

INDEX TO APPENDICES

Appendix A: *United States v. Eric Bruce Fowler*, 48 F. 4th 1022 (9th Cir. 2022)

Appendix B: *United States v. Eric Bruce Fowler*, district court order denying motion to suppress, dated January 25, 2021.

Appendix C: *United States v. Eric Bruce Fowler*, Judgment, dated July 21, 2021.

Appendix D: “2003 Amendment of Cooperative Agreement Providing For Cross-Deputization of Law Enforcement Officers of the Assinboine and Sioux Tribes of the Fort Peck Reservation, the City of Wolf Point, the City of Poplar, the Montana Highway Patrol, Roosevelt County and Valley County.”

Appendix E: Letter to Fort Peck Executive Board from Special Agent Douglas Noseep, dated February 16, 2016

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ERIC BRUCE FOWLER,
Defendant-Appellant.

No. 21-30172
D.C. No.
4:20-cr-00030-
BMM-1
OPINION

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, District Judge, Presiding

Argued and Submitted June 9, 2022
Seattle, Washington

Filed September 13, 2022

Before: Sandra S. Ikuta and Eric D. Miller, Circuit Judges,
and Dean D. Pregerson,* District Judge.

Opinion by Judge Miller

* The Honorable Dean D. Pregerson, United States District Judge
for the Central District of California, sitting by designation.

SUMMARY**

Criminal Law

The panel affirmed the district court's denial of Eric Fowler's motion to suppress evidence discovered as a result of a traffic stop made by a Montana state trooper while Fowler, a member of an Indian tribe, was driving on a highway that runs through the Fort Peck Indian Reservation.

The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have a cross-deputization agreement with the State of Montana under which the Tribes have agreed to commission state police to act as tribal police where there is a gap between their respective criminal jurisdictions. Fowler challenges the validity of the cross-deputization agreement.

He first argues that the Tribes lack the inherent sovereign authority to enter into a cross-deputization agreement with the State of Montana. Rejecting this argument, the panel emphasized that the cross-deputization agreement deputizes state officers to enforce tribal law, not state law, and emphasized that Congress has expressly provided for the Tribes' authority to enter into such compacts.

Fowler also argued that the Tribes explicitly conditioned the cross-deputization agreement on federal approval, which they did not receive. The panel did not read the agreement's use of the word "approve" as giving the Bureau of Indian Affairs veto power over the agreement. The panel

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

distinguished this cross-deputization agreement from Special Law Enforcement Commission agreements to deputize tribal officers to enforce federal law in Indian country—agreements that do require federal approval. The panel declined to ascribe to the Tribes or the State an intent to condition their agreement—which neither deputizes non-federal officers to enforce federal law nor deputizes federal officers to enforce tribal law—on federal approval when neither party ever manifested such an intent. The panel wrote that even if the lack of a signature from the BIA representative on the 2003 amendment to the agreement impaired the validity of the amendment, it would not invalidate the trooper’s commissioned status.

The panel wrote that the trooper’s failure to carry an identification card was plainly a violation of the agreement. The panel noted, however, that none of the sovereign parties to the agreement appears to consider the violation sufficiently serious to seek any remedy for it, and explained that the Fourth Amendment does not strip the Tribes of the sovereign authority to decide how—or whether—to enforce the provisions of their own agreements.

COUNSEL

Megan M. Moore (argued), Watson Law Office PC, Bozeman, Montana, for Defendant-Appellant.

Leif M. Johnson (argued), United States Attorney; Jeffrey K. Starnes, Assistant United States Attorneys; United States Attorney's Office, Billings, Montana; for Plaintiff-Appellee.

OPINION

MILLER, Circuit Judge:

While driving on a highway that runs through the Fort Peck Indian Reservation in eastern Montana, Eric Fowler was stopped by a Montana state trooper. The stop led to the discovery of evidence that in turn led to federal criminal charges. Fowler is a member of an Indian tribe, and he argues that the state trooper lacked jurisdiction to stop him on the Reservation. But the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have a cross-deputization agreement with the State of Montana under which the Tribes have agreed to commission state police to act as tribal police where there is a gap between their respective criminal jurisdictions. Under that agreement, the state trooper who stopped Fowler was permitted to enforce tribal law, not just state law. We reject Fowler's challenges to the validity of the agreement, and we affirm the judgment of the district court, which denied Fowler's motion to suppress the evidence against him.

In the early 2000s, the Fort Peck Tribes entered into a cross-deputization agreement with the State of Montana and various local governments. The agreement authorized state

and local law-enforcement officers to be deputized to enforce tribal law against Indians on the Reservation, and, conversely, it allowed tribal officers to be deputized to enforce state law there. Specifically, the agreement provided that “certain officers of the local jurisdictions and [the Montana Highway Patrol] will be appointed as commissioned law enforcement officers of the Tribes” and, when acting within the Reservation, “shall have the same authority to arrest Indians for violations of Titles III and IX of the Tribal code and shall have the same authority to issue citations and/or summonses and to accept bond as officers of the Tribes.” It also provided that officers commissioned under the agreement “must wear their insignia, if issued, and carry . . . identification cards with them at all times while acting under the authority of the commissioning agency.”

In March 2000, the Tribal Executive Board formally adopted the cross-deputization agreement, and by the next month all parties to the agreement had signed, including the Bureau of Indian Affairs (BIA) of the Department of the Interior. An amendment followed in 2003 to add Valley County, Montana, to the agreement; the amendment made no substantive changes. But although the 2003 amendment stated that the BIA would be a party, the relevant official from the BIA did not sign. In 2016, the BIA wrote to the Tribes to say that because the federal government was not part of the 2003 agreement, none of the cross-deputized officers would be treated as deputized federal employees under the BIA’s Special Law Enforcement Commission program, which allows designated officers to enforce federal law in Indian country. *See* 25 C.F.R. § 12.21.

Meanwhile, in 2014, the Tribes passed a resolution designating Trooper David Moon of the Montana Highway Patrol for cross-deputization and resolving that Moon be

“grant[ed] tribal arrest authority.” Although Trooper Moon’s authority was initially set to expire the following year, another tribal resolution made it “continuous . . . until the end of [his] employment.”

On May 5, 2019, Trooper Moon was patrolling a stretch of U.S. Highway 2 that passes through the Fort Peck Reservation. Trooper Moon did not have an identification card to indicate that he had been cross-deputized, but he did wear a badge on his uniform to that effect. When he saw a Ford F-150 that lacked a license plate or temporary tag, Trooper Moon made a traffic stop. At some point during the encounter—the record does not reveal precisely when or how—Trooper Moon established that the driver, Fowler, was a tribal member.

Trooper Moon learned from a dispatcher that Fowler was registered as a violent offender and had a revoked driver’s license. Trooper Moon gave Fowler a warning for driving without a license plate and issued citations for driving without a license, driving without insurance, and driving without a seatbelt. The citations charged Fowler with violations of tribal law and commanded him to appear in tribal court.

Trooper Moon impounded the vehicle. Before leaving, Fowler asked Trooper Moon to retrieve his coat from the truck. When Trooper Moon reached into the vehicle, he noticed a marijuana grinder in the pocket of the car door. Trooper Moon then had a dog sniff the vehicle. The dog alerted, and Trooper Moon subsequently sought and obtained a tribal search warrant for the truck. The search turned up a rifle and a sawed-off shotgun.

Fowler was indicted on one count of being a felon in possession of a firearm, in violation of 18 U.S.C.

§ 922(g)(1), and one count of possessing an unregistered firearm, in violation of 26 U.S.C. § 5861(d), based on the firearms seized from the truck. Fowler moved to suppress the evidence from the stop. After the district court denied that motion, Fowler entered a conditional plea of guilty to the section 922(g)(1) count, reserving his right to appeal. He was sentenced to 48 months of imprisonment, to be followed by three years of supervised release. He now appeals the denial of the suppression motion, which we review *de novo*. *United States v. Ngumezi*, 980 F.3d 1285, 1287 (9th Cir. 2020).

The cross-deputization agreement was designed to address one of the many jurisdictional gaps in Indian country: While tribes have inherent authority to enforce tribal law against Indians on a reservation, they “lack inherent sovereign power to exercise criminal jurisdiction over non-Indians.” *United States v. Cooley*, 141 S. Ct. 1638, 1641, 1643 (2021); *see also Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). Instead, tribal police encountering “a non-Indian on a public right-of-way that runs through an Indian reservation” have the authority only “to detain temporarily and to search” the suspect “prior to the suspect’s transport to the proper nontribal authorities for prosecution.” *Cooley*, 141 S. Ct. at 1641. Conversely, state law-enforcement officers have the authority to enforce state traffic laws against non-Indian travelers on highways in a reservation. *See Duro v. Reina*, 495 U.S. 676, 680 n.1 (1990), *superseded by statute on other grounds by* Act of Oct. 28, 1991, Pub. L. No. 102-137, 105 Stat. 646, *as recognized in* *United States v. Lara*, 541 U.S. 193 (2004); *see also United States v. McBratney*, 104 U.S. 621 (1881). But they do not have the same authority to arrest tribal members. *See United States v. Patch*, 114 F.3d 131, 133–34 (9th Cir. 1997); *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459

(2020). And until a driver is stopped, “it is impossible for [the] officer to tell who is operating an offending vehicle.” *Patch*, 114 F.3d at 133–34.

Fowler seeks to pry that gap back open by challenging the validity of the cross-deputization agreement. Without the agreement, Trooper Moon would not have had authority to proceed with the traffic stop once he learned that Fowler was an Indian. Fowler has two theories: (1) the Tribes lack authority to deputize state law-enforcement officers to enforce tribal law or, in the alternative, (2) the Tribes explicitly conditioned the cross-deputization agreement on federal approval, which they did not receive. We find neither persuasive.

Fowler’s first theory is that the Tribes lack the inherent sovereign authority to enter into a cross-deputization agreement with the State of Montana. He begins with the premise that “there is no mechanism provided by law that permits state law enforcement officers to exercise criminal jurisdiction over Tribal members” in these circumstances. Whatever the merits of that premise, it does not support Fowler’s conclusion. Fowler conflates the exercise of state jurisdiction on the Reservation with the exercise of the Tribes’ own authority. The cross-deputization agreement does not grant the State of Montana authority to enforce its own criminal laws on the Fort Peck Reservation. Instead, it allows certain state actors to enforce certain *tribal* laws. Specifically, it confers the “authority to arrest Indians for violations of Titles III and IX of the Tribal code and . . . the same authority to issue citations and/or summonses and to accept bond as officers of the Tribes.” David Moon may happen to be State Trooper Moon, an employee of the State of Montana, but in his arrest and search of Fowler, he acted under the authority of the Tribes—not Montana.

The inherent sovereignty of a tribe “includes the right to prescribe laws applicable to tribe members and to enforce those laws by criminal sanctions.” *United States v. Wheeler*, 435 U.S. 313, 322 (1978). But the tribe itself, as a political entity, cannot investigate crimes or arrest offenders; only individuals can do that. The right to enforce tribal law necessarily includes the right to select those individuals—whether they are employees of the tribe, private contractors, or, as here, employees of another sovereign. Cf. *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2197 (2020). To be sure, “tribal authority remains subject to the plenary authority of Congress,” *Cooley*, 141 S. Ct. at 1643, and it has also been limited “by implication as a necessary result of [tribes’] dependent status,” so that, for example, tribes “cannot enter into direct commercial or governmental relations with foreign nations,” *Wheeler*, 435 U.S. at 324, 326. For that reason, the Fort Peck Tribes presumably could not agree to let the Royal Canadian Mounted Police enforce tribal law on the Reservation. But nothing in the Tribes’ dependent status precludes them from entering into such an agreement with the State of Montana.

Nor does anything in federal law. Fowler relies on 25 U.S.C. § 1326, which prescribes a mechanism by which a State may assume jurisdiction to enforce state criminal laws against Indians in Indian country. But, again, the cross-deputization agreement deputizes state officers to enforce tribal law, not state law. Section 1326 is therefore inapplicable here.

In fact, Congress has expressly provided for the Tribes’ authority to enter into compacts such as the cross-deputization agreement. In the Indian Reorganization Act of 1934, Congress authorized tribes to adopt constitutions, and it provided that, “[i]n addition to all powers vested in any

Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the . . . [power] to negotiate with the Federal, State, and local governments.” 25 U.S.C. § 5123(a), (e). The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation did just that, authorizing agreements with federal, state, and local governments “on all activities which may affect the Tribes.” Constitution and Bylaws of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, art. VII, § 1. The cross-deputization agreement is a permissible exercise of the Tribes’ sovereign authority to negotiate an agreement with the State of Montana.

That brings us to Fowler’s second theory, which is that the agreement was written in such a way as to disclaim the Tribes’ authority to compact with the State without federal approval. According to Fowler, because the Tribes made the BIA a party to the agreement with “approval” power, and the state troopers were designated as federal employees in the agreement, the agreement was conditioned on the approval of the BIA. Because the BIA’s representative did not sign, the agreement must be invalid. We disagree.

Both the 2000 agreement and the 2003 amendment begin with a recitation of the signatories’ respective authority to enter into the agreement. It says that the Tribes are authorized to compact by their own constitution and bylaws, the State by sections 18-11-101 to -112 of the Montana Code, and the federal government by “the Indian Law Enforcement Reform Act, 25 U.S.C. § 2801 to -2804, [which] provides the Secretary of the Interior with the authority to enter into *and approve* such cooperative law enforcement agreements.” (emphasis added). We do not read the use of the word “approve” as giving the BIA veto power over the agreement. In drafting the agreement, the Tribes

seem to have conflated the requirements of *any* cross-deputization agreement (no matter which sovereigns are involved) with those of the Indian Law Enforcement Reform Act, 25 U.S.C. §§ 2801–2815. That statute allows the BIA—which traditionally has been responsible for the enforcement of federal criminal statutes on tribal lands—to enter into cross-deputization agreements (called Special Law Enforcement Commission agreements) to deputize tribal officers to enforce federal law in Indian country. *Id.* §§ 2801–04. Such agreements require federal approval.

But the cross-deputization agreement is not a Special Law Enforcement Commission agreement. It is a compact between the Tribes and the State, and it neither deputizes non-federal officers to enforce federal law nor deputizes federal officers to enforce tribal law. Consistent with that understanding, both the Tribes and the State have deputized officers under the agreement for two decades even though the BIA did not sign it, and they continued to do so even after the BIA made clear that the deputized officers would not be treated as federal employees. We will not ascribe to the Tribes or the State an intent to condition their agreement on federal approval when neither party ever manifested such an intent. *Cf. J.A. Jones Constr. Co. v. Plumbers & Pipefitters Local* 598, 568 F.2d 1292, 1294–95 (9th Cir. 1978) (reasoning that even a non-signing party may be bound by a contract “if he accepts it and both act in reliance on it as a valid contract” (quoting *NLRB v. Local 825, Int’l Union of Operating Eng’rs*, 315 F.2d 695, 699 (3d Cir. 1963))).

In any event, even if the lack of a signature from the BIA representative on the 2003 amendment impaired the validity of that amendment, it would not invalidate Trooper Moon’s commissioned status. The 2003 amendment sought only to add Valley County to the 2000 agreement. Everyone else—

including the BIA—had signed the 2000 agreement, and the 2003 amendment made no substantive changes to it. The agreement executed in 2000 would not evaporate merely because some of the parties tried and failed to join Valley County as a party. Accordingly, Trooper Moon could be deputized under the 2000 agreement regardless of whether the 2003 amendment required the Secretary’s approval.

In sum, because the cross-deputization agreement was valid, Trooper Moon was validly deputized to enforce tribal law, and he had jurisdiction to seize and search Fowler’s truck. We therefore need not decide whether the Fourth Amendment would have been violated—or what the appropriate remedy might be—if Trooper Moon had lacked jurisdiction to seek a tribal search warrant. *See United States v. Becerra-Garcia*, 397 F.3d 1167, 1173–75 (9th Cir. 2005).

Finally, Fowler observes that the cross-deputization agreement mandates that all cross-deputized state officers be issued and carry identification cards identifying the commissioning agencies for which they are authorized to act. The Tribes did not issue Trooper Moon an identification card until after the stop at issue here. Trooper Moon’s failure to carry an identification card was plainly a violation of the agreement, but none of the sovereign parties to the agreement appears to consider the violation sufficiently serious to seek any remedy for it. Fowler does not explain why that provision of the agreement should be read to create judicially enforceable individual rights, *cf. Medellin v. Texas*, 552 U.S. 491, 505 (2008), or why the appropriate enforcement mechanism would be the suppression of evidence, *cf. Herring v. United States*, 555 U.S. 135, 140–41 (2009); *Virginia v. Moore*, 553 U.S. 164, 176 (2008). The Fourth Amendment does not strip the Tribes of the sovereign

authority to decide how—or whether—to enforce the provisions of their own agreements.

AFFIRMED.

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ERIC BRUCE FOWLER,
Defendants.

CR-20-30-GF-BMM

ORDER

The United States indicted Defendant Eric Bruce Fowler (“Fowler”) on two counts stemming from a traffic stop on the Fort Peck Indian Reservation (“FPIR”). Doc. 1. Count I charges Fowler with Prohibited Person in Possession of Firearm, in violation of 18 U.S.C. § 922(g)(1). *Id.* at 1. Count II charges Fowler with Possession of an Unregistered Firearm, in violation of 26 U.S.C. § 5861(d). *Id.*

Fowler filed a Motion to Suppress. Doc. 22. Fowler argues that Montana Highway Patrol (“MHP”) Trooper Moon (“Trooper Moon”) exceeded his authority when he stopped Fowler within the exterior boundaries of the FPIR and any evidence stemming from the traffic stop must be suppressed. Doc. 23. The Court held a hearing on December 11, 2020. Doc. 70.

BACKGROUND

Trooper Moon saw Fowler driving on Highway 2 east of Wolf Point, Montana. Doc. 22-4 at 5. Trooper Moon began following Fowler after Fowler made a U-turn and headed back into Wolf Point, Montana. Trooper Moon saw that Fowler's car did not have a license plate or a temporary tag. *Id.* Trooper Moon initiated a traffic stop. *Id.* The entire interaction occurred within the exterior boundaries of the FPIR.

Fowler got out of the car shortly after pulling over. Trooper Moon knew from previous interactions that Fowler was an Indian Person. Fowler left the driver's door open while he talked with Trooper Moon. *Id.* Trooper Moon asked Fowler to move away from the car after seeing a pry bar just inside the driver's door. *Id.* Trooper Moon searched Fowler for weapons. *Id.*

Trooper Moon saw through the back window of the car a rifle lying in the back seat. *Id.* at 6–7. Fowler said that he was only working on the car and that Kevin Jackson owned the car. *Id.* MHP Dispatch informed Trooper Moon that Fowler had registered as a violent offender and possessed a revoked driver's license. *Id.* Fowler had no tribal warrants. *Id.* Fowler admitted that he was on state probation. *Id.* Trooper Moon called Fowler's probation state officer, Bruce Barstad ("Officer Barstad"), and told him about the rifle and that Fowler would have seen it in the car. *Id.* Officer Barstad advised Trooper Moon to forgo a probation search

and handle “the stop the proper way on the reservation.” *Id.* Trooper Moon understood this to mean he should seize the car and pursue a tribal search warrant. *Id.*

Trooper Moon gave Fowler a warning for driving without a license plate infraction and citations for driving without a license, driving without insurance, and driving without a seatbelt. *Id.* at 6. Trooper Moon included a summons to tribal court because Fowler was an Indian Person and the violations occurred on the FPIR. *Id.* Fowler asked Trooper Moon to retrieve his coat and house keys from the car. Trooper Moon went to get Fowler’s belongings and saw a blue marijuana grinder in the pocket of the driver’s door. *Id.* Fowler took his belongings and left on foot. *Id.* Trooper Moon deployed his canine while waiting for the tow truck to arrive. The canine alerted at the driver’s door and at the rear of the car where Fowler had been standing. *Id.* Trooper Moon had the car towed to Roosevelt County Sheriff Office secure storage. *Id.* Trooper Moon obtained a tribal search warrant from the Fort Peck Tribal Court and searched the vehicle. Trooper Moon found, among other items, a sawed-off shotgun, a rifle, various knives and ammunition, and drug paraphernalia, including scales, vials, and a glass pipe with suspected marijuana residue. *Id.* at 9.

ANALYSIS

CROSS-DEPUTIZATION AGREEMENTS.

Criminal jurisdiction in and around Indian Country proves complicated. *See generally* Kevin Morrow, *Bridging the Jurisdictional Void: Cross-deputization Agreements in Indian Country*, 94 N.D. L. REV. 65 (2019). Indian tribes generally operate as separate and sovereign governments within Indian Country. Pursuant to various statutes, the federal government also exercises jurisdiction in Indian Country. *Los Coyotes Band of Cahuilla & Cupeno Indians v. Jewell*, 729 F.3d 1025, 1030 (2013); 18 U.S.C. § 1152. States generally lack jurisdiction in Indian Country. Some tribes have allowed states concurrent criminal jurisdiction, however, to enforce state laws in Indian Country. Other tribes have rejected this arrangement. *See County of Lewis v. Allen*, 163 F.3d 509, 514 (9th Cir. 1998).

The complexity of criminal jurisdiction with Indian Country, when compounded with limited police resources and vast reservations, often results in ineffective law enforcement and a much higher rate of crime in Indian Country. *Los Coyotes*, 729 F.3d at 1030. Acts committed in Indian Country can be subject to federal, state, or tribal jurisdiction depending on the severity of the crime and on whether the actor or victim are Indian persons. *United States v. Patch*, 114 F.3d 131, 133 (1997).

Some jurisdictions have sought to cut the gordian knot by enacting cross-deputization agreements. Cross-deputization agreements are arrangements by which one jurisdiction commissions law enforcement officers of another jurisdiction to enforce laws that the law enforcement officers would otherwise be without jurisdiction to enforce. *See Bridging the Jurisdictional Void*, 85–86. Tribes can freely enter cross-deputization agreements with county governments, city governments, or state governments. Cross-deputizations agreements between a tribe and the federal government constitutes a special subset of cross-deputization agreements called Special Law Enforcement Commission (“SLEC”) agreements. *Hopland Band of Pomo Indians v. Norton*, 324 F.Supp.2d 1067, 1068–69 (9th Cir. 2013).

In 2000, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation (“the Tribes”) entered into a cross-deputization agreement (“2000 CDA”) with various neighboring local governments and the MHP. Doc. 28-3. The 2000 CDA represents more than a mere memorandum of understanding between the various jurisdiction. The 2000 CDA constitutes a provision of the Tribes’ governing law, equivalent to a section of the United States Code or the Montana Code. *See Fourstar v. Riden*, 2018 WL 6421736, at *2 (D. Mont. 2018). The Tribes entered into the 2000 CDA pursuant to Article VII, Section 1 of the Constitution and Bylaws of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. Doc. 28-3 at 1. The

Tribal Executive Board adopted tribal resolutions incorporating the 2000 CDA and deputizing Trooper Moon. *Id.* at 1–2.

The effect of the 2000 CDA proves relatively simple. The Tribes appoint certain MHP troopers to serve as commissioned law enforcement officers of the Tribes. *Id.* at 4. When the cross-deputized troopers operate within the exterior boundaries of the FPIR, they possess the same authority to enforce tribal law that tribal officers possess. *See Fourstar*, at *2.

FOWLER’S MOTION TO DISMISS

The Tribes sought to amend the 2000 CDA in 2003. Doc. 22-1 at 1. The sole purpose of the 2003 Amendment was to include Valley County, Montana, as a party to the 2000 CDA. The purpose, legal foundation, and required procedures of the 2000 CDA remained unchanged. *Compare* Doc. 28-1 *with* Doc. 22-1.

Fowler asserts that Trooper Moon lacked jurisdiction to stop Fowler within the FPIR because the 2003 Amendment does not satisfy the requirements of a Special Law Enforcement Commission (“SLEC”) agreement. Doc. 23 at 3; Doc. 22-2. Fowler cites the lack of a signature from the Secretary of the Interior as the invalidating deficiency of the 2003 Amendment. Doc. 71 at 4-5. Fowler’s argument confuses cross-deputization agreements between the State of Montana and the Tribes with SLEC agreements between the federal government and the Tribes.

The requirements of a SLEC agreement are irrelevant to the validity of the 2000 CDA. The initial traffic stop and subsequent search of Fowler's car did not implicate the federal government or tribal officers enforcing federal law. SLEC agreements represent cross-deputization agreements between the federal government and a tribe. *See Hopland Band of Pomo Indians*, 324 F.Supp.2d at 1068. SLEC agreements allow tribal law enforcement officers to enforce federal law in Indian Country. SLEC agreements require consent of the federal government because the federal government serves as a party to the agreement. Standard cross-deputization agreements (*i.e.*, non-SLEC agreements) do not require the signature of the Secretary of the Interior because the federal government has no involvement.

The lack of a signature from the Secretary of the Interior has no effect on the 2003 Amendment. The 2003 Amendment sought only to include Valley County, Montana, as a party to the 2000 CDA. Trooper Moon already possessed cross-deputization authority under the 2000 CDA. The tribal executive board confirmed Trooper Moon's status in a tribal resolution that provided that Trooper Moon's status would be continuous unless otherwise terminated under Section IX of the 2000 CDA. Doc. 28-2; Doc. 28-1 at 16. The 2003 Amendment has no bearing on the validity of the 2000 CDA as it relates to the original parties. Any deficiency in the 2003 Amendment would serve only to draw into question Valley County's status as a party to the 2000 CDA.

The 2000 CDA, not the 2003 Amendment, sought to cross-deputize certain MHP troopers. The Tribes commissioned Trooper Moon pursuant to the 2000 CDA and subsequently adopted his status by tribal resolution. Fowler's reliance on a technical deficiency to a later amendment proves unavailing. Trooper Moon's authority to act in this case derives from tribal law. Whether the federal government approved this in the 2003 Amendment proves wholly irrelevant.

THE TRAFFIC STOP.

As an MHP trooper, Trooper Moon possessed limited authority to enforce state law on Highway 2 against non-tribal members within the exterior boundaries of the FPIR. *See Bressi v. Ford*, 575 F.3d 891, 896 (9th Cir. 2009). As a cross-deputized officer, Trooper Moon possessed the authority of a tribal officer to enforce tribal laws against tribal members within the exterior boundaries of the FPIR. *See Fourstar*, at *2.

Trooper Moon's authority flowed from different sources as the stop progressed. Trooper Moon possesses the authority to stop Fowler within the exterior boundaries of the FPIR. *See United States v. Patch*, 114 F.3d 131 (9th Cir. 1997). State law enforcement officers may stop a car when the officers possess reasonable suspicion that the driver of the car has engaged in wrongdoing. *Terry v. Ohio*, 392 U.S. 1 (1968). Initial confusion existed regarding whether a state law enforcement officer with this authority may stop tribal members in Indian Country for state law

violations. The Ninth Circuit determined that “as a practical matter, without a stop and inquiry, it is impossible for [a state officer] to tell who is operating an offending vehicle.” *Patch*, 114 F.3d at 133–34. In other words, it would be impossible for a state law enforcement officer to conduct stops of non-tribal members properly without first stopping cars to determine whether the driver was a non-tribal member.

In this case, Fowler was driving a car without a license plate or a temporary tag, in violation of Montana law. Trooper Moon, having seen this infraction, possessed the authority as an MHP trooper to stop Fowler’s car to determine whether the driver was a non-tribal member to whom Trooper Moon could issue a state citation. *Id.* At the point that Trooper Moon recognized Fowler as a tribal member, Trooper Moon’s authority to enforce state law expired. *See id.*

As a cross-deputized officer, however, Trooper Moon possessed authority to investigate violations of tribal law and enforce tribal law against tribal members. Driving without a license plate violates tribal law. 17 Fort Peck Tribes Comprehensive Code of Justice (“C.C.O.J.”) § 132-A, *available at* <http://fptc.org/comprehensive-code-of-justice-ccoj/> (accessed Jan. 15, 2021). Trooper Moon also issued the following citations for violations of tribal law: mandatory financial responsibility (17 C.C.O.J. § 132), driving without a seatbelt (17 C.C.O.J. § 131), and driving without a license (17 C.C.O.J. § 101). Trooper Moon included with these citations a summons to tribal court. Doc. 28-3.

THE ID CARD.

The swan song of Fowler's Motion to Suppress argues that the 2000 CDA requires that Trooper Moon carry an identification card that identifies the agencies under which Trooper Moon possesses authority to act. Doc. 28-2 at 12. The 2000 CDA requires cross-deputized officers to carry identifications cards. Doc. 28-3 at 12. The 2000 CDA also requires cross-deputized officers to present their identification cards whenever an individual requests to see them. Doc. 28-2 at 12. The record indicates that neither the Tribes nor the MHP issued Trooper Moon an identification card.

Fowler fails to cite any legal authority for his claim that the evidence found in his car needs to be suppressed because Trooper Moon lacked an identification card. Trooper Moon's failure to carry an identification card constitutes, at worst, a violation of the Tribe's police policy. Fowler suffered no prejudice from this omission. The 2000 CDA requires cross-deputized officers to display their identification cards when an individual request to see them. Nothing in the record indicates that Fowler requested to see Trooper Moon's identification card.

Motions to suppress have constitutional roots in the Fourth Amendment. *See Simmons v. United States*, 390 U.S. 377, 389 (1968). "In order to effectuate the Fourth Amendment's guarantee of freedom from unreasonable searches and seizures, this Court long ago conferred upon defendants in federal prosecutions the

right, upon motion and proof, to have excluded from trial evidence which had been secured by means of an unlawful search and seizure.” *Id.* The Court fails to make the connection between any constitutional violation whose remedy is suppression with Trooper Moon’s non-prejudicial violation of the 2000 CDA. The Tribes may take this violation into consideration when deciding whether to renew Trooper Moon’s commission. Trooper Moon’s failure to carry an identification card does not warrant suppression. *See* Doc. 28-3 at 12.

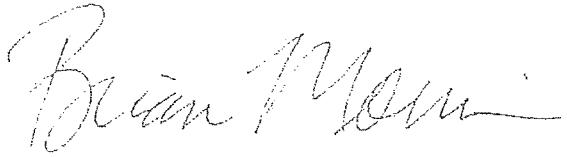
CONCLUSION.

The 2000 CDA constitutes a valid agreement by which the Tribes cross-deputized Trooper Moon to enforce tribal law. At no time did Trooper Moon exceed his authority as a cross-deputized officer. There exists no reason to suppress any of the evidence found at the time of the stop or as a result of the subsequent search.

IT IS HEREBY ORDERED:

1. Defendant Eric Bruce Fowler’s Motion to Suppress (Doc. 22) is **DENIED**.

Dated the 22nd day of January, 2021.



Brian Morris, Chief District Judge
United States District Court

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA GREAT FALLS DIVISION

UNITED STATES OF AMERICA

v.

ERIC BRUCE FOWLER

JUDGMENT IN A CRIMINAL CASE

Case Number: CR 20-30-GF-BMM-1
USM Number: 05653-046

Megan M. Moore
Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	1 of the Superseding Indictment
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1), 924 Prohibited Person In Possession Of Firearm	05/05/2019	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

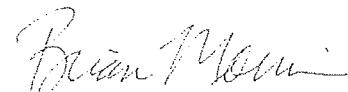
The defendant has been found not guilty on count(s)

Count(s) 2 and 3 of Superseding Indictment, and original Indictment is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

July 21, 2021

Date of Imposition of Judgment



Signature of Judge

Brian Morris, Chief Judge
United States District Court
Name and Title of Judge

July 22, 2021

Date

DEFENDANT: ERIC BRUCE FOWLER
CASE NUMBER: CR 20-30-GF-BMM-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 48 months. This term shall run concurrent with Valley County Docket DC-13-18 and Powell County DC-15-24.

- The court makes the following recommendations to the Bureau of Prisons:
 - (1) Defendant shall participate in the Bureau of Prisons' 500-hour Residential Drug Treatment Program (RDAP) if eligible.
 - (2) Defendant shall be placed at the Bureau of Prisons' facility in Sandstone, Minnesota.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at _____
 - a.m.
 - p.m.
 - on _____
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on _____
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ERIC BRUCE FOWLER
CASE NUMBER: CR 20-30-GF-BMM-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: ERIC BRUCE FOWLER
CASE NUMBER: CR 20-30-GF-BMM-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at <https://www.mtp.uscourts.gov/post-conviction-supervision>.

Defendant's Signature _____

Date _____

DEFENDANT: ERIC BRUCE FOWLER
CASE NUMBER: CR 20-30-GF-BMM-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must submit your person, residence, vehicles, and papers, to a search, with or without a warrant by any probation officer based on reasonable suspicion of contraband or evidence in violation of a condition of release. Failure to submit to search may be grounds for revocation. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. You must allow seizure of suspected contraband for further examination.
2. You must abstain from the consumption of alcohol and are prohibited from entering establishments where alcohol is the primary item of sale.
3. You must participate in substance abuse testing to include not more than 104 urinalysis tests, not more than 104 breathalyzer tests, and not more than 36 sweat patch applications annually during the period of supervision. You must pay part or all of the costs of testing as directed by the probation office.
4. You must participate in and successfully complete a program of substance abuse treatment as approved by the probation office. You must remain in the program until you are released by the probation office in consultation with the treatment provider. You must pay part or all of the costs of this treatment as directed by the probation office.
5. You must undergo a mental health evaluation and participate in a program for mental health treatment as recommended by the treatment provider and approved by the probation office. You must remain in the program until you are released by the probation office in consultation with the treatment provider. You must pay part or all of the costs of this treatment as directed by the probation office.
6. You must not possess, ingest or inhale any psychoactive substances that are not manufactured for human consumption for the purpose of altering your mental or physical state.

DEFENDANT: ERIC BRUCE FOWLER
 CASE NUMBER: CR 20-30-GF-BMM-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

	<u>Assessment</u>	<u>JVTA Assessment**</u>	<u>AVAA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	N/A	N/A	WAIVED	N/A

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ERIC BRUCE FOWLER
 CASE NUMBER: CR 20-30-GF-BMM-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payments of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
Special assessment shall be immediately due and payable. While incarcerated, criminal monetary penalty payments are due during imprisonment at the rate of not less than \$25 per quarter, and payment shall be through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk, United States District Court, Missouri River Courthouse, 125 Central Avenue West, Suite 110, Great Falls, MT 59404.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:
Final Order of Confiscation filed 06/16/2021, a 10 gauge Remington model 870 Winchester pump action shotgun (serial number S612839M) and a .22 Remington model 597 semi-automatic rifle (serial number A264134).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AWA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) SRTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court

APPENDIX D

**2003 AMENDMENT OF COOPERATIVE AGREEMENT
PROVIDING FOR CROSS-DEPUTIZATION OF LAW
ENFORCEMENT OFFICERS OF THE ASSINIBOINE AND SIOUX TRIBES OF
THE FORT PECK RESERVATION, THE CITY OF WOLF POINT,
THE CITY OF POPLAR, THE MONTANA HIGHWAY PATROL,
ROOSEVELT COUNTY AND VALLEY COUNTY**

Pursuant to Article VIII of the Cooperative Agreement providing for Cross-Deputization of Law Enforcement Officers of the Assiniboine and Sioux Tribes of the Fort Peck Reservation (the Tribes), the City of Wolf Point, the City of Poplar, the Montana Highway Patrol, Roosevelt County, and Valley County (the Agreement), the undersigned parties execute this writing to amend the Agreement to include Valley County as a party, and to provide that the future withdrawal or addition of individual state political subdivisions as parties does not effect the underlying agreement or require all parties to execute an amendment hereto.

The entire text of the original agreement is set forth. Thus, this writing is intended to replace the original agreement of the parties.

This Agreement is made by and between the Assiniboine and Sioux Tribes of the Fort Peck Reservation (the Tribes), the City of Wolf Point (Wolf Point), the City of Poplar (Poplar), Roosevelt County, Valley County, the State of Montana, Department of Justice, Highway Patrol, and the Secretary of the Interior of the United States.

Whereas, the Montana Department of Justice, Highway Patrol, the cities of Poplar and Wolf Point, Roosevelt County, and Valley County are authorized by the State-Tribal Cooperative Agreements Act, Mont. Code Ann. §§ 18-11-101 to -112, to enter into cooperative agreements with tribal governments to perform any service authorized by law, including cooperative law enforcement agreements, and each has authorized the signatories below to commit their respective jurisdictions to this agreement, and

Whereas, the Tribes are authorized by article VII, section 1 of the Constitution and the Bylaws of the Assiniboine and Sioux Tribes of the Fort Peck Reservation to negotiate agreements with state and local governments on all activities which may affect the Tribes, including cooperative law enforcement agreements, and have by Tribal Resolution Number approved this Agreement, and

Whereas, the Indian Law Enforcement Reform Act, 25 U.S.C., §§ 2801 to -2804, provides the Secretary of the Interior with authority to enter into and approve such cooperative law enforcement agreements, and

Whereas, the parties to this Agreement desire to provide the most efficient law enforcement and police protection to the residents of Montana and of the Fort Peck Reservation, and

Whereas, the Tribes have contracted with the United States to provide law enforcement services on the reservation pursuant to 25 U.S.C. § 450-450n, and

Whereas, the parties wish to establish a mechanism whereby citation and arrest authority of the Tribes over Indians on the reservation is extended to commissioned law enforcement officials of the State of Montana, Roosevelt County, Valley County, Poplar and Wolf Point, and citation and arrest authority of the State of Montana Highway Patrol, Roosevelt County, Valley County, Poplar, and Wolf Point over non-Indians on the Reservation is extended to commissioned officers of the Tribes,

Now, therefore, the parties agree to enter into this Agreement for the purpose of enhancing law enforcement services to all residents of the Reservation, cities, and counties involved, and of making the best use of scarce rural law enforcement services for the benefit of all Reservation residents.

I. Definitions

1. "Applicant Agency" means the agency requesting a commission for one of its officers as a commissioned law enforcement officer.
2. "BIA" means the United States Department of the Interior, Bureau of Indian Affairs.
3. "Commissioned Law Enforcement Officer" means any officer of an applicant agency who has been commissioned to enforce the laws of the commissioning agency as specified herein or in the officer's commission.
4. "Commissioning Agency" means the agency conferring a commission upon a law enforcement officer of an applicant agency.
5. "Indian" means any person who would be deemed an Indian as the term is used in 18 U.S.C. § 1153.
6. "Local jurisdictions" means the local political subdivisions of the State of Montana who are parties hereto, i.e., the cities of Poplar and Wolf Point, Valley County, and Roosevelt County.
7. "MBCC" means the Montana Board of Crime Control. See Mont. Code Ann. § 44-4-301 (1999).
8. "MLEA" means the Montana Law Enforcement Academy.
9. "Montana Highway Patrol," "MHP" or "State" means the Highway Patrol Division of the Montana Department of Justice, State of Montana.
10. "POST" means Peace Officers Standards and Training.
11. "Reservation" means the Fort Peck Indian Reservation as established in the Agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.
12. "The Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.
13. "Tribal Code" means the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

II. Purpose

1. The parties, having conferred together on a government-to-government basis, agree that pursuant to the terms of this Agreement, certain officers of the local jurisdictions and MHP will be appointed as commissioned law enforcement officers of the Tribes and that certain officers of the Tribes will be appointed as commissioned law enforcement officers of the local jurisdictions and MHP, and, further, that they will establish herein a procedure for continued recurrent commissioning of new officers.
2. It is the parties' intent that this Agreement serve over a long term to establish a good working relationship among all the parties to encourage and promote cooperative law enforcement among all the jurisdictions and enhance the delivery of effective law enforcement services to the residents of the Fort Peck Reservation. This Agreement is entered into in furtherance of the purposes of the Montana State Tribal Cooperative Agreements Act, the Indian Law Enforcement Reform Act, and the Indian Self Determination and Education Assistance Act. Nothing herein alters or conveys any judicial jurisdiction, including the authority to issue warrants for arrest or search and seizure, or to issue service of process.

III. Negative Declaration

1. This Agreement does not reflect, in this or any context, any party's position with respect to the jurisdictional authority of another. Nothing in this Agreement, or in any conduct undertaken pursuant to this Agreement, shall be construed as enlarging or diminishing the jurisdictional authority of either party except to the extent necessary to implement and effectuate the terms of this Agreement. Nothing herein affects any extant statutory or tribal code provisions regarding the sovereign immunity of the parties. Neither this Agreement nor the activities of the parties pursuant to this Agreement shall be used to affect the legal or equitable position of any party in any pending or future litigation. Nothing in this

Agreement shall be construed to impact or impair the extradition authority and processes of the parties.

2. Nothing in this Agreement shall be construed as waiving the sovereign immunity of the local jurisdictions and MHP or their employees from suit in Tribal or federal court. The state and its employees' liability for suit in state court are determined by existing state law except to the extent preempted by the Indian Law Enforcement Reform Act requirement of federal tort claim act coverage for state officers acting hereunder. Nothing in this Agreement waives the sovereign immunity of the Tribes or Tribal employees in state, federal or tribal court.

IV. Commissions

1. Qualifications for Commissions

A. Any officer of the Tribes who is commissioned as a law enforcement officer of any of the Local jurisdictions and MHP must satisfy the qualifications for peace officers set forth in Mont. Code Ann. § 7-32-303, within one year of the date of commissioning. These qualifications are described in Attachment A, hereto. Successful completion of a federal law enforcement academy course is deemed equivalent to the Montana Law Enforcement Basic Course. Within one year of being commissioned hereunder, all officers must take and pass the Montana equivalency test.

B. Any officer of any of the Local jurisdictions and MHP who is commissioned as a law enforcement officer of the Tribes must meet the qualifications for Reservation police set forth in Title XII, Section 205 of the Tribal Code and in the Law Enforcement Handbook, United States Department of the Interior, Bureau of Indian Affairs, Vol. 1, Sec. 4 (June 1, 1997), Attachment B, hereto. All officers of the Local jurisdictions and MHP commissioned as law enforcement officers of the Tribes must also complete a "Criminal Jurisdiction in Indian Country" training course within one year of commissioning.

C. In recognition of the rich and distinct cultural backgrounds of the Indian members of the community and the law enforcement profession, all commissioned law enforcement officers must also complete, in addition to any cultural sensitivity training included in MLEA or BIA courses, one day of cultural diversity training.

D. All parties agree to notify each other of local in-service training courses to be offered to their officers and to offer such training to the officers of any other party.

2. **Commissioning Procedure**

A. The Local jurisdictions and MHP may nominate qualified officers to be considered by the Tribes' commissioning agency for appointment as commissioned law enforcement officers of the Tribes. The Tribes may nominate qualified officers to be considered by the appropriate Local jurisdictions and MHP commissioning agencies for appointment as commissioned law enforcement officers of the Local jurisdictions and MHP. Unless specifically limited by its own terms, each commission shall confer the same law enforcement authority on the commissioned officer as that of the officers of the commissioning agency. It is the intent of the parties to this Agreement that all such commissioned law enforcement officers shall be treated as federal employees in accordance with the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804, and with the Federal Tort Claims Act, 28 U.S.C. §§ 2401, 2671-80, when performing duties under their commissions.

B. Commission applications should be sent to the appropriate law enforcement agencies and records of all commissions and decommissions must be also sent to the MBCC, BIA, and to the Tribes' Department of Law and Justice for record maintenance. When seeking a commission from a Local jurisdiction or MHP, the Tribes must send the written application for commission and the required accompanying documentation to: Roosevelt County Sheriff's Office, 400 Second Avenue South, Wolf Point, MT. 59201-1600, which shall forward the application

and materials to the appropriate state party, and send a copy to the Billings BIA District Five Commander. The Local jurisdictions and MHP, when applying for a commission from the Tribes, must send the written application for commission and the required accompanying documentation to: Department of Law and Justice, P.O. Box 1027, Poplar, Montana 59255, and must send a copy to the Billings BIA District Five Commander. Each party, upon issuing a commission for one of its officers and/or upon receiving a commission for one of its officers, must notify Mr. Jim Oberhofer, P.O.S.T. Council, MBCC, or his successor, Mr. Calvin Red Thunder, Public Safety Director, or his successor, and the Billings BIA District Five Commander, Ed Naranjo, or his successor, of the details of the commission.

C. Upon receiving nominations, the commissioning agency may conduct interviews and review the nominees' training qualifications. The commissioning agency may thereafter appoint such commissioned law enforcement officers as it deems proper. The parties agree that the standards contained in Mont. Code Ann. § 7-32-303 and in the Law Enforcement Handbook, United States Department of the Interior, Bureau of Indian Affairs, Vol. 1, Chapter 2, Sec. 4, provide the appropriate minimum standards for the issuance of commissions. Each commissioning agency must provide to the commissioned law enforcement officers identification cards containing the information indicated in section VI, paragraph 1 of this Agreement.

D. To allow the parties most efficiently to coordinate law enforcement commissions, upon application therefore, the parties may apply for and issue interim commissions. Upon application as specified in this section 2, the parties may seek interim commissions to be effective immediately upon receipt of approval of the commissioning party and effective only for thirty days. This process will allow for interim commissions to be effective upon receipt of provisional approval and pending receipt and approval of completed applications for commission. Interim commissions will expire of their own terms after thirty

days, and may only be issued for new hires who have successfully passed the P.O.S.T. basic course, or equivalent. The application for interim commission must be clearly labeled as such and must include the following minimum information about the person for whom the interim commission is sought: name, date of birth, height, weight, color of hair and eyes, social security number, date of hire, date of completion of P.O.S.T. basic or equivalent, and title or position in law enforcement agency. The application for interim commission must be signed by the liaison for the nominating agency, but it need not be accompanied by supporting documentation. The parties may apply for and receive interim commissions by fax or electronic communication, so long as a hard copy of the request and communication are saved in the parties' files.

3. **Arrest and Investigative Authority**

A. Law enforcement officers commissioned by the Tribes, when acting within the Reservation, shall have the same authority to arrest Indians for violations of Titles VII, IX, and XVII of the Tribal code and shall have the same authority to issue citations and/or summonses and to accept bond as officers of the Tribes. Upon arresting any Indian as authorized by this Agreement, commissioned officers must promptly deliver the individual to the Tribal detention facility or to another Tribally commissioned or Tribal law enforcement officer for further processing pursuant to Tribal laws. Each officer making such an arrest must inform the arrestee of his or her commission from the Tribes for the purpose of enforcing Tribal law.

B. Law enforcement officers commissioned by Roosevelt County, when acting within the Reservation and within the County, shall have the same authority to arrest and cite non-Indians for violations of state and county laws as officers of the Roosevelt County Sheriff Department

C. Law enforcement officers commissioned by Valley County, when acting within the Reservation and within the County, shall have the same authority to

arrest and cite non-Indians for violations of state and county laws as officers of the Valley County Sheriff Department.

D. When acting under the commission of the MHP, commissioned law enforcement officers shall have the same authority as officers of the MHP to arrest and cite non-Indians for traffic offenses and other violations of law occurring on the public roadways of the State in the areas of the Reservation.

E. When acting under commission of either of the city parties within the boundaries of the commissioning cities, commissioned officers shall have the same authority as the city law enforcement officers to arrest and cite non-Indians for violations of state, county, municipal laws and ordinances. Commissioned officers shall have the same authority to issue citations and/or summonses and to accept bond as officers of the commissioning agency.

F. Upon arresting any non-Indian as authorized herein, commissioned officers commissioned by the local jurisdictions and MHP must promptly deliver the individual to the appropriate state or municipal detention facility, appropriate state or municipal law enforcement officer, or to the appropriate state or municipal court for further processing under state or municipal law. Each commissioned law enforcement officer making such an arrest must inform the arrestee of his or her commission for the purpose of enforcing state or municipal law.

G. The parties to this Agreement recognize that the applicability of federal and tribal criminal laws in Indian country may depend on whether either the suspect or the victim is Indian. The parties further recognize that state criminal laws do not apply to Indians in Indian Country. The parties further recognize that tribal criminal laws do not apply to non-Indians. The parties agree that nothing in this Agreement makes any law applicable to persons or conduct where it would not otherwise be applicable under tribal, federal, state or municipal law. Nothing herein affects state, federal, or tribal codes or statutes.

H. Any party hereto may request investigative assistance from an officer commissioned by that party. Such assistance shall be rendered to the extent

possible so long as it does not interfere with the commissioned officer's normal workload, is in response to a specific request by an officer of the commissioning agency, or is related to an arrest carried out by the commissioned officer.

4. Forms

When acting under the authority of a commissioning agency, commissioned officers shall issue citations or other legal process on their own forms, which shall clearly be marked as those of the agency for whom the commissioned officer is an employee. Thus, a Local jurisdiction or MHP officer acting under commission from the Tribes shall issue citations (notices to appear and complaint) on forms provided by the appropriate Local jurisdiction or MHP party. When a Tribal officer acting as a commissioned law enforcement officer of the Local jurisdictions and/or MHP issues a citation to a non-Indian, that citation shall be issued on a Tribal form. All other legal forms or other legal process tools necessary for the commissioned officers to carry out their duties shall be provided by the commissioning agencies. That is, for example, a Tribal officer acting under a commission from Roosevelt County in arresting a non-Indian for driving while impaired, shall issue the initial citation/summons on a Tribal form. All subsequent paperwork processing that arrest shall be from Roosevelt County.

V. Territorial Limitation

The authority conferred by this Agreement and the processes outlined herein shall be exercised only within the exterior boundaries of the Fort Peck Indian Reservation. A commissioned law enforcement officer may proceed in hot pursuit of an alleged offender across the exterior boundaries of the Reservation and has such authority to arrest and hold in custody an alleged offender as the officer would have had if the alleged offender had been apprehended at the location where the alleged offense was committed. Further, this Agreement is not intended to impair or restrict the ability of any commissioned law enforcement officer to

respond to mutual aid requests from other jurisdictions in accordance with Montana law.

VI. Status of Commissioned Law Enforcement Officers

1. Identification

A. All commissioning agencies shall issue identification cards, and may issue insignia to officers commissioned pursuant to this Agreement. All commissioned law enforcement officers must wear their insignia, if issued, and carry the identification cards with them at all times while acting under the authority of the commissioning agency. The identification cards must bear signatures or other insignia to identify each of the commissioning agencies for which the commissioned law enforcement officer is authorized to act. Commissioned law enforcement officers must immediately display these identification cards to individuals upon request. The identification cards must include the following identification data: name and recent photograph of the holder of the commission; the date of birth; height; weight; eye and hair color; and social security number. The holder of the commission and the authorized representative(s) of the commissioning agency(ies) must sign all identification cards.

2. Compensation, Expenses and Employment Relationship

A. Each applicant agency shall remain solely responsible for the ordinary and extraordinary expenses of its officers while the officers are performing functions as commissioned law enforcement officers on behalf of commissioning agencies. Commissioned law enforcement officers remain employees of their applicant agencies and are subject to all rights, responsibilities, and standard chain of command as employees of their applicant agencies.

B. This agreement does not affect the internal chains of command of the parties. No independent contractor relationship or employment relationship is formed as a result of this Agreement between commissioned law enforcement

officers and commissioning agencies. However, all such commissioned law enforcement officers shall be treated as federal employees, in accordance with the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804, the Federal Tort Claims Act, 28 U.S.C. §§ 2401, 2671-80, and to the extent applicable, the Indian Self Determination and Education Assistance Act, 25 U.S. C. §§ 450-450n, when performing duties under their commissions.

3. **Liability and Insurance**

A. The BIA agrees that all commissioned law enforcement officers shall be treated as federal employees, in accordance with the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804, the Federal Tort Claims Act, 28 U.S.C. §§ 2401, 2671-80, and other applicable federal laws, when performing duties under their commissions. The Tribes assume no liability and will not defend or indemnify for claims arising from the actions of any of the local jurisdictions or their officers, or MHP or its officers commissioned by them pursuant to this Agreement. The local jurisdictions and/or MHP assume no liability and will not defend or indemnify for claims arising from the actions of the Tribes or any Tribal officers commissioned by them pursuant to this Agreement. Each party shall remain solely responsible for the ordinary expenses of its employees and its property, including insurance, throughout the term of this Agreement.

B. Except as provided by the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804, the Federal Tort Claims Act, 28 U.S.C. §§ 2401, 2671-80, and to the extent applicable, the Indian Self Determination and Education Assistance Act, 25 U.S. C. §§ 450-450n, nothing in this Agreement is intended to alter the parties' insurance obligations toward their employees or others.

C. To the extent this Agreement does not apply, that is for mutual aid requests among the local jurisdictions and MHP, requests for mutual aid shall be governed by Mont. Code Ann., title 44, chapter 11, parts 1 to 3.

VII. Suspension and Termination of Commission

1. Automatic Suspension or Termination of Commission

- A. Each party to this Agreement shall promptly notify the appropriate commissioning agency(ies), MBCC, and the BIA District Five Commander in the event that any one of its officers serving as a commissioned law enforcement officer is suspended, terminated, or resigns from official duties.
- B. All suspended, terminated or resigned officers shall automatically and immediately be relieved, without further action, of their official capacity to exercise commissioned law enforcement authority under this Agreement.
- C. Should any person be subsequently reinstated to the official duties in the jurisdiction from which the person was suspended, terminated, or had resigned, such person shall not be automatically reinstated as a commissioned law enforcement officer under this Agreement. Instead, such person must seek a new commission under the procedures and standards set forth in Section IV of this Agreement.

2. Conditions, Suspensions and Terminations

- A. All commissioning agencies have the authority with good cause to revoke, suspend or place conditions on any commission issued under this Agreement. Any commissioning agency may temporarily suspend or place conditions on the commission of any officer, provided, however, that 30 days prior to any final revocation of a commission, the commissioning agency shall provide written notice of the revocation, and the specific reasons therefore, to the commissioned law enforcement officer and to his or her applicant agency. The commissioned law enforcement officer and/or his or her applicant agency shall have a reasonable opportunity to respond to the notice of revocation or condition. However, the decision of the commissioning agency shall be final. A commissioned law enforcement officer whose commission is revoked or suspended must immediately return his or her identification card to the commissioning agency.

B. All commissioned law enforcement officers must fully comply with the enforcement policies and regulations of the commissioning agency when exercising authority under their commissions. Failure to comply with this requirement shall be grounds for suspension or revocation of the officer's commission.

C. All suspensions, terminations or special conditions placed on commissions shall be filed with the MBCC and the Tribes' Department of Law and Justice for record-keeping purposes.

VIII. Amendment

Except that a local jurisdiction or the MHP may withdraw from this Agreement, and additional state political subdivisions may become a party hereto without affecting the underlying consent of the other remaining parties, this Agreement may not be altered, changed, or amended, except by written instrument executed by all parties and attached hereto. All parties hereto agree that one or more state political subdivisions may withdraw or be added as a party hereto without affecting the underlying agreement of the remaining parties. Should any party hereto terminate its participation, it shall do so by notice as provided herein. Should any state political subdivision become authorized to participate herein under all the same terms and conditions as the other parties, it may bind itself to this Agreement by sending notice of such authorization, including an effective date therefore, to the undersigned parties at the addresses below.

IX. Effective Date and Term

A. This Agreement shall become effective upon execution by the parties. Each officer must be commissioned by compliance with Article VI and issuance of the identification card or other insignia by the commissioning agency. Unless otherwise provided, the term of each commission shall continue from year to year.

B. Unless terminated as provided herein, this Agreement shall continue from year to year. Any party shall have the right, however, to terminate this Agreement

4. Communications to the city of Poplar shall be sent to:

Kevin Buckles, Mayor, City of Poplar
208 Third Avenue West
Poplar, MT 59255

5. Communications to the City of Wolf Point shall be sent to:

Mathew Golick, Mayor, City of Wolf Point
201 Fourth Avenue South
Wolf Point, MT 59201

6. Communications to the BIA shall be sent to:

Ed Naranjo
District 5 BIA Law Enforcement Commander
Federal Building
316 North 26th Street
Billings, Montana 59101

7. Communications to Valley County shall be sent to:

Sheriff Glen Meier
501 Court Square # 10
Sheriff's Office
Glasgow, MT 59230

The parties evidence their agreement hereto by affixing their signatures below.

Arlyn Headdress
ARLYN HEADDRESS, CHAIRMAN
ASSINIBOINE AND SIOUX TRIBES
THE FORT PECK RESERVATION

6/30/03
DATE

Jim Shanks
JIM SHANKS
ROOSEVELT COUNTY COMMISSIONER

7/2/03
DATE

and all commissions issued hereunder, with or without cause, upon written 30 days' notice to the other parties.

C. Upon execution by all parties, the State shall file this Agreement with the appropriate officials in accordance with the Montana State/Tribal Cooperative Agreements Act.

X. Liaisons

All parties agree timely to notify the others of the successors to the individuals listed as liaisons herein, and to replace the following names in accordance with such notification:

1. Notices sent to the State shall be sent to:

Mike McGrath
Attorney General
P.O. Box 201401
Helena, MT 59620-1401

Col. Shawn Driscoll,
Chief, Montana Highway Patrol
P.O Box 201419
Helena, MT 59620-1419

Jim Oberhofer, P.O.S.T. Council
Crime Control Division, P.O. Box 201408
Helena, MT 59620-1408

2. Communications to the Tribes shall be sent to:

Arlyn Headdress, Chairman
Assiniboine and Sioux Tribes of the Fort Peck Reservation
P.O. Box 1027
Poplar, MT 59255-1027

3. Communications to Roosevelt County shall be sent to:

John Grainger, Sheriff
400 Second Avenue South
Wolf Point, MT 59201-1600

Ferris Toavs
FERRIS TOAVS
ROOSEVELT COUNTY COMMISSIONER

7-1-2003
DATE

Gary MacDonald
GARY MACDONALD
ROOSEVELT COUNTY COMMISSIONER

7-1-03
DATE

Kevin Buckles
KEVIN BUCKLES
MAYOR, CITY OF POPLAR

7-10-03
DATE

Matthew Golik
MATTHEW GOLIK
MAYOR, CITY OF WOLF POINT

7-11-03
DATE

Dave Pippin
DAVE PIPPIN
VALLEY COUNTY COMMISSIONER

6-30-03
DATE

David Reinhardt
DAVID REINHARDT
VALLEY COUNTY COMMISSIONER

6-30-03
DATE

Ron Gilbertson
RONALD GILBERTSON
VALLEY COUNTY COMMISSIONER

6-30-03
DATE



MIKE MCGRATH
STATE OF MONTANA
ATTORNEY GENERAL
FOR THE MONTANA HIGHWAY PATROL

DATE

ED NARANJO
DISTRICT FIVE COMMANDER
BIA DESIGNEE OF THE U.S. SECRETARY
OF THE INTERIOR

DATE

TRAINING APPENDICES

APPENDIX E



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Billings, Montana 59101

IN REPLY REFER TO:
Office of Justice Services
400-647-3003

February 16, 2016

Floyd Azure, Chairman
Fort Peck Executive Board
501 Medicine Bear Rd
Poplar, MT 59255

Dear Chairman Azure,

This letter is to address the 2003 Amendment of Cooperative Agreement Providing for Cross-Deputization of Law Enforcement Officers of the Aasiniboine and Sioux Tribes of the Fort Peck Reservation, the City of Wolf Point, the City of Poplar, the Montana Highway Patrol, Roosevelt County and Valley County which was enacted by resolution 1723-2003-6.

After careful review of the cooperative agreement, it has been concluded that this is the tribe's version of the Bureau of Indian Affairs (BIA), Special Law Enforcement Commission (SLEC) Deputization Agreements. In Section VI, Status of Commissioned Law Enforcement Officers and Part 3, Liability and Insurance of the agreement states the following: "The BIA agrees that all commissioned law enforcement officers shall be treated as federal employees..." In 2003, when this agreement was signed by the above parties, the tribe failed to gain the BIA's signatory approval.

The tribe's agreement does not meet the requirements of an official BIA SLEC deputization agreement. Any and all parties to this agreement are not considered BIA Special law enforcement commissioned officers, nor are they considered federal employees under that same process.

With that being said, there is a process in which the above parties can obtain SLEC status. If the tribe is interested in this endeavor please contact our office.

EXHIBIT B

If you have any questions, please do not hesitate to call me at 406-657-5936.

Sincerely,



Douglas Noseep
Special Agent In Charge

EXHIBIT B