

Memorandum

To: Indian Affairs Committee
CC: Damian Lara
From: Jessica Hernandez, General Counsel to Governor Martinez
Date: July 19, 2012
Re: Indian Gaming Compact Negotiations

In response to a request from the Legislative Council Service, this memorandum provides an update on the status of Indian gaming compact negotiations.

Overview of Existing Compacts

There are two existing gaming compacts in New Mexico. They are generally referred to as the "2001 Compact" and the "2007 Compact."

Compact Expiration Dates

The 2001 Compact will expire at midnight on June 30, 2015. The 2007 Compact will expire at midnight on June 30, 2037.

Tribes Requesting Negotiations

All five of the tribes that are parties to the 2001 Compact have requested that the State enter into negotiations. Those tribes are the Jicarilla Apache Nation, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Acoma, and the Pueblo of Pojoaque.

Governor's Designated Representative

Pursuant to the New Mexico Compact Negotiation Act, 11-13A-1 to 11-13A-5 NMSA 1978, Governor Martinez designated me as her representative to negotiate the terms of a new or amended compact with the Jicarilla Apache Nation, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Acoma, and the Pueblo of Pojoaque. The written designation is attached for the Committee's reference. I will select other individuals to participate on the State's negotiating team as appropriate.

Timeframe for Negotiations

Compact negotiations are a fluid and complex process. Given the importance of gaming compact negotiations, it is not appropriate to impose any specific deadline for completion. I have emphasized to the tribes that I will work with them to move negotiations forward, but that the State will not sacrifice quality for speed. I have had several meetings with the negotiating teams for the five tribes involved in the 2001 Compact. Negotiations will continue in an effort to reach a compact that is acceptable to the State and the tribes. The timeframe for negotiations will allow for the necessary review and approval by the New Mexico Legislature and the Department of Interior prior to the compact's expiration on June 30, 2015.

Involvement of Joint Legislative Committee on Compacts

Pursuant to the Compact Negotiation Act, once the State and the tribes agree upon a proposed compact, the Governor is required to submit it to the joint legislative committee on compacts within five days of the conclusion of negotiations. There is a statutorily defined process through which the committee can propose specific modifications and request that the Governor resume negotiations. The Governor and the tribes may choose whether to negotiate further. After the opportunity to suggest proposed modifications, the committee must submit the proposed compact to the legislature to approve or disapprove.



State of New Mexico

Susana Martinez
Governor

April 23, 2012

President Levi Pesata
Jicarilla Apache Nation
P.O. Box 507
Dulce, NM 87528

President Frederick Chino, Sr.
Mescalero Apache Tribe
P.O. Box 227
Mescalero, NM 88340

President Ben Shelly
Navajo Nation
P.O. Box 2040
Window Rock, AZ 86515

Governor Randall Vicente
Pueblo of Acoma
P.O. Box 309
Acoma, NM 87034

Governor George Rivera
Pueblo of Pojoaque
78 Cities of Gold Road
Santa Fe, NM 87506

Re: Designation of Representative Pursuant to NMSA 1978, Section 11-13A-3(C)

Dear Tribal Leaders:

As you know, the 2001 Gaming Compact will expire on June 30, 2015. In anticipation of that expiration date, I have received letters from the following governments requesting compact negotiations pursuant to NMSA 1978, Section 11-13A-3(A) of the Compact Negotiation Act: the Jicarilla Apache Nation, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Acoma, and the Pueblo of Pojoaque. This letter is in response to those requests for negotiation and serves as my designation of a representative to negotiate the terms of a new compact or an amendment to the 2001 Gaming Compact in advance of the expiration date of the current compact.

In accordance with NMSA 1978, Section 11-13A-3(C), I hereby designate Jessica M. Hernandez, General Counsel, as my representative to negotiate the terms of a new compact or an amendment to the 2001 Gaming Compact. Ms. Hernandez' contact information is as follows:

Jessica M. Hernandez, General Counsel
Office of the Governor
State Capitol Building
490 Old Santa Fe Trail, Suite 400
Santa Fe, NM 87501
Telephone: (505) 476-2200
Facsimile: (505) 476-2207
jessica.hernandez@state.nm.us

Please direct all correspondence related to compact negotiations to Ms. Hernandez.

I have directed Ms. Hernandez to begin meeting with representatives from the five involved governments and to negotiate new compact terms that are acceptable to all parties involved. Please expect more detailed correspondence under separate cover regarding the scheduling of the first meeting.

I look forward to a very successful and mutually beneficial negotiation effort between the State of New Mexico, the Jicarilla Apache Nation, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Acoma, and the Pueblo of Pojoaque.

Sincerely,

A handwritten signature in black ink, appearing to read "Susana Martinez", written in a cursive style.

Governor Susana Martinez

cc (pursuant to NMSA 1978, Section 11-13A-3(C) :

Gary K. King, Attorney General
Ben Luján, Speaker of the House of Representatives
Timothy Z. Jennings, President Pro Tempore of the Senate



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
SOUTHWEST REGIONAL OFFICE
1001 Indian School Road, N.W.
Albuquerque, New Mexico 87104



IN REPLY REFER TO:
420 - Division of Real
Estate Services

MAY 15 2012

CERTIFIED MAIL / RETURN RECEIPT REQUESTED

The Honorable Susana Martinez
Governor, State of New Mexico
490 Old Santa Fe Trail
Room 400
Santa Fe, New Mexico 87501

Dear Governor Martinez:

The Fort Sill Apache Tribe (Tribe) has informed the Secretary of the Interior it wishes to begin the process of developing/operating a Class III Gaming Facility on its property located in Akela, Luna County, State of New Mexico (Property). This notice is being sent to you in accordance with the Indian Gaming Regulatory Act of 1988 (IGRA), 25 USC §§2701 et seq. The Office of Indian Gaming Management has determined that no further restrictions to gaming exist on the property. The Bureau of Indian Affairs is now prepared to initiate the consultation process required to support the requisite two-part determination under Section 20 of the IGRA, 25 USC §2719(b)(1)(A) and Title 25 Code of Federal Regulations Part 292.19. This letter serves as the Southwest Region's formal request to commence the two-part consultation process to allow the Tribe to conduct on-reservation gaming activities on the 30.00 acres of tribal trust land.

The Property was acquired in trust on behalf of the Tribe pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 985; 25 USC §465). The land is located approximately 19 miles east of the Town of Deming, Luna County, New Mexico. The Property is described in metes and bounds, within Section 11, Township 24 South, Range 6 West, New Mexico Principal Meridian, of the U.S.G.L.O. Surveys. Section 20(a) of the IGRA prohibits gaming on land acquired in trust after October 17, 1988, subject to certain exceptions. One of the exceptions to the prohibition appears at §2719(b)(1)(A) which provides as follows:

“...the Secretary, after consultation of the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian

2012 MAY 17 PM 12:49
Office of the Governor

tribe and its members and would not be detrimental to the surrounding community, but only if the governor of the state in which the gaming activity is to be conducted concurs in the Secretary's determination;..."

For the purposes of the above section, the BIA will treat the 30.00-acre tribal trust land as "newly acquired lands". Accordingly, the Secretary of the Interior must complete the above-stated two-part determination consultation by addressing the following criteria:

25 CFR §292.20(a)(1) Describe or show the location of the proposed gaming establishment:

A 30.00-acre tract of land located east of Deming at the northwest corner of Interstate 10 and County Road 8049, Luna County, New Mexico, in Section 11, Township 24 South, Range 6 West, New Mexico Principal Meridian, of the U.S.G.L.O. Survey.

25 CFR §292.20(a)(2) Provide information on the proposed scope of gaming:

The property will be used for the development and operation Class III gaming within a 30,000 square-foot building.

25 CFR §292.20(a)(3) Include other information that may be relevant to a specific proposal, such as the size of the proposed gaming establishment, if known:

The site will consist of a 30,000 square-foot building that will house all gaming operations. Approximately 650 slots, 7 table games, one full service restaurant and a cultural center will be located on-site. Parking will be available for 600 cars, 40 RV's, trucks and employees. The casino and associated operations will employ between 280 and 300 individuals.

Within sixty (60) days after you receive this letter, we are asking you to submit your comments, if any, on the following seven areas:

- 25 CFR §292.20(b)(1) Information regarding environmental impacts on the surrounding community and plans for mitigating adverse impacts;
- 25 CFR §292.20(b)(2) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;
- 25 CFR §292.20(b)(3) Anticipated impact on the economic development, income, and employment of the surrounding community;
- 25 CFR §292.20(b)(4) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them;
- 25 CFR §292.20(b)(5) Anticipated costs, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment;
- 25 CFR §292.20(b)(6) Any other information that may assist the Secretary in determining whether the proposed gaming establishment would or would not be detrimental to the surrounding community; and

- Any other information that may assist the Secretary in determining whether to approve the gaming facility/operation.

Please address the information and comments to:

Regional Director
Southwest Regional Office
Attention: Division of Real Estate Services
Bureau of Indian Affairs
1001 Indian School Road, N.W.
Albuquerque, New Mexico 87104

Any comments or request for consultation received within sixty (60) days of the date of receipt of this letter at the above address will be considered. You may be granted an extension of time to furnish comments provided you submit a written justification requesting such extension within sixty (60) days of receipt of this letter. An extension of thirty (30) days may be granted. Your comments will be made available to the applicant.

If you have questions or need further information, please contact Mike Anspach, Realty Specialist, at (505) 563-3335.

Sincerely,



Regional Director

cc: The Honorable Jeff Houser, Chairman, Fort Sill Apache Tribe