

# Native American LAW DIGEST

A monthly summary of legal decisions and developments significant to the Native American community

## Contents

<b>Culture and Heritage</b>	
Article.....	1
Cases.....	9
News.....	11
<b>Economic Development and Business</b>	
Article.....	1
Cases.....	11
News.....	12
<b>Environment, Land and Natural Resources</b>	
Cases.....	13
News.....	13
<b>Health, Education and Welfare</b>	
Cases.....	14
News.....	15
<b>Human Resources and Employment</b>	
Cases.....	16
News.....	17
<b>Tribal, Federal and State Governments</b>	
Cases.....	17
News.....	19

## Navajo Mega-Energy Projects Take Shape

A decade-long effort by the Diné Power Authority (DPA), an entity of the Navajo Nation, to develop large-scale commercial power generation and transmission on the Navajo Nation is reaching fruition. Two major projects, the Desert Rock Energy Project and the Navajo Transmission Project, are in the final stages of environmental review and are slated to go to financing and construction in 2007.

The Desert Rock Energy Project, a 1,500 mega-watt coal-fired power plant, will be located on the Navajo Nation in northwest

New Mexico. The project has been lauded for setting the strictest environmental standards to date for a commercial-scale, coal-fired power plant in the United States. Indeed, the project's proposed environmental standards, submitted to

the U.S. Environmental Protection Agency, have reportedly forced other planned coal projects to revise and raise their own environmental standards.

The Navajo Transmission Project, likely to be built in stages, is a 500 kv transmission line

**“Senator Domenici provided the seed money without which these projects could not have gotten off the ground. We are going to get a thousand-fold return on that investment.”**

*Steve Begay, General Manager, DPA*

that will originate from the Desert Rock plant, cross northern Arizona, ultimately connecting to the Market Place Substation in southern Nevada.

The transmission line will facilitate moving the

*continues on page 8*

## Native Language Bill Zips Through House; Stalls in Senate

The U.S. House of Representatives has approved the Esther Martinez Native Languages Preservation Act (H.R. 4766), which would authorize grants from the U.S. Department of Education to establish Native American language “nests,” “survival” and “restoration” programs, with an emphasis on language immersion.

The bill is named for the late Esther Martinez of Ohkay Owingeh Pueblo in New Mexico, a woman who spent her life maintaining and preserving

the Tewa language. Martinez recently died in a car crash driving home from a ceremony honoring her at the National Endowment of the Arts. The legislation aims to preserve indigenous languages that are still spoken, increase support for language immersion programs to create fluent speakers and allow tribes and pueblos to develop their own immersion programs.

In the September 2006 issue of *Native American Law Digest*, we featured the House Education

*continues on page 2*

©2006 by Falmouth Institute  
ISSN No. 1067-019X

No part may be reproduced without the consent of Falmouth Institute. Native American Law Digest is published monthly at:

3702 Pender Dr., Suite 300, Fairfax, VA 22030  
Telephone: 1-800-992-4489  
Fax: 703-352-2323  
www.falmouthinstitute.com

EDITOR-IN-CHIEF

**Gregory A. Smith, Esq.**  
*Johnston & Associates*

ASSOCIATE EDITOR

**Randi Hicks Rowe**

PUBLISHER

**Jeffrey S. Marciano**

Native American Law Digest is a monthly summary of legal decisions and developments of interest to the Native American community. NALD welcomes the views of its readers. All articles and letters must be typed and signed and must include the author's address and telephone number. NALD reserves the right to edit all submissions. Published submissions represent the view of the author; not necessarily those of Falmouth Institute or NALD.

**Native Language Bill**, *continued from page 1*

and the Workforce Committee's historic hearing on this legislation in Albuquerque, N.M. That hearing greatly energized the effort to push this legislation through the House. Set forth below is the House floor debate that took place before the passage of this landmark bill.

The legislation is now in the Senate awaiting action. Although H.R. 4766 enjoys widespread support in the Senate, the effort to get this legislation passed before the election recess was stalled due to broader political issues. Advocates for the legislation are asking that the Senate pass this bill when it comes back for its lame duck session, currently planned for the week of Nov. 13, 2006.

**ESTHER MARTINEZ NATIVE AMERICAN LANGUAGES  
PRESERVATION ACT OF 2006 —  
(House of Representatives - September 27, 2006)**

Mr. *McKEON*. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4766) to amend the Native American Languages Act to provide for the support of Native American language survival schools, and for other purposes, as amended.

The Clerk read as follows: [NALD Editor's Note: The text of the bill is not included here due to space limitations]

...

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. *McKeon*) and the gentleman from Michigan (Mr. *Kildee*) each will control 20 minutes.

The Chair recognizes the gentleman from California.

**GENERAL LEAVE**

Mr. *McKEON*. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4766.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. *McKEON*. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 4766, the Esther Martinez Native American Languages Preservation Act of 2006. Within the confines of existing programs under the Department of Health and Human Services' Administration for Native Americans, this measure will empower Native American tribes, organizations, colleges and governing bodies as they seek to preserve Native languages and cultures.

I would like to commend my colleague, Congresswoman **HEATHER WILSON**, for leading the charge on this issue. Native American tribes nationwide are struggling with the loss of their languages, and, indeed, to lose even one Native language is to lose a piece of our Nation's history.

Mrs. *Wilson*, along with her colleague Mr. **TOM UDALL**, has really done a great service to us, as she invited me to her district last month. I will mention a little bit more about that later, but I want to thank her for doing that. I also want to commend Ranking Member **KILDEE**, who has been a strong supporter of Native American programs forever since I came here, and I am sure much longer than that.

H.R. 4766 is being considered in the same spirit as a previous version of the legislation which was examined by our Education and Workforce Committee last month in a field hearing held in Representative *Wilson's* district in Albuquerque. That hearing provided us an opportunity to learn firsthand about the extent and impact of Native American language loss in New Mexico, throughout the Southwest, and across the Nation. We heard from Native American advocates, academics and students about the need to preserve their languages in the face of a dramatic decline, and today I am proud we are responding.

In that hearing we began with an invocation by a Native American Governor in his language and ended with a benediction in his language by the same Native American Governor. There was a great feeling in the room, and some people commented that they hoped this wasn't just a shot and they would never see us again and never hear from us. We are back, and we are passing the bill.

In many Native American communities, Native languages are disappearing at an alarming rate. As a matter of fact, it is estimated that only 20 indigenous languages will remain viable by the year 2050.

The link between education, language, and culture is considered by many as paramount to preserving the very identity of Native Americans. By encouraging a greater focus on Native language programs, we are not only striving to preserve that identity, but we are encouraging greater academic performance among Native American students as well. The fact that this bill does so within the confines of existing programs makes it worthy of even stronger support from this body.

Mr. Speaker, when we discuss Native American language preservation, we are not just simply talking about a method of communication within tribes. This issue is far deeper than that. It represents the preservation of an important part of our Nation's history, culture, and legacy.

*continues on page 3*

**Native Language Bill**, *continued from page 2*

By providing grants to Native American language programs consisting of language nests, survival schools and restoration programs, we are bolstering that preservation effort. This measure will empower Native Americans to take the steps they deem necessary to preserve their indigenous languages and thus their cultures.

After visiting with them last month in New Mexico, I am convinced that we not only are doing right by giving them the opportunity to preserve their languages in this way, but we are also right for working in a creative, fiscally responsible manner to preserve critical elements of our national heritage.

I urge my colleagues to join me in supporting this worthwhile legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. KILDEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4766, the Esther Martinez Native American Languages Preservation Act of 2006, introduced by my colleague from New Mexico, Mrs. **HEATHER WILSON**.

Language scholars estimate that there were approximately 300 languages spoken in North America prior to the arrival of Columbus. Some project that without intervention, only 20 indigenous languages will remain viable by the year 2050. This bill will help save Native languages, whose very survival depends upon our intervention.

Native languages are one of the treasures of this country's heritage, history, and diversity. The names of many States, cities, towns, streets, rivers and other geographical names in our country are derived from Native words. It would be a dishonor to continue to lose the languages to which we owe their origin.

Native languages have played a vital role in protecting our country in times of war, Mr. Speaker. In World War I and World War II, many brave Native Americans performed the role of "code talkers" to help protect this great country.

We owe much of this language preservation assistance to the legacy of our heroic code talkers. The key to stemming the loss of our Native American languages is by significantly increasing support for Native American language immersion programs. In addition to developing fluent speakers, language immersion programs have other remarkable benefits. Studies are showing that native language immersion programs decrease native dropout rates and increase educational attainment compared to their counterparts without such opportunities.

Mr. Speaker, these programs are valuable in fostering self-awareness, self-esteem, social growth, and problem-solving skills which are crucial in developing confident individuals who can tackle life's challenges in developing the next generation of Native American leaders.

H.R. 4766 allows the commissioner of the Administration for Native Americans Department of Health and Human Services to award grants to support and strengthen Native American language immersion programs, including language and language restoration programs. H.R. 4766 takes an important step forward in recognizing that vital importance of the Federal Government proactively working to save an important part of our heritage.

I would be remiss if I did not point out that the allowance for this grant program is just a promise, and this promise cannot be realized without a real increase in funding from the Administration for Native Americans which has been level funded at \$44 million for the last 3 years. I pledge today that if this bill should become law, I shall send a letter to the Appropriations Committee supporting the increased funding necessary to support this program. I invite Chairman *McKeon* to join me in this effort. And I know that Mrs. *Wilson* is also concerned with this.

I urge my colleagues to support H.R. 4766. And if this bill should become law, I invite all Members to join me in supporting appropriations necessary to fulfill our promise made today.

Mr. Speaker, I reserve the balance of my time.

Mr. *McKEON*. Mr. Speaker, I would state that I would be happy to join with the gentleman on that letter.

I am happy now to yield whatever time she may consume to the gentlewoman from New Mexico (Mrs. *Wilson*), the author of this bill.

Mrs. *WILSON* of New Mexico. At a government-run boarding school for American Indians in the 1920s, Esther Martinez was not allowed to speak Tewa, her native language. Nor could she listen to the kinds of stories that her grandfather would tell her at her native San Juan Pueblo, now known as Owingeh. The goal of the school was to assimilate American Indians, and that meant leaving the past, the stories, and the language behind. But Mrs. Martinez never did.

After graduating from high school, Mrs. Martinez raised 10 children on an income earned from working as a janitor and in other service industry jobs, and she taught her children Tewa.

Esther took linguistics classes, and in her 50s she became a teacher. She taught Tewa in the local public schools. In 1983, her dictionary

*continues on page 4*

**Native Language Bill**, *continued from page 3*

of San Juan Tewa was published, and just a little more than 2 weeks ago on September 14, Esther Martinez was honored as one of 12 2006 National Heritage fellows by the National Endowment of the Arts, the highest recognition in the folk and traditional arts in America.

Two days later, as she returned to San Juan Pueblo, Esther Martinez was killed in a car accident in Espanola, New Mexico, caused by a suspected drunken driver. She was 94 years young. With the permission of her family and particularly of her grandson, Matthew, and the support of Governor Joe Garcia, I would like to honor Esther's efforts to preserve native languages by naming this bill for her.

Our native languages are dying. Only about 20 of over 300 precolonial indigenous languages will be left by the year 2050. And I wanted to thank my colleagues **TOM UDALL**, **RICK RENZI** from Arizona, and particularly Chairman *McKeon* and Mr. *Petri*, for taking a personal interest in this, and of course Ranking Member **KILDEE** for his longtime leadership on Native American education.

This bill will increase the support for Native American language so that we can create and recreate fluent speakers of native languages. It doesn't create a new program, but rather incorporates Native American needs for language nests and survivor schools and restoration programs into current authorized funds.

Mr. Speaker, not too far from this House down at the foot of Capitol Hill, we have the newest building in the Smithsonian Institution. It is a beautiful building. It is the Museum of the American Indian, and inside it we are preserving Navajo rugs and bead work and beautiful pieces of art and kachinas and fetishes. We spend millions of dollars to preserve objects from the past. This bill I ask my colleagues to support tonight preserves a living culture through the preservation of language.

Mr. Speaker, I thank the gentleman from California (Mr. *McKeon*) for his support. I ask my colleagues to vote in favor of this bill.

Mr. KILDEE. Mr. Speaker, I yield 3 minutes to the gentleman from New Mexico (Mr. *Udall*).

(Mr. UDALL of New Mexico asked and was given permission to revise and extend his remarks.)

Mr. UDALL of New Mexico. Mr. Speaker, I rise today in support of H.R. 4766, the Esther Martinez Native American Language Preservation Act of 2006; and I would like to thank my colleague from New Mexico (Mrs. *Wilson*) for introducing this important piece of legislation. It is an honor to be a cosponsor of it. I would

also like to thank the gentleman from Michigan (Mr. *Kildee*) for his hard work on this issue, as well as many other Members who have taken an interest in this very important issue, and also thank Chairman *McKeon* who brought the committee to New Mexico.

I remember, Mr. Chairman, we were in that room and it was standing room only. I think we could have gotten a much bigger room and even a bigger crowd. But it was an enormous crowd, and I think we were all impressed, and you could see and feel the real interest in this issue in terms of native communities caring about preserving their language. So it was wonderful to have you in New Mexico and have the committee out there and **TOM PETRI**, the gentleman from Wisconsin, who was also there.

Mr. Speaker, we pass this legislation today with the great hope for the future, but with great sorrow for the recent past. As has been mentioned, Ms. Esther Martinez, a master storyteller from Ohkay Owingeh, a pueblo located in my district, was tragically killed on September 17, 2006. Esther was returning home from the airport on the heels of a trip to Washington, D.C. to be honored as a 2006 National Heritage Fellow by the National Endowment for the Arts. Esther was 94 years old.

She had dedicated her life to maintaining and preserving the various forms of the Tewa language. Among her Pueblo people, Esther, or Aunt Esther, as many called her, is best known for her storytelling, but also recognized for her linguistic and educational contributions. Esther taught Tewa at the San Juan Day School and for more than 20 years served as the school's director of bilingual education. She also published her stories and used them as learning tools in the classroom.

As a master of the Tewa language, she compiled Tewa dictionaries in various dialects for the Northern New Mexico Pueblos, and also translated the New Testament into Tewa.

Considering Esther's dedication to preserving her native language, it is a fitting tribute that this legislation be named after her. The importance of language and its ability to enhance the rich dynamics of our Nation's history is often overlooked. From learning the ancestry of those who came before us to passing stories down through the generations to maintaining religious, cultural, and social ties, language is fundamental. Passing this legislation today is an indication that the importance of cultivating and passing languages down to younger generations is now being recognized.

I have had the great honor of visiting the Pueblos, the Navajos and the Apaches, and others, in my district during my four terms in the Congress and learning the traditions and characteristics

*continues on page 5*

**Native Language Bill**, *continued from page 4*

unique to each individual tribe. One similarity, however, is that native languages are being lost. Tribal elders are often the only ones fluent in the language as an increasing number of children are growing up in homes that speak only English.

The urgent need to protect and preserve Native American languages is clear. We must invest in their preservation by implementing immersion programs. Passage of this legislation today is an important step toward reversing that trend. I urge my colleagues to support this legislation.

Mr. KILDEE. Mr. Speaker, I yield 2 minutes to the gentleman from North Dakota (Mr. *Pomeroy*).

Mr. POMEROY. I thank the gentleman for yielding, and I thank my colleagues for what has been a very interesting, indeed moving, debate. Esther Martinez is someone I wish I had met. You have certainly done her great credit in your stirring words on the floor this evening.

It was only a couple of years ago we had a procession of horses, Native Americans dressed in their traditional clothing as we came down the Mall, part of the ceremonies attendant to the opening of the newest Smithsonian just down 100 yards from where we speak. It is and stands as ongoing testament to the rich history and culture of the native peoples of our land. But in a much broader way we need to make certain that these cultures continue to live and thrive and are passed on within the generations.

I so wish that all of my colleagues had the opportunity to attend some of the events I attend in North Dakota. We are proud to host four reservations, four tribes, each with their own distinct cultures and ceremonies, but typically begin with the flag song, an honor song, a prayer delivered by an elder and so often in the native tongue. I have often thought, what will happen when these elders are no longer with us? Will we still have the native tongue?

This legislation is a wonderful commitment of this Congress to the legitimacy of the actions to preserve native languages, and commits, in my opinion, very strategic ways to continue to advance these native languages. In listening, young children, we know just by how the brain develops, language can be so effectively taught, and then continuing that trend right through junior high and high school grounding these emerging young men and women in solid notions of their culture and their history and their native pride. It can only be as important a part of their upbringing as our own respective cultural traditions have been with ours.

So I am very proud to join the discussion tonight and urge that we pass this bill and then work, as my friend, the gentleman from

Michigan (Mr. *Kildee*), has mentioned to get the appropriations support behind to get the funding.

Mr. KILDEE. Mr. Speaker, I yield back the balance of my time.

Mr. McKEON. Mr. Speaker, I would like to say, seeing Mr. *Pomeroy* from North Dakota get up and speak about this, and we have talked about this before, I had a younger brother that served a mission for our church in the Dakotas with the Indian people. He would have loved what we are doing here tonight.

Ms. BORDALLO. Mr. Speaker, I rise in support of H.R. 4766, the Esther Martinez Native American Languages Preservation Act of 2006. This is important legislation which seeks to protect, preserve, and promote indigenous languages across the United States. Among the estimated 175 indigenous languages spoken by citizens of the United States today is the Chamorro language, the indigenous language of the Chamorro people of Guam.

Ethnographers and linguists recognize the Chamorro language as belonging to the western group of the Austronesian language family. The Chamorro language has been spoken by the Chamorro people for more than 5000 years. It is a beautiful language that has survived outside influences and westernization.

Chamorro and English are the official languages of Guam. I am proud to support H.R. 4766 because it proposes to increase federal resources for Native American language immersion programs. The version of H.R. 4766 that has been brought to the House floor this evening also would amend the Native American Programs Act to authorize the Administration for Native Americans (ANA) in the Department of Health and Human Services to award grants to organizations and colleges dedicated to Native American language preservation. The bill specifically authorizes grants to establish site-based educational programs for children and their families, "survivor schools," and restoration programs.

The preservation of the Chamorro language and culture is within the current authorized mission of the ANA-administered grant programs that H.R. 4766 seeks to expand and for which it seeks to reauthorize funding. The Native American Programs Act, which H.R. 4766 seeks to amend, contains a definition for "Native American Pacific Islander" that includes the Chamorro people and our indigenous language. This definition is codified in 42 U.S.C. 2992c and should guide the ANA in administering future grant programs in accordance with this legislation should it be enacted.

Mr. Speaker, I also note for the record that H.R. 4766 has received the support of the 28th Guam Legislature. The inclusion

*continues on page 6*

**Native Language Bill**, *continued from page 5*

of the Chamorro language as among the Native American languages sought to be preserved by this legislation is an important element. I urge support for H.R. 4766. I thank the sponsor of this bill, my colleague from New Mexico, Mrs. Wilson, and the Chairmen and Ranking Members of the Education and Workforce Committee, for advancing this legislation and for ensuring Guam and the Pacific Territories were included in the legislation.

Mr. BACA. Mr. Speaker, I rise today in support of H.R. 4766, the Esther Martinez Native American Languages Preservation Act of 2006.

Language is an important part of one's culture and heritage. Unfortunately, many languages are dying off at a tremendous rate. Native American languages are especially vulnerable and might soon become extinct if we do not take action to preserve them. It is predicted that by 2050, only 20 indigenous languages will remain viable in the United States.

Serving as a member of the Native American Caucus and having worked closely with the Native American communities of Southern California as a Congressman (and previously in the California State Assembly and State Senate), I am committed to helping preserve Native American language and culture.

In fact, I think Congress should take additional steps to help educate all Americans about Native American culture and traditions--and to honor the contributions that the "first Americans" have made to the larger American culture.

That's why I introduced a resolution a couple of years ago to encourage schools across the country to honor Native Americans for their contributions to American history, culture and education. The House passed this resolution, H.R. 168, during the 107th Congress.

And that's why I have been working to establish a Native American holiday. I believe that a national holiday would help raise awareness about American Indians. When I served in the California Legislature, the San Manuel Band asked me to introduce a bill calling for such a holiday. We passed it in California, and now I have introduced similar legislation, H. Res. 76, in the House of Representatives.

So I understand what is at stake today: We have a chance to prevent Native languages from disappearing forever. This is why we must pass this legislation.

Native American languages can be revitalized through language immersion programs. Language immersion programs have the ability to create fluency among students. In addition, students who participate in such programs often have higher rates of academic

success than their peers who do not. This legislation therefore would be one way to raise the academic achievement of Native American students.

The Native American Language Preservation Act would contribute to an already existing Native language grant program within the Department of Health and Human Services by allocating grants for language immersion programs which would not only help keep the language alive, but also help ensure that Native languages are accessible for the next seven generations to come.

I ask my colleagues to join me in supporting H.R. 4766. Let's preserve and honor Native American heritage and save our Native languages.

Mr. PEARCE. Mr. Speaker, I rise in support of the Esther Martinez Native American Languages Preservation Act of 2006 (H.R. 4766). I would like to congratulate my colleague from New Mexico, Mrs. Wilson, for bringing this issue forward.

This is important legislation to preserve the culture and increase fluency in Native American society. Sadly, all across America, Native American languages are in rapid decline; estimates are that there may be only 20 Native American languages remaining by the year 2050. These languages are unique to our country and unique to our history. If we do not preserve them, they will disappear forever.

This bill will establish a series of grants to help preserve the language and culture of our Native American people. This will help create programs that will teach our young people of the importance of learning the language of their ancestors and continuing to preserve the history and culture of their people.

Finally, the language programs created in this bill are locally based educational programs that will help both children learn and preserve languages in households all across America.

My constituent Dr. Christine Sims, a professor of language at the University of New Mexico, and Pueblo of Acoma tribal member says, "The future of America's first languages, those that are indigenous to this country hang in the balance of what we do as a Nation to help tribal communities preserve them. Much has been given up by countless generations of Native people in the wake of this country's expansion and growth into the great nation that it is today. It is only right and just that Congress consider the tremendous price that America's first people paid in terms of losing so much throughout the course of this nation's history, including the loss of native languages. Among America's Native language communities remaining today, the hopes and the dreams that Native elders, parents and tribes hold for their children are those which include the maintenance and

*continues on page 7*

**Native Language Bill**, *continued from page 6*

revitalization of tribal heritage languages. We can do no less in this country, therefore, than to ensure that tribal communities have the opportunity and the funding resources that will help make these hopes and dreams for their children a reality.

"Today's education for the American Indian student must open the doors for youngsters to have more opportunities to learn their own languages as provided in the provisions of H.R. 4766. This bill, so aptly named for one of New Mexico's tribal elders, Mrs. Esther Martinez from San Juan Pueblo ( who tragically died in a car accident this past week), would not only honor the memory of this renowned Native language advocate and leader; but as well, demonstrate the commitment that Congress is willing to make in support of the intent and purpose of the Native Languages Preservation Act."

Again, I want to thank my New Mexico colleague, Mrs. *Wilson*, for bringing this bill forward, her hard work and dedication are a credit to her and she is a credit to our State.

Mr. PETRI. Mr. Speaker; throughout the country, Native American languages are experiencing a rapid decline. Of the nearly 300 native languages of the United States, only 210 are still spoken, and all too often these languages are spoken only among the elderly. This is a particularly troubling development, given the importance of Native American languages to tribal identity and culture. As such, I was pleased that Congresswoman *Heather Wilson* introduced H.R. 4766, the Native American Languages Preservation Act, which would provide federal support for programs that provide language training for young children and their families. I would also like to recognize Chairman *Buck McKeon* for the expedited manner in which he has moved this legislation.

On August 31st, I had the opportunity to travel to Albuquerque, New Mexico, to participate in a hearing held by the Education and the Workforce Committee on the "Recovery and Preservation of Native American Languages". We heard from representatives of several tribes regarding their experiences with this problem and ways in which they have attempted to preserve their native languages. Fortunately, efforts are underway to save these languages and to encourage a new generation of Native Americans to keep their languages alive as an integral part of Native American culture and identity.

I was particularly pleased that a representative from the Oneida Nation of my home state of Wisconsin was able to testify at this hearing. The Oneida have made language preservation a priority by pairing Elder native speakers with younger English-speakers to train a new generation to appreciate and preserve the traditional language. Since 1996, the Oneida have developed a Language

Revitalization Program to connect their fluent Elders with trainees in a semi-immersion process that would produce speakers, and most importantly, teachers of the Oneida language.

Although tribes like the Oneida have already begun to develop programs to preserve their own languages, Congress can help other tribes create programs of their own. H.R. 4766 will provide more options for revitalization programs and take advantage of existing grants within the Administration for Native Americans Office. Mr. Speaker; I urge support for this bill and for the revitalization of native languages.

Mr. McKEON. Mr. Speaker; I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. *McKeon*) that the House suspend the rules and pass the bill, H.R. 4766, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to amend the Native American Programs Act of 1974 to provide for the revitalization of Native American languages through Native American language immersion programs; and for other purposes."

A motion to reconsider was laid on the table.

---

**STATEMENT of Congressman Rick Renzi  
The Esther Martinez Native American Languages  
Preservation Act  
September 27, 2006**

Thank you, Mr. Speaker.

I would like to thank Chairman McKeon and Ranking Member Miller for the opportunity to speak on this important piece of legislation. I also want to thank my colleague, Congresswoman Heather Wilson, for her leadership on this important issue.

This bill amends the Native American Programs Act to allow the Administration for Native Americans under the Dept. of Health and Human Services to award grants to strengthen Native American language immersion programs.

This measure is vital to preserving the diminishing Native languages in tribes across the nation, including many in my district. As an original cosponsor on this measure, I am thankful for the bipartisan effort to preserve the languages of those people who hold the original history of our country. In my own district, the Navajo people have a very successful language immersion program.

*continues on page 8*

**Native Language Bill.** *continued from page 7*

In 2001, the Navajo Language Immersion School at the Window Rock Unified School District was established by Dr. Deborah Dennison. At the first grade level, students are instructed in the Navajo Language 90% of the time, and the remaining 10% of their lessons are in English. With each year, these Navajo students are immersed in English more and more until there is an equal balance of language instruction. The students in this successful program cover academic content areas in both Navajo and English and the results have been astounding. These students perform better on the standardized tests than students in "regular" classrooms. Moreover, since it was established, the Navajo Language Immersion School has consistently met No Child Left Behind's designation of "Annual Yearly Progress" and they have also met "Arizona Learns" standards. I hope this kind of excellence in learning and education can be duplicated throughout Indian Country.

While some may worry that this program would decrease the importance of the English language in the United States, we must remember the contributions that Native Americans who speak their Native language have made to our country. During World

Wars I and II, Native American languages, including the Navajo language, played a vital role in protecting our nation. Navajo people and other Native Americans were employed as "Code Talkers" during the wars, and implemented a code that our enemies could not break. Thus it was through their language that we overcame our enemies.

U.S. English, an organization dedicated to promoting English as the official language of the United States, has stated that, "...official English legislation proposed by U.S.ENGLISH does not prevent the use of Native American languages. ... In education, U.S.ENGLISH supports the right of tribal governments and autonomous Native American communities to make their native languages the primary language of instruction in their schools."

Therefore, it is paramount that we pass this legislation. As it helps us protect not only an essential part of Native American history but also helps us safeguard a larger part of United States character and culture for future generations to learn their Native language. A wise friend once shared with me that "To take away a people's language is to begin to conquer them." Let us join together to support and preserve the first American's Native languages.

**Navajo Mega-Energy Projects.** *continued from page 1*

power generated by Desert Rock to consumers in New Mexico and Arizona. The transmission line, which closely follows other existing transmission lines, will also strengthen an identified weakness in the national power transportation grid.

The total cost of these two projects is estimated at approximately \$3.2 billion. The Navajo Nation will have an equity stake in both projects and will receive well over \$1 billion in revenues over the next 30 years from coal royalties, water sales, rights of way and taxes. The projects will also generate substantial tax revenues for the state and federal governments. During the four-year construction of Desert Rock, the average number of workers will be approximately 1,000. After completion, there will be approximately 200 employees at the power plant and another 200 employees at the adjacent coal mine.

Since the mid-1990s, DPA has benefited from about \$11 million in federal funding, principally due to the support of Senator Pete Domenici. DPA General Manager Steve Begay noted, "Senator Domenici provided the seed money, without which these projects could not have gotten off the ground. We are going to get a thousand-fold return on that investment. Congressman Renzi has also been assisting in securing funds, which will be especially useful as we begin development of our renewable energy projects."

The Navajo Nation has invested approximately \$14 million in tribal funds in the two projects, as well. "With \$3.2 billion in construction costs, a huge economic multiplier effect that will benefit the whole region, more than a billion dollars in revenues to the Navajo Nation

and likely hundreds of millions to federal and state governments, these two projects will provide an enormous return on the initial federal and Navajo investments," added Begay.

DPA has worked closely with the Navajo congressional representatives, who have asked many questions about the project, including, most notably, its environmental and economic impact. Begay said, "We have sought to respond in detail to the questions that have been raised and to have regular contact with our senators and representatives. They have kept us focused on the essential environmental and economic questions that will always come up around a plant like this, in a place like Navajo. For our part, this plant has to work for the Navajo people, both environmentally and economically. We have a responsibility for generations to come."

Although most of the chapters around the Desert Rock site support development of the power plant, there is some opposition coming, in great part, from experience with two existing plants in the Four Corners area that have generated large amounts of pollution over the years and, despite some newer pollution controls, continue to generate significant emissions. "The Desert Rock plant should not be judged by these other plants, which are 40 years old. Huge efforts have gone into the design of Desert Rock to reduce pollutants to a level which is a small fraction of what these other plants produce, even with their add-on pollution controls," said Begay. Nonetheless, for some in the region any additional pollution is too much pollution.

*continues on page 9*

**Navajo Mega-Energy Projects.** *continued from page 8*

These groups have made their views known at numerous public hearings and meetings held by DPA and by various federal agencies.

In July 2006, the EPA issued a draft air quality permit for the Desert Rock plant, which is now going through the public review process. "The public meetings have been going well, and we are optimistic that a final permit, similar to the draft, will be issued around the end of the year," noted Begay. More information on the draft permit

can be found at: [www.epa.gov/region9/air/permit/r9-permits-issued.html](http://www.epa.gov/region9/air/permit/r9-permits-issued.html). DPA's private partner, Sithe Global, also maintains a Web Site on the Desert Rock project: [www.desertrockenergy.com](http://www.desertrockenergy.com).

When asked what the future holds for DPA once these projects are completed, Begay enthusiastically responded, "We are working on the development of alternative energy projects, with wind and solar high on our list. Look for announcements from DPA in these areas in the coming year."

**CULTURE AND HERITAGE****CASES****CRAFTS****Native American Arts, Inc. vs. Specialty Merchandise Corp.**

2006 U.S. Dist. LEXIS 65141 (E.D. Calif., Aug. 28, 2006)

The U.S. District Court dismissed a lawsuit by Native American Arts, Inc., against Specialty Merchandise Corp., holding that Native American Arts had only made allegations referring to competitive injury, but failed to properly plead damages under Fed. R. Civ. P. 11 (b)(3).

Native American Arts, a wholly Indian owned arts and crafts organization, had alleged that Specialty Merchandise Corp. was violating the Indian Arts and Crafts Enforcement Act, 25 U.S.C. 305, by selling imitation Native American pottery, sculpture, dolls, figurines and jewelry.

The court held that Native American Arts' allegations that it had lost sales and that the imitation products sold by Specialty Merchandise had driven its prices down and caused Native American Arts to suffer loss of reputation would be sufficient if they were properly plead. However, they were not, and the factual allegations were insufficient on their own.

**RELIGION****United States of America vs. Berra Tawahongva**

2006 U.S. Dist. LEXIS 67947 (Dis. Ct. Ariz., Sept. 11, 2006)

The U.S. District Court has denied a motion by Berra Tawahongva to dismiss charges against him that he violated the Migratory Bird Treaty Act. Tawahongva had argued that his conviction would violate his right to the free exercise of his religion and that requiring him to acquire a permit before taking golden eagles constitutes a substantial burden on the free exercise of his religion and, therefore, that the Religious Freedom Restoration Act prohibits his prosecution for failing to obtain a permit.

In June 2005, the U.S. Fish and Wildlife Service (USFWS) found two live golden eagles in a fenced area behind Tawahongva's

residence on the Hopi reservation. Before executing the search warrant, the officers ascertained that the Hopi government had not issued a permit to Tawahongva to possess the eagles. They subsequently charged him with violation of the Bald and Golden Eagle Protection Act, 16 U.S.C. 668 (a) and 18 U.S.C., Section 2, violation of the Migratory Bird Treaty Act, 16 U.S.C. 703 and 18 U.S.C., Section 2, and violation of the Lacey Act and Hopi law regarding possession of golden eagles without a permit. The government later dismissed counts one and three, leaving only the remaining Migratory Bird charge.

The MBTA prohibits the possession and taking of golden eagles except as provided by law. The court noted that to accommodate the religious practices of the Hopi, USFWS has developed regulations to allow them to obtain and possess golden eagles lawfully. Under these regulations, the Hopi were able to take from their lands 12 to an unlimited number of golden eagles per year for religious use from 1986 through 1996. From 1997 to 2005, the take has been 40 golden eagles. The state of Arizona has permitted the Hopi to take 10 golden eagles per year from state lands, and the Navajo Nation permitted them to take 12 per year from the Navajo reservation from 1998 to 2003. A permit was issued to the Hopi chairman for the time period in which Tawahongva was charged allowing him and tribal members designated by him to take 40 golden eagles that year, and the tribal council has adopted a permit system, which is administered by the cultural preservation office. Generally, Hopi tribal officers have testified, any Hopi tribe member may obtain a permit by filling out the application. In 2005, only 21 of the available 40 permits had been taken, meaning 19 would have been available to qualified individuals had they applied for them.

The court did note that traditional Hopi do not believe that tribal forms of government currently in place validly exercise authority over them. It also noted that Tawahongva was a member of the Coyote clan and an elder in the One-Horn kiva of Mishnognovia and that to fulfill his religious duties he must collect golden eagles each year.

The court held that Tawahongva's reference to the American Indian Religious Freedom Act was misplaced because that act neither included a provision for individuals to sue for their rights nor does it provide a defense to a criminal charge. *Lynn v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 455, 471 (1988).

The court also held that Tawahongva lacked standing to challenge the permit system as violating his free exercise of religion because he never applied for one. Tawahongva had argued that the permits are distributed unfairly and that his acting in accordance with his faith is the only permit he needs. *United States v. Hugs*, 109 F.3d 1375, 1378-79 (9th Cir., 1997). The court rejected his contention that he had standing to raise a First Amendment challenge based on *United States v. Hardman*, 297 F.3d 1116 (10th Cir., 2002). It held that Hardman was different based on Tawahongva's eligibility for a permit, while Hardman was ineligible because he was not a member of a federally recognized tribe. It did hold that he could challenge whether MBTA was, on its face, unconstitutional even if he had not applied for a permit. However, to be successful, he must show that there is no set of circumstances under which MBTA can be enforced without violating the First Amendment. See *Ohio v. Akron Ctr. For Reproductive Health*, 497 U.S. 502, 504, 110 S.Ct. 2974, 2975-76 (1990) and *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 2100. The court noted that Tawahongva did not clearly assert that the regime was incapable of being applied without violating the First Amendment and that many traditional Hopi people have acquired permits without their exercise of religion being substantially burdened.

The court rejected his claim that the RFRA barred his prosecution. It used a three-step analysis in considering this claim. The court recounted testimony at the hearing that showed conflicts within the Hopi community with regard to Hopi and non-traditional Hopi and their view of the validity or invalidity of the system of tribal government currently in place, but noted that its court was not the appropriate venue to resolve this. It noted that while other federal courts have determined that requiring an American Indian to acquire a permit before taking an eagle for religious purposes constitutes a substantial burden on the exercise of religion, Tawahongva had failed to present evidence that it substantially burdened his exercise of religion, only his mental discomfort in acknowledging the legitimacy of the Hopi tribal government. It also noted that the government has established that it has a compelling interest in protecting golden eagles and that it was "not convinced by this limited evidence" that the current permit system was not the least restrictive means of addressing the compelling government interest.

## INMATES AND RELIGIOUS RIGHTS

### **James Limbaugh vs. Leslie Thompson** 2006 U.S. Dist. LEXIS 65949 (M.D. Ala., Sept. 14, 2006)

The court accepted a magistrate's findings that denied relief in inmates' challenges to the Alabama Department of Corrections' policy prohibiting Native American inmates from participating in sweat lodge ceremonies because the prison system has now begun allowing participation. James Limbaugh and other Native American prisoners in Alabama had argued that the Alabama Department of Corrections had not carried its burden of proving that it is unlikely that the prohibition will recur:

The court held that when the defendant is a government, as is the case here, there is a rebuttable presumption that the objectionable behavior will not recur and that the Native American prisoners failed to rebut this presumption. The court also denied claims for monetary damages because these claims are barred by qualified and sovereign immunity.

## WIRELESS TOWERS

### **CTIA vs. Federal Communications Commission** U.S. Ct. Apps. 05-1008, Sept. 26, 2006

The U.S. Court of Appeals for the District of Columbia denied a petition from the Wireless Association (CTIA) challenging an order of the Federal Communications Commission that determined that the construction of a wireless communications tower was an "undertaking" subject to Section 106 of the National Historic Preservation Act, 16 U.S.C., Section 470f, and deferring to a determination by the Advisory Council on Historic Preservation that Section 106 protects not only those properties formally deemed eligible for listing in the National Register of Historic Places, but also those that meet the criteria for listing.

The case involved an agreement negotiated between the FCC, the Council and the National Conference of State Historic Preservation Officers that resulted in the drafting of a Nationwide Programmatic Agreement regarding wireless tower construction. After the NPA was drafted, the FCC received public comment; and on Jan. 4, 2005, after the notice and comment period, the FCC issued the NPA Order. In that order, the FCC concluded that construction of a wireless communications tower constituted an "undertaking" subject to Section 106 of the NHPA and deferred to the Council's interpretation of the term "eligible for conclusion." The CTIA then filed a petition for review, urging that the NPA Order was "arbitrary, capricious and abuse of discretion or otherwise not in accordance with law."

The case is significant to Indian tribes because CTIA was, in great part, seeking to relieve itself of extensive obligations under the Nationwide Programmatic Agreement to work with Indian tribes.

The court held that Section 106 of the NHPA requires federal agencies to take into account the effect of a federal undertaking on historic properties (which include sites of religious and cultural importance to tribes and Native Hawaiian Organizations). It also found that the NPA Order had concluded that tower construction requires federal approval because of the commission's tower registration process and the FCC's limited approval authority with regard to environmental protections. CTIA had argued that the registration process was wholly ministerial and not a process requiring federal approval and that the FCC's action was arbitrary and capricious. The court rejected these arguments.

It also rejected CTIA's four arguments in trying to show that the FCC's deference to the Advisory Council on Historic Preservation was unlawful. These were that the FCC had misconstrued its own authority to adopt in the NPA a definition of "eligible for inclusion" that differed from that adopted by the council; that the phrase "eligible for inclusion" in Section 106 is "unambiguous;" that the council's interpretation of the term "eligible for inclusion" is not entitled to deference because it appears in multiple provisions of the National Historic Preservation Act; and that the council's interpretation "cannot be squared with the text and structure of the Act or with the legislative history of Section 106."

## NEWS

## Board Denies Request to Extend Water Permit in Virginia

The Virginia State Water Control Board has voted 6-1 to deny Newport News' request to extend the permit the city needs to build and operate a reservoir in King William County. The Mattaponi Indians oppose the reservoir because it threatens the Mattaponi River and their tribal culture.

The city must now obtain a renewed permit before the old one expires in December 2007.

The Richmond Times Dispatch quoted Newport News Mayor Joe Frank as saying that the city was surprised because it has been working hard to satisfy all the regulations. He said it now is faced with the question of whether to spend public money on the plan when there's no guarantee of gaining state approval.

The newspaper quoted a board member as saying he didn't feel the city made a good case to grant the extension of the permit. The permit required the city to conduct several studies, but the city said the studies have been delayed by legal challenges and the challenge of obtaining other permits.

The tribe is not the only group opposed to the reservoir: Local farmers, watermen and environmentalists also have opposed it.

## Ads in England Offend Shoshone

Steve Pattinson, a member of the Shoshone tribe living in Britain, said he is offended by TV ads for Virgin Trains, which he said are straight out of the dark ages of cowboy and Indian films, according to *The Sun*.

The ad features a large Indian warrior on horseback who tries to board a speeding Virgin train but keeps bouncing off. He then tries to break a glass window with his tomahawk but, instead, rides into the wall of a tunnel entrance.

The *Sun* said Pattinson is considering a lawsuit. Pattinson sent a message to Virgin leader Sir Richard Branson in Shoshone, which translates "You have hurt our Indian people and you should pay."

When the ad first appeared on September 17, the Advertising Standards Authority received 18 complaints. The newspaper said that now the authority is logging complaints and will decide later if an investigation is to be launched. The newspaper quoted Virgin Trains as saying that the Broadcast Advertising Clearance Centre approved the script and tried to ensure no offense was caused. It also noted that an American Indian acted the role and didn't feel it was degrading.

## Senate Passes Bill Honoring Code Talkers

On Sept. 20, 2006, the U.S. Senate passed a bill (S. 1035) that would award gold medals to American Indians from all tribes who served as code talkers during World Wars I and II. The Senate legislation is being "held at the desk," in the House, allowing it to be taken up for consideration without referral to a House committee, perhaps in a lame duck session after the November elections. Two similar House bills are currently in committee with little prospect of moving on their own in the short time remaining in the 109<sup>th</sup> Congress.

The bill was designed as a follow up to a measure passed in 2001 that recognized only Navajo Nation code talkers.

### ECONOMIC DEVELOPMENT AND BUSINESS

#### CASES

#### NON-FEDERALLY RECOGNIZED TRIBAL GAMING

##### **D. Scott Carruthers vs. David Flaum** 2006 U.S. Dist. LEXIS 64684 (S.D.N.Y., Sept 6, 2006)

The U.S. District Court dismissed a complaint filed by investors against all parties except the real estate developer. It indicated it would dispose of these claims as well once it received more information on how the real estate developer's motion was served.

The parties were trying to open a casino on tribal land of the Unkechaug Indian Nation, but the venture fell through largely because the Unkechaug lacked federal recognition and, thus, the tribe was unable to legally operate a casino. The parties set up a limited liability company for their venture and sought to acquire land in Sullivan County, N.Y. for the venture. One parcel, “the 106 parcel” owned by Charles Petri, a defendant, was transferred to the Unkechaug, in exchange for \$550,000, supplied by D. Scott Carruthers. The land, however, was subject to a \$3.5 million mortgage and was subsequently foreclosed upon. A second parcel, “the 107 parcel,” was supposed to have been transferred to the tribe, but never was. Carruthers and other investor plaintiffs assert Petri and his associates breached several provisions of the contract and made fraudulent representations to induce the investors to invest. David Flaum was a real estate developer who allegedly backed Petri’s activities; Alan Young, their attorney, was sued for alleged breach of fiduciary duty as escrow agent.

During closing of the land deal, a law firm that had been hired by the tribe, Monteau & Peebles, issued an opinion that the tribe would not be able to conduct gaming on its ancestral lands because it lacked federal recognition. The tribe originally had contended that they were free, as a sovereign power, to operate gaming facilities without state or federal recognition. The court noted that it was unsure when or if this news might have been delivered to the investors. In either event, acquisition of the parcel continued.

The mortgage was foreclosed upon within six months of the date of the property purchase. One of the investors’ allegations was that Petri had said he believed the mortgage could be satisfied for \$1.5 million and that he would make a good faith effort to try to have it reduced and indemnify the investors in case he failed.

The court began by holding that David Flaum and Flaum Management had nothing to do with the venture and noting that the investors even now conceded this. The court, however, was unsure as to whether it was appropriate to find in Flaum’s favor or allow the investors to withdraw their claims against them, saying it depended on whether the investors “timely and fully responded to the Rule 11 motion” served to them. The investors replied on the 22nd day by agreeing to withdraw the claims. If the motion for sanctions to Rule 11 was delivered by first-class mail, then the response was timely, the court held. The court ordered the investors to tell the court how the motion was served.

The court then examined the allegations against Petri and noted that the letter of intent regarding the 107 parcel lacked basic information, including purchase price, which would be required for it to be considered a complete agreement under the terms of the N.Y. Statute of Fraud. It held that no binding agreement existed to transfer that parcel.

The court noted that the letter of intent regarding the 106 parcel also was incomplete, but that, in that case, the parties did take

steps to consummate part of that deal. The court held that nothing in the letter of intent bound Petri or his company to make any effort to reduce the amount to \$1.5 million only that Petri agreed to indemnify the Nation for any amount above \$1.5 million paid to satisfy the mortgage. It also noted that Petri had indicated that he thought the mortgage could be settled for this amount, but that was a “far cry from his entering into any contractual undertaking to settle the mortgage for that, or any, amount.” The court also held that the investors had offered no evidence that Petri had made any sort of representation with knowledge that it was false or with the intent not to perform and that, given that he had indemnified the investors for all monies they would have to pay above \$1.5 million, he “would have been a fool not to do everything possible to help the plaintiffs reduce the amount needed to clear the encumbrance.” It noted that the investors never offered evidence that they could have paid the reduced mortgage anyway.

The court then dealt with allegations against Young. It held that, in order for him to have been liable for breach of fiduciary duty, there must have been some agreement as to the uses of the \$550,000. The investors argued that it was to be used only to “clear title,” but the court disagreed with this notion, noting that \$550,000 could not be used to clear up the loan and acquire insurance because the loan was too large. The court noted that it found no evidence that the \$550,000 was to be used for that and that Young was Petri’s attorney anyhow and would have taken instructions from him and not the investors.

Finally, the court reviewed a claim against James Simermeyer that he engaged in malpractice based on his duty as a counsel for Carruthers. The court noted that Simermeyer was entitled to summary judgment dismissing the malpractice claim because even if Simermeyer had done things that Carruthers alleges he was supposed to have done, such as acquire title insurance for the 106 parcel, Carruthers still would have lost his land and money.

## NEWS

### 14 Tribes Named As Finalists for Harvard Award

Fourteen tribes have been named as finalists by Honoring Nations, a program of the Harvard Project on American Indian Economic Development. The program honors tribes that identify, celebrate, and share excellence in American Indian tribal governance. The finalists will make presentations to an Honoring Nations Board this month, and seven will be chosen for the highest honors.

The programs and tribes programs are:

- Alternative Sentencing Program, Tulalip Tribal Court, Tulalip Tribes
- Bad River Recycling Solid Waste Department, Bad River Band of Lake Superior Chippewa
- Citizen Potawatomi Community Development Corporation, Citizen Potawatomi Nation
- Cultural Education & Revitalization Program, Makah Cultural and Research Center, Makah Nation
- Homeownership: Financial, Credit & Consumer Protection Program, Umatilla Reservation Housing Authority, Confederated Tribes of the Umatilla Indian Reservation
- The Hopi Child Care Program, Hopi Tribe
- Hopi Education Endowment Fund, Hopi Tribe
- Indian Child Welfare Services, Department of Indian Child Welfare Services, Houlton Band of Maliseet Indians
- Morongo Tutoring Program, Social Services Department, Morongo Band of Mission Indians
- Navajo Methamphetamine Task Force, Navajo Department of Behavioral Services, Navajo Nation
- Red Lake Walleye Recovery Program, Red Lake Department of Natural Resources, Red Lake Band of Chippewa Indians
- Task Force on Violence Against Women, National Coalition of Native Nations and Organizations affiliated through the National Congress of American Indians
- Tribal Land Title & Records Office, Housing Department, Saginaw Chippewa Indian Tribe of Michigan
- Winnebago Community Development Fund, Ho-Chunk Community Development Corporation, Winnebago Tribe of Nebraska

## Manitoba Negotiating to Begin Native Fund

Manitoba has begun negotiating with Native groups to create a \$20 million fund, financed by profits from provincial lotteries, to help bridge the economic gap between First Nations and non-Natives in the rest of the province.

Dave Chomiak, gaming control commission minister, told Canadian Press that a proposal has been made to put \$4 million a year for five years into the fund. The fund could be used to fund the development of enterprises on reserves, he told the Press.

Canadian Press quoted a representative of the Assembly of Manitoba Chiefs as saying that, while there is a long way to go, this is an encouraging beginning.

## ENVIRONMENT, LAND AND NATURAL RESOURCES

### CASES

#### INDISPENSABLE PARTY

##### **Wesley Barber vs. Cliff Simpson and Unadell Turner** 2006 U.S. Dist. LEXIS 65819 (E.D. Calif., Sept. 1, 2006)

The U.S. District Court denied a motion that it amend a judgment in favor of Cliff Simpson and Unadell Turner in an eviction case. Wesley Barber argued that the Washoe Tribal Court had exceeded its jurisdiction by deciding an eviction case Simpson and Turner had brought against him because the United States was an indispensable party. The District Court, however, had observed that a long line “of cases ... have consistently held that, whenever Indian tribes or individual Indians sue to recover either tribal land or individual allotments, the United States is not an indispensable party.”

In considering the request for amending the motion, the court noted that the motion, absent highly unusual circumstances, would require newly discovered evidence, clear error or a change in a controlling law. The court examined closely *Choctaw & Chickasaw Nations v. Seitz*, 193 F.2d 456, 458 (10th Cir., 1952), which noted several U.S. Supreme Court holdings that recognized the right of Indians and tribes to take actions related to their lands without the federal government being a party.

### NEWS

## Judge Urges Indian Farmers to Restructure Case

U.S. District Judge Emmet Sullivan has urged Indian farmers and ranchers to restructure their case so that it can move more quickly through the court system. He said it would be a “travesty” if some aging Indians die before trial. He said the court lacks resources to deal with several trials and proposed that some claims be dropped.

The lawsuit accuses the USDA of discrimination in granting of loans since 1981. The Indian farmers said this was done in an attempt to squeeze them out of business.

Joe Sellers, the lead attorney for the farmers and ranchers, asked the judge for a trial on one part of the case next year. He told The Associated Press that he is pleased that the judge appears receptive to an eventual trial and that he would talk to his clients about how to proceed. He and lawyers representing the USDA agreed to talk to a magistrate to resolve some of their differences.

The lead plaintiff is George Keepeagle, a Fort Yates, N.D., rancher. Attorneys estimate the number of people who could be included as plaintiffs to be in the tens of thousands.

## Lands Climate Conference Scheduled

The Cocopah Indian Tribe will host a Tribal Lands Climate Conference from Dec. 5-6 at the Cocopah Indian Nation Casino in Someton, Ariz. The conference, to be held in conjunction with the National Wildlife Federation's Tribal Lands Conservation Program, will gather representations from more than 50 tribes from throughout the Southwest, Northwest, Midwest and Alaska, as well as political leaders, climate scientists and non-governmental organizations.

Speakers will include Robert Corell, chair of the steering committee for the Arctic Climate Impact Assessment; Nancy Maynard, a climate impact specialist with NASA; and Tom Boucher, president and CEO of Native Energy. Al Gore also is to speak, and Sen. John McCain has been invited to speak.

## Judge Holds in Favor of Fish Ladders on Dam

Judge Parlen McKenna has held in favor of fish ladders over four Klamath River dams. The proposed passages would return Chinook and endangered coho salmon as well as steelhead and Pacific lamprey to 350 miles of river. Dams have blocked access to the entire river for these fish for more than half a century. The judge's holding pleased environmentalists, commercial fishermen and Indian tribes.

McKenna held that the dams have seriously affected the salmon and other fish that use the river.

Leaf Hillman, vice chairman of the Karuk tribe, told the Los Angeles Times that it would be cheaper for PacifiCorp, owners of the dams, to remove the dams, rather than to continue pushing forward with license renewal and fish ladders.

### HEALTH, EDUCATION AND WELFARE

#### CASES

#### INDIAN CHILD WELFARE ACT

##### Adoption of Hannah S.

2006 Cal. App. LEXIS 1359, (Third Dist., Sept. 8, 2006)

The Court of Appeals reversed a trial court's orders denying a mother's petition to terminate the parental rights of the father so that the child, an enrolled member of an Indian tribe, could be adopted by the stepfather:

The father, Walter S., had sought dismissal of this petition on the grounds that the mother, Katrina S., had failed to show compliance with Indian Child Welfare Act (ICWA) provisions. The Appeals Court held that ICWA did not apply to the type of placement in this case

and that the trial court had failed to apply the proper standard in determining whether the mother had complied with the requirement of 25 U.S.C. 1912 (d) and failed to consider all evidence about whether continued custody would damage the child, Hannah S.

Katrina first applied to terminate Walter's rights in conjunction with the stepfather's petition to adopt Hannah in August 2003. The petition stated that the minor had no Indian ancestry. The father had custody. In October 2003, the Confederated Tribes of the Grand Ronde Community of Oregon filed a motion to intervene because the child was an enrolled member of the Grand Ronde and the court granted the motion. A report issued during the proceedings recommended termination of the father's parental rights and granting of the adoption petition because Walter had failed to provide for Hannah and he had been abusive and controlling to Katrina, who had left him when Hannah was born.

Walter and Katrina had continued their relationship until Walter was arrested in December 1999 and convicted of violent crimes against Katrina. He is currently in prison. Katrina filed an amended petition in March 2004, alleging that Walter had abandoned the child and had been convicted of a felony demonstrating his unfitness for custody.

The Grand Ronde tribes filed a statement that indicated that Hannah was enrolled in the tribe in April 2000 at the application of Walter. The tribe's statement said that it did not object to terminating the father's parental rights as long as Katrina provided assurances that she would maintain Hannah's cultural connection to the tribe. In October 2004, the tribe and Katrina stipulated this.

In moving to dismiss Katrina's petition, Walter argued that she had not shown that active efforts had been made to prevent the breakup of the Indian family or that evidence, beyond a reasonable doubt, had been offered supporting a determination that his custody was likely to result in serious emotional or physical damage to Hannah. Katrina contended that the "existing Indian family" doctrine constituted an exception to the application of the substantive provisions of ICWA. A therapist who interviewed Hannah also testified that adoption by Hannah's stepfather was in her best interest, but also indicated that, if done properly over time, Hannah could be told about her biological father and be able to have contact with him in certain situations.

At the trial, Walter testified that he had been on a tribal alcohol rehabilitation plan and had seen the child several times during Katrina's visits to him there. He relapsed twice in 1999, and Katrina had made it clear that the relationship was over then. After his conviction in 1999, the court issued a lifetime domestic violence restraining order prohibiting him from contacting Katrina. The trial court concluded that the therapist had not shown beyond a reasonable doubt that continued custody of the limited type sought by the father would be harmful and denied Katrina's request.

The court held that the “existing Indian family” doctrine has no place in the application of ICWA. In *re Alicia S.*, 65 Cal. App. 4th 79; *Adoption of Lindsay C.*, 229 Cal. App. 3d 404. It held that the provisions of the ICWA apply only when an Indian child is placed for adoption or foster care outside the home of one of the biological parents, but that in this case, if the court granted the petition, Hannah would be living with her biological mother. It held that Katrina did not give up on the father until he had relapsed twice in his alcoholism program and had committed violent acts against her. It held that the mother could not be expected to continue to be responsible for further attempts to alleviate the father’s alcohol abuse after all this happened. It also held that the trial court appeared to have relied solely on the expert’s testimony rather than all the evidence in making its holding and that it was too heavily influenced by the minimal nature of continued contact sought by the father:

#### NEWS

## Native Enrollment Up At Syracuse

A scholarship program for citizens of the Haudenosaunee nations has helped Syracuse University in New York to start this year with twice as many first-year Native American students as last year.

Of the 44 American Indian students registered at Syracuse this year, 30 are participants of the Haudenosaunee Promise Scholarship Program, according to HT Media. The program provides financial assistance equal to the cost of tuition, on-campus room and board and fees.

Students from the Akwesasne Mohawk, Kantatsiohareke Mohawk, Ganienke Mohawk, Kahnawake Mohawk, Kanesatake Mohawk, Tyendinage Mohawk, Tonawanda Seneca, Six Nations (Canada), Oneida (New York), Oneida of the Thames (Ontario), Onondaga, Allegany Seneca, Cattaraugus Seneca, Oil Spring Seneca and Tuscarora Haudenosaunee nations qualify for the program.

## S.D. Indians Have Lowest Life Expectancy

A national research study conducted by a doctor at the Harvard School of Public Health reported that American Indians living on or near the Pine Ridge and Rosebud Indian Reservations have the lowest life expectancy in the nation. People in that area can expect to live 66.6 years, compared with 79 years for low-income rural white people in the Northern Plains.

Jacqueline Left Hand Bull, administrative officer of the Aberdeen Area Tribal Chairmen’s Health Board, told The Associated Press that she’s not surprised by the findings. American Indians in South Dakota have high rates of infant mortality, cancer, diabetes and heart disease

and many live far from hospitals and clinics. “We know the Indian Health Service is doing the best it can with the funding it receives, but it needs more funding,” she told the AP.

Alcoholism is one factor impacting the health of American Indians, the AP quoted an IHS spokesman as saying. Also, 53 percent of Indians smoke, compared with only 21 percent of white people in the state.

## FCC Adopts Pilot Program

The Federal Communications Commission has adopted an order that will establish a pilot program to help public and non-profit health care providers build broadband networks that will bring tele-health and tele-medicine services to rural areas. The program will fund up to 85 percent of the costs incurred to deploy state or regional broadband networks dedicated to health care and up to 85 percent of the cost of connecting the state or region to Internet2, a nationwide backbone that connects government research institutions and many public and private health care institutions.

Following is the text of a statement by Commissioner Jonathan Adelstein related to the order:

*In this Order, we expand the Federal Universal Service Rural Health Care program to include a pilot program to fund the construction of broadband infrastructure to connect rural health care providers. The telemedicine programs funded through the Rural Health Care program can have dramatic benefits for rural communities, and I have repeatedly supported efforts to improve the connectivity of rural health care providers.*

*I have been privileged during my time as an FCC Commissioner to have seen first hand the way that telemedicine programs enable rural residents to bridge distances that might otherwise be unaffordable or physically impractical to cross. The telemedicine applications funded through the Rural Health Care program may be the only viable link to vital diagnostic services and specialized care for many patients. With advances in digital imaging, rural health care providers are increasingly able to send medical records, CAT scans, and other lab results to specialists in distant locations. Connecting our health care providers can also play a critical role in promoting continuing education through distance learning for our health care professionals.*

*“More than ever it is critical that we expand the connectivity of our health care providers to improve our ability to respond to disasters, natural and man-made. As we have seen repeatedly in the past few years, our communications systems are a critical factor in our ability to respond quickly and in a coordinated fashion.*

*The funding provided by the Rural Health Care program is crucial to the sustainability of many telemedicine programs. Without universal service, the high cost of telemedicine services*

might put them out of reach of many small communities. Yet, the Rural Health Care program has consistently been underutilized despite widely-varying levels of connectivity among rural health care providers. So, I was pleased to support our 2004 Notice of Proposed Rulemaking in which we sought comment on whether to fund infrastructure development for rural health care providers, and I am pleased that we take a step in that direction today. A well-tailored pilot program has the potential to give us critical information about the needs of health care providers and the resources required to establish connectivity.

While I support our efforts to make additional funds available for telemedicine uses, I have had some concerns about the specific implementation of this program — some of which have been addressed, while others still give me pause. One area where the item could be improved is in its articulation of criteria for selecting program participants among the potentially myriad well-qualified applicants who may seek funding. While I appreciate my colleagues willingness to amend the criteria to give weight to applications that serve rural areas, this Order could do more to explicitly prioritize projects that target services to rural areas. Nor does the Order assign any apparent weight to the selection of applicants willing to deploy facilities to unserved areas, or applicants targeting service to the most needy or hardest-to-serve areas. Had we sought comment on whether to create a pilot program and how to tailor it, we likely would have greater clarity and transparency here but, unfortunately, that is not the case.

With an entirely new program, and given the importance of this effort, I also would have preferred a longer application window. Even in a more established program like our Schools and Libraries program we give applicants sixty days to file their funding requests from our publication of the Eligible Services List. But I appreciate the Chairman's commitment to extend the application deadline for interested parties who would like to participate but may require additional time. It will also be critical for us to do as much outreach as possible to solicit a wide variety of applicants. We all want to improve the connectivity of our health care providers as quickly as possible, but if we are trying to create a program that is above reproach and that truly is open to all — including small communities and Tribal providers who may not have the resources to assemble proposals on a moment's notice — we must give health care providers a meaningful opportunity to participate and the Commission's selection processes should be as transparent as possible.

This program is so important, we've got to get the details right. So, I thank my colleagues for their willingness to accommodate some of my concerns and look forward to working together to further Congress' goal of connectivity for rural health care providers.

## Congress Reauthorizes Child Welfare Bill

Congress has approved a bill to reauthorize the Child and Family Services Improvement Act of 2006, which authorizes additional funding for several programs for tribes.

Under the bill, the Promoting Safe and Stable Families program was reauthorized, including increases in the PSSF tribal allocation to 3 percent for both mandatory and discretionary funding. Previously, the allocation was 1 percent for mandatory and 2 percent for discretionary. The bill also authorizes tribal consortia in the lower 48 states to apply.

"Allowing tribes to apply as consortia is common in federal programs," Ascribe Newswire quoted Terry Cross, executive director of the National Indian Child Welfare Association, as saying. "Most tribal consortia are in states where there is a preponderance of many small tribes, such as California and Washington. Consortia arrangements for very small tribes can maximize the use of funds by, for example, having a single accounting system, jointly training social workers, using a common data system and offering services at shared sites."

### HUMAN RESOURCES AND EMPLOYMENT

#### CASES

#### **Roy P. Davidson vs. Mohegan Tribal Gaming Authority** 97 Conn. App. 146 (App. Ct. Conn., Aug. 15, 2006)

The Appellate Court of Connecticut affirmed a Superior Court's dismissal of a wrongful termination lawsuit brought by Roy P. Davidson against the Mohegan Tribal Gaming Authority. The trial court concluded that it lacked subject matter jurisdiction because the tribe's gaming authority and casino were entitled to avail themselves of the tribe's sovereign immunity and that the tribe had not waived that immunity.

Davidson was employed as an entertainment technician at the casino. In July 2003, he requested leave for dental surgery, but his supervisor denied the request. Davidson, however, had the surgery and was absent from work for several days, in violation of the company's attendance policy and was fired. He then filed an action in the Gaming Disputes Trial Court (gaming court) on July 13, 2004, alleging his rights under the Mohegan Discriminatory Employment Practices Ordinance had been violated. That action was dismissed as untimely. After that, he began his action in Superior Court, but the court granted the tribe's motion for dismissal. Davidson appealed, arguing that sovereign immunity does not prevent application of various labor and employment laws.

The court noted that an Indian tribe is subject to suit only where Congress has authorized it or the tribe has waived its immunity, clearly and unequivocally. It recounted the history of the tribe and its gaming operations, noting that under terms of a gaming compact with the state of Connecticut, the tribe did not waive its sovereign immunity, but instead is to adopt its own remedial system for resolving tort claims. As part of that, the tribe established the gaming court with “exclusive jurisdiction for the tribe over disputes arising out of or in connection with the Gaming, the actions of the [authority] or contracts entered into by [the tribe] or the [authority] in connection with Gaming, including without limitation, disputes arising between any person or entity and the [authority] including customers, employees or any gaming manager operating under a gaming management agreement with the [authority] or any person or entity which may be in privity with such persons or entities as to Gaming matters shall be vested in the [gaming court] ...”

The court failed to accept Davidson’s argument that sovereign immunity did not apply to the defendants because they are private entities, noting that his suit was against the authority, clearly a tribal entity, and that even if it were interpreted to include the private parties operating it, these would be considered to be in privity with the authority.

#### NEWS

## Indian Denied Aid After Refusing Haircut

An American Indian has been denied Iowa state unemployment benefits after being fired from his job with a trucking company because he refused to cut his hair. Dewey Harris said that the hair cut would violate his religion as an American Cherokee, according to The Associated Press.

The Employment Appeal Board upheld a judge’s holding against eligibility, saying that Harris was insubordinate. Harris was told by a Heartland Express, Inc., manager that his ponytail extended past his shirt collar, which is a violation of Heartland policy. He offered Harris a company car and told him to go get a haircut, but Harris refused. He was soon fired and filed for state unemployment benefits, the AP said.

Harris had worked for Heartland for three years.

The appeal board voted 2-1 to uphold the decision. Dissenting board member Elizabeth Seiser argued that Heartland had chosen to accommodate the ponytail for more than three years and ignored alternatives that might have allowed him to secure his ponytail above the collar.

## TRIBAL, FEDERAL AND STATE GOVERNMENTS

### CASES

#### TRIBAL RELOCATION AGREEMENT

### Melissa Lorraine Russ vs. Dry Creek

#### Rancheria Band of Pomo Indians

2006 U.S. Dist LEXIS 67915 (N.D. Calif., Sept. 12, 2006)

The U.S. District Court stayed proceedings in a dispute about a Tribal Redevelopment and Relocation Agreement until Melissa Lorraine Russ exhausted tribal remedies.

Under an agreement, Russ and other plaintiffs agreed to convey their rights and interests to their residences on the Dry Creek Rancheria Reservation to the Dry Creek Rancheria Band of Pomo Indians in exchange for the tribe helping to find them permanent replacement housing, providing a monthly relocation allowance and paying the cost, up to a specified amount, for the replacement housing. The tribe wanted to use the land for economic development. Russ alleges the tribe did not provide them with the money or help them find the housing. Russ sued for breach of written contract, specific performance, imposition of constructive trust, fraud and deceit, conversion, negligent infliction of emotional distress and wrongful eviction. The band moved for dismissal, arguing that the court must stay the case or dismiss it until tribal remedies have been exhausted and that, as a recognized tribe, it is immune from suit.

The court held that Russ and the other plaintiffs had the opportunity of taking the matter before the tribal council and that none of the exceptions to the exhaustion requirement applied in this case (*Nat’l Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 856, n.21 (1985)).

#### JURISDICTION

### State of New Mexico vs. Del E. Romero

#### State of New Mexico vs. Matthew Gutierrez

2006 N.M. LEXIS 432 (Sup. Ct. N.M., June 14, 2006)

The Supreme Court of New Mexico held that the state lacked jurisdiction to prosecute Del Romero for alleged crimes on privately owned land within the boundaries of Taos Pueblo and Matthew Gutierrez for alleged crimes on privately owned land within the boundaries of the Pojoaque Pueblo. In making this holding, the court affirmed the District Court and reversed the Court of Appeals.

Romero, an enrolled member of Taos Pueblo, was indicted by a New Mexico grand jury on the charge of aggravated battery against another member of the tribe. He moved to dismiss the indictment on Aug. 13, 2001, due to the state’s lack of jurisdiction, saying that the alleged acts occurred on the reservation. The state argued that the acts occurred at a privately owned mall within the boundaries of the

town and outside the exterior boundaries of the pueblo. The parties later agreed that the incident occurred on private property within Taos Town and the exterior boundaries of the Taos Pueblo Land Grant. The District Court concluded that the state lacked jurisdiction and dismissed the indictment on Dec. 7, 2001. The state appealed.

Gutierrez is an enrolled member of Pojoaque Pueblo and was arrested by tribal police after a stabbing incident. He was arraigned in tribal court on Aug. 29, 2002, on charges of assault, battery, carrying a concealed weapon, criminal negligence and disorderly conduct, in violation of Pojoaque Pueblo Tribal Law and Order Court. The tribal police department contacted the Bureau of Indian Affairs, which referred the matter to the U.S. Attorney for the District of New Mexico for prosecution. After the tribal prosecution began, the state of New Mexico indicted him on Sept. 13, 2002, for the same incident. Gutierrez moved to have the state indictment dismissed due to lack of jurisdiction. Both parties agreed that the alleged crime occurred within the exterior boundaries of Pojoaque Pueblo on non-Indian land owned by Gutierrez's father-in-law, Ben Garcia. The District Court dismissed for lack of jurisdiction, holding that the alleged crime occurred in "Indian Country." The state appealed.

The state Court of Appeals reversed the district courts in both cases on split decisions.

The court held that if the land upon which the alleged incidents occurred was Indian Country, the state prosecution must be dismissed and that if there is any ambiguity in applicable federal law, such as 18 U.S.C. 1151 and the Pueblo Lands Act, S. 2932, 68th Cong. 43 Stat. 636 (1924), it is to be resolved in favor of the Indians.

The court held that a pueblo is a dependent Indian community within the meaning of 1151 (b) (*United States v. Sandoval*, 231 U.S. 28, 34 S.Ct. 1, 58, L.Ed. 107 (1913) and *Venetie*, 522 U.S. 520, 118 S.Ct. 948, 140 L.Ed. 2d 30). It also held that "in the face of Congressional silence" the fee land within a 1151 (b) dependent Indian community is Indian Country just like the fee land within a 1151 (a) reservation. The court then held that Congress has not shown clear intent to extinguish Indian Country status for the privately held parcels within the pueblos' exterior boundaries. It used *Seymour*, 368 U.S. 351, 82 S.Ct. 424, 7 L.Ed. 2d 346 to determine that parcels of private claim land and towns within boundaries of Indian land are Indian Country.

## JURISDICTION

### **Darwin Cloverton Zempel vs. Lenora Linda Liberty** 2006 Mont. LEXIS 419 (Sup. Ct. Mont., Sept. 6, 2006)

The Supreme Court of Montana overturned a District Court's dismissal of a complaint against a tavern and its sole shareholder in which a minor, who was not a member of the tribe, lost consciousness after repeatedly being sold alcoholic beverages. It affirmed dismissal of the suit against a non-owner. It remanded the case.

The court held that the Confederated Salish and Kootenai Tribes' tribal court did not have jurisdiction over the case because the tavern was not located on an Indian reservation and the tribes failed to demonstrate any threat to self-government to overcome Montana's general rule prohibiting tribal court jurisdiction over suits involving non-members. The only connection to the tribes was that its shareholder was a tribal member, which wasn't enough to give jurisdiction to the tribal court.

TTC, a Montana corporation, operates a bar in Charlo, located within the exterior boundaries of the Flathead Indian Reservation. TTC's only shareholder, Lenora Linda Liberty, is a tribal member.

Darwin Cloverton Zempel, who was not yet 21, was served several alcoholic beverages while in the tavern on July 4, 2003. Another patron in the bar tried to drive Zempel home after he lost consciousness, but she lost control of the car and was killed. Zempel was seriously injured.

In January 2004, Zempel sued Liberty and John Herak and TTC, alleging, among other things, that he was served alcoholic beverages even though bartenders knew he wasn't old enough and that bartenders continued to serve him even after he was visibly intoxicated. The suit also alleges that TTC's bartenders continued to serve Moore after she became visibly intoxicated and that bartenders knew she was incapacitated, but did not try to stop her from driving Zempel home. He contends that Liberty, Herak and TTC acted negligently and in violation of Montana laws.

The court held, however, that the Montana law in question, 27-1-710, MCA does not prohibit the conduct at issue in the case, but rather sets the criteria governing the liability in case of injury or damage. Thus, it held that Zempel's lawsuit was essentially a negligence claim.

Liberty argued that the District Court lacked jurisdiction in the dispute because he is a tribal member and the business is tribally owned. The District Court dismissed Liberty as a defendant, but declined to dismiss TTC because it was a Montana corporation. Herak filed a motion for dismissal because he didn't own any of the business, but the District Court denied this request. After this, both TTC and Herak filed additional documents and motions and, ultimately, the District Court dismissed Zempel's complaint completely.

The court held that Zempel had not properly raised Herak's dismissal in the appeal. The court noted that because corporations have identities separate from their owners, it appeared that Zempel had failed to state a claim against Liberty and it assumed that she would be dismissed on remand unless Zempel amended his complaint. The court also noted that she had acted on behalf of TTC in District Court proceedings, which violated Montana law that said that a corporation can only appear on its own behalf through an attorney and suggested that the District Court exercise vigilance in "ensuring

that only licensed legal practitioners represent corporate entities in district court proceedings.”

Then it undertook a jurisdictional analysis based on Supreme Court holdings on the retained sovereignty of Indian tribes. It held that exercise of tribal sovereignty was limited to their members and their territory or to regulating the conduct of non-Indians on fee lands when that conduct has some direct effect on the political integrity, economic security or the health or welfare of the tribe. *Atkinson Trading Co. Inc. v. Shirley*, 532 U.S. 645, 659, 121 S.Ct. 1825, 1835, 149 L.Ed. 2d 889 (2001) and *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245 67 L.Ed. 2d 493 (1981). It also held that the relationship at issue in this case fails to meet the consensual relationship exception in Montana that would recognize inherent tribal authority to exercise civil adjudicative jurisdiction with respect to nonmembers who enter consensual relationships with the tribe or its members through commercial dealing, contracts, leases or other arrangements.

NEWS

## Tribes Rally Against NLRB Decision

American Indian tribes across the United States have united to fight a National Labor Relations Board holding that the San Manuel Band of Serrano Mission Indians qualified as an employer under the National Labor Relations Act. The tribes have joined as amici. The D.C. Circuit is expected to hear oral arguments in the case later this fall.

Attorneys who represent the tribes said the holding, if allowed to stand, could have far-reaching implications for the sovereignty of their governments even beyond labor implications. Attorneys for the unions said that tens of thousands of workers will be denied basic protections if they can't belong to unions.

The NLRB's holding in favor of the Hotel Employees & Restaurant Employees International Union and against the San Manuel tribe reversed more than 30 years of the NLRB's own precedent.

## Navajo Utah Group Makes Education A Priority

The Navajo Utah Commission has listed education as one of its top concerns in an annual letter to the governor and legislature. Many San Juan School District schools are failing state learning standards, Deseret Morning News said.

According to the News, the commission recommends that:

- The State Office of Education and the San Juan School District develop a teacher recruitment and retention plan with incentive bonus payments to keep quality teachers in remote and isolated communities
- The education office and district identify resources and services to assist low-performing schools over established timelines to meet state learning standards and, most importantly, provide quality education
- The education office develop a comprehensive Indian education policy, with proper consultation with tribal leadership and Indian educators
- The Utah Indian Education Office become more proactive and establish a greater presence in resolving educational issues with Utah tribal governments
- Gov. Jon Huntsman Jr. and the legislature study the prospects of locating a state applied technology center on the Navajo reservation in southeastern Utah

### SUBSCRIPTION ORDER FORM • ANNUAL SUBSCRIPTION \$299

Name \_\_\_\_\_

Organization \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone/FAX \_\_\_\_\_

Credit Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_

Amex     MC     Visa

Signature \_\_\_\_\_

Please return with check or purchase order to:

**Native American Law Digest**

Falmouth Institute  
3702 Pender Drive,  
Suite 300  
Fairfax, VA 22030

**All major credit cards accepted**

Phone 1-800-992-4489  
FAX 703-352-2323

## Navajo Approve Navajo-Hopi Intergovernmental Compact

The Navajo Nation Council has approved the Navajo-Hopi Intergovernmental Compact, ending the 40-year-old Bennett Freeze. The compact, adopted 75-3, now moves to the Hopi Tribe and to Interior Secretary Dirk Kempthorne for approval. Once that is done, Federal District Judge Earl H. Carroll is expected to order the construction and development freeze lifted.

Navajo Nation President Joe Shirley Jr. said the passage of the bill was important. "We've lost a lot of elderly, we have lost a lot of medicine people, a lot of young people to the metropolitan areas because they couldn't build on the frozen land. Now what it means is once the land is thawed out, we can build houses there, we can build farms for our livelihood. We can build schools. We can build gas stations, grocery stores. We can pave our roads. That's what it means. It's getting back to living."

## Ottawa Mayoral Candidates Debate Native Issues for First Time

For the first time ever, candidates running for mayor of Ottawa are debating First Nations issues.

In front of about 200 people at the Odawa Native Friendship Centre, the candidates outlined their plan for dealing with aboriginal issues if elected.

About 13,500 First Nations people live in Ottawa-Gatineau. Many live in substandard housing or on the streets, according to the Ottawa Citizen.

## Osage Win Trust Case

The federal government failed to collect and invest millions of dollars in oil lease royalties owed to the Osage Tribe and its members, the U.S. Court of Federal Claims has held. The two sides have until November 2 to develop a settlement, otherwise a judge will determine the amount owed.

The tribe filed its lawsuit about six years ago.

Under federal rules developed after the 1906 law that created the Osage Nation, the local Bureau of Indian Affairs office was to collect nearly 17 percent from the sales of oil obtained in Osage County, Okla., and place it in interest-bearing accounts to benefit tribe members. The BIA changed its rules frequently regarding the collection, tending to favor oil producers to the tribe's detriment, the court held.

Osage County is one of the top two oil producing counties in the United States, and the Osage Chief estimated it has generated more than \$1 billion over the last century, according to the Oklahoman.

## Assembly of Manitoba Chiefs to Open Chile Office

The Assembly of Manitoba Chiefs is in the process of finalizing a lease for an advocacy office in Chile. The group hopes the new office will help link Chile's indigenous people with the aboriginal population in Manitoba.

The office is the latest development in a cross-cultural relationship that began two years ago when Manitoba's Black River First Nation and the Brokenhead Ojibwa First Nation began working with the Willeche people of Chile. The groups have been building relationships ever since, according to Canadian Press Newswire.



A PUBLICATION OF FALMOUTH INSTITUTE

3702 Pender Dr. • Suite 300 • Fairfax, VA 22030

PRESORTED STD  
U.S. POSTAGE  
**PAID**  
PERMIT #320  
DULLES, VA