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ROLL NUMBER

DESCRIPTION

4022

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10/23/03
Date

2003 SENATE NATURAL RESOURCES

SCR 4022

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4022

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-14-03

Tape Number	Side A	Side B	Meter #
1		X	20.4 - 37.9
2	X		0.9 - 4.0
Committee Clerk Signature <i>Jenit James</i>			

Minutes:

Senator Thomas Fischer, Chairman of the Senate Natural Resources Committee opened the hearing on SCR 4022, a resolution directing the Legislative council to study proposed legislation permitting the Game & Fish Department to coordinate with game and fish programs conducted by the tribal government of the federally recognized Indian tribes in North Dakota.

All members of the Committee were present except Senator John Traynor.

Senator Ronald Nichols of District 4 introduced SCR 4022 stating the resolution is basically asking to get people to the table to discuss some issues as stated in the description of the resolution.

Mike Donahue (22.5) representing the United Sportsman's Club and the North Dakota Wildlife Federation testified in supports the efforts of the SCR 4022.

Tex Hall, Chairman of the Mandan, Hidatsa and Arikara Nation testified in a neutral position on SCR 4022. (See attached testimony). He stated the resolution was not their first option but to

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Date

Page 2

Senate Natural Resources Committee

Bill/Resolution Number SCR 4022

Hearing Date 2-14-03

look at legislation to correct the issues. He also presented an amendment (attached) asking that this would become legislation and not go into a study.

Senator Fischer stated there were several problems the first being that the amendment would have to be attached to different vehicle than the resolution and secondly if a non member takes and an animal on the reservation and then takes off they could be sited for a violation.

Senator Ben Tollefson asked if this was reciprocity between the tribe and the North Dakota Game & Fish Department rules.

Tex Hall confirmed that what it is.

Senator Stanley Lyson asked about boundaries and tribe land ownership.

Tex Hall answered it is the tribe land ownership.

Senator Michael Every described the situation of his District where cities are divided and the problems dealing with tribal and non-tribal licenses.

Senator Fischer closed the hearing of SCR 4022.

Tape 2, Side A, 0.9 - 2.9

Senator Thomas Fischer opened the discussion on SCR 4022.

Discussion was held in regards to deciding if this should be an amendment to another bill or have a study to include all the issues.

Senator Ben Tollefson made a motion for a Do Pass of SCR 4022.

Senator Joel Heltkamp second the motion.

Roll call vote was taken indicating 5 YEAS, 0 NAYS AND 2 ABSENT OR NOT VOTING.

Senator Fischer will carry SCR 4022.

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Date: 2-14
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4022

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Tollefson Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson					
Senator John T. Traynor					

Total (Yes) 5 No 0

Absent 2

Floor Assignment Fischer

If the vote is on an amendment, briefly indicate intent:

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10/23/03
Date

REPORT OF STANDING COMMITTEE (410)
February 14, 2003 12:58 p.m.

Module No: SR-29-2757
Carrier: Fletcher
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SCR 4022: Natural Resources Committee (Sen. Fletcher, Chairman) recommends DO
PASS (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SCR 4022 was placed on
the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-29-2757

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2003 HOUSE NATURAL RESOURCES

SCR 4022

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10/23/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 4022

House Natural Resources Committee

☐ Conference Committee

Hearing Date March 20, 2003

Tape Number	Side A	Side B	Meter #
2	xx		312-3818
Committee Clerk Signature <i>Em. Myra</i>			

Minutes:

Chair Nelson called the hearing on SCR 4022 relating to A concurrent resolution directing the Legislative Council to study proposed legislation permitting the Game and Fish Department to coordinate with game and fish programs conducted by the tribal governments of the federally recognized Indian tribes in North Dakota.

Mervyn Packineau: Three Affiliated tribes. Introduced SCR 4022. (See Attached Testimony)

Rep. Nottestad: By bringing the legislature into this do you think that would strengthen or weaken you bargasining position.

Mervyn Packineau: That is tough to tell. Hopefully it strengthens the case. The question is does game and fish have the right to go to tribal land? We are tying to find some middle ground here.

Rep. Nottestad: What is the position of the court? They would have set presedence here.

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Page 2

House Natural Resources Committee

Bill/Resolution Number 4022

Hearing Date March 20, 2003

Mervyn Packineau: It has not come to this point.

Rep. Klein: What happens to violators of Game and Fish rules on the reservation?

Mervyn Packineau: They receive a citation.

Rep. Johnson: What if I own land on the reservation? Do I need a tribal liscense as well as a state liscense?

Mervyn Packineau: Yes you do. It is not enforced. It is a grey area.

Rep. Drovdal: I am trying to understand the purpose of this. Are we trying to develop a format for public input on this? Is that the purpose of this study resolution?

Mervyn Packineau: This is showing we willing to work with the tribes to come up with a solution to this.

Rep. Norland: Do the tribes honer the North Dakota liscense.

Mervyn Packineau: They can be cited for not having a both.

Charles Carvel:

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 4022

House Natural Resources Committee

☐ Conference Committee

Hearing Date March 21, 2001

Tape Number	Side A	Side B	Meter #
1	xx		325-564
Committee Clerk Signature <i>Elin M. [Signature]</i>			

Minutes:

Chair Nelson called the hearing on SCR 4022 to order.

Rep. DeKrey moves an amendment to SCR 4022 seconded by Rep. Porter. Passed by voice vote.

Rep. Porter moves a Do Pass as amended on SCR 4022 and place the Resolution on the Consent Calendar Seconded by Rep. DeKrey. The motion carried by voice vote.

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Date

Date:
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4022

House House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Place on Consent Calendar

Motion Made By Porter Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson					
Vice-Chairman Todd Porter					
Rep. Byron Clark					
Rep. Duane DeKrey					
Rep. David Drovdal					
Rep. Lyle Hanson					
Rep. Bob Hunsakor					
Rep. Dennis Johnson					
Rep. George Keiser					
Rep. Scott Kelsh					
Rep. Frank Klein					
Rep. Mike Norland					
Rep. Darrell Nottestad					
Rep. Dorvan Solberg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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10/23/03
Date

REPORT OF STANDING COMMITTEE (410)
March 21, 2003 2:15 p.m.

Module No: HR-51-5476
Carrier: Porter
Insert LC: 35383.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SCR 4022: Natural Resources Committee (Rep. Nelson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4022 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "have" with "assert"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-51-5476

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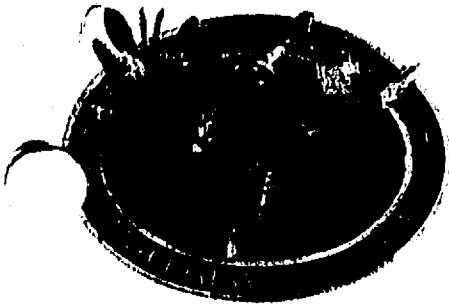
2003 TESTIMONY

SCR 4022

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TRIBAL BUSINESS COUNCIL
(701) 627-4781
Fax (701) 627-3805

MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation
404 Frontage Road • New Town, North Dakota 58763-9402

Natural Resources Committee
North Dakota Senate
58th Legislative Assembly

Testimony of Tex G. Hall
Chairman
Mandan, Hidatsa and Arikara Nation

on SCR 4022

"Study Resolution on issues relating to recognition by North Dakota
of tribal management of fish and game"

February 14, 2003

Mr. Chairman, members of the Committee, thank you for the opportunity to present testimony regarding SCR 4022. My name is Tex Hall, and I am the Chairman of the Mandan, Hidatsa and Arikara Nation.

This study resolution was introduced to spur discussion at the legislation on an issue that is very important to my Tribe and our members. For the past several years, I have been in discussions with the North Dakota Fish and Game Department and Dean Hildebrand, its Director. Our Tribe, and other Tribes, have been helping the Fish and Game Department understand that on our Reservation, we are managing the wildlife that is present on the reservation pursuant to a Tribal Game and Fish Code that is similar to what is in place for the State of North Dakota. Our management of the fish and game on the reservation is done in an entirely professional manner.

We issue permits to hunt and fish within the reservation to Tribal members and non-Tribal members. For many years, the State had recognized that if we issued a permit to a non-Tribal member who was hunting on land held in trust by the United States within the reservation, that permit entitled the individual to hunt or fish and that no additional state license would be required.

However, recently, some of these individuals have been cited by officials of the State Fish and Game Department for not having a state license, even though the individual had a valid Tribal license and was hunting on trust land within the reservation, and was not violating any of our hunting and fishing laws. This is simply not what we believe to be the state of the law, as a 1983 Supreme Court case, *Mescalero Apache Tribe v. New Mexico*, has said that the state must recognize Tribal hunting and fishing licenses issued to non-members hunting on trust lands within the reservation. This case has not been overruled and should still be good law.

What we seek is that our hunting and fishing permits issued to non-members for hunting and fishing on the reservation be recognized by the state of North Dakota. After discussing this the other day again with Dean Hildebrand, it is clear that the only way we can resolve this issue

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Tex G. Hall

10/23/03
Date

Testimony on SCR 4022
Chairman Tex G. Hall
February 14, 2003
Page 2 of 2

without litigation is for the state legislature to pass legislation recognizing our hunting and fishing permits issued within the reservation.

We have a simple piece of legislation that we are seeking to have incorporated as an amendment on another piece of legislation that involves hunting and fishing, and this study resolution was introduced to be considered only if our legislative effort in this session fails. We want to be able to resolve this issue once and for all, if at all possible. We are hopeful that we can work with the Fish and Game Department to make this legislation possible. Therefore, I urge this Committee to do everything in its power to amend one of the pending bills relating to fish and game issues that will allow our fish and game licenses to be recognized, making SCR 4022 unnecessary.

Thank you for the opportunity to testify today.

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PROPOSED AMENDMENT

NEW SECTION TO PENDING BILL

Section 20.1-03-04 of the North Dakota Century Code is hereby reenacted and amended to read as follows:

20.1-03-04. When licenses to hunt, fish, or trap not required of residents. Subject to the provisions of this title:

1. Any resident, or any member of the resident's family residing customarily with the resident, may hunt small game, fish, or trap during the open season without a license upon land owned or leased by the resident.
2. Residents or nonresidents under the age of sixteen years may fish without a fishing license.
3. Residents may fish at a private fish hatchery without a resident fishing license. Developmental center at westwood park, Grafton patients, North Dakota youth correctional center students, school for the deaf students, North Dakota vision services - school for the blind students, state hospital patients, community health and retardation service unit patients under direct therapeutic care, and residents of facilities licensed by the state department of health and the state department of human services may fish without a resident fishing license. Patients of these institutions must be identified. The department shall issue authority to each institution.
4. Residents may fish without a resident fishing license on free fishing days. The date of these free fishing days may be set by proclamation by the governor.

Page No. 1

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5. Residents under age sixteen may take fur-bearers without a fur-bearer license.
6. Residents under age sixteen may take small game or waterfowl without a small game license.
7. Residents who are enrolled as students or serving as certified instructors during official aquatics education program events of the game and fish department may be granted free fishing privileges by discretion of the director.
8. Any person who possesses a valid hunting or fishing license issued by a Federally recognized Tribe that has adopted a hunting and fishing code providing civil penalties for non-compliance with that code and who is hunting or fishing within the Federally recognized boundaries of that Tribe.

Page No. 2

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MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation
404 Frontage Road • New Town, North Dakota 58763-9402

TRIBAL BUSINESS COUNCIL
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Natural Resources Committee
North Dakota House of Representatives
58th Legislative Assembly

Testimony of Mervyn Packineau
Vice-Chairman
Mandan, Hidatsa and Arikara Nation

on SCR 4022

"Study resolution on issues relating to recognition by North Dakota
of tribal management of fish and game"

March 20, 2003

Mr. Chairman, members of the Committee, thank you for the opportunity to present testimony regarding SCR 4022. My name is Mervyn Packineau, and I am the Vice-Chairman of the Mandan, Hidatsa and Arikara Nation.

This study resolution was introduced to spur discussion at the legislation on an issue that is very important to my Tribe and our members. For the past several years, we have been in discussions with the North Dakota Fish and Game Department and Dean Hildebrand, its Director. Our Tribe, and other Tribes, have been helping the Fish and Game Department understand that on our Reservation, we are managing the wildlife that is present on the reservation pursuant to a Tribal Game and Fish Code that is similar to what is in place for the State of North Dakota. Our management of the fish and game on the reservation is done in an entirely professional manner.

We issue permits to hunt and fish within the reservation to Tribal members and non-Tribal members. For many years, the State had recognized that if we issued a permit to a non-Tribal member who was hunting on land held in trust by the United States within the reservation, that permit entitled the individual to hunt or fish and that no additional state license would be required. We believe this is also the state of the current Federal law as stated in the United States Supreme Court case of *Mescalero Apache Tribe v. New Mexico*, which has not been overruled.

Because we have had recently some incidents where non-Indians were cited by officials of the State Fish and Game Department for not having a state license, even though the individual had a valid Tribal license and was hunting on trust land within the reservation, we restarted our discussions with the State Game and Fish Department, the Governor's office and legislative leaders on a government-to-government basis. Several weeks ago, our Chairman reached a tentative agreement with State of North Dakota officials about hunting on the reservation. A draft of that tentative agreement is attached for your review. This agreement has not yet been approved by either our Tribal Business Council or state officials, but it gives an idea of what the Chairman believes is a possible middle ground.

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Deanna Hildebrand

10/23/03
Date

Testimony on SCR 4022
Vice-Chairman Mervyn Packineau
Three Affiliated Tribes
March 20, 2003
Page 2 of 2

But we also recognize that not every Tribal Nation in North Dakota will support the agreement we are working on with the State of North Dakota. That is why we still support SCR 4022, which calls for additional study of the issues relating to game and fish management by the State and the North Dakota Tribes, with the thought in mind that additional discussion between the Tribes and the State may be needed to resolve these issues, and additional legislation may yet be necessary to resolve the issues once an agreement is reached.

With this study resolution, and our own efforts to achieve a resolution of these issues, we are seeking to avoid litigation. We are hopeful with further discussion that the other Indian tribes in North Dakota can also resolve these issues once and for all. Therefore, I urge this Committee to give a DO PASS recommendation to SCR 4022.

Thank you for the opportunity to testify today and I stand ready to answer any questions the Committee may have.

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Date

DRAFT AGREEMENT 3-14-03

Memorandum of Understanding

**Between the
Three Affiliated Tribes and the State of North Dakota
Regarding regulation of hunting within the state of North Dakota**

This Memorandum of Understanding is between the Three Affiliated Tribes (the "Tribe") of the Fort Berthold Reservation and the State of North Dakota (the "State") regarding mutual recognition of hunting licenses issued by the Tribe and the State.

In consideration of the promises made in this Agreement and in the interest of reaching an agreement on issues of long standing between the parties, the parties agree as follows:

1. The Three Affiliated Tribes, also known as the Mandan, Hidatsa and Arikara Nation, is a Federally recognized Indian tribe located in northwest North Dakota.
2. The Tribe possesses the sovereign right to issue hunting licenses for game, including game birds and animals, excluding fish or other aquatic animals, that are not otherwise endangered or protected by state, tribal or federal law and that exist on lands within the boundaries of the Fort Berthold Reservation that are held in trust for the Tribe or for any of its members by the United States, and issues such licenses to Tribal members and non-Tribal members for a fee.
3. The State possesses the sovereign right to issue hunting licenses for game that exists within the state, including game birds that are not otherwise endangered or protected by state or federal law within the State to residents and non-residents of the State.
4. The Tribe and the State both have professional game management programs, prescribed by the laws and regulations of each jurisdiction, that set limits on the number of persons to whom hunting licenses can be issued, the types of game that can be hunted, and the period of time in each year during which hunting of particular game animals is permitted, and which require each person allowed to hunt a particular type of game animal to have and carry a permit for the purpose of hunting issued by the respective jurisdiction where the hunting activity is to take place.
5. That in recognition of the jurisdiction of the State, the Tribe shall not require any non-Indian person hunting within the boundaries of the Fort Berthold Reservation to possess a hunting permit or license issued by the Tribe unless such person intends to hunt within or on lands held in trust by the United States for the benefit of any individual Indian or for the benefit of the Tribe.
6. That in recognition of the jurisdiction of the Tribe, the Tribe shall have the right to enforce its laws relating to hunting on lands held in trust by the United States for the benefit of any individual Indian or for the benefit of the Tribe where such lands are within the boundaries of the Fort Berthold Indian Reservation, and the State will not

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DRAFT AGREEMENT 3-14-03

interfere with the Tribe's enforcement of its laws on such trust lands, but, the State shall require any non-Indian person hunting on such trust lands to possess a valid hunting permit issued by the State for the game animal for which the person has a valid Tribal hunting permit or license. The State may, at its option, and only after the person who has been hunting on lands held in trust by the United States for the benefit of any individual Indian or for the benefit of the Tribe is no longer physically on such lands, may require the person to show possession of a valid State hunting permit or license for the particular animal being hunted within or on such trust lands.

7. Appropriate officials of the Tribe and the State will meet together to determine the cost of such hunting permits or licenses that are required by each respective jurisdiction so as to not increase unnecessarily the cost of the license to the hunter seeking the permit or license.

8. That in general, where hunting is permitted for the same animals by Tribal and State law the seasons for hunting and the limits on animals that can be taken or killed by an individual hunter who possesses both a valid Tribal and State permit will be the same and these issues, along with the issue of the number of hunting permits or licenses that can be issued by each party, and any other game management issue that may arise, will be coordinated between the parties in good faith discussions on a government-to-government basis, and with the further understanding that in any given year different seasons or different limits on the number of animals for the respective jurisdictions of the parties may be warranted by the application of sound game management practices.

9. That in the event the Tribe allows hunting for an animal or game bird where hunting is not permitted by State law but against which no other prohibition exists under Federal or tribal law, the Tribe shall have the right to issue a hunting permit or license for hunting such animal on lands held in trust by the United States for the benefit of any individual Indian or for the benefit of the Tribe and the State agrees to recognize such permit or license as valid and will not further prosecute any person who possesses an animal or game bird taken pursuant to Tribal law.

10. That the Tribe and the State agree to cooperate on a government-to-government basis to resolve issues of jurisdiction regarding enforcement of the respective gaming laws of each entity in cases where lands held in trust for the Tribe or for any of its members are adjacent to non-trust lands held publicly or private by the Tribe or other parties.

11. That appropriate officials of the Tribe and the State agree to meet periodically in good faith in a government-to-government relationship to discuss the implementation of this Agreement.

12. That nothing in this Agreement shall be interpreted as diminishing or enhancing the sovereign rights of the respective parties, including the sovereign immunity of the parties, except as may be specifically stated herein, nor shall this Agreement be permitted to be used in any way by either party in any litigation brought by

DRAFT AGREEMENT 3-14-03

any person including the parties to this Agreement that may arise within the State of North Dakota regarding the substance of any issue covered by this Agreement other than with respect to enforcement of this Agreement.

13. That should any dispute arise under this Agreement, the following procedure may be invoked:

A. The party asserting the non-compliance shall serve written notice on the other party. The notice shall identify the specific provision or statute alleged to have been violated and shall specify the factual basis for the alleged non-compliance. The State and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

B. If the dispute is not resolved to the satisfaction of the parties within ninety (90) days after service of the notice set forth, either party may pursue any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Agreement, including:

(i) Arbitration pursuant to the specifications set forth in this section.

(ii) Any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Agreement.

In the event an allegation of non-compliance by either party is not resolved to the satisfaction of the party Tribe within ninety (90) days after service of the notice set forth above, the Tribe may invoke arbitration as specified above.

Any arbitration under this authority shall be conducted under the rules of the American Arbitration Association, except that the arbitrators will be selected by the State picking one arbitrator, the Tribe a second arbitrator and the two so chosen shall pick a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is picked, the third arbitrator will be chosen in accordance with the rules of the American Arbitration Association.

Either party may initiate action in the appropriate court of the other party to enforce an arbitration determination, or to pursue such relief as may be available through arbitration.

14. That this Agreement shall remain in force until the parties mutually agree that the Agreement is no longer in force or until a party withdraws from the Agreement having given the other party no less than 30 days' notice of their intention to withdraw.

15. That for the purpose of any notice to either party contemplated or stated in this Agreement, the following shall be the contact persons for the respective parties:

DRAFT AGREEMENT 3-14-03

For the Tribe:

[name of party]

For the State:

[name of party]

16. That the parties may amend this Agreement by mutual consent and agreed to in writing in the manner in which consent is given for this Agreement.

Dated this ____ day of March, 2003.

For the Tribe:

For the State:

Chairman, Three Affiliated Tribes

Governor, State of North Dakota

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Deanna Hall
Operator's Signature

10/23/03
Date