed out copies of HB 304 (EXHIBIT #5) and copies of agendas from past WPIC meetings (EXHIBIT #6) and copies of the WPIC Work Plan (EXHIBIT #7). Ms. Evans said HB 304 is very detailed and specific in the duties and expectations of WPIC. She discussed committee activities to date:

- committee members have spent a significant amount of time educating themselves on issues;
- the Work Plan has been adopted and contains an aggressive meeting schedule, necessary to get a solid knowledge on which to base good decisions;
- the goal is to establish priorities on how to spend the remaining committee time and resources at the next meeting;
- the first meetings were held in closed basin areas for the purpose of gathering information and taking public comment, but the remaining meetings will probably be in Helena; and
- topics for the next meeting will include well issues, particularly exempt wells, and water.

In response to a question from Ms. Whiteman Runs Him regarding tribal water compacts, Ms. Evans said WPIC has no oversight or involvement in the tribal water compacting process. She said she does receive updates on tribal water compacts as a courtesy from the tribes and provides them to WPIC members for informational purposes only.

SEN. LAIBLE asked if the WPIC plans to consider the issue of water augmentation and recharge, and the impact of overgrown forested lands that are taking up a great deal of water from the aquifer. Ms. Evans said that those issues are not included in the Work Plan and noted that while there are many water issues facing the State, WPIC has a very specific scope of study.

Ms. Whiteman Runs Him asked if WPIC is looking at abuses of exempted uses, which have a substantial impact on water resources, particularly in closed basins. Ms. Evans said WPIC is studying that issue, which includes exempt wells. (TAPE 4 - SIDE B) She noted that senior water rights holders will be the focus of a meeting in Choteau. Ms. Evans said a second issue that ties in with Ms. Whiteman Runs Him's concern is enforcement and how DNRC enforces existing permits. She said that there is a difference of opinion on whether there should be more or less enforcement. If more enforcement is needed, then DNRC will need additional staff. She discussed options that will be considered by WPIC.

REP. PETERSON asked if WPIC is meeting with any of the Tribes relating to water compacts and water issues. Ms. Evans said that WPIC asks the Reserve Water Rights Compacts Commission, which negotiates water rights for the State through the Governor's Office, for updates on the water compacts under negotiations because the WPIC Chair feels it is appropriate to have that information. Beyond that, WPIC has not considered becoming a more active player in that process.

Ms. Whiteman Runs Him addressed the Committee regarding water issues, primarily the Crow Tribe's concerns regarding ongoing efforts to secure water rights on the Reservation, using a PowerPoint presentation of Montana/Crow Water Compact (EXHIBIT #8). Ms. Whiteman Runs Him's presentation included:

- a history of the Montana/Crow Compact, ratified by the Montana Legislature in 1999;
- specific information regarding the tribal water right;
- details of the Montana/Crow Water Compact;
- streamflow plan target flow rates;
- federal ratification;
- federal contribution; and
- a request for support from the Montana Legislature in gaining federal ratification of the water rights settlement.

SEN. SMITH asked if a letter from the State-Tribal Relations Committee would be of help. Ms. Whiteman Runs Him said a letter would be great help. SEN. TROPILA asked why ratification has not occurred yet. Ms. Whiteman Runs Him said changes in tribal leadership and other issues have held up ratification. SEN. TROPILA **moved** that SEN. SMITH draft a letter to Congress in support of ratification of the compact.

REP. PETERSON said he had occasion recently to review a court case dealing with the Big Horn River and said it is his understanding the United States government ceded all its water rights to the State of Montana when the State was formed. He asked how the need for water compacts evolved if the federal government gave up its water rights. Mr. Laverdure said in close reading of that case, the federal government has authority to regulate a navigable stream, under the interstate commerce clause. He said that all property within states, when created, became property of the state at the time. Tribal property rights were ignored and the State was given title to the river beds. The issue of who owned the water was not addressed and is still in question, so the State of Montana owns the riverbed but not the actual water.

REP. PETERSON asked, regarding water law, if it was tribal, state, or federal water law being discussed. Ms. Whiteman Runs Him said what was being discussed is a settlement compact, so there has been no actual determination of law. Under the terms of the compact, the tribal rights would be regulated by a tribal water office under a tribal water court. The State uses

would be regulated by the state office and a Dispute Resolution Board would be set up to address disputes.

TAPE 5 - SIDE A

REP. PETERSON asked how nontribal water use could be affected. Ms. Whiteman Runs Him said nontribal waters users would be affected also. REP. PETERSON asked if all properties on the Reservation are entitled to use water and have the same rights. Ms. Whiteman Runs Him said that as of 1999, a level playing field was established. REP. PETERSON said he noticed a plan to purchase select non Indian land and asked if that purchase would be negotiated or eminent domain would be used. Ms. Whiteman Runs Him said a purchase would have to be negotiated. Mr. Laverdure said water law can be divided into two different categories of riparian water law and beneficial use law. He explained that the compact is basically an opt out provision from western water law and gives the non Indians rights they would not otherwise be entitled to.

REP. HENDRICK asked how much land the Tribes plan to purchase as mentioned in the compact, and if negotiations have begun. Mr. Laverdure said the plan is to purchase several thousand acres in select areas that would help prevent problems with rights of way in the future.

Pat Riley, DNRC, said he has been involved in the water compacting process since 1999 and discussed the types of land being looked at for purchase. He said that DNRC has worked closely with the Crow Tribe on water issues and that it was very significant that the Tribe allowed the State to elevate its water rights to equal status to their 1850 priority date to ensure the State's existing uses were covered. He said the issue of administration of non tribal lands on the Reservation is very complicated and will become even more complicated when the Tribe gets its own water codes.

The **motion** to send a letter of support for the compact to Congress passed on unanimous voice vote.

PUBLIC COMMENT

No public comment was given.

REVIEW / ADOPT WORK PLAN AND NEXT MEETING DATE IN JANUARY

Ms. Murdo said the Committee must adopt a work plan. SEN. STEINBEISSER **moved** to adopt the work plan, as revised at the June meeting. The **motion passed** on a unanimous voice vote.

Ms. Murdo said the next meeting date is set for January 16 and 17, 2008, and that she would invite all tribes to attend and that Corrections issue of identification for released prisoners would be on the agenda.

Ms. Murdo reminded the Committee that it was to meet with the Crow Legislature at 9 a.m. the next day.

Ms. Murdo read press releases announcing Department of Commerce awards for tourism projects on the Rocky Boy and Fort Belknap reservation and the appointment of a new Indian Affairs Coordinator (EXHIBIT #9 and EXHIBIT #10).

SEN. TROPILA relayed a message of thanks from the Little Shell Chippewa Tribe to the Montana Legislature for its assistance to the Tribe in procuring a building and acreage in order to achieve official recognition from the federal government.

ADJOURNMENT

With no further business before the Committee, the meeting was adjourned. The State-Tribal Relations Committee will meet next in January of 2008, in Helena.

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