

# LEGISLATIVE COMMISSION ON INDIAN SERVICES

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

# DRAFT MINUTES

Meeting Date: February 21, 2018

Meeting Location: Oregon State Capitol, Hearing Room 50

#### Members Present:

Dee Pigsley, Tribal Chairman, Confederated Tribes of Siletz Indians, LCIS Chair Cheryle Kennedy, Chair, Confederated Tribes of Grand Ronde (LCIS Chair Elect) Joe DeLaRosa, Tribal Chair, Burns Paiute Tribe (LCIS Vice-Chair Elect) Brenda Meade, Tribal Chairperson, Coquille Indian Tribe Gary Burke, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation Charles Calica, Tribal Council Representative, Confederated Tribes of Warm Springs Bill Hansell, Senator (Partial, Legislative Business) Caddy McKeown, Representative (Partial, Legislative Business) Arnie Roblan, Senator (Partial, Legislative Business)

#### Members Absent:

Mark Ingersoll, Tribal Chairman, Confederated Tribes of Coos, Lower Umpqua and Siuslaw (Tribal Government Business) Sherrie Sprenger, Representative (Legislative Business) Jackie Mercer, CEO, NARA Northwest (non-voting) (Weather) Don Gentry, Tribal Chair, Klamath Tribes (Tribal Government Business) Dan Courtney, Tribal Chairman, Tribal Board of Directors, Cow Creek Band of Umpqua Tribe of Indians, LCIS Vice-Chair (Tribal Government Business)

#### Staff

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

### In Attendance:

- 1. Mike Moran, Consultant, Coos, Lower Umpqua & Siuslaw
- 2. Christine Kamps, Tribal Affairs, Department of Human Services
- 3. Emily Hawkins, Tribal Affairs, Department of Human Services
- 4. Kathleen George, Tribal Council, Confederated Tribes of Grand Ronde
- 5. Briece Edwards, THPO, Grand Ronde
- 6. Kassie Rippee, THPO, Coquille
- 7. Bridget McConville, Warms Springs
- 8. Sean McConville, Nez Perce
- 9. Mona Halcomb, Oregon Department of Education
- 10. C. Blake Whitsen, Oregon Department of Education
- 11. April Campbell, Oregon Department of Education
- 12. Diane L. Teeman, Cultural Resources Director, Burns Paiute Tribe
- 13. Louis Pitt, Government Affairs, Confederated Tribes of Warm Springs

#### Welcome

**Chair Pigsley** called the meeting to order at 9:07 a.m., and welcomed the members and guests. Senator Hansell was welcomed as the newest member of the Commission. Chair Pigsley noted that there was no quorum at this point in the meeting and any votes would need to wait for more members to arrive or the next meeting, otherwise the meeting would be informational only.

### Staff Report:

**Karen:** Good morning Madam Chair and Commission Members. Thank you all for being here and our audience. We have a packed agenda today, however one speaker has indicated they will not be here because of the weather.

The first item in your packet is the Executive Director's Report. A few things for LCIS direction or action: Out of State Tribes are seeking to be consulted as Oregon Tribes with State Agencies or Universities. It seems to be increasing in prevalence. Often there are maps presented by those Tribes, which can confuse, so State Agencies don't always have a clear path of action. Would LCIS like to send out a directive? Oregon law is very clear in listing the Nine Tribes of Oregon, barring any treaty obligations that call for interactions with out of state Treaty Tribes, for State business consultation. It may be appropriate for the Governor to issue an Executive Order giving State Agencies that direction.

**Chair Pigsley:** It seems that this is something that has been dealt with already. We have recently spoken to Misha Isaak about this issue. The governor may need to issue a letter to make it very clear.

**Cheryle Kennedy:** There was a discussion several years ago possibly concerning a University and LCIS did act on it. However, it may have only been with the Department of Education

**Karen:** The focus then should be on something from the Governor going to State Agencies to make it clear what her expectations are. I'm hearing some confusion from State Agencies.

Cheryle Kennedy: It seems that this was dealt with at the Summit.

**Brenda Meade:** I would just add that it can be confusing because of the Government to Government relationship that other Tribes have with the Federal Government. When things like Sudden Oak Death come up and you have Tribes, Local, State and Federal Government all come together to work on it, relationships are built. That changes when it is just a State issue. It can be hard for people that are doing their jobs and want to make sure that everyone has been invited to the table. It is up to the Governor to be very clear about what consultation is and who participates.

**Karen:** On a related note, many state agencies are wondering if there is a State Consultation policy on working with Tribes. That may be something else you would want to request or develop a draft for. There isn't currently a State policy on consultation.

**Charles Calica:** I remember that Governor Atiyeh and Rudy Clements had addressed this early on. It might be worthwhile to check the archives of the Commission. This is an issue that needs to be addressed.

The Commission discussed the topic and agreed that a consultation policy and direction would be beneficial. This has been an issue for many years and has been discussed many times, so the Commission would like to move forward with a solution.

**Karen:** Another related topic. A map of Oregon outlining Tribal areas has been requested on multiple occasions. My response is that the 9 Tribes of Oregon have not agreed on one single map, and I stress that there needs to be a fuller conversation about what may be entailed. Consultation needs to happen based on that.

Additionally, there was a bill passed this session dealing with public lands, that institutes a "no take" provision. This came about through many discussions through the years. The public needs to be educated about the fact that these items are associated with people that are still here. The cultural resource cluster is starting conversations about implementation, possibly in conjunction with SB 13 to educate the public.

Also, would the Commission like to have land managing agencies describe what they're doing to inform the public about this new law.

**Chair Pigsley:** Isn't there agreement between the cultural resource groups at each of the Tribes about areas of interest?

**Karen:** That is true, but this was a request for one map. My concern is that if you have areas of overlap, would individuals think they only needed to pick one Tribe to consult. A

map can go with a conversation, but it they ask, and you don't know why, and it's used improperly, it can be a problem.

# Chairman Burke arrived and Senator Hansell indicated that he had to leave.

**Chair Pigsley:** With the arrival Chairman Burke, we have a quorum. There are a few items we need to take care of.

## Adoption of Agenda and Minutes

Commission members approved the agenda for the February 21, 2018 LCIS meeting by acclimation.

Commission members approved the minutes for the October 3, 2017 LCIS meeting by acclimation.

# **Election of Officers**

Cheryle Kennedy was elected by acclimation to serve as Chairperson. Joe DeLaRosa was elected by acclimation to serve as Vice-Chair.

**Karen:** There have been some changes happening at some of the Cluster Groups. The Economic development group has been led by Lisa Ansell for some time and she is ready to pass the role to another member. It is beneficial for the leadership of the groups to alternate between agencies. Sometimes there is co-leadership with the Tribes and State Agencies, although it's important to understand that this is a State obligation.

A Commission Member has asked the consultation sheets that I give you at each meeting. Those sheets give you an idea of what kinds of contacts I have in the office. Also in your packet, there is a contact list from 2005 – 2006 which was presented to the budget committee. This should give an idea of the consistency of some of these contacts.

Included in your pack as well, is a list of received annual reports from State Agencies. I encourage you to look through them on our website.

I have been invited to speak at the University of Oregon. I am going to talk about looting. Changing attitudes and the fact the Tribes are not gone.

The Employment Department provided two documents of interest.

The Dental Association is providing you an update in writing. They have issued an invitation to Tribes to come to the Dental Association conference and then attend a special breakfast.

# Business Oregon: Chris Harder, Director & and Amy Payette, Strategy and Communications Division Director

Chris Harder, the Director of Business Oregon thanked the Commission for the opportunity to speak and introduced Amy Payette as the Strategy and Communications Division Director. Ms. Payette spoke about her background and her role at the agency.

**PowerPoint:** Director Harder spoke about the agency's strategic plan which has been a year in the making and the agency's desire to start a conversation to learn more about each Tribe's priorities. The relationship between the State's and the Tribe's economies is important.

The first phase was economic trends analysis at the national state and regional levels. They also went through a qualitative process with focus groups and surveys among other things. Established a new vision and mission for the agency. Phase two was about focus and action. The agency spent time on how they would know they were successful.

Mr. Harder outlined their priorities that arose from this earlier work. Those are to innovate Oregon's economy, grow Oregon businesses and industries, rural economic stability, economic opportunity for underrepresented people, and ensure an inclusive, transparent and fiscally healthy agency.

The Agency wants to start a conversation on what is needed for Native communities and is committed to strong government to government relationships.

Ms. Payette spoke to the Commission about what the agency can do for the economies for native communities. She presented a few options, the first being an economic impact report. This would quantify the impact the Tribes have economically. The second option would be a "snapshot" report which would give an overview of the current state of Tribal economy. Ms. Payette reiterated that the agency was committed to meeting with each of the Tribes to understand what is needed and what the Tribes feel is important.

Commission member Brenda Meade asked about opportunities zones and Mr. Harder replied that this was something the Governor's office was looking at and the agency will be starting a public process soon. Commission member Charles Calica spoke about what was needed for the Warm Springs Tribe. Chairwoman Kennedy also spoke about what was important economically for Grand Ronde. Karen Quigley emphasized the importance of formal Consultation with the Tribes before discussion become public.

# Tribal Small Business Owner, Brigette McConville, CTWS

Ruth Miles with the Secretary of State's office was unable to attend the meeting due to the weather.

**PowerPoint:** Brigette McConville spoke to the Commission about her work in the fishing industry on the Columbia. She gave a brief overview of the history of business. It was started 8 years ago and was originally conceived to be a Tribal woman owned business focused on fish. The business was started with a fish, there wasn't a lot of capital. She spoke about what the fish mean to Tribal people. Fishing areas were historically economic centers. The Columbia River is a treaty right of the Tribe. Their fisherman take only what they need. Ms. McConville spoke further about the way they business works, including processing, grading, and distribution. They started out with smoked salmon so that the business could start out with what they did best. The business has expanded to other products and has also been able to provide retirement benefits to workers. Ms. McConville then spoke about how a single fish processed certain ways (or not processed) could be worth very different amounts and the importance of these lessons to the next generation.

*Commission Member Charles Calica spoke about the Tribes concerns with several State Agencies concerning fishing areas.* 

## State Treasurer Tobias Read: Duties of Treasurer's Office and the Oregon Saves Program

**PowerPoint:** The State Treasurer began by giving an overview of what the Treasurer's office does. Treasury is tasked with keeping funds safe until they are needed for things such as roads and teacher salaries. It also helps coordinate bond sales.

Particularly relevant are the financial programs run by the office. One of those is the Oregon College Savings Program. Treasurer Read noted that this program was not just for University, but could also be used for community college or any other type of learning program. However, the people that use the program are not representative of the State's population and the Agency would like to change that.

The Treasurer then discussed the Baby Grad Program that seeds any new account in 2018 with \$25. Research shows that the mere existence of a college savings account, means that child is three times as likely to go to college and four times as likely to graduate. The \$25 contribution helps to encourage the culture and expectation of college attendance.

He also talked about the Able Program, which is a program allowing those with disabilities to save for expenses. About three million dollars have been saved by Oregonians in the program since it was implemented about a year ago.

Finally, the Treasurer spoke to the Commission about the Oregon Saves Program. About half of working Oregonians don't have a way to save for retirement at work. The goal is to remove barriers for people so they may take control of their own future. About 70% of people will participate in a savings program if it is available through their work versus about 4.5% that will set something up outside of work. This program is aimed at people who don't have a retirement plan at work. It is set up to be an opt out program versus an opt in program. The Treasurer described to the Commission how the program works and how it works specifically for the Tribes.

Two other programs that the office runs are the Local Government Investment Pool, also known as the Oregon Short Term Fund. The Oregon Facilities Authority offer different financing options to non-profits and Tribal Governments. The Agency is also in the beginning stages of establishing a financial literacy agenda and would interested in partnering with the Tribes.

Commission members asked the State Treasurer about details for the literacy program and to clarify some of the details about how the Oregon Saves Program works for the Tribes.

## Oregon Health Authority & the Department of Environmental Quality: Richard Whitman, Director, DEQ, Pat Allen, Director, OHA; Jennifer Wigal, DEQ, Rebecca Hillwig, OHA, and André Ourso, OHA's Center for Health Protection Administrator

**PowerPoint:** Patrick Allen began with an overview of issues and progress for OHA and introduced his colleagues with him. A Tribal consultation policy is being finalized. He also spoke about the Oregon Health Alert Network. It is an automated secure system and issues push communications about urgent health related issues. Andre Ourso then gave an overview about the environmental health program and the Portland Harbor fish advisory.

Rebecca Hillwig spoke about fish advisories. Specifically, how and why they are issued. OHA does not sample fish tissue, they rely on other partner agencies such as the EPA and DEQ. Once OHA receives that data, they use it to calculate meal recommendations. Based on what is seen in those allowances, they may issue a fish advisory. There are no fish advisories on many of the lakes and rivers in Oregon and that is because there is limited data for those water bodies.

They are getting better at communicating with Tribes now that they have a Tribal liaison. In the past they have mainly communicated with Tribal natural resource staff and are now including health staff. Ms. Hillwig spoke further about their agencies Tribal consultation policy, who they work with, and how they communicate.

Chairwoman Kennedy asked about the frequency of the testing. Ms. Hillwig noted that testing times could be very hit or miss and that current advisories could be based on data from previous years. Commission Member Mead asked to clarify notification procedures with Tribes and noted that cultural resources departments are also important to notify. Karen Quigley noted that it was always important to notify Tribal leaders. Commission Member Calica expressed concern about the entire basin and asked what outreach has happened. Ms. Hillwig noted that their agency does not always have access to data either because it is not being collected or the collecting agency or organization does not share that data.

**Richard Whitman:** DEQ collects water quality data along with many other agencies. DEQ is funded to collect fish tissue samples on a rotating basis around the State. They are able to sample in any one location roughly every eight years based on their current funding. There

is current data collection happening in Portland Harbor and the lower Willamette River. The project is designed to determine whether things are improving.

They are working on a clean water plan involving mercury in the Willamette Basin and would like opportunity to do formal consultation with the Tribes. Other clean water plans will be coming in the coming years.

Chairwoman Kennedy asked if eight years was a reasonable gap between fish tissue data collections. Mr. Whitman replied that it is not an optimum timeline and the Agency has asked for but have not received more funding. They are currently working on the requested budget for next year. One type of monitoring they would like to do more of is continuous monitoring of certain pollutants so they can gauge whether there is a pulse of pollution. Chairwoman Kennedy noted that fish are important to the Tribes and they would likely be interested in helping to move towards more testing. Commission Burke spoke about his Tribe's work with DEQ and reiterated how important clean water was. He asked if the fish were less contaminated at this point. Mr. Ourso spoke about when certain fish samples have been collected for current advisories. OHA still encouraged people to eat fish and are less concerned about migratory fish than they are about resident fish. Ms. Hillwig reiterated that fish advisories do not include migratory fish. OHA is always balancing the health benefits of eating fish with the risks of contaminants. They want people to know what types of fish to eat and if they do have to eat resident fish, what amounts are safe. Mr. Whitman spoke further about what the standards mean in more broadly.

Commission Member Meade spoke about lamprey in the Coquille River and whether that river was something they looked at. Mr. Whitman noted that there has been sampling at the mouth of the river and estuaries. The recent report does have data on pollutants in those species. The City of Powers is a serious concern for DEQ and they are continuing to monitor the situation closely and want a resolution soon. Ms. Hillwig spoke about recent advisories and answered Commission Member questions about specific areas and specific species.

# Veterans Issues: ODVA Acting Director Mitch Sparks & Terry Bentley with the US Department of Veterans' Affairs

**Terry Bentley**: Introduced herself and spoke briefly about her heritage and work with the VA. She works with Tribes in six States and considers it a great honor to work with the Tribes of Oregon and the Oregon VA.

**Mitch Sparks:** spoke to the Commission about his heritage and history with the Oregon VA. He spoke about SB 80 which allows the agency to provide services and support for Tribal veterans. They plan to do more consultations with the Tribes. There is concern that Tribal veterans are not represented well in the Federal program. The Agency wants to make sure that each Tribe has their Veteran members represented. He then spoke about upcoming visits with individual tribes. A top goal for the Agency is to have a comprehensive process to help veterans access healthcare.

## Misha Isaak, Governor's Counsel, Update:

**Misha Isaak:** Began by thanking the Commission and all involved for their efforts in the Annual Summit held in November. It has busy since then in terms of consultation and the Governor has recently held a formal consultation with the Tribes on the Governor's climate change policy. They look forward to future consultations.

Mr. Isaak then spoke about the State's policy concerning out of state tribes. Pursuant to statute and executive order, the State of Oregon has a Government to Government relationship with only the nine Federally recognized Tribes of Oregon. It is a very special relationship. However, there are other tribes that have interests in areas of Oregon, some even have treaty rights, so it is not a policy to not talk to out of state tribes. They communicate with those tribes the way they would with any other stakeholder.

# Chair Pigsley and others asked questions of the General Counsel and ultimately stated that it would helpful if the Governor would issue clear directives to State Agencies on this topic.

**Working Lunch:** The Commission briefly discussed the history of the compensation payment of the Executive Officer. The Legislature's HR Director was on hand to answer questions and explained that all three options presented by her were within the agency's budget. The Commission voted to rescind the motions made at the October meeting, as requested, and adopted the following motions:

Motion One: Approve Reclassification of Executive Officer to Salary Range 38x/4 effective July 1, 2015.

Motion Two: Approve reclassification of Executive Officer to Salary Range 38x/4, effective July 1, 2015.

Motion Three: Direct HR Director to prepare Personnel Actions by February 28, 2018 placing Executive Director into approved Salary Range and Step effective July 1, 2015

## Department of Education:

**PowerPoint:** April Campbell, Ramona Halcomb and Blake Whitson briefed the Commission on a Report on a recent report titled: "American Indian/Alaska Native Students in Oregon: A Review of Key Indicators." The Deputy Superintendent of Public Instruction, Colt Gill, was unable to attend this Commission meeting. Ms. Campbell noted that other States will often compile these reports. This is the first that Oregon has put together and they intend to do more in the future.

Mr. Whitson spoke to the Commission about the report. He began by discussing how they understand the number of American Indian/Alaska Native students enrolled in Oregon schools. The report explores several indicators affecting students such as language Arts and

math assessments, graduation rates, absenteeism, discipline incidents and post-secondary enrollment.

Chair Kennedy, Vice-Chair DeLaRosa and Brenda Meade asked questions of the panel relating to discipline, post-secondary activities and identification methods. Mr. Whitman noted that there are some limitations to data collections. For instance, the department does not track students by SSN, but the Employment department does, which presents a challenge to tracking students after school. For the most part, students will self-identify as American Indian, but if they are also Hispanic and mark that box first, they will only be counted as Hispanic.

Ms. Campbell also updated the Commission on the progress of SB 13. They are hiring a contractor to develop a curriculum. They are requesting  $4^{\text{th}} 8^{\text{th}}$  and  $10^{\text{th}}$  grade level curriculums and working with the Tribes on the development.

### Commission Member Reports and Discussion:

**Brenda Meade:** Coquille has been busy writing a management plan for their Forest. They are now no longer required to manage the forest similarly to nearby forests. They have recently met with the Governor regarding the recent Executive Order. The Governor's Deputy General Counsel has been appointed as organizer of this new committee. There will be a preliminary meeting tomorrow. There is concern that this Executive Order will lead to many items that will need to be dealt with. Emergency Management is also a concern of the Tribe.

**Dee Pigsley:** Spoke about the farewell to Ted Ferrioli, who was an integral part of the Commission. The Tribe has recently held elections and has one new Council member and the same leadership. The ATNI meeting was held recently. The Tribe has also become more invested in climate change issues. The Chemawa campus has been cleaned up recently. This has raised the issue of what to do with the building.

Joe DeLaRosa: The Tribe has recently gotten a new General Manager. There are some new council members.

**Charles Calica:** The Tribe is still entangled in legal issues regarding forest products. They are soon to have a management plan for US Vs. Oregon. They want to focus on environmental function. The Tribe recently met with Governor Inslee and others about proposals on carbon tax and climate change. Mr. Calica suggested starting a foundation for Chemawa.

## Cultural Resources Cluster Updates:

Briece Edwards introduced himself and Kassandra Rippee and thanked the Commission for allowing them to speak to them today. Mr. Edwards then spoke about the purpose, make up and opportunity of the Cultural Resource Cluster. The goal is to provide recommendations to the Commission on Cultural resource issues and one of the most pressing issues of the day is that of native remains. The annual agenda for the Cluster has been proposed with an emphasis on cultural resource education and protections, as well as, a review of past guidance. Mr. Edwards spoke about the passage of SB 144 and the recent Executive Order regarding native cultural items.

Kassandra Rippee spoke about the treatment of ancestral remains. There have been many issues surrounding the repatriation of ancestors. There are federal agencies housing ancestral remains that are not on the NAGPRA register. The relationship with the Medical Examiner's office is strained. Ms. Rippee detailed issues with multiple agencies. It is important to care for these ancestors and the Tribes are eager to learn more about the Washington model.

# State of Washington Physical Anthropologist Guy Tasa:

**PowerPoint:** Mr. Tasa thanked the Commission for the Opportunity to speak today and spoke briefly about his professional history. He began by speaking about a few of the most famous issues of repatriation and others that while not as well known, led to some changes in Washington. HB 2624, passed in 2008, sought to clarify the process for notification upon the discovery of human skeletal remains. A major point of the new law was the formation of a new position of a State Physical Anthropologist and the responsibilities of that position.

There are provisions in the law for ground disturbing activities since that is when many remains are found. If those responsible for ground disturbing activities act in compliance with the law, then they will be held harmless. However, willful and unlawful excavation of human skeletal remains is a class C felony. Mr. Tasa detailed the law's notification process and identification of affected Tribes. Affected Tribes will self-identify. Once the office receives jurisdiction of the remains they must determine whether they are Native American within 2 business days. Mr. Tasa spoke about the facilities of the office.

Affected tribes have 5 business days to respond as to their interest in ancestral Native remains. Options for disposition are to leave in place or removal. Once removed, they are repatriated or reburied. Not all human remains that are discovered are Native American. Remains can be found in a variety of places and can be from a variety of places outside of Washington.

Mr. Tasa spoke about the number of cases that come through the office. The average is 55 cases per year. Since the change in the law, there have been substantially more cases, not because there are actually more, but because they are now being reported. He also spoke about the disposition of historic non-native remains.

The law also set in place a fund to cover the costs associated with the inadvertent discovery of human remains. This amount has since been reduced by the legislature and later reduced due to the funding of an Assistant State Physical Anthropologist. The office also maintains a database of cemeteries and burial sites.

Mr. Tasa ended by discussing some of the reasons the Washington program is so successful.

Karen Quigley asked about capacity issues (for remains awaiting repatriation held at the Washington SHPO office) and what feedback there has been from the Tribes. Mr. Tasa replied that everyone involved was surprised by the number of cases and the office has been challenged by that. There are many logistical issue for the Tribes as well concerning repatriation. Feedback from the Tribes has been good. Ms. Quigley also asked about the relationship with State Police and how the frequent lack of information affects what they do. Because tribes are notified based on the jurisdiction of where they're found, those are the tribes that come forward to claim native remains. Chair Kennedy asked about how decreases in the budget have affected their work. There is a huge backlog even with the addition of the assistant. Gary Burke asked about difficulties that landowners say they have with Tribes. Mr. Tasa stated that this is more of a perceived difficulty.

Chair Kennedy opened questioning to include those in the audience. Several audience asked questions.

## Continued... Commission Member Reports and Discussion:

**Gary Burke:** The Confederated Tribes of the Umatilla Indian Reservation has recently held elections. Jeremy Wolf has been reelected as Vice-Chair, Doris Wheeler is the new Treasurer, William Sigo is the new General Council Chair, and Sally Kosey is a new Board of Trustees Member. Mr. Burke also attended the ATNI conference recently. He then outlined several other meetings he has attended and testimonies given. The Tribe is in the process of completing the Yellowhawk clinic.

**Chairwoman Kennedy:** The Tribe finished the year by passing their annual budget. They will be doing renovations on the Spirit Mountain Hotel. The Council has been traveling a lot to attend various meetings including ATNI. Chair Kennedy talked about some of the things happening at a Federal level that are concerning, but also pointed out that the Tribes have been through much harder times and are still here. She also spoke about the Tribe's recent elections and the elections of officers for the Commission.

Chair Kennedy asked Brenda Meade to close the meeting with a prayer.

Chair Kennedy adjourned the meeting at 3:08 p.m.