

MINUTES

(Subject to approval by the Council)

IDAHO COUNCIL ON INDIAN AFFAIRS
OCTOBER 9, 2008
NEZ PERCE TRIBAL HEADQUARTERS
100 AGENCY ROAD
LAPWAI, IDAHO

Council members present were Senator Michael Jorgenson, Chairman of the Council; Council Vice-Chairman Chief Allan, Chairman of the Coeur d'Alene Tribal Council, 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; Jennifer Porter, Chairwoman of the Kootenai Tribal Council, representing the Kootenai Tribe; David Hensley (participating telephonically), representing Governor "Butch" Otter; and Paige Alan Parker of the Legislative Services Office. Absent and excused were Nancy Egan, Chairwoman of the Shoshone-Paiute Tribal Council; Senator Edgar Malepeai; Representative George Saylor; and Representative Bob Nonini.

Also in attendance were Eric VanOrden, Helo Hancock and Bill Roden, representing the Coeur d'Alene Tribe; Joel T. Moffett, Brooklyn D. Baptiste, McCoy Oatman, Tonia B. Garcia, Joanna F. Marek, Julia A. Davis-Wheeler and Darren Williams, representing the Nez Perce Tribe; Kyle Prior, representing the Upper Snake River Tribes; Senator Claudia Kauffman, Washington State Legislative District 47; Representative John McCoy, Washington State Legislative District 38; Brad Gary of the Lewiston Tribune; Mary Jane Oatman-Wak Wak, Indian Affairs Coordinator, Idaho Department of Education; Bryon Samuels, Chair of the Idaho Indian Education Committee; Wayne Davis, Executive Director of the Idaho Association of School Boards; Representative John Rusche, Idaho Legislative District 7; and Representative Liz Chavez, Idaho Legislative District 7.

Chairman Michael Jorgenson called the meeting to order at 9:08 a.m. and turned the meeting over to **Chairman Samuel Penney** of the host Nez Perce Tribe to chair the meeting. After the opening prayer and introductions, **Chairman Penney** announced that following the meeting a tour would be conducted of the Nez Perce Tribe's Bio-Control Center, the Nez Perce Tribal Hatchery and the Nez Perce National Historical Park.

Chairman Chief Allan moved that the minutes of the Council's March 12, 2008, meeting be approved. **Senator Jorgenson** seconded the motion. **The minutes were approved without objection.**

Chairman Penney requested **Governor's Representative David Hensley** to report to the Council on the Summit Meeting Task Force. **Mr. Hensley** noted that he has just taken over

the responsibility of representing **Governor “Butch” Otter** on the Council and has not yet had the opportunity to discuss the Summit Meeting with the Governor. He plans to do so in the near future and will make a report to the Council. **Mr. Hensley** told the Council that **Governor Otter** values his relationship with the Idaho Indian Tribes.

Senator Jorgenson asked **Mr. Hensley** if there were any 2009 legislative proposals coming out of the Governor’s office that would affect the Tribes. **Mr. Hensley** stated that any proposals are still preliminary and that he will report back to the Council when these become clearer. **Mr. Hensley** noted that the Governor is in the process of reviewing the budget and has already implemented a one percent (1%) state agency holdback.

Chairman Penney requested **Chairman Allan** to report on the Tribal Commerce Development Task Force. **Chairman Allan** stated that **Senator Edgar Malepeai** has not been available to meet due to an illness in his family.

Chairman Penney then recognized **Washington State Senator Claudia Kauffman**, a member of the Nez Perce Tribe, and **Washington State Representative John McCoy** to address the Council on the topics of law enforcement jurisdiction and cross-deputization of tribal law enforcement officers in Washington State.

Representative McCoy began his presentation with the observation that Indian gaming has increased the contact between Indians and non-Indians. There are some 30,000 daily non-Indian visitors to the Tulalip Tribes Indian Reservation and their casino. Such contact is not always positive. When there is a problem with a non-Indian visitor, the tribal law enforcement officer used to have to call the county to deal with the issue. If the county was unable to promptly respond due to priorities, the tribal law enforcement officer would be forced to release the non-Indian.

Representative McCoy noted that the law enforcement issues on reservation lands are compounded by the checkerboard land holding patterns on some reservations. For some non-Indian individuals, reservation lands represent a “no man’s land” where the individual is outside the reach of state and local law enforcement officers, while not subject to the criminal jurisdiction of tribal law enforcement officers.

Last session, **Representative McCoy** and **Senator Kauffman** were able to get the Washington Legislature to enact HB 2476 (2008) to deal with the cross-deputization issue. (A copy of this legislation is available in the Legislative Services Office.) In sponsoring this legislation, **Representative McCoy** had to address the unfounded allegations that Indian officers are not properly trained and may have questionable backgrounds that had not been fully checked. His strongest argument in favor of the legislation was that the tribes needed equal protection under the law.

Representative McCoy stated that, in addition to Washington, there are currently five

states that permit cross-deputization: New Mexico, Kansas, Oklahoma, Arizona and Minnesota. Three of these states have legislation similar to Washington's, including: only individual tribal officers are cross-deputized; tribal officers must attend and graduate from an accredited police academy, either operated by the Bureau of Indian Affairs or by the state; a psychological, polygraph and background check must be completed by the state; and the tribal police department must carry adequate liability insurance. A non-Indian arrested by a tribal officer must be charged into state court.

The tribe has the discretion to opt into the cross-deputization program. The first step is for the tribe to make a formal request to the county sheriff. The formal request starts a one year clock. If the sheriff does not negotiate with the tribe in good faith to reach a cross-deputization agreement, binding arbitration is instituted after the lapse of one year. The cross-deputization agreement addresses such issues as the housing and care of Indian and non-Indian prisoners and fresh pursuit.

Arguments against the legislation included the inability of non-Indians to vote in the jurisdiction employing the tribal officer and the adequacy of liability insurance. **Representative McCoy** addressed the voting issue by noting that being subject to the jurisdiction of an Indian reservation is no different than traveling to another county, state or foreign country where there is no right of the nonresident to vote. As for the liability insurance issue, **Representative McCoy** observed that most tribes had \$20 million in liability coverage, which is greater than that carried by most counties. He also noted that tort claims against tribes in Washington are rare.

Senator Kauffman carried the legislation in the Washington Senate, which was initially resistant. She was concerned about the large numbers of non-Indians coming onto reservation lands and the inability of tribal officers to address serious crimes committed by non-Indians against Indians, including a high incidence of rape. She noted that the federal government's response to reservation criminal issues is minimal due to the lack of resources and interest. She observed that not all Washington Indian tribes have police forces; many contract with counties for law enforcement.

In response to a question from **Chairwoman Jennifer Porter** regarding crimes being perpetrated by non-Indians against Indian women and children, **Senator Kauffman** noted the frustration of tribal officers who may have knowledge that a serious crime is being committed by a non-Indian on reservation lands but who cannot respond due to the lack of jurisdiction.

Representative McCoy answered **Senator Jorgenson's** question on how long has cross-deputization legislation been on the books in other states by noting that New Mexico's legislation has been in effect for 25 years.

Chairman Allan commented that the Coeur d'Alene Tribe has been trying to get cross-deputization legislation passed in Idaho for a number of years. The Coeur d'Alene Tribe has negotiated cross-deputization agreements with two counties. The tribe sends its officers to POST

and hires officers from surrounding jurisdictions. **Chairman Allan** noted that the tribe's relationship with the different counties varies. The issue is public safety and he believes that cross-deputization legislation is the way to go. However, the tribes need to be proactive in this regard. **Representative McCoy** responded by observing that there is still opposition in Washington, primarily from the Sheriff's Association and some individual sheriffs who want to control who may be officers. **Representative McCoy** also observed that some individual sheriffs may be challenged by diversity issues. However, the Washington legislation addresses these issues through the binding arbitration provision which takes the political and emotional issues out.

Chairman Allan asked about how the cross-deputization program is funded in Washington. **Representative McCoy** stated that the Washington legislation did not result in taking funding or responsibility away from the sheriffs. Minor criminal matters are handled by tribal courts which may assess fines and fees. The more serious crimes, such as driving under the influence, are remanded to state court. The tribes pay what they agree to pay, and the state pays the rest. If a non-Indian breaks a state law, the state pays.

Senator Jorgenson asked whether cross-deputization provides a mutual benefit to both the counties and the tribes. **Chairman Allan** observed that the Coeur d'Alene's agreement with Kootenai County has saved the county the cost of patrolling Lake Coeur d'Alene and other costs associated with the availability of resources.

Senator Jorgenson asked whether cross-deputization moves off the reservation. **Chairman Allan** responded that if it is a tribal function, the tribe pays. He noted that the Coeur d'Alene Tribe entered into an agreement with Post Falls when the tribe held a powwow there.

Senator Jorgenson asked how the implementation of the Washington legislation is going. **Representative McCoy** replied that some sheriffs were quick to respond. As for the sheriff in the county where the Tulalip Tribes casino is located, the sheriff was resistant and the negotiation of an agreement stretched over 14 months. However, when the new sheriff took office, the agreement was quickly signed. **Senator Kauffman** stated that the legislation has resulted in taking sexual predators off the streets.

Senator Jorgensen asked where the Tulalip Tribes were sending their officers for training. **Representative McCoy** said that they were being sent to the Bureau of Indian Affairs school in New Mexico. He explained that the number of slots in the Washington police academy were limited, due to funding issues and that nontribal jurisdictions have priority. However, the tribe pays for the training of its officers. **Chairman Allan** added that Idaho tribes can now send their officers to POST.

Vice Chairman Tyler commented that education is the key, including understanding Indian reservations as being sovereign entities. He stated that the Fort Hall Indian Reservation is surrounded by four counties. A memorandum of understanding was developed but the Idaho

State Police refused to sign. He wants to be sure that tribal officers are able to protect the reservation borders which is a homeland security issue. He is also concerned with the delays involved in summoning law enforcement officers from the counties. He opined that the tribes are disrespected under P.L. 280. **Vice Chairman Tyler** suggested that the youth cadet program, which helps demonstrate that police are not the enemy, be reinstated. He also complained that there is differential treatment of Indians in criminal matters.

Chairman Penney stated that the definition of “peace officer” in the Idaho Code needs to be changed to include tribal officers. Law enforcement problems on the Nez Perce Reservation include domestic violence and drugs. Nez Perce officers sometimes have to let a non-Indian suspect go because of the delay in response by the county or by the Idaho State Police. The issues of mutual aid and hot pursuit need to be addressed. **Chairman Penney** suggested that the Council do research on the definition of “peace officer.”

Chairman Allan urged the Council to be more proactive, rather than reactive, in legislative matters. He stated that the tribes need to press the issues they think are important in the next legislative session, with the help of the Council’s legislative members. **Senator Jorgenson** reminded the Council that it has no legislative authority and if legislation is to move forward, help must come through the tribes’ friends. **Senator Jorgenson** expressed his willingness to help and noted that headway was made on the POST certification issue.

A presentation in memory of their father by the **Kauffman family** was made.

Chairman Penney recognized **Mary Jane Oatman-Wak Wak**, the Indian Affairs Coordinator for the Idaho Department of Education, to make a presentation on Idaho Indian Student Data. (A copy of the Idaho Indian Student Data report is available in the Legislative Services Office.)

Ms. Oatman-Wak Wak began by noting that she has been in her position for a year and a half. Her greatest challenge to date has been learning her role in state government. She understands that there is a learning/achievement gap, not just between Indian and non-Indian students, but also between urban and rural students. This is largely an issue of funding. She invited the tribal leaders to apply for the Idaho 21st Century Community Learning Centers funding opportunity and passed out information regarding the application process.

The data presented by **Ms. Oatman-Wak Wak** is based on a one-day achievement test which has not been normalized for Indian students. Included in the data are: demographic information, Idaho testing dates, Idaho reading indicator data, direct writing assessment data, direct math assessment data, Idaho standards achievement test and state graduation data. **Ms. Oatman-Wak Wak** commented that there are two tribal schools in Idaho which are categorized as private schools and thus do not receive public funding. She stated that these schools have not been designated as private by statute.

Highlights of the demographic data presented by **Ms. Oatman-Wak Wak** included: the Indian median family income in Idaho was \$35,981/year in 2005, compared to \$57,427/year for whites; there were 4,381 Indian students attending Idaho schools in 2007-2008 (up 69 from the previous year), representing 1.6% of the Idaho student population; the number of Native Americans in the education profession in 2007-2008 included: two superintendents (up 1 from the previous year), two principals (up 1), 39 teachers (up 3) and three counselors (no change); the number of Indian children in special education was 574, representing 13.2% of that population; and the number of Indian students in the gifted and talented program was 64, representing 1.5% of that population. Regarding the assessment data, **Ms. Oatman-Wak Wak** stated that an overall decline may be reflective of the raising of the bar and the lack of coincidence between teaching and testing. She stated that the Department is in the process of generating local school district data.

Senator Jorgenson asked whether **Ms. Oatman-Wak Wak** has seen any movement or progress over the last one and a half years. She replied that being in her position has allowed a voice advocating for Indian students to be part of the discussion. She would like to see her position continue in subsequent administrations, and expressed appreciation for the support of the Council. In response to **Senator Jorgenson's** question as to what is next, **Ms. Oatman-Wak Wak** responded that she would like to have clarification of the status of the tribal school, have funding increase, and would seek the certification of tribal language elders as authorized by the 2001 legislation.

Senator Jorgensen asked **Representative McCoy** about updating textbooks in Washington to reflect Indian issues. **Representative McCoy** stated that in 2005, the Washington Legislature authorized the teaching of tribal history and culture in the schools. Some school districts have objected to the cost. However, school districts are required to update their curriculums every three to five years. When they update, the school districts need to go to the local tribes to obtain information on their histories. Tribal elders are also being certified. **Ms. Oatman-Wak Wak** stated that Idaho needs to integrate tribe-approved content standards. She observed that school teachers need to be trained before they can teach Indian history.

Chairman Allan opined that tribal leaders need to address school district deficiencies on the reservations. Tribes can help by contributing to funding and getting parents involved. He expressed sadness in the data presented by **Ms. Oatman-Wak Wak**, including the fact that only 71% of Indian kindergarteners graduate from high school. **Ms. Oatman-Wak Wak** agreed that there is a disconnect between the parents and the schools and that there is a need for greater collaboration.

Vice Chairman Tyler commented that funding is the key issue. Among the needs that he sees are including tribal schools in the state funding provided by section 33-1001, Idaho Code, meeting with the Governor on education issues, and having same-sex counselors in the schools. He noted that the Shoshone-Bannock Tribal School does not have extracurricular activities due to funding. Such activities provide alternatives to disruptive influences.

Chairwoman Porter agreed that funding is an issue and commented that there needs to be tribal leadership on the State Board of Education and that teachers need to be educated on Indian issues.

Chairman Penney asked whether the data presented by **Ms. Oatman-Wak Wak** included the two tribal schools located on the Fort Hall Indian Reservation and on the Coeur d'Alene Reservation. **Ms. Oatman-Wak Wak** replied that it did.

Chairman Penney asked about the reduction in funding for the Idaho Indian Education Committee. **Ms. Oatman-Wak Wak** stated that funding has been reduced from \$8,000 to \$5,000 for next year's budget but that **Superintendent of Public Instruction Tom Luna** is reviewing that matter. The reason for the reduction was a carryover from the previous year due to unique cost savings.

Chairman Penney recognized **Kyle Prior**, the Executive Director of the Upper Snake River Tribes, to explain the function of his organization. **Mr. Prior** stated that the organization is made up of three tribes: the Shoshone-Bannock Tribes, the Shoshone-Paiute Tribes and the Burns Tribe. The focus of the organization, located in Boise, is on the coordination of fish and wildlife issues. However, the organization should be viewed as a resource to all the tribes.

Chairman Penney asked whether there were any questions from the audience.

Bryon Samuels, the chairman of the Idaho Indian Education Committee, stated that the state has not addressed the fact that Indian students are not performing adequately on the state tests. He stated that progress has been made but there are still issues outstanding, including insufficient progress on the Annual Yearly Progress measure. The Committee's budget is insufficient to undertake activities. **Mr. Samuels** opined that the Legislature does not understand the contributions being made by the tribes to the local schools. He stated that progress in the Lapwai School District came when the Albertson Foundation was providing funding. **Mr. Samuels** would like to see the Council sponsor a summit between the tribes, the Legislature and the school districts.

Kay Kidder of the Idaho Rural Partnership provided the Council with a handout describing that organization. (A copy of this handout is available in the Legislative Services Office.) She stated that in 2004, the Partnership voted to allow all the Idaho tribes to have a representative on the Partnership's Board, which includes four Legislators. The tribes need to move forward and nominate a representative to serve. She stated that one of the Partnership's concerns is protecting land threatened by population growth.

Wayne Davis, Executive Director of the Idaho Association of School Boards and a former school district superintendent, stated that the Association supports full/all day kindergarten.

Representative John Rusche, Idaho Legislative District 7, expressed his appreciation for the Council's work.

Chairman Jorgenson suggested that the Council hold its next meeting in early December or in early January. That meeting should be able to review the Governor's legislative proposal prior to the start of the next Legislative session. **Chairman Jorgenson** requested that the Shoshone-Bannock Tribes host that meeting at the Fort Hall Indian Reservation.

Chairman Penney thanked all for attending the meeting.

The meeting adjourned at 11: 50 a.m.