

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

NATURAL RESOURCES COMMITTEE

Wednesday, December 3, 2003
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative John Warner, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives John Warner, Arden C. Anderson, Tracy Boe, Glen Froseth, Lyle Hanson, Gil Herbel, Darrell D. Nottestad, Todd Porter, Dorvan Solberg; Senators Bill L. Bowman, Ronald Nichols

Members absent: Representatives LeRoy G. Bernstein, Scot Kelsh; Senators Robert S. Erbele, Michael Polovitz

Others present: See Appendix A

It was moved by Representative Nottestad, seconded by Representative Solberg, and carried on a voice vote that the minutes of the August 5, 2003, meeting be approved as distributed.

DEVILS LAKE OUTLET

Mr. Dale L. Frink, State Engineer, addressed the committee. A copy of his written comments is attached as Appendix B. He discussed the Devils Lake Outlet and the Northwest Area Water Supply Project.

In response to a question from Representative Warner, Mr. Frink said a sand filtration system for the Devils Lake Outlet is no longer under consideration. He said a sand filter would remove fish and fish eggs but would not remove viruses or other pathogens from the water. In response to a further question from Representative Warner, Mr. Frink said Canadian officials are opposed to any interbasin transfer of water, including transfers that would be made by the Northwest Area Water Supply Project.

In response to a question from Representative Herbel, Mr. Frink said Devils Lake is flowing into Stump Lake which is helping to stabilize the level of Devils Lake. He said Stump Lake has risen approximately four feet and is currently at a level of 1,415 feet mean sea level. He said at a level of 1,457 to 1,459 feet mean sea level, Devils Lake will overflow into the Sheyenne River.

In response to a question from Representative Hanson, Mr. Frink said the proposed Devils Lake Outlet will lower Devils Lake approximately four inches per year. He said the major constraint on the amount of water that may be taken from Devils Lake is the quality of water. Thus, he said, the State Water Commission is reviewing other options in

conjunction with the outlet to relieve flooding in the Devils Lake Basin.

In response to a question from Senator Nichols, Mr. Frink said the estimated cost of operating the state outlet is \$1 million per year and the cost of operating the federal outlet is estimated to be \$3 million to \$4 million per year.

TRIBAL GAME AND FISH COORDINATION STUDY

At the request of Chairman Warner, committee counsel presented a background memorandum regarding the committee's study of proposed legislation permitting the Game and Fish Department to coordinate with game and fish programs conducted by tribal governments. The memorandum discusses state ownership of wildlife, regulation of game and fish in Indian country, the Game and Fish Department's position paper on hunting and fishing within the external boundaries of North Dakota Indian reservations, and state-tribal cooperative agreements. Committee counsel also distributed a packet of state-tribal game and fish cooperative agreements entered by various states and tribes, copies of which are on file in the Legislative Council office.

Senator Ronald Nichols, District 4, addressed the committee. He said Senate Concurrent Resolution No. 4022 (2003) was introduced to resolve state-tribal game and fish issues, including the issuance of licenses, the transportation of game animals off reservations, the beginning and ending of seasons, and which entity has jurisdiction on different types of land.

Mr. Roger Rostvet, Deputy Director, Game and Fish Department, addressed the committee. He discussed state-tribal game and fish issues and distributed a question and answer sheet containing questions about hunting on reservation land. A copy of the question and answer sheet is attached as Appendix C.

Mr. Rostvet said Indian game and fish issues are very complex and are governed by federal law, treaties, and other agreements. Thus, he said, Indian game and fish issues must be reviewed on a reservation-by-reservation basis. Some reservations, he said, notably in the Southwest, are virtually closed with no in-holdings while other reservations, such as those in North Dakota, have privately held lands

located within the external boundaries of the reservation. He said these privately owned areas are subject to state regulation.

In response to a question from Representative Froseth, Mr. Rostvet said Game and Fish Department wildlife surveys include wildlife within the state's reservations.

In response to a question from Senator Bowman, Mr. Rostvet said tribal members do not need state licenses to hunt on tribal land while nontribal members need state licenses to hunt on tribal land, just as they do to hunt on private land or federal land.

Mr. Rostvet said the Game and Fish Department has several concerns with the current status of hunting on the state's reservations. He said these include the dual-licensing system, the status of nontribal members hunting within reservations, and the differing seasons between the reservations and the rest of the state. He said dual-licensing systems are expensive to establish and are unpopular with the public because most hunters do not want to purchase two licenses. Also, he said, there are certain provisions of state law that restrict the areas in which the department can enter memorandums of understanding with the tribes. He said these restrictions include the prohibition of the issuance of wild turkey licenses to nonresidents and the limitation on the number of deer licenses that can be issued to nonresidents.

In response to a question from Representative Nottestad, Mr. Rostvet said the department has had discussions with tribal leaders on developing a single state-tribal cooperative agreement, similar to the state-tribal gaming compact, that would be uniform for the state and the tribes. However, he said, developing a uniform agreement is very difficult because of the different federal laws and treaties governing each tribe, the different tribal game and fish codes, the different ways in which land is held within the external boundaries of the different reservations, and differing tribal goals and objectives for tribal game and fish programs. In sum, he said, it would be very difficult to draft a uniform agreement that fits the concerns of each individual tribe.

In response to a question from Representative Warner, Mr. Rostvet said the state Game and Fish Department recognizes tribal licenses issued to tribal members. However, he said, the state does not recognize tribal licenses issued to nonmembers. In response to a further question from Representative Warner, he said, an animal taken in another state with a valid license and transported through North Dakota is legal while an animal taken by a nonmember without a state license on a reservation and transported across North Dakota is illegal because the nonmember does not have a valid state-issued license. He said tribal members may transport game off-reservation because the state recognizes tribal licenses issued to tribal members.

In response to a question from Representative Hanson, Mr. Rostvet said the State of South Dakota recognizes Standing Rock Sioux Tribe tribal licenses in exchange for the tribe granting the state access to the Missouri River across tribal land.

Mr. Arlen Gilbertson, Parshall, addressed the committee. He said he owns land in fee within the northeast quadrant of the Fort Berthold Indian Reservation. He said he operates a bed and breakfast operation and that dual licensing is a problem. He said the state should recognize tribal licenses issued to nontribal members who hunt on Indian trust land.

Mr. Michael Swallow, Standing Rock Sioux Tribe, Fort Yates, addressed the committee. In response to an earlier question from Representative Hanson, Mr. Swallow said the Standing Rock Sioux Tribe does not have any state-tribal game and fish agreements with the State of South Dakota. However, he said, South Dakota recognizes Standing Rock Sioux Tribe game licenses and tags issued by the tribe and does not prosecute nontribal members who take game on the reservation and transport the game off the reservation as long as it is properly tagged. He said the Standing Rock Sioux Tribe is willing to work with the state but questioned whether the state is interested in reaching an accord or cooperative agreement concerning game and fish issues. He said the threat of prosecution of nontribal members transporting game off the reservation has a serious economic impact on the tribe. He said the tribe has adopted a comprehensive game and fish code that is very similar to the state's code which regulates the taking of game by both members and nonmembers on the reservation. He said tribal game and fish law recognizes state tags and out-of-state tags while North Dakota law does not recognize tribal tags. He said North Dakota Century Code Sections 20.1-04-06 and 20.1-05-03 should be amended to allow properly tagged game taken on Indian trust land to be possessed, transported, or shipped in the state.

Mr. Jesse Taken Alive, tribal council and former chairman, Standing Rock Sioux Tribe, Fort Yates, addressed the committee. He distributed a copy of the *Year of the People Accord Between the Standing Rock Nation and the State of North Dakota*, a copy of which is attached as Appendix D. He said the tribe wishes to work cooperatively with the State of North Dakota to resolve differences concerning game and fish issues. He urged the state to recognize tribal game and fish licenses and tags issued to both members and nonmembers.

Mr. Randy White, tribal council, Standing Rock Sioux Tribe, Porcupine, addressed the committee. He said the state should recognize tribal game and fish licenses just as it honors licenses issued by other states. He said the Standing Rock Sioux Tribe has a full-time game and fish staff that professionally manages game and fish resources on the reservation.

Mr. Archie Fool Bear, Standing Rock Sioux Tribe, Fort Yates, addressed the committee. He said the state must remember that each of the tribes in North Dakota and the reservations within North Dakota are different and have different concerns because of the areas in which they are located and the treaties under which they were created. He said the tribes are sovereign entities and the state should recognize tribal game and fish licenses.

Mr. Tex Hall, Chairman, Mandan, Hidatsa, and Arikara Nation, and Chairman, National Congress of American Indians, New Town, addressed the committee. He distributed a draft *Memorandum of Understanding Between the Three Affiliated Tribes Fish and Game Department and the North Dakota Game and Fish Department*, a copy of which is attached as Appendix E. He said game and fish issues are very important to the economy of the Three Affiliated Tribes and the tribe wishes to work cooperatively with the State of North Dakota to promote this resource. He said the tribe's game and fish resource is professionally managed by the tribe's Game and Fish Department and the right to hunt and fish on the reservation was guaranteed by the Fort Laramie Treaty of 1851. He said the tribe believes that the reservation of game and fish rights on the reservation not only guarantees tribal members the right to hunt and fish on tribal lands but, as an attribute of tribal sovereignty, allows the tribe to issue nonmembers licenses to hunt on tribal trust lands. He said hunting opportunities on the reservation are very important economically to the tribe and its members. He said the tribe's hunting regulations are comparable to the state's and in some instances tribal taking limits are more stringent than those imposed by state regulations. He said the tribe would like to avoid an adversarial relationship with the state over game and fish issues and work cooperatively with the state as it has on Missouri River issues.

In response to a question from Representative Hanson, Mr. Hall said game and fish issues are different from gaming issues and although the general principles in a uniform or standard memorandum of understanding between the tribes and the state may be beneficial, each agreement would have to be carefully tailored to meet the concerns of each individual tribe.

In summary, Mr. Hall said, the proposed memorandum of understanding recognizes tribal sovereignty as well as state game and fish laws and regulations and provides for a dual license for tribal lands with a state license at no cost and a tribal license at cost which would solve the problem of transportation of game taken on tribal trust lands off the reservation.

In response to a question from Senator Bowman, Mr. Steve Kelly, attorney, Three Affiliated Tribes, New Town, said the tribe asserts complete jurisdiction over all hunting on tribal trust lands and over tribal members hunting on nontrust lands within the exterior boundaries of the reservation.

Mr. Kade Ferris, Director, Natural Resources Department, Turtle Mountain Band of Chippewa, Belcourt, addressed the committee. He said the tribe's Natural Resources Department conducts archaeological and historic preservation activities, dam safety programs, a bison management program, a geological information systems program, mineral resources program, and a game and fish management program. He said the tribe's game and fish management program is managed pursuant to a comprehensive tribal game and fish code adopted in 2002. He said the 2002 code supersedes a code first adopted in 1942, one of the earliest game and fish codes in Indian country. He said the tribe works cooperatively with the United States Fish and Wildlife Service, Bureau of Indian Affairs, and the United States Department of Agriculture as well as other state and federal agencies. Unique among North Dakota reservations, he said, the Turtle Mountain Band of Chippewa owns trust lands in nine counties--Rolette, Cavalier, Ramsey, McHenry, McLean, Mountrail, Burke, Divide, and Williams Counties.

Mr. Ferris said the tribe has taken steps to allow its members to hunt off-reservation on tribal trust land and have the Game and Fish Department recognize these licenses and allow tribal members to transport game taken on off-reservation tribal land. One example of cooperation, he said, is the tribe has mapped all of its trust lands and it would like to have these maps included in the Game and Fish Department's private land open to sportsmen (PLOTS) guide to indicate that these lands are tribal lands closed to hunting to nontribal members.

Cooperative activities that he would like to see, Mr. Ferris said, include law enforcement training for tribal natural resources staff at the North Dakota Law Enforcement Academy, cotraining of program staff at Game and Fish Department trainings and inservice programs, biological and other technical assistance from the Game and Fish Department, publication of the location of tribal trust land in the PLOTS guide, and programming and technical agreements.

Mr. Mervin Packineau, Vice Chairman, Mandan, Hidatsa, and Arikara Nation, Parshall, addressed the committee. He said he represents the Lucky Mound area of the northeast quadrant of the Fort Berthold Indian Reservation which actually has more fee land than tribal trust land. He said the tribe opposes dual licensing and is only proposing a state license at no fee and a tribal license at a fee until the 59th Legislative Assembly can resolve the issue in 2005. He said the state should recognize tribal licenses for game taken on tribal trust land. He urged the committee to recommend resolution of state-tribal game and fish differences by supporting the agreement proposed by the Three Affiliated Tribes as one of the committee's findings.

In response to a question from Representative Warner, Mr. Packineau said it would be virtually

impossible for the tribes to reach agreement on one agreement that could be presented to the state because of the different issues of concern to each tribe. In order to cover all differences, he said, the agreement would have to be so broad as to be essentially unworkable.

Mr. Todd Hall, Director, Game and Fish Programs, Mandan, Hidatsa, and Arikara Nation, New Town, addressed the committee. Although the proposed memorandum of understanding would be entered between the tribe and the executive branch of government, he said, it may require legislation to codify some of the items in the agreement. Also, he said, since the agreement is essentially terminable at the will of the tribe or the executive branch, if certain provisions were codified it would add an element of permanence or stability to the agreement. He said the tribe would rather negotiate than litigate its differences with the state.

In response to a question from Representative Warner, Mr. Rostvet said the Game and Fish Department and the Spirit Lake Nation have drafted a preliminary or proposed memorandum of understanding. He said the agreement is under consideration by the Spirit Lake Nation's tribal council. In response to

a further question from Representative Warner, Mr. Rostvet said it would be difficult for the state and tribes to negotiate a uniform agreement because of the different tribal interests involved.

STAFF DIRECTIVES

Representative Warner requested that the Legislative Council staff prepare a bill draft to provide that wildlife taken on Indian trust land is properly taken for purposes of transportation in North Dakota.

Representative Porter requested that the Legislative Council staff arrange for representatives of the Attorney General's office to appear at a future meeting to discuss Indian law issues.

No further business appearing, Chairman Warner adjourned the meeting at 3:00 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:5