



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

STATE OF SOUTH DAKOTA, )
Plaintiff, )
v. )
THE HONORABLE PAUL MUELLER, )
in his personal capacity )
and official capacity )
as Judge of the Crow Creek )
Sioux Tribe Tribal Court and )
NORMAN THOMPSON, SR., )
Vice-Chairman, Crow Creek )
Sioux Tribal Council in his )
personal and official )
capacities; Crystal J. Kirkie, )
Secretary, Crow Creek Sioux )
Tribal Council in her personal )
and official capacities; )
DARLA R. FALLIS, Treasurer, )
Crow Creek Sioux Tribal )
Council in her personal )
and official capacities; )
RANDY SHIELDS, SR., )
Councilmember, in his )
personal and official )
capacities; DONALD MCGHEE, )
Councilmember, in his )
personal and official )
capacities; and LORON )
FALLIS, SR., Councilmember, )
in his personal and )
official capacities. )
Defendants. )

Civ. \_\_\_\_\_

AFFIDAVIT OF
LARRY LONG, ATTORNEY GENERAL
OF THE STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA )
) SS:
COUNTY OF HUGHES )

Larry Long, being duly sworn, states:

- 1. I am the Attorney General of the State of South Dakota.
2. In my capacity as Attorney General, I have special obligations to enforce and uphold the integrity of South Dakota

laws, including those laws relating to the exercise of the voting franchise.

3. In my capacity as Attorney General, I have supervisory authority over agents of the Division of Criminal Investigation of the Office of Attorney General.

4. On Friday, January 17, 2003, I was made aware that DCI Agent James Severson had attempted to serve witness subpoenas with regard to the Rebecca Red Earth matter on tribal members on the Crow Creek Reservation. I was made aware that Severson had been instructed by Tribal Judge Paul Mueller of the Crow Creek Tribal Court to not serve the witness subpoenas and that Agent Severson had left the reservation without service of the witness subpoenas. I was also made aware that Judge Mueller suggested that I call him on this matter.

5. On January 22, 2003, I attempted unsuccessfully to reach Judge Mueller by telephone and e-mail and on January 23, 2003, sought to reach him by first-class mail. A copy of the January 23, 2003, letter is attached as Attachment L-1. As the letter reveals, I desired to speak to Judge Mueller with regard to Nevada v. Hicks, 533 U.S. 53 (2001). None of my attempts to contact Judge Mueller during that week succeeded.

6. On January 27, 2003, I again called Judge Mueller's home. At this time I was directed to a number at a tribal office and was able to talk to Judge Mueller. I explained that the state desired to serve witness subpoenas with regard to the Rebecca Red Earth matter. I also stated my view that this was allowable under Nevada v. Hicks, 533 U.S. 53 (2001). Judge

Mueller said that he would check with the Tribal Council. We agreed that in the event that we were unable to resolve this matter, that we would seek a gentlemanly method in which to avoid a confrontation.

7. That same day, January 27, 2003, I received a call from Ken Dewell, a lawyer for the Crow Creek Sioux Tribe, in which essentially the same matters were discussed as had been discussed earlier that day with Judge Mueller.

8. January 28, 2003, Crow Creek Tribal President Dwayne Big Eagle left a message for me to return a call. I first received clearance from Terry Pechota, another lawyer for the tribe, to speak directly with President Big Eagle. I then talked with Big Eagle, and at that time informed him of South Dakota's desire to serve witness subpoenas on tribal members on the reservation. President Big Eagle inquired as to whether the witnesses would be paid and I assured him that they would receive the normal state fee for an appearance and would also receive money for transportation along with money for meals. I explained that a check would be supplied to each person at the same time the subpoena was served.

9. President Big Eagle stated that he would relate these matters to the Tribal Council but would be obligated to defer to its wishes. He also explained that we would be hearing from him.

10. On January 28, 2003, I again heard from President Big Eagle. I again conferred with tribal lawyer Terry Pechota to get clearance to talk directly with the Tribal Chairman. President

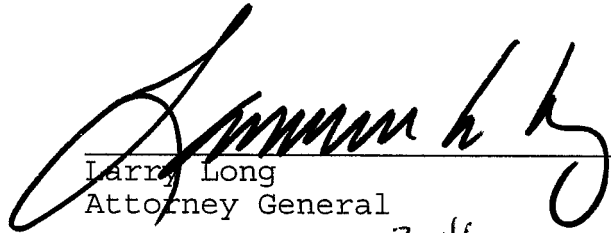
Big Eagle informed me that the Tribal Council had overruled him and would resist the service of the witness subpoenas.

11. The same day, I spoke to Judge Paul Mueller who also told me that the Tribal Council had determined that the witness subpoenas should not be served. We discussed an orderly manner in which to deal with this matter and agreed that DCI agents would appear at the Tribal Courthouse on the morning of January 29, 2003. At that time, Judge Mueller could issue whatever order the tribe desired. I indicated that the state agents would not violate a tribal court order.

12. Judge Mueller also indicated that he would fax a copy of the Tribal Council Memorandum to me. A copy of that fax is attached as Attachment L-2. Tribal lawyer Terry Pechota also forwarded the memorandum by fax. The Tribal Council Memorandum is addressed to Judge Mueller and essentially directs him not to allow issuance of the state subpoenas on the Crow Creek Reservation.

13. On the morning of January 29, 2003, DCI Agents met with Judge Mueller on the Crow Creek Reservation. Judge Mueller informed the agents that it was the decision of the tribe not to allow service of the witness subpoenas. The judge related that state process would be allowed on the reservation only if a federal court so orders. State agents did not violate the tribal court order made in open court and did not serve witness subpoenas.

Dated this 30th day of January, 2003, at Pierre, South  
Dakota.

  
\_\_\_\_\_  
Larry Long  
Attorney General

Subscribed and sworn to before me this 30th day of  
January, 2003.

  
\_\_\_\_\_  
Lynell Erickson  
Notary Public - South Dakota

My Commission Expires:

7-26-2005  
(Seal)