

Frequently Asked Questions Regarding the Joint Business Council

Introduction

Today the Northern Arapaho Business Council (NABC) dissolved the former Shoshone and Arapaho Joint Business Council (JBC). After more than half a century of problems and dysfunction rooted in the JBC, the NABC believes now is the time to take this important step toward greater autonomy and sovereignty for the Northern Arapaho Tribe (NAT). The following FAQ is meant to give tribal members and others information about why this action was necessary, how it is already strengthening the sovereignty of each Tribe on the Wind River Reservation, and why it was a critical step in the march toward the ultimate Northern Arapaho goal of tribal self-governance.

How did we get here?

The federal government created the JBC decades ago, for its own convenience. It has proven inefficient and harmful to both Tribes.

- **How was JBC created?**

Both Tribes successfully resisted federal pressure to consolidate into a single governing body under the policies of the Indian Reorganization Act of 1934. The members of each Tribe then elected their own Business Council. But the federal government continued to pressure the Tribes to meet in joint session, essentially because federal officials found it more convenient. The federal government eventually began referring to the combined group as the JBC, creating the impression that JBC controlled the decisions made by each separate Tribe. However, neither General Council approved the JBC. In fact, about 25 years ago, the Shoshone General Council withdrew most of SBC's authority to participate in the JBC. Over time, many people forgot that the JBC was a federal creation, and to some it began to feel like a government body that controlled the Tribes. It was not.

- **What process dissolved the JBC?**

The NABC dissolved the JBC by making a new policy not to meet in JBC sessions,

but to cooperate with the Eastern Shoshone Tribe (EST) through existing joint committees, boards or other methods instead.

- **Did the Northern Arapaho Business Council have authority to take this step?**

Yes. The NABC has always conducted the day-to-day business of the Tribe, including business formerly conducted through the JBC.

- **The EST was not involved in dissolution of the JBC. Is that a problem?**

No. The NABC does not need approval from the SBC to move toward greater autonomy. Each Tribe is recognized as a separate sovereign by the U.S. government. As such, each Tribe is entitled to carry on its own business without seeking approval from the other. However, we believe that this change will benefit our Shoshone neighbors as well, for they will enjoy the same increased sovereignty and other benefits.

Meanwhile, the EST has made similar decisions to exercise sovereignty outside the JBC framework. For example, in recent years, the Shoshone Tribe unilaterally 638-contracted the reconstruction of Washakie Dam and the federal Rural Utility Service (RUS) solid waste equipment grant, both of which benefitted joint programs.

- **The BIA was not involved in dissolution of the JBC. Is that a problem?**

No. The BIA played no role in the decision to dissolve the JBC. This is an internal tribal matter over which the BIA has no control.

- **The General Council did not vote to approve the dissolution of the JBC. Is that a problem?**

No, because the Northern Arapaho General Council never authorized the formation of the JBC in the first place. JBC was a creation of the federal government, not an exercise of self-determination by the Tribe.

How did the JBC undermine the Northern Arapaho Tribe?

The NAT made major strides toward self-determination in recent years in areas such as gaming, housing, code development, and taxation. At nearly every step,

detractors attempted to use the JBC as an instrument to block those efforts.

- **Did the JBC model harm tribal sovereignty?**

The JBC's very existence undermined NAT sovereignty. Any matter seeking a JBC decision had the potential to delay action on tribal-member requests. Because approval by JBC required at least four supporting votes from each Business Council, as few as three SBC members could gridlock the entire JBC. Some federal agencies wrongly believed that the JBC was the governing body of the Tribes. Some outside groups purposely dealt with the JBC to avoid a government-to-government relationship with the actual sovereigns. Our congressional delegation, meanwhile, hesitated to meet with our tribal leaders in private, asking, "Where is the JBC?" and "Has the JBC approved your efforts to help the NAT?"

- **Did the federal government use the JBC to undermine Northern Arapaho sovereignty?**

Yes. Federal agencies historically used the JBC to convince Indian leaders to act against tribal interests. They have done this by using the JBC to gridlock "638" contracts or block action the federal government did not want.

In this way, the JBC allowed some federal agencies to treat the Tribes like it did in the historic treaty councils, where the federal government restricted the flow of information to tribal leaders and used internal disagreements and other questionable methods to gain advantage over Tribes. Sometimes despite the best efforts of tribal leaders, similar scenarios have occurred in JBC, and the losses have been substantial.

- **What are some examples of this?**

An early example happened when the JBC approved oil and gas lease conversions with lower royalty rates, resulting in losses of millions in revenues. Fixing this problem took decades of litigation, resulting in the recent Claims Court settlement. NABC prefers to avoid this kind of problem rather than having to sue the federal government after a mistake is made.

More recently, the U.S. Fish and Wildlife Service interfered with the right of Northern Arapaho members' free exercise of religion. The agency refused to discuss an eagle take permit by the NAT without Shoshone leaders present in a JBC meeting.

- **Did the State of Wyoming use the JBC to undermine Arapaho sovereignty?**

Yes. The State used the JBC in much the same way as the federal government. For example, when the NAT sued to force a State gaming compact, the State argued that Shoshone participation in negotiations via the JBC was required. Federal courts eventually rejected this argument, but it gave the State a pretext for delaying the development of Northern Arapaho gaming.

The State has also exploited the governmental bottleneck at JBC for decades to frustrate Northern Arapaho water rights, irrigation, and other important sovereign interests. In one instance, the state and federal governments used the JBC system to override the express wishes of the NAT with respect to priorities for irrigation rehabilitation, favoring structures used by Crowheart irrigators instead of structures in greater need of repair in areas predominantly populated by Arapaho water users.

In the reservation boundary case, the State of Wyoming says the "Tribes agreed" to open the reservation to non-Indian settlers in 1904. But the Arapaho Tribe rejected the 1904 agreement by vote of adult male Arapaho members. Wyoming combines Arapaho votes with Shoshone votes (who approved by an 80% majority) to argue that the Tribes agreed to "diminish" that part of the reservation.

- **Did the EST use the JBC to undermine Arapaho sovereignty?**

Yes, although not always intentionally. For example, the EST often gained advantage when federal and state actors insisted on dealing with the JBC, because it gave that Tribe a kind of "veto" on Northern Arapaho projects and sovereignty interests.

In addition, while we all appreciate our friends and loved ones in the EST, we also recognize that a few Shoshones maintain certain anti-Arapaho ideas. They remind us of this each time they insist they are the "Treaty Tribe," and we are but interlopers on "their" reservation. In fact, the Arapaho Tribe is party to two separate treaties with the federal government: (1) the Fort Laramie Treaty of 1851; and (2) the Fort Laramie Treaty of 1868. Arapaho leaders negotiated with President Hayes to have our reservation located here. As early as March, 1878, the United States recognized Arapaho ownership of half the tribal lands on the Wind River Reservation. The United States paid the EST, and the NAT then fully repaid the United States for that ownership through an offset against Arapaho claims in the Indian Claims Commission. Unfortunately, this small minority of EST members have been able to use the JBC as a

tool to undermine Northern Arapaho projects supported by a majority of members of both Tribes.

Shoshone leaders and their lobbyists have claimed to speak to Congress and to federal agencies on behalf of both Tribes, including in meetings where the NAT was not invited. Making a clean, public, and permanent break with the JBC sends a clear message that those groups must deal directly with our Tribe, and the EST, separately.

What other problems did the JBC create?

The JBC hobbled Northern Arapaho government, created barriers to economic development, and wasted time and energy. Some federal agencies refused to recognize the JBC.

- **How did the JBC system work to “veto” Arapaho efforts?**

When the JBC strayed beyond “joint” property or program management, it gave each Tribe an overly broad “veto” over efforts by the other Tribe. This “veto” system was unfair to both Tribes and to NAT members, who now make up more than 70% of all tribal members on the reservation. The JBC system divides the power equally between the two Tribes, and therefore gave a minority of reservation residents “veto” power over the majority. Under this system, any program or initiative that is population based (such as education or housing) unfairly disadvantaged the Arapaho Tribe. This inequality undermines NAT sovereignty and shortchanges members of the majority Tribe.

NAT has had to work hard to overcome this “veto” effect. For example, the NAT tried for a long time to pursue casino development through the JBC. Because the EST refused, JBC could take no action. Ultimately, the NAT moved forward on its own and now each Tribe has its own separate casinos, gaming laws, and tribal gaming agencies. If JBC had been allowed to have this “veto,” there would be no casinos and no casino job opportunities on the reservation. Eliminating the JBC ended the need to overcome this “veto” effect on NAT priorities.

In the Big Horn I water case, the Arapaho Tribe paid the Covington & Burling law firm to develop and prepare the Supreme Court case. The EST refused to pay their share of this work.

In approximately 2008, the Tribes agreed to try to start a tribal oil and gas company. Each Tribe agreed to fund the project with \$50,000. NAT put its money in. The Shoshone executive director spent all the money in less than a year. The Shoshone Tribe never contributed its share of the start-up funds. The venture failed.

- **How did the JBC harm Arapaho economic growth?**

The JBC held back both Tribes by creating a bottleneck. Early Northern Arapaho casino efforts provide a good example of this. Others include the NAT's efforts to create a tribally owned oil and gas company, avoid state taxes, and move forward with housing projects. The JBC even locked away a \$10 million environmental fund despite an agreement by both Tribes to put the funds into separate bank accounts. These problems were serious and growing.

By JBC resolution, the Ethete C Store property was under the exclusive control of NAT, and the Shoshone gas station/store was under the exclusive control of EST. Even so, EST blocked NAT from locating Little Wind Casino at the C Store, and the relocation of Little Wind Casino cost NAT up to \$3 million.

Meanwhile, the BIA resisted giving critical information to NABC because JBC had not approved it. JBC sat on a "secured transactions" law (Uniform Commercial Code) for years, denying loan opportunities for our veterans and others. These missed opportunities are a result of SBC's lack of legislative authority and flaws in the JBC system.

- **How did the JBC affect Arapaho priorities?**

The JBC wasted a lot of time that could have been spent on NAT issues. JBC operated in a way that asked NABC to focus at least half of its time on just a handful of programs. By contrast, there are about 130 NAT programs requiring the attention of the NABC. In addition, because the Shoshone General Council stripped the SBC of most authority, the SBC cannot take action on many matters that come before JBC. Waiting for Shoshone General Council authority created even bigger roadblocks for NAT priorities.

The joint programs are also hampered by JBC gridlock. Many management positions have been vacant for years.

Even though there are two Tribes and two governments at Wind River, the BIA insisted that the Tribes agree on one set of priorities for purposes of allocating BIA regional funding among the Tribes. There are six Tribes in Montana which are part of the Billings region (one Tribe is in the Portland region) and each receive their own allocation, except at Wind River. The NAT and EST are shortchanged because the budget is carved into seven pieces instead of eight.

The SBC has proven unreliable in living up to promises it makes in JBC. A 1985 JBC resolution designated the Ethete Store location for the "exclusive use" of NAT. When casino operations at Ethete became profitable, EST reneged on the agreement.

- **Is it true that some government agencies did not even recognize the JBC?**

Yes. Not all federal agencies insisted on or even recognized JBC authority. For example, an attorney for the U.S. Department of Agriculture refused to approve contracts between that federal agency and the JBC because the JBC was not a federally recognized Tribe. Other agencies have approved contracts with JBC, but only because both Tribes approved the particular contract.

If you think about it, the JBC does not even function like a governing body, since any action must be approved by a majority *from each side*. The only way for JBC to truly be a governing body of both Tribes would be to provide for proportionate representation, giving all tribal members the right to vote for all 12 members of the JBC. Making a clean break from JBC will help federal authorities better understand our governments and deal with them properly.

Why is the Tribe taking this step now?

The NAT has worked patiently to resolve issues created by the JBC system. Despite these efforts, the broken JBC system continues to create serious and ongoing problems that threaten NAT self-governance. Now it is time for a clean break.

- **Why is this the right time?**

This is an important time for our Tribe. Our membership has grown to almost 10,000, and makes up more than 70% of the Indian population at Wind River. Our Tribe is predominantly young, and we have different priorities. We are in the midst of some

big changes, important challenges, and critical decisions. The NABC believes that moving forward now as a single sovereign will send a strong message of sovereignty to the federal and state governments and to our members, and will vastly improve our chances of success in the future.

- **Did this all happen suddenly?**

No. Momentum for this change has been building for decades. This action is one of many steps the Northern Arapaho Tribe has taken towards independence. For example, NAT moved its headquarters from Ft. Washakie to Ethete in 1989. We established our own housing department in 1995. We established gaming and our own gaming laws after extensive litigation establishing our right to do so separately from the EST. We have our own laws and ordinances governing ourselves. Our break with the JBC is important, but it did not come out of the blue.

- **Aren't the Tribes stronger when they act together?**

This idea sounds appealing, but is misleading when it implies that the Tribes should work through the JBC. The Tribes at Wind River are very different in the way they run their governments. Federal attempts to force the two into a kind of combined government in JBC have failed again and again. The results have at times been severe and harmful to both Tribes. Hard-earned experience has shown us that without a doubt the Tribes are stronger when they operate as separate sovereigns.

Dissolving the JBC does *not* mean the Tribes will never act together – to the contrary, NABC believes that cooperation with EST will be more effective when it happens through each Chairman or other cooperative arrangements such as MOUs. The Northern Arapaho Business Council wants what is best for both Tribes. And in cases where we can work together with the EST, two tribal governments are pushing for progress rather than one JBC. Ultimately, we think the arrangement will help everyone.

How does the new system work?

Most tribal members will notice no difference at all in the day-to-day function of the government, except perhaps quicker approval of Northern Arapaho homesite applications and other requests. The tribal government is already operating more effectively and efficiently as a separate sovereign, without the JBC holding us back.

- **How can tribal government function without the JBC?**

The JBC is an unnecessary body created by and for the benefit of the federal government. The Tribes already function as separate sovereigns, each with its own autonomous government. Most tribal programs are also separate. For example, each Tribe operates its own Housing, Gaming, Social Services, Health, and Education programs, and develops its own tribal laws governing each. Perhaps most importantly, the federal government recognizes each Tribe as a separate sovereign, and each is entitled to operate its own separate government for the betterment of its membership.

- **How does the new arrangement work?**

The new system works essentially like the old one, with one important change. Actions by the Tribes will no longer be made through JBC. Instead, each tribal Business Council considers the issues of concern to both Tribes independently and then approves or denies. Matters approved by both Business Councils move forward jointly. Those denied by one or both Councils do not. This was true under the JBC system, too, because a majority vote by both Councils was required for JBC to act. But without the JBC system, the problems it created can be more easily avoided.

- **Does the Northern Arapaho government work better without the JBC?**

Yes. The Northern Arapaho government performs more efficiently without the delays and problems created by the JBC.

What does the change mean for existing projects and programs?

Joint tribal programs will function without interruption, and the change will have no impact on the Tribes' application for "Treatment as a State" (TAS) under the Clean Air Act or the related reservation boundary dispute.

- **What happened to Shoshone & Arapaho joint programs?**

They operate unchanged. The dissolution of JBC has had little or no impact on joint tribal programs. Under the old system, joint programs were operated by joint committees or boards, which made recommendations to the JBC. Today, joint

committees make recommendations to the SBC and the NABC, which then separately adopt or reject the recommendations.

- **Will this affect the Tribes' application for Treatment as a State (TAS) under the Clean Air Act?**

No. The structure of the JBC system created obstacles to the NABC's role in TAS. Removing JBC from the mix will allow the NABC to more efficiently participate in the TAS process. Ultimately, elimination of the JBC will streamline the Tribes' government-to-government relationships with the federal government, which is helpful for TAS.

- **What will this change mean for individual tribal members?**

The new system will reduce delays for tribal members and others awaiting meetings with or decisions from the JBC. Individual Northern Arapaho members will notice improved services and faster approval of realty items like homesite leases and access roads, assuming BIA submits them promptly. Individuals working for joint programs should notice no changes, and the JBC programs and oversight committees or boards are still fully operational, assuming vacancies on existing boards or committees are promptly filled.

- **What will the post-JBC era be like?**

The Arapaho Tribe has always faced a hard road, but found a way to grow and thrive. With these new changes, we more fully embrace the policy of self-determination and move forward towards a bright future.

What are the implications for the Tribe and at the federal level?

Without the JBC in the way, the Northern Arapaho Tribe can more effectively participate in government-to-government relationships, while striving to achieve the ultimate goals of maximum sovereignty and self-sufficiency.

- **What will the BIA do now that NABC has withdrawn from the JBC?**

We cannot predict how the local BIA officials will react. However, each Tribe is recognized by the federal government as a separate sovereign, and the BIA is obligated

to deal with the tribal governments separately.

- **How does the Tribe's break from JBC square with federal Indian policy?**

Modern federal Indian policy is built on the principle of tribal self-determination, which Congress has endorsed and the U.S. Supreme Court has upheld. Self-determination policy empowers tribal governments and puts many functions formerly performed by the BIA into tribal hands. By moving beyond the federally imposed JBC model, the NAT has more tools of self-determination at its disposal. This will make "self-governance" for the NAT more achievable. This is a proud moment for our Tribe.

- **What impact will the new approach have on Northern Arapaho self-sufficiency?**

The goal of the NAT has always been self-sufficiency, and a tribal government exercising its inherent sovereignty at the maximum allowed by law. Everything good that has happened for our Tribe in recent years has happened without the JBC or in spite of the JBC. Dissolution of the JBC is a key step. We sincerely hope that every Northern Arapaho member, along with our partners in the federal, state, and Eastern Shoshone governments, will rally with us as we champion these goals on behalf of our members.