

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

**November 23-24, 2010  
Room Vista A, Buffalo Thunder Resort, Pueblo of Pojoaque  
Room 322, State Capitol, Santa Fe**

The sixth meeting of the Indian Affairs Committee (IAC) for the 2010 interim was called to order by Representative James Roger Madalena at 10:21 a.m. on Tuesday, November 23, 2010, at the Buffalo Thunder Resort in the Pueblo of Pojoaque.

**Present**

Rep. James Roger Madalena, Co-Chair  
Sen. John Pinto, Co-Chair  
Rep. Eliseo Lee Alcon  
Rep. Ray Begaye  
Rep. Sandra D. Jeff (11/24)  
Rep. Patricia A. Lundstrom (11/24)  
Sen. George K. Munoz (11/23)  
Rep. Jane E. Powdrell-Culbert  
Sen. Nancy Rodriguez

**Absent**

Sen. Rod Adair  
Sen. Eric G. Griego  
Sen. Lynda M. Lovejoy  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Advisory Members**

Rep. Ernest H. Chavez  
Rep. Ben Lujan  
Sen. Richard C. Martinez (11/24)  
Rep. Debbie A. Rodella  
Rep. Nick L. Salazar (11/24)

Sen. Stuart Ingle  
Sen. Timothy Z. Jennings  
Rep. Antonio "Moe" Maestas  
Sen. William E. Sharer

**Guest Members**

Rep. Thomas A. Anderson (11/24)

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

**Staff**

Damian Lara, Staff Attorney, Legislative Council Service (LCS)  
Alise Rudio  
Adan Delval

**Minutes Approval**

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

## **Guests**

The guest list is in the meeting file.

## **Handouts**

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

## **Tuesday, November 23 — Pueblo of Pojoaque**

Committee members introduced themselves.

### **Welcome; Pueblo of Pojoaque Status Update**

Governor George Rivera welcomed the committee to the Pueblo of Pojoaque and Buffalo Thunder Resort. He thanked the committee for supporting Buffalo Thunder Resort and for helping Indian Country become more economically self-sufficient. Governor Rivera said that the resort, which has been open two years, initially started with about 100 employees and now has about 1,800 employees. The resort employs about 150 of the pueblo's 417 members but benefits the whole community. Governor Rivera discussed the refinancing and restructuring of bonds for Buffalo Thunder, which, by restructuring debt based on the next four to five years, will give the resort time to move out of the recession. Governor Rivera said that there might be some gaming issues coming before the legislature when the session begins. He said that he believes that the Gaming Control Board has gone beyond its authority in the way that it calculates net win. He said that the issue of whether the board is trying to collect additional revenue affects all gaming tribes. He said that it would be ideal to work something out with the legislature and Governor-Elect Susana Martinez. Governor Rivera noted that the *Aamodt* Litigation Settlement Act passed the U.S. Senate and would continue to the U.S. House of Representatives. Governor Rivera said that President Barack Obama has said that he would sign the bill. Governor Rivera thanked the committee for its work.

The committee expressed concern about the impact of a recent Ninth Circuit Court case, *Rincon Band v. Schwarzenegger*, and its impact on the gaming compacts and a state's ability to tax tribes if revenue is put in the general fund. The committee asked staff to review the case. The committee suggested that new legislators take a Native American studies class to learn about how the state does business with New Mexico's nations, tribes, pueblos and urban Indians. The committee said that the biggest concerns for new legislators usually relate to tribal jurisdiction with respect to liquor licensing, tobacco regulation and the enforcement of driving while intoxicated (DWI) laws. Governor Rivera said that the Pueblo of Pojoaque has the toughest DWI laws anywhere. The committee expressed its concern about citing non-Native individuals in tribal court for civil fines in order to raise money for the pueblo. In response, Pojoaque Judge Frank Demolli said that he did not think that tribal officers were stopping people to raise funds. He said that the road through the Pueblo of Pojoaque used to be considered one of the most dangerous highways in the country but that has changed due to strong law enforcement from the pueblo.

### **Indian Water Rights Settlement Report**

John R. D'Antonio, Jr., state engineer, introduced Estevan Lopez, Interstate Stream Commission director, who discussed the Office of the State Engineer's 2010 Indian Water Rights Settlement Fund Report. The report discussed: (1) the status of proposed Indian water rights settlements requiring state financing; (2) the distribution of funds from the Indian Water Rights Settlement Fund to implement approved settlements; and (3) recommendations on appropriations to the fund necessary to implement timely Indian water rights settlements.

#### Status of Proposed Indian Water Rights Settlements

There are currently three water rights settlements pending: the Navajo Nation settlement in the San Juan River adjudication, the settlement agreement with the Pueblos of Nambe, Pojoaque, Tesuque and San Ildefonso in the *Aamodt* adjudication and the Taos Pueblo settlement in the Rio Pueblo de Taos/Rio Hondo adjudication. Mr. D'Antonio said that the Navajo Nation settlement will provide associated water development projects for the benefit of the Navajo Nation and non-Indian communities in exchange for a release of Navajo water claims that potentially could have displaced existing non-Indian water rights in the basin. The *Aamodt* settlement agreement will adjudicate the water rights of the four pueblos in the ongoing adjudication of water rights in the Nambe-Pojoaque-Tesuque stream system. Finally, the Taos Pueblo settlement will adjudicate the Pueblo of Taos' claims and will expedite the adjudication of non-pueblo claims to water rights in the ongoing Taos area water rights adjudication suit. In addition to resolving the claims of the Pueblo of Taos, the settlement agreement addresses several issues of concern to non-Indian water rights owners, including the preservation of existing acequia water uses, the preservation of existing acequia water-sharing arrangements between the pueblo and non-Indian acequias on the Rio Lucero and the Rio Pueblo and the allocation of San Juan-Chama Project water available for the settlement.

#### Distribution of Money from the Indian Water Rights Settlement Fund

The \$10 million appropriated in 2007 is the first appropriation made to the fund since the fund was created in 2005. The \$10 million is no longer in the fund; it was taken out by the 2009 legislature and replaced with a severance tax bonding fund authorization in the amount of \$10 million.

#### Funding Recommendations

The total cost share for each of the three settlements is as follows (figures indicated are in thousands): \$50,000 for Navajo; up to \$50,000 for *Aamodt*, plus construction cost increases; and \$14,490 for Taos. This totals \$114,490. The Office of the State Engineer and the Interstate Stream Commission recommend that the 2011 legislature appropriate a total of \$15.2 million to the Indian Water Rights Settlement Fund. This is included in the Interstate Stream Commission's budget request.

Upon inquiry from the committee, Mr. D'Antonio expressed concern that if the U.S. House of Representatives goes forward with the Indian water rights settlements, the state will not have matching funds. Mr. D'Antonio said that the settlement explains how much water the Navajo Nation will receive for particular projects and discusses management of the water. He said that the Navajo Nation will control its own water; however, the nation has agreed that the state

engineer will have jurisdiction over transfers of water off the reservation. The committee expressed concern about budget cuts to the Office of the State Engineer. Mr. D'Antonio said that the office has had to cut meetings and travel, which help to educate pueblos, tribes and surrounding communities about the settlements.

### **Fort Sill/Chiricahua-Warm Springs Apache: Past, Present and Future**

Jeff Houser, tribal chair, Fort Sill Apache Tribe, introduced Leland Michael Darrow, tribal secretary, Fort Sill Apache Tribe. Mr. Darrow said that the Fort Sill Apache Tribe is made up of the descendants of the Chiricahua Apache who were held as prisoners of war by the United States from 1886-1914. The Chiricahua Apache speak a southern Athabascan dialect and are most closely affiliated with the Mescalero Apache, Jicarilla Apache, Lipan Apache, Kiowa Apache and Western Apache and the Navajo. The ancestral homelands of the Chiricahua Apache include what is now known as southern Arizona, southern New Mexico, northwestern Sonora and northeastern Chihuahua. Mr. Houser said that in 1968, the Indian Claims Commission found that approximately 15 million acres of land were taken by the United States from the Chiricahua, Warm Springs and Fort Sill Apache tribes without payment or compensation.

Mr. Darrow said that in 1980, the tribe began efforts to secure land in its ancestral homelands but lacked funding. In 1998, the tribe found funding and bought a 30-acre parcel in Luna County, which was taken into trust for the tribe in 2002. In 1999, the tribe acquired a half-acre parcel of trust land in Lawton, Oklahoma, where they opened a casino; however, the Comanche Nation filed lawsuits that blocked approval of the Fort Sill Apache gaming compact with Oklahoma. In 2007, the United States ratified a settlement to the lawsuit, in which the United States stipulated that the Fort Sill Apache Tribe has no reservation on Oklahoma but is a successor-in-interest to the Chiricahua and Warm Springs Apache tribes. According to the settlement, the United States agreed to accept an application for a reservation proclamation for a parcel of trust land at Akela, New Mexico. In 2007, the Fort Sill Apache Tribe built a temporary casino at Akela, but the United States still has not processed the reservation proclamation application. When the tribe attempted to offer bingo in 2009, it received a notice of violation from the National Indian Gaming Commission. The tribe is appealing the notice of violation; meanwhile, the tribe continues to operate a restaurant and smoke shop at Akela. The tribe would like to expand its operation at Akela, has acquired a parcel of land at the former Warm Springs reservation and is exploring development at Truth or Consequences. Mr. Houser said that the tribe is currently operating a casino in Oklahoma that has 300 employees. The tribe would like the committee's support in its efforts to return to its homelands in New Mexico.

The committee acknowledged the trauma caused to the tribe by the federal government and the military and noted that many other tribes in New Mexico experienced similar histories.

Representative Madalena recessed the meeting at 3:34 p.m.

**Wednesday, November 24 — Room 322, State Capitol**

Representative Madalena reconvened the meeting on Wednesday, November 24, 2010, at 9:18 a.m. in Room 322 of the State Capitol in Santa Fe.

### **Native American Veterans' Income Tax Settlement Fund Report**

Dorothy Rodriguez, secretary-designate, Taxation and Revenue Department, introduced Ron Cruz, deputy director of taxation and revenue. Secretary-Designate Rodriguez discussed department efforts to administer the Native American Veterans' Income Tax Settlement Fund by consulting with tribal leaders, developing regulations, creating and distributing forms, posting information on web sites and processing claims. She said that the department has received 1,068 claims, issued 609 refunds and denied 428 claims and has 31 pending claims. She said that the total appropriation for the fund was \$1 million, that \$756,832 has been paid from the fund, with an average refund amount of \$1,243, and that the fund balance is now down to \$99,760. It was originally estimated that approximately 7,000 Native American veterans might qualify, but that estimate was a little off and now the fund will be depleted fairly soon.

Upon inquiry from the committee, Secretary-Designate Rodriguez said that the application process takes approximately 30 days and that the process can be slowed down if it goes to the federal government for further review. She said that outreach was attempted through radio and newspaper announcements. Mr. Lara said that outreach has been reduced due to the lack of money left in the fund.

### **Minutes**

Upon a motion by Representative Jeff, seconded by Senator Rodriguez, the committee adopted the minutes of the fifth meeting of the IAC without opposition.

### **Cigarette Tax Credit Stamps as Units Sold in Indian Country**

Attorney General Gary King and Albert Lama, chief deputy, Office of the Attorney General (OAG), told the committee that changes were made to the tax on tobacco sales. Attorney General King said that it is important to make sure that packs of cigarettes are not being sold without a stamp because the state loses out on tax revenue. He said that in 1999, the OAG reached a major settlement with the tobacco companies. According to the Master Settlement Agreement, the state will receive \$40 million based on units sold. The money goes straight into the general appropriation fund after certification. The money from this settlement is to be used to ameliorate the effects of smoking on health care costs. Attorney General King said that a mistake was made in a bill in 2010 that did not clearly define one set of cigarettes. Thus, a bill is being introduced to correct that mistake. Attorney General King also said that state attorney generals across the nation are also looking at the increased rate of smoking among teenagers.

Nan E. Erdman, assistant attorney general, Litigation Division, OAG, said that the proposed bill makes two specific changes. It changes the definition of "units sold". The new definition includes tax credit sales on nonparticipating manufacturers. It also clarifies the use of stamps on packs of cigarettes, which makes enforcement easier.

Upon inquiry from the committee, Attorney General King said that the proposed bill should not impact the tribes because the tribes can still charge less tax, approximately \$.75 per package versus \$2.66 off the reservation. Under the Master Settlement Agreement, tobacco companies that are participating in the settlement have to pay \$5.50 per carton, while those who are not participating do not. The proposed legislation will require nonparticipating companies to pay \$5.50 per carton into escrow. After 25 years, if the OAG does not file suit against the nonparticipating companies, the companies can keep the money in the escrow accounts. Attorney General King said that if the nonparticipating companies are required to pay into escrow, there could be an impact on tribes if the nonparticipating companies increase their prices and fewer people buy cigarettes on the reservation. However, he said, the increased cost also could have a health benefit.

The committee requested that the OAG work with the Indian Affairs Department and tribal leaders to gain consensus on the proposed legislation.

### **Endorsement of Legislation**

Mr. Lara addressed the committee in regard to proposed legislation for the 2010 legislative session.

### **Bill A**

Sponsored by Senator Munoz, the bill proposes to add the following text: "The state also recognizes a local county government as having the capability and capacity to act as a fiscal agent for the chapters of the Navajo Nation within the exterior boundaries of the county."

Mr. Lara stated that the Navajo Nation has not yet seen the proposed legislation. He also indicated that there are some cases where the Navajo Nation likes to see that all projects go through its capital improvements office. Secretary of Indian Affairs Alvin Warren stated that there are pros and cons to be considered with the new administration. The committee also stated that the legislature should seriously consider the government-to-government relation with the Navajo Nation. In addition, the committee indicated that the bill is permissive because it includes the word "may" and not "shall" and therefore does not impose a requirement.

Upon motion by Representative Lundstrom, seconded by Representative Begaye, the committee voted without objection to table the bill and let the new Navajo Nation government discuss these issues.

### **Bill B**

Sponsored by Representative Begaye, the bill proposes providing the lottery scholarship for residents who attend tribal colleges. Committee members stated that this legislation has been proposed before. The bill has passed in the house of representatives but has died in committee in the senate.

Upon motion by Representative Lundstrom, seconded by Senator Rodriguez, the committee voted without objection to endorse the bill. Senator Pinto will co-sponsor the bill on the senate floor.

**Memorial C**

Sponsored by Representative Madalena, the memorial proposes returning control of the Jemez State Monument to the Pueblo of Jemez.

Upon motion by Representative Lundstrom, seconded by Representative Powdrell-Culbert, the committee voted without objection to endorse the memorial.

**Memorial D**

Sponsored by Representative Madalena, the memorial proposes changing the funding mechanism for the Indian Health Service to an entitlement program.

Upon motion by Representative Lundstrom, seconded by Representative Powdrell-Culbert, the committee voted without objection to endorse the memorial.

**Memorial E**

The memorial proposes to assist the Navajo Nation to develop a foster care and subsidized adoption program plan.

Upon motion by Representative Lundstrom, seconded by Representative Alcon, the committee voted without objection to endorse the memorial, with Representative Begaye as sponsor.

**Adjournment**

There being no further business before the committee, the sixth meeting of the IAC adjourned at 12:07 p.m.