

# Issues confront Smith in Indian Affairs position

Reprinted from *The Oregonian*

by Lynn Engles

With his confirmation April 14 by the U.S. Senate, Ken Smith, a 45-year-old Wasco Indian and former general manager of the Warm Springs Indian Reservation became the second man to hold what many believe to be one of the most thankless jobs in government.

The job of assistant secretary of the Interior for Indian affairs was created by President Carter. Prior to that time the top job relating to Indians had been commissioner of the Bureau of Indian Affairs, who had to report to an assistant secretary who also was responsible for other bureaus within the sprawling Department of the Interior. The conflicts inherent in that arrangement and the rising importance of Indian Tribes and the lands and natural resources they controlled prompted the upgrading of the job.

However, many of the conflicts remain, not only within the Department of the Interior, but also within the Bureau of Indian Affairs itself.

The assistant secretary must act as the advocate for Indian tribes when other bureaus in Interior differ with the Bureau on conservation, fisheries, mining, and land use. And the BIA must serve tribes from the Arctic ocean to the Everglades of Florida, each with different priorities and needs.

Smith, who was back in Warm Springs a week ago to attend a dinner in his honor, was not unaware of the problems that go with his new job, but he also was cautiously optimistic.

"I'm sure I'm going to go through some frustrations," he said, "but I've committed myself for four years.

"I've never been a quitter yet," he added, "and I've never been on a losing team."

During his 10 years as general manager at Warm Springs, Smith oversaw the business affairs of one of the most progressive and profitable Indian reservations in the nation. But as he sat in his former office and looked out at the land and the people he was about to leave to take the job in Washington D.C. he already was feeling some of the frustrations he had talked about a few minutes earlier.

A group of tribal leaders from throughout the country had been meeting in Washington and, angered by the failure of Secretary of the Interior James Watt to meet with them, had written letter to President Reagan calling for Watt's resignation.

But Smith was quick to defend his boss. "I'm impressed with the administration, and one of the reasons I'm coming in is that I'm impressed with Secretary Watt," he said. "He's a team leader. He's a motivator. He's a very sharp individual, and he wants to see things happen."

When asked about the tribal leaders' letter, Smith said, "I don't think they've given him a chance, really. I'm not sure why they are opposing him, but it is very disappointing to hear. They are supposed to be the leadership of Indian country and we're supposed to be working together with the secretary, and here they come out and oppose him. The

secretary hasn't had a chance to react to any issue in Indian country."

Two of the issues Smith and Watt are going to have to face in the Northwest are Indian fishing rights and Indian water rights. While the fishing issue has gained public attention because of the lawsuits resulting in what are known as the Boldt and Belloni decisions on Indian fishing rights, few people are aware that the treaties signed with Indian tribes also provide for water rights to make the reservations viable homelands. In most cases, however, the amount of water needed to make the reservations viable has not been determined, or quantified. Many tribes oppose any quantification, saying that to set limits today would limit future growth and development and reservations.

Smith agreed that water will be a "tough issue," but, he added, "I'm sure that as trustee (of Indian lands and natural resources) we are going to protect the Indian rights."

However, he added that he believed that the time has come for Indian tribes to quantify those rights. He said, "I understand that some tribes don't want to get into this, but I think that because water is getting scarcer—we have to be able to quantify our water rights and I believe that the sooner we do it the better off we are."

He said he fears that if the rights were not quantified now they would gradually be chipped away until no unallocated water was left for the tribes.

While Smith felt that all

parties in the fishing rights disputes had "come a long way," he also said there still was a "long way to go."

"But I think everyone in the Northwest is finally beginning to wise up to the fact that 50 percent of a dwindling resource is not very much," he said, "and I think the attitude in the Northwest is changing to one of 'How do we enhance that resource,' rather than trying to fight over the last chinook or steelhead."

The only way to solve the fishery problem, he said, was to get all parties together to work as a group to build up runs.

However, he did say that federal spending cuts could have an effect on the ability of the tribes and the states to increase fish production.

Another issue facing the new assistant secretary will be the affect of the administration's budget cuts on the Bureau of Indian Affairs and its ability to provide services to Indian tribes. He said he would try to see that as many of the cuts as possible come in the administrative functions in Washington rather than in the programs on the reservations. Smith admitted that for tribes with few natural resources and little to attract industry, the problems would be severe. But, he added, "There's something wrong if the feds decreasing their budget has this kind of impact on us. We've got to move toward less dependency on the feds so that when we do get these budget cuts they don't drop us to our knees.

"I feel that tribal government is the key out there," he said, "and if we have good strong tribal governments then we

are going to be able to solve some of these problems on a local level."

Smith is the first person to head the federal government's Indian programs who has a strong background in reservations programs and decisions in Washington actually work at the local level. His predecessors have either been bureaucrats or businessmen who had little contact with reservation life after growing up.

The Bureau of Indian Affairs is one of the most vilified agencies in the federal governments. It takes it knocks not only from the Indians themselves but also is held up as an example of excessive federal meddling in the lives of people.

But the BIA is necessary if the federal government is to fulfill its obligations under the treaties with the Indian people. To abolish the BIA would be to abandon the federal responsibility. That was tried in the 1950's under the label of "termination," and Indian tribes bitterly oppose any attempt to resurrect that policy.

For Smith, who turned down the position of commissioner during the last administration, the challenge will be to deal successfully with the competing interests whose differences have given his new post the reputation of being one of Washington's impossible job.

*Lynn Engles is a Portland-based consultant to Indian tribes and former director of the office of public information for the Bureau of Indian Affairs in Washington D.C.*

## Jurisdiction a big issue in Sherars Bridge case

by Pat Leno

A True Bill has been handed down by the Wasco County Grand Jury indicting four Warm Springs residents. Evidence was presented by the District's Attorney's office to the Grand Jury May 14 on an alleged incident occurring April 26 at Sherars Bridge which is tribally-owned land.

Wasco County officials are working on the assumption lands purchased by the Confederated Tribes of Warm Springs after the passing of Public Law 280 fall under the jurisdiction of the state. They are proceeding with the case.

Public Law 280 gives the State of Oregon jurisdiction over all Indian Country excluding the Warm Springs Reservation. Wasco County officials claim the Sherars Bridge parcel did not fall under the description of Warm Springs Reservation at the writing of that law in 1953.

The Grand Jury has indicted Matthew Wewa on one count of assault in the second degree. Elmer "Buzzy" Scott was indicted on four counts of coercion. Winston Wewa on four counts of coercion, two

counts of assault in the fourth degree and one count of attempted assault in the second degree. Joe Brisbois was indicted for four counts of coercion and a charge of harassment.

Winston Wewa's arraignment will be postponed. Matthew Wewa, Buzzy Scott and Joe Brisbois will be arraigned in Wasco County Circuit Court at The Dalles on June 8 at which time they will enter their pleas to the charges. Trial dates will be set on the court's docket for the three men following their arraignment. The court will proceed with the trials on the assumption it does have jurisdiction.

### The Jurisdiction Question

Who does have jurisdiction over Indians at Sherars Bridge land parcel? This question is being asked at this time following the incident at Sherars between Indians and non-Indians. Wasco County District Attorney Bernie Smith claims jurisdiction goes to his office and to the state.

Jeffery E. Sanders, Sr., Chief of Police at Warm Springs, stated the Tribes have jurisdiction. His reasoning is that the land is held in trust by the U.S. government for the Tribes. This land parcel is a

part of the reservation and does not fall under the state's control.

Chief Sanders will continue to have the police department and Game & Range Division patrol the Sherars Bridge land. He will continue to assert tribal jurisdiction over Indians.

It has been the policy for Indian tribes to assert jurisdiction over lands held in trust for them by the Federal Government. This stand is one in following with the Self-

Determination Act written by the government in 1974.

At this point in time, the question has been addressed to the Solicitor's Office in Washington D.C. at the request of Mark Werner, Bureau of Indian Affairs Special Officer at Warm Springs. The Solicitor is the office designated to handle most Indian legal issues within the government. It is the general counsel for the Interior Department.

Even if the Solicitor's office

hands down a ruling in favor of the tribal jurisdiction it is only a ruling and not law. So the state can still assert jurisdiction until it has been settled in Federal court or the State of Oregon offers retrocession (giving the tribe jurisdiction and accepting that piece of land as being a part of the reservation.)

It is still just an issue before government offices and has not been solved. So the four men must go through the state system.

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