

GAMING LEGALNEWS

INDIAN COUNTRY AND OBAMA'S CHOICE FOR SECRETARY OF THE INTERIOR

by Patrick Sullivan

In March, Ken Salazar will leave his well-appointed office at the helm of the Department of the Interior and return to Colorado, which he represented in the Senate until his 2009 nomination and unanimous confirmation as Secretary.

The President's second inaugural address on Monday emphasized civil rights but contained no mention of Indian Country or Native Americans, although Native dancers graced the ceremonies. President Obama's choice to replace Ken Salazar as Secretary of the Interior will reflect his commitment to Indian Country. This choice is important as the Department of the Interior is the face of the United States turned towards Indian Country. The Assistant Secretary for Indian Affairs is the head of the Bureau of Indian Affairs (BIA), and Kevin Washburn recently assumed the position; he will likely remain there for the duration of Obama's second term.

The Secretary, with the advice of the Assistant Secretary for Indian Affairs, considers applications for recognition of Indian tribes and must approve tribal-state gaming compacts, placing him in the position of setting the boundaries of negotiations between states and tribes over revenue sharing and exclusivity agreements. The Solicitor for the Department of the Interior, Hilary Tompkins, is the first Native American in that position and spearheaded the Cobell trust settlement. In all, the administration has been very pro-tribal, and everyone expects it to remain as such in Obama's second term.

Secretary Salazar's tenure was widely regarded as level-headed but not revolutionary. He was criticized by conservatives for his bold six-month moratorium on offshore drilling after the Deepwater Horizon disaster, and he reorganized the ineffective and ethically bankrupt Minerals Management Service. He established a good track record with Indian tribes. Milestones for his tenure include the settlement of the \$2.5 billion Cobell lawsuit and other Indian trust suits based on BIA's mishandling of property belonging to Native Americans and Indian tribes, as well as initiatives guaranteeing access to water for Indian tribes and reforming Indian land leasing regulations.

Washington State Governor Christine Gregoire's name is being passed around as a positive choice for Indian Country. Gregoire has made positive changes for tribes in the state, including returning limited civil and criminal jurisdiction to Washington's Indian tribal courts. Washington tribes supported her campaign, and her staff in Olympia has great experience in Indian Country. Gregoire has advocated for Indian gaming and resisted efforts to extract onerous revenue-sharing



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provisions in gaming compact negotiations. These relationships have earned her the support of Indian Country for the nomination. Gregoire's appointment would also blunt criticism of a lack of gender and racial diversity in Obama's cabinet. However, Gregoire is also a natural fit to run the Environmental Protection Agency in Obama's second term, so she may be otherwise occupied.

Indian Country also supports Raúl Grijalva, who has served as a democratic U.S. Representative from Arizona since 2002. Grijalva serves on the House Committee on Natural Resources and the Subcommittee on Indian and Alaska Native Affairs. Grijalva has been a strong advocate for increased consultation with Indian tribes by the federal government before undertaking major actions that affect tribes and Indian land. He is friendly to Indian gaming and strongly opposed federal legislation intended to restrict off-reservation Indian gaming in Phoenix.

Tom Udall, Democratic Senator from New Mexico, seems a natural choice. His father, Stewart Udall, served as Interior Secretary under both Presidents Kennedy and Johnson from 1961 to 1969 and was widely hailed as an environmentalist and an advocate for justice for Navajo Indians poisoned by uranium tailings. Tom Udall is a friend to Indians and is committed to water rights, public safety in Indian Country, and improving the Indian Health Service. However, Udall has said he is not interested, and politics is a factor as New Mexico Governor Martinez would certainly fill his U.S. Senate seat with a Republican.

Former Senator Byron Dorgan from North Dakota is denying rumors that he may be a candidate for the job. Dorgan served in the Senate for 30 years and as Chairman of the Senate Committee on Indian Affairs from 2007-2011, an excellent pedigree for a move to Interior. He was instrumental in sponsoring the Tribal Law and Order Act and the Indian Health Care Improvement Act in 2010. Dorgan supports Indian gaming and has been honored by the National Indian Gaming Association (NIGA), the leading Indian gaming policy group.

Any of these choices would continue the pro-Indian direction that has characterized the Obama administration and the Department of the Interior, avoiding disruption in the economic development priorities of Indian Country, key to which are gaming and energy development.

TOHONO O'ODHAM NATION – AN EMERGING JUGGERNAUT IN THE DESERT

by Dennis J. Whittlesey

The Indian Gaming industry has been closely following over the past several years the saga of the Tohono O'odham Nation of Southern Arizona in its quest to develop a casino/hotel complex within the City of Glendale near the massive sports complex on the west side of the Phoenix Metro Area. The casino project has been tied up by massive resistance leading to both political and legal battles that are ongoing as this is written.

Although the casino complex site is some 70 miles north of the Nation's historic reservation lands, Tohono O'odham has special federal legislation giving it the right to acquire land within Maricopa County

and have it taken into trust and reservation status. This was enacted as part of a major settlement between the United States and the Nation for the federal government's flooding of portions of the tribe's Gila Bend Reservation with the 1960 completion of the Painted Rock Dam on the Gila River. The Glendale site was purchased for the purpose of adding it to the reservation as "replacement land," and the Secretary of the Interior has announced that at least a portion of the Glendale tract will be taken into trust/reservation status. Still, the battles continue, and the Glendale project is on hold pending their resolution.

But the Nation is not sitting still in the interim, as evidenced by its just-announced purchase of valuable commercial real estate in Tucson for \$4.2 million. The property is known as Plaza Antigua II and is occupied by a single tenant, University Medical Imaging. Knowledgeable observers have deemed this a sound investment likely to generate revenue for the Nation for many years to come. In short, a tribe that already has money in the bank due to \$30 million received as part of the federal settlement and its three Desert Diamond casinos in southern Arizona is soon to have even more cash in the bank with which to pursue not only its Glendale project but other attractive investment opportunities.

Tohono O'odham has moved carefully in its economic development, including the steps to secure all of the necessary approvals for the Glendale casino project that is certain to be a major tribal casino from the day it opens for business. If past tribal success is prologue, then the casino is likely to become reality.

As for the future, you have to ask the Tohono O'odham. However, it is clear that other projects already are on the drawing boards.