



VIEW OF THE LOWER BRULE SIOUX RESERVATION IN SOUTH DAKOTA

# TFA

## Monthly Newsletter

### February 2015

IN THE NEWS

## Lower Brule Sioux: Appreciating the Lessons From a Troubling Report

by Kristi Jackson

Many of you saw the report that was released last month titled "Secret and Unaccountable: The Tribal Council at Lower Brule and Its Impact on Human Rights" by a group called Human Rights Watch ("HRW"). The report garnered national attention for a few reasons - its allegations of improprieties are scandalous and the accounts of the activities of the Tribe are revealed with such unusual detail - it provides a look into tribal decision making and missteps that are nearly always kept close to the vest.

Essentially, the report is an account of the Tribe's alleged misuse of government assets, the council's dealings for their personal gain and a very large failed acquisition that was intricately structured and financed with federal government funding - leaving the US government on the hook to repay the Tribe's debts.

Clearly, there are two sides to every story - and some of the allegations may not be proven true, regardless however, there are takeaways here for all of us to keep top of mind when dealing with governance, diversification, diligence and debt.

**GOVERNANCE** Nearly all financing documents require that leadership and management disclose all of their business dealings with the borrower. Lenders look for "arm's length" transactions - contracts that would be the same the tribe would enter into with a third party. Additionally, most lenders as part of their diligence into a tribe's decision-making look for transparency and evidence of open dialog between tribal leadership and membership. This is important to lenders as they want to make sure they are lending to stable tribal governments: they feel that tribes that keep

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The Jicarilla Apache Nation Announces Agreement on New Gaming Compact

1/1/15 - [IndianCountryToday.com](http://IndianCountryToday.com)

Idaho Tribes Call 'Instant Racing' Machines an 'Illegal Hoax'

1/6/15 - [Spokesman.com](http://Spokesman.com)

New Bill Would Legalize, Regulate Online Poker in Washington State

1/11/15 - [OnlinePokerReport.com](http://OnlinePokerReport.com)

Deal Would Allow More Gambling Machines at Tribal Casinos

1/25/15 - [Columbian.com](http://Columbian.com)

Terms of Proposed Gambling Compacts Raise Concerns

1/26/15 - [SantaFeNewMexican.com](http://SantaFeNewMexican.com)

Gov. Walker Rejects Proposal for Menominee Tribe's Kenosha Casino

1/26/15 - [IndianCountryToday.com](http://IndianCountryToday.com)

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members in the loop are less vulnerable to challenges, referenda and unrest.

## DIVERSIFICATION AND ACQUISITIONS

HRW outlines the Lower Brule's acquisition of the failing Westrock Advisors brokerage firm. While the intent here was positive - acquire a business that will allow the tribe to diversify its investments - this particular business was insolvent while it was up for sale and was very far afield from the knowledge-base and capabilities of the Tribe. In addition, the scale of an acquisition should be in line with a tribe's overall net worth and capacity. In this case, HRW points out that the \$20mm acquisition, in an area very foreign to the Tribe's core, was at a price that represented nearly 60% of the Tribe's annual budget.

**DILIGENCE** Any investment demands significant due diligence and a thorough understanding of what is being purchased. Basic questions need to be asked with any red flags taken seriously. Based on the report, there seemed to be little diligence done on Westrock prior to the acquisition. There were numerous red flags that should have kept the tribe from pursuing the business: Westrock was unprofitable, there were accounting restatements, they were repeatedly

sanctioned by industry regulators, and they had reportedly defaulted on its debts with licenses revoked due to management's unethical dealings. Any one of these allegations is serious enough to warrant an acquirer to back away from a deal.

**DEBT** Finally, the Westrock acquisition was financed using a very complicated structure. It involved selling shares, multiple shell companies, the establishment of a tribal CDFI, using federal tax credits and US federal government guaranteed loans. Any one of these methods is complex - HRW outlines a plan that involved them all. Tribal leadership has a fiduciary responsibility to be stewards of the tribe's resources and be keenly aware of the financial obligations it commits to on

the tribe's behalf. Questions need to be asked - regularly - to make sure that leaders understand the basics of the obligations they are voting to commit to. Complicated structures can be a red flag in themselves - if a deal cannot be easily financed in an understandable way, it often is too risky to undertake.

Tribes need to know and understand the risks associated with acquisitions and debt obligations. In this case, while there may be parts of this Lower Brule story that are proven untrue, many of the lessons are a wake-up call. Please call us to discuss more of these insights and how you can protect your tribe.

To read the full Human Rights Watch report, [click here](#).



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