

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

**October 25, 2012
Senior Citizen Center
Pueblo of Santa Clara**

**October 26, 2012
Tewa Visitor Center
Pueblo of San Ildefonso**

The fifth meeting of the Indian Affairs Committee (IAC) was called to order by Representative Debbie A. Rodella at 9:55 a.m. on Thursday, October 25, 2012, in the Senior Citizen Center at the Pueblo of Santa Clara.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Rep. Ray Begaye
Rep. Sandra D. Jeff (10/25)
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. Richard C. Martinez
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez

Absent

Sen. Rod Adair
Sen. George K. Munoz
Sen. John C. Ryan
Rep. James E. Smith

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Ernest H. Chavez
Rep. Debbie A. Rodella

Sen. Eric G. Griego
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Antonio "Moe" Maestas
Rep. Nick L. Salazar
Sen. William E. Sharer

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

Staff

Damian Lara, Legislative Council Service (LCS)
Peter Kovnat, LCS
Theresa Rogers, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Thursday, October 25 — Senior Citizen Center, Pueblo of Santa Clara

Committee and staff members introduced themselves. The meeting started as a subcommittee until a quorum was present. Governor Walter Dasheno of the Pueblo of Santa Clara gave an invocation.

Welcome, Status Update and Tour — Pueblo of Santa Clara

Governor Dasheno thanked the committee for coming to the pueblo and discussed the devastating effects on Santa Clara Canyon of the Las Conchas fire and the flooding that followed. The sandbags that are evident all around the pueblo are used to combat the effects of the flooding, which are expected to continue for the next few years.

Next, Governor Dasheno led the committee on a tour of the Senior Citizen Center and the Adult Daycare Center, both of which were built with state funding. Then the committee boarded a van for a tour of Santa Clara Canyon. In the canyon, the committee saw the devastation brought on by a series of fires and floods.

Continued Wildfire Recovery Efforts: The Aftermath of Las Conchas Fire

Governor Dasheno discussed the cleanup of Santa Clara Canyon and said it is an immense undertaking. The Santa Clara Creek Watershed Area comprises 31,400 acres, and the total burn area is 15,516 acres. So roughly 50% of the entire watershed was affected.

The clean-up effort to remove the flood debris and restore Santa Clara Canyon is financed by the pueblo, which contributes 12.5%; the state, via the Homeland Security and Emergency Management Department, which contributes 12.5%; and the federal government, which contributes 75%. The current financial commitment is \$56 million. Governor Dasheno estimates that it will take \$100 million and 100 years to restore Santa Clara Canyon.

The Federal Emergency Management Agency (FEMA) and state funding process includes the coordination of a number of entities and a number of steps before money can reach the targeted emergency.

Michael Chavarria, acting forestry director, Pueblo of Santa Clara, discussed the history of forestry at the pueblo. The pueblo did not have a forest management department until 2000, but there were already serious issues with which to contend. The Oso Complex fire of 1998 burned more than 1,500 acres of forested land on the pueblo, and the Cerro Grande fire of 2000 burned over 6,700 acres of forest on the pueblo.

After the two fires, the Pueblo of Santa Clara made an enormous effort to get funding to manage its forest resources. Currently, the pueblo has contracts under Public Law 93-638 for forest development, forest management, fire preparedness and hazardous fuel reduction. These contracts are critical because the clean-up effort requires \$17,000 a month just in fuel costs to operate the machinery.

Governor Dasheno noted that the pueblo's experience with self-governance has helped guide the pueblo in working with other agencies on the clean-up effort. The pueblo was the first in the southwestern United States to organize under self-governance, starting the process in 1994. Self-governance allows tribes to manage and control their own programs and resources and provides broad flexibility in using resources and redesigning programs to meet tribal needs. Before self-governance, all programs, services, functions and activities of the Pueblo of Santa Clara were performed by the Northern Pueblos Agency/Southwest Regional Offices.

Questions

When asked to follow up on an issue raised during the tour of Santa Clara Canyon, Governor Dasheno explained that 50% of the debris in one pond was cleared at a cost of \$300,000, but that in a single day, rain caused sediment to refill the pond completely. Governor Dasheno stressed that if the cleanup does not start upstream and work its way downstream, all the work may be for naught. The governor emphasized that debris collection structures must be put in place to prepare for the next monsoon season.

In response to a question about self-governance, the governor explained that the Pueblo of Santa Clara has been functioning under self-governance for 15 years and that, typically, self-governance is renewed annually, but there is flexibility in how the agreements are structured.

In closing, Governor Dasheno said that his focus is to promote the health, social welfare and economic well-being of the pueblo and its people. He said that it is critical to work with other agencies to come up with a plan to best accomplish those goals, and that the pueblo must rely on others for help in accomplishing those goals.

Minutes

On a motion by Representative Madalena, seconded by Representative Powdrell-Culbert, the minutes for the September 24-26, 2012 meeting of the IAC were adopted without objection.

Charter Schools

Alfred Barney, president, Red Lake Chapter, Navajo Nation, presented a letter of intent to establish a charter school within the Red Lake Chapter. The charter school would be a joint project between New Mexico and Arizona, because the chapter lies on the border of both states and serves community members on both sides of the state line. It will be one of the first charter schools established in the Navajo Nation. The school will educate the local population and increase the number of children who will stay in the community.

Richard Bitsie, vice president, Red Lake Chapter, Navajo Nation, said that many of the young people in Red Lake have dropped out of high school and that some vocational programs,

particularly animal sciences and agriculture, would serve the needs of the community. Even the young people who go away to college and come back cannot find jobs when they return.

Jack Jackson, representative, Red Lake Chapter, Navajo Nation, said schools on the Navajo Nation used to teach real-life skills, but they no longer do. He said that relevant education, with Navajo input, is critical to the success of students on the Navajo Nation. Also, Mr. Jackson said that the Red Lake Chapter is seeking help to understand the process for starting the charter school and for putting in a modern irrigation system and the training to use it.

Questions

A committee member noted that the Legislative Finance Committee has done an extensive assessment on opening a charter school on the Navajo Nation. The process started when the consolidation of two McKinley County schools was being considered, and a charter school was envisioned as a way to offer an alternative to students and their parents. Those schools have yet to be consolidated, but the assessment could still prove valuable.

The committee member said that there are a few Native American charter schools and that schools can be chartered by the state or by the local school district. However, the funding formula is going to change, and funding might no longer go through the district. The current moratorium on new charter schools is still in place, but once the moratorium ends, the establishment of a charter school in the Red Lake Chapter deserves support. It is critical to identify possible obstacles that the Red Lake charter school will face and adjust to them now, so that when the moratorium ends, Red Lake is well-positioned to get a charter school.

Another committee member mentioned an issue in Red Valley, Arizona, where students that live in Utah cross into Arizona to go to school. When the school was audited by the state, the tuition for those students needed to be repaid.

Dr. Ferlin Clark, assistant secretary for Indian education, Public Education Department, said the department and the chapter are working together to get the Red Lake charter school started. Dr. Clark cited an attorney general's opinion that was very helpful in that undertaking and noted that 25% of the local school district impact aid funds would support the school budget. He said this does raise the question of how difficult it will then be for other schools, which will have less money.

A committee member said that it is important to take advantage of the charter school idea while it is available, as communities in the Rio Grande Valley have done. The committee member then asked whether a charter school can take over a public school that closes. Dr. Clark said that there is a whole process to follow, but since the infrastructure is all in place, it would make sense. Dr. Clark explained that there are more than 89 charter schools in the state currently, higher than the number of school districts. That is why the moratorium was put in place. This is also a funding issue, which is driving the consolidation of schools in the first place, which then drives interest in charter schools.

Another committee member said she thinks that the Navajo Nation needs to make a commitment to charter schools, but a lot of charter schools are failing kids, so the Red Lake Chapter needs to be careful to ensure that its charter school is well-planned so that it will be successful.

The presentation ended with a discussion of funding for technical assistance to develop a plan for a program like the Red Lake charter school.

The committee recessed at 4:40 p.m.

Friday, October 26 — Tewa Visitor Center, Pueblo of San Ildefonso

Representative Madalena reconvened the meeting at 9:47 a.m. on Friday, October 26, 2012, in the Tewa Visitor Center at the Pueblo of San Ildefonso. Committee, staff and audience members introduced themselves. Elmer Torres, former governor of the Pueblo of San Ildefonso, offered an invocation.

Welcome and Status Update — Pueblo of San Ildefonso

Terry Aguilar, governor, Pueblo of San Ildefonso, introduced Perry Martinez, former governor, Pueblo of San Ildefonso, and other members of the tribal council. Governor Aguilar invited legislators to the January 23 feast day at the pueblo. The governor noted that respect for elders is paramount to the pueblo, as is protection of the people and the land.

The governor talked about the Aamodt settlement and said that not just the pueblos but all those involved are working together to resolve water rights issues. He next highlighted two projects at the pueblo, the wastewater system and the gas station. Governor Aguilar made the point that as a non-gaming tribe, the gas station and the gas tax are the tribe's main sources of income.

The Pueblo of San Ildefonso is not a gaming tribe by choice, but that makes the gas tax that much more important. The money from the gas tax serves the needs of the pueblo, and the governor asked the committee for continued support of the tax in the face of ongoing efforts to repeal it.

Mr. Martinez greeted the committee and stated that he is a member of the New Mexico Native American Petroleum Coalition (NMNAPC) and spoke about the importance of the gas tax to the Pueblo of San Ildefonso. The state agreed not to tax gasoline sold on Indian land as long as the tribe imposes a gas tax equal to that of the state. This agreement was the result of extensive negotiation and compromise, and efforts to change this tax policy would have a substantial negative impact on tribes. Mr. Martinez was adamant that the NMNAPC stands opposed to any change in the status quo regarding the gas tax.

Questions

In response to a question, Governor Aguilar said there are currently about 750 members of the pueblo, and the pueblo is made up of 54,000 acres since its reacquisition of some land.

Regarding the Aamodt negotiations, the governor said that some tribes, including San Ildefonso, had some concerns about the settlement, but the tribal councils got together and came to an agreement. Currently, the Pueblo of Pojoaque and the Pueblo of Tesuque have not signed on to the settlement, although the governor said that those two pueblos do agree with the settlement and are prepared to sign on.

Mr. Martinez answered a committee member's question by noting that the gas tax existed for 10 years, and was reauthorized for another 10 years. Mr. Martinez clarified that the tribes are not involved in the diesel fuel tax.

A discussion of different funding opportunities ensued. A series of memorials were introduced to address the issue, but some confusion was created by different findings by different agencies. Assessment of the revenue produced by the gas tax ranges from \$34 million to \$54 million. The committee directed staff to look into the true revenue amount that comes from the gas tax to determine the amount against which it is bonded.

From the audience, James Rivera, tribal council member, Pueblo of Pojoaque, spoke of the importance of the gas tax. He listed infrastructure projects that would not have been possible without the gas tax. He said that it is not a lot of money, but that it does help with a broad range of projects.

Indian Water Rights Settlements: State Funding Recommendations

DL Sanders, chief counsel, Office of the State Engineer (OSE), said the Aamodt, Taos and Navajo water agreements are ongoing, and each has its own obstacles. Mr. Sanders cited the 2012 Indian Water Rights Settlement Fund Report as a good source of information for committee members.

Mr. Sanders cited the Winters Doctrine, set out in the United States Supreme Court case of *Winters v. United States*, which delineates tribal water rights. The Winters Doctrine states that:

1. rights are defined by federal law;
2. establishment of a reservation by treaty, statute or executive order includes an implied reservation of water rights in sources within or bordering the reservation;
3. based on date, users with prior appropriation dates under state law take precedence over Native American rights, but those with later dates are subordinate;
4. the quantity of water reserved is the amount sufficient to irrigate all irrigable land on the reservation; and
5. rights are not lost due to non-use.

Regarding the Navajo settlement, Mr. Sanders said the December 2013 deadline for the settlement was threatened by nine motions that Mr. Sanders believes are obstructionist in nature.

This is a problem because the City of Gallup is a party to this agreement and will run out of water soon. One of the motions is a notice of cessation of state funding for the water settlements. This helps opponents of the settlements and misleads people as to the message to be read from the legislature's actions of the recent past: that the legislature does not support the Indian water rights settlements because \$15 million was pulled from the previous year's budget. A committee member said that it is important that the Department of Finance and Administration recommit the \$15 million that was vetoed in that budget. The member then posited that an alternative funding route may be achieved by working with the governor's office and that a solution is critical to avoid jeopardizing federal matching funds.

Mr. Sanders said that all parties must be involved, including the county, because there needs to be buy-in to whatever solution is reached. He then made the point that with many new members of Congress taking office, it is important to emphasize how much work has gone into this over the past 40 years.

The project is expected to cost \$1 billion, with the federal government paying \$870 million and the rest coming from the state and the Navajo Nation. The project is on track to meet the deadline and pay its share, thereby not overrunning costs. Mr. Sanders noted that despite the protests, the settlement appears to be equitable and that time will bear that out.

As for the Aamodt settlement, the federal government will require 25,000 acre-feet of additional water to meet the needs of all the people, Native and non-Native, in the area. Without a pipeline, this will prove impossible. However, the United States Department of the Interior said that because it is the middle of an election cycle, it is unlikely there will be action on this right now. Mr. Sanders said that this whole process has been so complicated that the take-away for all parties involved is how not to go about this kind of undertaking.

Gregory C. Ridgely, deputy counsel, OSE, discussed the Taos settlement, which is in the process of being conformed to federal regulation. The Taos settlement is the least expensive of the three settlements at \$145 million, with the state only responsible for \$20 million, and state money will be used for mutually beneficial projects. The state has already committed \$6.3 million through the Indian Water Rights Settlement Fund.

To summarize from the perspective of the state's obligation, the Navajo settlement is \$10 million away from complete funding, the Aamodt settlement still needs \$45 million and the Taos settlement still requires \$13.7.

Myron Armijo, tribal liaison, OSE, expressed the OSE's support for the funding commitment so far and wants to know when the state will commit the remaining money that is required.

Questions

Committee members expressed frustration at what one member called misguided legal motions aimed at destroying the progress made by the Navajo agreement. The member noted that the legislature does indeed support the \$15 million in funding.

In response to a comment about concerns with the Navajo settlement by farmers in the San Juan River region, Mr. Sanders said that New Mexico produces 2.7% of the water in the San Juan River, but pursuant to the Upper Colorado River Basin Compact, New Mexico gets 11% of the San Juan River water rights. The difference exists because when water rights were being assigned, Native Americans were given the opportunity to become agrarian societies, which require a certain amount of water. Under the current agreement, the Navajo Nation agreed to subordinate its water rights, which are senior rights, in order to enter the agreement. However, it is doubtful that the Navajo Nation will ever need to access water beyond what it currently uses, so it is giving up a right to something it does not use. Mr. Sanders said that however many times it is explained, people who are opposed to it will never accept the agreement.

Mr. Sanders went on to explain that if water is not used, it is not banked. The Upper Colorado River Basin Compact requires that water be sent downstream. The state gets credit for the unused water, but the unused percentage does not accumulate for use in later years.

Committee members then discussed the creation of a funding mechanism to provide the water settlements with revenue. Annual funding needs to be sought because the state is a party to the agreements and, as such, is obligated to pay whether it wants to or not. Upon a motion by Representative Begaye, with a second by Senator Lovejoy, and without opposition, staff was directed to work with the appropriate parties to find a consistent funding mechanism to provide the water settlements with revenue.

Next, some questions were raised about the state's financial burden for these projects and any limits that exist. Mr. Sanders said that the state can only carry some of the financial burden. Officially, the state's position is that it does not pay for Indian infrastructure, which is the job of the federal government. Accordingly, no Indian infrastructure costs are being borne by the state. The cost to the state is for non-Indian infrastructure, construction and employment. However, Mr. Sanders said that if the state wants to bear some of the cost for Indian infrastructure, that is a possibility.

A committee member said that there needs to be outreach to tribes so that they understand what the settlements encompass. Otherwise, people will feel left out of the process. Also, the timing of approval for funding is important because so many project proposals are time-sensitive. While many of these issues were discussed at the state-tribal summit that occurred in 2012, legislators were not a part of that discussion because they were not at the summit. Committee members reiterated what was said at earlier IAC meetings: that they want to be involved in the state-tribal summit and that communication is important. A suggestion was made to amend the Indian Education Act and the State-Tribal Collaboration Act to include some interaction and feedback from the legislature.

Mr. Sanders closed by saying that the OSE has aggressively sought to work with the tribes and pueblos and the Navajo Nation and that the Pueblo of San Ildefonso is collaborating with the OSE and Secretary of Indian Affairs Arthur P. Allison, too.

Fire Protection Fund and Funding for First Responders in Indian Country

John Standefer, state fire marshal, noted that fire protection is expensive. He quoted the adage that law enforcement requires one person, one gun and one car, but fire protection requires four to six people, a huge truck and a lot of equipment.

Mr. Standefer discussed the Fire Protection Fund FY13 distribution handout, which broke the distribution down by county, pueblo and chapter. The fund comes from a surcharge of 3% of home and auto insurance in the state. When the fund was created, there were no county fire departments. Now, by and large, the creation of a fire department requires a municipality or county to organize it.

Currently, the Fire Marshal Division is reaching out to Native American tribes and pueblos to create fire departments. A potential complication is that even when a new fire department is created, the county owns all the equipment. So even if the tribe owns the station and the land itself, there is nothing to prevent the county from taking the equipment and leaving the tribe without the means to fight fires.

Bernie Moller, deputy state fire marshal, said the Fire Marshal Division's work requires collaboration with a number of state agencies, tribal governments and communities. Mr. Moller said this type of collaboration is the best way to address fire safety issues without duplication of efforts.

Mr. Moller explained that if an area wants improved fire protection, it must get the county to do a feasibility study and satisfy some requirements, including having an adequate communications system and an adequate water supply, and buildings also must meet some minimum standards. He reiterated that the first step has to be with the county. If a pueblo wants help in setting up communications with a county to provide fire assistance, the state fire marshal will help.

Mr. Standefer explained that the Fire Marshal Division is available to improve fire protection services around the state, and it is open to innovative approaches. As for any proposed legislation, Mr. Standefer said that the division has no opinion and will carry out the letter of the law. Mr. Standefer explained that it takes legislative action for the division to treat the Fire Protection Fund differently. When and if the law changes, the division will change how it implements its services.

Questions

In response to a committee member's question, Mr. Standefer said that volunteer firefighters do have a retirement fund and that \$75,000 goes into that fund annually. Despite that, the fund is not doing well currently and it may require increasing the amount annually put

into the fund to keep the account solvent. The way it works now is if someone volunteers for 10 years, she can draw \$100 a month; 20-year volunteers can draw \$200 a month.

When asked, Mr. Standefer said he hopes that a fire protection solution for the Pueblo of Sandia is arrived at soon to prevent a tragedy from happening. As it stands, the Pueblo of Sandia has no fire station, which is why it could not lend assistance at the nearby Corrales fire that occurred during the summer of 2012.

A committee member inquired about the state of fire protection in Sandoval County, which covers a lot of area. Mr. Standefer said there are 10 county fire departments and four municipal fire departments in Sandoval County. In fact, he said, the 10 county fire departments are run as one department, and while each department has its own chief, they all report to a single administrative body.

In terms of specific Native American fire departments, Mr. Standefer said that the Pueblo of Santa Ana fire station is an excellent facility, while the pueblos of San Felipe and Kewa are looking into how to best proceed. In the Pueblo of Jemez, a district will be created and come into existence soon.

Finally, Mr. Standefer mentioned that the Pueblo of Laguna was operating as an Insurance Services Office, Inc., (ISO) class 10, but that after the pueblo was reevaluated, it was rerated as an ISO 6, which gives the pueblo better fire protection services.

Program Evaluation: Navajo Nation Department of Emergency Management (NNDEM)

Duane Duffy, deputy secretary, Indian Affairs Department (IAD), introduced Lillian Brooks, administrative services director, IAD, and they discussed the funding provided for the NNDEM.

The IAD has received requests to speed up the funding process, but to do so, the IAD needs to get some clear deliverables to assess the return on investment. For example, in one instance where an emergency was declared, some hay for livestock was handed out to families in the affected area. The IAD considers that to be more a subsidy than a measure dealing with an emergency.

The committee reserved its questions until after the subsequent presentation by the NNDEM.

NNDEM

John Billison, director, Navajo Nation Division of Public Safety, introduced his co-presenters: Faye Platero, emergency services coordinator, NNDEM, and Rosalita Whitehair, incoming director of NNDEM.

Mr. Billison discussed the background and role of the NNDEM and said that he hopes the IAC will understand that there is hope that recovery of affected areas will be apparent after seven

years of hard work. The task is enormous. The NNDEM field offices are located in New Mexico, and the service area is composed of 13,520 square miles, with a population of 150,000. Since 1995, the NNDEM has responded to more than 10,000 incidents, saving lives and helping families rebuild their lives. Often, the services provided by the NNDEM are provided to the elderly and high-risk individuals, so the work is critical.

Questions

A committee member gave kudos to the NNDEM and noted his years of support for the agency. However, he said that there has been no state money given to the NNDEM for the past few years, and without that money, important services cannot be provided to match the need. He said the Navajo Nation does not have much money, so the state needs to help. The committee member asked that all legislators support his appropriation request in the 2013 legislative session.

Another committee member asked if state dollars are supposed to be used for equipment only and if, despite that, salaries are being paid out of the state dollars that go to the NNDEM. Deputy Secretary Duffy said that is a problem. When an audit was done of the NNDEM, it appeared that money was indeed being used for salaries. He said that state money administered through the IAD was not supposed to be a consistent funding stream for the Navajo Nation, pueblos and tribes. The problem, the committee member noted, is that it is unclear what money would be used to replace that funding if state funds were not used to pay those salaries.

Mr. Billison said that his department does not know what pot of money is used for what, and that the department needs to get that information to the committee. Secretary Allison said that this year, the IAD allowed for money to be used for salaries, but the hope is to use it only for equipment next year. He said that extra help was needed this year to deal with emergencies.

Secretary Allison said that the IAD's budget was cut, too, and that the IAD is limited in the amount of help it can provide. He expressed hope that by working with the Homeland Security and Emergency Management Department, more funds could be accessed. Secretary Allison asked the IAC for a letter to the Homeland Security and Emergency Management Department asking it to work with the IAD to look at the emergency management needs of the 22 tribes in New Mexico. Upon a motion by Representative Powdrell-Culbert, with a second by Senator Pinto, and without objection, the IAC passed a motion to write a letter to the Homeland Security and Emergency Management Department, asking it to work with the IAD to look at the emergency management needs of the 22 tribes in New Mexico.

Adjournment

There being no further business before the committee, the fifth meeting of the IAC for the 2012 interim adjourned at 2:55 p.m.