

MINUTES

IDAHO COUNCIL ON INDIAN AFFAIRS

DECEMBER 5, 2006

SENATE MAJORITY CAUCUS ROOM
IDAHO STATEHOUSE
BOISE, IDAHO

(Subject to approval by the Council)

Idaho Council on Indian Affairs members present were Senator Michael Jorgenson; Representative George Saylor; Representative Bob Nonini; Paula Landon, representing Governor James Risch; Coeur d'Alene Tribal Council Chairman Chief Allan, representing the Coeur d'Alene Tribe; Nez Perce Executive Committee Vice-Chairman Samuel Penney, representing the Nez Perce Tribe; Fort Hall Business Council Member Delbert Farmer, representing the Shoshone-Bannock Tribes; Shoshone-Paiute Tribal Council Vice Chairman Marvin Cota, representing the Shoshone-Paiute Tribes; and Attorney Russ Westerberg, representing the Kootenai Tribe. Paige Alan Parker of the Legislative Services Office was present as staff.

Also present were Representative Eric Anderson; Mitch Silvers, representing United States Senator Mike Crapo; Bill Bacon and Gary Gould, representing the Shoshone-Bannock Tribes; Darren Williams, David Kerrick and Rebecca Miles, representing the Nez Perce Tribe; Margaret SiJohn, representing the Coeur d'Alene Tribe; Darlene Blossom-Paiua and Lisa G. Jim, representing the Shoshone-Paiute Tribes; Matt Ellsworth, representing Governor James Risch; Idaho Superintendent of Public Schools-elect Tom Luna; Betsy Russell, representing The Spokesman-Review; Pat White, representing the Idaho Department of Education; Pam Eaton, representing the Idaho Retailers Association; and Dan Adams, representing the Langdon Group, Inc.

The meeting was called to order at 2:15 p.m. by **Council Chairman Jorgenson**. An invocation was offered by **Mr. Penney**.

Chairman Jorgenson introduced new Council members **Paula Langdon**, **Governor James Risch's** representative who is employed by Albertson's Inc. and who is the granddaughter of an American Indian, and Idaho House of Representatives member **Bob Nonini**, a native Idahoan who represents the Fifth District.

Guests at the Council meeting were introduced by **Chairman Jorgenson**. Representative **Lawrence Denny**, the Majority Leader of the House of Representatives, stated that he is pleased with the work of the Council. Senator **Robert Geddes**, the Pro Tem of the

Senate, is pleased with the progress of the Council. **Pro Tem Geddes** stated that he appointed **Senator Jorgenson** to the Council because he is not only a tough negotiator but is fair and honest. **Pro Tem Geddes** commented that the Idaho Council on Indian Affairs is appropriately labeled as a “council,” since it serves to exchange information in order to arrive at beneficial solutions. **Pro Tem Geddes** committed to do his best to understand the Council’s concerns as the dialogue progresses.

Idaho Superintendent of Public Instruction-elect **Tom Luna** was introduced by Chairman **Jorgenson**. **Mr. Luna** served as an education advisor for the Bush administration. His great grandmother was a Pueblo Indian. As part of his duties with the Bush administration, he was appointed to a committee on the thirty-two tribal colleges across the nation. He visited each of these tribal colleges and was impressed with the good things being done with minimal funds. He also had the opportunity to visit many of the Bureau of Indian Affairs schools and was able to observe their condition.

Mr. Luna has met with Coeur d’Alene Tribal Council Chairman **Chief Allan** and indicated his support for a staff level position in the Department of Education for an Indian Education Coordinator. That position will be presented in this year’s budget. **Mr. Luna** is looking forward to working with the Council. In response to a question by **Bill Bacon**, **Mr. Luna** stated that the Indian Education Coordinator position would be advertised and a job description would be available.

Vice-Chair Allan cautioned that the first task is to get the Indian Education Coordinator position funded. During the last legislative session, the ball got dropped when the issue came up in the Joint Finance and Appropriate Committee (JFAC). Some member of JFAC thought that the tribes would fund the position. **Vice Chair Allan** stated that he was not opposed to a joint funding effort between the state and the tribes but believes that all should work together. **Vice Chair Allan** encouraged the tribes represented on the Council to make staff available to assist in this effort.

Representative Sayler moved that the Council send a letter to JFAC recommending that the Indian Education Coordinator position in the Idaho Department of Education be funded. **Vice Chair Allan** seconded the motion. The motion was approved without objection.

Chairman Jorgenson asked that all Council member to solicit applications from tribal members who might be interested and qualified to fill the Indian Education Coordinator position. These applications may be sent to **Mr. Parker**.

Mr. Penney requested that the Idaho Indian Education Committee (IIEC) stay intact and be supported by **Mr. Luna**. Nez Perce Executive Council Chairperson **Rebecca Miles** joined in **Mr. Penney’s** request, noting that the IIEC has supported the creation of an Indian Education Coordinator.

Dan Adams of the Langdon Group, a public policy and conflict resolution consulting organization, addressed the Council on proposed state and federal land exchanges in Idaho. The Langdon Group has been retained to advise the Idaho Department of Lands (DOL) on the proposed Orchard Tank Training Area land exchange between the Bureau of Land Management (BLM), the Department of Defense and the state of Idaho. The state of Idaho would benefit since it has a fiduciary duty to generate revenue from state lands. The military would like to see a buffer zone around the Orchard Tank Training Area in order to protect that training area from the encroachment of development. However, Shoshone-Paiute ancestral lands would be affected and there is an overlap with the Birds of Prey lands.

In working with the directly affected groups during the initial phases of the consulting project, **Mr. Adams** discovered that the interest in land exchanges went beyond the Orchard Tank Training Area matter. Many federal and state lands in Idaho present a “checkerboard” pattern which creates management problems. The state of Idaho has an interest in exchanging under-producing lands for better- producing lands.

Mr. Adams observed that the proposed Orchard land exchange, as well as the other potential land exchanges, may affect tribal interests. **Mr. Adams** is now extending the consultation process to the tribes in order to solicit thoughts, concerns and recommendations. **Mr. Adams** inquired as to whom would be the appropriate tribal contact.

Mr. Cota asked whether there was any documentation that would describe the current status of the proposed land exchange. **Mr. Adams** passed out an Idaho Department of Lands brochure titled “Potential Land Exchange” which explains the project’s background and approach, provides a description of Idaho’s endowed land, and discusses current land use and related proposals. A copy of this brochure, as well as other relevant information, is available at www.IdEndowedLandExchange.Info/. **Mr. Cota** also suggested that these consultation be done on a government-to-government, one-on-one basis. **Vice-Chair Allan** recommended that **Mr. Adams** should contact the tribal governing council office for each tribe and asked that the tribe appoint a contact person. **Mr. Penney** recommended that the tribes be contacted on an individual basis with telephone follow-up.

Mr. Farmer injected that the tribes understood that they would be compensated for the lands they had vacated when they moved to reservations, but that the Claims Commission created in the last century went out of existence without resolving the Indian claims to the Boise Valley lands. Not only the Shoshone-Bannock and the Shoshone-Paiute Tribes are affected, but other tribes, such as the Nez Perce, used the Boise Valley as part of its hunting territory. He suggested that DOL may not have clear title to lands affected by the proposed exchange and asked whether this issue was being addressed. **Mr. Cota** expressed the hope that the BLM lands were being held in trust for the Indians.

Chairman Jorgenson pointed out that these are federal issues over which the state of Idaho has not authority. He suggested that the affected tribes take these issues up with the federal government.

Chairman Jorgenson noted that the purpose of the Council is to strengthen communications, citing the Council's efforts on the fuels tax issue as an example. **Chairman Jorgenson** then asked each tribal representative to put forth the issues that each of the tribes would like the Council to address.

Mr. Westerberg, on behalf of the Kootenai Tribe, stated that the tribe supported the creation of the Indian Education Coordinator position in the Department of Education and the appointment of an American Indian to fill that position.

Mr. Farmer, on behalf of the Shoshone-Bannock Tribes, expressed the concern that members of the House Transportation Committee were recommending that HB 661, which sought to impose a distributor-level fuel tax which would be assessed on reservation fuel outlets, be reintroduced in the upcoming legislative session as a means to balance the budget. **Representative Sayler** stated that he has not heard of such an effort and that the Transportation Committee members he has talked to have indicated that they are supporting the tribes provided that progress is made in the negotiations with the Governor on this matter. **Vice-Chair Allan** stated that he has also spoken with Transportation Committee members and has expressed the view that only a minimum amount of revenue (four to five million dollars annually) would be generated from a fuels tax on Indian retailers which would be insufficient to balance the budget. **Chairman Jorgenson** stated that the purpose of the Council's Fuels Tax Task Force was to address this issue and that the tribes and the Governor have negotiated in good faith. **Chairman Jorgenson** also stated that **Governor-elect Otter** is looking forward to continuing these negotiations and that he will make every effort to make the Legislature aware of what's going on.

Mr. Farmer also stated that an issue for the Shoshone-Bannock Tribes was the repeal of Public Law 280 which creates state jurisdiction on tribal land in seven specific areas. **Mr. Farmer** commented that while the state has asserted jurisdiction in these areas, it has not provided adequate funding. **Mr. Penney** commented that P.L. 280 was passed by Congress during the "termination" era of the 1950's and that the state legislature can undertake the retrocession process. **Mr. Penney** asked that the Council authorize research on how the retrocession process might be undertaken.

Mitch Silvers of U.S. Senator **Mike Crapo's** office stated that his understanding was that P.L. 280 is federal legislation that allows states the option to exert jurisdiction within Indian country and that the states can determine not to exercise such jurisdiction. **Mr. Silvers** stated that he can get clarification on this matter and report back to the Council. **Chairman Jorgenson** thanked **Mr. Silvers** for this offer and also requested that **Mr. Parker** research the power of the state regarding the retrocession process.

Mr. Cota, on behalf of the Shoshone-Paiute Tribes, stated that the fuels tax issue was of concern. The Shoshone-Paiute Tribes have negotiated a compact with the state of Nevada which recognizes that Nevada cannot collect a fuels tax on reservation lands since the tribe is a sovereign nation and, in exchange, provides for the tribes to give up part of the fuels tax the tribes collect on reservation to the state for the benefit of state highways. **Mr. Cota** admitted

that the Shoshone-Paiute Tribes do not operate a fuels outlet in Idaho but may choose to do so in the future. **Mr. Westerberg** commented that the Kootenai Tribe does not currently operate an Idaho fuels outlet but was taking advantage of the opportunity to negotiate with the Governor's office on a fuels tax outlet to preserve its options and to dispel any fears of unfair competition that might be entertained by non-Indian retail fuels sellers.

Chairman Jorgenson commented that the Council makes every effort to recognize tribal sovereignty and supports the efforts of the separate tribes to negotiate individual compacts with the Governor. Although uniform compacts are unlikely to be adopted, **Chairman Jorgenson** expressed the hope that the individual tribes can get together on common tribal issues.

Mr. Penney, on behalf of the Nez Perce Tribe, commented that the state of Idaho receives millions of dollars each year from the federal government for transportation funding under the federal SAFETEA-LU program. The state is required to match federal funds for state transportation projects but may not be required to match when the federal funds are used on Indian reservations. **Mr. Penney** believes that the Council should explore this issue.

Mr. Penney also expressed the hope that the issue of tribal gaming does not arise again but that recent actions of the National Gaming Commission may infringe on both state and tribal sovereignty. In response to **Chairman Jorgenson's** inquiry regarding possible expansion of Indian gaming activity, **Mr. Penney** stated the Nez Perce gaming activities are limited by Proposition #1 and by the lack of any nearby metropolitan centers. **Mr. Westerberg** commented that the Idaho tribes with compacts are limited by Proposition #1.

Mr. Cota stated that the Shoshone-Paiute Tribes are the only Idaho tribes without an Idaho gaming compact and may want to enter into such a compact with the Governor, although the tribes have not yet approached the Governor's office on this matter. **Chairman Jorgenson** offered to help set up a meeting with the Governor if the tribes have a proposal to make.

Mr. Farmer informed the Council that the Northwest Band of the Shoshone Nation, which is out of the Phoenix area but which has an Idaho presence, is considering building an Idaho casino in Oneida County in order to attract a Utah clientele. **Chairman Jorgenson** noted that the Northwest Band of the Shoshone Nation is not a member of the Council.

Chairman Jorgenson recommended that the meth issue be put on the Council's agenda for the next meeting, especially if Governor-elect Otter intends to make meth a priority. **Mr. Bacon** stated that the Fort Hall Business Council has a memorandum of understanding (MOU) on drug issues with Bingham and Oneida Counties which facilitates cooperation while protecting tribal sovereignty. The tribe's relationship with Bannock County is not as good. According to **Mr. Bacon**, meth garbage from meth manufactured in the surrounding counties is being dumped on reservation lands. **Mr. Bacon** commented that it takes both sides to solve the problem and that perhaps the Department of Law Enforcement might help.

Vice-Chair Allan stated that the Coeur d'Alene Tribe has cross deputations agreements

with neighboring law enforcement agencies. The tribe's relationship with Benewah County is not always that great, but everyone has the same overall goals regarding public health and protection. Cross deputations assist in combating drug dealers. The Coeur d'Alene Tribe has made sure that its police officers have received POST training. **Representative Saylor** commented that there may be a role for the state in overcoming the obstacles involved in law enforcement across sovereign boundaries on the drug issue. **Chairman Jorgenson** observed that the separate jurisdictions have the same goals but may have philosophical differences.

Mr. Cota stated that the Shoshone-Paiute Tribes would be acceptable to a state-wide MOU on meth. He observed that the Shoshone-Paiute reservation is a major artery for meth coming into Idaho but that the federal government does not have the resources to combat this problem. A larger cooperation would be welcome.

Mr. Penney stated that Idaho statute does not recognize tribal police officers under the definition of "police officer." **Mr. Penney** expressed the belief that the definition of "police officer" should be based on the training received, be it POST, Idaho State Police, or federal. **Mr. Westerberg** suggested that this could be a future agenda item with a presentation from a knowledgeable individual.

Chairman Jorgenson summed up the action items agreed to at the Council meeting as: reviewing the P.L. 280 issue with reports by **Mr. Silvers** and **Mr. Parker**, the support by the Council of a Resolution to JFAC supporting the establishment and funding of an Indian Education Coordinator in the Department of Education, continued monitoring of the sensitive issue of tribal gaming, investigation of the recognition of trained tribal police officers under Idaho law, and the efforts to mount a joint attack on the meth problem.

The consensus of the Council was to continue to hold monthly meetings while the Legislature is in session. **Chairman Jorgenson** appointed **Vice-Chair Allan** to set up the next Council meeting and its agenda.

Vice-Chair Allan moved that the minutes of the June 6, 2006, meeting of the Council be approved. **Mr. Penney** seconded the motion. The motion passed without objection.

The Council meeting adjourned at 4:10 p.m.