

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - SPECIAL SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Russell Fagg, on December 9, 1993, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Karmen Tuttle, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 29
	HB 67
Executive Action:	SB 29
	HB 67

HEARING ON SENATE BILL 29Opening Statement by Sponsor:

Sen. Judy Jacobson said that money for SB 29 has been taken out of HB 2 and will not be replaced. The administrator for the Montana Supreme Court said there is grant money in the amount of \$75,000/year for a program such as this, if it is administered through the Supreme Court. There is language in HB 2 that would allow the court to expend federal grant monies.

Questions From Committee Members and Responses:

Rep. Vivian Brooke asked **Sen. Jacobson** if there will be an RFP going out to counties for a proposal. **Sen. Jacobson** said funding was going to be eliminated.

Rep. Brooke said it is a very good idea for the state to have a pilot program, and it should extend to urban as well as rural areas. **Sen. Jacobson** said that expansion may have to wait to be voted on until the next regular session.

Rep. Liz Smith asked if there is a possibility of allowing more citizens to participate on the existing review board. **Rep. Smith** said it would offer a better balance if more citizens were used. **Sen. Jacobson** replied that accumulated information shows that this is the best approach.

Rep. Randy Vogel asked if the \$91,650 funding has been appropriated or is available as a grant through the Supreme Court. **Sen. Jacobson** said the fiscal note clearly states that there is no money. They can use federal funds if they receive them.

Rep. Vogel said that there should be an amendment to change page 2 line 2. The phrase "at the time prescribed by 5-11-210" is in the wrong place; it should be moved down to line 4 after the word "and".

Rep. Robert Clark asked who appoints the local citizens. **Sen. Jacobson** responded that the community would make the decision.

Sen. Jacobson closed the hearing on SB 29.

Motion/Vote: Committee members moved to amend these items: Page 2, line 2 strike "at the time prescribed by 5-11-210 and" Page 2 line 4 following: "part and" insert: ",at the time prescribed by 5-11-210," Amendment carried unanimously.

Motion/Vote: **Rep. Bill Tash** moved that the bill be passed as amended. Motion passed unanimously. **Rep. Debbie Shea** will carry the bill.

HEARING ON HB 67

Opening Statement by Sponsor:

Rep. Dore Schwinden said the bill was requested by the Fort Peck Tribes. It is an act authorizing the state to negotiate a compact under the Federal Indian Gaming Regulatory Act granting authority to a tribe to operate slot machines, roulette and to conduct the game of craps and the live card game of blackjack or twenty-one within the boundaries of its reservation; providing for payment of 8% of net revenue to the state to fund local government operations; requiring gaming operations to be regulated by tribal law pursuant to the federal Indian Gaming Regulatory act; and providing an immediate effective date.

Proponents' Testimony:

Rep. Bob Gervais, H.D. #9, said that gaming would bring in revenue to the state. Tribes have a 50-85% unemployment rate, and gaming would give these people employment.

Merle Lucas, Fort Peck Tribes supports HB 67. **Exhibits 1 & 2**

Sen. Chris Christiaens supports this legislation because in other states casino gaming has provided employment and increased revenue for Indian reservations. This legislation may help reservations become self-supporting.

Christine Mangiantini, Economic Development Consultant, said the Native American population is growing at a very fast rate in the state of Montana. The county welfare for the Fort Peck Tribe has doubled in ten years. They have the largest per capita population of welfare recipients in the state. Fifty percent of the population of the tribes is below the age of 18, it is the states duty to give them this.

Richard C. Whitesell, Director, Bureau of Indian Affair, supports HB 67. **Exhibit 3**

Gene Culbertson, Fort Peck Tribes, supported HB 67. **Exhibits 4 & 5**

Caleb Shields, Fort Peck Tribes, said the bill has wide support from Northeastern Montana. They see that this activity would improve the local economy.

Gordon Morris, Director, Montana Association of Counties, said the counties have two concerns: changing "net revenue" to "gross revenue before expenses" and changing the distribution method for money paid the state.

Robert Nelsen, Poplar City Council, supported HB 67.

Donald Horn, Gaming Agent Fort Belknap Community Council, supported HB 67. **Exhibit 6**

Dick Loegering, President, Traders State Bank, said that the Fort Peck Tribes have been progressive and aggressive in trying to improve their people. The tribes believes that federal monies will not continue to come in. HB 67 will help the reservation and the state. **Mr. Loegering** supported HB 67.

Leighton Reum, Fort Peck Tribes, supported HB 67.

Doris Poppler, National Indian Gaming Commission, said gaming has brought employment to many of the reservations. The NIGC does background checks on everyone before hiring is done for management positions in the casino's. Also background checks are done every three to five years. **Mrs. Poppler** believes the tourist industry will blossom in the state because of the casino's location on Indian reservations.

Daniel Schauer, Fort Peck Tribes, and **Michael Peoples, Chamber of Commerce**, supported HB 67.

George Ochenski, Fort Peck Tribes, said that many states have gambling on reservations and Montana should be one of them.

Opponents' Testimony:

Gloria Hermanson, Don't Gamble With the Future, said that there are problems that need to be brought out. The bill does not state what the operating expenses are; therefore the state will end up with a very small amount of money. This bill could generate \$10 to \$15 million in annual revenues. In order for the state to see \$15 million in revenue sharing of 8%, the Indian casino's would have to have \$187.5 million in revenue. **Exhibit 7**

Harley Warner, Montana Association of Churches, said that they oppose gambling. They want to protect family values in Montana. The tribes need economic development, but this is not appropriate.

Questions From Committee Members and Responses:

Rep. Karyl Winslow asked if 300-500 jobs would be created on the Fort Peck Reservation. **Merle Lucas** replied that jobs will occur in the casino, hotel, motel, restaurant, shopping center, RV parking lot, and maintenance business.

Rep. Winslow asked who attended the meeting in Billings and how the Crow tribe feels about this. **Mr. Horn**, answered that North American Indian Alliance meeting was held in Billings in October with the Crow, Rocky Boy, Fort Belknap, and Fort Peck tribes present.

Rep. Jody Bird asked **Mr. Horn** if the tribes would have any objection to setting aside money for gambling addiction treatment. **Mr. Horn** said the Fort Belknap Tribe would not object. **Mr. Lucas** said that the Fort Peck Tribe would not object.

Rep. Vivian Brooke asked when they will be breaking ground on the casino. **Sen. Schwinden** answered in the spring.

Rep. Robert Clark asked what the revenues will be. **Mr. Lucas** said revenues would be around \$2 million per year and around \$15 million if other tribes negotiated with the state; his reply was based on the Two Bears Casino in North Dakota.

Rep. Clark asked whether if 8% went to the state and 2% went to local committees there would be any objections. **Mr. Lucas** said he could not make a decision for his tribal council.

Rep. Tim Whalen asked to what extent will tribes have gaming. **Mrs. Poppler** answered that the law specifies banking games can be held.

Rep. William Tash asked if there are any hiring preferences. **Mr. Lucas** replied yes, that tribal members will be hired.

Rep. Smith asked what percent of tribe membership is supportive. **Mr. Horn** replied about 80%. **Mr. Reum** answered about 70-75%.

Rep. Randy Vogel asked if it was the tribe's goal to create an unlevel playing field so that the revenues now being gained by local governments would be shifted to Indian governments. **Rep. Schwinden** replied that Fort Peck's proposal assumed that their money would come from Canada; those are dollars not being circulated in this economy.

Rep. Vogel asked if it would be legal to change it to a gross tax from a net tax. **Mrs. Poppler** answered that the state does not have the right to tax Indian gaming and what the bill calls for is voluntary revenue sharing by the tribes.

Rep. Angela Russell asked if there are any changes occurring in economic development. **Mr. Whitesell** replied that the best game in town is gaming. It provides an opportunity for those who do not have resources to generate an income. The federal government and Montana cannot solve this problem; it takes the people of the tribe to solve their problems.

Rep. Russell asked if BIA, through the Indian Financing Act is contributing financially to some of these casino developments. **Mr. Whitesell** replied that they are.

Closing by Sponsor:

Rep. Schwinden said that the gaming issue should not be on a level playing ground because the private gaming operator is under a different set of rules and regulations than the tribal. Not every tribal member supports gaming as a means towards self-sufficiency. If the committee takes away the tribes' opportunity to help themselves, what else can they be given. It gives jobs for the unemployed and hope that the future will be better than the past.

Motion/Vote: REP. RICE MOVED TO ADOPT AMENDMENTS 1-7. Motion carried 14-4 with REPS. RUSSELL, SMITH, MCCULLOCH, AND WYATT voting no. Exhibit 8

Motion/Vote: REP. RICE MOVED TO ADOPT AMENDMENT 8. Motion carried unanimously. Exhibit 8

Motion/Vote: REP. RICE MOVED TO ADOPT AMENDMENT 9. Motion carried unanimously. Exhibit 8

Motion/Vote: REP. RICE MOVED TO ADOPT AMENDMENT 10, ALL BUT NEW SECTION. Motion carried unanimously. Exhibit 8

Substitute Motion: REP. WHALEN MADE A SUBSTITUTE AMENDMENT THAT ALL OF THE MONEY WOULD GO TO THE STATE AND THE STATE WOULD DISPERSE IT THROUGH THE COMPACT AND IN COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT.

Rep. Bird said she opposes the substitute amendment.

Rep. Toole said he supports the amendment.

Motion: REP. WHALEN MOVED TO WITHDRAW HIS AMENDMENT.

Motion: REP. RICE MOVED TO WITHDRAW HIS LAST AMENDMENT.

Motion: REP. WHALEN MOVED A NEW AMENDMENT TO STRIKE THE AMENDMENTS PREVIOUSLY PUT ON THE BILL HAVING TO DO WITH THE STATE RECEIVING 15% OFF OF THE GROSS PROCEEDS AND PROVIDE ANY COMPACT NEGOTIATED HAS TO PROVIDE FOR AN AMOUNT EQUIVALENT TO WHAT IS CURRENTLY BEING TAXED ON GAMING MACHINES STATE WIDE AND BE PAID TO LOCAL GOVERNMENTS PURSUANT TO IGRA AND TO ANY NEGOTIATED COMPACT ENTERED INTO BY THE STATE. Motion passed unanimously.

Motion/Vote: REP. RICE MOVED TO ADOPT AMENDMENTS 11-13. Motion carried unanimously. Exhibit 8

Rep. Fagg said he will vote against the bill.

Rep. Toole said he supports the bill.

Rep. Whalen supports the bill.

Rep. Clark opposes the bill.

Motion: REP. TASH MADE A MOTION TO TABLE HB 67.

Vote: Motion to table bill passed 13-5 with Rep. Brooke, Rep. McCulloch, Rep. Russell, Rep. Toole, and Rep. Whalen voting no.

Motion/Vote: REP. RICE MOVED TO GIVE THIS A DO NOT PASS RECOMMENDATION WITH AMENDMENTS. Motion passed unanimously.

ADJOURNMENT

Adjournment: 11:15 p.m.



REP. RUSSELL FAGG, Chairman



KARMEN TUTTLE, Secretary

RF/KT

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE December 09, 1993

NAME	PRESENT	ABSENT	EXCUSED
REP. RUSSELL FAGG, CHAIRMAN	x		
REP. RANDY VOGEL, VICE CHAIRMAN	x		
REP. JODY BIRD	x		
REP. VIVIAN BROOKE	x		
REP. ELLEN BERGMAN	x		
REP. DIANA WYATT	x		
REP. DEBBIE SHEA	x		
REP. ROBERT CLARK	x		
REP. DUANE GRIMES	x		
REP. SCOTT MCCULLOCH	x		
REP. JIM RICE	x		
REP. ANGELA RUSSELL	x		
REP. TIM SAYLES	x		
REP. LIZ SMITH	x		
REP. HOWARD TOOLE	x		
REP. BILL TASH	x		
REP. TIM WHALEN	x		
REP. KARYL WINSLOW	x		

HR:1993
wp:rollcalls.man
CS-10



HOUSE STANDING COMMITTEE REPORT

December 9, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 29 (third reading copy -- blue) be concurred in as amended.

Signed: *Russ Fagg*
Russ Fagg, *Chair*

And, that such amendments read:

Carried by: Rep. Shea

1. Page 2, line 2.

Strike: "at the time prescribed by 5-11-210 and"

2. Page 2, line 4.

Following: "part and"

Insert: ", at the time prescribed by 5-11-210,"

-END-

Committee Vote:
Yes __, No __.

101359SC.Hcr

*12-4-93
2:15*



Karmen

HOUSE STANDING COMMITTEE REPORT

December 13, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 67 (first reading copy -- white) do not pass as amended.

Signed: Russell Jay
Russ Fagg, Chair

And, that such amendments read:

1. Title, lines 9 through 11.

Strike: "OF 8" on line 9 through the first "OPERATIONS" on line 11

Insert: "TO LOCAL GOVERNMENT SUBDIVISIONS OF PART OF THE MONEY PAID TO PLAY THE MACHINES AND GAMES"

2. Title, line 13.

Following: "ACT;"

Insert: "PROVIDING FOR A TRIBAL GAMBLING ABUSE PREVENTION AND TREATMENT PROGRAM;"

3. Page 3, line 22 through page 4, line 3.

Strike: subsection (c) in its entirety

Renumber: subsequent subsection

4. Page 4, lines 16 and 17.

Strike: "the state" on line 16 through "tribe; and" on line 17

Insert: "local government subdivisions of the state part of the money paid to play the gambling devices and games defined in this section. The tribe and the state shall mutually agree to compact provisions that are in compliance with the Indian Gaming Regulatory Act and that:

(i) state which local government subdivisions will receive money under this subsection, how much each will receive, and the purposes for which the money may be used;

(ii) ensure that the total amount of combined payments to the local government subdivisions is as close as possible

Committee Vote:

Yes __, No __.

131120SC.Hcr

12-13-93
11:45

to what it would be if the revenue-producing concepts, method, and provisions of 23-5-610 were used; and

(iii) provide for the tribes to keep records of amounts paid to play the gambling devices and games and for the right of local government subdivisions receiving amounts under this subsection to inspect those records."

5. Page 4, line 18.

Following: line 17

Insert: "(b) establish and fund a gambling abuse prevention and treatment program that is adequate to handle gambling problems among the Indian and non-Indian residents of the reservation; and"

Re-number: subsequent subsection

6. Page 4, lines 21 through 23.

Strike: subsection (3) in its entirety

7. Page 4, line 25.

Strike: "an integral part"

8. Page 5, line 1.

Strike: "of"

Insert: "a separate chapter in"

9. Page 5, lines 1 and 2.

Strike: ", chapter" on line 1 through "1]" on line 2

-END-

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE December 9, 1993 BILL NO. 67 NUMBER

MOTION: Rep. Tash made a motion to table HB 67

NAME	AYE	NO
REP. RUSSELL FAGG, CHAIRMAN	X	
REP. RANDY VOGEL, VICE CHAIRMAN	X	
REP. JODY BIRD	X	
REP. VIVIAN BROOKE		X
REP. ELLEN BERGMAN	X	
REP. DEBBIE SHEA	X	
REP. ROBERT CLARK	X	
REP. DUANE GRIMES	X	
REP. SCOTT MCCULLOCH		X
REP. JIM RICE	X	
REP. ANGELA RUSSELL		X
REP. TIM SAYLES	X	
REP. LIZ SMITH	X	
REP. BILL TASH	X	
REP. HOWARD TOOLE		X
REP. TIM WHALEN		X
REP. KARYL WINSLOW	X	
REP. DIANA WYATT	X	

EXHIBIT 1
DATE 12/19/93
HB 67

Testimony of

**Assiniboinc and Sioux Tribes
of the
Fort Peck Indian Reservation, Montana**

Indian Gaming bill

Chairperson and members of the Committee, I am very pleased to appear here today on behalf of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. I speak in support of legislation to broaden the types of Indian gaming in Montana for tribes that are willing to enter into a compact with the State to pay eight percent of the net revenues of such games to help fund the operations of local government agencies. We greatly appreciate the introduction of this legislation by Representative Schwinden.

The Assiniboine and Sioux Tribes have concluded a gaming compact with Montana, as well as two amendments to it in 1992. The original gaming compact authorized our Tribes to operate gambling machines and simulcast horse racing. Our main purpose in entering into this initial compact was to protect existing gaming machines already operating on our Reservation: (1) at the casino operated by the Wolf Point Community Organization; and (2) at a few Indian businesses, which under the compact must now become management contractors of not more than 20 machines the Tribes will own. The Tribes were not sure in early 1992 what other gaming we might want to permit in the future, so we agreed with the State to continue to negotiate at least once annually for the next three years to consider additional gaming operations.

As matters turned out, in 1992 alone, two unanticipated events have occurred requiring two amendments to the compact. First, in July, the United States Attorney threatened to close the State's lottery on the Reservation unless it was included in the compact. Because the lottery proceeds support Reservation public schools, the Tribes promptly agreed with the State to amend the compact to include the lottery, although the Tribes did not necessarily agree with the United States' legal position or action.

Second, the Tribes were approached by an Indian owned company that proposed to locate a casino, motel, restaurant and shopping complex on the Reservation, principally to attract Canadian and other tourists. The State agreed to a second amendment to our compact authorizing 24 hour operation of live keno and poker games, and to allow machines with a coin drop mechanism. However, we also wished to have other games, such as slot machines and blackjack in our new casino. We learned in our negotiations on the second amendment to our compact that the State's negotiating team refused to allow this. They had said "no" on all these items to other tribes, and felt that consistency required saying "no" to us. Also, they advised us that it was State policy not to allow tribes to play games not played elsewhere in Montana.

The purpose of this bill is to change this policy and allow a tribe to play roulette, blackjack, twenty-one, craps and slot machines on its Reservation -- if the tribe agrees to pay eight percent of its net revenues from these games to the State.

EXHIBIT
12-9-93
HB 67

You should enact this legislation for several reasons. First, because it will produce up to \$15 million a year to help balance the State's budget. The Indian Gaming Regulatory Act allows Indian gaming revenues to be used to help fund operations of local governmental agencies. Tribes that play the games under this bill would have to agree to pay eight percent of the net revenues from these games to the State for these purposes. This is the rate, for example, that New Jersey imposes on gaming enterprises. We believe this will produce between \$10 million and \$15 million a year for the State if all seven tribes enter into compacts. (New Jersey receives \$250 million, but there are a lot more people in New Jersey and surrounding states.) We expect slots at Fort Peck would produce net revenues of at least \$20 million a year based on the success of current casino operations at Four Bears Casino in New Town, North Dakota, on the Fort Berthold Reservation. The other games should produce over \$5 million in annual net revenues, again as they do at Four Bears. Montana's payments from our Reservation alone would be about \$2 million a year.

You should also enact this legislation because it is *absolutely essential* to promote Indian economic advancement in our State. As we have done in the past with our trailbreaking agreement on water rights and tax sharing, the enactment of this bill creates another "win-win" situation for Montana and tribes that elect to come under it.

I am sure you know that Montana's Indian reservations are the poorest parts of the State. Unemployment is often over 50 percent. Poverty and the social dislocation it causes are everywhere.

This is as much against Montana's interest as it is against ours. The effects of this widespread and longlasting poverty are *not* confined to Indian country. They affect every part of the State.

Intolerable though this Indian poverty is, it may have seemed until recently that nothing could really be done about it. But that is no longer true. The pervasive cancer of Indian poverty can now be cured -- without massive expenditures of public funds or new taxes that burden other Montana citizens -- by permitting broad Indian gaming on the lands of tribes that wish to conduct it.

This has happened on other Indian reservations in other states in the past five years. The turnaround on Indian reservations in Connecticut, Wisconsin, Minnesota, New Mexico, Arizona, and California in the past few years has been startling, nothing short of a miracle. Indian gaming in 1992 brought over \$16 billion into reservations. That is five times the size of *the entire federal Indian budget*. Those reservations have been transformed. Unemployment has vanished. Tribes have used gaming

revenues to build clinics, schools, water treatment facilities and the like. There is even the promise of prosperity upon them.

Unemployment is very high on the Fort Peck Reservation, even though we have done everything we can to lower it -- including operating a tribal defense firm that is the largest single industrial employer in Montana with over 200 jobs. Indian gaming of the kind we propose is necessary if we are to escape poverty. Tribes cannot operate successful casinos in Montana unless we can conduct these games. If we can, it will bring hundreds of new jobs into our Reservation alone. Our members cannot fill every position, so Indian gaming will be an economic benefit to the entire State, even apart from the revenue payments in the bill. These are not idle dreams or speculation. This is happening now on dozens of Indian reservations in the other states I have mentioned.

With your help, this can take place on my Reservation and others in Montana as well. We do not ask that you loosen the gaming laws elsewhere in the State. We ask only that you open up the compact negotiations by allowing tribes to play games that are not played elsewhere -- slots machines, blackjack and twenty-one, roulette, and craps. You should do this for yourselves, not just for us, *because it is not in your interest that Indians remain poor*. Tribes have close interrelationships with the State of Montana. Neither you nor we can avoid that. What benefits us benefits you. If we are poor, the burdens on your government and society are greater. We need to work together to move forward together.

This interdependence and the possibility for joint gain is the primary reason the Fort Peck Tribes have taken the lead in the past ten years in working with State leaders to resolve other controversies -- by compacts concerning water rights and taxation as well as gaming. For decades, tribes and the State wrangled and litigated about jurisdiction, water rights and taxing authority. Many cases were filed and decided in courts, particularly in the 1960s and 1970s, suits tribes usually won.

But lawsuits don't end poverty. Wise policy can. The Fort Peck Tribes have learned to resolve these kinds of disputes by negotiations. We were the first tribes, for example, to conclude a water compact with Montana. That compact, which was ratified by the Legislature and Tribal Executive Board in 1985, quantifies our reserved water rights. It also settled litigation between the Tribes and the State, protects certain existing non-Indian uses, provides for us to market water and establishes a neutral Board to settle any disputes concerning water used by Indians -- which is recognized as within tribal jurisdiction -- and that used by non-Indians under state law and jurisdiction.

EXHIBIT 1
12-9-93
HB 67

The Fort Peck Tribes have also in 1991 and 1992 concluded agreements with the State to share motor fuel taxes and alcoholic beverages taxes, as well as an agreement concerning the enforcement of state cigarette sales taxes to non-Indians on the Fort Peck Reservation. Instead of litigation, we have agreed to share tax revenues under a common collection scheme, and to control sales of tax-free cigarettes.

The present legislation follows in these footsteps by working a common solution to the most important problem we share – Indian poverty in Montana. Because most Indian tribes are in isolated areas distant from most resident populations, as Montana itself is somewhat remote from big population centers, we need special incentives – like games *not* allowed elsewhere in Montana – to attract customers. My Tribes' customers, for example, will mostly be tourists, many from Canada. It is surely fair to give tribal gaming these kinds of special incentives. For a critical difference between Indian gaming and gaming elsewhere in Montana is that *all* the money tribes receive from Indian gaming must be spent for public purposes and programs. This is a requirement of the federal Indian Gaming Regulatory Act. Tribes do not and can not operate gaming for private profit.

This legislation can be of lasting benefit to tribes and to all Montanans as well. That concludes my testimony. I will happily answer any questions you may have.

EXHIBIT 2DATE 12/09/93HB 107**DUNBAR & ASSOCIATES**

SUITE 5A, 1629 AVENUE D, BILLINGS, MONTANA 59102 • 406-252-2353 • FAX 406-259-421

DECEMBER 7, 1993

FAX TO 444-1350

TO: KATHY FLEURY
FROM: PETE DUNBAR
RE: HOUSE BILL #67

THE CAPTIONED BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE STATE TO NEGOTIATE A COMPACT UNDER THE FEDERAL INDIAN GAMING REGULATORY ACT GRANTING AUTHORITY TO A TRIBE TO OPERATE SLOT MACHINES AND ROULETTE AND TO CONDUCT THE GAME OF CRAPS AND THE LIVE CARD GAME OF BLACKJACK OR TWENTY-ONE WITHIN THE BOUNDARIES OF ITS RESERVATION....."

THE INDIAN GAMING REGULATORY ACT (IGRA) IS UNDERGOING SERIOUS SCRUTINY BY THE CONGRESS OF THE UNITED STATES; HOWEVER, AS I INTERPRET THE IGRA, IT PRECLUDES AT THE PRESENT TIME AUTHORIZING AN INDIAN TRIBE TO HAVE ANY FORM OF GAMBLING NOT LEGAL IN THE STATE. AT THE PRESENT TIME THE GAMES REFERRED TO IN H.B. 67 ARE NOT LEGAL IN THE STATE OF MONTANA.

IF THE STATE OF MONTANA DOES LEGALIZE THE CASINO-TYPE GAMES REFERRED TO IN H.B. 67, I WOULD THEN WHOLEHEARTEDLY SUPPORT THE BILL WITH PARTICULAR EMPHASIS ON REVENUE SHARING. REVENUE SHARING AS SUGGESTED IN THE PROPOSED LEGISLATION IN MY OPINION IS A FORWARD, INNOVATIVE AND VIABLE TYPE OF PROGRESSIVE THINKING OF BENEFIT TO BOTH THE TRIBES AND THE STATE OF MONTANA.

FROM PERSONAL KNOWLEDGE I CAN ASSURE THAT ANY GAMING CONTRACTOR OF THE FORT PECK TRIBE WILL HAVE A SCRUPULOUS AND DETAILED BACKGROUND INVESTIGATION.

CC: CALEB SHIELDS
CHAIRMAN, FORT PECK TRIBES
P.O. Box 1027
POPLAR, MT 59255

STATEMENT PREPARED BY:
RICHARD C. WHITESELL
BILLINGS AREA DIRECTOR
BUREAU OF INDIAN AFFAIRS
DECEMBER 9, 1993

I am here to testify in favor of House Bill 67. I offer the following testimony with the understanding that the seven tribal governments in the State of Montana support the passage of this important legislation.

The Congressional authors of the Indian Gaming Regulatory Act, Public Law 100-497, intended to provide a statutory basis for the operation of gaming by Indian Tribes as a means of promoting 1.) tribal economic development, 2.) self-sufficiency 3.) strong tribal governments.

On March 10, 1993, Governor Marc Racicot issued a Proclamation on behalf of the State of Montana to the seven federally recognized Indian tribes, which among other things, sets forth the guiding principal of achieving mutual goals through improved relationships between sovereign governments.

Tribes are always faced with the fact that federal appropriations for Indian Affairs do not come close to meeting basic needs. In addition, many of the Montana Indian tribes are also struggling to balance their budgets, as in the case of the Montana State government, HB 67 is an attempt for the sovereigns to mutually achieve this particular goal.

To further clarify my statement, we view HB 67 as a step in the direction of fortifying the economic conditions of both the state and the tribes.

It is important to note that last year a national total of Indian gaming operations grossed 5.4 billion dollars, not to mention a bolstering of surrounding non-Indian community economies and much needed increase of on reservation employment.

Montana is fortunate to have an extremely large land base.

However, that same geographical fact is detrimental to many of our Indian reservations due to their remote and isolated location which also is not conducive to the development of industrial ventures.

We have one recommendation to make which should be in the form of an amendment or addition to the language presently written in the bill. We consider it important that this proposed bill provides for express assurances that it is exclusive to the Indian tribes in Montana. In other words, there should be some assurance that this bill provides for these specific games only on reservations or administered by Indian reservation jurisdiction.

In closing, we would like to emphasize that this is an opportunity to take advantage of a situation which may not be open to us in the future. The window of opportunity to profit from the gaming industry may very well be of short duration. We urge your approval of HB 67.

• The *Star* riverboat has a \$2.4-million per year contract with the brother of the State Senator who sponsored the 1991 bill that legalized riverboat gaming. The company provides work crews for the riverboat, but the company president has no previous experience running a company. *Star* majority owner Louie Roussel contributed on several occasions to the Senator's campaigns.

Despite the fast-and-loose impression that many gaming observers have of Louisiana, they note that Binion's of Las Vegas was denied a preliminary riverboat license recently by the Louisiana State Police, suggesting that the state does still retain some semblance of a regulatory structure.

In denying the license, investigators said Binion's had been fined \$1 million by Nevada gaming authorities in September for nearly 1,000 money-handling violations, and also owed \$80,000 in delinquent Federal taxes. The taxes were paid after Louisiana found out about them, the three-member state police panel noted.

Binion's had planned a \$60 million complex at Bossier City. The company will appeal the license denial to the state Riverboat Gaming Commission.

Chastain wants to stay, asks Robinson not to go

Louisiana Gaming Board Chairman Max Chastain has told Gov. Edwin Edwards he will accept reappointment to the panel after his current one-year term expires on New Year's Eve.

If Edwards renames Chastain, the appointment would be for six years at more than \$100,000 annually.

In a related move, board President William Robinson, who resigned in anger last week due to an ongoing contract dispute and what he felt was "disrespect" from some other members, has had a change of heart.

Following a talk with Chastain and

a public motion by the board to refuse his resignation, Robinson said he will reconsider his position. He's looking for a three-year extension of his current one-year deal for a reported \$100,000 annually.

MICHIGAN

Gaming compact approved for seven Michigan tribes

Although their eight casinos have been in operation since 1989, Michigan's seven Indian tribes have finally had their tribal-state gaming compact approved by U.S. Interior Secretary Bruce Babbitt.

The tribes opened their casinos after the federal Indian Gaming Regulatory Act of 1988 was enacted, despite the state's refusal to sign a gaming compact.

Last August, after the tribes reached a settlement with Governor John Engler, their compacts were signed, ratified by the Legislature, and sent to the Interior Department for approval.

The seven tribes—Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa, Hannahville Indian Community, Keweenaw Bay Indian Community, Lac Vieux Desert Indian Community, Saginaw Chippewa Indian Tribe of Michigan, and Sault Ste. Marie Tribe of Chippewa Indians—which collectively run a \$70.7 million Indian gaming industry in Michigan, agreed to pay an eight percent gaming tax to the state on revenues generated by their electronic gaming devices, and an additional two percent to the local communities.

The taxes will be payable every six months.

Mississippi burgeoning

With gaming revenues soaring, Mississippi is reaping a whirlwind of riverboat investment, with virtually no end in sight.

Fourteen dockside casinos are operating in six locations in the Magnolia State, which only 18 months ago had not one gaming hall. Operators now are speaking of a second wave of construction—multi-million dollar hotel towers with hundreds of rooms apiece—as they solidify their presence in the Deep South and prepare for a long stay.

The industry is buoyed by phenomenal operating numbers, the public's enthusiastic acceptance of casino gaming, and by a growing realization that competition from nearby New Orleans' gigantic land-based casino is still years away.

Mississippi riverboats took in a record \$80.9 million in adjusted gross revenue in October, five percent better than September's record of \$77.1 million. Per-house daily win of \$237,362 was off about eight percent from September, however.

Meanwhile, development continues at full speed. Treasure Bay, a subsidiary of Las Vegas-based Sahara Gaming, has closed on permanent financing of \$115 million to complete and open its pirate-themed riverboats in Biloxi and Tunica. Both projects will be on-line within six months, the company says.

Lady Luck is also pressing ahead with its plans for a casino in Gulfport despite a court challenge. The company, with a riverboat already operating in Tunica, has all the necessary approvals from the city and state and its license to open in Gulfport is pending. However, the Gulfport Yacht Club is unhappy with the proposal and has asked the Circuit Court to intervene.

Harrah's Vicksburg casino successfully underwent two days of test gam-

CHAIRMAN AND MEMBERS OF THE JUDICIARY COMMITTEE. MY NAME IS GENE CULBERTSON, A MEMBER OF THE FORT PECK TRIBAL COUNCIL AND CHAIR OF OUR ECONOMIC DEVELOPMENT COMMITTEE.

AS A NATIVE AMERICAN LEGISLATOR, I AM PROFOUNDLY AWARE OF THE VICIOUS CYCLE OF POVERTY AND HOPELESSNESS THAT AFFECTS MY PEOPLE. FOR THIS REASON OUR TRIBE HAS COLLECTIVELY MADE THE DECISION TO PROMOTE THE LEGISLATION BEFORE YOU. THIS LEGISLATION COULD PROVIDE THE NEEDED JOBS AND REVENUE TO ADDRESS OUR NEEDS.

I DO NOT PERCEIVE THIS BILL AS AN EXPANDED GAMING BILL, BUT AS A VEHICLE TO ADDRESS ECONOMIC DEVELOPMENT, JOBS, EDUCATIONAL NEEDS AND SOCIAL REFORM.

THERE IS A REAL SOVEREIGNTY ISSUE HERE. I DON'T BELIEVE THAT I SHOULD BE HERE PLEADING WITH THE STATE LEGISLATURE FOR SANCTIONS THAT WOULD IMPROVE THE QUALITY OF LIFE FOR MY PEOPLE.

JUST AS YOU, THE LAWMAKERS OF MONTANA, SET POLICY FOR YOUR GOVERNMENT, SO DO WE AS TRIBAL COUNCIL MEMBERS.

IT IS UNFORTUNATE THAT CONGRESS HAS CREATED THIS CONFUSION THROUGH THE INDIAN GAMING REGULATORY ACT.

I BELIEVE THAT IT IS NOT IN YOUR BEST INTEREST OR OURS TO LET A CULTURE AND A PEOPLE CONTINUE TO SUFFER A PAINFUL EXISTENCE.

I ALSO ASK YOU TO TAKE NOTE OF THE SUCCESSFUL GAMING OPERATIONS OF TRIBES THROUGHOUT THE COUNTRY.

IN CLOSING, I WOULD ASK YOU TO SET ASIDE ANY PRECONCEIVED FEELINGS YOU MAY HAVE, AND BASE YOUR JUDGEMENTS ON THE MERITS OF THE OTHER TESTIMONY SUBMITTED IN FAVOR OF H.B. 67.

THANK YOU,

GENE CULBERTSON,



FORT PECK TRIBAL COUNCIL

**TESTIMONY OF
THE GROS VENTRE
AND
ASSINIBOINE TRIBES
OF
THE
FORT BELKNAP INDIAN RESERVATION**

PROPOSED INDIAN GAMING REVENUE SHARING BILL

PRESENTED BY

**DONALD HORN, GAMING AGENT
FORT BELKNAP COMMUNITY COUNCIL**

CHAIRPERSON and members of this distinguished Committee: Thank you for the opportunity to appear before you today to submit this testimony on behalf of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation. I am testifying in support of this bill which would allow Tribes to consider expanded gaming on their Reservations.

Most of you are aware of the dire economic circumstances on Reservations here in Montana. The poorest counties in the state are those that encompass Indian Reservations. Because of poverty, expenditures for Medicaid, AFDC, WIC and similar programs are often higher, per capita, than in other areas of the state.

Unemployment and underemployment together consistently hover at 70% on the Fort Belknap Indian Reservation. This is not by choice. The Tribal Government at Fort Belknap has consistently invested limited tribal resources into various businesses over the last twenty (20) years. Some businesses have been successful and are providing employment. Other efforts, just like anywhere, have not been successful. Individuals have made attempts at various businesses, although capital investment has been very difficult to come by because of banker's fears about the Reservation.

Without question, fear and prejudice have played a part in keeping the Fort Belknap Indian Reservation isolated and poor. Entrepreneurs and bankers simply look dimly on opportunities at Fort Belknap.

The Tribal Council is working to change this circumstance, but change comes slowly. Meanwhile, poverty and its associated problems continue to devastate families. The hopelessness of poverty, especially in a state where only 6% of the overall population is without work, fosters social problems unlike those seen elsewhere in the state, except on other Indian Reservations.

In this context, examples around the nation in Indian Country show that controlled gaming enterprises can be a "quick fix". Indian gaming is controlled like no other gaming in the country. Federal law sets up the parameters, in turn requiring approved tribal regulatory structures. Additionally, Class III operations are required to be operated under compacts with the states where

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they are located. This three layered arrangement was developed to keep organized crime out, and to insure that profits actually benefitted the reservations that developed the gaming enterprises.

Profits are required by the Indian Gaming Regulatory Act to be spent on public purposes and programs. On the reservations that have developed casino enterprises in the last five (5) years, unemployment has consistently dropped, welfare expenditures have fallen, businesses in surrounding communities have grown and expenditures for public purposes on and off reservation have increased dramatically.

This bill has the potential to benefit the State of Montana by adding up to \$15 million to the State's General Fund. It has the potential to solve our 70% unemployment problem and provide hope for the future. It will reduce public expenditures for welfare-related programs. It will boost the regional economy. These beliefs are not simply empty dreams. They are reality in other states where the state governments have chosen to work with the Indian Tribes.

There are those who would say that such a law is simply subjecting Indian people and the public to yet another vice--gambling. The facility we are examining is a destination resort complex. It would draw people from out of state and Canada. Such facilities are developing and will develop across the country. That is a fact. There is now a window of economic opportunity which is available for a period of time, and could be closed with expanded gaming availability across the country. We would like the opportunity to consider taking this step.

What we do with the opportunity would be up to our Tribal Council. There have been plans discussed for a casino. Such plans are much more viable, if the expanded gaming in this bill is offered.

Your careful deliberation on this bill is appreciated. We ask that the State of Montana, through this legislation, agree to partner with the Tribes of Montana to enable them to make important decisions on the economic future of their Reservations. I can promise you that all of the decisions on this important topic will be carefully deliberated, with the best interests of everyone considered.

Our view

No double standard for gambling casinos

The Issue: Native Americans want casino gambling on their reservations.

Our opinion: The state should not employ a double standard.

Casino gambling on Montana Indian reservations?

"Yes," say officials of the Fort Peck Tribe, who want to transform a grassy hillside about five miles east of Poplar into a casino with neon lights, blackjack tables, roulette wheels, slot machines and craps.

And there are some logical reasons this should be so.

First, they argue that tribes are autonomous, sovereign governments that should not be bound by the laws of the states that surround their reservations.

Second, unemployment reaches 50 percent or more on many reservations and casino gambling would be a way for tribes to break out of that cycle of poverty. In so doing, the welfare burden on taxpayers would be eased.

Third, the tribes would be willing to pay the state 8 percent of their gambling profits, so the state would share in the increased gambling activity.

But there are some equally good reasons not to permit the expansion.

MOST COMPELLING, perhaps, is that it isn't fair to impose one set of standards on a group of businessmen and then — after they have invested heavily in that industry — belatedly ease the regulations for another set of businessmen. That competitive disadvantage can ruin entrepreneurs who invested in good faith.

As important as it is to give Native Americans an opportunity to break out of poverty, it isn't right for the state to maintain a double set of standards for reservations and non-reservations.



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Further, gambling is the wrong industry to rescue Indian tribes. It creates nothing. Instead, it encourages a something-for-nothing attitude and further impoverishes those foolish enough to believe they can beat the odds consistently.

BUT AS STATE lawmakers mull these issues, they also stand to be pre-empted by new federal regulations.

Sen. Daniel Inouye, D-Hawaii, who chairs the Senate Committee on Indian Affairs, recently told the National Congress of American Indians in Sparks, Nev., that one final hurdle is all that remains before the Indian Regulatory Gaming Act receives its first major revision since Congress enacted it five years ago.

"In my view, the parties are close, very very close, to resolution," said Inouye. "I believe that a breakthrough on the last remaining issue, the scope of Indian gaming, is close at hand."

IF THE FEDERAL government decides to open reservations to unlimited gambling, there's little the state could do but employ the same standard throughout the rest of the state.

And that would be a serious mistake.

For a persuasive counter-argument, though, see the guest column by Merle Lucas to the right.

Amendments to House Bill No. 67
First Reading Copy

Requested by Rep. Rice
For the Committee on the Judiciary

Prepared by John MacMaster
December 10, 1993

1. Title, line 9.

Strike: "8"

Insert: "15"

2. Title, line 10.

Strike: "NET REVENUE"

Insert: "GROSS INCOME"

3. Title, line 13.

Following: "ACT;"

Insert: "PROVIDING FOR THE KEEPING AND STATE INSPECTION OF
RECORDS OF GROSS INCOME; PROVIDING FOR A TRIBAL GAMBLING
ABUSE PREVENTION AND TREATMENT PROGRAM; REQUIRING SUBMISSION
OF A COMPACT TO THE VOTERS OF COUNTIES THAT CONTAIN PART OF
THE RESERVATION; PROVIDING A STATUTORY APPROPRIATION;
AMENDING SECTION 17-7-502, MCA;"

4. Page 3, line 22.

Strike: "\"Net revenue\""

Insert: "\"Gross income\""

Strike: "gross revenue received"

Insert: "money paid"

Following: "each"

Insert: "state"

5. Page 3, line 23.

Strike: "year from"

Insert: "quarter to play"

6. Page 4, lines 1 through 3.

Strike: "prizes" on line 1 through "twenty-one" on line 3

Insert: "winnings"

7. Page 4, line 16.

Strike: "8%"

Insert: ", within 15 days after the end of each state fiscal
quarter, 15%"

Strike: "net revenue"

Insert: "gross income"

Strike: "each"

Insert: "during the prior state"

8. Page 4, line 17.

Strike: "year"

Insert: "quarter"

Following: "tribe"

Insert: ", together with a statement of the gross income from each device or game, and to keep records of the gross income from each gambling device or game in the form required by the state and to allow the state to inspect the records at any time during the business hours of an establishment keeping the records or providing a device or game for play"

Strike: "and"

9. Page 4, line 18.

Following: line 17

Insert: "(b) establish and fund a gambling abuse prevention and treatment program that is adequate to handle gambling problems among the Indian and non-Indian residents of the reservation; and"

Renumber: subsequent subsection

10. Page 4, lines 21 through 23.

Strike: "Payments" on line 21 through "agencies." on line 23

Insert: "The state shall, in accordance with the provisions of 15-1-501(6), forward one-third of the money received under this section to the state general fund to be appropriated and used for the operations of local government subdivisions. The state shall, in accordance with the provisions of 15-1-501(6), forward the remaining two-thirds of the money received under this section to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the gambling device or game that generated the money is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from gambling devices or games located in incorporated cities and towns. The two-thirds local government portion is statutorily appropriated, as provided in 17-7-502, for deposit to the county or municipal treasury."

NEW SECTION. Section 2. Submission to voters of affected counties. The question whether to approve a compact entered into under [section 1] must be submitted to the electors of each county that contains part of the reservation affected by the compact at a special election or elections held no later than 90 days after the compact is signed. Each county may hold its own election or combine with one or more other counties in a common election. The applicable election procedures in 7-5-131 through 7-5-137 apply. The votes for and against in each county must be combined with the votes for and against in the other counties, and if the total combined vote for the compact exceeds the total combined vote against the compact, the compact takes effect on the date of certification of the election results.

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition --
requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a

state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; [section 1]; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-2-707; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Renumber: subsequent sections

11. Page 4, line 25.

Strike: "[Section 1] is"

Insert: "[Sections 1 and 2] are"

Strike: "an integral part"

12. Page 5, line 1.

Strike: "of"

Insert: "a separate chapter in"

13. Page 5, lines 1 and 2.

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Strike: ", chapter" on line 1 through "1]" on line 2

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VISITOR REGISTER

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DATE *12-9-93* SPONSOR(S) *Judy Jacobson*
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Michael R. Bouldry</i>			
<i>Loris Popple</i>	<i>NIGC</i>		
<i>Donald Horn</i>	<i>FT. BELKNAP TRIBE</i>	<i>X</i>	

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DATE 12-9-93 SPONSOR (S) Dore Schwinden
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
HARLEY WARNER	ASSOC. OF CHURCHES		X
GEORGE OCHENSK	FT. PECK TRIBES	X	
Gloria HERMANSON	DON'T GAMBLE w/ THE FUTURE		X
Rep. Bob Lewis	H.D. #9	X	
Rep. Don Schick	Dist # 20	X	
Sen Chris Christensen	Dist # 18	✓	
Gordon Morris	MACO.	—	—
Merle R. Lucas	ft. Peck tribes	X	
Leob Shields	FT. PECK TRIBES	X	
Bob Rievic	Lake County Tax. Assoc.	X	
Heanne Sandholm	attorney General		
GENE CILBERTSON	FT. PECK TRIBES	X	
Robert Nelson	CITY OF POPLAR MT	X	
Lanning Russell	Bureau of Indian Affairs	X	

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DICK HOEGERING	TRADERS STATE BANK	67		X
Leighton Reum	A. Peck tribes	67		X
Daniel Schauer	A. Peck Tribal Member	67		X
CHRISTINE MANGIANTINI	SELF	67		X
DAVE ANDERSON	SELF	67		

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