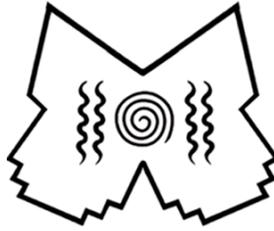


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**State of New Mexico Revenue Stabilization and Tax Policy Committee
Las Cruces, NM – New Mexico State University
September 29, 2014**

**UPDATE ON GAMING COMPACTS WITH THE FEDERAL GOVERNMENT
TESTIMONY OF GEORGE RIVERA, GOVERNOR
PUEBLO OF POJOAQUE**

Chairman Sandoval, Honorable Members of the Committee, I am George Rivera, Governor of the Pueblo of Pojoaque. On behalf of our Tribal Council, the Pueblo would like to thank you for inviting me to offer comments to the Committee.

As you are aware the Pueblo currently operates under the 2001 Tribal-State Gaming Compact. We are in the process of obtaining Secretarial Procedures from the United States Department of the Interior (“DOI”). By way of background, the Pueblo initiated compact negotiations through a letter addressed to Governor Susana Martinez in May 2011. A year later, on April 23, 2012, Governor Martinez appointed Jessica Hernandez and Jeremiah Ritchie to negotiate on her behalf. The Pueblo of Pojoaque along with the Pueblo of Acoma and the Mescalero and Jicarilla Apache Tribes faithfully participated in negotiation meetings with the State’s appointed negotiators for nearly two years until we determined that negotiations had

failed and filed a complaint in Federal District Court on December 13, 2013 for the State's failure to conclude compact negotiations in good faith.

The Pueblo's Proposed Procedures are actually a tribal/federal compact instead of a tribal/state compact. The Pueblo only became eligible for such a tribal/federal compact because Governor Martinez refused to consent to the remedial process established by Congress under the Indian Gaming Regulatory Act of 1988 ("IGRA") when negotiations fail. Prior to the passage of IGRA, Indian gaming was a tribal/federal process that excluded states. Congress knew when it passed IGRA, that by providing states a role in the process, there would be disagreements at the negotiation table and Congress created a remedy. Pojoaque filed its lawsuit as provided for under IGRA and Governor Martinez refused to consent to the federal court's jurisdiction. The consequence of her refusal is that the Pueblo is now eligible for a tribal/federal compact with the DOI. Governor Martinez dealt the State out of the process. Simple as that.

The tribal/federal compact proposed by Pojoaque contains all of the provisions required by federal law, including but not limited to, minimum internal control standards, provisions to ensure the integrity of the games, public and workplace health and safety standards, patron safety provisions, and various dispute resolution provisions. The National Indian Gaming Commission ("NIGC") will have the oversight authority to enforce each and all of these provisions. In stark contrast to most every other state, New Mexico's compacts only empower the State to perform a financial review to ensure it collects its illegal gaming tax. The compacts do not include State regulatory oversight. All New Mexico Tribes, including the Pueblo of Pojoaque, have created independent Tribal Gaming Commissions that have the primary responsibility to regulate our gaming activities. Under the Pueblo's proposed tribal/federal compact, the Pueblo will be the

only tribal gaming operation in New Mexico that is subject to non-tribal regulatory oversight. This oversight is in addition to the regulatory oversight of the Pueblo's gaming commission.

The Pueblo has spent nearly two decades working hard on improving the impoverished conditions of our community. We are not about to negotiate ourselves back into poverty. We will not negotiate ourselves into a position of reliance where the State is the main beneficiary of Indian gaming revenues contrary to any interpretation of IGRA. This Administration's disregard for government-to-government relationships, its complete failure to address tribal issues of concern, and partisan politics have pushed too hard.

Quarterly "Net Win" report numbers released by the New Mexico Gaming Control Board ("NMGCB") just this past June indicate a 5.65% overall decrease in New Win for tribal gaming facilities. What we are experiencing here in New Mexico is consistent with national industry trends. Gaming revenues are down across the U.S. and just last week Moody's updated its outlook of the U.S. gaming industry from "stable" to "negative" reflecting recent declines in comparable monthly gaming revenue for most states and jurisdictions that allow gambling.

Yet Governor Martinez continues on her misguided path. What her Administration considers "success" in Tribal-State compact negotiations is the temporary assurance that the State gets a check for the General Fund, that inequitable restrictions placed on the industry some 20 years ago remain, and that the State be allowed to expand its overreach into tribal sovereignty.

The State of New Mexico needs a new negotiator to sit at the table. The current negotiator is not addressing tribal issues of concern and is ill-equipped to envision moving forward in Indian country and surrounding communities for the next 25 years. Governor Martinez's incompetence and indifference to tribal issues, her prosecutorial mindset and that of her negotiators, has driven the negotiations off the cliff. Neither she nor her negotiators seem to

grasp how the State of New Mexico still benefits if the Tribes benefit. One is not mutually exclusive of the other. Instead, the 2001 Compacted Tribes sit across from a negotiator that does not see any value in tribal economies—more specifically, in *successful* tribal economies—such that the State can work constructively with the Tribes moving forward. Instead “better” seems to be if the State gets a fat quarterly check dumped into the General Fund for no real effort or meaningful concession—in other words, a tax. New Mexico needs a real negotiator that can bring the position of the State and Tribes to place of mutually beneficial agreement for those 2001 Compacted Tribes remaining at the table. Governor Martinez dealt herself out of our negotiations.

The goals of federal Indian policy that the IGRA was enacted to promote include: tribal economic development, tribal self-sufficiency and strong tribal governments. Implicit in these goals is the concept of tribal self-determination. That is, it should be the Tribe that determines its future, including its economic well-being. The Pueblo of Pojoaque is not trying to do anything unjust or unlawful toward the State. In writing the IGRA, Congress specified several broad categories for appropriate tribal expenditures of gaming revenues first and foremost: (1) to fund tribal government operations or programs; (2) to provide for the general welfare of the tribe; and (3) to promote tribal economic development. Tribal governments determine the appropriate uses of net gaming revenues consistent with IGRA’s designated categories and since the late 1980’s the Pueblo of Pojoaque has committed gaming revenues to fund essential government services, including education, health care, police and fire protection, water and sewer services, and elderly and child care. In this regard we have the same objective as the State, to take care of our citizens and communities, and to provide opportunities for such things as education and jobs.

We will not negotiate ourselves into a position of reliance where the State is the main beneficiary of Indian gaming contrary to any interpretation of the IGRA. An informed understanding of IGRA clearly establishes the premise that states have no authority to extort tribal gaming revenues through the compacting process because Indian gaming is to be for the benefit of the Tribes. The State's hardline stance in our negotiations pushed too far and that is why the State failed to execute a compact with the Pueblo. Moreover, Governor Martinez continues to deal herself out by litigating with the Federal government. At her initiative, she has retained outside legal counsel, the costs of which will be placed on backs of taxpayers instead of changing her approach to negotiations, first through an honest look at her appointed negotiators.

The State's negotiators are playing tricks and hedging bets. The end game seems to be delay, delay, and more delay instead of dealing with the intergovernmental issues faced in compact negotiations. Our concerns are great and the potential ramifications are devastating. Tribal Government Gaming in New Mexico is a \$740,000,000 industry. The gross gaming revenue figure, however, does not reflect that Tribal governments, like all responsible employers, pay wages, benefits and employer taxes from that revenue in addition to the \$70,000,000 paid in revenue share directly to the State. Unlike our non-Indian counterparts, however, every dollar earned from our gaming operations is invested in public purposes — to improve peoples' lives, Indian and non-Indian alike, in communities all throughout the State of New Mexico.

The Pueblo of Pojoaque is the largest private employer north of Santa Fe. The Pueblo provides 1,500 New Mexico residents with employment and employment-related benefits. As an employer, the Pueblo pays a total of \$43,000,000 in annual payroll and benefits for employees. Our gaming /resort businesses employ 900 residents and the payroll and benefits total approximately \$30,000,000 dollars, and payroll taxes submitted to the State from bi-

weekly pay checks total in the millions. Our ability to provide jobs, career training and employment-related benefits to the workforce keeps many of these individuals from relying upon State assistance such as unemployment benefits, Medicaid, Temporary Assistance for Needy Families (“TANF”), and Food Stamps. Governor Martinez refuses to acknowledge the many benefits that flow from Indian gaming, instead, she is just taking the highest bidder which the Legislature has twice determined unacceptable.

The Pueblo believes it is the best interest of the State to create compacts that actually benefit the Tribes. That is a tall order when the State’s negotiator evidences a clear lack of respect for and understanding of the industry as a whole. From the Pueblo’s perspective in the current negotiations, the Administration is no longer able to take advantage of the desperation of tribal governments to acquire gaming revenues as a means to economic self-sufficiency by blackmailing us with revenue sharing demands as it did in the early days of gaming. We can no longer agree to demands that will literally wipe out the economic incentive and cash flow needed to ensure success of our gaming enterprises and the future growth of our economy. The State must be willing to consider the long-term financial impact of tribal gaming operations throughout the State. The State must be willing to respond to the Tribe’s request for terms that allow for them to be successful and to ensure jobs and job security for future generations. Imposing additional and higher tax rates and restrictions will not work and will make it extremely difficult to revive the industry once further decline sets in. The Tribes must be able to reinvest into our communities—to grow more jobs. The current negotiator does not see any value in the success of Tribes; however, the success of tribal economies IS the success of New Mexico.

We also believe that the New Mexico Gaming Control Board similarly acts with impunity. The Pueblo sent an inquiry to the New Mexico State Auditor earlier this year because we are concerned the NMGCB has provided inaccurate accountings in the collection of additional revenue share on slot free play activities. In May 2010, the Board first issued a Notice of Non-Compliance to the Pueblo demanding payment of revenue share on free play activities going back to 2007. We have received similar letters from the NMGCB each year since. We believe the NMGCB's effort to actively pursue a higher percentage of net gaming revenue equates to an unlawful tax, fee, or assessment in contravention of IGRA and is an impermissible demand for the payment of a tax.

If the NMGCB's "interpretation" of Net Win is proper as it has argued, it should pass standards and criteria as established by law. The State Auditor's Office maintains responsibility to ensure that the financial affairs of every State agency are examined for compliance with and adherence to regulation, policy and other legal requirements and obligations. We have received a response back from the State Auditor's Office that the matter is under review.

The Pueblo has publicly stated for many years that it is improper and unlawful for the State to require the Gaming Tribes to pay revenue share on free play without the approval of the Department of the Interior. Nothing in the 2001 Compact, federal law, industry standards, or generally accepted accounting principles supports the NMGCB net win calculation that increases the effective revenue sharing rate far in excess of the current 8% under the 2001 Compact. Neither the State nor the NMGCB has the authority, as merely one party to an agreement, to unilaterally change the amount of revenue sharing a tribe pays the State. The Pueblo believes that any increase in the effective revenue sharing rate without DOI approval is a violation of IGRA, places the entire revenue sharing model at risk and poses a danger of re-opening the

validity of revenue sharing payments to the State. We hope that the State Auditor's Office may help to shed some light on these issues.

We appreciate the Committee's invitation to make comments this afternoon. The Pueblo has witnessed this Administration offer significant tax breaks and incentives to nearly every industry in the State except tribal gaming. We believe the State fully intends to offset the loss of this essential tax revenue on the backs of tribes. This simply does not make sense. The State's key negotiating provisions would increase the share of earnings Tribal casinos pay the State effectively by 32%. Increasing the revenue share demands of the State and keeping outdated restrictions on tribal facilities neither stimulates job growth nor keeps up with the rates of neighboring states that offer gaming, like Oklahoma, Colorado, Arizona and Nevada. The State of New Mexico cannot continue to demand more and more from the Tribes. This Administration is on the brink of breaking Tribes all in the name of what she now characterizes to the federal court as "uniformity" and "fairness" to the Tribes. So the ship is sinking and we are expected to throw our life vests overboard. "Self-determination" is meant to reverse the paternalistic policies enacted upon tribes since the U.S. government created treaties and established the reservation system. It is precisely self-determination that leads the Pueblo to reject the paternalistic policies of this Administration designed to harm our communities.

Currently there are 28 states that have Indian gaming and these operations are covered by nearly 240 Tribal-State gaming compacts. Our experience shows that the current Administration believes it is negotiating from a position of authority, but we point out that Congress specifically limited the right of states to tap into tribal gaming revenue. States cannot, according to the IGRA, condition approval of tribal gaming agreements on getting a share of the revenue. Revenue sharing does not have a statutory basis in the IGRA. Proposed compacts have to be

approved by the U.S. Secretary of the Interior and must demonstrate that the agreements comply with IGRA and is a negotiated agreement the result of individualized government-to-government discussions. Our experience to date, however, is that the State's negotiating stances are to put the tribes in the position that either they pay a demand for additional taxes, fees and assessments and succumb to the State's over-reaching to get a gaming compact, or challenge the process and revenue sharing provisions.

Make no mistake. In order for the 2001 Compacted Tribes to reach an agreement with the State, they must be certain that it sets the stage for tribal businesses not only to sustain but to grow. This requires eliminating of many prohibitions and limitations placed on the industry going back two decades when tribal gaming was introduced in this State and now inconsistent with nationwide practices in the industry. These will only assure further decline in revenue share to the State as the tribes lose the ability to capture potential gaming dollars by keeping the restrictions and high tax structure in the compacts. Let the tribal gaming market be what it is. Let tribal rights be tribal rights. The division of authorities authorized by the IGRA was strictly limited to the regulation of gaming activities, and did not open the door to a broad invasion of tribal jurisdiction and unlawful demands for taxes.

The Pueblo's current gaming compact will expire on June 18, 2015. The Pueblo seeks procedures that comport with federal law and stripped of the State's non-gaming related provisions and taxes. Hopefully, this Legislature can pass something that will change the course of the remaining negotiations. What worked in the past will no longer work. This Administration has handled negotiations poorly and left the Tribes and the Legislature without a viable compact to offer the Department of the Interior. The State's revenues are at risk.

Thank you.