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# State-Tribal Relations Interim Committee

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## 59th Montana Legislature

### SENATE MEMBERS

JERRY O'NEIL  
GERALD PEASE  
FRANK SMITH  
DONALD STEINBEISSER

### HOUSE MEMBERS

GORDON HENDRICK--Vice Chair  
JONATHAN WINDY BOY--Chair  
JOAN ANDERSEN  
JOEY JAYNE

### COMMITTEE STAFF

CHRIS LOHSE, Lead Staff  
EDDYE MCCLURE, Staff Attorney  
DAWN FIELD, Secretary

# MINUTES

November 15 & 16, 2005

Greet the Dawn Auditorium  
Fort Peck Community College  
Poplar, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

### COMMITTEE MEMBERS PRESENT

REP. JONATHAN WINDY BOY, Chair  
REP. GORDON HENDRICK, Vice Chair

SEN. JERRY O'NEIL  
SEN. FRANK SMITH  
SEN. DONALD STEINBEISSER

REP. JOAN ANDERSEN  
REP. JOEY JAYNE

### MEMBERS ABSENT

SEN. GERALD PEASE

### STAFF PRESENT

CHRIS LOHSE, Lead Staff  
EDDYE MCCLURE, Staff Attorney  
DAWN FIELD, Secretary

### AGENDA

Agenda, [Attachment #1](#).

## **COMMITTEE ACTION**

The State-Tribal Relations Committee approved drafting a bill to eliminate the double severance tax on new oil production on reservations.

## **CALL TO ORDER AND ROLL CALL**

The government-to-government meeting between the State-Tribal Relations Interim Committee and the Tribal Executive Board of the Assiniboine and Sioux Tribes was called to order at 10:30 a.m. by Fort Peck Tribal Chairman John Morales. Tribal Council members and State-Tribal Relations Committee members and staff introduced themselves.

**Roxanne Big Horn, Tribal Council Member,** gave an opening prayer and welcomed the State-Tribal Relations Interim Committee to the Fort Peck Reservation. An Honor Song was performed by a drum group.

On behalf of the Fort Peck Tribe, Chairman Morales presented a certificate of recognition to Representative Windy Boy for his continued efforts on behalf of Native American women and children who have been victims of domestic violence. He thanked Rep. Windy Boy for his good work, saying that he has done much to further government-to-government relations and is an example to others.

**Patti McGeshick, Director, Family Resources Center,** addressed the Committee and agreed that Rep. Windy Boy's work has benefitted many. She said the newly-elected Tribal Council is committed to building strong relationships with the State-Tribal Relations Interim Committee and other state entities.

**Raymond K. Eder, Tribal Council Member,** discussed several economic development projects being considered by the Tribe, such as oil and gas development.

**Frank Smith, Tribal Council Member,** reported on his activities as a tribal council member, saying that he has met with the Governor's American Indian Nation (GAIN) Council to discuss tribal issues and that he is interested in exploring the possibility of building biodiesel and ethanol plants on the reservation. SEN. SMITH thanked the Committee for visiting the Fort Peck Reservation.

**Abe Chopper, Tribal Council Member,** (minister and educator) was introduced.

**Thomas "Stoney" Ancatel, Tribal Council Member,** also discussed several economic development projects that the Tribe is considering:

- The development of the Tribe's one million acre feet of water into a massive irrigation system covering one-half million acres would turn northeastern Montana into a highly productive region capable of growing many different food products. Mr. Ancatel said such a project would enable the area to act as a "breadbasket" for the nation. The feasibility study has been completed and the Governor has urged the Tribe to move forward with the project.
- The Tribe is collaborating on a wind energy project with Bechtel Energy. Preliminary studies have determined that wind speeds in the area are Class Six winds, which are

ideal for wind farm utility energy. Transmission, or the lack of, is an issue that must be dealt with.

- Oil reserves belonging to the Fort Peck Tribe total at least 100 million barrels. It is very likely that there is a great deal more than that, but more exploration is needed in order to verify that. Oil companies are very hesitant to do business in Montana because of the double severance tax on oil production: there is a 13.5% tax by the State of Montana and a 7% tribal tax.

**Roxanne Gorneau, Vice Chair, Fort Peck Tribal Council**, said the Tribe is anxious to be equal partners with state government.

REP. WINDY BOY complimented the membership of the Tribal Council, saying that the members possess a vast knowledge and experience base from which to base it's decisions. He said Rep. Margaret Campbell and Sen. Steinbeisser have carried good legislation for the Tribe. He thanked the Tribal Council for the certificate of recognition of his past work for domestic abuse victims. He said the purpose of the Committee visit is to listen to the Tribal Council and that it is important for the Committee to hear what issues are of concern to the Council.

Council Vice Chair Roxanne Gorneau introduced the Tribal Council Executive Staff: Robert Mangan, Director, Fish, Wildlife, and Parks; Myrna Walking Eagle, Director, Natural Resources and Conservation; Debbie Madison, Officer of Environmental Protection; Earlene Ackerman, Director of Minerals; and Richard Peterson, editor of the local newspaper.

**Tom Esarcega, Director, MR & I Water Project**, said that the Tribe has received a \$19 million grant to develop the water pipeline system.

### **ECONOMIC DEVELOPMENT INITIATIVES**

REP. WINDY BOY said there is much interest in economic development all over Montana and on the reservations. He reviewed House Joint Resolution 41, sponsored by Rep. Margaret Campbell, which is intended to measure the economic impact of the seven reservations in Montana. REP. WINDY BOY also announced that he will be attending the historic 52nd Indian Legislature, scheduled to convene in Sonoma, California on Sunday, November 20, 2005. He said there will be an election of an American Indian caucus.

**Mark Sansaver, Director, Enterprise Community**, said providing seed money and leveraging funding for projects would be key elements of economic development projects on the Reservation.

**Representative Margaret Campbell, Fort Peck Assiniboine - Sioux Tribe**, reported on Integrated Solutions, which is a partnership formed between the Fort Peck Tribe and Avenave Software Company, which operates in 26 countries. Avenave is very interested in doing business with the Fort Peck Tribe and will provide many jobs. The biggest obstacle the partnership must overcome is the lack of a trained workforce. Rep. Campbell said that as many as 2,000 computer programmers may be needed and that very few are currently available. She suggested coordinating computer technology training programs between all of the tribal colleges to offer the needed classes in order to more quickly generate a trained workforce. She said that once trained, the only equipment needed to do the job is a laptop computer and an internet

connection, reducing overhead expenses. She said the partnership would help keep the brightest youth in Montana and would allow them the flexibility to work from home.

### **HJR 41 - Economic Development in Indian Country**

Rep. Campbell said that Montana's Native American population makes major economic contributions to the state but that there has not been any documented statistics to prove this or to provide exact numbers. The purpose of HJR 41 is to gather the data to document the economic impact of the tribes on Montana's economy. Native American-sponsored bills often die in the process because there are no data to support the request. Rep. Campbell said HJR 41 would provide hard data on the economic impact that Montana's seven Tribes have on the state's economy. Rep. Campbell referred to a study being conducted by Eleanor Yellow Robe and Dr. Paul Polzin, University of Montana, that is being done to document the economic impact of Native American people.

SEN. O'NEIL asked what number of trained workers are currently available to work on the Avenave partnership. Rep. Campbell said that only 12 workers have been hired to date and that many more are needed. She explained that the project undertaken by the partnership is to debug Medicare software. The due date for the process to be completed is March 31, 2006.

SEN. O'NEIL asked what the salary level is for the workers. Rep. Campbell said it ranges widely and is dependent on the experience and training of the worker. She said the current salaries range from \$11 to \$53 per hour.

REP. HENDRICK asked if the Tribal College is involved with the project. Rep. Campbell said the Tribal College has done all of the computer training and has had to bring in extra help.

**Todd Kasten, Department of Commerce, and Dr. Jim Shanley, President, Fort Peck Tribal College,** were introduced

**ARLEN HEADRESS, former Tribal Council Member,** reported that 45 tribal members were preparing to depart for Louisiana to help with the cleanup efforts due to Hurricane Katrina.

Mr. Ancatel provided a detailed description of the wind energy project that the Tribe in considering. He said:

- A 1993 grant of \$349,998 from the Department of Energy measured wind speeds in five locations for a full year around the clock.
- three locations were not viable wind producers and the remaining two locations provided Class Six wind scale utility grade energy, averaging 19.2 miles per hour.
- The proposal was shelved in 2002 but there is a great deal of interest in reviving the proposal.
- There is a plan to offer the opportunity to invest in and retain a 10% royalty to be used to offer free electricity to tribal members.
- Appointment to the Lower Yellowstone Conservation District in 2001 lead to the Governor Martz-supported Montana Natural Resources Act of 2002, an act with several key provisions for stimulating irrigation development along the Missouri and Milk Rivers. Features of the Act include:
  - ▶ \$30 million of support for center-pivot irrigation on the North of Sprole Irrigation project (IRZ Consulting of Hermiston, OR is assisting in this effort);

- ▶ \$50 million of support for wind farm feasibility studies and development;
- ▶ \$12.5 million for agricultural research; and
- ▶ \$2.5 million for operational costs.
- The 1944 Pick-Sloan Act, also known as the flood relief act, provided low cost electricity in exchange for damming rivers for flood control. Mr. Ancatel believes that wind power can be used to circumvent the opposition of many rural electric associations and cooperatives to the Act.
- Title VI - ask the federal government to forgive the debt in order to get rid of the lien.
- Both projects were ready for action in 2002 when they were shelved and the Tribe is anxious to pick up where work was left off on both projects.

REP. WINDY BOY asked for copies of both proposals for the Committee's records.

REP. JAYNE asked what the State-Tribal Relations Interim Committee could do to assist the Tribe in its efforts to proceed on the proposals. Council Member Ancatel said Pat Riley, Department of Natural Resources and Conservation (DNRC), has been very involved and that the Montana Natural Resources Act and electricity were the biggest issues to be dealt with.

SEN. O'NEIL asked if the Tribe has considered trading wind energy for hydro power. Mr. Ancatel said that has been considered and that steps have been taken to pursue that option.

REP. WINDY BOY said the Legislature could draft a letter to the DNRC to urge continued support for the Tribe in its effort to develop the wind energy project. Council Member Ancatel said the jobs that would be provided would employ many more than just tribal members and would be very good for the surrounding area private business sector also.

Chairman Morales said the Tribe is pursuing realistic industries for the reservation. He said gaming is not a realistic business for the Tribe to develop because the population base would not support such a business. He said the Tribe would like for the State of Montana to support the Tribes economic development initiatives and that the Fort Peck Tribe is striving for economic independence. The Tribe has several potential sources of wealth to explore, such as oil reserves, low grade coal, water, natural gas, wind energy, and agricultural opportunities.

REP. WINDY BOY said the Committee would meet shortly after the Reservation visit in order to follow up quickly on the issues voiced by the Tribe. He said he planned to have staff research the situation and that legislation to assist the Tribe is a possible outcome.

Chairman Morales said the Tribe must adjust its air shed quality rating in order to allow refining and that help would be needed throughout the permitting process.

SEN. STEINBEISSER question about oil exploration and the double tax. Chairman Morales said that the double tax and TERO issues are being addressed.

Council Member Ancatel said the Committee could provide valuable assistance if it could help with the double severance tax issue on oil production. He provided detailed history of the evolution of the tax, which resulted from a Supreme Court ruling in New Mexico that established the double taxation on oil production. The end result was that the Indian Tribes imposed a seven percent per barrel tax on oil production and the State imposed a 13.5% tax per barrel. Chairman Morales said that in his opinion, a reasonable solution would be to lower the state tax

to 6.5% for all new production. He suggested the new combined tax be a flat rate of 13.5%, with 55% of the state's portion going into the general fund and 45% returned to the counties.

REP. WINDY BOY said that lowering the severance tax would be discussed with staff and that possible language for a bill draft would be considered.

REP. ANDERSON said that if the decreased severance tax resulted in significant new production, there may not be any loss of revenue. Council Member Ancatel said the current estimate of new reserves is approximately 100 million barrels, but that there could be much more. REP. ANDERSON said having a more definite number would be a selling point in promoting a tax reduction.

Council Member Gorneau said that it should be remembered that if the Tribe suffers economically, the entire State does as well. The Fort Peck Tribe can contribute even more significantly than it has in the past, if given the right to harvest its wealth.

SEN. O'NEIL asked if the 2.3 million acres of tribal land is collectively owned by the Tribe. Council Member Gorneau said that the majority of the land is shared ownership but that some is deeded to individuals. SEN. O'NEIL asked how much is owned privately. Council Member Ancatel said that 42% of the lands are owned collectively by the Tribe, 30% are lands allotted to individuals in the 1934 Allotment Act Trust and that 28% are owned by the fee lands.

Council Member Gorneau said that it is important for the Tribe to create a financial portfolio in order to attract corporate investors.

Council Member Smith said that he is negotiating with the Governor's American Indian Nation (GAIN) Council on the double tax issue. REP. WINDY BOY said the State-Tribal Relations Committee would send a letter to the GAIN Council urging support of a tax reduction.

Council Member Ancatel emphasized that the tax reduction would be for new oil production only and that existing oil production would not be affected.

REP. WINDY BOY asked the Tribal Council to send a copy of the Tribe's resolution regarding the negotiations with the GAIN Council for LSD staff to use in drafting a letter of support to the GAIN Council.

Council Member Eder said that much of the tribal lands is divided up in a checkerboard pattern, making it difficult to deal with energy companies. He said Mike Weber is negotiating with the State on behalf of the Tribe on a fair taxation system for the reservations. Councilman Eder compared the double taxation of oil to the taxation issues dealt with by the colonists in the Boston Tea Party, saying that the State of Montana taxes oil produced on trust lands but won't allow tribes to tax fee lands for the same use.

SEN. O'NEIL asked if counties tax fee lands. **Gary McDonald, County Commissioner**, said that counties get very little of the tax money back from the state. Mr. Ancatel explained that the state tax collected is divided and that 55% is deposited into the general fund. The remaining 45% is given back to the county. Mr. McDonald commented that 13.5% of something would be better than 100% of nothing, which is what his county is receiving now.

Mr. Sansaver asked to discuss the agenda for the Wednesday, November 15, portion of the meeting. He said plans have been made to tour the Poplar Schools in the morning and that the Committee could tour economic development projects in the afternoon. Mr. Sansaver provided the Enterprise Community's web address and encouraged Committee members to contact him with questions or information requests.

REP. HENDRICK asked what types of environmental issues are facing the Tribe. Chairman Morales said he did not foresee any environmental problems and that he appreciated the gesture of support from the Committee. He said there is strong support from the Fort Peck members for the economic development projects.

Vice Chair Gorneau, discussed her position as Director of the tribal court system. She said the system is excellent and that the Tribe has set high standards which are strictly enforced. She said that 22 code titles have been written by the Tribe and that issues are addressed as they occur.

SEN. O'NEIL asked if air quality would be significantly sacrificed if the air shed rating was lowered. Chairman Morales said no. Council Member Eder explained the difference in standards between a Class I air shed rating and a Class II rating and said the difference is negligible. He said the Class II rating is needed to allow for sophisticated coal extraction methods and that the synofuel is a clean technology. SEN. O'NEIL asked, if the technology is clean, why the change in classification is needed. Council Member Eder said the Tribe is requesting a change in classification on its air space only and that the change would not sacrifice air quality. SEN. O'NEIL said he has been of the opinion for a long time that the Class I rating is too restrictive and that he is pleased that the Tribe is of the same opinion.

Chairman Morales said that if an oil refinery is built on the Reservation, it would be state-of-the-art and would be the first refinery built in the nation in 30 years. Emissions would be very low and the proposed project has federal support.

Council Member Smith said he has attended hearings in New Town, North Dakota, which also wants an air shed classification change from Class I to Class II. He said he is impressed with the proposal put forth by New Town.

SEN. O'NEIL asked about the status of the SJR 24, passed in the 2003 Legislature. REP. WINDY BOY said the intention of the resolution was to bypass the State of Montana to enhance the sovereignty of the Tribes. SEN. O'NEIL said he would like the Committee to look into this and get it back on track.

Ms. Erickson said she recalled the resolution and would do the followup investigation. Copies will be provided to the Committee members when they become available. She explained that currently, all federal funding has to go through the State and that the resolution asked that the funding be routed directly to the Tribes.

Vice Chair Gorneau said it would be very beneficial to the Tribes to be able to eliminate the 10% administrative fee, especially in light of cuts in federal funding, because administrative costs amount to a significant amount of money.

SEN. O'NEIL said he would sponsor legislation on this issue, but as a bill and not as a resolution. He said that he would like to have the support of the Tribes.

REP. WINDY BOY said staff would have an update for the Committee at the next day's meeting.

REP. JAYNE suggested contacting Montana's Congressional Delegation regarding this issue.

REP. WINDY BOY summarized the meeting topics and said:

- He would work with Mr. Lohse on crafting language to eliminate the double tax on oil production. He said he would like to have a bill prepared for review by the Committee by September of 2006.
- Staff will investigate the resolution dealing with direct funding to Tribes.
- A letter will be sent to the GAIN Council regarding oil taxation / revenue sharing.
- A letter will be sent to the DNRC urging continued support for the wind energy project.
- The Committee would support the Tribe's effort to change its air quality classification from Class I air shed to Class II air shed.
- The Committee will draft bills to address the double severance tax on oil production and to route federal funding directly to the Tribes, circumventing the State.

REP. HENDRICK thought that the State-Tribal Relations Committee should meet before the special session to deal with the issues of concern to the Fort Peck Tribal Council. Mr. Lohse said that after the next Quality Schools Committee, he would have a better idea of when to schedule a State-Tribal Relations Committee meeting. Ms. Erickson suggested inviting Pat Riley, DNRC, to the next meeting to update the Committee on the issues of concern. REP. WINDY BOY asked that a copy of the letter be sent to the Tribal Council. Mr. Lohse asked the Committee if he should invite the GAIN Council to the next meeting.

REP. JAYNE asked what the purpose of a meeting before the special session would be. REP. HENDRICK said the Committee would approve the letters drafted by staff and would work as a group on issues of concern to the Fort Peck Tribe.

REP. JAYNE said the Committee is also vested with the responsibility of HJR 41 and that action needs to be taken on that as well. She said she would like to see some action taken by and/or a report by the end of 2006? 2005?. She asked Mr. Lohse to review the provisions of HJR 41.

Mr. Lohse said that education is a key element in HJR 41. He recommended that American Indian student achievement reports be considered and information should be collected from each reservation. He also reported that Susan Ockert, Census and Economic Information Center, Department of Commerce is also studying this issue and that he would contact her to compare data.

Mr. Lohse discussed HJR 15 - study of disparate sentencing practices - and said that while no funding is available, his plan is to study data from a small area. Mr. Lohse said that he has contacted Great Falls and that he has been granted access to the court records. He said he would be starting that project in January of 2006.

REP. JAYNE asked the Committee what type of end product it wished to have at the end of the interim. Mr. Lohse suggested that the Committee begin drafting its legislation in the spring after the next reservation visit.



REP. WINDY BOY said that all Tribes are welcome to share concerns and ideas with the Committee.

Vice Chair Gorneau asked to receive quarterly and annual reports from the Committee. She asked for a report card on reservation schools and said just to provide the raw data and that the Tribe would interpret the data.

Mr. Ancatel reminded the Committee that his proposal for eliminating the double tax on oil production was only for new production and that existing production would not be affected. He asked what the next step would be. He asked if the tax would be the same on tribally-owned oil production as on production on allotted lands. He asked about negotiating with the GAIN Council on this issue.

REP. WINDY BOY said government to government relations are important and that the Committee will send a letter to the GAIN Council encouraging it to negotiate with the Tribe.

Mr. Ancatel said the Fort Peck Tribe would provide a copy of the resolution to Mr. Lohse to use in drafting a letter to the GAIN Council.

SEN. O'NEIL supported immediately drafting a committee bill to eliminate the double severance tax on oil production. REP. WINDY BOY said the Mr. Lohse will work on that but that the GAIN Council has to be consulted, as a part of the process. SEN. O'NEIL asked to have a rough draft within a month or two.

SEN. O'NEIL **moved** to have draft legislation to eliminate the double severance tax on all new oil production on Montana Indian Reservations. The **motion passed** on a unanimous voice vote.

Chairman Morales said the Tribe will continue its work on economic development projects.

Council Member Eder asked to recognize Spike Big Horn, Superintendent of the Fort Peck Agency and said that Mr. Big Horn had served as Tribal Chairman.

The meeting was adjourned.

### **November 16, 2005**

The members and staff of the State-Tribal Relations Interim Committee toured the Poplar School System. The tour began in the school cafeteria sampling the breakfast program and progressed to the Junior High. The Committee participated in the Wellness Fair, organized by the students and community. After a lunch break, several of the Committee members continued on to Glasgow and toured the Avenave facility with Rep. Margaret Campbell.

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