

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

**November 7-9, 2005
Ohkay Owingeh
Pueblo of Tesuque
Pueblo of Nambe**

The fifth meeting of the Indian Affairs Committee for the 2005 interim was called to order by Senator John Pinto, co-chair, on Monday, November 7, 2005, at 10:22 a.m. at the Ohkay Casino Dome, Ohkay Owingeh.

Present

Rep. James Roger Madalena, Co-chair
Sen. John Pinto, Co-chair
Sen. Rod Adair
Rep. Ray Begaye
Sen. Dianna J. Duran
Rep. Manuel G. Herrera
Rep. Patricia A. Lundstrom
Sen. Nancy Rodriguez
Rep. Don L. Tripp (11/7)

Absent

Rep. Irvin Harrison
Sen. Lidio G. Rainaldi
Sen. John C. Ryan
Sen. Leonard Tsosie
Rep. W. C. "Dub" Williams
Rep. Teresa A. Zanetti

Advisory Members

Rep. Ben Lujan
Rep. Fred Luna (11/8)
Sen. Richard C. Martinez
Rep. Nick L. Salazar
Rep. Gloria C. Vaughn

Sen. Ben D. Altamirano
Sen. Joseph J. Carraro
Rep. Debbie A. Rodella
Sen. William E. Sharer
Rep. Avon W. Wilson

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

Staff

Charles H. Van Gorder
Jennie Lusk
Larry Matlock
Lisa Barsumian (11/9)

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Monday, November 7 — Ohkay Owingeh

Representative Salazar assumed the chairmanship of this meeting and recognized the election of Ohkay Owingeh Governor Joseph Garcia as president of the National Congress of American Indians. Members of the committee and the audience introduced themselves.

Ohkay Owingeh — Status Update

Governor Joseph Garcia introduced himself and four members of the pueblo's council and thanked committee members for the legislature's support over the years. He explained that the pueblo has changed its name to Ohkay Owingeh to reflect a revival of Indian spirit. The name Ohkay Owingeh means "place of the strong people". Governor Garcia had been elected the previous week as president of the National Congress of American Indians, where he will work to unite a range of tribes and pueblos. Ohkay Owingeh has 2,800 members with about 5,000 (including non-Indians) living on pueblo land. The pueblo is experiencing positive economic development through the Tsay Corporation, which includes 11 separate enterprises that employ 500 people, up to 70 percent of which are non-native people. "Tsay" means eagle in Tewa. Sixty-five percent of the corporation's money stays in New Mexico and 35 percent stays in the Espanola area. The pueblo may have the highest payroll in the area (\$8.5 million) next to that of Los Alamos National Laboratory. Among the pueblo's projects in various stages of planning and implementation are an outdoor recreation facility for all the local residents, a senior citizens center, a head start facility, a renovated library, internet access for all tribal members, an education summit in December to talk about competing interests in implementation of the federal No Child Left Behind Act, settling the pueblo's water rights under the *Aamodt* agreement and building an "economic engine" for the pueblo, which may be an alternative energy source. After a 14-year effort, the statue of Po'Pay has been installed, thanks especially to Representative Salazar. Christy Sterns and Eddie Martinez briefed the committee on developments related to the pueblo's library and senior center.

TANF Funding

Michelle Walela, director of the Zuni Education and Career Development Center, reported that the Pueblo of Zuni will request \$186,870 in funding during the upcoming session for temporary assistance for needy families (TANF) programs, which the tribe administers. The tribe has administered the TANF program since July 2002, and Ms. Walela described the services provided to TANF clients. She reported that the tribe has a high concentration of poverty and unemployment, but currently operates a "one-stop shop" for clients seeking employment or getting education. A brochure describing the program was distributed to committee members.

Roxanne Gorman, Navajo Nation TANF director, gave the committee a background report on the efforts of the Navajo Nation to assist those most in need to achieve self-reliance through the TANF program. The Navajo Nation TANF program has developed a FY 2007 Service Plan that was circulated to committee members. She noted that the Navajo Nation originally requested more funding than it is likely to receive in 2006 (\$547,156), since the Navajo Nation and the Pueblo of Zuni originally requested \$1.3 million but were funded for only \$250,000. She said the Navajo Nation had just received its contract from the state and is waiting for state funds already appropriated before initiating the Navajo Nation process for project approval.

After discussion by the co-chairs, staff was instructed to draft and present to the committee a TANF appropriation in the amount of \$500,000 for the Pueblo of Zuni and \$1 million for the Navajo Nation.

Minutes

Upon a motion by Senator Martinez, seconded by Representative Begaye, the committee approved without objection the minutes from the September 2005 meeting of the Indian Affairs Committee.

Capital Outlay Process — Navajo Nation Update

Representatives from the Indian Affairs Department and the Navajo Nation reported on progress in talks designed to improve the flow of money in the state capital outlay process for projects within individual chapters of the Navajo Nation. Secretary Benny Shendo reported that the two governmental entities have been working together since the committee's August 3 meeting in Gallup and that communications are improving. Rebecca Martinez, capital outlay manager, indicated that the final tally of capital outlay funds for Navajo Nation projects that reverted as of June 30, 2005 was \$530,203.28. She then reviewed with the committee the six issues that both entities have agreed it is important to address:

1. Length of the application process. A resolution in support of requiring only President Joe Shirley's signature on joint powers agreements (JPAs) that conform to a Navajo Nation template has been passed unanimously by the Eastern Agency Council, the Shiprock Council and the Fort Defiance Council. The resolution must now be approved by the Transportation and Community Development Committee and the Intergovernmental Relations Committee of the Navajo Nation Council. If the resolution passes, the JPA process should be significantly streamlined.
2. Limited understanding of the JPA process. The Indian Affairs Department has conducted training for 475 people in eight sessions to address this problem. However, out of 251 funded projects since 2002, 111 projects do not have approved scopes of work.
3. Tardy reimbursement requests. Tardiness may cause a reversion of funds. Ms. Martinez noted that although concerns remain regarding the funding backlog and reversions, the backlog has been reduced from \$17 million to \$530,000. The Indian Affairs Department is working with the Navajo Nation Capital Improvements Office to do an invoicing project to get documentation in place and, hopefully, the problem of tardy reimbursement requests will be eliminated.
4. Lack of proper quarterly reporting. This issue will be resolved when issue #3 is resolved.
5. Application of new financial management information system. The Navajo Nation is currently conducting an audit and then, hopefully, will be able to produce required financial reports.
6. Direct pay for vendors. The Indian Affairs Department is doing a pilot project for getting direct pay to vendors and testing it for vehicles and equipment only, with a hope of applying that process to other types of capital outlay projects.

Navajo Nation Community Development Division Director Arbin Mitchell and Capital Improvement Office Manager Casey Begaye continued with a discussion on revising the Navajo Nation's coordination policy with chapters and plans to develop a template for JPAs available to chapters. The Navajo Nation is also working on a uniform approach to the internal review of

chapter projects, a review of coordination policies, alternatives to reimbursement, coordination of direct funds to chapters, education at chapters and possibilities for streamlining the capital outlay process.

Discussion followed on the role of state legislators in setting project priorities with constituents versus following priorities set by executive agencies. Secretary Shendo noted that all 64 Navajo Nation chapters in New Mexico have submitted five-year capital improvement plans at this point. In response to questions from committee members, Tom Teegarden, tribal liaison for the New Mexico Department of Transportation, explained that the department is fully committed to delivery of a four-lane Highway 491, that Senators Pinto and Tsosie have persuaded Governor Richardson to expand the project originally projected as a two-lane highway and that most of the rights of way have been purchased from the Navajo Nation. Some issues remain for environmental problems and on wetlands and archaeological issues, but state project engineers are set to discuss and resolve these issues with the Navajo Nation soon. The primary issue has been money — a budget originally set for road work on a two-lane road is not large enough for a four-lane divided highway.

Recess

The meeting was recessed by Representative Salazar at 3:50 p.m.

Tuesday, November 8 — Pueblo of Tesuque

The meeting was reconvened by Speaker Lujan, co-chair for this meeting, on Tuesday, November 8, 2005, at 9:29 a.m. at the Intergenerational Center of the Pueblo of Tesuque. Governor Mark Mitchell introduced himself, members of the pueblo's council and former governors of the pueblo. Governor Mitchell also welcomed the committee to the Pueblo of Tesuque, gave an invocation and invited committee members to the pueblo's upcoming feast day. Members of the committee and the audience then introduced themselves.

Pueblo of Tesuque — Status Update

Charlie Dormé, former pueblo governor and current chair of the New Mexico Indian Gaming Commission, reviewed the pueblo's needs and interests. The pueblo wants revenues from the state earmarked for specific purposes. Capital outlay projects include a new wellness center and a new elementary school. The pueblo also seeks financial assistance for post-secondary educational scholarships and utility bills for the elderly. The pueblo supports vouchers for school districts and opposes the expansion of the Santa Fe Ski Basin into sacred land. The Pueblo of Tesuque aims to protect any sacred site within 50 miles of its borders, including the La Cienega petroglyphs, and intends to purchase areas of land to buffer areas of tribal concern. The pueblo operates a gas station and the newly completed highway has alleviated traffic concerns. The pueblo wants central water and wastewater systems and wants mitigation of the alkaline drinking water situation. The pueblo currently has entered a memorandum of understanding with the City of Santa Fe. The pueblo supports retention of some gaming funds for its own projects. One of the local projects discussed was a petroleum coalition to keep the state from collecting gas tax on the reservation. On questioning by the committee, Mr. Dormé reported that because of gaming funds, 12 pueblo students are in college, but he noted problems with the Pueblo of Tesuque students getting lottery scholarship funds.

Native American Language Education

Dr. Christine Sims, faculty lecturer in the University of New Mexico (UNM) College of Education Department of Language, Literacy and Sociocultural Studies and UNM Department of Linguistics, gave the committee an overview of developments in language acquisition and preservation. She said that many children are not learning their native languages but instead come into school speaking only English. Only the Pueblos of Jemez, Santo Domingo, Zuni and San Felipe still have strong native language speakers at an early age. The Pueblos of Acoma and Cochiti schools now have native language courses. Under an agreement with the Bernalillo School District, Keres classes are being offered in high school for credit. The passage of the Indian Education Act in 2003 has made a difference in support for Native American languages at UNM and has greatly aided in funding the Navajo language initiative at the school. The Indian Education Division put out two requests for proposals this summer, targeting Navajo language development and rewarding exemplary programs in schools, and a number of communities took advantage of such grants to establish planning initiatives. The ability to receive certification for Navajo language speakers under the act has allowed Navajo speakers to get into schools, though the act requires tribes to come up with their own certification procedures — a task they had not heretofore undertaken. In 2003, UNM established the Institute for American Indian Education, with eight native faculty members, and under that umbrella hopes to partner with the Indian Affairs Department for improvements, including language supports. In 2005, the College of Education at UNM, the Indian Affairs Department and the Public Education Department's Division of Indian Education executed a memorandum of agreement for language support, technical assistance and training that would bring in native speakers to teach. Next summer, they hope to have a two-week summer language institute at UNM as an alternative to options available at the University of Arizona in Tucson. The teaching of Native American languages is a race against time as these languages cannot be taught from books.

Roseann Willink, UNM Department of Linguistics, who has been teaching Navajo at UNM for 25 years, told the committee about the school's 35-year-old Navajo language program that now offers four sections of Navajo. Now a majority of Navajo students take Navajo because it meets the university's language requirements, and tribes now require some students to take Navajo courses in order to qualify for scholarships. In the future, the department wants to hire another Navajo language teacher and a linguist, and wants to get more students involved in research. Navajo is offered as a minor, and in the near future the department wants to offer it as a major available to those receiving a bachelor of arts degree.

Melissa Axelrod, UNM Department of Linguistics, reported that she and research students in UNM's masters program in linguistics completed a 600-page dictionary for the Jicarilla Apache Nation to use in elementary and middle schools. Dr. Axelrod is also working with the Pueblo of Nambe on a dictionary and archive that will include stories and descriptions of ceremonies. The National Science Foundation has funded creation of a language database. Two current masters students hope to enter a newly created doctoral program in Navajo; one is working on a teaching guide to Navajo and one on the grammar of the Pueblo of Laguna.

On questioning by the committee, Dr. Sims noted that because the No Child Left Behind Act requires English acquisition for assessment of adequate yearly progress (AYP), some schools that included immersion programs in Native languages have dropped the programs and no longer speak the Navajo language at all.

Rights of Way in the Checkerboard Area

Jerry King returned to report to the committee about state acquisition of trust land in the Navajo checkerboard areas. The State Land Office received \$250,000 last session to resolve the issue of acquiring title for 63 home sites on state trust lands and developing a memorandum of understanding between owners and the state. Once issues of title are resolved with owners and with the Indian Affairs Department, the state will go to the Navajo Nation regarding ownership issues. Representative Begaye suggested that the office examine how the Bureau of Indian Affairs (BIA) decides title claims in its realty office when it approves land leases. The Navajo Nation does not sell land, but extends 99-year leases renewable by tribal members for their families. These claims are similar to Navajo homestead titles on Bureau of Land Management (BLM) lands. Also, when the Navajo Nation deeds land, the BIA should have documents about the lease ownership with the grazing permits. Representative Lundstrom also recommended that the presenter contact Lena Yazzie at the BIA Office. The land office will update legislators during the session. Mr. King also briefed the committee on a pending land swap with the BLM involving 4,000 acres near the Pueblo of Acoma.

Water Rights Issues

James Hena, a former governor of the Pueblo of Tesuque, expressed the pueblo's concerns about settlement of the *Aamodt* lawsuit, especially the problem of dating pueblo title only to post-Spanish times. He asserted that pueblo water rights should be senior to all colonial, territorial and modern water rights as they were not extinguished by the 1846 Treaty of Guadalupe Hidalgo. Although the *Aamodt* lawsuit addresses Navajo Nation water rights adequately after declaration of the reservation, the lawsuit does not distinguish pueblo water rights. Though the legislature agreed to set aside money to settle the lawsuit, the amount should be large and the annual contributions should increase.

Jurisdictional Questions in Law Enforcement — Status Update

Margaret McLean, assistant attorney general in the Criminal Appeals Division, reviewed the background of the issues regarding an alleged lack of jurisdiction for law enforcement in areas that had formerly been pueblo lands but that are now privately owned and provided a handout that is in the committee file. The attorney reported that New Mexico is unique because of the status of pueblos, which were recognized prior to statehood. U.S. Senate Bill 279 seeking to amend the Pueblo Lands Act so that only the federal government has criminal jurisdiction to prosecute pueblo members is particularly important in New Mexico. The question of which entities can prosecute pueblo members is of central importance to state law enforcement. While still in the state court of appeals, Justice Richard Bosson has asserted the state's interests in pueblo criminal prosecution. Ms. McLean reviewed pueblo history, noting that pueblo people have not been relocated or given federal lands. The 1924 Pueblo Lands Act allowed non-natives to settle within the pueblo boundaries, but did not settle any question of criminal jurisdiction over such settlers. Ms. McLean reviewed the importance of the *Venette* case, 522 U.S. 520 (1998), defining a dependent Indian community as land set aside by the federal government for use as Indian land or under federal superintendence. The problems spill over into the arena of prosecution for domestic violence, for example, when an Anglo nontribal member living on pueblo land is alleged to have abused a pueblo member. While federal law permits cross-deputization for an arrest and there is a good sense of cooperation among law enforcement officers, the question of who prosecutes and who is entitled to sentence the convicted perpetrator is not clearly answered under current law. The current controversy over Senate Bill 279's

redefinition of Indian country centers on whether federal officers will retain only the authority to prosecute major crimes or take over all criminal prosecutions on pueblo lands. The problem with acknowledging concurrent jurisdiction is that the sentences in tribal and state courts are much less severe.

On motion of Representative Lundstrom and seconded by Representative Madalena, the committee voted to draft a letter to the speaker of the house and senate president pro tempore, co-chairs of the New Mexico Legislative Council, requesting that legislators receive a half-day training in Indian laws and jurisdictional controversies over water and prosecutions.

Teach for America

Sean VanBerschot, executive director for Teach for America New Mexico, reported on the successes of the program, which brings graduates of the nation's top colleges to poor schools in New Mexico. Thus far, the program is concentrating on schools in the Navajo Nation and the Pueblo of Zuni, whose students are often three years behind their peers by age eight, and are 17 times less likely to graduate from high school by age 18. At present, there are 60 Teach for America Corps members located in New Mexico. The program hopes to expand to 110 teachers in five years and to the Mescalero area.

Recess

The meeting was recessed by Speaker Lujan at 4:07 p.m.

Wednesday, November 9 — Pueblo of Nambe

The meeting was reconvened by Speaker Lujan, co-chair for this meeting, on Wednesday, November 9, 2005, at 9:27 a.m. in the Council Room at the Governor's Office of the Pueblo of Nambe.

Pueblo of Nambe — Status Update

Lieutenant Governor Jennifer Vigil welcomed the committee to the pueblo and explained the pueblo's election process. Following the introduction of committee members and members of the audience, Governor Tom Talache welcomed the members and updated them on pueblo activities and concerns. The pueblo is concerned about expansion of the Santa Fe Ski Basin and the fact that the increased dimensions of a planned project were not communicated to the pueblo. The planned expansion will encroach upon areas that are sacred to the pueblo. The pueblo plans to open a family-oriented casino to be built between the Camel Rock and Cities of Gold casinos. The environmental assessment for that project is ongoing and a grand opening is planned for 2007. There is a desire to change taxation so that the pueblo can retain some of the state funds for economic development and keep a portion of state employment taxes. The pueblo is also concerned about the cuts in the Indian Health Service. On questioning of committee members, the governor said other economic development ideas include bottling Nambe Falls water to market in casinos, groceries and discount stores. The pueblo is providing a total of 1,000 jobs for the region and is using more of its water rights. The pueblo has about 850 tribal members, of which 600 live within the 19,000 acres of the pueblo.

Paseo del Norte Extension — State Update

John Castillo, director of the Albuquerque Department of Municipal Development, and

Laurie Weahkee, executive director of the Sacred Alliance for Grassroots Equality (SAGE) Council, presented to the committee on the continuing controversy between native people and the city's planners over the extension of Paseo del Norte through sites containing petroglyphs and areas considered sacred by Native Americans. Mr. Castillo briefly reviewed the history of the planning process for the extension over the years and asserted that the city has attempted to communicate with and seek appropriate input from tribal entities, but that there is no prudent and feasible alternative to placing the roadway through the petroglyph area. Mr. Castillo also reviewed a recent trial court decision on a lawsuit to halt the project. The city hopes to begin construction by year-end on the Paseo del Norte extension project that has been designed to minimize harm to the area and will provide traffic relief for the whole city.

Ms. Weahkee said that there are some 35,000 petroglyphs along the five volcanos on the west mesas, including altars and prayer sites that have been significant through many generations for hundreds of years. Although those opposing development through the petroglyph area lost a significant piece of the lawsuit to halt construction, she asserted that the views of Native Americans should be heard and respected, but that they have not been. Tribal people have been left out of the process, and the pueblo governors consider the experience of "consultation" among the city, developers and the tribes as being far from a positive experience. SAGE requests that the project be required to have an updated environmental impact statement and a plan for mitigating any harm to petroglyphs before construction is allowed to commence. The city's most recent environmental impact statement for the petroglyph area dates from 1982. Gil Vigil of the All Indian Pueblo Council observed that there has been no meaningful consultation between the city and tribal entities regarding the Paseo del Norte extension project, and that the council is opposed to the project.

Discussion among committee members included considering passage of a tribal consultation statute or strengthening the federal Native American Religious Freedom Act in state law. The committee agreed to support a memorial directing the Indian Affairs Department to promulgate rules for "adequate consultation" with tribes, particularly with state-funded projects involving Indian country.

Lottery Scholarships

Representative Madalena reported on the Lottery Tuition Scholarship Study Subcommittee's activities. The subcommittee is seeking more funds for the Lottery Tuition Scholarship Fund. Ramos Suina from the Institute of American Indian Arts spoke to the committee, thanking members for advocating legislation for using the lottery scholarship money at tribal colleges, including his own. The committee will include more discussion of the lottery scholarship during its December meeting. Also, staff was directed to add Mr. Suina to the agenda.

Adjournment

There being no further business before the committee, upon a motion by Representative Madalena, seconded by Representative Vaughn and passed without objection, the fifth meeting of the Indian Affairs Committee for the 2005 interim was adjourned at 12:55 p.m.