

MINUTES
of the
IDAHO COUNCIL ON INDIAN AFFAIRS
SHOSHONE-PAIUTE TRIBAL HEADQUARTERS
OWYHEE, NEVADA
September 1, 2009

(Approved by the Council)

Members in attendance were Chairman Senator Michael Jorgenson; Senator Edgar Malepeai; Robert Bear, Chairman of the Shoshone-Paiute Tribes Business Council, representing the Shoshone-Paiute Tribes; Darren Williams, representing the Nez Perce Tribe; Helo Hancock, representing the Coeur d'Alene Tribe; Lee Juan Tyler, member of the Fort Hall Business Council, representing the Shoshone-Bannock Tribes; and David Hensley, who was present for part of the meeting, representing Governor "Butch" Otter. Absent and excused was Representative George Saylor. Absent and not excused was Representative Bob Nonini. No representative of the Kootenai Tribe attended the meeting. Paige Alan Parker of the Legislative Services Office attended as Secretary to the Council.

Others in attendance were: Tanya McElfresh, Regional Director North and Tribal Relations Manager for the Department of Health and Welfare; Donnie Hale, Boise State University TRIO Program; Bill Roden, representing the Coeur d'Alene Tribe; Christopher Kensler, Kota, Inc.; Tom Luna, Superintendent of Public Instruction, and Mary Jane Oatman-Wakwak, Indian Affairs Coordinator, Idaho Department of Education; Laverne Beech and Nathan Small, Vice Chairman of the Fort Hall Business Council, representing the Shoshone-Bannock Tribes; Bryan Samuels, member of the State Indian Education Committee and of the Nez Perce Tribe; Dennis Smith, Sr., vice chairman of the Shoshone-Paiute Business Council; Lynneil Brady, James Blossom, Fred Brooks, Angele Smith and Cristi Walker, members of the Shoshone-Paiute Tribes Business Council; Darin Crow, Gloria Jim, Herman Atkins, Rachel Thomas and Winona Manning, members of the Shoshone-Paiute Tribal Administration; DeMetria Sam, reporter for the Sho-Pai News; Garry Lough, Communications Director, Idaho Education Network; and Jeff Anderson, representing the Idaho Lottery.

Chairman Jorgenson called the meeting to order at 9:28 a.m. The Secretary was instructed to take an oral roll call. The Chairman noted that **Representative Bob Nonini**, representing the Idaho House of Representatives on the Council was absent and not excused from the meeting. The Secretary was instructed to draft a letter for the chairman's signature to the Speaker of the Idaho House of Representatives and the President Pro Tem of the Idaho Senate, notifying them of **Representative Nonini's** unexcused absence, the importance of attending Council meetings and the need to appoint an individual to the Council who will be able to attend future meetings.

Following an invocation by **Lee Juan Tyler** and introductions, **Chairman Jorgenson** thanked the Shoshone-Paiute Tribes for hosting this meeting on the Duck Valley Reservation. **Chairman Jorgenson** then turned the meeting over to **Robert Bear**.

Mr. Bear welcomed the Council members and guests to Duck Valley. After introducing members of the Shoshone-Paiute Business Council and Tribal Administration, **Mr. Bear** asked for approval of the Council's June 1, 2009, meeting. **Senator Malepeai**

moved that the minutes be approved; Mr. Tyler seconded the motion with a correction regarding the identity of Bannock County; and the minutes were approved as corrected without objection.

David Hensley, Governor "Butch" Otter's representative to the Council, addressed the Council via telephone regarding the scheduling of a summit meeting between the Governor and the chairs of the recognized Indian Tribes in Idaho. **Mr. Hensley** suggested that the meeting take place before the next legislative session, perhaps in November or December. He is working with the Governor's scheduler to find three hours to conduct the summit and is open as to location. **Senator Jorgenson** suggested that the meeting be held in the renovated Capitol Building during the first week of December. **Senator Jorgenson** recommended that the summit meeting be scheduled for at least half a day. **Chairman Bear** determined that the consensus of the Council was to hold the summit meeting during the first week of December.

Senator Jorgenson informed **Mr. Hensley** that the Council members planned to work on agenda items during the current meeting and would follow up with **Mr. Hensley** on the agenda the following week. From the Governor's side, **Mr. Hensley** suggested that the agenda include agency legislative proposals that may affect the tribes.

Mr. Tyler stated that the Shoshone-Bannock Tribes had to build their new justice center on their own, without state help, despite the state's responsibilities for a number of justice related matters under legislation adopted by Idaho as authorized by Public Law 280. Other issues of interest to the Shoshone-Bannock Tribes are homeland security needs on the reservation and attempts to enter into a memorandum of understanding with Idaho State University to finance Native American scholars.

Senator Jorgenson noted that he has not received responses to his request to the tribes for summit meeting topics. The topics need to come from the tribes to be meaningful. He reminded them that the Governor had just conducted a business summit meeting, which none of the tribes attended. The business summit meeting had a high potential for economic development on the reservations. He also noted that the Coeur d'Alene Tribe has a business activities publication and that other tribes have business activities on their reservations without published information concerning such activities. **Senator Jorgenson** recommended that such information be developed by the tribes.

Chairman Bear stated that the Council needs direction on how the tribes want to participate in the summit. Each tribe may have its own request.

Senator Jorgenson reminded the Council that it had made a commitment to get a draft agenda to the Governor the following week. He suggested that one summit topic might be cross-deputization. He noted that some tribes have memorandums of understanding with sheriffs and county prosecutors that appear to be working effectively. Without cross-deputization, there may be a safe haven for criminals on reservation lands. The Governor has already committed to the proposition that all citizens of the state are entitled to police protection with the police, including the Idaho State Police, county sheriffs, city and town police chiefs, county prosecutors, tribal police departments, tribal chairs and Police Officer Training (POST), working in a unified way.

Fort Hall Business Council Vice Chairman **Nathan Small** suggested that commerce on reservations be a summit topic. He suggested that the state's desire to tax economic ventures on reservation lands chases economic ventures away. **Mr. Small** took the position that the state should not be allowed to tax economic activities on reservation lands absent

an agreement. He stated that cities and counties are discouraging private enterprise on reservations.

With regard to cross-deputization, **Mr. Small** stated that memorandums of understanding come and go. There is jurisdictional confusion and misapplication of some cross-deputization agreements. He expressed the belief that cross-deputization may not be a solution for the Shoshone-Bannock Tribes. According to **Mr. Small**, cities and counties use cross-deputization as an excuse to come onto reservation lands for other reasons. Any agreement regarding cross-deputization with the state needs to include the counties. **Senator Jorgenson** responded that cross-deputizations serve to avoid confusion by educating both sides. **Mr. Small** stated that the training required for tribal and state police officers differs. State offices would have to go to the Bureau of Indian Affairs Academy to learn Indian law while tribal officers would have to go to POST to learn state law. **Senator Jorgenson** agreed that a cross-deputized deputy must know both state and Indian law, but that it is working in Washington state.

Helo Hancock stated that sometimes cross-deputization looks good on paper but may depend on personalities. It is subject to renewal and termination. He suggested that Idaho look to Arizona as a model where certified tribal police can enforce state law on reservation lands and issues of liability are addressed. **Mr. Hancock** stated that the White House is conducting a listening session on this issue. **Mr. Hancock** stated that the Coeur d'Alene Tribe is willing to participate in a task force that **Senator Jorgenson** has asked **Senator Malepeai** to chair on prosecution of crimes arising in Indian country.

Mr. Small agreed that cross-deputization may work if tribal officers are allowed to enforce state law when the counties cannot respond. **Mr. Small** commented that the Fort Hall Reservation is not the checkerboard type of other reservations as thus has different law enforcement issues. **Mr. Small** noted that there is a need to clean up the meth issue on reservations. According to **Mr. Small**, Public Law 280 has been a hindrance in this regard. The state is only interested in enforcement of traffic laws under the authority it acquired pursuant to Public Law 280. The state has failed to exercise the authority it acquired regarding juvenile justice.

Senator Jorgenson said that he understands the Public Law 280 issues and has been trying to respond to the issues raised by the Shoshone-Bannock Tribes. The issue is whether Public Law 280 should be raised at the summit meeting with the Governor along with cross-deputization. **Mr. Small** replied that cross-deputization might work if the right people are at the table. **Senator Jorgenson** agreed that all the stakeholders need to be involved. **Dennis Smith, Sr.**, Vice Chairman of the Shoshone-Paiute Business Council, stated that the state boards and commissions dealing with Indian issues should be present at the Governor's summit.

Mr. Tyler stated that a summit needs to address the training of tribal officers attending POST. These trainees need financial help to attend POST. **Senator Jorgenson** suggested that this can be investigated.

Darren Williams suggested that summit topics might include improving textbooks from the Native American point of view, creating a cabinet position in the Governor's Office dedicated to Native American issues and providing notification to and participation by the tribes on amicus briefs written by the Attorney General. **Senator Jorgenson** noted that the state has participated in amicus briefs without giving tribes a chance to respond. He wrote a letter to the Attorney General stating that tribal relations cannot improve if this practice is permitted to continue. Assurances were received from the Attorney General in a

face-to-face meeting, but an amicus brief was subsequently issued by the Attorney General without consulting the tribes.

Mr. Williams suggested that hunting on reservation lands should also be a summit issue. The Coeur d'Alene Reservation is checkerboard in jurisdiction. The tribe issues hunting licenses for hunting on reservation lands. However, resistance has been encountered when tribal fish and game officers seek to check licenses. The issues of requiring a tribe-issued hunting and fishing license for sportsmen activities on reservation lands should be addressed legislatively and through Fish and Game Department rulemaking. Also the regulation of game violations, such as poaching, might be addressed through a reciprocal agreement with the Fish and Game Department regarding enforcement, a type of cross-deputization.

Mr. Smith stated that there needs to be a cabinet position for tribal affairs, including the establishment of an administrative office for Tribal Affairs. **Mr. Smith** produced a resolution by the Idaho Tribes requesting this action. A copy of the resolution is available in the Legislative Services Office. **Mr. Smith** also stated that the lands into trust issue discussed at the Council's last meeting should be a summit issue since this is a big issue in Indian Country.

Branded animals leaving the reservation for sale is another issue. According to **Mr. Smith**, the state currently only requires a brand card for such animals, rather than conducting a brand inspection. He asked that the state require a brand inspection for such animals at the time of sale. **Mr. Tyler** commented that the Shoshone-Bannock Tribes have their own brand inspector and agreed that there needs to be stronger brand inspection enforcement.

Mr. Tyler moved that the tribes get together before the December summit meeting with the Governor to discuss and refine the summit issues. Senator Jorgenson seconded the motion. Mr. Hancock asked if the letter promised to **Mr. Hensley** next week would still be sent even if its purpose would be just to inform. **Chairman Bear** said that the letter would be sent but would not represent the tribes' final agenda for the summit meeting. **The motion passed unanimously.**

Senator Malepeai informed the Council that he had been unable to meet with Tribal Commerce Development Cochairman Chief J. Allan and therefore did not have a report for the Council. **Senator Jorgenson moved that the Council's agenda item for a report from the Tribal Commerce Development Task Force be tabled. Mr. Tyler seconded. The motion passed without objection.**

Tanya McElfresh, Regional Director North and Tribal Relations Manager for the Department of Health and Welfare, provided a description of her activities to the Council. **Ms. McElfresh** stated that she has a great interest on Indian issues. She is working with **Pam Mason** regarding Medicaid issues that affect the tribes, seeking tribal consultation on Medicaid waivers. Regarding the Indian Child Welfare Act, standards on process are being amended. There was good participation on behalf of the tribes on a recent conference call. Forms are being developed to come into compliance with the Act and workers are being trained on the use of the forms. She is in the process of gathering names of contacts within the Department regarding issues of tribal concern.

Ms. McElfresh commented that there is a lack of a voting tribal representative on the Idaho Council on Substance Abuse. The rules regarding substance abuse affect the

tribes. Through her efforts, the new proposed rules on substance abuse recognize individuals certified as substance abuse counselors as substance abuse professionals.

Senator Jorgenson asked whether reports were being prepared regarding these activities. **Ms. McElfresh** said that she sends weekly reports to Regional Director Drew Hall and a monthly summary that includes tribal issues. **Mr. Tyler** asked whether she deals with Public Law 280 issues. **Ms. McElfresh** replied that she does.

Mary Jane Oatman-Wakwak, the Indian Affairs Coordinator for the Idaho Department of Education, provided the Council with a written "Report on Indian Education in Idaho," along with Idaho Standards Achievement Test (ISAT) math and reading proficiency data for Idaho school children, grades 3 through 10, broken down by demographic categories. These documents are available in the Legislative Services Office.

Ms. Oatman-Wakwak reported that the State Board of Education has promulgated rules for the implementation of Native American language teaching as authorized by the Idaho Code. These rules will allow full-time status to such teachers. Currently, there are four certified teachers: two for the Nez Perce and two for the Shoshone-Bannock. Technical assistance is being provided to the schools regarding program evaluations.

Addressing tribal resources for tribal histories, **Ms. Oatman-Wakwak** stated that classroom teachers may come from outside Idaho and not have the background to teach the fourth grade level tribal history content. An ad hoc committee is exploring this matter and is seeking input from the tribes. The Indian Tenure Land Foundation has agreed to match the \$15,000 dedicated to this project. The plan is to start with contemporary tribal histories and issues and move back in time. She added that federal funds are available to bring elders into the classroom.

Regarding annual yearly progress, **Ms. Oatman-Wakwak** stated that there are still problems. The ISAT data requires more time than is presently available to digest. The data is presented in a snapshot format.

Senator Jorgenson asked if data has been compiled on a tribe-by-tribe basis. **Ms. Oatman-Wakwak** stated that only the Nez Perce Tribe has tribe specific data. **Senator Jorgenson** asked if any of the schools were woefully inadequate. **Ms. Oatman-Wakwak** affirmed that there were such schools. She added that race relations and cooperation should be issues at the Governor's summit.

Mr. Tyler opined that there is a need to go back to ancient tribal history through teaching stories such as legends. **Ms. Oatman-Wakwak** reminded that the Council supported the appointment of a Native American to serve on the State Board of Education but such an appointment has not been made.

Mr. Smith asked whether the Indian Education Committee was still in existence. **Ms. Oatman-Wakwak** replied that the committee still meets, although it has no legislative authority. She also commended **Superintendent of Public Instruction Tom Luna** for having the foresight to have created her Indian Affairs Coordinator position.

Bryan Samuels informed the Council that he is the chairman of the Indian Education Committee and that the committee has been funded. The committee has representatives from all the Idaho tribes and representatives from the state universities. It meets four times yearly. Its activities include the review of testing and the discussion of textbooks being used. The committee has been pushing for a Native American to be

appointed to the State Board. **Mr. Samuels** distributed an invitation to the Council members to attend the upcoming Seventh Annual Idaho Indian Education Summit 2009, which is being held from September 30 through October 2 at the Red Lion in Lewiston. **Mr. Samuels** also expressed the desire to meet with the Council in regard to the Governor's summit.

Superintendent of Public Instruction Tom Luna provided comments to the Council regarding Idaho Indian education policy. He reminded the Council that he has been in his current position for two and one-half years. He created the Indian Affairs Coordinator position with moneys in his existing budget because he saw a need. He met **Ms. Oatman-Wakwak**, was impressed and encouraged her to apply for the position. She has been an advocate in that position and has accomplished a lot. **Superintendent Luna** believes that it would be a great idea for the Governor to create a cabinet level Indian Affairs position.

Regarding the Governor's summit, **Superintendent Luna** hopes that education is a top priority. He said that there is a link between a quality education system and a growing economy. If one is neglected, the other suffers. Too many children do not graduate from high school, and if they graduate, they are not prepared for college or to enter the workforce. He is committed to continuing to raise the bar through better use of existing resources and by seeking additional resources.

Superintendent Luna reported that the Department has received an additional five million dollars to improve the performance of struggling students. These funds go directly to the students most in need. Local school boards need to be held accountable for the use of these funds. An additional \$100 million in stimulus dollars is being split between Title I schools and disabled students. These moneys are going directly to the local school boards, which need to be held accountable for how the moneys are spent.

Adults must be held accountable for student performance, according to **Superintendent Luna**. All Idaho schools are held to the same standard as measured by annual yearly progress (AYP). Two years ago, one-fourth of the schools made AYP; last year 66% of the schools made AYP. This is a tremendous statewide achievement that has been accomplished by focusing resources where needed and holding teachers and administrators accountable. However, there is still a long way to go.

Chairman Bear commended **Superintendent Luna** on his efforts regarding Native Americans and the entire educational system. **Chairman Bear** introduced **Rachel Thomas**, the Shoshone-Paiute Education Coordinator, to the Council.

Senator Jorgenson asked when the stimulus moneys were being distributed to the local school districts and the amounts going to each district. **Superintendent Luna** said that the information is on the Department's website. He offered to break down that information regarding Native American school districts.

Mr. Tyler asked about the Drug Abuse Resistance Education (DARE) program. He commented that the DARE program continue, adding that people don't know about the Native American heroes and that often, police officers are not viewed positively in the schools. **Superintendent Luna** responded that the DARE program still operates in many schools. The state provides funding for drug education programs to the local school districts, which make the final determination on how those funds are spent.

Garry Lough, communications director for the Idaho Education Network (IEN), provided information to the Council on the IEN. The handout provided by **Mr. Lough** is

available in the Legislative Services Office. **Mr. Lough** reported that the IEN has been in the works for a long time and has received \$2.9 million in stimulus moneys. The IEN can be a good tool for enhancing the education of Indians. The IEN has adopted a blended model, utilizing the Wyoming practice of providing the same opportunity for both urban and rural schools to access online, video content, and the Weiser/Emmett practice of allowing students college level classes online for college credit. **Mr. Lough** stated that the IEN can provide more than K-12 content. It is "consumercentric." The goal is to connect the over 200 Idaho high schools in a virtual private network. Content providers will be able to interact with students and cater to specific age groups. The IEN has been able to leverage the stimulus moneys to develop higher levels of service and to permit partnering of education offerings between local school districts.

Senator Jorgenson noted that he was one of the original sponsors of the bill creating the IEN and sees it as a solution for rural school access to specialized teachers. **Mr. Lough** concurred that partnering between school districts will permit this.

Chairman Bear commented that the local school district has been able to access both adult and student education content online from Great Basin College. Also the Nevada network has telemedicine capabilities and the ability to train emergency medical technicians. He fully supports these efforts.

Mr. Tyler commented that Public Law 280 should be taught in the schools. He added that state and federal dollars often do not reach the tribes, despite the responsibilities that are required by law. **Mr. Lough** responded that the IEN provides a great opportunity to be on the network. With IEN, a locality does not have to wait for someone to deliver content. **Ms. McElfresh** added that the Department of Health and Welfare has telehealth grants and that collaboration may be achieved on equipment and resources.

Chairman Bear asked if there were other matters from the audience to be presented to the Council. **Laverne Beach** asked whether the Council plans to meet prior to sending its letter to the Governor regarding summit agenda items. **Mr. Tyler** said that the letter would be sent with tribes meeting prior to the Governor's summit. **Ms. Beach** offered to help coordinate on models for the proposed Indian Affairs position in the Governor's cabinet.

Donnie Hale, Boise State University TRIO and Upward Bound programs, informed the Council that 26 Shoshone-Paiute students participated in the Upward Bound Program at Boise State University and 22 Shoshone-Paiute students traveled to Montana for a campus visit. The Upward Bound Program recruits students for college enrollment and provides special services to students who are enrolled in college. The Upward Bound Program also has a component for military veterans and their families.

In closing remarks, **Senator Jorgenson** expressed appreciation for the participation by the audience and said that he is looking forward to coming back to the Duck Valley Reservation.

Senator Malepeai said that he has been enlightened regarding tribal issues. He has been impressed with the political and social histories of the tribes. Especially where reservations are isolated, there may be fear due to lack of cultural understanding. Challenges are presented to the Council and the Legislature in gaining a better understanding of Indian culture. All parties need to move toward the middle to improve understanding.

Mr. Smith expressed thanks to **Senator Jorgenson** for his efforts on behalf of the tribes. However, he commented that direct communication with the Governor is needed rather than relying on an intermediary. Also, all stakeholders need to be present at that meeting.

Chairman Bear expressed his thanks to all and commented that the Council needs to be more active.

Mr. Tyler moved that the meeting be adjourned. Senator Jorgenson seconded. The motion was adopted without objection. The meeting adjourned at 12:50 p.m.