

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

FORT SILL APACHE TRIBE, and the
HONORABLE JEFF HAOZOUS, Chairman
of the Fort Sill Apache Tribe,

Petitioners,

vs.

THE HONORABLE SUSANA MARTINEZ,
in her official capacity as Governor of the
State of New Mexico,

Respondent.

VERIFIED PETITION FOR A WRIT OF MANDAMUS

Petitioners, the Fort Sill Apache Tribe (the “Tribe,” “Ft. Sill,” or “Fort Sill Apache”) and its Tribal Chairman, Jeff Haozous, respectfully request that this Court issue a writ of mandamus to the Honorable Susana Martinez in her capacity as Governor of New Mexico to compel her to exercise her nondiscretionary, statutory duty under the Compact Negotiation Act, NMSA 1978 § 11-13a-4(J) to approve and sign a Class III gaming compact between the State of New Mexico and the Fort Sill Apache Tribe. The Governor has refused. Accordingly, Petitioners have turned to this Court for relief.

Petitioner was before this Court last year in *Ft. Sill Apache Tribe v. Martinez*, No. 34,464 (N.M. April 14, 2014, Order). In that case this Court required the Governor to recognize the Fort Sill Apache as a tribe within the

SUPREME COURT OF NEW MEXICO
FILED

FEB 27 2015



S. Ct. No.: 35140

meaning of NMSA 1978, § 11-18-2(B). Notwithstanding Ft. Sill's status, as determined by this Court, the Governor refused and continues to refuse to perform her nondiscretionary, statutory duty to sign a Class III gaming compact with Ft. Sill. The Tribe and its Chairman ask this Court to compel the Governor to sign two compacts the Tribe sent to her for her signature. To date, the Governor has ignored them.

PARTIES AND JURISDICTION

1. Petitioner Fort Sill Apache Tribe is a federally recognized Indian nation, whose only reservation is located in Akela Flats, New Mexico. *See* 76 Fed. Reg. 228. Petitioner Jeff Haozous is the Chairman of the Tribe's General Council and of its Business Committee, which oversees the Tribe's affairs and operations, including the Tribe's interactions with the State of New Mexico and its officials. *See* Const. and Bylaws of the Fort Sill Apache Tribe, art. III..

2. Respondent, the Honorable Susana Martinez, in her capacity as Governor of the State of New Mexico, is vested with the executive power of this state, and is charged with assuring that all state laws are faithfully executed. N.M. Const., art. V, § 4; *see also State ex rel. Coll v. Carruthers*, 1988-NMSC-057, ¶ 6, 107 N.M. 439, 759 P.2d 1380 (governor is chief executive officer of state).

3. This Court has original jurisdiction of petitions for writ of mandamus pursuant to the N.M. Const. Art. VI, § 3 and NMSA 1978 § 44-2-1, *et seq.*

Mandamus is the proper remedy to compel an official act by a state officer, as to which the officer has no discretion. *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, ¶ 7, 85 N.M. 747, 517 P.2d 69; *see also, e.g., New Energy Econ., Inc. v. Martinez*, 2011-NMSC-006, ¶¶ 21-23, 149 N.M. 207 (issuing writ to compel Governor and State Records Administrator to comply with statute and regulation).

4. Petitioners have standing to seek relief from this Court because they have been directly harmed by Respondent's refusal to comply with the Compact Negotiation Act, which requires the Governor to sign the gaming compacts that Petitioners sent to her March 12 and 14 of 2013. The Governor's refusal to sign the compacts, along with her continuing refusal to meet with Petitioners or even to discuss the proposed gaming compacts, even though the proposed compacts comply with New Mexico law in every respect, directly harms Petitioners by depriving them of their statutory right. Petitioners are therefore "beneficially interested" in Respondents' compliance with the governing law. *See State ex rel. Coll v. Johnson*, 1999-NMSC-036, ¶ 17, 128 N.M. 154, 990 P.2d 1277 (parties that are "beneficially interested" are entitled to sue for mandamus relief). The Governor's continued refusal to comply with the Act and her failure to so much as respond to the Tribe's requests for negotiation deny the Fort Sill Apache the right to preserve its interest in Class III gaming within this State.

5. Mandamus is appropriate because there is no plain, speedy or adequate remedy at law available to Petitioners. *See, e.g., State ex. rel King v. Lyons*, 2011-NMSC-004, ¶ 26, 149 N.M. 330 (mandamus appropriate when there is no adequate remedy at law); *see also State ex rel. Pilot Dev. Northwest v. State Health Planning & Dev. Bureau*, 1985-NMCA-050, ¶ 32, 102 N.M. 791, 701 P.2d 390 (mandamus appropriate where no right of appeal exists).

RELEVANT FACTS AND BACKGROUND

The undisputed facts demonstrating the need for a writ of mandamus are as follows:

Historical Background

6. The Fort Sill Apache Tribe is the legally defined successor in interest to the Chiricahua Apache Tribe whose members once occupied a large portion of Southwestern New Mexico, Southeastern Arizona and Northern Mexico. *Ft. Sill Apache Tribe et. al v. United States*, 41 Ind. Cl. Comm. 37, 52, (Oct. 6, 1977).

7. The Federal Government first recognized the Tribe's sovereign status in New Mexico in 1852 with the signing of "The Treaty with the Apache" in Santa Fe. The treaty was short lived due to continued encroachment into the Chiricahua Apache Tribe's territory by settlers, miners and others.

8. In 1877, the United States Government closed the Tribe's Ojo Caliente reservation near present day Truth or Consequences and forcibly removed its

members from New Mexico. This process of taking the land, the liberty, and many lives of the Chiricahua Apache culminated in 1886 when the government declared them prisoners of war and transported them by rail to Florida, then Alabama and finally to Oklahoma. *See generally id.*

9. Their removal to Oklahoma occurred in 1894 when the government placed the Tribe's surviving members on the Fort Sill Military Reservation. They lived there as prisoners for another 20 years. They were released from imprisonment and removed in 1914 after the government determined the Fort Sill Military Reservation to have higher value as an artillery range than as a prison camp. *Ft. Sill Apache Tribe*, 41 Ind. Cl. Comm. at 65; *Comanche Nation v. United States*, 393 F. Supp. 2d 1196, 1200 (W.D. Okla. 2005). Nearly 1,000 miles from its ancestral lands, the Tribe was without recognition or a reservation. *See Agreement of Compromise and Settlement Recital, Comanche Nation v. United States*, Case No. CIV-05-328-F, 7 (W.D. Okla. 2005) (Ex. A).

10. Over the years that followed, the Tribe sued the United States to obtain compensation for the seizure of its homeland and for the deprivation of freedom suffered by its members as prisoners of the United States. *See, e.g., Comanche Nation*, 393 F. Supp. 1196; *United States v. Ft. Sill Apache Tribe*, 480 F.2d 819 (Ct. Cl. 1973); *Ft. Sill Apache Tribe v. United States*, 1 Ind. Cl. Comm. 137 (May 8, 1949); *Ft. Sill Apache Tribe v. United States*, 34 Ind. Cl. Comm. 81 (1974); *Ft.*

Sill Apache Tribe, 41 Ind. Cl. Comm. 37; *Ft. Sill Apache Tribe v. United States*, 19 Ind. Cl. Comm. 212, 235-247 (June 28, 1968) (finding that the United States had taken the Tribe's land in Southwest New Mexico and Southeast Arizona). The Tribe has also worked steadily toward repatriation to its lands in southern New Mexico and to obtain the status necessary to maintain a government-to-government relationship with the United States.

11. The Commissioner of Indian Affairs formally approved the Fort Sill Apache Constitution in 1976, and the Tribe has maintained a government-to-government relationship with the United States since that time. Agreement of Compromise and Settlement Recital, *Comanche Nation*, Case No. CIV-05-328-F at 7 (Ex. A); *see also* 68 Fed. Reg. 68180 (2003) (Bureau of Indian Affairs listed the Ft. Sill Apaches as “acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes.”); *see also* 70 Fed. Reg. 71194 (2005), 75 Fed. Reg. 190 (2010) (same). In 1999, the Tribe purchased a 30-acre parcel in Luna County, N.M. known as Akela Flats that is within its ancestral homeland. The federal government took the land into trust on behalf of the Tribe in 2002. Warranty Deed (Ex. B).

12. Nearly ten years after taking the Akela Flats plot into trust on behalf of the Tribe, the federal government declared the land “as the Fort Sill Apache Indian Reservation for the Fort Sill Apache Tribe of Indians.” 76 Fed. Reg. 228 (2011); *see also* HM 24 at 2 (2011) (Ex. C) (the New Mexico House of Representatives passed House Memorial 24, in which the Representatives acknowledged that Akela Flats was Ft. Sill’s “homeland” and “former aboriginal territory.”); *see also* Resolution No. 2013-33 (Ex. D) (On April 10, 2013, the Doña Ana County Commission passed a Resolution recognizing Fort Sill Apache as a New Mexico tribe and recognizing that Akela Flats is both the Tribe’s ancestral homeland and its current federal reservation.). The Akela Flats Reservation is and has been the Tribe’s only reservation. *See* Agreement of Compromise and Settlement Recital, *Comanche Nation*, Case No. CIV-05-328-F, 7 (The Tribe has no reservation in Oklahoma as defined by the Secretary of the Interior pursuant to 25 U.S. § 467 (2013)). (Ex. A).

13. Despite the Tribe’s hard-won recognition and the existence of its reservation in New Mexico, the Fort Sill Apache as recently as last year had to fight for recognition by New Mexico’s governor, the Respondent. *See* Verified Petition for Writ of Mandamus, No. 13-34464, 2013 WL 9883703; *Ft. Sill Apache Tribe v. Martinez*, No. 34,464 (N.M. April 14, 2014, Order). On April 14, 2014, this Court issued a writ of mandamus to Governor Martinez, as well as the New

Mexico Secretary of Indian Affairs, compelling them to treat the Fort Sill Apache Tribe as a “tribe” within the meaning of the State’s Collaboration Act. *Ft. Sill Apache Tribe v. Martinez*, No. 34,464 (N.M. April 14, 2014, Order) (ordering the Governor and Secretary of Indian Affairs to add the Fort Sill Apache Tribe to a list of tribal names in compliance with NMSA 1978, § 11-18-3(D) (2009)).

The Compact Negotiation Act, NMSA 1978, § 11-13a-4(J).

14. The New Mexico Compact Negotiation Act, NMSA 1978, §§ 11-13a-1 – 11-13a-4 (“the Act”), authorizes the negotiation of Class III gaming compacts between the state and tribes in New Mexico, pursuant to the federal Indian Gaming Regulatory Act, 25 U.S.C. 2701 (“IGRA”).

15. The Act sets forth a procedure by which compacts are negotiated between tribes and the governor and approved by the legislature.

16. The Act defines “Tribe” as “an Indian nation, tribe or pueblo located in whole or in part within the state.” § 11-13a-2(D).

17. Entrance into a compact under Sections 11-13a-1 – 11-13a-4, does not automatically enable a tribe to open a class III gaming facility within the state, but rather is one step of many necessary to eventually do so under federal law. *See* 25 U.S.C. § 2710(d). A gaming compact with the state, therefore, preserves a tribe’s interest that may vest at a future time. *See id.*

18. New Mexico does not have a history of individually negotiating class III gaming compacts with tribes in the State. In fact, none of the tribes with which the state currently has compacts negotiated the compact individually with the state. *See* <http://www.nmgcb.org/tribal/compacts.html> (listing all tribes currently signed onto one of two compacts with the state). Instead, gaming compacts are established only every several years, during the state's legislative session, after which tribes, without negotiation, sign onto those compacts, which expire by their own terms. *See id.*; *see also e.g.*, Proposed 2015 Compact (Ex. E).

19. Accordingly, in 2001, New Mexico tribes and pueblos negotiated a uniform gaming compact with the State of New Mexico pursuant to the Compact Negotiation Act and IGRA. This compact is commonly referred to as the "2001 Compact." Sample 2001 Compact (Ex. F). On December 14, 2001 the Department of the Interior, Bureau of Indian Affairs published its approval of this compact in the Federal Register. 66 Fed. Reg. 241 (Dec. 14, 2001) (approving the 2001 compact between the Pueblos of Isleta, Laguna, Sandia, San Juan, Santa Ana, Santa Clara, and Acoma and the state). By their express terms, these 2001 compacts expire on midnight June 30, 2015. Ex. F at 23.

20. Similarly, in 2007, New Mexico tribes and pueblos negotiated another gaming compact with the State of New Mexico pursuant to the Compact Negotiation Act and IGRA. This compact is commonly referred to as the "2007

Compact.” Sample 2007 Compact (Ex. G). On July 5, 2007, the Department of the Interior Bureau of Indian Affairs published its approval of this compact in the Federal Register. 72 Fed. Reg. 128 (Jul. 5, 2007) (approving compact between the state and the Pueblos of Isleta, Nambe, Picuris, Laguna, San Felipe, Sandia, Santa Ana, Tesuque, Taos, Santa Clara, and Ohkay Owingeh). By their express terms, these 2007 compacts expire on midnight June 30, 2037. *See, e.g.*, Ex. G at 23.

21. In order to sign on to the 2007 Compact, the requesting tribe must have first entered into a 2001 Compact with the state, effectively rendering the 2001 compact as a prerequisite to becoming a party to the 2007 Compact. Letter from Assistant Secretary for the Bureau of Indian Affairs, Kevin Washburn (Aug. 27, 2014) (Ex. H) (declining to approve Jemez Pueblo’s 2007 Compact because the tribe had not yet entered into a 2001 Compact).

22. Not every tribe that has a compact, 2001 or 2007, has a gaming facility; nor does the Act require that the negotiating tribe open a facility. *See generally* §§ 11-13A-1 – 11-13A-4 (the Compact Negotiation Act omits mention of any tribal plan to immediately or eventually open a gaming facility).

23. Section 11-13A-4(J) of the Act outlines a process to approve a request to enter into a compact that is “identical to a compact or amendment previously approved by the legislature except for the name of the compacting tribe and the

names of the persons to execute the compact or amendment on behalf of the tribe and on behalf of the state.”

24. Section 11-13A-4(J) provides that, under the circumstances outlined above, “the governor shall approve and sign the compact or amendment on behalf of the state without submitting the compact for approval” to the legislature. “A compact or amendment signed by the governor pursuant to this subsection is deemed approved by the legislature.” *Id.*

25. Similarly, Section 11-13A-4(J) of the Act does not require the requesting tribe to have fulfilled every federal requirement necessary to open a gaming facility under IGRA prior to negotiating a state compact. *Id.* Consequently, whether the tribe has been federally approved for gaming under IGRA does not affect the nondiscretionary nature of the Governor’s duties under subsection (J). *See id.*

Tribe’s Attempts to Communicate with the Governor Requesting to Enter into a “2001” Compact

26. On March 12, 2013, Petitioner Jeff Haozous, in his official capacity as Chairman of the Fort Sill Apache Tribe, sent Governor Martinez a request to enter into a “2001 Compact.” Faxed Cover Sheet and Fax Confirmation, Letter, and Requested Compact (Ex. I).

27. Chairman Haozous sent the request by fax as well as by FedEx. *See id.*

28. The requested compact was identical to other previously approved and signed 2001 Tribal State Class III Gaming Compacts, except for the name of the Tribe and signature of the parties. *See* Exhibits F and I; *supra* ¶ 19.

29. Before March 12, 2013, the identical 2001 Compact had been approved or deemed approved for 13 tribes. *See* State-Tribal Gaming Compacts, Effective Dates (Ex. K).

30. Although Ft. Sill's request was complete and complied with the Act in all respects, Governor Martinez simply ignored the request and never responded to it.

Tribe's Attempts to Communicate with the Governor Requesting to Enter into a "2007" Compact

31. On March 14, 2013, Jeff Haozous, in his official capacity as Chairman of the Fort Sill Apache Tribe, sent Governor Martinez a request to enter into a "2007 Compact." Faxed Cover Sheet and Fax Confirmation, FedEx Receipt, Letter, and Requested Compact (Ex. J).

32. Chairman Haozous sent the request by fax as well as by FedEx. *Id.*

33. The requested compact was identical to the 2007 Tribal State Class III Gaming Compact, except for the name of the Tribe and the signatures of the parties (Exs. G and J). The Chairman sent the request anticipating that the Governor would have first received, approved and signed the earlier mailed 2001 Compact the execution of which, as set forth above, was and is a precondition to executing the 2007 Compact.

34. Before March 14, 2013, the identical 2007 Compact had been approved or deemed approved for 12 tribes. *See* State-Tribal Gaming Compacts, Amended July 2007, Effective Dates (Ex. L).

35. Although Ft. Sill's request to enter into a 2007 Compact was complete and complied in all respects with the Act, Governor Martinez again ignored it and never responded.

The Proposed 2015 Compact

36. With the 2001 Compact expiring in June 2015, several New Mexico tribes and pueblos recently negotiated language with Governor Martinez for a newly proposed "2015 Compact," which is, as of the date of filing, before the legislative Committee on Compacts. *See* Proposed 2015 Compact (Ex. E) found at http://www.nmlegis.gov/lcs/committee_detail.aspx?CommitteeCode=COC;

37. Without the Governor's signature and approval on a 2001 Compact, Ft. Sill will have effectively bypassed the opportunity to enter into a 2007 Compact and will be left to consider *only* the 2015 Compact.

38. However, the proposed 2015 Compact states, in its introduction, in language peculiar to the Ft. Apache tribe, and which is intended to frustrate the tribe's rights:

The Tribe has informed the State that it does not intend to conduct Class III Gaming on Indian Lands that are eligible for gaming pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii). If, in the future, the Tribe desires to conduct Class III Gaming on Indian Lands eligible for gaming

pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii), the Tribe intends to negotiate a separate compact with the State to address the unique circumstances and conditions associated with such lands. The Tribe acknowledges and agrees that it has not addressed those circumstances and conditions in the negotiations leading up to this Compact and that there are federal authorizations required to determine eligibility to game on those lands. For those reasons, the Tribe agrees that the execution of this Compact is not evidence of and cannot be used to support a determination that any land located in the State is eligible for gaming pursuant to the 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii).

Ex. E at 1-2. The federal sections referenced by the Compact, 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii), authorize Class III Gaming on Indian lands acquired *after* 1988. Therefore, by its own terms, the Compact excludes Class III Gaming lands taken into trust after 1988.

39. The Fort Sill Apache Tribe has no lands or reservation *except* for those purchased in Akela Flats, NM, in 1998 and subsequently taken into trust in 2002. Consequently, in order to conduct Class III Gaming at all, the Tribe must do so pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii).

40. Therefore, the 2015 Compact, as proposed, excludes *all* Fort Sill lands in New Mexico, and thereby excludes the Fort Sill Apache Tribe as an entity from becoming party to its terms. *See Proposed Compact Tweaks Gaming Rules, Albuquerque Journal* (Feb. 20, 2015) (Ex. M) (“The compact appears to effectively preclude the Fort Sill Apaches, who have a 30-acre reservation and have tangled with the Martinez administration, from signing on. The tribe would be required

instead to negotiate a separate compact, which the tribe contends Martinez would be reluctant to do.”).

41. The 2015 Compact, in order to “cure” the blanket exclusion above, includes the following language:

If, in the future, the Tribe desires to conduct Class III Gaming on Indian Lands eligible for gaming pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii), the Tribe intends to negotiate a separate compact with the State to address the unique circumstances and conditions associated with such lands.

Ex. E at 1.

42. This language has little practical meaning, however, because the State does not have a history of individually negotiating compacts with any tribe, *see supra* ¶ 25, and New Mexico law explicitly permits tribes to sign on to the existing compacts and requires the Governor to execute those documents. Yet Governor Martinez has twice ignored Ft. Sill’s requests to become party to any compacts, even though explicitly required to do so by statute. *Supra*, ¶¶ 31 and 35.

43. If the Governor does not approve and sign the Tribe’s requested 2001 Compact prior to June 2015, followed by the requested 2007 Compact, as required by statute, the Tribe will be effectively and indefinitely precluded from pursuing Class III Gaming in New Mexico. *See* letter from Jeff Haozous to tribes re Compacts (Ex. N).

44. The Governor’s stonewalling of Ft. Sill’s efforts to enter into the 2001 and 2007 Compacts is difficult to see as anything other than an effort to run out the clock until June of this year, when the 2001 compact expires. If this occurs, as explained above in Paragraph 21, Ft. Sill will have lost its existing statutory compact rights and will be relegated to a process under which it will have to separately negotiate a compact based on its supposed “unique circumstances.” Those unique circumstances – whatever they may be considered to be by the Governor – are the product of forced removal from New Mexico and decades of prisoner status.

ARGUMENT

“Mandamus lies to compel the performance of a ministerial act or duty that is clear and indisputable.” *New Energy Econ.*, 2011-NMSC-006, ¶ 10. “A ministerial act is an act which an officer performs under a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to the exercise of his own judgment upon the propriety of the act being done.” *Id.* (quoting *State ex rel. Perea v. Bd. of Comm’rs of De Baca County*, 1919-NMSC-030, ¶ 6, 25 N.M. 338, 182 P. 865). Such is the nature of the act with which Governor Martinez has failed to comply under Section 11-13A-4(J).

The Section states, in relevant part:

If a request for negotiation of a compact or amendment is made and the proposed compact or amendment is identical to a compact or amendment

previously approved by the legislature except for the name of the compacting tribe and the names of the persons to execute the compact or amendment on behalf of the tribe and on behalf of the state, the governor shall approve and sign the compact or amendment on behalf of the state without submitting the compact for approval pursuant to the provisions of this section[.]

Id. The Governor's nondiscretionary duty is triggered by only two requirements:

(1) that a tribe make a "request for negotiation of a compact or amendment" and
(2) that "the proposed compact or amendment is identical to a compact or amendment previously approved by the legislature except for the name of the compacting tribe and the names of the persons to execute the compact or amendment on behalf of the tribe and on behalf of the state." *Id.* If both of those conditions are met, the Governor *shall* approve and sign the requested compact, which will be deemed approved by the legislature. *Id.* Fort Sill believes it is undisputed that it met both requirements, thereby triggering Governor Martinez's duty to enter into a Compact with Fort Sill and it is undisputed that the Governor has refused to sign the proffered compacts.

First, the Fort Sill Apache Tribe is a "tribe" within the meaning of the Compact Negotiation Act. The Act defines a "tribe" as "an Indian Nation, tribe or pueblo located in whole or in part within the state." § 11-13A-2(D). The Fort Sill Apache Tribe is a federally recognized Indian Nation with its only reservation located in New Mexico. 76 Fed. Reg. 228. Accordingly, state agencies treat Fort

Sill as a “tribe” under their respective statutory schemes.¹ Moreover, this Court recently held Fort Sill to be a “tribe” under substantively identical language when it issued a writ of mandamus to Governor Martinez and the Secretary of Indian Affairs compelling them to treat Fort Sill as a “tribe” within the meaning of the state’s Collaboration Act, NMSA 1978, § 11-18-2(B). *See Ft. Sill Apache Tribe*, No. 34,464 (N.M. April 14, 2014, Order); *see also* NMSA 1978, § 11-18-2(B) (defining an “Indian nation, tribe or pueblo” as “any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico[.]”). Accordingly, there can be no doubt that Ft. Sill is a tribe within the meaning of Chapter 11 of New Mexico’s statutes. Subpart (J)’s first requirement, therefore, is met.

The second requirement is similarly fulfilled on its face. Mr. Haozous, as Chairman of the Fort Sill Apache Tribe, sent the Governor separate written requests to sign on to the 2001 and 2007 compacts, both by fax and by FedEx. *See* Fax cover sheets; Fed Ex receipts (Exs. I and J). At the time Mr. Haozous made the request, thirteen tribes had already signed onto identical 2001 compacts. *See* State-Tribal Gaming Compacts, Effective Dates (Ex. K). Similarly, twelve tribes

¹ In its recent petition to this Court seeking to compel the Governor and the Secretary of Indian Affairs to recognize Fort Sill as a tribe under the Collaboration Act, the Tribe included substantial argument on this point, which, for the sake of brevity, the Tribe incorporates here by reference. Verified Petition for Writ of Mandamus, No. 13-34464, 2013 WL 9883703 (N.M. December 17, 2013).

had already signed identical 2007 compacts (Ex. L). The Governor's duty to approve and sign the proposed compact was, therefore, mandatory and nondiscretionary. § 11-13A-4(J).

Respondent's failure to carry out her mandatory, nondiscretionary duty presents the second occasion of the Governor's willful refusal to treat the Fort Sill Apache Tribe like every other tribe within New Mexico. Just as the Governor refused to acknowledge the Tribe as an Indian nation of New Mexico, she has similarly ignored the Tribe's request to enter into gaming compacts identical to those previously approved by the Governor and Legislature. The Governor's refusal seeks to deprive the Tribe of an opportunity to pursue an interest to which it is entitled under statute and over which it may soon encounter even more hurdles to overcome.

The Tribe's attempts to overcome the Governor's refusal to exercise her nondiscretionary duty have become urgent. First, the 2001 Compact will shortly expire by its own terms. *See* Sample 2001 Compact, Ex. F at 23. Because entrance into a 2001 Compact is a prerequisite to the same for a 2007 Compact, BIA Letter (Ex. H), the Tribe will shortly have no means by which it can preserve its rights under New Mexico law.

The urgency is compounded by current legislative developments. The recently negotiated "2015 Compact" includes language to effectively exclude the

Fort Sill Apache Tribe, and *only* the Fort Sill Apache Tribe², from pursuing any Class III gaming within the state. *See* Proposed 2015 Compact (Ex. E). The Compact states, in relevant part,

The Tribe has informed the State that it does not intend to conduct Class III Gaming on Indian Lands that are eligible for gaming pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii). If, in the future, the Tribe desires to conduct Class III Gaming on Indian Lands eligible for gaming pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii), the Tribe intends to negotiate a separate compact with the State to address the unique circumstances and conditions associated with such lands. The Tribe acknowledges and agrees that it has not addressed those circumstances and conditions in the negotiations leading up to this Compact and that there are federal authorizations required to determine eligibility to game on those lands. For those reasons, the Tribe agrees that the execution of this Compact is not evidence of and cannot be used to support a determination that any land located in the State is eligible for gaming pursuant to the 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii).

Id. at 1-2. *All* of the Tribe's land in New Mexico falls within the provisions identified in the Compact because the land was not taken into trust until 2002. 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) and (b)(1)(B)(iii). Fort Sill cannot change its history or the date upon which it was finally able to regain some of the lands that were taken from it, and it is the only tribe within New Mexico whose lands fall entirely within these provisions. Therefore, the newly proposed compact, as negotiated by this Governor, perpetuates her pattern of exclusion and

² The Tribe acknowledges that the offending language in the proposed compact has some affect on other tribes if those tribes have some portion of their land acquired in trust after 1988. However, Fort Sill is the only tribe in New Mexico for whom the exclusionary provision applies to the entirety of its New Mexico lands.

effectively creates a category of one, without going so far as to name “Fort Sill.” Consequently, if this Compact is approved by the legislature, Fort Sill will be effectively denied any avenue to pursue Class III gaming on its sole reservation and pursuant to IGRA.

The Governor’s refusal to so much as acknowledge Ft. Sill’s application can easily be understood within the context of the New Mexico and federal statutes and the text of the proposed 2015 Compact: The Governor is attempting to run out the clock on Ft. Sill’s current statutory rights until a new compact is in force that will effectively eliminate Ft. Sill’s existing rights. Accordingly, the only means Fort Sill has to preserve its rights under New Mexico law is for this Court to compel the Governor to now perform her nondiscretionary, statutory duty and sign the Compacts sent by the Tribe in 2013. For that reason, the Tribe respectfully requests that this Court issue a writ of mandamus to the Governor, ordering her to sign the Tribe’s proposed compacts.

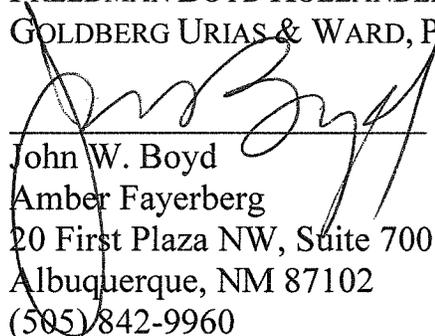
CONCLUSION

For over one hundred years, the Tribe has worked not only to repatriate its members to their aboriginal lands but also to establish and exercise the same rights that other tribes have and exercise. Because Fort Sill is a tribe within the meaning of the Compact Negotiation Act, and because it has submitted proposed compacts that are substantively identical to those already approved by the Governor and

legislature, the Governor has a nondiscretionary duty to sign the Tribe's proposed compacts. The Governor has refused. The Tribe's attempts to get the Governor to perform her duty have failed. Accordingly, this Court's writ should issue.

Respectfully submitted,

FREEDMAN BOYD HOLLANDER
GOLDBERG URIAS & WARD, P.A.



John W. Boyd
Amber Fayerberg
20 First Plaza NW, Suite 700
Albuquerque, NM 87102
(505) 842-9960

*Attorneys for Petitioner Fort Sill Apache
Tribe and the Honorable Jeff Haozous,
Chairman of the Fort Sill Apache Tribe*

We hereby certify that a copy of the foregoing was served by hand-delivery to:

The Honorable Susana Martinez
Office of the Governor
490 Old Santa Fe Trail
Room 400
Santa Fe, NM 87501
Telephone: (505) 476-2200

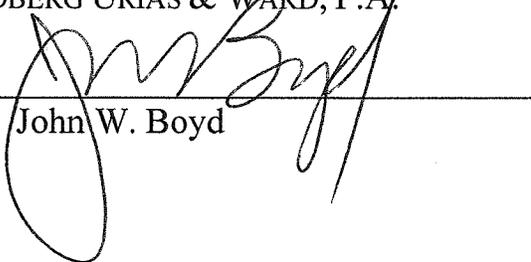
The Honorable Hector Balderas
New Mexico Attorney General
408 Galisteo Street
Santa Fe, NM 87501
Telephone: 505-827-6000

The Honorable Arthur Allison
New Mexico Indian Affairs Department
Wendell Chino Building, Second Floor
1220 South Saint Francis Drive
Santa Fe, NM 87505
Telephone: 505-476-1600

on this 27th day of February, 2015.

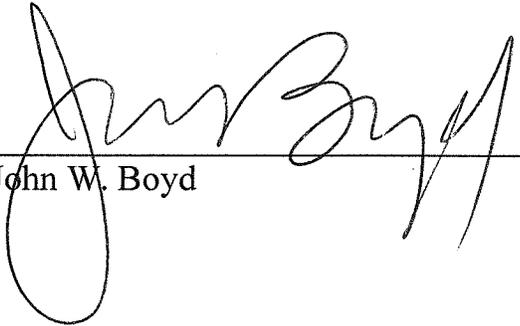
FREEDMAN BOYD HOLLANDER
GOLDBERG URIAS & WARD, P.A.

By: _____


John W. Boyd

STATEMENT OF COMPLIANCE

Pursuant to Rule 12-213(A), (F) & (G), Petitioner's counsel states that the total word count contained in the body of the brief is 5,109 words, using Microsoft Office Word 2007.



John W. Boyd

Dated: February 27, 2015

