

LEGISLATIVE COMMISSION ON INDIAN SERVICES

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**LEGISLATIVE COMMISSION ON INDIAN SERVICES
SUMMARY MINUTES**

Meeting Date: May 18, 2016

Meeting Location: Ocean Dunes Golf Resort
Florence, Oregon

Called to Order: The meeting came to order at 1:04pm.

Adjourned: The meeting concluded at 5:15pm.

Members Present:

1. Dee Pigsley, Tribal Chairman, Confederated Tribes of Siletz, LCIS Chair
2. Dan Courtney, Tribal Chairman, Cow Creek Band of Umpqua Tribe of Indians, LCIS Vice-Chair
3. Jarvis Kennedy, Tribal Treasurer, Sergeant of Arms, Burns Paiute Tribe
4. Mark Ingersoll, Tribal Chairman, Confederated Tribes of Coos, Lower Umpqua and Siuslaw
5. Justin Quaempts, Confederated Tribes of the Umatilla Indian Reservation
6. Raymond Tsumpti, Tribal Council, Confederated Tribes of Warm Springs
7. Brenda Meade, Tribal Chairperson, Coquille Indian Tribe
8. Jackie Mercer, CEO, NARA Northwest (non-voting)
9. Caddy McKeown, Representative
10. Ted Ferrioli, Senate Republican Leader
11. Duane Stark, Representative
12. Arnie Roblan, Senator

Members Absent:

1. Cheryle Kennedy, Tribal Secretary, Confederated Tribes of Grand Ronde
2. Don Gentry, Tribal Chairman, Klamath Tribes

Staff

1. Karen M. Quigley, Executive Director, Legislative Commission on Indian Services
2. Dianna Brainard-King, Commission Assistant, Legislative Commission on Indian Services

In Attendance:

1. Meliah Masiba, Rep McKeown's office
2. Teresa Spangler, Conf. Tribes of Coos, Lower Umpqua & Siuslaw
3. Kippy Robbins, Coquille Indian Tribe
4. Doc Slyter, Conf. Tribes of Coos, Lower Umpqua & Siuslaw
5. Delvis Heath, Conf. Tribes of Warm Springs Reservation
6. Layne Sawyer, Secretary of State's office
7. Reyna Aguiar, Rep McKeown's office
8. Shary Mason, Oregon Judicial Department
9. Adam Lake, FirstNet in Oregon
10. Ida Hardin, FirstNet in Oregon

11. Andrea Fogue, Oregon Employment Department
12. Bryson Davis, Conf. Tribes of Coos, Lower Umpqua & Siuslaw Indians
13. Carina Miller, Conf. Tribes of Warm Springs Reservation
14. Patrick Flanagan, Oregon Department of Justice
15. Gary Sims, Oregon Department of Corrections
16. Jen Andrew, Governor's Office
17. Nadja Jones, Oregon Department of Human Services
18. Ben Souede, Governor's Office
19. Valerie Switzler, Conf. Tribes of Warm Springs Reservation
20. Karol Dixon, Oregon Health Authority
21. Robb Cowie, Oregon Health Authority
22. BethAnne Darby, Oregon Health Authority

Dee Pigsley, Chair, Confederated Tribes of Siletz welcomed everyone to the meeting.

Mark Ingersoll, Chair, Coos, Lower Umpqua & Siuslaw Indians opened with the invocation.

Karen Quigley, Executive Director, Legislative Commission on Indian Services shared Don Gentry and Cheryle Kennedy would not be able to attend today's meeting.

Karen stated the Oregon Dept. of Energy will not be in attendance at tomorrow's Spring Gathering, however she shared they are already discussing working with emergency managers on fuel allocation protocols and will make sure tribal governments are part of the discussion. Karen discussed the budget cycle, key performance measures and additional requirements from the legislative commission.

Dee requested adoption of the Feb. 18, 2016 meeting minutes, which were approved.

Review of Plans for LCIS Spring Gathering

Karen reviewed the LCIS Spring Gathering and state agency training program.

Sen Ferrioli, Senate Republican Leader with the Oregon Legislature discussed a project that took place along the Columbia River, to allow off-loading of trash into landfills. Removal and fill permits were filed with federal, state and local governments and construction began. After the project was initiated someone questioned whether the area that was being disturbed was considered tribal fishing grounds owned by tribal families. No one had asked the tribes to be part of the planning discussions, and after millions of dollars had already been spent and countless hours, the project shut down.

Sen Ferrioli stated two main concerns: 1) Tribal fishing grounds that were specifically reserved for the tribes use was desecrated, and 2) A similar incident had occurred along the Seattle Sound, which was also halted before completion, yet we did not learn from prior mistakes.

Karen agreed with Sen Ferrioli's statement on the need for consultation, which is why she wanted specific state agencies to attend tomorrow's meeting. Karen discussed a recent grant application submitted by Oregon Water Resources that did not consider consultation. As a follow up to this, the Director of Water Resources attended a Cultural Resources Workgroup meeting and apologized to the tribes in attendance.

Mark stated there are both large and small projects that lack consultation, describing recent septic tank work that took place without consultation with the tribes. Artifacts were discovered

during the dig, yet the tribe was not consulted with initially. Mark agreed it is important to work together.

Raymond Tsumpti, Tribal Council, Conf. Tribes of the Warm Springs Reservation discussed the 1988 Columbia River Management Plan between Washington, Idaho, Oregon and Montana. The plan took a long time to develop and included meetings with cities, counties, states and federal agencies. A lot of missed consultation opportunities took place during that process.

Brenda Meade, Tribal Chairperson, Coquille Indian Tribe questioned how many years have we been speaking to state directors on consultation? Tribes are all different, yet we need to speak together about solutions. It is hard to accept people do not understand tribes need to be consulted with. Brenda believes Governor Brown would support us if we had a solution in place. Something that states do not start a large project without consultation. People attend cluster groups and speak to tribal staff, and tribal members have been very clear. Tribes have been very busy on these types of issues, incorporating a lot of time and money.

Raymond discussed Senate Bill 3 where Senator Courtney added two state Representatives and Senators to this Commission. We as tribes were not aware of consultation education. This is a work in progress. We should not bring up old issues yet need to lay it out on the table. We will keep this out of litigation. Raymond is a firm believer that tribal members should attend cluster meetings to avoid hard issues between state agencies & tribes.

Karen stated compared to 20 years ago things could have been a lot worse. Our goal has been to make consultation with tribes automatic. Everyone needs to be educated on consultation and be committed and have an open heart.

Karen gave examples of how state agencies have consulted with tribes. Patrick Flanagan wants tribes to call him, explaining he can't do anything unless he is contacted. Dave Stuckey stated the First Responder funds were going to disappear from the Conf. Tribes of Warm Springs this year. Anya Sekino with the Youth Development Council shared that by listening to tribal members the State of Oregon began incorporating tribal best practices. Karen hoped these examples showed consultation does occur in some agencies in Oregon.

Rep Caddy McKeown, Oregon Legislature discussed turn overs in state agencies and how a process should be codified permanently regarding consulting with tribes. In January 2017 the Oregon House will have 12 new members. She believes House members need to understand what LCIS is and suggested she and Rep Stark work together to inform representatives about this office. She shared she was never introduced to LCIS when she became a representative.

Justin Quaempts, Board Member, Conf. Tribes of Umatilla shared he has a background in communication and feels respect is a huge part. Justin felt consultation needs to be internalized respectfully. Technology makes communication instantaneous, and if respect is not reciprocated it is out the door. Communication is important for existence, as it has been proven scientifically that if people do not have communication and interactions it causes mental health issues. Justin was taught the three C's: Communication + Communication + Communication = Strong Relationships.

Turn-over is high in tribal governments as well. We need to develop communication from prior knowledge, the state and tribes, with a balance of both entities. The relationship needs to be fluid and we need a better process in place.

Dee agreed, stating bringing state agencies and tribes together once or twice a year is not a process. It needs to be constant, and tribal members and state agents need to meet, perhaps at cluster meetings three or four times a year to make it constant.

Brenda shared she wants us to develop a system so future generations don't have these issues.

Sen Ferrioli questioned what the consequences were for state agencies failing to consult with tribes. He shared he has been in legislature for 20 years and he doesn't know the answer to that question. Should we ask the governor if there are any consequences? If there aren't it needs to be fixed. What are the consequences, beyond failure, wasted funds and embarrassment? What are the consequences for not doing what the law requires?

Sen Roblan, Senator, Oregon Legislature stated the entire State of Oregon is tribal land, and Native people are everywhere. All agencies should have a check box for consultation with tribes for all work.

Sen Ferrioli suggested historically consultations were not done.

Karen stated there are federal and state laws in place for archaeological processes. It is important for the State to have a place where tribes understand discussions and consultations are held. Karen questioned how to strengthen this Commission to have additional resources, to make sure all needed information is available. Don't pick favorites or play favorites. Directors and others may be evaluated on their consultations. Exec. Order 96-30, SB 770 did not create rights of action against a state agency or a right of review of an action of a state agency. That would take legislative action to create.

Sen Roblan stated archaeological looting takes place all the time. Port Angeles historically dug up graves before acknowledging there was an issue. How do we get people in the mindset to know there are people who know where historically tribal sites are located?

Sen Ferrioli suggested polling agency heads and asking if they understood they were violating treaty rights with their actions. This is something that is not learned in our schools or thru policies. What are the consequences? None? This is not currently a priority.

Brenda shared the consequences for tribes is sacred sites are destroyed, fishing sites are gone forever. Those are our consequences. Losing sacred sites is very detrimental.

Dee shared her tribe was approached about what their process was for reburial of people. Dee explained the tribe didn't dig them up so we don't have a process.

Mark stated tribes do know what the areas of interest are and state agencies need to check with them.

Dee wished to follow Brenda's suggestion and develop a process. New people are always going to come in and someone needs to follow the process to avoid consequences.

Rep McKeown was intrigued recently when she became aware some Representatives didn't realize they had tribal members in their district.

Rep Stark shared he made it through his first session with no knowledge that this Commission existed. He interacted with lobbyists for tribes but was not told about LCIS. In 2017 he reiterated the House will have a 50% turnover. He felt we should have better media, perhaps a small

orientation for new members, a mandatory training of five minutes with information that shows the consequences if consultation doesn't take place.

Doc Slyer stated it cost the State of Washington \$250 million to stop a project and we don't want to see that happen in Oregon. In Washington tribes stated remains were in the Puget Sound but they didn't stop digging until after they found 70 bodies. This led to an outcry from tribal nations.

Raymond wondered if we should hold a workshop that explains where this Commission fits and how we are struggling to communicate. It was not clear where we should be so people know how to communicate with us. Reaffirming tribal turn over, The Confederated Tribes of Warm Springs had 5 new council members last term and 5 new this term. We have interest in 14 counties and beyond for customary gathering, hunting and fishing rights.

Rep McKeown wondered about a ceded map.

Dee shared in the newspaper Indian Country Today there was a map that stated tribal land was the entire United States, while reservations were little dots. Having designated reservations does not mean tribes lose rights to all other places.

Mark discussed the future of this Commission in regards to a resource where people could determine which tribes to consult with. We need to determine areas so people can see which tribes need to be consulted with. Mark acknowledged this would be more complex with realistic and overlapping boundaries.

Karen mentioned her tenure and that of her predecessor. The statute for this Commission does discuss appropriate tribes. There is often more than one tribe that needs to be consulted with. Karen asked the Commission to please let her know if this is changing. LCIS is the place to go. If she needs direction due to changes... Tribes don't make that decision amongst themselves. There are more instances than not where more than one tribe is contacted. Often tribes defer to other tribes with interest in areas. Inadvertent discovery decisions must be made immediately. Policy decisions can be made by this Commission.

Brenda felt only some agencies are coming to LCIS asking which tribes need to be consulted with. Brenda mentioned a work session or agenda item for future meetings. She would like to develop a solutions process to present to Governor Brown.

Sen Roblan believed Atiyeh's understanding was state agencies would contact LCIS for names of tribes to consult. There is one place to contact and that is LCIS.

Sen Ferrioli asked didn't we request and receive tribal liaisons for each state agency, and Karen stated yes, that is our Key Contact Directory, which was developed in 1996.

Layne Sawyer, Secretary of State's Office, Archives, shared the Secretary of State apologized for not being able to attend today's meeting. Layne gave a handout on The Oregon Constitution Challenge, to raise funds for two display cases, one in the State Capitol and one in the State Archives building. Layne encouraged tribes to get youth engaged in the Oregon Constitution. This fund raiser began in the spring of 2015 and is scheduled to end June 2016, and they currently have approximately \$900 in their account. The cost for one display case has been estimated to be \$30,000. Restoration of the Constitution itself will cost between \$10,000 and \$15,000.

On a side note Layne shared her office would like to get youth to understand the distinction between sovereignty and tribes and other partners.

Sen Ferrioli stated he did not recall seeing any press on this fund raiser. He suggested they move the end date to June 2017.

Sen Roblan agreed and asked if they could send an announcement stating this would last to the end of the next school year. Sen Roblan recalled the Gold Man fund raiser where youth were asked to donate a nickel or dime and they raised a tremendous amount of money.

Justin volunteered his tribe could possibly submit a donation fairly quickly, and wondered if donations were only received from school children.

Layne thanked Justin and shared donations were being accepted from anyone. One of the main goals for this fund raiser was to raise awareness of the Oregon Constitution to school children.

Adam Lake, Oregon FirstNet introduced his colleague, Ida Hardin, who was also presenting. Adam explained the first nationwide public communication system would be built next year. They are here to obtain feedback from the tribes. Hardware will be built in the United States, and there is potential for drone communication needs. They want to make sure tribes have a voice in this project and they are very sensitive to their sovereign rights. If a tribe wishes to meet with them individually they would travel to speak to them directly.

Justin agreed there is a need to have coverage across all areas of Oregon. 911 call centers are being mapped out across Oregon.

Sen Ferrioli questioned if they had reached out to the Oregon Broadband Advisory Council, and Adam shared their boss sits on that council.

Sen Roblan wondered if this was only available to first responders. Adam shared FECC has set aside a certain amount of bandwidth to be made available. They are in agreement that access needs to be made immediately for emergencies, such as Tsunamis.

Shary Mason, Oregon Judicial Department discussed training to judges on state and federal laws, which was funded by the federal government. Shary went over collaboration efforts her agency has had over the past four years with Oregon tribes (she provided a handout). Judges who visited reservations shared a change of awareness regarding tribes. Her agency has a check list to show how well judges are following ICWA (Indian Child Welfare Act). They have made plans for improvement. Held trainings on BIA guidelines in many counties across Oregon. Craig Dorsay approached them asking to explore an idea to start a state/tribal court consortium, which had never happened in Oregon. Held a committee chaired by Judge Lomez with the Conf. Tribes of Warm Springs. They held their first forum August 2015. It was decided there was a need for this on-going project. Outlined principles & purpose, structures and goals. Chief Justice approved second forum this fall at a tribal location. They are currently putting in policy action to make this an annual event.

Shary shared two outcomes from the August 2015 consortium:

1. There was a requirement that out of state tribal members who wished to appear in Oregon courts had to pay a \$500 appearance fee plus a counsel fee. Wish to put together a new UTCR (Uniform Trial Court Rule) that would allow tribal members from out of state to waive these fees to appear at ICWA proceedings.

2. Currently state appellate courts decide which cases may affect tribes. They would like tribes input and knowledge on these cases and wish to make a requirement that tribes are notified.

Brenda thanked Shary for her report and shared she didn't know about the consortium. Brenda shared her Tribal Court is in the process of including in their bar exam questions pertaining to the difference between restored tribes, treaty tribes, etc. She would be interested in running this by Shary's office.

Shary thanked Brenda and stated those types of questions have appeared in other state bar exams.

Jackie Mercer, Director, NARA, NW wished to give a Health Update regarding previous concerns this Commission voiced to the Oregon Health Authority.

Jackie shared she attended Rick Acevedo's memorial service this past Saturday, which made her recall people she has lost and people we have all lost. Jackie is committed to eliminating health disparities and to live her own life in a more fulfilling fashion.

In review, the State of Oregon put out an RFP (Request for Proposal) which came to light when Jackie received notification from the Oregon Health Authority, a requirement the State has to notify NARA, NW regarding anything to do with Indian Health. This RFP involved funds in the amount of \$600,000. There are real concerns about quality care and the lives of people. Jackie is committed to taking care of Native people, and would like to (1) include a waiver for the RFP around care coordinating and housing, and (2) look into the Medicaid system program, which pays 100% reimbursement. If IHS (Indian Health Systems) refers out, could be 100% federal match and save the state well over \$20 million.

Jackie shared when she spoke to Jeremy Vandehey, Governor Brown's Health Care Policy Advisor, his response was, why wouldn't the State want to reinvest money back into the tribes? Jackie explained this would be the first time in the United States we would have statewide IHS. Jackie suggested creating work groups potentially with elected tribal leaders. The considerations of tribes could be looked at. Jackie was very excited about this opportunity and very grateful to the governor's staff.

Sen Roblan shared he received notices stating payment had to be paid for services, which he thought was very irritating. Health care is part of the tribal agreements and it needs to be figured out.

Jackie offered to send out inquiries to tribal health directors for their input. She said some part of the RFP had to be submitted by July 2016 while other parts would not have to be addressed for another 6 to 9 months.

Sen Roblan stated we could have avoided a lot of issues if the tribes had been notified initially.

Dee was very appreciative of the people who are involved, who know what they are doing.

Justin shared his tribe had a meeting regarding consulting with providers and it was good to see them at the table asking the tribe what could they do to help. Justin felt that was the first time he heard providers asking how they could help. Things are getting better and this goes a long way to provide educational opportunities for tribal members.

Mark wondered if meetings were available remotely and Jackie will look into that but believes that could be a possibility.

Patrick Flanagan, Oregon Department of Justice, reviewed his work history, sharing he previously worked with federal law enforcement in the Grand Canyon, where he worked with both the Hopi and Navajo tribes around artifact thievery. His position was created because the federal government questioned how to determine what was a cultural resource or cultural site.

Patrick discussed a variety of cases his office has investigated. He shared communication early and often is the key. He compared state guidelines with those of federal guidelines, and stated state guidelines did not list artifact thievery or environmental crimes. Patrick shared they cannot use federal guidelines in state court, which is why sentences have not been as strict as they could be.

Brenda felt the trials were successful simply because tribal members were asked to testify.

Patrick shared there are more cases where people are caught taking or selling artifacts on the coast. Their office has to be asked by counties to assist. Patrick shared civil claims does give the right for items to be returned to the rightful owner, though they only have 15 days to make that request and the court only has 15 days to schedule a hearing.

Karen asked Patrick to review something he discussed at a recent Cultural Resources Cluster meeting. When something that is archaeological is taken, it does belong to someone, Native Americans.

Patrick shared he questioned wouldn't tribes be considered victims when artifacts were taken or sold? They met the definition of victims. Patrick said it is important to speak to the correct tribal staff, to the State Historic Preservation Office (SHPO), to law enforcement and to Patrick himself. He also stated tribes should contact their District Attorney's office. It is important to know when critical stages are occurring.

Patrick clarified seizing a single arrowhead is not included in these definitions.

Sen Ferrioli asked about civil litigation and racketeering, when there is a conspiracy to commit a crime. Patrick explained offenses need to be ranked on state guidelines

Jarvis questioned what would happen if someone broke into your home and took something of yours. It is very frustrating and something needs to be done to put a stop to looting.

Sen Roblan asked Patrick to come back to them with suggestions as we need expertise to put these changes in place.

Trevor Sleeman, Oregon Department of Transportation (ODOT) stated when ODOT does construction projects they have procedures in place to consult with tribes, which has been a good process. Tribes have shared concerns with locations of staging and disposal sites, which at times are moved from the original plans. Under Section 106 compliance, ODOT clears these sites with contractors in advance on certain projects. ODOT requires contractors to be licensed and bonded.

The Director of ODOT has heard tribal concerns. Other states have shared similar concerns have been voiced by tribes. Trevor is hopeful this is a good example of how beneficial attendance at cluster meetings can be.

Sen Roblan wondered if ODOT had a check sheet or something of that format that made consultation with tribes imperative.

Trevor stated anytime they receive federal funds they are subject to federal laws. Sen Roblan asked what if they receive only state fund, do they still have to make contact with tribes?

Karen stated if there is any possibility of an impact on a confirmed archaeological site, contractors are required to notify SHPO and LCIS. Karen discussed the concern tribes had with contractors changing the staging and disposal areas without additional consultation (after the project contract was signed). She also shared one tribal archaeologist felt threatened by a contractor. Karen said a checkbox was in place for consultation with Tribes regarding "brownfield site" projects in the past, so it can be done.

Sen Ferrioli understood consequences for not following federal guidelines could be very expensive. He wondered what the consequences are if a state agency doesn't follow state law.

Dee referred to work done on Hwy 20, where a project was started and not completed. For two years the project was stalled, which cost millions of dollars. Archaeological sites were violated.

Brenda thanked Trevor for addressing their issues. She appreciates his finding solutions to help them and the good communication he has provided.

Clyde Saiki, Director with the Oregon Department of Human Services spoke on recent actions taken by the Administration of Children & Families (ACF) with the United States Department of Health & Human Services, and the Smith River Tribe. Beginning in the year 2000, the Smith River Rancheria Tribe in California made several attempts to designate Oregon areas for federal funding through TANF (Temporary Assistance to Needy Families) and unaffiliated members. In 2014 the tribe submitted an application to ACF that stated they were not going to provide services to other tribes in the area, yet did not exclude the Cow Creek Band of Umpqua Tribe. Cow Creek protested the application, yet ACF did not deny the Smith River Tribe. There are two different federal agencies with different rules involved.

ACF granted permission to the Smith River Tribe designated service area. When asked how many people would be served in this area, Smith River claimed 587. However, when Oregon Dept. of Human Services (DHS) researched the population, they came up with only 78. This was a huge discrepancy. ACF held their own review and came up with a population to be served of 110. ACF determines cost per case, which would require DHS to transfer funding to Smith River, which in turn would decrease the amount of funds DHS could provide to the nine federally recognized tribes of Oregon.

Clyde shared he sent a letter to ACF asking them to reconsider the granting of this application. In the letter Clyde declared three concerns:

1. Conflict in rule, DHS doesn't feel Smith River should serve unaffiliated members
2. Cow Creek's opposition to the application was not considered
3. DHS disputes ACF's determined Smith River Tribe population of 110 members

This letter is due to ACF by May 27. DHS reached out to the Oregon tribes and received several letters supporting DHS's actions, thank you.

This morning Clyde requested reviewing the federal code in case he requires additional recourse.

Brenda shared her tribe held a consultation with ACF and stated they were concerned Coquille was not consulted. ACF stated they did not recognize the area because it wasn't a congressional BIA area? Brenda wanted to make sure all tribes were consulted.

Justin agreed and requested progress reports, stating all of us would be affected if this application is approved.

Dee stated this would have bigger implications about other services.

Brenda wished to state this is not about tribe vs. tribe. Brenda understands Smith River wishes to take care of all their members, however, if this change is being made for one tribe it needs to be made for all tribes. Brenda was glad Clyde was here to oversee this concern.

Sen Ferrioli felt it might be problematic to argue because the right decision by ACF should have been a denial to Smith River's application.

Clyde explained he wrote the letter to ACF in three parts to separate each concern. He wanted to reserve the right to challenge. The rule interpretation was incorrect, which was his first concern.

Ben Souede, Governor's General Counsel

Due to the late time, Dee suggested Ben Souede hold an update on how state agencies are doing to their next LCIS meeting.

Ben concurred but wanted the tribes to know the position for Superintendent for the State Police was coming up. The governor would like the tribes' comments and suggestions on particular qualities they would like the new superintendent to have. Ben asked tribal members to contact Heidi Moawad, Public Safety/Military Policy Advisor with the Governor's Office, heidi.moawad@oregon.gov, or (503) 372-8472.

Meeting adjourn at 5:15pm.