

RESOLUTION NO. 2021 - 02

STATEMENT OF INTENT AND POSITION REGARDING THE STIPULATED SETTLEMENT AGREEMENT IN *NAVAJO NATION HUMAN RIGHTS COMMISSION, et al. v. SAN JUAN COUNTY, et al.*, CASE NO. 2:16-cv-00154 JNP, FOR THE PURPOSE OF MEETING IN GOOD FAITH TO DISCUSS THE MODIFICATION AND EXTENSION OF THE STIPULATED SETTLEMENT AGREEMENT DATED FEBRUARY 22, 2018.

WHEREAS, San Juan County was a defendant in a lawsuit, *Navajo Nation Human Rights Commission, et al. v. San Juan County, et al.*, initiated by the Navajo Nation Human Rights Commission and several named plaintiffs challenging the voting procedures in San Juan County, specifically with respect to polling places and mail-in ballots.

WHEREAS, on February 22, 2018, the parties reached a Stipulated Settlement agreement regarding plaintiffs' claims that San Juan County did not provide effective language assistance to Navajo-speaking voters and that Navajo voters had unequal voting opportunities in the County, and further stipulating that the Court would maintain jurisdiction to enforce the terms of the Stipulated Settlement Agreement. STIPULATED SETTLEMENT AND MOTION TO DISMISS ¶ 19, attached hereto.

WHEREAS, the Court issued an Order on February 22, 2018, dismissing the case, and incorporating the terms of the Stipulated Settlement agreement into its Order and further Ordered that the Court would retain jurisdiction to enforce the terms of the Settlement Agreement going forward. ORDER re: STIPULATED SETTLEMENT AND MOTION TO DISMISS , ¶ 23, attached hereto.

WHEREAS, the Order states that after the 2020 general election the parties shall "meet, in good faith, through designated representatives within 60 days to review the data collected and determine if procedures should be altered or services reduced, increased, or held the same" and further, if the parties cannot agree on the next steps, "they shall submit their dispute to the Court for resolution." ORDER re: STIPULATED SETTLEMENT AND MOTION TO DISMISS, ¶¶ 18-19, attached hereto.

WHEREAS, on December 28, 2020, having reviewed the parties' Stipulated Modification to Settlement Agreement, the Court Ordered that the modification be granted, and that the deadline set forth in ¶ 19 of the Stipulated Settlement Agreement be extended to March 3, 2021, with the Court retaining jurisdiction over the parties, to allow the parties to meet and discuss the terms of the Stipulated Settlement and whether they should be modified. ORDER GRANTING STIPULATED MODIFICATION TO SETTLEMENT AGREEMENT, attached hereto.

WHEREAS, the San Juan County Commission values fair and accessible elections and wants to negotiate the modification and extension of the Settlement Agreement and “Settlement Terms Rule 408 Communications” (attached hereto) to insure fair and accessible elections are maintained in San Juan County in coming years.

WHEREAS, the County has reviewed and concurs with the redlined Revised Settlement Agreement. Redlined REVISED SETTLEMENT AGREEMENT attached hereto.

WHEREAS, the redlined Revised Settlement Agreement incorporates the election procedures the County utilized to conduct the 2020 General Election and makes other minor modifications to ensure fair and accessible elections for County voters in coming years.

WHEREAS, the County, through this official action of the San Juan County Commission, intends to exercise its sole authority to choose the legal options pursued by the County and to choose its legal counsel for negotiating the modification and extension of the Settlement Agreement.

WEREAS, the County has previously been represented in this matter by the Switter Axland law firm and Jesse Trentadue, who is a member of the Switter Axland firm.

WHEREAS, the County believes it is in the best interests of the County to terminate its relationship with the Switter Axland law firm and Mr. Trentadue.

WHEREAS, the San Juan County Attorney, Kendall Laws, is required to implement the directives of his client, San Juan County, as those directives are expressed in official actions of the County Commission. *See, Salt Lake County Commission v. Salt Lake County Attorney*, 985 P.2d 899, 905 (1999); UCA § 17-18a-802; Rules 1.2 and 1.13, Utah Rules of Professional Conduct.

WHEREAS, the County, through this official action, will exercise its authority to direct the County Attorney to immediately terminate the representation agreement between the County and Switter Axland, including Mr. Trentadue, and to ensure that the Switter Axland firm and Mr. Trentadue immediately take steps to withdraw their appearances in *Navajo Nation Human Rights Commission, et al. v. San Juan Count, et al.*

WHEREAS, the County believes it is in its best interests to be represented in this matter by legal counsel who are familiar with election issues in San Juan County and that the County Attorney and the County Administrator should take steps to secure the representation of Steven Boos and/or David Irvine as the County’s representatives in the meet and confer process established in the Order, at rates comparable to what the County has been paying the Switter Axland firm.

NOW, THEREFORE, BE IT RESOLVED:

Section 1: The “Redlined REVISED SETTLEMENT AGREEMENT” represents San Juan County’s intent and position for the purposes of negotiating with the opposing parties in *Navajo Nation Human Rights Commission, et al. v. San Juan County, et al.*, pursuant to the Stipulated Settlement and Order to “review the data collected and determine if procedures should be altered or services reduced, increased, or held the same” in accordance with the Court’s ORDER.

Section 2: The San Juan County Commission directs the County Administrator, Mack McDonald, to immediately, but no later than February 22, 2021, contact the parties to *NAVAJO NATION HUMAN RIGHTS COMMISSION, et al. v. SAN JUAN COUNTY, et al.*, for the purpose of setting a date for a meeting to discuss the modification and extension of terms of the stipulated Settlement Agreement dated February 22, 2018.

Section 3: The County directs the County Attorney to immediately terminate the representation agreement between the County and Switter Axland, including Jesse Trentadue, and to ensure that the Switter Axland firm and Mr. Trentadue immediately take steps to withdraw their appearances in *Navajo Nation Human Rights Commission, et al. v. San Juan Count, et al.*

~~**Section 4:** The San Juan County Commission directs the County Attorney and the County Administrator to immediately take steps to secure the representation of Steven Boos and/or David Irvine as the County’s representatives in the meet and confer process established in the Order.~~

PASSED, ADOPTED AND APPROVED by the Board of San Juan County Commissioners this 16 day of Feb. 2021.

Those voting aye: Commissioners Maryboy, Adams

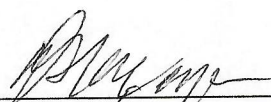
Those voting nay: N/A

Those abstaining: Commissioner Grayeyes

Absent: N/A

Commissioners

Board of San Juan County



Willie Grayeyes, Chairman

ATTEST:

John David Nielson - Attesting to the vote only
John David Nielson, County Clerk/Auditor

Attachments:

- * STIPULATED SETTLEMENT AND MOTION TO DISMISS
- * ORDER GRANTING STIPULATED MODIFICATION TO SETTLEMENT AGREEMENT
- * SETTLEMENT TERMS RULE 408 COMMUNICATIONS
- * Redlined REVISED SETTLEMENT AGREEMENT

~~reviewed pursuant to this settlement, and its procedures and terms modified as that the terms of that settlement are as follows:~~

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

NAVAJO NATION HUMAN RIGHTS
COMMISSION; PEGGY PHILLIPS; MARK
MARYBOY; WILFRED JONES; TERRY
WHITEHAT; BETTY BILLIE FARLEY;
WILLIE SKOW; and MABEL SKOW,

Plaintiffs,

v.

SAN JUAN COUNTY; JOHN DAVID
NIELSON, in his official capacity as San Juan
County Clerk; and PHIL LYMAN, BRUCE
ADAMS, and REBECCA BENALLY, in their
official capacities as San Juan County
Commissioners,

Defendants.

**REVISED STIPULATED
SETTLEMENT**

Case No. 2:16-cv-00154 JNP

Judge Jill N. Parrish

Magistrate Judge Brooke C. Wells

BACKGROUND

A *Stipulated Settlement Agreement* was negotiated and agreed upon by the parties, and executed on the 22nd day of February, 2018.¹ The *Stipulated Settlement Agreement* and the Court's dismissal of the case with prejudice were expressly conditioned upon the Court retaining jurisdiction to enforce the terms of the *Stipulated Settlement Agreement*. The

¹ Dkt. XXX, Feb. 22, 2018.

Settlement Agreement also contained provisions² calling for reexamination and modification of the *Settlement Agreement* following the 2020 general election.

The parties have met and conferred pursuant to those provisions. Modification of the *Stipulated Settlement Agreement* has been negotiated and agreed upon by the parties. The amended terms of the *Stipulated Settlement Agreement* are as stated below. All other provisions of the *Stipulated Settlement Agreement* remain unchanged.

A. Voting Polling Places and Early In-Person Voter Assistance

Offices: The Clerk Auditor shall:

1. Continue through the 2020 2024 election to open ~~three~~ primary and general election-day polling places located on or close to the Navajo Nation.
 - a. The locations of the ~~three~~ polling places shall be at ~~Montezuma Creek, Navajo Mountain, and Oljato, Utah~~ the Navajo Chapter Houses located in the State of Utah or nearby facilities as appropriate.
 - b. In the future and upon agreement of the parties, the locations of the ~~three~~ polling places may be changed. If so, then the parties will attempt to locate polling places at Navajo Nation polling places when state, federal, and county elections fall on the same day as Navajo Nation elections.
2. Open voter assistance offices ~~satellite offices~~ at Aneth Bluff and Montezuma Creek, and at Chapter Houses or nearby facilities at Oljato or Monument Valley, Aneth, Red Mesa, Mexican Water, and Navajo Mountain for in-person voter assistance during the 28-days (four weeks) preceding each primary and general election. To the extent possible, these voter assistance offices ~~satellite offices~~ should be located at the same locations as the voting ~~polling~~

² *Navajo Nation Human Rights Commission v. San Juan County, Stipulated Settlement Agreement*, Paragraph F. Applicable Time Period and Review.

locations used for Election Day voting. In-person voter assistance shall include voter registration and assistance with the ballot including language assistance. ~~the ability to submit a completed ballot into a locked ballot box, the ability to request a replacement ballot if necessary and, if it is adopted by the Clerk Auditor, early in-person voting.~~

- a. ~~Each location~~ The voter assistance offices located at Bluff, Montezuma Creek, and Oljato or Monument Valley will be open from 10 a.m. to 3 p.m. or from 3pm to 7pm, for at least one day per week in the four weeks preceding each election.
- b. The voter assistance offices located at Aneth, Red Mesa, Mexican Water, and Navajo Mountain will be open at least twice in the 28 days preceding each primary and general election.
- c. ~~The locations~~ voter assistance offices will be staffed by a County employee trained on election procedures and a Navajo interpreter who, if qualified as described below, can also be the San Juan County Navajo Liaison.
- d. Completion of proper registration forms or in-person early voting at each site shall be deemed the equivalent to filing them with the County Clerk Auditor's office for purposes of the deadline that registration closes.
- e. The voter assistance offices will allow voters to submit a completed ballot into a locked ballot box and to request a replacement ballot if necessary, and early in-person voting.

B. Navajo Liaison Duties and Language Assistance

San Juan County and the Clerk Auditor shall:

3. Continue to employ a Navajo Liaison during the six-month period leading up to any election who shall focus his or her efforts upon educating Navajo voters about voting-related issues such as: voter registration ~~(which under current law ends one week prior to the election so that those persons registering inside of a week of an upcoming election would be registering for~~

the next election); voting ~~polling~~ locations and hours of operation; voter registration instructions and deadlines; filing requirements for local offices and deadlines; ballots, mail-in ballots including instructions and deadlines, and early-voting information.

- a. If the Navajo Liaison position becomes vacant, San Juan County will notify the Navajo Utah Commission, Navajo Human Rights Commission and the Chapter Presidents of the vacancy so that they can encourage members to apply for the position.
- b. If necessary, employ a certified Navajo language interpreter to, among other things, assist the Navajo Liaison with ensuring appropriate interpretation of election-related materials. It is further understood and agreed that a certified Navajo interpreter is not required if the Navajo Liaison becomes so certified and takes any required refresher CLE courses. Towards this end, Plaintiffs will provide the Clerk Auditor with the names of persons, schools and/or other programs at which this language certification and refresher CLE programs are offered.

4. Ensure that each election day voting ~~polling~~ place and each early voting location has at least one individual designated and qualified to provide Navajo language assistance.

5. Beginning 30-days prior to every primary and general election, place a timely radio ad in the Navajo language providing election-related information on KNDN Radio 960 AM and KTNN 660 AM, which ads will air twice weekly during the 12:30 p.m. to 1:00 p.m. during that stations' free public announcement period, and more often if the station permits.

6. Ensure the Navajo Liaison and any Navajo interpreters comply with all duties listed below.

7. Appropriate the Navajo Liaison and any interpreters adequate funding to cover the duties listed below.

8. Establish a training program for poll officials and all other county officials involved in the electoral process with respect to the *Voting Rights Act*, voting requirements,

registration requirements and all other relevant voting procedures with an emphasis on how to render effective assistance to Navajo voters.

C. The Navajo Interpreter:

The Navajo Human Rights Commission shall:

9. Obtain from the Navajo Utah Commission and Navajo Nation Election

Administration the names of individuals that the Navajo Utah Commission and Navajo Nation Election Administration consider to be competent Navajo interpreters and, provide those names to the Clerk Auditor who, subject to verification of their qualifications and the compensation demanded, will endeavor to select or hire Navajo interpreters from that list.

- a. Subject to the limitations placed upon the dissemination of election related materials by federal and state law, those persons hired as a Navajo interpreter shall translate from English into Navajo the following information: polling locations and hours of operation; voter registration instructions and deadlines; filing requirements for local offices and deadlines; ballots, mail-in ballots instructions and deadlines, and early-voting information. These translations shall be provided in audio

form with that audiotape being placed on San Juan County's website and copies will also be provided by the Clerk Auditor to each Navajo Utah Chapter House, Navajo Utah Commission, the Navajo Human Rights Commission, and the Navajo Nation Election Administration.

- b. Within four business days of receipt of the audiotapes referenced in paragraph 9 a above, the Navajo Utah Chapter Houses, Navajo Utah Commission, Navajo Human Rights Commission and/or Navajo Nation Election Administration will notify the Clerk Auditor as to any inaccuracies in the translations or lack of clarity. If no requests to correct or clarify the audiotapes are received from these recipients, the Clerk Auditor shall proceed with distributing and/or publishing the recordings in accordance with paragraphs 5, 9 and 11 herein.
- c. Once the ballot is available, record in the Navajo language an audiotape describing the ballot which recording shall be placed on San Juan County's website, with copies distributed to the Navajo Utah Commission, Navajo

Nation Election Administration, each Utah Navajo Chapter in the State of Utah and made available at polling places on election days and at any early voting locations.

- d. Record radio ads in the Navajo language regarding voter registration, polling locations and hours of operation, voter registration instructions and deadlines, filing requirements and filing deadlines for local offices, ballots, instructions and deadlines for mail-in ballots, and/or early-voting information, which ads shall be aired on KNDN and KTNN in accordance with paragraph 5 above.

D. The Clerk Auditor Shall:

10. Oversee publication of all registration deadlines, notification of the establishment of all satellite registration offices and voting ~~polling~~ locations, and notification of all other relevant election-related deadlines, including candidate filing deadlines:

- a. At least twice a week during the 30-day period preceding each election registration deadline and each election day on KNDN as described in paragraph 5 above.
- b. At least three times during the 30-day period prior to each election-related deadline, publish this information in the Navajo Times and San Juan Record.
- c. Create a flyer in English containing the same information as the newspaper ads and provide a copy of that flyer to all Navajo Chapter Houses located in the State of Utah.
- d. In English, on San Juan County's website, Facebook, and other social media the County uses in the 60-days prior to the election.
- e. With respect to Navajo Chapter House meetings on the Utah portion of the Navajo Nation, prior to each election announce in person or by audio recording at least onetime election-related deadlines.

11. Prior to each election, arrange for the Navajo Liaison and, if necessary an interpreter, to attend Navajo Chapter House meetings on the Utah portion of the Navajo Nation a minimum of three times for each Chapter to educate voters about: voter registration, voting

polling locations and hours of operation, voter registration instructions and deadlines, filing requirements and filing ~~filing~~ deadlines for local offices, ballots, instructions and deadlines for mail-in ballots, and/or early-voting information.

E. Data Collection:

12. The Clerk Auditor shall keep track of and maintain written records ~~until the 2020 election~~ on of the following information for each polling place and in-person voter assistance office, including Monticello:

- a. The County employees present and the date, time, and duration of same;
- b. The number of people who utilize each service, by service;
- c. The date, time, and duration each person spends utilizing each service;
- d. For each person who utilizes a service, whether they are Navajo or not; and
- e. The number of persons who voted in-person at the three polling locations.

13. Plaintiffs will provide the Clerk Auditor with forms on which this data is to be recorded and reported. The Clerk Auditor shall provide Plaintiffs' counsel with copies of these reports on a quarterly basis.

F. Applicable Time Period and Review:

14. The procedures and services detailed above shall be in place through at least the 2024 ~~2020~~ general election, at which time the parties agree to meet, in good faith, through designated representatives within 60 days to review data collected and to determine if procedures should be altered or services reduced, increased, or held the same.

15. The District Court shall retain jurisdiction over this *Settlement Agreement* which shall be in effect until the 2024 ~~2020~~ election. If the parties cannot agree on whether any term

of this *Settlement Agreement* shall be continued, altered, reduced or increased they shall submit their dispute to the Court for resolution.

G. — Attorneys' Fees:

~~16. — The parties shall each bear their own costs and attorneys' fees.~~

H. — No Admission of Liability:

~~17. — It is further stipulated, understood and agreed that this settlement is a compromise of a disputed claim and, therefore, is not to be considered or construed as an admission of liability on the part of San Juan County.~~

I. — Warranty:

~~18. — The undersigned counsel warrant and represent that they are each authorized to execute this *Stipulated Settlement Agreement* on behalf of their respective clients who shall be bound hereby as though having signed this *Agreement* themselves.~~

J. — Dismissal With Prejudice:

~~19. — The Court shall dismiss this case with prejudice. However, it is understood and agreed that this *Stipulated Settlement* and that dismissal with prejudice are expressly conditioned upon the Court retaining jurisdiction to enforce the terms of this *Settlement Agreement*, which shall also be incorporated into the Court's *Order of Dismissal*.~~

WHEREFORE, the undersigned counsel hereby jointly move the Court to ~~dismiss the~~ above captioned case with prejudice; to incorporate the terms of ~~the~~ this *Revised Settlement Agreement* into its *Order of Dismissal*; and to retain jurisdiction over this matter in order to enforce the terms of ~~the~~ this *Revised Settlement Agreement*.

Dated this day of February, 2021~~18~~.

**AMERICAN CIVIL LIBERTIES
PLLC UNION OF UTAH**

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