

**EXHIBIT 1**

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**From:** Walters, Anthony (Indian Affairs)  
**Sent:** Friday, November 28, 2014 9:40 AM  
**To:** Lukens, Jeanette (Tom Udall)  
**Cc:** Pavel, Mary (Indian Affairs)  
**Subject:** Fw: Question on status of appeal

Jeanette, below is the response we received from NIGC to Senator Udall's question regarding the Ft. Sill NM project.

Let us know if there is anything else we can to help with the issue.

Thanks,  
Tony

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

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**From:** Shepard, Eric <[Eric\\_Shepard@nigc.gov](mailto:Eric_Shepard@nigc.gov)>  
**Sent:** Friday, November 28, 2014 9:30 AM  
**To:** Walters, Anthony (Indian Affairs)  
**Cc:** Bratt, Jeremy  
**Subject:** RE: Question on status of appeal

The Commission was working on the decision when the Tribe filed a lawsuit against the Agency in the United States District Court for the District of Columbia. The Tribe claims that the amount of time that has passed since the Tribe filed its appeal has converted the NOV into final agency action, and asked the court to decide the merits of the NOV. So as not to interfere with the court's proceedings, the Commission has decided not issue a decision while the matter is being litigated. The Commission does, however, stand ready to issue a decision once the litigation is resolved.

Unfortunately, this appeal has been pending for an unusually long amount of time. Based on the procedural history and circumstances surrounding the appeal, however, that amount of time is not wholly unreasonable. When the appeal was filed in August of 2009, the NIGC met with all of the parties, including the State of NM, and set out a briefing schedule. Both the Tribe and NM repeatedly asked for extensions of time to file submissions under that schedule, including the Tribe's request for a 120 day stay of proceedings for the introduction of expert opinions. Briefing was not complete until August 26, 2011. But even after briefing was complete, the Tribe continued to file submissions with the Agency which further delayed review. The Tribe's last submission as filed on September 21, 2012. Additionally, in January 2012, the Tribe's counsel contacted NIGC to inform us that the Tribe was pursuing a two part determination and that it was going

to seek the State's concurrence in a Stay of the NOV Appeal while that application was pending with the Secretary of the Interior. Counsel asked that the Commission not issue a decision while it sought the State's concurrence. Although the State ultimately refused to concur in the Motion to Stay the NOV Appeal, the Commission was informed that the Application for a two part determination was still pending. So as not to affect the outcome of that petition, and also to avoid applying scarce resources to a matter that may become moot based on the Secretary's decision, the Commission focused its efforts on other matters pending before the Agency. Eventually, we were informed by staff at the DOI Solicitor's office that no progress was being made on the two-part determination application, and the Agency resumed its efforts on the NOV Appeal.

Further complicating matters, the Commission has undergone significant change over the past five years. Since the appeal was filed in August 2009, the Commission has had four Chairmen (or Acting Chairmen) as well as significant turnover amongst the Associate Commissioners each of whom has had to review the lengthy and complex record in this appeal. Upon beginning his review of the record, Acting Chairman Chaudhuri sought guidance from the DOI ethics division regarding one potential conflict. While that ethics review was on-going, only one Commissioner remained, which is not enough to issue a decision on Appeal. Acting Chairman Chaudhuri received guidance in late January 2014 that there was no potential conflict and Acting Chairman Chaudhuri did not need to recuse himself from the matter. At that point, Acting Chairman Chaudhuri resumed reviewing the record.