

**MINUTES
of the
THIRD MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**August 19-20, 2013
Ohkay Owingeh
Pueblo of Picuris**

The third meeting of the Indian Affairs Committee (IAC) was called to order at 10:04 a.m. by Senator John Pinto, co-chair, on August 19, 2013 at Ohkay Owingeh Casino Resort Hotel in Ohkay Owingeh.

Present

Rep. Sandra D. Jeff, Co-Chair
Sen. John Pinto, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado
Rep. Sharon Clahchischilliage
Rep. James Roger Madalena (8/19)
Sen. Richard C. Martinez
Rep. Jane E. Powdrell-Culbert (8/19)
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr. (8/19)
Sen. William P. Soules (8/19)

Advisory Members

Rep. Ernest H. Chavez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar (8/19)

Absent

Rep. Patricia A. Lundstrom
Sen. Cliff R. Pirtle
Sen. John C. Ryan

Sen. Carlos R. Cisneros
Rep. Zachary J. Cook
Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Georgene Louis
Rep. Antonio "Moe" Maestas
Rep. Patricia Roybal Caballero
Sen. Clemente Sanchez

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Monica Ewing, Staff Attorney, LCS
Alexandria Tapia, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, August 19**Call to Order**

Senator Pinto welcomed everyone to the IAC meeting and passed the gavel over to Representative Salazar to chair the morning session of the meeting. Members of the committee and staff introduced themselves.

Invocation and Welcome

Governor Marcelino Aguino, Ohkay Owingeh, provided an opening prayer and welcomed the committee to the meeting. He introduced his tribal council and other members of the tribe present in the audience. Governor Aguino provided the committee with a brief overview of the community, adding that Ohkay Owingeh is seeking wellness and educational opportunities for the area.

Indian Rights of Way in the Jemez Mountain Electrical Cooperative (JMEC) Service Area

Governor Aguino and Germaine R. Chappelle, attorney, Gallagher and Kennedy, continued with a more detailed presentation of Ohkay Owingeh and an update on the JMEC service area issue. Ms. Chappelle told the committee that in the Public Regulation Commission's (PRC's) recent order denying the Pueblo of San Ildefonso's challenge to the methodology at issue, the PRC found that the methodology is fair because it attributes "costs to those customers or classes that cause them to be incurred and benefit from them". Ohkay Owingeh did not present an argument or otherwise participate in the proceedings pertaining to the Pueblo of San Ildefonso's challenge of the methodology as it might be applied to the Pueblo of San Ildefonso or other pueblos. As Ohkay Owingeh maintained throughout its PRC proceeding, it had no authority or intent to bind other pueblos to a particular course of action or methodology. Ohkay Owingeh also sent out two separate notices of its own, met with pueblos interested in meeting and offered resources and knowledge on what Ohkay Owingeh learned from its experience working with the PRC.

Ms. Chappelle outlined some of the complex issues, including federal law and Indian sovereignty, PRC jurisdiction, utility principles, the PRC and the Supreme Court of New Mexico precedent, municipal franchises and balancing interests. Ms. Chappelle provided a historical overview and sovereignty perspective for the region and Ohkay Owingeh. (Please see handout for more information regarding this presentation.) An explanation of how cooperatives differ from electric utilities was provided.

Ben Lujan, project director, Ohkay Owingeh, highlighted some of the pueblo's

contributions to the community at large. Ohkay Owingeh provides services to more than 6,700 people living within the exterior boundaries of Ohkay Owingeh; of these, approximately 16% of the residents are pueblo members. Funds generated from the right of way are deposited into Ohkay Owingeh's general fund. A portion of the general fund is used to fund governmental services, including:

- economic development providing more than 400 jobs, of which 75% are provided to non-pueblo members within the Espanola Valley area health and wellness services and facilities;
- irrigation, water and wastewater infrastructure;
- solid waste services;
- wellness center and senior center programs;
- a public library and educational and professional development programs;
- summer programs, after-school services and Head Start, of which more than half of the services are provided to non-pueblo members' families;
- flood protection;
- transportation infrastructure and free shuttle services; and
- public safety, including responding to calls from pueblo members and non-pueblo members alike.

In addition, the presenters explained that Ohkay Owingeh negotiated a right-of-way agreement with the JMEC in which Ohkay Owingeh agreed to consolidate all of its rights of way for JMEC facilities for a term of 25 years. To minimize the impact on consumers, Ohkay Owingeh agreed to spread payment for the rights of way over the 25-year period. In return, the JMEC agreed to pay Ohkay Owingeh an average of \$450,000 annually for the rights of way for 25 years for transmission, distribution and substation rights of way used by the JMEC within Ohkay Owingeh's boundaries. As a result of settlement discussions, a stipulation was negotiated that allocated the rights-of-way costs attributed to transmission and other facilities benefiting the entire system to all ratepayers; rights-of-way costs attributed to distribution facilities benefiting local customers within Ohkay Owingeh's boundaries would be paid by those local customers.

Joe Garcia, council member and former governor of Ohkay Owingeh, said that there is a special relationship between the tribes and the state but that there is room for improvement. The tribes have not been a big player in shaping energy policy, but they need to be. Mr. Garcia explained that there is a big difference between a transformation line and a distribution line — transformation lines are the large structures that carry high voltage and distribution lines are the smaller poles. Ohkay Owingeh has large transmission lines, which are necessary to get energy to small communities.

Members of the committee discussed the PRC's January 2012 rate increase, which resulted in an agreement to balance transmission costs. Currently, other agreements are being negotiated with the JMEC, including "rate 19", a method not supported by Espanola. Refusal to comply with payments would result in a breach of a right of way, such as in the case with the Jicarilla Apache Nation.

A member of the committee inquired about Public Service Company of New Mexico's (PNM's) involvement with the Navajo Nation. Cathy Newby, tribal relations manager for PNM, responded that PNM is up to date with its issues. Of the 15 tribes that PNM works with, eight are customers. Five years ago, PNM established a mutual agreement with the Navajo Nation regarding 23 lines. Ms. Newby stressed the importance of working together beyond rights of way. PNM is currently looking at two different plans: 1) a federal plan involving technology costing upwards of \$1 billion; or 2) a selective non-catalytic reduction technology state plan, at \$350 million.

A member of the committee added that if a tribe is affected on any level, an agency is required to consult with that tribe's environmental protection agency. Partnerships are critical in these instances.

Senator Martinez chaired the afternoon portion of the IAC meeting.

Ohkay Owingeh Water Rights

Larry Phillips, Jr., co-chair, Ohkay Owingeh Water and Natural Resources Commission and general counsel, provided a summary of two recent federal court cases involving Ohkay Owingeh. The *Aragon* settlement involves rights to the Rio Chama and the *Aamodt* settlement involves rights to the Rio Truchas and the Rio Santa Cruz. The *Aragon* and *Aamodt* cases have both been in litigation for a long time and have been very costly. The state has been at the forefront of settling Indian water rights cases.

In 2011, Ohkay Owingeh asked the United States secretary of the interior to appoint a negotiating team in an attempt to get those cases resolved. The secretary of the interior said that the state and the New Mexico Acequia Association objected to the appointment of such a team, resulting in the denial of the request. Lee Bergen, attorney, Bergen Law Offices, LLC explained that federal negotiating teams come with both money and expertise. He encouraged members of the committee and the Office of the State Engineer to help resolve some of these issues, adding that with support, these cases could be sorted out in the next five to seven years.

A motion was proposed by Representative Jeff for a letter to be sent to Governor Susana Martinez and the Office of the State Engineer in support of the appointment of a federal negotiating team to assist in negotiating a settlement of the water rights. After a long discussion by the committee, it was determined that the letter would be contingent upon more information and that Mr. Bergen is to work with LCS staff to draft the letter for the next IAC meeting for endorsement.

Ohkay Owingeh Status Update and Infrastructure Needs

Mr. Lujan addressed the committee regarding some of the infrastructure needs of the pueblo. Ohkay Owingeh suffers from a lack of resources, with an unemployment rate of 14.2% and approximately 11.7% of all families in the community living under the federal poverty level. Recently, the tribal administration identified 10 projects that are critical for the community.

(Please see the handout for details on the projects, included estimated completion costs.) They include:

1. water line improvements;
2. a wastewater treatment facility;
3. the Ohkay Owingeh Community School;
4. housing infrastructure development;
5. dry utilities (solar);
6. the transportation department — heavy equipment;
7. acequia improvements;
8. the Ohkay Owingeh Fire Department;
9. Ohkay Owingeh Boys' and Girls' Club renovation; and
10. an outdoor recreation facility.

Mr. Garcia discussed health care, education and economic development needs. Mr. Garcia emphasized the need to improve the services available for tribal members and expand early childhood development programs.

Motion 1

After some discussion from the committee regarding funding for tribal schools, Representative Rodella made a motion for a letter to be sent to the Espanola Public School District, copying in Representative Mimi Stewart, regarding the lack of impact aid money and Johnson-O'Malley funds. Representative Baldonado seconded the motion, and it passed without opposition.

Members of the committee asked questions regarding relations between Ohkay Owingeh and several state agencies, including the Indian Affairs Department (IAD), the Tourism Department and the Department of Health. A member asked how the tribe has been affected by the recent changes in health care and behavioral health services. Patricia Y. Archuleta, director of education, Ohkay Owingeh, explained that several children have had their services discontinued. Another member of the committee suggested that Ohkay Owingeh go before the interim Legislative Health and Human Services Committee to address this issue.

Adult Day Care Center

Norman Martinez, director, Pueblo of Santa Clara Regional Adult Day Care Center (SCRADCC), discussed the SCRADCC's status. The 10,800-square-foot facility provides a range of services for the eight northern pueblos. The center's services are focused primarily on older adults who, because of physical, emotional or mental impairment, require assistance in a supervised environment to prevent premature institutionalization. Mr. Martinez outlined the objectives for the center, along with goals for its target population. Currently, the SCRADCC is operating at a budget of \$68,000, with its optimal budget being \$479,000.

Motion 2

After some discussion by the committee, Senator Martinez made a motion that a letter be

sent to Secretary of Aging and Long-Term Services Gino Rinaldi, copying in to Governor Martinez, requesting the Aging and Long-Term Services Department to include \$428,000 in its budget request next year to support the SCRADCC. The motion was seconded by Representative Jeff and passed without opposition.

Collaborating to Fight Forest Fires and Mitigate the Harm That Fires Cause

J. Michael Chavarria, forestry director, Pueblo of Santa Clara, addressed the IAC regarding the flooding devastation that the area has experienced following the recent Las Conchas fire. Mr. Chavarria provided a presentation that illustrated the after-effects an area suffers following a large forest fire. Without ground vegetation and a tree canopy, the burned forest is subject to severe flooding when the monsoons begin. With flash flooding, ponds are frequently filled with sediment and debris, and the integrity of any infrastructure is compromised, rendering it unusable.

Regis Chavarria, tribal sheriff, Pueblo of Santa Clara, requested the IAC's support in requesting an extension of federal American Recovery and Reinvestment Act of 2009 (ARRA) funds. For several years now, the pueblo has received ARRA funds through the Energy, Minerals and Natural Resources Department (EMNRD). Due to a series of delays, largely because of unforeseen fires and flooding, and amendments to the scope of work, the pueblo has not been able to complete the ARRA projects. The pueblo has been forced to divert labor, equipment and resources to address the devastation caused by the Las Conchas fire in 2011 and the subsequent two years of flooding. The extension request would have to be submitted by Governor Martinez to the United States Forest Service Region 3 Office in Albuquerque because the state is the primary grantee of this grant and the Pueblo of Santa Clara is considered a sub-grantee. The pueblo is seeking an extension through December 31, 2014.

Motion 3

Representative Powdrell-Culbert made a motion for a letter to be drafted and sent to Governor Martinez's office for an extension of the ARRA grant and to request that she meet with Pueblo of Santa Clara representatives to collaborate in addressing the fallout from the forest fires and subsequent flooding. Copies of the letter should also be sent to the cabinet secretaries of the EMNRD, the IAD and the Homeland Security and Emergency Management Department. Seconded by Representative Jeff, the motion passed without opposition.

A member of the committee stressed the urgency in requesting assistance from Governor Martinez and asked Secretary of Indian Affairs Arthur P. Allison to speak with the governor directly. The member recalled seeing the devastation the area has suffered during a previous committee tour and highlighted the need for continual support for restoration.

Recess

The meeting recessed at 3:45 p.m. Some members of the committee received a tour of Ohkay Owingeh.

Tuesday, August 20

Reconvene

Senator Pinto reconvened the meeting at 10:15 a.m., and Senator Martinez was asked to chair the second day of the meeting. Members of the committee and staff introduced themselves. Senator Martinez then shared an article with the committee and those present in the audience honoring Senator Pinto for his service as a Navajo code talker during World War II.

Invocation, Welcome and Status Update

Richard Mermejo, governor, Pueblo of Picuris, asked the Picuris war chief to provide an invocation, and he welcomed the committee to the Pueblo of Picuris and introduced several members of the pueblo. The governor provided a brief history of the pueblo. The Pueblo of Picuris is the smallest of the 19 pueblos in the state and has a population of 326 members. The pueblo currently has an unemployment rate of 9.7%, with approximately 39.5% of its residents living in poverty.

The Picuris Tribal Council has identified nine critical infrastructure and capital projects to sustain the well-being of the Picuris members. Federal funding is based on a determination of a tribe's population, and thus, the Pueblo of Picuris receives little to no funding to assist with capital projects or human services programs. Details of these projects can be found in the handouts. The projects include:

1. a Pueblo of Picuris visitor center and museum;
2. Pueblo of Picuris administration building renovations;
3. Pueblo of Picuris gym renovations;
4. a fire station;
5. the Hidden Valley convenience store;
6. electrical upgrades;
7. a solid waste facility;
8. water line replacement; and
9. dry utilities.

Governor Mermejo also mentioned several past projects that have been successfully completed. The pueblo believes that these projects will not only improve the community's overall health and safety, but also create jobs for residents.

Members of the committee asked several questions about specific projects. A member suggested that the pueblo work with the IAD to help it with capital outlay requests. Another member added that the Tribal Infrastructure Fund (TIF) was established specifically to help tribes with building projects. Pamela Mahooty, Sutter Group, explained that the pueblo did apply for funds the previous year but fell under the threshold needed to qualify. The IAC and Secretary Allison discussed the need for changes to the criteria required for TIF qualification and working with the U.S. congressional delegation to acquire community block grants from the federal government.

Governor Mermejo continued by talking about potential cross-commissioning of Bureau of Indian Affairs (BIA) police officers with the New Mexico State Police. The Pueblo of Picuris has seen an increase in crimes that are not prosecuted, including burglary, drug trafficking, motor vehicle violations and DWIs. The pueblo does not have a tribal police force, so, when necessary, law enforcement officers must come from Pojoaque or Espanola. The pueblo relies on a neighborhood watch program, and the sheriff is not permitted to carry a firearm or exercise arresting authority.

The New Mexico State Police has had a cross-commissioning agreement with the BIA since 1979, but the number of hours required for training has made it difficult to add more officers to the northern pueblos' area. Governor Mermejo suggested legislation to reduce the number of required training hours and legislation to accept the BIA standards of training, with any additional New Mexico standards offered online.

Members of the committee discussed this issue, noting that because the Pueblo of Picuris does not have a police department, it may be difficult to establish cross-commissioning. A member noted that other areas have issued memoranda of understanding among the county, the state and the nation, tribe or pueblo to address public safety.

Motion 4

Representative Jeff made a motion for a letter to be sent on behalf of the committee to the BIA, asking it to make more officers available to patrol the Pueblo of Picuris area, highlighting the IAC's concern that law enforcement is minimal in the area while crime, including domestic violence and drug trafficking, is significant. The motion was seconded by Senator Rodriguez and passed without opposition.

Motion 5

Representative Jeff made a motion for a letter to be sent on behalf of the committee to the new director of the New Mexico Law Enforcement Academy requesting that the training hours of officers be adjusted to assist in the cross-commissioning with the BIA and New Mexico State Police. The motion was seconded by Senator Pinto and passed without opposition.

Motion 6

Upon a motion made by Representative Jeff, seconded by Representative Baldonado, the committee voted without opposition to approve the minutes of the July IAC meeting.

Update on the New Mexico Health Insurance Exchange (NMHIX) — Native Perspective

Dr. J.R. Damron, chair, board of directors, NMHIX, provided a brief summary on the origins and evolution of the federal Patient Protection and Affordable Care Act (PPACA), from the state models to a national mandate. Dr. Damron explained that a defined benefit plan outlines certain benefits for consumers, and a contribution plan requires employers to pay a specified percentage for the employee's plan. The PPACA is a defined benefit plan. An exchange is meant to serve as a central clearinghouse for medical services and products and to

help with enrollment. With the passage of the PPACA, states were given the choice to have either a state-based model or a federal-based model of health insurance. Due to New Mexico's diverse culture, Governor Martinez chose to include New Mexico among 17 other states and the District of Columbia, which have decided to set up a state-based program.

In May 2013, members were appointed to the NMHIX board to oversee the implementation of the exchange. The board consists of six members appointed by the legislature, six members appointed by the governor and the superintendent of insurance. Dr. Damron briefed the committee on the current status of the Native American liaison to the NMHIX. The goal is to establish a work group that is representative of the tribes and pueblos around the state to work with the IAD and through the liaison, once that individual is identified.

Members of the committee asked if Native Americans are required to enroll in the exchange. Dr. Damron replied that Native Americans have several options in terms of health insurance. Native Americans are not mandated to have health insurance, but if they choose to do so, they can stay with the Indian Health Service, enroll in Medicaid if they are eligible due to their income, obtain private insurance or enroll in the exchange. Native Americans are not held to the six-month enrollment period and can join at any time. Dr. Damron estimates that 26,000 Native Americans will enroll in the NMHIX.

Members of the audience were invited to ask questions of the committee and the presenters regarding specific situations. Senator Shendo, Secretary Allison and Dr. Damron obliged by answering their questions.

Dr. Damron concluded his presentation, by saying that the NMHIX board is working diligently and tirelessly to make this program happen for New Mexico. There are 450,000 New Mexicans currently uninsured, and the goal is to insure as many of them as possible. The members of the board are using their talents and expertise to accomplish a huge undertaking in a short amount of time. Dr. Damron recognized that the NMHIX is important to the people of New Mexico as well as the government leaders who want this for the state.

Cancellation of Presentations

Due to the unexpected passing of Representative Stephen P. Easley, the update from University of New Mexico School of Architecture's Indigenous and Planning Institute and the Northern Pueblos Institute presentations were postponed to allow members to attend Representative Easley's memorial service in Santa Fe.

Adjournment

There being no further business before the committee, the third meeting of the IAC adjourned at 2:00 p.m.