

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Monday, June 25, 2012

Tribal Council Chamber, Mandan, Hidatsa, and Arikara (MHA) Nation Administration Building
404 Frontage Road
New Town, North Dakota

Senator David O'Connell, Chairman, called the meeting to order at 10:15 a.m.

Members present: Senators David O'Connell, Richard Marcellais, Donald Schaible; Representatives Kenton Onstad, Wayne Trottier

Members absent: Senator Robert Erbele; Representative Jim Kasper

North Dakota Tribal Governments' Task Force members present: Scott J. Davis, Executive Director, Indian Affairs Commission; Tex G. Hall, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation

North Dakota Tribal Governments' Task Force members absent: Charles Murphy, Chairman, Standing Rock Sioux Tribe; Merle St. Claire, Chairman, Turtle Mountain Band of Chippewa Indians; Robert Shepherd, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; Roger Yankton Sr., Chairman, Spirit Lake Tribe

Others present: See [Appendix A](#)

It was moved by Senator Marcellais, seconded by Representative Trottier, and carried on a voice vote that the minutes of the March 26, 2012, meeting be approved as distributed.

Chairman O'Connell introduced Mr. Hall. Mr. Hall welcomed the committee members to the Fort Berthold Reservation. Issues of concern to the tribe, he said, include oil and gas development on the reservation, law enforcement issues, and tribal identification issues. He said the tribal enrollment office would like to see the state of North Dakota recognize tribal identification documents for state identification purposes.

Mr. Hall discussed adjustment of the tribal-state oil and gas tax agreement. A copy of his written comments is attached as [Appendix B](#). He said the agreement was positive in that it established one taxation system for oil and gas produced within and outside the reservation. However, he said, the agreement should be adjusted as it has become apparent in the operation of the agreement that the distribution of tax revenues under the agreement is inequitable. He said the agreement should provide the tribe with the same 80 percent of revenue for trust land that the state receives for non-trust land on the reservation. He said with these revenues, the tribe can support energy development and economic activity that will benefit the region as well as the state.

Mr. Hall said the Three Affiliated Tribes charges a drilling fee of \$100,000 per well for wells drilled within the exterior boundaries of the Fort Berthold Reservation. He said the tribe uses the revenue generated by this fee to offset the impact of oil and gas development on the reservation.

Chairman O'Connell recognized Mr. Davis. Mr. Davis noted that tribal entities are not eligible to participate in oil and gas impact grants. He said this issue must be rectified.

Mr. Hall said the concept of one uniform tax for the oil and gas industry is good, but the agreement is not equitable. He said that money received pursuant to the agreement best used for tribal job training and other programs is being diverted for transportation infrastructure damaged by oil and gas development. He urged the committee to support revisiting the agreement. If the agreement is not revised, he said, the tribe must consider exercising its opt-out options and enacting its own oil and gas tax scheme.

It was moved by Senator Marcellais, seconded by Representative Trottier, and carried on a voice vote that the Legislative Council staff be requested to work with tribal representatives and the Indian Affairs Commission on a revision of the legislation governing implementation of the oil and gas tax agreement.

HYDRAULIC FRACTURING

Chairman O'Connell recognized Mr. Robert B. Shaver, Director, Water Appropriations Division, State Water Commission, who reviewed water availability for oil and gas development in North Dakota, the status of water depot permit applications, and issues with the Corps of Engineers for access to Lake Sakakawea water. A copy of Mr. Shaver's presentation is attached as [Appendix C](#). He said the State Water Commission is concerned about trends in water level declines of the Fox Hills aquifer. He noted the Fox Hills aquifer is an important water source, and every effort should be made to develop large scale ground water supplies from other sources to reduce the effect on the aquifer.

Concerning the Corps of Engineers, Mr. Shaver said the State Water Commission is opposed to paying an excess storage fee for natural flows that are waters of the state. He said the issue is being

reviewed at the federal level but has not been resolved.

Mr. Shaver said the State Water Commission is committed to getting sufficient water to the western oilfields. However, he said, the bottleneck is the availability of fracing crews and not the availability of water. He said he is hopeful that water can be more efficiently delivered to the oilfield to remove over-the-road truck traffic. He said the best alternative for achieving this objective is developing water pipelines.

Chairman O'Connell recognized Mr. Jon C. Patch, Staff Hydrologist, State Water Commission. Mr. Patch discussed the status of water permits and applications for western North Dakota and the oil and gas industry. A copy of his presentation is contained in [Appendix C](#).

FEDERAL EMERGENCY MANAGEMENT AGENCY

Chairman O'Connell recognized Mr. Davis. Mr. Davis briefed the committee on availability of Federal Emergency Management Agency (FEMA) trailers that are being vacated in Minot. He said as residents return to their homes in Minot, the trailers used by them are becoming available. He said he is working with FEMA to obtain these trailers for use on the state's reservations. He said he has encountered some difficulties, and it would be appreciated if the committee would draft a letter of support for his efforts.

Chairman O'Connell recognized Mr. Yancey Lovelace, F & S Environmental LLC. Mr. Lovelace said his organization has expertise in transferring ownership of FEMA trailers to other public and private entities.

Chairman O'Connell recognized Mr. Arnie Strahs, Mandaree Segment, Three Affiliated Tribes Tribal Council. Mr. Strahs noted that even if the tribe is able to obtain FEMA trailers, there is no place to put them. He said the trailers will need utility hookups in order to be usable, and the Fort Berthold Reservation is lacking places to locate these trailers.

It was moved by Senator Marcellais, seconded by Senator Schaible, and carried on a voice vote that the Chairman of the Tribal and State Relations Committee, with the approval of the Chairman of the Legislative Management, send a letter to FEMA in support of the efforts of the Indian Affairs Commission to obtain vacated FEMA trailers for use on the reservations in the state.

INDIAN EDUCATION

Chairman O'Connell recognized Mr. Robert Marthaller, Assistant Superintendent, Department of Public Instruction. Due to the restructuring of a vacant position, Mr. Marthaller said the department is establishing a Director of Native American Education within the department. He said this position will be at a director level within the department.

Mr. Marthaller distributed a document ([Appendix D](#)) regarding a community framework in support of native youth.

Mr. Marthaller introduced Mr. Greg Gallagher, Director, Standards and Achievement, Department of Public Instruction, who reviewed the document.

Mr. Marthaller said research has revealed that there is a low level of student performance in certain areas of Indian country. However, he emphasized, the performance is based on location and not the students. In addition, he said, research reveals improvements are possible. He said the proposal for action establishes a competitive pilot grant to advance two primary priorities. He said these priorities are to provide integrated school-based and community-based educational, health, and social support services for identifying at-risk students and their families to aid these at-risk students in meeting the goal of postsecondary success and success in life and to institute local governance partnerships and service delivery models that enhance, support, and sustain an environment where local service providers can identify specific community needs, develop measurable plans, and implement activities to aid at-risk students and their families. He said the proposed pilot grant attempts to address both individual student needs of identified at-risk American Indian students and the structure and efficiency of local service provision by the various public and private agencies that exist to support students and their families. He said the primary outcome hoped to be achieved is increased self-sufficiency of students and their families and the sustainability of local collaboration efforts. He said the Department of Public Instruction is available to assist the committee in drafting a bill with a supporting appropriation to advance the proposal.

In response to a question from Senator O'Connell, Mr. Gallagher said that in order to make a meaningful impact, the grant would require a \$500,000 appropriation.

Chairman O'Connell recognized Mr. Strahs. Mr. Strahs said rather than one competitive grant, grants should be made available to each Indian nation located in the state. He said this would be a more equitable way of establishing grants to enhance student achievement.

It was moved by Senator Marcellais, seconded by Representative Onstad, and carried on a voice vote that the Legislative Council staff work with the Department of Public Instruction to prepare a bill draft to establish the grant program.

GOVERNMENT-TO-GOVERNMENT RELATIONS

Chairman O'Connell recognized Mr. Mark Fox, Finance Director, Tribal Tax Department, Three Affiliated Tribes. Mr. Fox reviewed several issues of importance to the Three Affiliated Tribes. He said the first issue concerns state recognition of tribal

identification documents. He said the tribe is anxious to meet any concerns the state has in recognizing tribal identification documents for state purposes.

Senator O'Connell suggested Mr. Fox work with the Department of Transportation Motor Vehicle Division to address any concerns it might have in recognizing tribal identification documents.

Mr. Fox said another area of concern to the tribe is law enforcement. He said the tribe would like to enter joint agreements for law enforcement with state entities. He said with oil and gas development, criminal activity on the reservation has increased, and the tribe would like to pursue all options in addressing these issues. He said the Highway Patrol has a large presence on the reservation, but county law enforcement resources are lacking.

Chairman O'Connell recognized Mr. Fred Poitra, Game and Fish Director, Three Affiliated Tribes. Mr. Poitra reviewed several game and fish issues of concern to the tribe. He said the reservation is included in two hunting units. He said it would be better if the entire reservation consisted of one hunting unit for game and fish purposes. Concerning fishing licenses, he said, tribal and state fishing licenses should be reciprocal.

Chairman O'Connell recognized Mr. Fox. Mr. Fox said the tribe would like to see the Corps of Engineers recognize the tribe's improved capability to

manage recreational areas within the external boundaries of the reservation owned by the corps.

STAFF DIRECTIVES

Senator Schaible requested the Legislative Council staff invite representatives of the Tax Department to discuss oil and gas tax revenues generated from trust and non-trust lands on the Fort Berthold Reservation at a future meeting.

Senator Marcellais requested the Legislative Council staff invite the Commissioner of Veterans' Affairs to appear at a future meeting and address placement of veterans' service officers on each of the state's reservations.

Senator Marcellais requested the Legislative Council staff invite the Director of the Department of Transportation to appear at a future meeting to address transportation issues on the state's reservations.

No further business appearing, Chairman O'Connell adjourned the meeting at 2:55 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:4