



# MANDAN, HIDATSA, & ARIKARA NATION

*Three Affiliated Tribes • Fort Berthold Indian Reservation*

*HC3 Box 2 • New Town, North Dakota 58763-9402*

## REGULAR COUNCIL MEETING MINUTES

**WEDNESDAY, DECEMBER 18, 1996**

**FRIDAY, DECEMBER 20, 1996**

**MONDAY, DECEMBER 23, 1996**

TRIBAL BUSINESS COUNCIL  
701-627-4781  
Fax 701-627-3805

01. **CALL TO ORDER AND OPENING PRAYER.** The December Regular Meeting of the Tribal Business Council was called to order by Chairman Russell D. Mason, Sr., at 11:15 a.m. on Wednesday, December 18, 1996, in the Tribal Council Chambers. A moment of silent prayer was held.
02. **ROLL CALL.** Chairman Russell D. Mason, Sr., present; Councilman Thomas Bird Bear, present; Councilman Mark N. Fox, present; Councilman Austin Gillette, present; Councilman Edwin Hall, present; Councilman Tex G. Hall, present; Councilman Daylon Spotted Bear, present. All present.
03. **ANNOUNCEMENTS.** The Tribe will have a 3-minute presentation at the Garrison Diversion Meeting in Bismarck. The TAT Christmas Party will be held on Friday, December 20. Discussion held on IHS health care services, physician salaries and funding, and the need for a good rural health care program. A special meeting will be held Friday morning, December 20, 1996, for tribal judge interviews. Another special meeting will be held on Monday, December 23, 1996, to review the 1995 Tribal Draft Audit Report.
04. **APPROVAL OF MINUTES.**
  - A. November 14-15, 1996. Motion to approve, Mr. Edwin Hall; seconded by Mr. Gillette. Vote: 7 in favor. Minutes approved.
  - B. November 22, 1996. Motion to approve, Mr. Gillette; seconded by Mr. Edwin Hall. Vote: 7 in favor. Minutes approved.
  - C. December 04, 1996. Motion to approve, Mr. Gillette; seconded by Mr. Edwin Hall. Vote: 7 in favor. Minutes approved.

NOTE: Break taken at 12:10 p.m. for lunch.  
Meeting reconvened at 1:30 p.m., with Mr. Fox not present.
05. **APPROVAL OF AGENDA.** Motion to approve agenda with additions, deletions, and changes, was made by Mr. Edwin Hall and seconded by Mr. Bird Bear. Vote: 6 in favor, 1 member absent. Agenda approved.
06. **NEW BUSINESS.**
  - A. Oil & Gas Update. Report was presented by Staff Attorney Thomas A. Disselhorst. The escrow agreement will be ready to be acted on by the council on December 23. The tribal and allotted mineral leases and exploration and final agreement drafts should

be ready for consideration by the council in early January. As soon as the lease agreement is approved by the bureau and the exploration agreement is approved by the council, the leasing program can begin. (Tentatively scheduled for January 13.)

NOTE: Mr. Fox entered the meeting at 1:40 p.m.

- B. Motion to Add to Agenda. A motion was made by Mr. Fox to add two items to the agenda. Motion was seconded by Mr. Edwin Hall. Vote: 7 in favor. Carried.
- C. R#96-244-DSB, FY 97-98 Domestic Violence Grant Application for \$60,000 from DHHS. Motion to approve was made by Mr. Fox, seconded by Mr. Gillette. Vote: 7 in favor. Carried.
- D. R#96-245-DSB, Edwin Hall Fence Settlement. Mr. Edwin Hall explained that he was requesting reimbursement for the cost of fencing materials for a fence which he built on a range unit leased to him. The range unit was relinquished to the tribe to use for a holding pasture for the Cattle Relending Program. Tex G. Hall made a motion to approve a \$7000 reimbursement to Edwin Hall for 2.5 miles of fencing material, at a cost of \$2,800 per mile. Motion was seconded by Mr. Fox. Discussion that any labor cost settlement can be worked out in committee. Vote: 6 in favor, Mr. Edwin Hall abstained. Motion Carried. Discussion that the resolution presented would have to be amended. (See Item 7.E.)
- E. VFW Post No. 9061 Financial Request. Mr. Maynard Fox advised Post 9061 has been invited to Northeastern College in Billings, MT, on March 28-29, and requested tribal assistance for travel and rooms. A motion was made by Mr. Mark N. Fox to provide up to one-half (\$1,124) of the total estimated amount of \$2,248, with the Post being responsible for raising the other half. Motion was seconded by Mr. Tex Hall. Vote: 7 in favor. Carried.
- F. Camilla Gosnelle Financial Request. A letter from Camilla Gosnelle requesting tribal assistance for her son to participate in a national olympic cross-country event in Biloxi, MS, was presented by Edwin Hall. A motion was made by Mr. Gillette to provide \$350. Motion was seconded by Mr. Fox. Vote: 6 in favor, Mr. Bird Bear not present during vote. Carried.
- G. Proposed Resolution to Establish an Emergency Feed Loan Program on Reservation. Motion to approve was made by Mr. Gillette, seconded by Edwin Hall. Discussion was held on proposed eligibility requirements. After discussion, motion and second were withdrawn so resolution could be sent back to the committee for additional work. Council will re-address on December 23.

**07. UNFINISHED BUSINESS.**

- A. Roads/Transportation Equipment Proposal. Ted Danks presented a proposal from RDO Equipment Company for purchase of a blade and accessories, stating that this was the only response he had received. After discussion, motion was made by Mr. Gillette, seconded by Tex G. Hall, to approve RDO proposal as presented by Mr. Danks and Virgil Eagle. A new resolution was requested by council. Vote: 6 in favor, 1 abstained. Carried.

NOTE: Break taken at 3:30 p.m. Reconvened at 3:50 p.m.

- B. Tribal Court FY97 Budget. Tribal Court Budget had not yet been approved for FY97. Budget was presented by Dixie Howling Wolf and reviewed with council. Motion was made by Mr. Bird Bear that the tribal court budget, as presented, is in addition to what is already in place for the master program in the other budgets. (See R#96-225-DSB.) Motion was seconded by Mr. Fox. Vote: 7 in favor. Carried.
- C. R#96-246-DSB, Reappointment of Dean Winkjer as Associate Judge. Motion to approve resolution to reappoint Dean Winkjer as TAT Associate Judge for a period of one year, beginning January 1, 1997, was made by Mr. Fox, seconded by Mr. Spotted Bear. Vote: 7 in favor. Carried.
- D. R#96-247-DSB, Reappointment of Mildred Berryhill as Magistrate Judge. Motion to approve resolution to reappoint Mildred Berryhill as TAT Magistrate Judge for a period of one year, beginning January 1, 1997, was made by Mr. Edwin Hall and seconded by Mr. Fox. Vote: 5 in favor, 1 abstained, Chairman Mason not present during vote. Carried.
- E. Approval of Amended R#96-245-DSB. Motion was made by Mr. Spotted Bear to approve the amended resolution indicating payment of \$7000 for fence line to Mr. Edwin Hall. (See Item 6.D.) Motion was seconded by Mr. Fox. Vote: 4 in favor, 2 abstained, Chairman Mason not present during vote. Carried.

**08. OTHER BUSINESS.**

- A. Three Affiliated Tribes Kidney Dialysis Unit Quarterly Report. Report was given by Linda Yourzek, Dialysis Administrator. All deficiencies (65) have been corrected and the program is currently in compliance with the ND State Department of Health. The policy and procedures manual has been completed and is on file. \$102,000 has been collected in third-party billings. At least \$200,000+ is still owed the Dialysis Unit by the State of North Dakota. A "third-party" budget needs to be developed by Dialysis.

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- B. R#96-248-DSB, TAT/KDU Medical Director Agreement. A motion to approve this resolution which would allow the TAT Chairman or Vice Chairman to execute an agreement for a KDU medical director with the Medical Arts Clinic was made by Mr. Bird Bear and seconded by Mr. Edwin Hall. Vote: 7 in favor. Carried.
  - C. R#96-249-DSB, New Town Ambulance Service District and TAT Memorandum of Understanding and Agreement. A motion was made by Mr. Tex G. Hall to approve this resolution, which authorizes a \$15,000 contribution in 1997, and approves a MOU and agreement for one year. Motion was seconded by Mr. Gillette. Vote: 6 in favor, 1 abstained. Carried.
  - D. Tribal History Curriculum Consultants. Motion to approve Linda Baker and Candace Bridges as consultants for this State Education project was made by Mr. Bird Bear, seconded by Mr. Tex G. Hall. Vote: 7 in favor. Carried.
  - E. R#96-250-DSB for Purchase of Road Maintenance Equipment. Resolution was presented by Theodore Danks and Virgil Eagle to approve purchase of motorgrader and accessories from RDO Equipment Company; along with trade-in of three motorgraders. Motion to approve was made by Mr. Edwin Hall, seconded by Mr. Gillette. Vote: 7 in favor. Carried.
  - F. Resolution on Mountrail-Williams Electric Cooperative Request for Partial Waiver of TERO Fees. Resolution presented by Paul Danks. Council was advised by Whitney Bell that the TERO Commission was not in favor of this. No motion. Denied.
  - G. R#96-251-DSB, Resolution Authorizing Development of a Tribal Emergency Response Planning Committee and Commission. Motion to approve was made by Mr. Gillette. Second by Mr. Fox. Vote: 7 in favor. Carried.
  - H. R#96-252-DSB, Resolution Approving Water Quality Standards Program Application. Motion to approve was made by Mr. Tex G. Hall and seconded by Mr. Bird Bear. Vote: 6 in favor, Chairman Mason not present during vote. Carried.
  - I. Welfare Reform Update. Leo Cummings reported on the welfare reform proposals and answered questions of the council.
  - J. Casino Report. A closed session was held on the casino. Present were TAT Financial Advisor David Brendsel, TAT Casino Manager Roy Galyean, and Staff Attorney Thomas Disselhorst.
09. **MOTION TO RECESS.** A motion to recess the meeting and reconvene on Friday, December 20, was made by Mr. Gillette and seconded by Mr. Fox. Vote: 7 in favor. Meeting was recessed at 7:00 p.m.

December 20, 1996

10. **RECONVENEMENT.** Meeting was reconvened at 10:00 a.m. on Friday, December 20, 1996. Meeting was called back to order by Chairman Russell D. Mason, Sr. All members were present, with the exception of Thomas Bird Bear, who was attending his sister's graduation in Grand Forks.
11. **REPORT ON GARRISON DIVERSION HEARING.** Staff Attorney Thomas A. Disselhorst was asked to give a report on the Garrison Diversion Hearing that had been held in Bismarck on Thursday, December 19. Both the Three Affiliated Tribes and Devils Lake were in attendance at the hearing. Standing Rock was not there, possibly due to the weather. Everyone was basically in support of continuation and completion of the tribal MR&I projects.
12. **SELECTION OF TRIBAL JUDGE.** Three candidates for tribal judge were interviewed by council beginning at 10:15 a.m. and ending at 12:10 p.m. The candidates interviewed were El Marie Conklin, William E. Woods, Jr., and Vance Gillette. After the interviews and discussion was held, Mr. Gillette recommended to the council that they select a judge today, since (1) this position has been vacant for quite some time; (2) the court is in urgent need of a judge; (3) all of the requirements in the selection process have been met. Mr. Gillette then made a motion for the selection process to be made and completed this date. Second to motion was offered by Tex G. Hall. A roll call vote was requested and follows: Chairman Russell D. Mason, Sr., - AYE; Vice Chairman Austin Gillette - AYE; Councilman Tex G. Hall - AYE; Councilman Edwin Hall - AYE; Councilman Mark N. Fox - OPPOSED; Secretary Daylon Spotted Bear - ABSTAINED; Treasurer Thomas Bird Bear - NOT PRESENT. A motion was then presented by Mr. Fox to select El Marie Conklin. No second to motion. Motion denied. A motion was presented by Mr. Fox to select William E. Woods, Jr. No second to motion. Motion denied. A motion was presented by Mr. Tex G. Hall for the selection of Vance Gillette. Motion was seconded by Mr. Edwin Hall. Vote: 5 in favor, 1 abstained, Mr. Bird Bear not present. Motion Carried.
13. **RECESS.** Meeting was recessed at 12:35 p.m. to be reconvened on Monday, December 23, 1996.

December 23, 1996

14. **RECONVENEMENT.** Meeting was reconvened on Monday, December 23, 1996, at 1:45 p.m. by Chairman Russell D. Mason, Sr., with all members present.
15. **PARSHALL RESOURCE CENTER.** Discussion was on the \$20,000 grant obligated by Tribe, of which \$5,000 is needed immediately to continue services at the resource center. After discussion, a motion was made

by Mr. Fox to authorize Chairman Mason to write a letter on behalf of the Tribal Business Council to Minot North Central requesting them to continue their services, and to coordinate the other two (Unimed/ Circle of Life) to try to resolve differences that exist so as to benefit the people of Fort Berthold. Motion was seconded by Mr. Gillette. Vote: 7 in favor. Carried.

16. **JOSEPH EVE AUDIT REPORT.** CPA Joseph Eve reviewed the draft audit report for Fiscal Year 1995 with the Tribal Business Council.
17. **EMERGENCY FINANCIAL REQUESTS.** Clorine Driver presented two requests from enrolled members Mabel Bear and Tim and Ardis White Body for emergency loans other than medical. Wage assignment loan agreements are to be signed by all parties. Mr. Gillette made a motion to approve an emergency loan of \$275 to Mrs. Bear, seconded by Mr. Tex G. Hall. Vote on motion: 7 in favor. Carried. Mr. Tex G. Hall made a motion to approve an emergency loan of \$275 to Tim and Ardis White Body, seconded by Mr. Edwin Hall. Vote on motion: 7 in favor. Carried. NOTE: Checks are to be made out to the vendor.
18. **CDBG PROJECT/PARSHALL.** Mr. Fox requested authorization to hire two individuals to work on this project. Mr. Gillette made a motion to authorize Mr. Fox to hire for this project. Motion was seconded by Mr. Edwin Hall. Vote: 7 in favor. Carried.
19. **COMPTROLLER POSITION.** List of applicants was presented by Personnel Director, who was requested to rate the top six applicants for possible interviews by council. Motion was made by Mr. Fox to authorize Treasurer Bird Bear and Chairman Mason to see what ways to initiate under indirect cost to create a position whereby we might have a possibility to hire Ms. Thomas in Finance, seconded by Mr. Edwin Hall. Vote: 7 in favor. Carried. Discussion included salary standard, accountant entry, and job description.
20. **R#96-253-DSB, TO AMEND R#96-216-DSB, COST OF LIVING ALLOWANCE.** Resolution was amended to indicate an across-the-board cost-of-living allowance for all tribal employees at the rate of 3%, retroactive to 10/01/96. Mr. Edwin Hall made motion to approve, seconded by Mr. Spotted Bear. Discussion was to include 11 temporary and segment employees. Vote on motion: 7 in favor. Carried.
21. **BLUE CROSS BLUE SHIELD INSURANCE.** Personnel Director Florence Brady requested the contract be extended with BCBS and that employees be eligible for insurance coverage on the first day of the month following their date of hire and that employee's coverage would begin in 32 hours rather than 90 days. Mr. Edwin Hall made a motion to approve, seconded by Mr. Bird Bear. Discussion by Mrs. Brady that 32 hours is in accordance with federal standards. Vote: 7 in favor. Carried.

22. **PAY SCALE ADJUSTMENT.** An explanation was requested from the Personnel Director as to the reasons for the discrepancy in the pay scale adjustment of Mr. Alfred Morsette, Jr., who was hired on the same date, at the same salary, and same title as Gerald Driver; however, he had not received the same adjustment. Mrs. Brady explained the process that had taken place, after which Mr. Fox made a motion to make the pay adjustment for Mr. Morsette the same level as had been made for Mr. Driver. Motion was seconded by Mr. Edwin Hall. Vote: 7 in favor. Carried.

NOTE: No other grievances will be brought in front of the council.

23. **R#96-254-DSB, ESTABLISHMENT OF EMERGENCY FEED LOAN PROGRAM.** Resolution was presented and explained by Mr. Tex G. Hall. After discussion, Councilmen Edwin Hall and Tex G. Hall stated they would work with Treasurer Bird Bear to amend the language requested by council in certain areas of the proposed resolution. Motion to approve the resolution with the language changes was made by Mr. Tex G. Hall and seconded by Mr. Edwin Hall. Vote: 7 in favor. Carried.

24. **R#96-255-DSB, APPROVAL OF ESCROW AGREEMENT WITH ALENCO OIL & GAS (N.D.) INC.** Resolution was presented and explained by Staff Attorney Thomas A. Disselhorst. During discussion, Mr. Gillette stated, for the record, that in 1984 311,000 acres were put up for bid and only 54,000 acres were bid on. In 1991, 325,000 acres were put up for bid and only 29,000 acres were bid on. Mr. Disselhorst said this company is interested in producing oil. Motion to approve the resolution was made by Mr. Gillette and seconded by Mr. Edwin Hall. Vote: 6 in favor, 1 opposed. Carried.


25. **FIRE MANAGEMENT PROGRAM.** Mr. Gillette made a motion to retain Fire Management employees Lyda Foote and Everett Hosie throughout the winter, or until the carryover funds are expended. Motion was seconded by Mr. Edwin Hall. Vote: 7 in favor. Carried.

26. **ADJOURNMENT.** Motion to adjourn was made by Mr. Bird Bear and seconded by Mr. Spotted Bear. The meeting was adjourned at 5:50 p.m.


#### CERTIFICATION OF MINUTES

I hereby certify that 7 members were present at a Regular Meeting held on the 13th day of February 1997, whereupon the Regular Council Meeting Minutes of December 18, 20 and 23, 1996, were presented for approval by the Three Affiliated Tribes' Recorder. Said minutes were duly approved, with changes, by the affirmative vote of 7 members.

**CERTIFICATION:**

  
Daylon Spotted Bear, Executive Secretary  
Three Affiliated Tribes' Tribal Council

**ATTEST:**

  
Russell D. Mason, Sr., Chairman  
Three Affiliated Tribes

INFORMATION TO BE INCLUDED IN THE TRIBAL MINUTES

- \* The TAT ESRD facility is under the control of the governing body which maintains responsibility for governance and operation of the dialysis unit. The constitution and Bylaws of the TAT which indicate this authority of the governing body are on file at the dialysis unit.
- \* Medicare certification for the dialysis unit is based on continued compliance with the Conditions of Participation which requires a facility to put in place a system to ensure that continued compliance. The TAT KDU facility has met the Conditions of Participation and received recertification on 10/10/96.
- \* The tribal council which is the governing body has adopted and enforces rules and regulations relative to the general operation of the dialysis facility as evidenced by the policy and procedure manual approved and signed by the governing body on September 30, 1996. The annual review and or revisions will be accomplished by the governing body as evidenced by resolution on file. Additionally, the annual review is on a yearly calendar schedule set for September 30, 1997.
- \* The operational objectives of the facility including services it provides have been established, delineated in writing and formally approved by the governing body. Further, effective administrative rules and regulations have been adopted to protect the health and safety of the patients. The facility is operated in accordance with legal requirements as evidenced in the bylaws and the language of the position descriptions.
- \* Policies concerning the provisions of dialysis and other ESRD (END STAGE RENAL DISEASE) services to patients have been developed by the Medical Director as evidenced by signature on the policy and procedure manual. Additionally, the position description for the Medical Director clearly delineates responsibility for the development of these policies.
- \* The Medical Director of the facility has been designated in writing to be responsible for the execution of patient care policies.
- \* The governing body ensures that there is available medical care for emergencies 24 hours a day, 7 days a week. A Medical Director has been appointed by the governing body. There is posted at the nurses station and in the front office an on-call schedule with appropriate numbers for physicians to be called in case of an emergency.
- \* Facility staff have been designated to serve as supervisor of the medical records. An outside ART has been retained for ongoing medical record chart reviews.
- \* Policy has been revised for licensure. The policy ensures responsibility for licensure or registration in accordance with applicable law. Tracked by a yearly schedule to ensure compliance. Further, personnel not properly licensed will not be allowed to work. The nurse manager is responsible for the verification. The governing body approves the hiring of all personnel after assurance of compliance with policies by the nurse manager and the dialysis administrator.



- \* Policy on patients' rights and responsibilities has been reviewed. All patients have been informed of their rights and responsibilities by the nursing staff. All patients have a copy of the patient handbook which also describes their rights and responsibilities.
- \* Two Inservices were conducted on Cultural Diversity. One inservice dealt specifically to address cultural competence for health care providers. An orientation checklist has been developed for employees which includes cultural diversity.
- \* Rules and regulations have been adopted relative to the protection of the patient's personal and property rights. This is found in the policy and procedure manual which has been signed off and approved by the governing body.
- \* A September terminal cleaning has been completed. Quarterly terminal cleanings will be done a per yearly schedule.
- \* Policies and procedures are in place for preventing and controlling hepatitis and other infections. Policies include but are not limited to, appropriate procedures for surveillance and reporting of infections, housekeeping, handling and disposal of waste, and contaminants, sterilization and disinfection. A log has been developed and implemented to track infections through the newly formed infection control committee.
- \* Training has been conducted for all personnel on the emergency disconnect procedure for their patients in the event of an emergency. Personnel have reviewed the policies and procedures for emergency preparedness. Drills for mock codes and fire drills with the Newtown Fire Department have been completed. The training provided continues quarterly. An actual power failure has been documented as a drill.
- \* Water policies have been completely reviewed and revised. Colony counts are checked on the dialysis machines and Reverse Osmosis, water loop on a every month basis or as deemed necessary by AAMI Standards. We remain in compliance with AAMI Standards. The entire water system has been checked, cleaned and disinfected by LAZERS H2O of Minneapolis. Preventive Maintenance has been completed on all of the 12 dialysis machines by the Cobe Technicians out of Denver, Colo. The water system and machines which are the two key pieces to dialysis are monitored daily and very competently by our Bio-Med Technician Roger Grady. Roger has successfully passed the Cobe school in Denver and is excellent at troubleshooting problems in both extremely technical systems. Mr. Grady is also responsible for the day to day operations of the start up of each dialysis day.
- \* Responsibilities of the CEO have been clearly delineated in writing in the position description. A formal means of establishing accountability for those involved in patient care has been developed. (QA/QI PLAN), has been approved and implemented. Clinical competencies were completed November 30, 1996 for all personnel involved in patient care. A formal orientation process has been developed and implemented. Continuing education and related development activities are in effect as evidenced by staff inservice calendar.

- \* The CEO reports quarterly to the governing body via the Tribal Health Administrator. Additionally, a yearly schedule has been developed which ensures that implementation is carried out for reports to the governing body as well as implementations of new policies and procedures.
  
- \* To assist the CEO in carrying out the multidisciplinary team approach and maintenance of medicare certification, all staff members at the dialysis unit have been appointed to chair, maintain and report quarterly on the following mandatory committees:
  - \* Roger Grady - appointed as the KDU Safety Officer.
  - \* Kami Boehm RN appointed as the KDU CQI Coordinator.
  - \* Linda Irwin RN appointed as the KDU Infection Control Coordinator.
  - \* Marvin Driver appointed as the KDU Vehicle Maintenance Coordinator.Through the individual reports the governing body, Medical Director, CEO, Nurse Manager are able to review and regulate these mandatory committees.
  
- \* The governing body has approved policies and procedures that ensures reports of incidents and accidents to patients and personnel are reviewed to identify health and safety hazards. Said policy has been implemented. Incidents identified by findings have been reviewed by the Medical Director, CEO, Nurse Manager and have made recommendation which have been implemented. Our QA/QI Plan identifies trends and has helped us develop and implement actions to prevent and minimize reoccurrences. Issues are dealt with in documented staff meetings and Inservices. Incidents of todate are minimal.
  
- \* Monthly staff and patient care conference meeting minutes have been reviewed by the CEO with input from the Nurse Manager. Information is provided to the Governing Body through the minutes, memos and tribal meetings. CEO has requested from the Nurse Manager that Staff Meetings and Patient Care Meetings be held upon her arrival to the unit. The CEO holds bi-monthly meetings with the Nurse Manager.
  
- \* Renal Network #11 has no outstanding recommendations currently for the TAT KDU. Network #11 was however involved and assisted the staff through our state survey. The nursing staff at the dialysis unit as well the Nurse Manager and CEO are in contact with the Network on a weekly basis.
  
- \* As required by the Governing Body the mandatory annual staff performance evaluations were completed by the Nurse Manager on November 30, 1996.

Submitted by: Linda Yourczek RN  
Administrator



**TRIBAL BUSINESS COUNCIL OF  
THE THREE AFFILIATED TRIBES**

**SPECIAL MEETING**

DECEMBER 18, 1996

WRITTEN REPORT

**PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996**

**1. TRIBAL AND STATE CHILD SUPPORT PROJECT**

- A. History of tribal/state child support cooperative services
- B. Litigation in North Dakota regarding IV-D services.

**2. NEW WELFARE REFORM REQUIREMENTS**

- A. Provides direct funding to Tribes if no cooperative agreement has been reached.
- B. The new child support enforcement provisions go into effect October of 1997.
- C. The need for cooperative agreements and tribal code amendments.

(The new law provides that states are *required* to enter into cooperative agreements upon the Tribe demonstrating that it has an established Tribal Court with the authority to establish paternity, establish, modify and enforce support orders; and to enter support orders in accordance with child support guidelines.)

- D. Must the Tribe have to provide a match? *Maybe.*
- E. Tribe must operate a child support program if it wished to operate TANF.
- F. Sanctions are mandatory if the mother is unwilling or uncooperative (to identify father in paternity actions); if so, the TANF benefits will be reduced by 25%.
- G. Custodial parent must assign rights to child support to the Tribe.

**3. ESTABLISHMENT OF PATERNITY**

- A. Tribe must pay for genetic blood testing subject to being reimbursed by putative father.
- B. Genetic testing results, under the new law, are admissible in a court proceeding without having to establish a foundation.

#### **4. CHILD SUPPORT ENFORCEMENT**

- A. Arreages cannot be retroactively modified.
- B. In certain situations, grandparents may be responsible for support.
- C. Support debt must be referred to credit reporting agencies.
- D. Must maintain central registry of child support orders.
- E. Must have procedure of referring obligors to IRS for tax intercepts and to States for tax, unemployment and worker's compensation intercepts.
- F. Must have mandatory wage withholding in place.
- G. Must have a system of license revocations (driver's licenses, professional licenses issued by tribe such as, but not limited to, gaming licenses, business licenses, and hunting and fishing licenses).

#### **5. OTHER CONSIDERATIONS**

- A. Tribe will need to determine what child support services it wants to provide within its Court system.
- B. Also, pursuant to the new welfare reform legislation, the Tribe must also determine if it has the capability to run the TANF program.
- C. Currently, the Tribe must provide matching funds. However, certain Indian organizations, including the ND State Child Support Agency, are attempting to secure a waiver of the matching funds requirement.
- D. Lastly, the Tribe is continuing to move forward with its Agreement with the State; however, the Department of Health & Human Services has indicated that their Department will be issuing regulations on the requirements of these agreements in the near future.
- E. The TANF provisions are already in effect, the child support provisions will go into effect October, 1997.

TO: TRIBAL BUSINESS COUNCIL  
FR: DIANE AVERY, STAFF ATTORNEY  
RE: BRIEF LITIGATION UPDATE:

THE THREE AFFILIATED TRIBES TAX COMMISSION VS. RESERVATION TELEPHONE COOPERATIVE, CONSOLIDATED TELEPHONE COOPERATIVE, AND WEST RIVER TELECOMMUNICATIONS COOPERATIVE, CIVIL NO. 97C-0380.

DA: DECEMBER 18, 1996

THE ABOVE REFERENCED LITIGATION WAS FILED IN THE FORT BERTHOLD DISTRICT COURT ON NOVEMBER 22<sup>nd</sup>, 1996. IT WAS ANTICIPATED, AT THIS TIME, THAT ESCROW AGREEMENTS WOULD ALSO BE IN PLACE WITH CONSOLIDATED TELEPHONE COOPERATIVE (CTC) AND WEST RIVER TELECOMMUNICATIONS COOPERATIVE (WRTC). IF SUCH AGREEMENTS HAD BEEN OBTAINED, THE TRIBE WOULD HAVE HAD TO FILE AN AMENDED COMPLAINT WITH THE COURT. THE TAX LIABILITY OF CTC AND WRTC ARE QUITE MINIMAL COMPARED TO THE TAX LIABILITY OF RTC. THE TAX LIABILITY FOR CTC IS \$2,286.90 FOR TAX YEAR 1992 AND FOR \$2,310.00 FOR TAX YEAR 1993. THE TAX LIABILITY FOR WRTC IS \$1,386.00 FOR TAX YEAR 1992. APPARENTLY THE TRIBE NEVER ASSESSED WRTC FOR TAX YEAR 1993. THE TRIBE PREVIOUSLY APPROVED THE ESCROW AGREEMENT WITH RTC WHEREIN RTC PLACED \$111,372.26 INTO THE ACCOUNT FOR TAXES ASSESSED IN TAX YEARS 1992 & 1993.

A LETTER WAS RECENTLY RECEIVED BY THE ATTORNEY FOR CTC INDICATING THAT THEY OWE NO TAX TO THE TRIBE, AND, THAT CTC WAS CLAIMING AN EXEMPTION UNDER SECTION 714 OF THE TAX CODE. ON NOVEMBER 22<sup>ND</sup>, GENE SLOAN, GENERAL MANAGER FOR RTC, PERSONALLY HAND-DELIVERED RTC'S TAX RETURNS FOR TAX YEARS 1994, 1995, & 1996. THESE TAX RETURNS CLAIM ZERO TAX LIABILITY TO THE TRIBE AND, FURTHER, CLAIMS AN EXEMPTION PURSUANT TO SECTION 714 OF THE TAX CODE.

WITH RESPECT TO EXEMPTIONS, THE LEGAL DEPARTMENT HAS BEEN CONCERNED ABOUT CERTAIN EXEMPTIONS GRANTED BY THE TRIBAL BUSINESS COUNCIL AND/OR THE TAX COMMISSION TO VARIOUS ENTITIES. I INQUIRED ABOUT THESE EXEMPTIONS SUCH AS TO WHOM THEY WERE GRANTED, INCLUDING THE RATIONALE FOR THE GRANTING OF SUCH EXEMPTIONS. IF THIS INFORMATION IS AVAILABLE, OR IF THE TAX DEPARTMENT HAS A FILE OR SOME INSIGHT, THIS INFORMATION IS CRITICAL. IN FACT, MIKE GEIERMAN, ATTORNEY FOR RTC, RECENTLY CALLED MIKE ROY REGARDING PROCEEDING WITH DISCOVERY IN THE CASE FILED WITH THE COURT ON NOVEMBER 22, 1996. IN TALKING WITH MIKE ROY TODAY, HE IS ALSO DEFINITELY CONCERNED ABOUT THE PREVIOUS EXEMPTIONS GRANTED BY THE TRIBE. MIKE ROY IS ASSUMING THAT THE PLAINTIFFS WILL WANT TO KNOW ABOUT ALL OF THE EXEMPTIONS DURING THE COURSE OF DISCOVERY. THESE ARE ISSUES THAT SHOULD CONCERN THE TRIBAL BUSINESS COUNCIL GIVEN THE SIGNIFICANT TAX LIABILITY OF RTC. IN FACT, IF THE TRIBE SHOULD PREVAIL TO THE 8<sup>TH</sup> CIRCUIT LEVEL, RTC WILL UNDER NO UNCERTAIN TERMS APPEAL THIS MATTER TO THE US SUPREME COURT. (OF COURSE, THE TRIBE COULD LOSE AS WELL AND, IF SO, THE TRIBE WILL BE APPEALING THE CASE). IN THE MEANTIME, THE A-1 CONTRACTORS CASE WILL HAVE BEEN DECIDED, AND MUCH OF THE RTC LITIGATION MAY TURN UPON CERTAIN DECIDING FACTORS IN THAT CASE.

LASTLY, THE TRIBAL BUSINESS COUNCIL SHOULD BE CONCERNED ABOUT APPOINTING/EMPLOYING A TAX DIRECTOR FOR THE TAX DEPARTMENT. FOR EXAMPLE, TAX ASSESSMENTS SHOULD BE ON-GOING, WHAT ABOUT OTHER TAXABLE ENTITIES BESIDES THE DEFENDANT'S IN THE PRESENT LAWSUIT? I ASKED MIKE ROY, TODAY, WHY ASSESSMENTS WERE NOT DONE FOR TAX YEARS 1994, 1995, & 1996. MIKE ROY INFORMED ME THAT PART OF IT WAS BECAUSE OF THE LITIGATION, BUT THERE CERTAINLY IS NO REASON WHY THIS ACTIVITY CANNOT RESUME. THE

PROBLEM WE ARE TRYING TO AVOID IS BEING INCONSISTENT WHETHER ITS DETERMINING ASSESSMENTS, WHETHER ASSESSMENTS ARE BEING MADE FOR ALL TAXABLE ENTITIES, AND FOR PROVIDING CONSISTENCY IN THE TRIBAL COUNCIL'S LEGAL RATIONALE WHEN EXEMPTIONS WERE GRANTED.

TO DATE, THE DEFENDANTS HAVE NOT FILED AN ANSWER TO THE LITIGATION FILED ON NOVEMBER 22<sup>ND</sup>, 1996. HOWEVER, ONE IS EXPECTED WITHIN THE NEXT FEW DAYS, THE EXPIRATION FOR THE FILING OF THEIR ANSWER ENDS ON DECEMBER 23, 1996.