

IDAHO COUNCIL ON INDIAN AFFAIRS

March 11, 2004

Senate Majority Caucus Room

State Capitol

Boise, Idaho

MINUTES

In attendance were Chair Hilde Kellogg; Vice-Chair Nancy Murillo, Shoshone-Bannock Tribe; Senator Joe Stegner; Representative Joseph Cannon; Kathy Ruffalo, Office of the Governor; Chief J. Allan, Coeur d'Alene Tribe; Gary Aitken, Sr., Kootenai Tribe; Jake Whiteplume, Nez Perce Tribe; and Kyle Prior, Shoshone-Paiute Tribe.

Others in attendance were Elmer Ward, Legal Counsel for Chief J. Allan, Coeur d'Alene Tribe; Dan John, Idaho State Tax Commission; Adam Wilson, Lewiston Tribune; Steve Westerberg, Shoshone-Bannock Tribe; Byron Keely, Local Highway Technical Assistance Council (LHTAC); Russell Westerberg, Kootenai Tribe; Dave Kerrick, Nez Perce Tribe; Wayne Hoffman, Idaho Statesman; William Brower, Shoshone-Bannock Tribe; and Michael Bogert, Office of the Governor. Staff members present were Caralee Lambert and Charmi Arregui, Legislative Services Office.

Representative Hilde Kellogg called the meeting to order at 5:10 p.m. and asked Vice-Chair **Nancy Murillo** to introduce **Byron Keely**, Local Highway Technical Assistance Council (LHTAC), who works for a Council of local, elected officials whose main interaction with the tribes has been two-fold. The Idaho Transportation Department (ITD) has a group that meets several times per year and the tribal representatives attend to address transportation issues, and are working with Nez Perce County and the Nez Perce Tribe to build the Cherrylane Bridge. This will benefit the tribe as well as Nez Perce County, funded through an innovative process. This \$8 million bridge goes to the fish hatchery. The county put up the engineering money and will turn jurisdiction of the bridge over to the Nez Perce Tribe. The bridge will be funded with reservation road money, and there will be a maintenance agreement with the county.

Mr. William Brower, Shoshone-Bannock Tribe, reported that the county is involved in the Riverton Bridge project and once the bridge is constructed, the tribe will take ownership of that bridge. The maintenance responsibility and tentative agreements are being worked out with regard to rights-of-way and other issues. Another project internally on the reservation is Arrowheart Road that is being reconstructed, as well as lighting on an intersection overpass, Exit 80 off I-15. The tribe will put up the front money for the lighting system and the state will request enhancement funds targeted for 2005-2006 for reimbursement. ITD will do the engineering and turn the project over to the tribes if the agreement works out, and the tribe will do the contracting work. There is a study being done on Corridor 91 which travels north to south next to the Union Pacific railroad tracks. There is some controversy being worked out since there are issues regarding jurisdiction. There is a possible study by ITD of I-15 itself because

there are safety issues when snow and wind cause traffic to be diverted. Growth over time has impacted this road and there may need to be a connection to I-15 from the other side of the river into Pingree. The state of Idaho collectively needs to encourage a study on this, and the tribe is currently working with District Five; good communication is being maintained between all entities. The tribe's goal is to maintain all roads within the boundaries of the reservation; in doing that they have to build the maintenance side of their department and are working on different schemes to support that goal.

Representative Kellogg emphasized the importance of communication and stated the ITD has made a commitment to the tribes to work together to allow everyone to know what the other is doing.

Ms. Murillo asked about the possibility of getting more exits off the reservations than they currently have. **Ms. Kathy Ruffalo**, Office of the Governor, responded that there is a coalition of five states (not necessarily looking at transportation improvement, because each state will make their own decisions on their roads within their boundaries) but they are focusing on tourism, economic development and rural telecommunication along borders.

Senator Joe Stegner suggested if there is a concern from any tribe about a highway situation, if it's a federal highway, to alert the legislature and perhaps they can encourage funding. **Ms. Ruffalo** added that a study would be the avenue to assess the needs for new intersections, rather than the Canamex Group. The answers could be obtained as to the plans for certain stretches of highway improvements. **Ms. Ruffalo** offered to get more information for the Council; there is federal authorization for legislation that might provide funding for road improvements but the legislation is still moving through Congress. She did not know specifics about money that could be available in the future. **Ms. Ruffalo** offered to research this further and get information for the Council, and indicated that the funding levels might be increasing. **Ms. Ruffalo** inquired about any changes planned on the reservations.

Mr. Jake Whiteplume, Nez Perce Tribe, commented that they are working closely with ITD to begin construction on an underpass to allow traffic from the reservation to Bonners Ferry, since crossing I-95 is against the law. A visitors center is planned to be built in 2006 in Bonners Ferry, and community support is being encouraged.

Mr. Brower expressed concerns about transportation on the Shoshone-Bannock reservation, school stops for children, shelters, and roads that are deteriorating due to the constant travel of agricultural trucks. **Mr. Brower** stated that the tribes are waiting on appropriation decisions in Congress to see what funding will be provided, and then the tribes will all be maneuvering for those dollars. The tribe has a conflict that is going through the court system regarding the fuel tax issue, which is related to the road maintenance; there is also interaction with the Bureau of Indian Affairs (BIA). Indian reservation roads don't need much funding for the tribes to take care of their roads. The tribe has about 400 roads that get funded through the BIA; the county gets funds to maintain four to five times that many roads. The tribe's 400 road miles also get all the public traffic, all the farming industry and some of those roads will eventually deteriorate so

much they will have to be returned to gravel roads. At one time there was funding for farm-to-market roads, but they don't qualify for funding and won't be able to be maintained any longer. The tribes must find local funding to help maintain their roads and that may be a legislative issue. The state does not participate in the maintenance of tribal roads, and very little maintenance can be done with the current funding. **Mr. Brower** continued to explain 638 contracting that allows the federal government to take on certain federal obligations and BIA obligations. Normally, the Bureau (BIA) had an agency road department on the reservation and that department was responsible to engineer, construct and maintain roads. The Shoshone-Bannock Tribe two years ago took on that total responsibility and **Mr. Brower** has become the Director of Transportation. **Mr. Brower** is responsible to the tribal government and to the people for all the roads within the boundaries regardless if they are Bureau of Indian Affairs roads, county or state roads; he determines if they are safe to drive on, but is not responsible for maintenance. The tribe is not responsible for legal issues due to possible accidents, but to the government as head of transportation, including all transportation issues including rail, airport, and other transit issues yet to be resolved. There was a meeting with the federal highways on March 11, 2004, because they are the certification authority; the tribe designs, Portland reviews the design and then it comes back to Boise to the federal highways. They go into a field and walk on the road before final approval so they have some idea what they are looking at and what to include in their plan, so there are no problems in the end. There is a process being worked out with federal highways to maintain balance within the tribes, rather than the Bureau of Indian Affairs.

Representative Kellogg asked if there was any percentage from state funds for some of these projects and the answer was "no." The Indian reservation road program is what they consider 100% funded, which does not mean they have more money for roads, it means they don't have the tax base in the system to help provide that offset, so in turn the federal government allows the tribe to use total tax dollars to build roads; however, the tribes don't have any way to supplement that. There are other opportunities if tribes and counties can work together to use different funding on projects which benefit both entities. This is what they are doing up north on the bridge program. There are other ways to use or share the money to construct roads, but the weakest spot for tribes is maintenance. Money does not come from federal highways; it comes through the Department of Interior and those funds are very insufficient to maintain roads. There is barely enough money in those budgets to pay for road crews and no money left to pay for the roads under the current system. This is a big problem and Congress has asked the BIA to give them evidence to provide funding, but that may or may not happen. The BIA is trying to collect data on a daily basis to put that package together.

A letter written by **Ernest L. Stensgar**, Chairman, Coeur d'Alene Tribe dated March 5, 2004, was read which informed the Council that **Mr. Stensgar** was stepping down as representative on the Idaho Council on Indian Affairs and that **Chief J. Allan** will be serving in his place. **Chief Allan** also serves as the Administrative Director for the Tribe. Councilwoman **Leta Campbell** was named as the alternate.

Chief J. Allan reported that the Coeur d'Alene Tribe has just finished a major expansion on

their casino with a new wing on the hotel and a new restaurant opening in April. They are working on transportation issues; with the hard winter, equipment got run down. They are anticipating **Dave Matheson**, Chief Executive Officer of the casino, to step up to a dual role with the tribe. The tribe started stamping in February and it seems to be going well. Highway #95 project has the participation of the Coeur d'Alene Tribe, along with the Highway Department, and the future construction of that road and the acquisition of rights-of-way are proceeding, but the funding could take several years.

Senator Goedde posed a question to the tribal members regarding the county roads that are on the reservations and maintained by the Highway Department. These roads are funded by property taxes, and there is concern that property is not taxed on the reservations, so other citizens in the highway district are paying for the maintenance work done on county roads on reservations. **Senator Goedde** asked the Council members what could be done about that.

Chief Allan answered that his home is not on the reservation and therefore pays property taxes himself, as do others. **Chief Allan** added that the county has not approached the Coeur d'Alene Tribe about this, but they would be willing to work with others for a creative solution to better maintain roads.

Mr. Brower stated that it was just the opposite for the Shoshone-Bannock Tribe; they would like county participation to maintain their roads.

Representative Kellogg inquired if the tobacco tax was an issue this year and asked what the tribes were doing. **Senator Stegner** replied that he knew of no bills regarding sales tax on tribal tobacco. **Mr. Dan John**, Idaho State Tax Commission, reported that there was no legislation this year that he was aware of. **Senator Stegner** reiterated that there was potentially a deadline coming up on the tobacco increase tax that was put into place last session which ends in June, 2005, and if there is any consideration by the legislature of renewing that or extending it, the issue may be reactivated. **Representative Kellogg** referred to a report from the Shoshone-Bannock Tribe entitled "Tribal Tobacco Act" and a copy of that report can be obtained from **Ms. Murillo**.

Ms. Murillo read a letter that was part of the Tribal Tobacco Act report and was sent by the Chairman of the Shoshone-Bannock Tribe, Mr. Fred Auck, stating: "You may recall that during the 2003 legislative session, there was substantial interest by certain legislators in imposing a state tax on tobacco sales on Indian reservations in Idaho. The rationale expressed by those legislators was to remedy an alleged, unfair competitive pricing disadvantage to a few local off-reservation retailers. However, an overwhelming majority of the House members rejected the repeated efforts to impose such a tax. Notwithstanding, the Shoshone-Bannock Tribe did not turn a deaf ear to concerns expressed by committee members and other legislators. Instead, the Shoshone-Bannock Tribe promised to undertake internal measures to address those concerns. The Chairman of the Tribe confirms that we have made good on that promise. The Tribe has implemented their Tribal Tobacco Tax Act which has been approved by the Bureau of Indian Affairs. They are an Indian Reorganization Act Tribe, so they have to go through the Bureau for the Secretary's approval. This Act was approved last year. The Shoshone-Bannock Tribe has

been collecting and using some of those taxes for health concerns in the health area, as well as educational and law enforcement areas. The taxes are divided by a percentile of where the money will go for actual administration and for education and health concerns which is outlined in the report how it will run. There is a commission consisting of retailers, the reservation as well as one member of the Council and they manage this Act. It seems to be working well and they hope to do great things with this money.”

Ms. Murillo added that the tribes have many needs on the reservation, and this tax money will help meet some of those needs. There is a high unemployment rate of about 40% + which has gone down from 52%; the nation screams when unemployment reaches 5 or 6%. Gaming has employed over 300 members of the Shoshone-Bannock Tribe. Many people use the health clinic and there is rampant diabetes and obesity in the younger generation and prevention is being addressed.

Representative Cannon mentioned that the issue of taxation was addressed at the 2003 session and one of the issues was that the state was asking the tribes to reimburse when a non-Indian member bought cigarettes on tribal land and the tribes resisted because they emphasize that point of sale rules. **Representative Cannon** remembers debating on the floor and voted against that motion that the legislature go after the tribes to reimburse and he promised that the way to solve these problems is through negotiation around the table, rather than making demands and going to court. **Representative Cannon** complimented the Shoshone-Bannock Tribe on what they are doing with this tobacco tax money; he only wishes they had more money to work with. The people who sell tobacco off the reservation get \$5.98 tax compared to \$3.00 tax on the reservation; the legislature wishes the tribes would help with that problem. The legislature is not concerned about who keeps the tax (at least **Representative Cannon** is not), but he asked the tribes if there were a way to avoid competing with that differential. “Charge \$3 more and fix your roads” was **Representative Cannon’s** solution and plea to the tribes.

Mr. Kyle Prior, Shoshone-Paiute Tribe, stated that they do not sell tobacco, so they do not deal with this tax, but the tribes do receive some funds from the tobacco settlement through the Department of Health and Welfare, so they participate in smoking cessation and prevention programs. **Mr. Prior** mentioned that it would be helpful to find the U.S. Civil Rights Commission paper called the “Quiet Crisis” which focuses on the disparities on health toward Native American people in America. It will open one’s eyes to understand that tribes must try to do more within their boundaries to provide adequate health care. However, most American citizens receive around \$5,000 in health benefits versus \$1,500 for a Native American.

Mr. Jake Whiteplume, Nez Perce Tribe, pointed out that his tribe has made \$274,000 from tobacco tax and that goes into four areas: scholarships, burial assistance, senior citizens and youth. Some legislators and lobbyists felt that the Nez Perce Tribe was making more money than this on the tobacco tax, but **Mr. Whiteplume** emphasized this is not true. He suggested the legislature study this more. It was suggested that the state of Idaho is losing out on \$9 million in tobacco tax; if that were true, this would not be an issue for the tribes. The Nez Perce Tribe is struggling. There are many exemptions being allowed by the Idaho State Tax Commission; in

comparison, to question tribes on the small amount of tobacco tax, **Mr. Whiteplume** sees this as unfair. The state of Idaho is treating the tribes in a very extreme way, in his opinion. He commented that Idaho failed to collect \$88 million in taxes, so to be picking on the Nez Perce Tribe thinking they make more than \$274,000 in tobacco tax, with utmost respect, he pleaded with this Council to listen and hear the tribes' needs. **Mr. Whiteplume** added that the tribes have been "attacked" on six different occasions and only one time did the "attackers" try to sit down to listen to them, and with only half an ear. **Mr. Whitplume** stated that the Nez Perce Tribe averages only \$1,200 per year per member for health care; federal prisoners get much better health care than the Indians. He continued, adding that the state of Idaho still owes the Nez Perce Tribe money for fuel tax, and the tribe will probably have to go to court to get that money back. The tribe, in good faith negotiations, collected this Idaho tax and gave it to the state, and the state agreed to reimburse the tribe, but it has not happened. The tribe put that money in an escrow account, money the tribe could be using in many ways, but there are still questions with regard to the legality and fairness of this issue.

Mr. Gary Aitken, Kootenai Tribe, explained that his tribe subsidizes many of their programs, especially health care, and most members can only receive health care if their life or limb is being threatened. It is cheaper for tribe members to buy tobacco from retailers nearby where they cost less. Every tribe is different and the Kootenai Tribe uses its money for health care and on their youth.

Ms. Murillo commented that according to the Shoshone Bannock Treaty, they are to have health care, education, housing, etc, and this has not been up to par. It is correct that Indian tribes receive the least amount of money for health care, and a member needs to be close to loss of life or losing a limb before medical care can be received, if eligible. A tribal member could not get a gall bladder surgery; they would probably have to get on a waiting list, unless a patient is critical, and hope for survival. This disparity has been great for many years and this little bit of tobacco tax money is greatly helpful. This Indian Council will hopefully support Indian funding for many of those title programs including health care and education which are critical issues.

Mr. Whiteplume emphasized the importance for tribes to have open communication with the legislature, and specifically requested after the elections in the fall of 2004, that the Idaho Council of Indian Affairs put on an educational meeting for the new legislators. The tribes could all be represented and in one place to present their needs, to educate the new legislators about what the tribes are doing, to hopefully be listened to, and have questions answered. **Mr. Whiteplume** added that he was grateful that his tribe was included in the legislative tour in northern Idaho, but there was not enough time for the tribe to get information out about issues affecting the tribe. The tribes have health care, education and jurisdictional concerns that they would like to address with legislators. He expressed a wish for more honor and respect for the tribes based on their treaties.

Senator Stegner summarized three points: (1) He was disappointed that the Indian Council meeting that was supposed to happen last year did not take place. There was an agreement the Council would try to get together later in the year and they were to meet at the Sho-Ban location,

similar to what had been done with the Coeur d'Alene and Nez Perce Tribes when legislators made themselves available for 1½ days and the tribes set the agenda, including traveling around to see things the tribe wanted to show the legislators. That Council meeting did not take place in southern Idaho, partly because the legislature was in session until May, 2003. That trip now needs to be rescheduled. (2) Having the tribes present at the new legislator orientation might be awkward because the only people at the orientation are freshman legislators. That could be 3-4 new members, or 10-12 and is organized by Legislative Services. That orientation is for specific training such as protocol, rules of order, committee specifications, parking, and processing rules. The time is very structured, and last year the orientation got cut back to one day, so to add more agenda items into that orientation could present problems. The matter does, however, deserve consideration and **Senator Stegner** agreed to pass on that request by the tribes. (3) A more promising time to get together would be the northern Idaho legislative tour and the off-year southern Idaho legislative tour; that would be a much better quorum for the tribes' purposes, and traditionally would be included. That tour is generally sponsored and paid for by the Chambers of Commerce of those regions in mid-November after an election in even-numbered years and each region hosts about every eight years, rotating locations. These tours are designed to educate the legislators about the interests, concerns, and issues in Idaho. The tribal issues have been taken into consideration, historically, on these tours. This legislative tour would be the best place for the tribes to possibly meet with the legislators. The tour would take place in southern Idaho in odd-numbered years.

Ms. Murillo requested that **Senator Stegner** pass on to the Speaker and Pro Tem's offices the request from the tribes to be included in the Chambers of Commerce legislative tours and **Senator Stegner** agreed to do that. He also suggested that the Council meet in southern Idaho for 1 1/2 days. **Ms. Murillo** welcomed the Council and extended an invitation for the Council to meet with the Shoshone-Bannock Tribe. It was agreed that the Council meet on June 10 and 11th, 2004, and **Senator Stegner** asked the tribe to arrange the meeting place, to arrange the schedule in order to educate the Council to learn about the tribe, the reservation, the land, and any tribal concerns. A tour is being arranged, along with transportation for the Council members by the Shoshone-Bannock Tribe. Notices will be sent out by the Legislative Services Office. **Ms. Caralee Lambert** asked that the tribe arrange for someone to take minutes and **Ms. Murillo** agreed to that. Attendees can contact **Ms. Murillo** for motel reservations.

Ms. Murillo reported that the Indian students taking ISAT tests that are being administered around the state are scoring very low. Stoddard School is doing quite well; the Blackfoot School District #55 scored poorly, especially the sixth graders. **Ms. Murillo** blamed lack of funding and understanding, stating that there needs to be educational training with the administrators and their staff. There are some excellent teachers, but the test scores are very low. The "No Child Left Behind" Act (NCLB) is supposed to be helping, but the state of Idaho needs to enhance education in the state, according to **Ms. Murillo**.

Senator Stegner confirmed the legislature has provided funding for the creation of the NCLB, but did not know if the language specified certain tribes or special groups anywhere across the state. **Senator Stegner** suggested that this be a topic for discussion at the next Council meeting

to be held with the Shoshone-Bannock Tribe, inviting all tribal members to bring information, documentation, and personnel to address their specific concerns.

Mr. Brower stated that he has concerns regarding children, education and there is a safety problem with regard to busing between Bingham and Bannock Counties. School children being bused to Bannock County are being dropped off at the district line, and it would only be another half mile to provide safety for them in Bingham County. Because of the difficulties between the two school districts, Bingham County will not allow Bannock County to bring the children where it would be safer for them. This has been an on-going issue for several years and there is a legal firm that looked into this issue, but progress has been blocked because the Bingham County School District will not allow Bannock County to bring them to a safe drop-off location. Bingham County is afraid that if they allow Bannock County to bus their children to a safe location, then more Indian children might want to go to Bannock County rather than to Bingham County. There are historical reasons why more of the Indian children prefer to go to Bannock County. This issue needs to be resolved for the children because they are walking where there are no sidewalks, it's cold, there are railroad tracks, and it is a dangerous situation. The counties have been asked for help in resolving this issue; they agreed to look into it, but nothing has been done. A political process may be necessary to resolve this safety issue for the children.

Representative Cannon inquired about the elementary school in Fort Hall and asked if the Indian children go to that school. **Ms. Murillo** replied that 150 students go to Fort Hall, kindergarten to fifth grade, and many Indian students prefer to go to Tyhee which is a better school in the Pocatello School District. The Shoshone-Bannock Tribe has 1,500 students attending high school in five different areas. **Senator Stegner** suggested that if education is the theme of the next Council meeting, there could possibly be a session where invitations could be extended to the State Board of Education and the board members from both feuding school districts to see if the problems can be resolved. **Ms. Ruffalo** suggested that a letter from the Council go as an invitation to these entities. **Mr. Prior** requested that an invitation also be sent to the Idaho Indian Education Board. **Senator Stegner** suggested that a representative from the State Board of Education who deals with ISAT testing be invited and a representative from the Department of Education, not necessarily the Superintendent, as well as representatives from the district school boards.

Mr. Whiteplume stated that the Idaho Board of Education has studied the Migrant Council on numerous occasions, and expressed hope for studies to also be done with the tribes to determine causes and concerns why the Indian children are not graduating from high school and testing at such low grade levels. **Ms. Murillo** requested an overview on the NCLB to look at who is exempt, and **Representative Cannon** responded that her request can be honored. **Ms. Murillo** asked where the Indian students were going to go, since the tribes have very few choices where to send their students. **Ms. Murillo** commented that their tribal students were "so far left behind that people think they are in first place."

Mr. Whiteplume stated that it is always a struggle trying to get Head Start funding from the state and there are many issues surrounding education that need to be resolved. **Ms. Murillo**

explained that she thought the federal government was going to funnel Head Start money through the state and the tribes are opposed to that; the tribes want to see the money come directly to the tribal programs so they can manage and direct them to specific needs.

Ms. Lambert suggested that education representatives be asked to attend the Council meeting on June 10th only, as they will be more likely to attend for one day only, with their busy schedules. Attendees will most likely be arriving on Wednesday evening, June 9th. It was suggested that the Council contact **Dr. Randy Thompson**, Chief Academic Officer, Idaho State Board of Education. It was suggested to check with **Dr. Thompson** to see if he could attend the June Council meeting, and to ask what day would be best for him. The June meeting was scheduled to begin on June 10th at 9:30 a.m., with education representatives being invited to participate until noon; tours would be in the afternoon of June 10th, and a half-day on June 11th would be available for the host tribe to schedule the rest of the agenda.

Senator Stegner suggested that the professional educational representatives may want to travel on the morning of June 10th, and he thought it preferable to meet with them the afternoon of June 10th so they could be free to drive home in the evening and only be away from their jobs one day. Thursday morning's agenda could include the background the tribe requested and tours could be held all day on Friday. **Representative Cannon** reiterated that the professional educational representatives might be extremely interested in the tribal schools, for example the teacher that developed a NASA science program. The educational representatives need to meet that teacher and some of the Indian students. **Ms. Lambert** stated that she would await notice from **Ms. Murillo** as to the specific agenda, and then **Ms. Lambert** will send out the invitations.

The meeting was adjourned at 7:00 p.m.