

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

**November 29-30, 2016
Inn of the Mountain Gods, Mescalero
December 1-2, 2016
Room 307, State Capitol, Santa Fe**

The fifth meeting of the Indian Affairs Committee (IAC) was called to order by Representative James E. Smith, appointed co-chair, on November 29, 2016 at 10:54 a.m. at the Inn of the Mountain Gods in Mescalero.

Present

Rep. Sharon Clahchischilliage, Co-Chair (12/1, 12/2)
Sen. John Pinto, Co-Chair (12/1, 12/2)
Rep. James Roger Madalena (12/1, 12/2)
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle (11/29, 11/30, 12/2)
Sen. Nancy Rodriguez
Rep. James E. Smith
Sen. William P. Soules

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. D. Wonda Johnson
Rep. Georgene Louis
Sen. Benny Shendo, Jr.

Advisory Members

Rep. Eliseo Lee Alcon (11/29, 11/30, 12/1)
Sen. Carlos R. Cisneros
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Nick L. Salazar (12/1)

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Patricia Roybal Caballero
Sen. Clemente Sanchez

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

Minutes Approval

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

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Shawna Casebier, Staff Attorney, LCS
Diego Jimenez, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts and other written testimony are in the meeting file.

Tuesday, November 29 — Inn of the Mountain Gods**Call to Order**

Representative Smith called the meeting to order. Committee members, staff and audience members introduced themselves.

Welcome and Status Update

Mescalero Apache Tribe President Danny Breuninger welcomed the committee and introduced Duane Duffy, chief of staff. The Mescalero Apache reservation is just under half a million acres, with approximately 5,000 enrolled members, not all of whom reside on the reservation. The tribe currently has around 300 homes and is in process of restructuring its housing program, which is scheduled to break ground on new homes in the near future.

President Breuninger updated the committee on the status of the resort formerly known as Sierra Blanca, now called Ski Apache. The resort has three new lifts, which cost \$15 million, including a \$4 million zip line that is among the top five longest in the world. The resort also has a snow machine to assist in production of snow.

One of the goals for the tribe in 2017 is to push federal legislation for the United States Forest Service (USFS) to transfer land to the U.S. Department of the Interior's Bureau of Indian Affairs, to be placed in a trust for the tribe, and thus return homelands to the Mescalero Apache people.

The tribe is known for its land management skills. Maintaining the ski basin is important for the tribe economically. The tribe also thrives at maintaining forest health and preventing forest fires. President Breuninger hopes operation of a sawmill will restart in 2017. The tribe has a contract for beef production with Labatt Food Service, which returns some of the beef to Wendell's Steak and Seafood Restaurant in the resort.

President Breuninger extended personal gratitude to Senator Pirtle and Representative Cook for their hard work on behalf of the tribe and for recently expended funds used to purchase a new solid waste disposal truck.

In response to a question from the committee, President Breuninger said that buyers from Mexico have expressed interest in utility poles created by the tribe's sawmill. The president wants to ensure that a market for the tribe's products exists to maximize employment while

building a sustainable operation. The tribe is considering entering the market to create and sell pellets.

The committee and the president discussed recent struggles in the milling industry. They focused on commercial products, encouraging the use of wood products in home construction and maximizing efficiency by operating the mill 24 hours a day.

In response to a question from the committee, President Breuninger told the committee that New Mexico's congressional delegation has not yet pushed for the federal land transfer. Since this kind of legislation was introduced and then died the last time he was in office, President Breuninger said he would like to ensure that municipal, county and state governments will support the legislation in 2017. President Breuninger assured the committee that this legislation is not a "land takeover"; the land will not be taken out of the tax base because it is already under USFS management. The committee recommended that a memorial be passed to encourage the land swap. Committee members further commented that in addition to the Mescalero Apache Tribe, the entirety of Lincoln County and the Village of Ruidoso benefit greatly from the investments in the Ski Apache resort.

President Breuninger said approximately 50% of the forest has been restored through the tribe's forest restoration program. The USFS recognizes the value of Mescalero's forest management model and that it is a proven fact that quality thinning and management reduce both the risk and destructive capacity of forest fires.

In response to a question, President Breuninger confirmed that certain portions of the facility serve alcohol, which is allowed after passage of Senate Bill 193 in 2016.

Update from New Mexico Legal Aid's (NMLA's) Native American Program

Rosalie Chavez, director, Native American Program (NAP), Federal Workforce Innovation and Opportunity Act (WIOA) Program, said she has been the manager of NAP for the last 20 years.

Formerly known as Indian Pueblo Legal Services, NAP is part of a statewide legal aid program that provides civil legal assistance to low-income persons to deal with matters that affect their basic needs, such as housing, safety and economic stability. NAP is primarily funded by the federal Legal Services Corporation (LSC), which has a specific line item in the federal budget for providing legal assistance on issues unique to Indian people. NMLA receives funding from the state through a variety of sources and, among other services, provides legal assistance to domestic violence victims in obtaining protection orders and ancillary legal assistance on such matters as divorce, custody and child support. To provide civil and criminal legal assistance in tribal court, NAP receives funding from the Native American Rights Fund, a nonprofit Native American rights organization. NMLA continues to face uncertainty about future LSC funding and has experienced a 6.2% cut in state funding.

NMLA assisted in drafting a grant supporting efforts by the Taos Pueblo Tribal Court to improve its court processes involving children to create better outcomes for those children. The current processes are being evaluated to identify gaps and deficiencies, and focus groups are looking to recommend changes in the Children's Code and to improve policies and protocols for services.

In 2015, NMLA launched a tribal law help line, which is designed to provide telephone access to legal assistance for rural Indians who have a legal issue relating to tribal law or tribal courts. The help line is accessible to all Indians in the state and is operated out of an office in Gallup.

In response to a question, Ms. Chavez explained that most tribal judicial systems do not have public defender programs. To her knowledge, only the Pueblo of Laguna has a public defender program, while the Pueblos of Acoma and Isleta may provide public defenders on a limited basis. Most of the pueblos do not provide public defenders, and there is no legal mechanism to require them to do so. Occasionally, NMLA has provided legal assistance in federal court cases involving Native Americans, but NMLA's primary service is to assist Native Americans in their own tribal courts. The committee discussed sentencing disparities and a related joint memorial.

Federal WIOA Program

Angelita Buurma, program director, WIOA Program, gave a history of the WIOA, which is funded using a formula based on census data.

Training services offered by the Mescalero Apache Tribe's WIOA Program include work experience, classroom training, supporting services and general educational development (GED) preparation. Some of the specific services offered include temporary work assignment, remedial education or vocational training and assistance to overcome employment barriers.

Ms. Buurma highlighted some of the successes achieved by the Mescalero WIOA Program and participants. Success stories include permanent employment, completion of occupational training and passing GED tests.

Ms. Buurma said that the WIOA Supplemental Youth Services Program eligibility age has increased from 21 to 24 years old and that participants must be in a low-income category to qualify. The WIOA changed the definition of "low income" to include any youth living in a high-poverty area.

Ms. Buurma said that participants must reside on the Mescalero Apache reservation. The budget is \$70,000 for the adult program and \$55,000 for the youth program. The starting salary for eight full-time-placement participants is the federal minimum wage of \$7.25 per hour. Ms. Buurma said that participants are often individuals who are trying to reenter the workforce. A

formal needs assessment has never been done, but Ms. Buurma believes that it is desperately needed.

Mr. Duffy informed the committee of a drug-screening protocol for the program and for tribal employment. All applicants for tribal jobs or programs are subject to pre-employment drug screening through the tribal human resources office. While the rate of positive drug tests is low, around 2% of individuals who test positive will be refused employment and advised to seek help. If a current employee returns a positive test for drugs, the employee is subject to a 30-day suspension and is required to participate in a rehabilitation program that will present the employee with a certificate of completion. The certificate must be presented to the tribal human resources office upon returning to the work post.

Update from the USFS

Sandy Watts, Southwestern region deputy regional forester, USFS, greeted the committee and introduced her colleagues: Erika Luna, New Mexico liaison, Yolynda Begay, regional tribal relations manager, and Travis Moseley, forest supervisor for the Lincoln National Forest. The USFS recognizes the significance of lands held by Native Americans and their status as a sovereign people. New Mexico is in Region 3, or the Southwestern Region, which is home to 55 federally recognized tribes. The USFS actively consults with tribes to protect their rights in the region.

The USFS is committed to supporting existing partnerships and fostering new relations that would help achieve restoration goals and protect sacred sites. The USFS is working with the Pueblo of Taos regarding the Carson National Forest, with the Mescalero Apache Tribe regarding the Lincoln Nation Forest and with the Pueblo of Jemez regarding the Santa Fe National Forest. Protecting ecosystems and landscapes is complex and robust work that requires partnerships with state agencies and tribes.

Mr. Moseley said that the USFS has a deep commitment to tribal relations. He said that land management requires an all-hands-on-deck approach that requires understanding of tribal interests and aboriginal use of lands for cultural or traditional purposes. These interests are vital to engaging in appropriate approaches to project planning.

In response to a question from the committee, Mr. Moseley explained that cross-commissioning relationships do exist in some jurisdictions. These agreements limit the authority of USFS officers and require a great deal of coordination with the Department of Game and Fish. Currently, only Sandoval and Bernalillo counties have cross-commissioning agreements in place. Mr. Moseley said he is concerned by the reported harassment of individuals, and he also discussed a recent event near Albuquerque, where a dog was caught in a bear trap. Mr. Moseley was unsure if that event occurred on national forest land, which does allow trapping under certain circumstances.

The committee recessed at 3:40 p.m.

Tuesday, November 30 — Inn of the Mountain Gods

The committee toured the Mescalero Apache reservation, including facilities that house such enterprises as broadband wireless, fire rescue, a fish hatchery, forest products and an elder care center.

Wednesday, December 1 — Room 307, State Capitol

Senator Pinto reconvened the meeting at 10:20 a.m.

Gaming Control Board (GCB)

In lieu of presenting, the GCB sent a letter to the committee declining the invitation to appear before the committee on December 1, 2016. Committee members discussed their disappointment with the letter and the inadequate report that accompanied it. The committee also discussed the importance of having good-quality information to craft good-quality legislation and the need for clarity and openness.

New Mexico Association of Indian Gaming Commissioners

Myron Salvador, chair, New Mexico Association of Indian Gaming Commissioners, provided background information on himself and the association. The association has existed for over 20 years and is composed of representatives from the state's gaming tribes. The association focuses on compliance, training and licensing. Indian gaming is highly regulated and regularly inspected by the National Indian Gaming Commission to ensure that federal, state and tribal laws are followed. The GCB performs audits and ensures appropriate money distribution.

Mr. Salvador said that the absence of the GCB at the meeting is typical of the board and shows that the GCB is not serious about helping the tribes. The 2015 Tribal-State Class III Gaming Compact mandates a government-to-government relationship. To date, the GCB has not yet attended any meetings of the New Mexico Association of Indian Gaming Commissioners.

Mr. Salvador said that the GCB requests documentation from the association and from tribal casinos, and to help them comply and file the requested paperwork, the board was supposed to establish an online portal. To date, only certain casinos have access to the portal, and the GCB has not logged into the portal to review the paperwork.

The committee discussed its appreciation of the association's attempts to work with the GCB and instructed the association to request to give a presentation to the Legislative Finance Committee (LFC) and the House Appropriations and Finance Committee.

Update on the Indian Water Rights Settlement

Deborah Dixon, P.E., director, Interstate Stream Commission, updated the committee on the status of three different proposed Indian water rights settlements: the Navajo Nation water rights settlement in the San Juan River adjudication, the embedded adjudication with the Pueblos

of Nambe, Pojoaque, Tesuque and San Ildefonso and the Abeyta adjudication in relation to the Pueblo of Taos water rights settlement.

The Navajo Nation water rights settlement was an agreement from 2005 to resolve claims by the Navajo Nation over water in the San Juan River. The settlement provides water development projects for the benefit of the Navajo Nation and non-Navajo communities in exchange for a release of the Navajo Nation's claims to water that potentially could displace existing non-Indian water users in the basin. In 2009, President Barack Obama signed legislation authorizing the Navajo Nation water rights settlement.

In 2013, two partial final judgments and decrees adjudicating the water rights of the Navajo Nation were entered. Four parties filed appeals and a related order in the New Mexico Court of Appeals. Answer briefs were filed in March 2015. Three New Mexico legislators also filed an amicus brief in one of the appeals. The appeals are now fully briefed and awaiting a decision from the court.

The Navajo-Gallup Water Supply Project was federally funded to the tune of \$870 million for planning, design and construction. The total estimated cost for the settlement has since increased to approximately \$1.255 billion. The state's share did not increase. The settlement legislation requires a \$50 million contribution by the state for construction costs. Based on New Mexico's total contribution toward the project and conservative estimates of anticipated cost-share credit, the state is within approximately \$3.73 million of meeting its cost-share obligation. Appropriations have been submitted and must be confirmed when construction is completed. Once expended, a finalization of a cost-share credit request can be submitted to the United States Bureau of Reclamation for approval.

In response to a question from the committee, Amy Haas, general counsel for the Interstate Stream Commission, informed the committee that the state is technically in default on payments and that cautionary agreements are expressly contingent on the availability of appropriations. A lack of appropriations or delays will cost the state more. Ms. Haas reminded the committee that each agreement is unique.

In response to a question from the committee, Greg Ridgley, general counsel, Office of the State Engineer, updated the committee with the status of the lawsuit filed by legislators and other lawsuits. The case has been fully briefed in appeals court, and the parties are awaiting notice as to whether full arguments will be heard by the court. New Mexico has 12 pending general water rights adjudication suits in the state.

In response to a question, Ms. Dixon and the committee discussed theoretical payment scenarios and repercussions of not making a payment or full payment. Repercussions could include being in violation of a contractual agreement or could cause a halt in construction due to lack of appropriations for the project.

The committee thanked Representative Madalena, who is retiring from the legislature, for his service and recessed at 2:00 p.m.

Wednesday, December 2 — Room 307, State Capitol

Representative Clahchischilliage reconvened the meeting at 10:08 a.m.

Endorsement of Legislation

On a motion made by Senator Cisneros and seconded by Senator Rodriguez, the committee endorsed a joint memorial requesting that members of the United States Congress enact legislation promptly to address the disparity in criminal sentences and time served in prison for individuals convicted in federal courts versus state courts and the resulting impact on Native Americans and people of color.

On a motion made by Senator Martinez and seconded by Senator Cisneros, the committee endorsed a bill removing the time limit for filing an application for a settlement claim from the Native American Veterans' Income Tax Settlement Fund.

On a motion made by Senator Martinez and seconded by Senator Pirtle, the committee endorsed a memorial requesting that the USFS transfer the real property upon which Ski Apache sits to the Bureau of Indian Affairs, to be held in trust by the Mescalero Apache Tribe.

Small Loan Report Update

Julia Downs, analyst, LFC, presented a progress report on the small lending industry in the state. Previously, FastBucks was ordered to pay \$32 million in restitution to consumers for taking advantage of a loophole in New Mexico's small loan laws. Also, a significant proposed guideline by the federal Consumer Financial Protection Bureau is a rule regarding a borrower's ability to pay. Under the proposed rule, lenders must make a reasonable determination that sufficient income remains for the payment of a high-cost loan by assessing the borrower's finances before lending. Assessment includes verifying a borrower's income, major financial obligations and borrowing history. The study, conducted by the LFC, notes that the guidelines are too vague. Making a "reasonable determination" that sufficient income remains to cover loan costs may be unenforceable. The rule could also prove to be cumbersome and would not apply to some lenders. The ability-to-repay guidelines under the proposed rule require consumers to fit within a certain model that may prevent their ability to choose borrowers.

In response to a question from the committee, Ms. Downs said that there is not currently a rate limit on short- or long-term loans. Approximately 14 states have a 36% all-in annual percentage rate cap, but rules on those caps vary greatly by state.

Santa Fe Indian School

Roy Herrera, superintendent, Santa Fe Indian School, gave the committee background on Santa Fe Indian School. The school is owned by the 19 pueblos in the state. Last year, the

school graduated 105 students, with 100% of seniors graduating. Scholarships awarded to students from Santa Fe Indian School totaled over \$5 million.

Superintendent Herrera provided the committee with a map of the property and discussed a project the school is working on to add turning lanes for entering the school property. For this project, the school will request \$900,000 for planning, design and construction for the new entrance. He also credited the legislature with being a part of the school's success. Capital outlay has been used to provide a positive environment and partnerships that have led, and continue to lead, to high-quality education.

The committee discussed the project to which Superintendent Herrera referred. The project was endorsed and put into the capital outlay bill during the 2016 session; however, the governor line-item vetoed that project. The committee requested that a letter be drafted and sent on behalf of the committee to the Department of Finance and Administration, the Office of the Governor, the House Appropriations and Finance Committee and the Senate Finance Committee to make those entities aware that the IAC has vetted this project. A motion to draft the letter was made by Senator Cisneros and seconded by Senator Martinez. It passed without objection.

On a motion made by Senator Cisneros and seconded by Senator Martinez, the IAC approved the minutes of the October 17-19, 2016 meeting.

Update on School Transportation Boundary Agreements

Paul Aguilar, deputy secretary, Public Education Department (PED), and Latifah Phillips, assistant secretary for Indian education, PED, told the committee that some impact aid funding could be in jeopardy by some cross-border agreements with Arizona. They discussed the possibility of having districts where students live claim the funding, in lieu of having the district risk losing impact aid money, which has been under consideration but has yet to be finalized.

The Gallup-McKinley County School District (GMCSD) agreement discussed during the first IAC meeting of the 2016 interim has been signed by the Window Rock Unified School District and is awaiting signatures by the GMCSD.

Impact aid applications are due in January, and districts will have until June to adjust their requests. If the GMCSD's general counsel allows the cross-border agreement, the school districts would apply for aid for the following school year.

One of things that the PED has been discussing over the last year is the availability of supplemental funding in the general appropriation act for those districts to help pay tuition for students attending school in other states. In the current revenue climate, this supplemental funding might not be considered, and the committee was asked to keep supplemental funding in mind while addressing budget issues this coming session. The committee discussed the impression that the LFC and Senate Finance Committee do not consider supplemental requests and the lack of money in reserves to fund supplemental requests.

On a motion made by Senator Cisneros and seconded by Senator Martinez, the IAC adjourned at 11:44 a.m.

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