

Fort McDermitt Paiute and Shoshone Tribe, Nevada
Office of the Tribal Chairman



The Honorable Billy A. Bell, Chairman
President of the Inter-Tribal Council of Nevada

Before the

INDIAN LAW AND ORDER COMMISSION

January 13, 2012
Scottsdale, Arizona

INDIAN LAW AND ORDER COMMISSION FIELD HEARING
Talking Stick Hotel, Salt River Indian Reservation – Scottsdale, Arizona
January 13, 2012

Testimony of the Honorable Billy A. Bell, Tribal Chairman of the Fort McDermitt Paiute and Shoshone Tribe and President of the Inter-Tribal Council of Nevada

Good morning Mr. Chairman and members of the Commission. I am Billy A. Bell, Tribal Chairman of the Fort McDermitt Paiute and Shoshone Tribe, and also the President of the Inter-Tribal Council of Nevada. I come before the Commission to give testimony on behalf of my Tribe and the Inter-Tribal Council of Nevada member tribes, on issues of law and order – a perspective from the Nevada tribes.

The Fort McDermitt Indian Reservation straddles Nevada and Oregon with a major highway running through it, and is 75 miles north of Winnemucca, Nevada. The reservation was traditional seasonal homeland to the Paiute, Shoshone and Bannock peoples, when it was occupied by the cavalry for a military fort in the 1860's until it closed in the 1890's. The fort was provided to the Indians after the Bannock War. Many Indians were force marched and removed to other reservations in Idaho, Washington, Oregon or other Nevada reservations. There are 27 Nevada reservations and tribes comprising the Inter-Tribal Council.

The Fort McDermitt Tribe does not have a BIA or tribal detention facility; our inmates are held at the Humboldt County Detention Center in Winnemucca. The county charges \$55 per day for our inmates paid by the Bureau of Indian Affairs (BIA). The nearest BIA facility is located on the Duck Valley Indian Reservation, five and a half hour drive from Fort McDermitt. No other BIA or tribal facility exists in Nevada, and the tribes use the Duck Valley facility or other facilities in Utah, Colorado or Arizona for long term sentencing. Several Nevada tribes (Pyramid Lake, Fallon, Reno-Sparks) use Washoe County for temporary detention. The dilemma faced by these tribes is unique and frustrating, these tribes contact the facility to ensure available bed space and obtain permission from the BIA before transporting a prisoner. These tribes reported they release criminals with merely a citation because sometimes there is no room at the Washoe County jail to house them, and when tribal police transports a prisoner, the officer's travel time takes them away from their patrol leaving their respective departments short-handed. These tribes have also reported their respective counties do not contract inmate services because the counties refuse to hold tribal inmates at their facilities.

Two Nevada tribes have begun to conduct feasibility studies for a regional BIA/tribal detention facility. Both the Fallon Paiute and Shoshone Tribe and the Reno-Sparks Indian Colony have taken the lead on this project, and their Chairmen were seeking support from the Nevada tribes to locate the regional facility on the Fallon Indian Reservation as a central location point for most of the Nevada tribes.

The Fort McDermitt Indian Reservation is a checkerboard reservation as a result of the Allotment Act of 1887 (Dawes Act). There are six tribal homes scattered about the reservation community, situated in Humboldt County jurisdiction and all criminal and civil matters are handled by the Sheriff's Office. The homes were built as part of the Tribe's 1937 Housing Act program funded by a Housing and Urban Development grant in the 1960's and 1970's. The homes are situated on Bureau of Land Management (BLM) administered lands. Since 1971, the BLM and Tribe have discussed the occupancy trespass and continuously work together on the issue. In 1973, the Tribe unsuccessfully sought a congressional land bill to acquire some 19,000 acres of BLM lands. Once again, the Tribe is seeking to acquire BLM lands to eliminate the checkerboard jurisdiction problem. I have created dialogue in partnership with state and county elected officials on the jurisdiction and checkerboard issue. I believe this partnership will help the Tribe as it seeks their support in our second attempt to introduce another land acquisition bill.

Like any other tribe, domestic violence is high. It burdens our judicial system and human services department because we have no resources on the reservation for abused victims and most incidents involve other family members or are repeated. We have no shelter to house victims and the children are removed from their homes in the middle of the night and placed in non-Indian foster homes located off the reservation, sometimes the drive is three hours one way. There are no psychological or psychiatric services to counsel victims, children or offenders. Alcohol and drug abuse is heavy, impacting and affecting the reservation, disrupting families and homes, the children, including the health and safety of our community. The BIA police lack proper equipment, personnel and training to combat the social disorders of the reservation. Drugs are trafficked to the reservation by tribal members and inter-married non-Indians alike. There is no substance abuse program on the reservation. This program is an Indian Health Service (IHS) funded activity. The former counselor retired, and IHS has not been able to fill the vacancy, now vacant for nearly two years. This has resulted in our tribal court not being able to order a defendant to alcohol or drug evaluation or counseling for in-patient/out-patient services.

The Fort McDermitt and Summit Lake Indian Reservations and the Winnemucca Indian Colony are served by four BIA police officers from the Western Nevada Agency. At one time, the BIA also covered the Lovelock Indian Colony. At any given time, a police officer can be dispatched from one reservation to the other, where it can take a BIA policeman one to four hours to respond to an incident, depending upon the road and weather conditions, the location of the officer, and the time of the reported incident. Recently, one police officer resigned, and one is on medical leave; leaving one police officer to respond between the three reservations. Recruitment and retention are the BIA's two biggest problems. There are no quarters for an officer to live, there are no relocation expenses, the reservation communities are remote, goods and services are in Winnemucca. Although the table of organization for law enforcement positions shows adequate coverage, the one thing it will not show is the local economy. Gas is \$4.20 a gallon, \$4.00 for a gallon of milk, \$4.00 for a carton of eggs, and the nearest hospital and shopping center is in Winnemucca. The government facility used by the BIA police is shabby, the roof leaks, the shingles have blown away, furniture looks as if they were purchased from a

second-hand store and office equipment is handed down from the agency programs. If I was a young police officer and saw the remoteness of Fort McDermitt, Nevada, I too would not want to work for Western Nevada Agency. There are no incentives to keep me around and the workplace looks like it's been ransacked with no possibility for officer morale.

The Fort McDermitt Tribal Court is underfunded and understaffed to meet the demands of the cases heard in the court. There is a Chief Judge, a court clerk and a prosecutor to operate the tribe's court system. The judge and prosecutor do not reside on the reservation and also serve other Nevada tribes. Whenever emergencies arise for child custody and warrants, the judge and prosecutor can be reached by telephone, e-mail or fax. The judge and prosecutor are on a contract for one year and some years the tribe could not hire a permanent judge for nearly four months due to available and interested people to serve the tribe. In this instance, the tribe hired different judges to hear on-going cases. There is no adult or juvenile probation officer to monitor those who have obligations to the court. BIA police provide bailiff services when requested by the court and bring inmates before the court when necessary from Winnemucca. At times the BIA police will serve adult and juvenile papers. The court's annual budget is \$59,000 and 100% of the funding is received through a BIA 638 contract. The Court holds hearings twice a month, one each for civil and criminal cases hearing anywhere from 10 – 25 per month. The criminal code was recently amended but eliminated the criminal procedures. The tribe's juvenile code was adopted in 2003, but has some inconsistencies with the civil procedures code.

The current problem we face is making arrests on non-enrolled tribal members, which stems from a March 20, 2008, Memorandum issued by the Phoenix Field Office of the Field Solicitor's Office. The memo addresses the detention of non-Indians in a BIA or BIA contracted detention facility, which radically claims non-enrolled Indians as non-Indians. We know non-Indians to mean a white or black man, Asian, Mexican, etc. Some Fort McDermitt tribal members are not enrolled and considered non-enrolled tribal members. Because of the solicitor's memo, the BIA police refuse to arrest the non-enrolled members in fear of their internal liability policy memorandum. The Tribe's Constitution was adopted in 1936, and states that no rule or regulation promulgated by the Department (Interior) which is contrary to the Constitution, shall not apply to these Indians. We have asked the BIA how they could apply this rule. This is a serious public safety concern because the result is a void in law enforcement which results in unpunished lawless behavior, to the detriment of order on our reservation. This lawless behavior is contrary to the conception of the Tribal Law and Order Act, which is designed to make "much-needed improvements to how the federal government delivers law enforcement, prosecution, and correctional services in Indian country"¹.

In closing, Mr. Chairman, Members of the Commission, thank you for your time and commitment to Indian Country, and for hearing our testimonies today.

¹ The Tribal Law and Order Act: An "Aggressive Fight" Worth Winning – Troy A. Eid, published in *The Federal Lawyer*, March/April 2010, page 35.