

MINUTES
(Approved by the Council)

IDAHO COUNCIL ON INDIAN AFFAIRS
MARCH 11, 2009
CAPITOL ANNEX, ROOM 145
514 WEST JEFFERSON
BOISE, IDAHO

Council members present were Senator Michael Jorgenson, Chairman of the Council; Helo Hancock, Legislative Director, representing the Coeur d'Alene Tribe; Lee Juan Tyler, Vice-Chairman of the Fort Hall Business Council, representing the Shoshone-Bannock Tribes; Samuel Penney, Chairman of the Nez Perce Council Executive Committee, representing the Nez Perce Tribe; Dennis Smith, Sr., Vice-Chairman of the Shoshone-Paiute Tribes Business Council; Billy Barquin, Attorney, representing the Kootenai Tribe; and Representative George Saylor. Absent and excused were David Hensley, Governor "Butch" Otter's representative; Acting Senator Dick Sagness; and Representative Bob Nonini. Paige Alan Parker and Michael Nugent of the Legislative Services Office were also present.

Also in attendance were Rosanna Sailto and Bill Roden, representing the Coeur d'Alene Tribe; David Kerrick and Darren Williams, representing the Nez Perce Tribe; Delbert Farmer, Laverne Beech and Gary Gould, representing the Shoshone-Bannock Tribes; Russell Westerberg and Joie McGarvin, representing the Kootenai Tribe; Kyle Prior, representing the Upper Snake River Tribes; Mary Jane Oatman-Wak Wak, Indian Affairs Coordinator, Idaho Department of Education; Christelle Edmo, Tribal Relations Program Manager, Idaho Department of Health and Welfare; Phil Haron and Justin Deey, representing the Senate Majority Caucus; Mitch Silvers, representing United States Senator Mike Crapo; and Clay Smith, representing the Idaho Attorney General's Office.

Acting Council Chairman Samuel Penney called the meeting to order at 3:15 p.m. After the opening prayer and introductions, **Acting Chairman Penney** recognized **Senator Jorgenson** to report on his recent meeting with **Governor "Butch" Otter**.

Senator Jorgenson reported that he had just met with the **Governor** at the Council's request at its last meeting. **Senator Jorgenson** reported that **Governor Otter** expressed his thanks to the Council and is looking forward to working relationship with the tribes as Idaho has never seen

Acting Council **Chairman Penney** next recognized **Christelle Edmo**, the Indian Affairs Coordinator with the Idaho Department of Health and Welfare. **Ms. Edmo** reported that she has just resigned in position due to a desire to be closer to her family. Joined by **Mary Jane Oatman-Wak Wak**, the Indian Affairs Coordinator with the Idaho Department of Education, **Ms. Edmo** requested that the tribal members on the Idaho Council on Indian Affairs seek a

formalized mechanism in the Governor's Office to address tribal issues. For her part, **Ms. Oatman-Wak Wak** reported that since she has been in her position since June of 2007, relationships have been built between the tribes and the school districts. **Ms. Oatman-Wak Wak** noted that not all agencies dealing with matters affecting the Idaho tribes have the benefit of dialogue with the tribes. She observed that the Governor's staff does not have a full-time Indian Affairs member. She recommended that the Council make a request that an office of Indian Relations be established in the Governor's office. **Ms. Edmo** stressed that her position needs to be filled in a timely manner or relationships that have been built may erode. She is requesting an interview with Health and Welfare Director **Richard Armstrong** to advocate for continuation of her position within the Department.

Senator Jorgenson thanked **Ms. Edmo** for her work and offered to join her in her meeting with **Director Armstrong**. He agreed that there needs to be continuing relations between the state agencies and the tribes and informed that he has discussed similar issues with the Governor who agreed to look into it.

Shoshone-Paiute Tribal Council Vice Chairman **Dennis Smith, Sr.** stated that a lack of funding is an issue and expressed concern that **Ms. Edmo's** position might not be filled.

Mr. Smith moved that the Idaho Council on Indian Affairs aggressively pursue the continuation of **Ms. Edmo's** position. **Senator Jorgenson** seconded the motion with the modification that the Council send a letter requesting that the Indian Affairs positions at both the Department of Health and Welfare and the Department of Education be maintained and that other relevant agencies with programs that affect the tribes have similar positions. After discussion, the motion passed unanimously by voice vote.

Representative George Sayler moved that the Idaho Council on Indian Affairs recommend to the Governor that a cabinet level Office of Indian Affairs position be established. **Mr. Smith** seconded the motion. After discussion, the motion passed unanimously by voice vote.

Mr. Smith asked that a meeting with the Governor at the state capitol be held so that the tribal leaders can express their concerns.

Mr. Smith moved that the Idaho Council on Indian Affairs approve a resolution on a meeting with the Governor with all the Idaho tribes. **Fort Hall Business Council Vice-Chairman Lee Juan Tyler** seconded the motion. After discussion, the motion passed unanimously by voice vote.

Acting Chairman Penney stated that the Council hopes to hold its next meeting in Fort Hall.

Acting Chairman Penney recognized Coeur d'Alene Tribe Legislative Director **Helo Hancock** to update the Council on the federal government's stimulus package.

Mr. Hancock stated that March 17th is the deadline for federal government agencies to announce their grant opportunities and solicit Requests for Proposals (RFPs). Updates on the status of the economic recovery program can be found at www.recovery.gov. The National Congress of American Indians also has a helpful website. **Mr. Hancock** recommended that the tribes monitor the developments closely. He noted that the Economic Development Bonds are no longer limited to essential governmental functions and now can be used for economic development. He recommended that the tribes employ grant writers to take advantage of the economic stimulus moneys.

Senator Jorgenson asked whether the one page Stimulus Funding Request that had been distributed by the Shoshone-Bannock Tribes was the proper way to seek the federal economic stimulus funds. **Mr. Hancock** stated that the bulk of the funding is coming through the separate federal agencies and that the Governor has established a committee to help make decisions on state utilization of the funds. **Mr. Hancock** noted that a letter had been drafted requesting a tribal representative on the Governor's committee. **Senator Jorgenson** stated that the tribes' position has been presented to the Governor but not written response has, as yet, been received.

Mr. Hancock stated that there are certain economic stimulus moneys that are only available to Indian tribes and other moneys that are open to both Indian tribes and other governmental entities. The tribes can apply through the federal governmental entities. Most of the moneys that are available to the Idaho tribes are being passed through the Idaho Department of Health and Welfare. However, a grant application will be required.

Mr. Smith commented that it is disturbing that there is currently no mechanism in place for consultation with the tribes on these matters. He asked if there was anything in the economic stimulus package that was earmarked for the tribes, noting that some tribes do not have the resources to hire an attorney or a grant writer. **Mr. Hancock** replied that there are no moneys that are guaranteed to the tribes. The moneys are available under existing grants or through a competitive grant process. Some moneys are being distributed through the state government.

Senator Jorgenson acknowledged the concern regarding a liaison with the Governor's office but suggested that no further motions were necessary at this time. He is in dialogue with the Governor's Office and any motion to force the creation of a liaison would exceed the Council's authority. **Senator Jorgenson** suggested that the tribes take **Mr. Hancock's** advice and work together. As far as a liaison to the federal government is concerned, **Senator Jorgenson** noted that **Mitch Silvers**, an aid to United States Senator **Mike Crapo**, was present at the meeting.

Senator Jorgenson was excused from the meeting at 4:30 p.m.

Acting Chairman Penney concluded that there are federal stimulus funds for the tribes, including funds that will flow through the state government. He expressed concern that some tribes may not have the opportunity to take advantage of these funds. This should be communicated to the **Governor**.

Billy Barquin, attorney for the Kootenai Tribe, said federal tax credits were available through the stimulus bill including Earned Income Tax Credit, a credit for first-time home buyers, and for purchase of a car.

Acting Chairman Penney recognized **Clay Smith**, a deputy attorney General with the Office of the Attorney General to discuss the potential impact of the recent U.S. Supreme Court decision of *Carcieri v. Salazar*.

Mr. Clay Smith said the case involved 31 acres being placed into trust in Rhode Island by then Interior Secretary Babbitt for a tribe that was not federally recognized when the Indian Reorganization Act (IRA) was passed in 1934. The authority was challenged that the term “Indian” in the IRA did not include a tribe that was not federally recognized when the act passed. **Mr. Clay Smith** said the U.S. Supreme Court accepted the state of Rhode Island’s interpretation of the word “now.” **Mr. Clay Smith** said the state of Idaho filed an amicus brief in the case supporting the state of Rhode Island. **Mr. Clay Smith** said the impact in Idaho is essentially zero as all five tribes were under federal recognition when the IRA was passed in 1934. He said that the decision does impact tribes in other states who were federally recognized after 1934.

Mr. Hancock said this decision was a blow to Indian Country. He said Indian Country feels that the Supreme Court found a way to rule against tribes. He said it casts doubt on tribes organized after 1934 and land placed into trust for them. He said they are trying to pursue a legislative solution to this before Congress.

Mr. Hancock asked why Idaho signed onto and filed the amicus brief when other western states did not do so. He asked if it was the public policy of the state of Idaho to oppose tribes taking land into trust. **Mr. Clay Smith** said the case presented a federal constitutional question as to whether the Secretary of Interior had legislative authority delegated to him that affects the rights of the state of Idaho.

Mr. Dennis Smith said the tribes are working with Congressional representatives to get this fixed. He also said the tribes need to sit down and discuss relationship between themselves and the state. **Mr. Penney** said that the impact in Idaho is essentially none, but on the Idaho Attorney General’s filing the amicus brief, the tribes will have to go to Congress to get a legislative fix. **Mr. Penney** believed the Supreme Court missed the intent of Congress in enacting the IRA.

Mr. Hancock asked if the Council needed to meet with **Governor Otter** to address this issue and needed to meet with **Attorney General Wasden** about being cooperative before he opposes tribal interest. He asked if the Attorney General consulted with the **Governor** or Legislature before making this policy decision. **Mr. Tyler** said treaty abrogation is a continuing problem. He said that land that had been taken from tribes can't be put in trust under this ruling. Healing between the tribes and the state was beginning, but now this happened. He asked what contributions are the tribes getting from the state of Idaho. **Mr. Penney** said that at future meetings the Council will invite **Attorney General Wasden** to attend.

Mr. Barquin said the Northwest Band of the Shoshone Nation is federally recognized in Utah and has a history in Idaho. At one point the Northwest Band was looking to have land put in trust for it near Preston for the purpose of building a tribal casino but were not getting cooperation from the state. **Mr. Dennis Smith** said he is concerned about the state of Idaho not consulting the tribes before entering into action against the tribes. He said he would like to make a motion about this. **Representative Sayler** said he would rather see the Attorney General appear before the Council and explain his actions.

A motion was made by Mr. Smith, seconded by Mr. Tyler that Attorney General Wasden meet with the tribes as soon as possible. The motion passed unanimously by voice vote.

Representative Sayler moved that the February 23, 2009 minutes be approved, seconded by Mr. Hancock, and the motion passed unanimously by voice vote.

The next meeting will be on the Shoshone Bannock Reservation and Legislative Services Office staff will coordinate the actual date toward the end of May. The meeting of the Council adjourned at 5:08 p.m.