

HEARING

BEFORE THE

NORTHERN ARAPAHO BUSINESS COUNCIL

IN JOINT SESSION WITH THE

EASTERN SHOSHONE BUSINESS COUNCIL

NOVEMBER 9, 2011



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Excerpt

Kip Crofts: I do. Chief Brooks or – especially on the issue of the update on increased law enforcement, has been the man responsible [inaudible] talk about that in Cheyenne [inaudible].

Chief Brooks: I guess first we can talk about update on what is happening with the HPPG presidential initiative and [inaudible] 24 officers, 5 of those are in training status meaning they are either getting to go to academy or waiting for a waiver to be approved if they're previously state trained. They will have to attend a 2-week training, federal law enforcement training seminar on federal law. We still have 6 vacancies that have to be filled and are selected for. We stand right now at 18 Native American law enforcement officers and 6 non-Native American law enforcement officers, just in case that question comes up. I know that was a concern of the tribes as well whether or not we were going to get enough Native American applicants. We continue to filter through that process. It's a fairly lengthy process as you go through your background, drug screening, things of that nature. Some applicants don't make it so we're continually having to select new folks to try to get them through the process. That was a concern as well for both tribes while you're in the presidential initiative whether or not we could get those folks on board in a timely manner. The presidential initiative has come to an end here in October. We're still trying to fill all of our vacancies. We are close at this point, 24 is a lot more folks than any of our neighboring tribes have, really more than anybody in the nation for the most part, other than the big gaming tribes such as Seminole who have hundreds of officers. I think we are the biggest BIA agency in the nation. The two new sites have been selected, San Carlos and Rosebud, which are tribal agencies so there is no assistance needed there. We will not be detailing folks out to other locations even though we are the biggest one in BIA. We are currently under a 2-year observation period with OMB, the office of management and budget, where the funding that

was given to us to bring these officers on board – they want to make sure that it's being used for what it was given to us for, keeping officers here at Wind River. So there are stipulations on us for setting folks up. I believe the next item on the list is jurisdiction and assisting other agencies. If we are asked, we will go. That's basically our policy. Our neighbors, if they need assistance, we will go without any questions asked. Two examples I can name recently – one would be the accident in front of Walmart, a DUI fatality where Riverton didn't have enough cops to even do traffic control on the main road there on Federal. We sent assistance to them. The other incident would be a possible plane crash at the airport in Riverton. We sent our "Batmobile" as well as our command center to the airport. It wasn't needed but we do offer whatever assistance we can give to our neighboring communities. For the most part they have been reciprocal in the same issues with us. The only problems we have had here and I can see it going forward in the future is possibly our relationship with the sheriff. That has been an issue and continues to be an ongoing issue. A lot of it goes back to the same thing Wes has stated earlier about education. When people come out to the reservation we are no different than communities off the reservation. We have speed limit signs, we have a traffic code, we have a law that we expect people to follow when they come out here. It doesn't matter what your color of skin is, what your nationality is, you're expected to abide by our law. There is a misconception out there. Recently I've been hearing certain things, people being educated about filing lawsuits against BIA for being non-Indian and being pulled over on the reservation. We're going to continue to do that. Our job is to protect this community. It doesn't matter who you are. A ticket is a ticket. Our radars don't detect what nationality you are, whether you're Indian or non-Indian, so we're going to issue that ticket. Whether you choose to say not guilty in the court [inaudible]. It doesn't matter which court it is, if it's a DUI arrest and we call the state to come out and assist us, they've been very good with that and taken non-Indian folks into custody and charged them with DUI on the reservation. But we continue to have an ongoing dialogue with the sheriff in regards to assistance. Usually it comes down to the number of folks on the road whether or not he can provide assistance to us with non-Indians. We are getting some inquiries from surrounding towns about us providing law enforcement services to those as well. We're talking about Hudson, Pavillion. They have asked us about providing law enforcement services to them. We are not for hire law enforcement service. We don't do things for a fee. We don't – we will

not take on responsibilities of other towns. If it's the responsibility of the sheriff to provide law enforcement services to these other towns, then so be it, but we will not entertain doing that for those other communities. There's really no mechanism for us to do that anyway. Our primary concern is providing services to this community and ensuring that all the guidelines are followed. We haven't had any problems with the violators themselves. When people come out here and get a ticket the only thing that I've heard is, "Chief, hey where do I go to pay this ticket . . . in front of tribal court?", they go and pay the fine. I haven't had anyone say hey you guys can't do this to me. And my whole issue is when you cross that boundary line the speeds on the signs are no different on the other side of the bridge. It's the law and if you choose to violate that law whether you're on the Riverton side of the bridge, the Lander side of the bridge, they're going to issue a ticket. It's the same out here. And my concern is that the more people who keep bringing up the issue of – Wes brought up some folks get red in the face – it's the same thing in law enforcement. For some reason they don't want a BIA cop to give them a ticket when they're driving on this reservation which to me is an education aspect of where they are. And what seems to be the question of the county attorney, have the same questions as [inaudible] is it continues to be an issue about where the signs are and where they're supposed to be and some kind of misconception that the boundary signs out there are not the actual boundaries [inaudible], the best thing for us in the law [inaudible] boundaries has come the question lately. But I can tell you what seems to be the problem here is education. The tribe has property that is outside Ft. Washakie, that is outside Ethete, outside Kinnear, the Canyon. Those are all within our jurisdiction and you're going to see a BIA unit out there sooner or later. The more people we bring on board, the more people we have to cover the area we're supposed to cover. But history shows that people aren't used to seeing them out there. So as we go out there questions are going to be raised, are we really supposed to be out there. Those are areas where we're supposed to cover. We just haven't had the manpower to cover it, so now we're out there doing it and people are asking the question why are we out there doing it. To put it simply, we set up a checkpoint outside of Hudson, that's to protect our Indian community from DWI, people speeding and fatality car wrecks. But they look at it as hey they want to stop us from driving on this road or into the reservation and assert their authority. That's not it [inaudible] option. No where else in Wyoming can we set up checkpoints except here on the reservation. And we do it

to provide safety for our community, not to hinder anybody's way, or using the highways or what have you. Our partnerships with outside agencies remain strong, specifically the highway patrol. They have a new commander and the relationship is great. He previously had worked here as a trooper so he knows the area and he has some relations with tribal membership out here. And we'll continue to build stronger relationships with Riverton and Lander and our other cooperating agencies. Some of you may know and some of you may not know but we do not have a regional SWAT team or a regional emergency response team, so we rely on each other to respond to incidents and form a team to provide the best service possible. That includes BIA. Recently we formed a training agreement with CWC so all our training will be done locally. We won't have to send folks back to Artesia for in-service training. But one of the things we did is we offered our training to everyone in the surrounding area. We didn't just say BIA is going to train in this session, we opened it up to state, county and other federal agencies as well. So we all train together so we all know what we're capable of when something hits the fan and we have to have a large response to, whether it's a school or to a casino or to the airport like with the plane incident I explained earlier. We know what everybody is capable of and we know how everybody is trained. And the benefit of using CWC is they can provide the same training to all of us, but they can also issue either college credit, post credit or BIA Indian police academy credit to the same training. If there is any questions, I know I covered quite a bit.

Mike LaJeunesse: I just have a comment. I know it's very good this initiative was placed here. Ivan was a big driving force in that, he went back to DC to testify and everything [inaudible]. You can tell that it's having a good effect here on the reservation. We see more police vehicles all over, and more visible, and people are driving reasonably now instead of speeding all the time. It's working, I'm glad to say that it is.

Brian Varn: This is one of the most successful projects I've ever been affiliated with. I've been stand by watching this thing. This has been amazing. And not only, I think are we seeing the impact of the [inaudible] law enforcement on the reservation, we're also seeing that off

reservation. That is a good thing for all the communities involved, all of the populations regardless of race [inaudible]. As far as the checkpoints, there is varying opinions. As you're aware of we can't do them in the state of Wyoming due to the state of the law and we will continue to support their checkpoints and come out and do arrests on the DUIs and things. And I applaud the chief. I agree whole heartedly with him. When we receive the phone calls we've been doing the education. You break the law on the reservation, you get a ticket. And we will continue to do that and support that in any way we can. It's real important. It's just like when you go to Colorado, it's just like when you go to Utah, you speed down there you get a ticket. You get a DUI down there, you get hauled off to jail. And we're going to continue to support the reservation in that way. I think the only question that we have on what's going on is what we didn't want to do, is get into a – allow a defendant a defense of “I was on the reservation” or “I was off the reservation when you came and arrested me” kind of thing that we were worried about. So I think the only guidance that we recommended is making sure those checkpoints are well within the reservation boundary. In other words, not right at the sign, so that we get the “well we were actually 10 feet out, not 10 feet in” thing. I think that's one thing we want to do. But we want to continue to support the chief in all those endeavors. I think likewise off the reservation if they need help, there isn't an officer out there I know who has refused to come out and agency assist. The thing that we've got to overcome for officers both BIA and off-reservation is they're really hanging themselves out liability wise by responding in those situations. They're out of their jurisdiction. We've got a little more coverage with this Wyoming law to help them out on a true agency assist, but we need to provide the BIA officers with the same thing when they come off on an agency assist. And I don't think we've got high confidence if that's in place for the law right now. But they should be fully protected. The law enforcement brotherhood out there wants to take care of each other to make sure nobody gets hurt. That's on and off the reservation. We need to clear the way for that to happen, cause we're going to – sooner or later when we're come up with a big incident. It might be a bank robbery, it might be something, and those guys have got to be protected legally so they're not being sued and being targets just because they're on site trying to do the right thing.

Kip Crofts: If I could, Mr. Chairman, I'd like to add something to my last comment by Mr. Varn. I agree, we've got a two-way street here, but it only works real well one direction. Federal law provides that BIA deputizes local officers when they are on the reservation assisting the BIA and they are covered by the federal tort claims liability act. The other direction as Mr. Varn has mentioned, there is no such provision and I think there should be. The other thing is there is continuing confusion and a gray area that nobody benefits from other than offenders, in which some non-Indian offenders see the reservation as a lawless place where they can't be held accountable. And I think all of us agree that should not be the case. A couple of examples: If the BIA – there's a state highway from Lander to Dubois that goes right through the middle of the reservation. The BIA officer when he stops a potential drunk driver who's weaving around out there in the middle of the night or something, obviously has no way of knowing whether that's a non-Indian or Indian driver. But he knows he has an obligation or a duty to take care of that situation. So he stops the car and walks up and then discovers – well, the current law is very clear that the BIA officer has the authority to detain that person and ask for a state officer to, or a county officer to come and get him and take him to jail and charge him with a state offense. But it's also pretty clear that the BIA has no authority to take that person into custody and take him to tribal jail. So they're faced with a bad situation sometimes. Obviously they don't want to just turn that person loose to be a threat to other drivers on the highway and they're non-Indian. If the highway patrol or the county sheriff's officer is not available to come get them fairly quickly, then it creates a pretty bad situation to stand there along the side of the road and what do they do with them. They can't turn them loose, can't take him into tribal jail. I think the solution would be a change in the state law and this is something that exists in many states. I was in New Mexico yesterday and down there the New Mexico state police has the authority to deputize tribal officers and make them state police officers for purposes of actions on or near the reservation. I think we need something like that and it needs to say something about liability. No person off the reservation should think that he can drive down a road, whether it's a state highway or any other road, do what he wants, whether it's speeding or drunk driving and of course the most deadly and dangerous situation, and not have that taken care of. I got in a horrible argument one time years ago when I was prosecuting cases in Lander. A BIA police officer was looking for a person on the reservation that had fired a sawed-off shotgun at several

Indian people. A serious situation. He was looking – as he was driving around looking for that car, he ran across a non-Indian teenage girl from Riverton who had run away from home and walking down the highway on 17 Mile Road. Being a responsible police officer, he picked her up and took her back to the police department in Riverton. As he was coming down Federal Boulevard and heading for the reservation, he saw the car he'd been looking for on Federal Boulevard and still in Riverton. And he told me that he considered letting them cross the bridge so there wouldn't be any argument about the legality. I think that in itself is a bad situation for him to have to think about that. Unfortunately the driver looked in the mirror and saw the police car behind him and pulled over. So the BIA officer conducted the search, found the individual and sawed-off shotgun. And he had a oral argument in federal court about whether that sawed-off shotgun should be suppressed and whether that arrest should be illegal because he was in that questioned area. Finally he saved the case because he had a deputy sheriff's card in his pocket and the court ruled that was okay. He could do what he did because he had that sheriff's card. But that's been called into question lately about whether the sheriff can do that [inaudible]. I think that could and should be solved by changing the state law and defines a peace officer to include the BIA officers for actions on and near the reservation so that we don't have those questions and particularly so that we don't have defendants taking advantage of that situation.

Ivan Posey: Mr. Chairman. Everything that's been discussed here has had good effect in our community [inaudible] examples which [inaudible] every initiative. But I think the issue that still lies out there for us is the issue of juvenile incarceration or process once they get in trouble. I think – we talked about this at the first meeting with the Governor about a lot of our youth may do some things and then by the time they turn 18 they do the same crime and they're charged federally. And they end up in my opinion in a system that's not a very – has a good record of rehabilitation. You know they come out sometimes more hardened. Last month – last Friday we had a meeting on Montana/Wyoming tribal leaders council in terms of that type of issue with juveniles. And right now I think every juvenile that goes through the system, whether they're a minor in possession or DUI or beating up somebody, go through the same process. So I think a lot of that we need to address prior to – maybe they get a MIP and we do something on the

prevention side. As you know in that system, Governor and Kip both know, we're catching them on the back side. So I'm thinking in our tribal communities we need to develop some type of process to really thoroughly address the issues with juveniles. I know that Keja was involved with truancy handbook and regulations and stuff that we passed last month. But it has to be a real concerted effort, not only here but across Indian country whether it's Montana or Wyoming. I just wanted Kip to be aware and I will let him know when we have that round table discussion up in Billings of how we would like to address the juvenile concerns and issues at the local level. We really want to – we purchased the intertribal wellness center, treatment center, outside of Sheridan. It doesn't look like it's going to work out, but the proceeds of that sale of that facility will generate money for ourselves as a TLC. And my push is really to develop something in terms of juvenile offenses and juvenile – the process in Indian country because there is no deterrent there. There's been stories of the county not taking a juvenile where the BIA officer had to drive that individual around all night because he was a threat not only to the house he was in, but to himself. So you know there's all those issues that we still have to deal with in terms of [inaudible]. I think for the most part in my opinion [inaudible] might just be minor possession or other types of a minor infraction. But we also have the criminal element out there [inaudible]. That's the effort that we're looking at now in terms of assisting this process for law enforcement in our court systems. Thanks.

Brian Varn: Just to kinda piggyback on this, Mr. Posey, I'd like to inform you all what we're doing within the county. I took over – while there's a lot of very good people with very good intentions in the juvenile system, both DFS and all of that, it seemed to be rather arbitrary to me. And so what we've spent the last two years is kind of standing up off reservation, a process that makes sense. So a kid that gets an MIP is being handled the same way all the time with the intent of trying to keep them out of district court which is really basic. It's mandatory stuff for the entire family at that point. So once we got that organized, what I took a look at really hard was the way the contracts with tribal DFS and state were being interpreted was a child who gets in trouble, doesn't really make it through our county youth services program and was going directly up to district court. What we've done is we've got the circuit courts involved with that.

And it's kind of a, a woodshed kind of thing, you know just getting a guy in a black robe to jack the kid up a little bit and say hey look, you're heading down the wrong road. If you comply with this you can get out. And we can get that kid out of the system a lot earlier. And we're pretty successful. We can reduce the number of kids into district court by almost 75% off reservation. So what we took a look at was why are we treating Native American kids differently. It was just unfair to me that we're sending these kids straight up to district court on those failures and they were tied up in that system for years. Literally when I was a public defender I had a kid with an MIP that had been there in the system for 5 years. Criminy, I can't get – I don't give probation on felons that long. So I was really frustrated with that entire situation. So we went down – I was invited actually to go down to DFS and we changed some language in the contracts with tribal DFSs that allows me to route those kids now through that circuit court process so we can hopefully [inaudible] them out. And then in this entire process DFS and tribal DFSs no longer have to wait for district court orders to start their probation. We can start that probation and that guidance so it's more culturally sensitive to their needs at the circuit court level with that circuit court judge. So we are really making some huge inroads in this area and we offer our services across the board, whatever we can do to help out to emulate or whatever for the federal side of the house because so far we think it's working real well and it's a really good partnership both on and off the reservation for the kids.

Mike LaJeunesse: I have a question, I don't know whether to direct it to Kip or Mr. Brooks, Mr. Varn or anybody might who know the answer. The state highway patrol, if they stop somebody out here for speeding, do they cite them into tribal court?

Chief Brooks: That is their discretion. They carry both ticket books.

Mike LaJeunesse: Oh, really. I didn't mean to – I thought it was just into tribal court. That was my understanding.

Chief Brooks: No they have the option [inaudible]. Not all of them carry ticket books, and not all of them have commission cards, so. . . . They only carry [inaudible] state so that would be the only option at that point unless they are cross-commissioned with BIA which some of them are [inaudible].

Ivan Posey: Mr. Chairman, on that point also the tribal court has increased their fines in terms of, almost mirrors the state. Because a lot of times a tribal member will be caught going 90 miles an hour by Ray Lake and they opt to go to tribal court, because their fine was only \$25. But Judge St. Clair upped the amount I guess for certain speeds so now that is really truly a deterrent. They'll have to pay the same fine as they would off.

Gilbert Peck (Highway Safety Patrol): [inaudible] that Mr. Crofts was referring to isn't a big huge swing of the pen as far as Wyoming state statute. In Wyoming state statute 72101 is simply just the definition of peace officers. Federal officers are not identified in this, whereas in Wyoming state statute 6-1-304 we are actually listed as officers of the law – peace officers – in that state statute. But because of the lack of or the non-identification as defined by law in the state statute, we can't be recognized by [inaudible] and therefore granted the authority in the state of Wyoming. So basically 72101 just needs amended as far as the law change that we're talking about. We're actually identified as peace officers and they will then [inaudible], recognize our training through the federal law enforcement training center and [inaudible]. So we're already maintaining and doing the required training but it isn't – we're not recognized.

Del McOmie: Yes, I've made a note of this to include it on our agenda in December to try – to draft a bill and clarify this.

Mike LaJeunesse: Mr. Thompson.

Doug Thompson: I'd like to maybe interject maybe from a citizen's point of view and uncertainty. And it's clear that from what Mr. Crofts said there was no – I mean there's a lot of confusion out there, jurisdiction, law enforcement. As a citizen, when you get arrested, avenues of recourse and those types of things are unclear even if the scenario is settled. We have a lot of confusion out there, who can arrest you, who can – what court you're going into, things like that. So I agree there's a great lack of education of the citizenry in order to understand and then maybe they will be less fearful. So until everybody gets their act together and we all claim one set of rules, it's really hard to give the citizenry out there some assurance of seeing this law enforcement and avenues of recourse. So I don't know how to clarify that, I guess I'm putting a question out there on who can do what and if there's abuse what can you do to kind of protect yourself. I guess the law enforcement and judges and lawyers all got to get together and get it figured out and tell the people what they're doing and make it clearer to them, these are legitimate things and this is what we can do. It's a fearful thing to get tied up in a legal system that you know nothing about and don't know what your rights are or anything. So whatever we can do to clarify the picture, I know our county and reservation have some deep jurisdictional differences and differences of opinion, but I guess that's why we're here is to work some of those things out. Thank you.

Governor Mead: Mr. Chairman. One thing, I think it's actually a very good news story because the law may need some catching up but Kip can correct me on my history. But one of the issues that we've had for a long time is what sort of training is necessary. Is it post-training? And then if not post-training, I know Chief Noseep, one of his issues was he only had about 3 or 4 guys, 6 guys, and how do you do that, how do you send them to the academy and how is it all going to work logistically. And so it sounds like, Chief, you've made some tremendous progress as part of the presidential initiative [inaudible] but being able to have additional bodies and allow the people to get the training. We've come a long ways, Kip, I think since I was in their chairs.

Kip Crofts: That's right, Governor. I'm sure that when you were U.S. Attorney, you probably complained bitterly of the federal government [inaudible] police officers as always the case. There have been some wonderful – things are a long ways from perfect but it's a lot better than it used to be. I'd also like if I may Mr. Chairman to say a couple things about Chief Brooks. He was here through this whole process. I know last summer when he was getting 20 or 30 park rangers and BLM rangers and Lord knows what every week or two and trying to keep that all headed in one direction, I don't know of many managers in the world that can handle that kind of turnover and personnel and orienting them, training them, and guiding them. And every time I talked to him he was always kind of a cool guy at least on the outside. I don't know what was going on inside but he did a wonderful job of managing all through that. Of course now he has a somewhat more stabilized situation. But I'd like to say in front of all these people here today thank you.

Brian Varn: I just have a comment for Mr. Crofts. Are you still pursuing standing up in magistrate's court [inaudible] in the reservation area?

Kip Crofts: Well, no, we have a part-time magistrate in Lander that is for [inaudible] well, she does a lot of public land management cases, forest service tickets, BLM tickets, but she also handles the reservation in those cases where we have jurisdiction.

Brian Varn: Some of these situations where there's a crossover, for instance, on DUIs with non-natives, and I analogize this to air force bases or army posts. The UCMJ, the uniform corps of military justice, does not extend to civilians that work on base or dependents. So what they were is cited into the federal magistrate's court under the appropriate law and handled that way, in those situations. And I was wondering if that might be one of those things that would help tamp down differences in jurisdictions and issues like that as well.

Kip Crofts: We looked into that, Mr. Varn, and we're prepared to try that as a last ditch alternative if nothing else works. There is some, as Mr. Thompson mentioned, a jurisdiction morass out here. Even lawyers can't figure it out half the time, but there's some question about whether or not we can prosecute a non-Indian in federal court for a crime committed on the reservation that's a victimless crime, may not be able to. And I think there may be a defense there so our preference would be at least on the state highways is that those go to state court [inaudible] it's less ambiguous. So that's one of the reasons I'm suggesting the cross-deputization of BIA officers to take that confusion out of it. We'll do that if we have to. I mean, if they end up out there with a DUI along the road and for some reason can't go to state court, I guess we'll have to do that rather than lose. But I think they might have a defense and I don't want that to happen.

Brian Varn: I concur. Thank you.

Mike LaJeunesse: Any other comments or questions? *(Pause)* I guess we'll move onto number six.

[end of tape]

Posted by Northern Arapaho Business Council Secretary.