



**LEGISLATIVE COMMISSION ON INDIAN
SERVICES**

900 Court Street NE, Room 167
Salem, Oregon 97301-1347
(503) 986-1067

MINUTES

Meeting Date: October 3, 2017

Meeting Location: Kah-Nee-Ta Resort and Lodge, Warm Springs, OR

Members Present:

Dee Pigsley, Tribal Chairman, Confederated Tribes of Siletz Indians, LCIS Chair
Dan Courtney, Tribal Chairman, Tribal Board of Directors, Cow Creek Band of Umpqua Tribe of Indians, LCIS Vice-Chair
Brenda Meade, Tribal Chairperson, Coquille Indian Tribe
Don Gentry, Tribal Chair, Klamath Tribes
Cheryle Kennedy, Chair, Confederated Tribes of Grand Ronde
Ted Ferrioli, Senate Republican Leader
Caddy McKeown, Representative
Gary Burke, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation
Jody Calica, Tribal Council Representative, Confederated Tribes of Warm Springs
Arnie Roblan, Senator
Jackie Mercer, CEO, NARA Northwest (non-voting)
Warren Brainard, Chief, Tribal Council, Confederated Tribes of Coos, Lower Umpqua and Siuslaw, attended on behalf of Mark Ingersoll, Tribal Chairman, Confederated Tribes of Coos, Lower Umpqua and Siuslaw

Members Absent:

Mark Ingersoll, Tribal Chairman, Confederated Tribes of Coos, Lower Umpqua and Siuslaw
Sherrie Sprenger, Representative (Legislative Business)
Joe DeLaRosa, Tribal Chair, Burns Paiute Tribe

Staff

Karen M. Quigley, Executive Director, Legislative Commission on Indian Services
Adrienne Fischer, Commission Assistant, Legislative Commission on Indian Services

In Attendance:

1. Gary Curtis, Archaeologist, Department of State Lands
2. Julie Johnson, Tribal Affairs Director, Oregon Health Authority
3. Nici Vance, State Medical Examiner's Office
4. Lena Tucker, Department of Forestry
5. Misha Isaak, Governor's General Counsel (partial, by phone)
6. Louis Pitt, Government Affairs, Confederated Tribes of Warm Springs
7. Joe Moses, Chief, Confederated Tribes of Warm Springs
8. Myrlie Johnson, Culture and Heritage, Confederated Tribes of Warm Springs

Welcome

Chair Dee Pigsley called the meeting to order at 9:02 a.m., and welcomed the members and guests.

Invocation

Jody Calica gave the opening invocation.

Adoption of Minutes

Commission members approved the minutes for the May 17, 2017 LCIS meeting by acclimation.

Commission members approved the minutes for the June 27, 2017 LCIS meeting by acclimation.

Staff Report:

Karen: Good morning Madam Chair and Commission Members. To start, I have a handout and we are joined today by Gary Curtis who is an archaeologist with the Department of State Lands, who will help us by being our "hander outer." First there is a table of contents. In your blue packet, there should be recent contacts and meeting for the Executive Director. This is not a comprehensive list, but it should indicate the types of contacts I have. The next item is bills of interest in 2017. Each of you have an official signed and embossed SB 144A, which was a stunning achievement for this legislative session. There are some others here as well, SB 13, which I'm sure Senator Roblan will talk about. Thank you to all Commission Members for your ongoing support. I've talked to three cluster groups recently and what I've emphasized is that this is just step one in the process. The next thing is to watch the rulemaking and then there's the follow through on enforcement on these pieces of legislation. The next thing in your packet is the budget which shows where we are for July and August. In addition, there is a new Financial Services manager and they are working up a new system. We have had a surplus remaining each biennium in this agency since I've been here. We've been very frugal. When we get more information, we will get it to you. We won't wait until the next meeting, we'll just send it to you once we receive it.

Karen: There are a few legislative appointments that stem from statutes that were passed. While I was with the education cluster, I mentioned HB 2845, which asks for an appointment from the commission to the ethnic studies and social sciences advisory council.

Val Switzler, Tribal Council Member and Culture and Heritage Director at the Confederated Tribes of Warm Springs, has been recommended by the education cluster. This Commission is the appointing authority, so you get to decide if you have someone else you would like to nominate or if you agree with the nomination of the education cluster.

Approved Unanimously

Karen: There is a second nomination request in regard to SB 1039, which was sponsored by Senators Roblan and Kruse and deals with ocean acidification. They are looking for an appointment to the Advisory Council. One potential nominee is a technical staff person from the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians. It is the only suggestion that I am aware of at this point to pass on to you. **Approved Unanimously**

Karen: Just so you all know, when I receive a request like this, my first question is whether they are looking for leadership or a staff person. I received confirmation that staff was appropriate for this appointment.

Karen: The third request stems from a bill concerning an outdoor recreation office. They are seeking someone who can provide the perspective of Tribal interest on this council. This isn't looking for Tribal Government. This person would gather information on behalf of the Tribes and report back to the Commission.

The Commission discussed various ideas concerning the advisory council and will take the information back to make a decision at a later date.

Karen: The last request is from Oregon Travel Experience. I asked what is the purpose, what kind of person are you looking for and what is the time commitment. All that information is in the printed email in your packets. This is another appointment decision that you can take back with you to decide once you've had time to consider it.

Karen: I am requesting some backup on guidance for State Agencies and the Governor's Office and their continued need in this regard. One has to do with non-federally recognized tribes. I have an appointment next week with the director of OWEB. I thought this was a settled issue once I reviewed their policy on working with Oregon's Tribes under Oregon law. My concern is that this is a grant review committee. If they are looking for Tribal governmental representation, a non-recognized tribe is not appropriate. However, if they are looking for a member of the public, then it would be ok. My concern is State Agencies extending invitations that appear to treat non-federally recognized tribes as governmental bodies, then you are potentially getting into a situation where the State is seen as endorsing/acknowledging their governmental status. That is an issue for the Federal Government. Again, it's not excluding members of non-federally recognized tribes from participating, but they should participate as a member of the public, not as a Tribal Government. Any words of wisdom for this director or any of the many others that contact me?

The Commission discussed the topic and ultimately decided that sovereignty is of the utmost importance to the Nine Tribes of Oregon and is an important foundation of Oregon Law concerning the Nine Tribes of Oregon.

Karen: Thank you all for your comments. You might find the next three items very similar; out of state Tribes, consultation with a little “c” and big “C” and the role of the cluster group. I do want to bring up the role of the cluster if I may. A State Agency key contact, who had been a coordinator of a cluster group, came to me recently because she had apparently been questioned about a topic that had been brought up at a cluster meeting. The topic was requested by a tribal representative cluster member, regarding Jordan Cove. The Tribe’s question was that they didn’t understand what the State Agencies around the table had to do with the process and sought clarification of various state agency roles. The group discussed the questions and the coordinator was later told that it was inappropriate for the Cluster to stand in the way of FERC’s Consultation with the tribes. This was not an accurate assessment of what happened, as the cluster discussion was simply an explanation of the involvement of different State Agencies. Several state agencies have a role to play in the matter, including DEQ, DOGAMI, Water Resources and Fish and Wildlife. We focus so much on educating state agencies, but we also need to educate the Governor’s Office on what this process is all about. I don’t think anyone associated with the clusters would confuse what they do with real consultation. Real consultation happens between the highest levels of government. In your packet, you have a document that outlines what the cultural resources cluster does. It is all about communication and is never meant to interfere with appropriate consultation between governmental leaders.

Karen: Another item I wanted to discuss with you, is in regard to rewriting some legislation. Many of you noticed, when looking at the 42 years old statute describing your responsibilities on the Commission, that a lot has changed through the years. In 2014, we were able to insert the language about communication and government to government work. Many people don’t realize that the clusters come from the breakout sessions of the first ever Annual Summit in 1997. They have continued because of LCIS, as part of your role of monitoring state agency action, including implementation of the government to government law. You might want your/the Commission’s oversight of the clusters to be spelled out. You could also want to include other items, or to appoint a committee to study some possible changes to the statute and the roles and responsibilities of the Commission. It may be beneficial to outline what you do at this point in time, because your focus is government to government, and that isn’t really captured in the original language. At that point in time unfortunately, there were only 3 recognized Tribes. The whole dynamic has changed and your oversight of state agencies has changed. The current language is included in your packets for your review. I would be happy to work with a committee or sub-committee that would like to work on this before the 2019 Legislative Session, if you would like to revise and update ORS 172, the Commission Statute.

The Commission discussed the possibility of updating the Commission Statute. The Executive Director had previously heard from at least one Commission Member that the

Statute didn't seem to capture what the Commission is now. The Commission will answer this issue at a later time.

Karen: Similarly, you also have there a copy of a hand engrossed copy of the Executive Order from 1995. This is what the Commission proposed for the executive order. The language was altered and the impact lessened quite a bit by the Governor's General Counsel at the time, because he was fearful of potential impacts. Our current Governor may be amenable to putting the stronger back in. This could be something that you look over to see if you would like to explore doing something with it, or decide that you are comfortable with the way it is. There is a lot more about accountability in the original version.

The Commission discussed their views on the current Executive Order versus the earlier draft. Commission members were generally interested in accountability and transparency with the State. Members indicated that they would take a closer look at the materials, but were interested in strengthening language. Senator Roblan pointed out that Administrative Rules are also important in understanding how things work at the agency level. Representative McKeown asked what triggered the Executive order 20 years after the legislation and whether it was something that state agencies would even look at when deciding how to handle situations.

Karen: In April of 1994, President Clinton issued an Executive Order, and LCIS decided they would like to do something similar on the State level. The Commission brought it to the Governor's office and there was quite a bit of negotiation. Some state agencies didn't see any way that they worked with tribes, which is something I've wanted to talk about since we have a whole new generation of people working in this field. Interest-based negotiation is something we focused on and have used to help people understand the people on the other side of the table and work together. Oregon was the first in the nation to pass this law and a number of states followed. The clusters, were the first breakout sessions from the first Annual Summit and have been a crucial tool of the work in State Tribal relations. I've spoken in various states about this and the ones that seem to be successful are the ones who followed the guidelines about having something to implement in between the Annual Summits. There needs to be a way for staff to get together and work things out.

Commission members discussed consultation, education of state agencies and instances where consultation did not happen when it should have. It is important that consultation happen and that those involved in State projects know what it is and that it needs to happen. The Executive Director shared that consultation was a topic at the upcoming LCIS Training and Annual Summit and that there was a PowerPoint on the topic in today's meeting materials titled "Why Consultation."

Karen: Before we get to planning for November 1st and 2nd, we will be talking to someone from the State Medical Examiner's office. This is the person who does the forensic work for the State. It has been a heartache of a relationship. Nici Vance and the State Medical examiner have wanted to do the right thing, perhaps it was just never the right home for what they were asked to do. Finally, we've asked, "why they are the ones doing this?" The

law says that the State police are the ones who determine whether something is a crime scene. Then the Medical Examiner's office was given the responsibility of identification and by default storage. Nici will be here to describe to you that she is dealing with 128 forensic cases. She is not trained in consultation with Tribes but is aware how much time you need to take for repatriation. So, for your consideration, it may be possible to find something like this that will be a better home and better relationship. The State of Washington has had a physical anthropologist/repatriation coordinator, a full-time position, since 2008. There is a fund to assist with inadvertent discoveries that Tribes can apply for. Most importantly, this a person that is designated to work with Tribes for what it takes to get ancestors home. In your meeting materials there is a copy of this Washington law.

The Commission and guests discussed this topic and what it could look like in Oregon, including special circumstances and logistical issues.

Karen: Madam Chair and Commission Members, the person in this position would be authorized to make these determinations we've been talking about, when we know where the remains came from. What is more difficult is when there is a drug bust and human remains or other artifacts are found, and we do not have any idea where the remains came from. So, the other part of my request for legislative proposal is a designation in State Parks or State Lands, one on the East side and one of the West side, dedicated as a joint reburial site. I am asking whether the Commission would like to back legislation to pursue this position and/or land designation.

The Commission discussed that the best scenario was to leave remains in their original resting place if they have not yet been moved, but the proposal was an option for instances where that was not an option.

Karen: Madam Chair, Commission Members, may I move on to the LCIS Training and the State-Tribal Annual Summit? There are already 120 registered for the event and we have 200 seats available so please get your registrations in as soon as possible. The first item on the agenda goes back to the basics, we are going to talk about the history of this land before there was a State of Oregon. Then we will move on to talk about Federal Indian Law, State Law, and then Tribal, unwritten and customary law. There will be a presentation on Tribal ceremony followed by a discussion on effective communication and State-Tribal Clusters.

The Commission reviewed a few PowerPoints and videos to potentially be shown at the upcoming LCIS Training and discussed the content and potential impact of each. Members also discussed historical conflict and how to best encourage state workers to recognize the past while working toward a better future.

-Break-

Chair Pigsley: Our next order of business is the Executive Officer position reclassification and implementation date discussion and action item. We have a few emails from human resources about what needs to happen.

Commission members discussed the background information and recent actions relating to the Executive Director's salary. Commission members are eager to resolve the situation as fairly as possible and several have expressed being unhappy with the handling of the situation by human resources. Members noted possible paths to follow and ended their discussion with the following motions:

Motion: Approve reclassification going back to earliest legal start date, preferably back to 2006.

Approved unanimously

Motion: Approve reclassification of Range 38, Step 10.

Approved unanimously

Motion: Authorize Senators Ferrioli and Roblan and Representatives McKeown and Sprenger to speak with Leadership regarding a solution for compensation for time not addressed with the reclassification.

Approved unanimously

Working Lunch: *The Commission listened to a presentation from Julie Johnson, the Tribal Affairs Director of the Oregon Health Authority. Julie outlined the organizational structure of the agency and the ways in which it works with Oregon's Nine Tribes.*

Presentation: *(PowerPoint attached)* Dr. Nici Vance, the State Forensic Anthropologist for the Medical Examiner Division of the Oregon State Police updated the Commission on the agency's functions and responsibilities. She discussed the history of the division's work with the Tribes and what they hope the future could hold. The primary focus of the office is to investigate contemporary, suspicious deaths under ORS 146. The office began to have more contact with the Tribes in the 1970's, however it was not positive contact. Common practice throughout Oregon in the 70's, 80's and 90's concerning human remains, was to remove them from the soil matrix and transport them to the Medical Examiner's office. There was little documentation. In 2004 the office moved to a new facility and in moving to that new space the Medical Examiner's office realized what a huge challenge they face in relation to unidentified human remains. They made the decision to bring them to the new facility and make a plan at that point.

It was at this point that Dr. Vance became involved. There is technically no funded position for an anthropologist in the Medical Examiner's office. Dr. Vance holds a position as a forensic scientist with the State Police Forensic Services Division. Dr. Vance is loaned out to the Medical Examiner's office to try and address some of the challenges at the office. The office faces many challenges in addition to the lack of a funded position, which include lack of time, lack of resources and no internal policy.

The remains that have been found are usually found under two different circumstances. The most helpful situation is when they are found in situ or with context. In these cases, there is an availability of information surrounding those remains including possible

appropriate tribal contacts. Examiners can gain information from the surrounding landscape and soil matrix to make determinations.

Remains that are found with no provenance offer little to no information to the examiner. This is most challenging situation.

In 2007 the office wanted to ramp up education for law enforcement regarding inadvertent discovery of human remains. A video, which focused on ORS 197, was produced with the involvement of LCIS, Clackamas County Sheriff's Office, State Historic Preservation Office, and the Medical Examiner's Office. The video was sent to all law enforcement agencies, and district attorney's offices. We asked law enforcement offices to make it mandatory training. Dr. Vance able to begin her inventory of those humans remains that had been transported in 2004. The work was interrupted frequently as modern forensic cases came into the office. Again, this wasn't a funded position, so the work had to be done when there was time. The inventory was completed in 2010 and the team attended a cultural resources cluster meeting to distribute the information to Tribal representatives and let them know that we were committed to working with the Tribes for the repatriation of these remains. We had lots of conversations with people about how to successfully repatriate these remain in the most careful, respectful and timely of ways.

Education and communication continued with law enforcement and Tribal representatives. Documentation improved and the office attempted to develop policy to address the situation, but there were still many challenges as the office's primary job was that of contemporary forensic cases.

A plan was developed through the work of the Tribes, SHPO, LCIS and the Medical Examiner's Office for a mass repatriation. The remains were placed at Chemawa Cemetery on April 28, 2015. There was a huge amount of effort from the Tribes. We were happy and honored to give them back to the place where they belonged.

The Medical Examiner's office wanted to make sure there was never a situation like this again, so they developed an internal policy for such situations. That policy focuses on timely communication, standardized documentation, and accurate reporting. Because the ME's office is not the most appropriate space for Native American Remains, a priority for the Medical Examiner's office is minimizing their role in the handling of Native American human remains and maximizing the role of the Tribes.

There are many challenges with the Medical Examiner's role regarding ORS 97.745. The responsibilities for the office are not clearly defined in the statute. The expertise of the office is in contemporary remains, not archaeology. The storage available at the office is very limited and Tribal representatives do not think the space is appropriate. Forensic cases under ORS 146 take precedent and there are currently 160 contemporary human skeletal remains cases at the facility.

Commission Members were able to ask questions after the presentation. Dr. Vance acknowledged that it was a very sensitive topic, and emphasized that their office strived to have a good relationship with the Tribes. There was also discussion about the possibility of a state physical anthropologist and locations suitable to storage. Dr. Vance also stated that the ME's office believed that human remains should never be considered evidence.

Presentation: (PowerPoint attached) Lena Tucker, Private Land Division Chief with the Oregon Department of Forestry updated the Commission on Sudden Oak Death Syndrome. It is caused by a non-native pathogen and kills tanoak. The name is something of a misnomer as there is actually a lag time between the infection and visible signs of the disease, which is one of the biggest challenges for those fighting it. The disease also has a broad range of host plants. The department has a range of methods for detecting the disease including aerial inspections and stream monitoring. Once a site has been identified, scientists then identify what the most effective treatment buffers are. A 300-foot buffer became the standard. Host plants would be removed in that area. Later, a 600 buffer was found to be a better option. Ms. Tucker shared stories about successful eradication efforts, as well as the introduction and history of the disease in Oregon. The disease has spread fairly rapidly. A second lineage of the disease was found in 2015 which can spread to other conifer species. A lot of research is being done to understand how the new lineage operates. Ms. Tucker outlined some recent challenges and the ways to move forward in the fight against Sudden Oak Death. Education and outreach will be important going forward, so that people understand how it can affect our forests and landscapes. Funding has been a recent challenge as well. The department really wants to protect the tanoak ecosystem.

Commission Members asked several questions and learned more about the spread of the disease and that it would be unlikely to affect other regions in Oregon. Because it behaves like a mold, it requires wet weather to spread.

Discussion: The Commission discussed the Annual Summit with Misha Isaak, the Governor's General Counsel briefly by phone and expressed being pleased with the agenda drafted by the LCIS Executive Director. Mr. Isaak expressed his apologies for being unable to be at the meeting in person. He thanked the Confederated Tribes of Siletz Indians for hosting the Summit and Annual Training. There was a brief discussion about the agenda for the day. Karen noted that Commission Members have some information in their packets for inclusion in the Summit and Annual Training. She went on to state that it was important to stress consultation with tribes and holding state agencies accountable for their work with Tribes. Mr. Isaak emphasized that the Governor was committed to maintaining a good relationship with the 9 Tribes of Oregon. Senator Roblan stated that State Agencies needed to think about the Tribes first, not last. Economic growth in rural areas oftentimes stems from the Tribes. Mr. Isaak spoke briefly about his background (private law firm/commercial practice) and previous work with Tribes accompanying the former General Counsel to some meetings with Tribes. He looks forward to further working with the Commission and making time to meet individually with leaders from each of the 9 Tribes of Oregon.

Commission Member Reports and Discussion

Jody Calica: The Confederated Tribes of Warm Springs have been largely focused on economic issues recently. Kah-Nee-Ta is entering into an agreement with a third party to run the resort and potentially launch new a new endeavor to attract customers. The Tribes is also working on a cannabis project. He also noted that tribal fisherman have encountered issues on the mouth of the Deschutes with State enforcement officials. This is an area considered a closed sanctuary by the tribe. The Tribe is doing some fact finding to see what the motivations were.

Dan Courtney: The Cow Creek Band of Umpqua Tribe of Indians has recently had an election. There were no changes to the Tribal Council, all three positions in the election remained the same and there were no changes to officer positions. Budgeting is the main work of the moment. The Tribe was pleased to have recently hosted the Education Cluster meeting. In regard to elder programs, the Tribe is partnering with DHS and the Council on Aging to boast their care for elders. There are currently four individuals in the Tribe that are trained in elder care. LCIS Vice-Chair Courtney informed the Commission that he would not be stepping down as Vice-Chair of the Commission. He thanked everyone for the opportunity to hold this position.

Brenda Meade: Chairperson Meade began by expressing sorrow over the events in Las Vegas. The Tribe had several people in the area that are having a hard time getting back. Tribal elders were able to get out to fish recently. They celebrated the 14th annual celebration at The Mill. Tribal Council offered a position to Mark Johnston to be the General Manager and he accepted. Healthcare has been a huge issue recently. The Tribe will be sending a letter to each of the other Tribes for support. They looking to the Indian Health Service to make Oregon a state-wide system. It would be an opt-in or opt-out system, but wouldn't be mandatory. There would be no new money, but it would help with how you were billed. The Tribes' new pharmacy will be opening soon, which will be a huge help for the prices the Tribe has had to pay in the past. The Tribe's two DHATs will be home after graduating to offer dental care in 2018. Chairperson Meade also discussed recent economic developments for the Tribe.

Jackie Mercer: The fee for service, care coordination program with the Tribes is going extremely well. They have already seen 143 people in a short time. NARA has opened a new youth residential treatment facility. Senator Merkley's office has been in contact requesting a gathering on individuals involved in healthcare scheduled for next week.

Senator Roblan: Senator Roblan updated the Commission on an issue concerning the Legislature, that is also a focus for the Governor, which is the climate initiative. There is a subcommittee for agriculture, forestry and Native Americans. Senator Roblan noted that they should not have put Native Americans into one sector, because there are Tribes that

are energy producers and ones that are doing other things. It is important for them to see Tribes not as one little part, but as part of the industry as well. It was noted that there was recently a conference about energy in the Northwest where the topics including things such as the production and distribution of energy. There is an upcoming event in Silicon Valley that will focus on telecommunications, which could be an opportunity for Tribes. Senator Roblan noted that he and Senator Ferrioli know and respect the sovereignty of the 9 Tribes in Oregon and realize that each has different interests and priorities. He also noted that the rest of the constituencies do not agree on everything, but it was important to make your voice heard and they would do their best to address it.

Don Gentry: The Klamath Tribe has broken ground on a new hotel which should open next summer. The General Manager of the Tribe has been doing a fantastic job. There has been great coordination with the Tribal health clinic as well. All Tribal entities have had great communication and coordination with Tribal Council and each other. Chair Gentry is very encouraged. Water settlements have been a huge issue for the Tribe. They have been in tough situations.

Warren Brainard: The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians are excited to have their DHAT (Dental Health Assistant Tech) home and working in the Tribe's dental clinics. The Tribe has recently achieved 8A status and are looking forward to what that means for the future. The largest issue currently is the Jordan Cove Project. It has been very difficult for the Tribe. The site was a village and burial site that is hugely important to the Tribe. Overall the Tribe wants to have a seat at the table and be able to work with the leaders of the project to minimize damage to these sites.

Gary Burke: The Confederated Tribes of the Umatilla Indian Reservation has been focused on developing, maintaining and improving policies and organization for the Tribe. They have been working on education initiatives, casino expansion and land buyback programs as well. Chairman Burke noted that this was his first LCIS meeting and that it has been good to hear what other members have to say. He emphasized that government to government work was important not only between the Tribes and the State, but among the Tribes themselves. He was encouraged that if everyone was willing to listen and work together, then it bode well for the future.

Delores Pigsley: Chairwoman Pigsley spoke about the state of the Chemawa Cemetery. There are signs declaring it a federal site, but it seems to be treated as a dumping ground. The Tribe has declared that they will endeavor to clean it up and clear wild vegetation. The Tribes 40th Restoration Celebration up on November 18th. Chairwoman Pigsley also indicated that she would be stepping down as LCIS Chair in February.

Chair Pigsley thanked Jody Calica and the Confederated Tribes of Warm Springs for their gracious hosting on this LCIS meeting.

Chair Pigsley adjourned the meeting at 3:30 p.m.