

INDIAN AFFAIRS COMMITTEE



2010 INTERIM FINAL REPORT

New Mexico Legislature
Legislative Council Service
411 State Capitol
Santa Fe, New Mexico 87501

INDIAN AFFAIRS COMMITTEE
2010 INTERIM FINAL REPORT
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2010 INTERIM SUMMARY

INDIAN AFFAIRS COMMITTEE

2010 INTERIM SUMMARY

Since the inception of the Indian Affairs Committee (IAC) in 1989 by post-session action of the New Mexico Legislative Council, the IAC has addressed issues that disproportionately affect Native Americans residing in New Mexico. The IAC strives to facilitate government-to-government cooperation with all 24 Indian nations, tribes and pueblos in New Mexico. In view of its work, the IAC conducts its meetings in locations accessible to Native Americans and their leaders. The meetings of the IAC are an essential way of relating the work of the legislature to the Native American segment of its constituency.

In fulfillment of its mission, the IAC held six meetings during the 2010 interim, which were conducted at five pueblos, one Navajo Nation chapter and the Mescalero Apache Tribe. This year, the IAC altered its normal travel schedule to remain close to the State Capitol in order to reduce travel costs for members, legislative staff and executive agency staff. Despite the limited travel, the IAC continued to focus on addressing the issues of greatest concern for Native Americans residing in New Mexico.

At its first meeting, the IAC heard from Raúl E. Burciaga director, Legislative Council Service; Alvin Warren, secretary, Indian Affairs Department (IAD); Marilyn Hill, deputy secretary, Taxation and Revenue Department; John Garcia, secretary, Veterans' Services Department; and Ray Espinoza, director, Office of Indian Elder Affairs of the Aging and Long-Term Services Department. During this meeting, members focused on government restructuring, the priorities and concerns of the IAD, the Native American Veterans' Income Tax Settlement Fund and the federal matching assistance percentage (FMAP) for Medicaid. The IAC determined the major issues affecting Native Americans for the 2010 interim in its work plan and meeting schedule.

During the second meeting, the IAC facilitated federal, state and tribal cooperation on various issues. Most notable among the issues was national health care reform, especially the federal Indian Health Care Improvement Act and Medicaid services. The IAC heard from Kathryn "Katie" Falls, secretary, Human Services Department; Dr. Alfredo Vigil, secretary, Department of Health; and Leonard Thomas, area chief medical officer, Indian Health Service (IHS). The IAC was particularly concerned with potential cuts to Medicaid services. The IAC

also heard from John D'Antonio, state engineer, and Estevan Lopez, deputy state engineer and director of the Interstate Stream Commission, regarding the *Aamodt* and Taos-Abeyta water settlements and the necessary enactment by the federal government. Joyce Begaye-Foss, chair, Indian Arts and Crafts Board (IACB), U.S. Department of the Interior, and director of education at the state Museum of Indian Arts and Culture, informed the IAC of the IACB's collaboration with the New Mexico Office of the Attorney General to enforce the provisions of the federal Indian Arts and Crafts Act of 1990. Vicki McIntire, deputy director, and Amadeo Shije, tribal partnership coordinator, both of the Denver Regional Census Center, and Gina Valdez, New Mexico regional manager, all of the United States Census Bureau, provided a status update on the enumeration of Native Americans in Indian Country. Finally, John C. Meyer, director, Superfund Division, Region 6, U.S. Environmental Protection Agency, presented before a joint meeting of the Radioactive and Hazardous Materials Committee and the IAC on the progress and activities underway with respect to the multi-agency five-year plan to address the uranium legacy in New Mexico.

At its third meeting, the IAC focused on the government-to-government relationship between the state and Indian nations, tribes and pueblos. Secretary of State Mary Herrera addressed IAC concerns on the implementation of a 2009 law to allow Indian nations, tribes and pueblos to submit a request for early voting alternative locations. Rachel O'Connor, Governor Richardson's DWI czar, and Michael Sandoval, director, Motor Vehicle Division, Taxation and Revenue Department, discussed a strategic plan to develop initiatives to stem DWI-related fatalities among Native Americans. John Standefer, state fire marshal, Fire Marshal Division, Public Regulation Commission (PRC), reviewed the state's funding history of municipal and county fire departments and their cooperation with Indian nations, tribes and pueblos to provide fire protection services. Roy E. Stephenson, director, Utility Division, PRC, summarized the status of proposed rules pursuant to SB 468 (2009), which directs the PRC to adopt rules regulating the propane industry to protect consumer rights. Upon a motion by Representative Debbie A. Rodella, seconded by Representative Gloria C. Vaughn, the committee voted without opposition to provide formal comments on those proposed rules consistent with the concerns expressed by the IAC.

Additionally, the IAC focused on the education of Native Americans. Dr. Sherry

Allison, president of Southwestern Indian Polytechnic Institute (SIPI), explained that SIPI lost its accreditation and has been placed on candidate status. The committee plans on holding a meeting at SIPI during the next interim. Dr. Susanna Murphy, secretary-designate of public education, provided the status of implementing the Indian Education Act (IEA). Kevin Shendo, chair, Indian Education Advisory Council, presented recommendations as follows: consider changes to the equalization formula so impact aid follows the student; increase the authority of the Indian Education Advisory Council; direct a greater amount of funding to state agencies to improve Native American student achievement graduation rates; and withhold approval of a school district's budget for noncompliance with the IEA. Finally, the IAC heard from various school district superintendents with large Native American student populations.

The IAC dedicated part of its fourth meeting to address issues of common concern with the Land Grant Committee. Both committees heard from Juan Sanchez, chair, Land Grant Council; Lawrence T. Morgan, speaker, Navajo Nation Council; Chandler Sanchez, governor, Pueblo of Acoma; Frank Cerno, Governor's Office, Pueblo of Laguna; Norman Coeoyate, governor, Pueblo of Zuni; and others regarding the application of the Cultural Properties Act and similar acts to land grant common lands and their potential treatment as state lands. After the joint meeting, the IAC continued to meet and addressed the persisting issue of capital outlay funding for Navajo Nation chapters in New Mexico, early childhood education for Native Americans, government restructuring that affects Native Americans and Indian water rights settlements. Upon a motion by Representative Ray Begaye, seconded by Representative James Roger Madalena, the IAC voted without objection to write a letter to the United States senators from New Mexico urging them to support the passage of the settlements. Representative Begaye also made a motion, seconded by Representative Sandra D. Jeff, to send a letter to the Government Restructuring Task Force recommending that the IAD be retained at the cabinet level. That motion also passed without opposition.

The second day of the fourth meeting focused on the mental health of Native American youth. Herbert Long, co-commander, Navajo Department of Behavioral Health Services, Dr. Jack Callaghan, director, Public Health Division, Department of Health, and others gave an in-depth account of the federal, state and tribal response to the youth suicide crisis affecting Thoreau and surrounding areas.

The topic of the mental health of Native American youth was continued at its fifth meeting in Mescalero. Dorlynn Simmons, chief executive officer, Mescalero Service Unit, IHS, said that after Mescalero experienced an initial cluster of suicides in 2009, she was dispatched for 90 days as the incident commander and provided analysis of the federal, state and tribal response to the crisis in Mescalero and surrounding areas. The IAC continued to address health care services for Native Americans. Rear Admiral Richie Grinnell, acting director, Albuquerque Area IHS, gave the committee an overview of the Contract Health Services Program and funding shortfalls. Representative Madalena directed staff to draft a memorial requesting Congress to fund the IHS as an entitlement program. Secretary Warren asked the committee for its formal support in the IAD's efforts to protect Medicaid benefits for American Indians by asking the Centers for Medicare and Medicaid Services (CMS) for a special waiver. Upon a motion made by Senator Eric G. Griego, seconded by Representative Patricia A. Lundstrom, the committee voted without opposition to send a letter to the CMS and to copy New Mexico's congressional delegation in support of the proposed Medicaid waiver.

The IAC addressed other topics of concern. Laurie Chapman, capital outlay manager, IAD, presented the committee with the Tribal Infrastructure Fund Fiscal Year 2011 Report. Joe Graham, director, Indian Resource Development Program (IRD) at New Mexico State University, stated the IRD's mission. David Eisenberg, deputy chief public defender, reported on the status of establishing a public defender office in Gallup. Upon a motion by Representative Lundstrom, seconded by Representative Rodella, the committee voted without opposition to send a letter congratulating the Public Defender Department on its work and encouraging collaboration with the county to finalize the office. John Monforte, executive director, Gaming Control Board, presented the 2009 Compulsive Gambling Funds Report.

At its final meeting, the IAC heard reports and considered legislation. Mr. D'Antonio presented the Office of the State Engineer's 2010 Indian Water Rights Settlement Fund Report and the implication of the enactment of the federal Indian water rights settlements. Dorothy Rodriguez, secretary-designate, Taxation and Revenue Department, discussed the department's efforts to administer the Native American Veterans' Income Tax Settlement Fund. Attorney General Gary King and Albert Lama, chief deputy, Office of the Attorney General, presented proposed legislation to implement a cigarette tax credit stamp for units sold in Indian Country.

Finally, the IAC endorsed legislation for the upcoming legislative session as follows:

- Lottery Scholarships for Tribal Colleges—.183389.1
Provides lottery scholarships for residents attending tribal colleges.
- Control of Jemez State Monument to the Pueblo of Jemez—.183107.1
Memorial requesting the return of the Jemez State Monument Heritage Area to the Pueblo of Jemez.
- Make the IHS an Entitlement—.183106.1
Memorial asking Congress to change the funding for the IHS to an entitlement program.
- Navajo Nation Foster Care Plan—.183324.2
Memorial requesting state agencies to assist the Navajo Nation in developing a foster care and subsidized adoption program plan.

2010 WORKPLAN AND MEETING SCHEDULE

**2010 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
INDIAN AFFAIRS COMMITTEE**

Members

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Sen. Eric G. Griego
Rep. Sandra D. Jeff

Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Gloria C. Vaughn

Advisory Members

Rep. Ernest H. Chavez
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Antonio "Moe" Maestas

Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Sen. William E. Sharer

Work Plan

The Indian Affairs Committee (IAC), was again created by the New Mexico Legislative Council to address issues that affect Native Americans in New Mexico. The IAC has existed since 1989 as a result of post-session New Mexico Legislative Council action each year. In view of the fact that the committee's work addresses issues relating principally to New Mexico's Native American population, the committee strives to conduct its meetings in locations that are accessible to the state's tribal members and their leaders. The committee views its meetings as an essential way of relating the work of the legislature to this segment of its constituency. Moreover, meeting at the various nations, tribes and pueblos facilitates government-to-government cooperation.

Travel

This year, however, the committee plans to limit its travel outside of the State Capitol in Santa Fe in order to cut down on travel costs for members, legislative staff and other agencies. Additionally, meetings held farther away from the State Capitol will limit the number of executive agency personnel on the agendas and focus on hearing from the local constituency.

On July 12 and 14, the committee proposes to meet at the Pueblo of Tesuque and Ohkay Owingeh, respectively. The committee has not met with the Pueblo of Tesuque or Ohkay Owingeh since 2005.

On August 19, the committee proposes to meet at the Pueblo of Jemez because it has not met there since 2008. The Pueblo of Jemez presents an ideal location to learn about the recent voting rights concerns, including staffing, expenses and locations for early voting precincts in

the area.

On August 20, the committee proposes to meet at the Pueblo of Zia because it has not met there since 2008. Senate Finance Committee Substitute for Senate Bill 1 provided over \$280,000 for improvements to the Pueblo of Zia senior center, and the pueblo provides an excellent location for the Aging and Long-Term Services Department to present on Native American needs and the efficiency and effectiveness of its programs.

On September 14, the committee proposes to meet in Gallup in order to take advantage of meeting with and hearing from the various Navajo chapters of the Eastern Navajo Agency located in Gallup. Additionally, there have also been recent hate crimes in Gallup and most recently in the Farmington area. The committee can hear from local law enforcement on the status of the cases and community relations with Native Americans.

On September 15, the committee proposes to meet at the Thoreau Chapter of the Navajo Nation. It has not met with the Thoreau Chapter since 2002. The continued increase in suicides and attempted suicides in Native American communities, particularly in this area of the state, necessitates a meeting in this location. Firsthand accounts and observations are invaluable to understanding this serious issue. The Department of Health and other executive agencies have already formed a "unified command team" based out of Thoreau. Additionally, this meeting location is accessible to other nearby Navajo chapters located in Prewitt.

On October 11 and 12, the committee proposes to meet in Mescalero. The committee was forced to cancel its previous meetings in Mescalero because of special sessions. The committee has not met with the Mescalero Apache Tribe since 2006. Late last year, the Mescalero tribe dealt with a series of teen suicides similar to the situation in Thoreau. Meeting in Mescalero will provide the members with a firsthand account of the steps taken by the tribe and state agencies to address this issue. Addressing teen suicide in two different locations and with two different tribes will allow the committee to draw conclusions on best practices while keeping in mind that each Native American community in New Mexico has its own distinct culture, core values and needs.

On November 23, the committee proposes to meet at the Pueblo of Pojoaque. The location will still minimize travel costs and still facilitate government-to-government cooperation. The committee will meet in Santa Fe for its last meeting and finalize its work on government restructuring and legislative endorsements.

Issue Areas

During the 2010 interim, the committee proposes to focus in large part on economic and infrastructure development and the reduction of duplication, with increased effectiveness of services and benefits funded by the state and by the federal government.

A. The committee proposes to provide guidance and recommendations to the Government Restructuring Task Force by examining the programs and missions of the Indian Affairs Department and other agencies overseen by the committee with an eye toward making

those agencies more efficient and cost-effective, including ranking programs in terms of criticality to the core functions of those agencies. The committee will coordinate, as needed, with other committees regarding presentations of subject matter of common concern.

B. The committee also proposes to explore and discuss the major issue areas affecting Native Americans during the 2010 interim as follows:

1. capital outlay, including tracking the expenditure of allocated funds, alternative funding sources and coordination with the Navajo Nation;
2. funding of projects from the Tribal Infrastructure Project Fund, including projections of allocated amounts pursuant to House Bill 162;
3. the coordinated multi-agency five-year plan to address the uranium legacy and cleanup of abandoned uranium mining and milling sites led by the United States Environmental Protection Agency;
4. the implications of Mt. Taylor being designated a traditional and cultural property in coordination with the Land Grant Committee pursuant to House Memorial 74;
5. the increase in hate crimes against Native Americans in recent years;
6. efforts to ensure an accurate count of Native Americans in the 2010 census;
7. public safety in Indian country, including tribal emergency management services and state tribal coordination;
8. settlement of state income tax refund claims from the Native American Veterans' Income Tax Settlement Fund;
9. the implications of *Garcia v. Gutierrez*, 2009-NMSC-044, in state and tribal jurisdiction on domestic matters;
10. the feasibility of establishing Shiprock Pinnacle as a state park pursuant to House Joint Memorial 69, 2009 legislative session;
11. implementation of the increased penalties pursuant to the Indian Arts and Crafts Sales Act;
12. Native American education, including improvements to performance, closing the achievement gap, cooperation with the Bureau of Indian Education and implementation of the Indian Education Act;
13. the disproportionate incarceration of Native Americans in relation to the population;

14. health care for Native Americans in Native American communities, including national health care reform, Medicaid funding, mental health care and addressing high rates of youth suicides among Native Americans;

15. status of the *Aamodt* and Pueblo of Taos and Abeyta Indian water rights settlements;

16. implementation of the State-Tribal Collaboration Act;

17. economic development in Indian country, including green jobs and industry;
and

18. planning protocols and cooperation for Indian Day at the Legislature.

**Indian Affairs Committee
2010 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 23	Santa Fe
July 12-14	Pueblo of Tesuque Santa Fe Ohkay Owingeh
August 19-20	Pueblo of Jemez Pueblo of Zia
September 14-15	Gallup Thoreau Chapter
October 11-12	Mescalero
November 23-24	Pueblo of Pojoaque Santa Fe

AGENDAS

Revised: June 14, 2010

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**June 23, 2010
Room 307, State Capitol**

Wednesday, June 23

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Government Restructuring Task Force — Update and Request**
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
- 10:30 a.m. **2010 Legislation — Summary**
—Damian R. Lara, Staff Attorney, LCS
- 11:00 a.m. **Indian Affairs Department — Priorities and Initiatives**
—Alvin Warren, Secretary of Indian Affairs
- 12:00 noon **Lunch**
- 1:00 p.m. **Native American Veterans' Income Tax Settlement Fund — Update**
—John M. Garcia, Secretary of Veterans' Services
—Marilyn Hill, Deputy Secretary of Taxation and Revenue
—Ron Cruz, Deputy Director of Taxation and Revenue
- 1:45 p.m. **Office of Indian Elder Affairs — Update**
—Ray Espinoza, Director, Office of Indian Elder Affairs
- 2:30 p.m. **Discussion of Focus Areas, Work Plan and Meeting Schedule**
—Damian R. Lara, Staff Attorney, LCS
- 3:30 p.m. **Adjourn**

Revised: July 9, 2010

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**July 12-14, 2010
Pueblo of Tesuque
Room 307, State Capitol, Santa Fe
Ohkay Owingeh**

Monday, July 12 — Pueblo of Tesuque

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Welcome and Pueblo of Tesuque Status Update**
—Frederick Vigil, Governor of the Pueblo of Tesuque
- 11:00 a.m. ***Aamodt and Taos-Abeyta* Water Settlements — Update**
—John D'Antonio, State Engineer
—Estevan Lopez, Director, Interstate Stream Commission
- 11:45 a.m. ***Aamodt* Water Settlement — Community Perspective**
—Paul White, Pojoaque Basin Water Alliance
—John Gutting, Pojoaque Basin Water Alliance
- 12:15 p.m. **Lunch**
- 1:00 p.m. **Indian Arts and Crafts — State and Federal Cooperation**
—Joyce Begay-Foss, Chair, Indian Arts and Crafts Board, Department of
Interior; Director of Education, Museum of Indian Arts and
Culture
- 2:00 p.m. **Indian Arts and Crafts — Authenticity and Preservation**
—Valarie Lyon, Director of Planning and Development, Eight Northern
Indian Pueblos Council
- 3:00 p.m. **Tribal-State Judicial Consortium — Major Issues for 2010 Interim**
—The Honorable Roman J. Duran, Lt. Governor and Judge, Pueblo of
Tesuque and Tribal Co-Chair of the Consortium
- 4:00 p.m. **Recess**

Tuesday, July 13 — State Capitol, Room 307

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Pueblo of Nambe Status Update**
—Ernest Mirabal, Governor of the Pueblo of Nambe
- 10:00 a.m. **2010 Census**
—Vicki McIntire, Deputy Director, Denver Regional Census Center,
United States Census Bureau
—Amadeo Shije, Tribal Partnership Coordinator, Denver Regional
Census
Center, United States Census Bureau
- 11:00 a.m. **Joint Meeting with Radioactive and Hazardous Materials Committee
In Situ Leaching, Uranium Mills and Ground Water**
—Jerry Schoeppner, Ground Water Quality Bureau, Department of
Environment
- 12:00 noon **Working Lunch**
Uranium Mining Safety Standards
—Rick Van Horn, Uranium Resources, Inc.
—Juan Velasquez, Strathmore Minerals Corp.
- 1:00 p.m. **Multi-Agency Five-Year Plan for Uranium Legacy Cleanup**
—Sam Coleman, Director, Superfund Division, Region 6, Environmental
Protection Agency (EPA)
—John C. Meyer, Superfund Division, EPA
- 2:30 p.m. **Uranium Mine Inventory — Status Update**
—Bill Brancard, General Counsel, Energy, Minerals and Natural
Resources Department
- 3:30 p.m. **Indian Health Care Improvement Act and Health Care Reform**
—Leonard Thomas, Area Chief Medical Officer, Indian Health Service
- 4:30 p.m. **Recess**

Wednesday, July 14 — Ohkay Owingeh

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Welcome and Ohkay Owingeh Status Update**
—Marcelino Aguino, Governor of Ohkay Owingeh

- 10:00 a.m. **Strong Starts for Pueblo Children Initiative**
—Amber Carrillo, Executive Director of All Indian Pueblo Council
- 11:00 a.m. **Native American Medicaid Services**
—Regina Begay Roanhorse, Advocate, New Mexico Health Advocacy Alliance
—Roxane Spruce Bly, Director of the Bernalillo County Off-Reservation Native American Health Commission
- 12:00 noon **Lunch**
- 1:00 p.m. **Department of Health — Initiatives and Priorities**
—Dr. Alfredo Vigil, Secretary of Health
—Dr. Ronald Reid, Director, Office of American Indian Health; Tribal Liaison
- 2:00 p.m. **Human Services Department and Aging and Long-Term Services Department — Initiatives and Priorities**
—Kathryn "Katie" Falls, Secretary of Human Services
—Michael A. Spanier, Secretary of Aging and Long-Term Services
- 3:30 p.m. **Adjourn**

Revised: August 17, 2010

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**August 19-20, 2010
Pueblo of Jemez
Pueblo of Zia**

Thursday, August 19 — Visitor Center, Pueblo of Jemez

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Welcome; Pueblo of Jemez — Status Update**
—Joshua Madalena, Governor, Pueblo of Jemez
- 11:00 a.m. **Early Voting Sites and Accommodations for Sandoval County**
—Mary Herrera, Secretary of State
—Kelli Fulgenzi, Administrator, Bureau of Elections
—Martin Aguilar, Coordinator, Native American Election Information
Program, Office of the Secretary of State
—Sally G. Padilla, Sandoval County Clerk
—Bernice Chavez, Manager, Bureau of Elections, Sandoval County
- 12:00 noon **Lunch**
- 1:00 p.m. **State-Tribal DWI Collaboration**
—Michael Sandoval, Director, Motor Vehicle Division, Taxation and
Revenue Department
—Michelle Brown-Yazzie, Member, Governor's State-Tribal DWI Task
Force
- 2:00 p.m. **Fire Protection Fund**
—John C. Standefer, State Fire Marshal
- 3:00 p.m. **Proposed Propane Rules**
—Roy E. Stephenson, Director, Utility Division, Public Regulation
Commission
- 4:00 p.m. **Recess**

Friday, August 20 — Tribal Offices, Pueblo of Zia

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Pueblo of Zia — Status Update**
—Marcellus Medina, Governor, Pueblo of Zia
- 10:00 a.m. **Kewa Pueblo — Status Update**
—Tony Tortalita, Governor, Kewa Pueblo (Invited)
- 11:00 a.m. **Southwestern Indian Polytechnic Institute (SIPI) — Status Update**
—Dr. Sherry Allison, President, SIPI
—Valeria Montoya, Vice President, Academic Programs, SIPI
—Monte Monteith, Vice President (A), College Operations, SIPI
- 12:00 noon **Lunch**
- 1:00 p.m. **Indian Education Act**
—Dr. Susanna Murphy, Secretary-Designate of Public Education
—Dr. Sheila Hyde, Deputy Secretary, Public Education Department
(PED)
—Barbara Alvarez, Interim Assistant Secretary for Indian Education, PED
—Dr. Anya Dozier Enos, High School Redesign Coordinator, Learning
and Accountability, PED
- 2:00 p.m. **Recommendations and Strategies to Improve Indian Education**
—Kevin Shendo, Chair, Indian Education Advisory Council;
Representative, Southern Pueblos
—Francine Hatch, Policy Analyst, Indian Affairs Department
- 3:00 p.m. **Implementation of the Indian Education Act**
—David Atencio, Superintendent of Jemez Valley Public School District
—Dr. Ralph Friedly, Superintendent of Bernalillo Public School District
—Jacqueline Mangham, Principal, Lybrook Elementary School
- 4:30 p.m. **Adjourn**

Revised: September 10, 2010

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**September 14-15, 2010
McKinley County Courthouse, Gallup
Thoreau Chapter House, Thoreau**

Tuesday, September 14 — McKinley County Courthouse Rotunda, Gallup

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Welcome**
—Ernest Becenti, Jr., McKinley County Commissioner
- 10:15 a.m. **House Memorial 74 — Status Update**
—Juan Sanchez, Land Grant Council
—Arturo Archuleta, Mexicano Land Education and Conservation Trust
—Lawrence T. Morgan, Speaker, Navajo Nation Council
—Chandler Sanchez, Governor, Pueblo of Acoma
—Marvin Trujillo, Lieutenant Governor, Pueblo of Laguna
—Frank Cerno, Pueblo of Laguna
—Norman Coeeyate, Governor, Pueblo of Zuni
—Dancy Simplicio, Lieutenant Governor, Pueblo of Zuni
—Selly Chimoni, Head Councilwoman, Pueblo of Zuni
- 12:00 noon **Lunch**
- 1:00 p.m. **Counties as Alternative Fiscal Agents for Chapter Capital Outlay**
—Gloria Skeet de Cruz, Breadsprings Chapter
—Annie Descheny, Breadsprings Chapter
—Ernest Becenti, Jr., Commissioner, McKinley County
—Doug Decker, County Attorney, McKinley County
- 2:00 p.m. **Aamodt Litigation and Settlement Act — Request for Support**
—Charlie J. Dorame, Chair, Northern Pueblos Tributary Water Rights
Association

2:15 p.m. **Strong Starts for Pueblo Children — Status Update**
—Jonathan N. Pino, Executive Coordinator, All Indian Pueblo Council

2:30 p.m. **Government Restructuring and the Indian Affairs Department**
—Alvin Warren, Secretary of Indian Affairs

4:00 p.m. **Native American Issues and the Federal Patient Protection and
Affordable Care Act**
—Alvin Warren, Secretary of Indian Affairs

5:00 p.m. **Recess**

Wednesday, September 15 — Thoreau Chapter House, Thoreau

9:00 a.m. **Call to Order**

9:05 a.m. **Thoreau Chapter — Status Update**
—Valerie Yazzie, President, Thoreau Chapter

10:00 a.m. **Unified Command Response to Crisis**
—Herbert Long, Co-Commander, Navajo Department of Behavioral
Health Services

11:00 a.m. **Mental Health and Native American Youth**
—Jack Callaghan, Director, Public Health Division, Department of Health

12:00 noon **Lunch**

1:00 p.m. **Tour — Solid Waste Infrastructure**

3:00 p.m. **Adjourn**

Revised: September 30, 2010

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**October 11-12, 2010
Inn of the Mountain Gods, Mescalero**

Monday, October 11 — Inn of the Mountain Gods, Mescalero

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Welcome and Status Update**
—Mark Chino, President, Mescalero Apache Tribe
- 11:00 a.m. **Tribal Infrastructure Fund Report**
—Alvin H. Warren, Secretary of Indian Affairs
- 12:00 noon **Lunch**
- 1:00 p.m. **Medicaid Task Force — Update**
—Alvin H. Warren, Secretary of Indian Affairs
- 2:00 p.m. **Native American Issues and the Federal Patient Protection and
Affordable Care Act**
—Alvin H. Warren, Secretary of Indian Affairs
- 3:00 p.m. **Long-Term Care at Fort Defiance Indian Hospital**
—Dr. Leland Leonard, Interim Chief Executive Officer, Fort Defiance
Indian Hospital Board, Inc.
- 4:00 p.m. **Recess**

Tuesday, October 12 — Inn of the Mountain Gods, Mescalero

- 9:00 a.m. **Call to Order**

- 9:05 a.m. **Indian Resource Development Program**
—Joe Graham, Director, Indian Resource Development Program, New Mexico State University (NMSU)
- 10:00 a.m. **Mescalero Response to Crisis**
—Dorlynn Simmons, Chief Executive Officer, Mescalero Service Unit, Indian Health Service (IHS)
- 11:00 a.m. **Tribal Extension Program**
—Leah Stevenson, Home Economist, Tribal Extension Program, NMSU
—Kathy Landers, County Program Director, McKinley County Extension, NMSU
—Jeff Bader, Northern District Director, Cooperative Extension Service, NMSU
- 11:45 a.m. **Gallup Public Defender Office**
—David Eisenberg, Deputy Chief Public Defender, Gallup
- 12:15 p.m. **Lunch**
- 1:00 p.m. **Gaming Revenue Distribution**
—John Monforte, Executive Director, Gaming Control Board (GCB) (Invited)
—Georgene Louis, State Gaming Representative, GCB (Invited)
—Demesia Padilla, Compulsive Gambling Council Member, GCB (Invited)
—Kandace S. Blanchard, Executive Director, Council on Problem Gambling (Invited)
- 2:00 p.m. **Native American Health Care Needs and Indian Health Services**
—Rear Admiral Richie Grinnell, Acting Director, Albuquerque Area IHS
- 3:00 p.m. **Adjourn**

Revised: November 22, 2010

**TENTATIVE AGENDA
for the
SIXTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**November 23-24, 2010
Room Vista A, Buffalo Thunder Resort, Pueblo of Pojoaque
Room 322, State Capitol, Santa Fe**

Tuesday, November 23 — Pueblo of Pojoaque

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Welcome and Status Update**
—Governor George Rivera, Pueblo of Pojoaque
- 11:00 a.m. **Indian Water Rights Settlement Report**
—John D'Antonio, State Engineer
—Estevan Lopez, Director, Interstate Stream Commission
- 12:00 noon **Lunch**
- 1:00 p.m. **Pueblo of Nambe — Status Update**
—Governor Ernest Mirabal, Pueblo of Nambe
—Carol Woods, Tribal Administrator
- 2:00 p.m. **Fort Sill/Chiricahua-Warm Springs Apache: Past, Present and Future**
—Jeff Houser, Tribal Chairman
—Leland Michael Darrow, Tribal Secretary
- 3:00 p.m. **Recess**

Wednesday, November 24 — Room 322, State Capitol

- 9:00 a.m. **Call to Order**

- 9:05 a.m. **Native American Veterans' Income Tax Settlement Fund Report**
—Dorothy Rodriguez, Secretary-Designate, Taxation and Revenue
 Department
- 10:00 a.m. **Cigarette Tax Credit Stamps As Units Sold in Indian Country**
—Gary King, Attorney General of the State of New Mexico
—Albert Lama, Chief Deputy, Office of the Attorney General
- 11:00 a.m. **Endorsement of Legislation**
—Damian R. Lara, Legislative Council Service
- 12:00 noon **Adjourn**

MINUTES

**MINUTES
of the
FIRST MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**June 23, 2010
Room 307, State Capitol**

The first meeting of the Indian Affairs Committee (IAC) was called to order as a subcommittee by Representative James Roger Madalena, co-chair, at 10:20 a.m. on Wednesday, June 23, 2010, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Eliseo Lee Alcon
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Gloria C. Vaughn

Absent

Rep. Ray Begaye
Sen. Eric G. Griego
Rep. Patricia A. Lundstrom
Sen. George K. Munoz

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

Staff

Damian Lara
Peter Kovnat

Guests and Handouts

The guest list and handouts are in the meeting file.

Wednesday, June 23

The committee members, staff and audience introduced themselves.

Government Restructuring Task Force — Update and Request

Raúl E. Burciaga, director, Legislative Council Service (LCS), told the committee that he would shorten his presentation because all of the members had already heard the full

presentation at other interim committee meetings. He reminded the committee that the New Mexico Legislative Council (LC) had asked all committees to meet in Santa Fe and that they should provide justification for any requests to meet elsewhere. He also said that the LC had asked to reduce the number of meetings as well. These are cost-saving measures. He asked the committee to consider suggestions and recommendations relating to cost savings. Mr. Burciaga also asked for recommendations for restructuring the agencies that the committee oversees. The Government Restructuring Task Force will provide a report to the governor by December.

Mr. Burciaga was asked if meetings in the Santa Fe vicinity would be close enough to be considered a local meeting. He stated that he cannot speak for the LC, but the LC is likely to allow locations that do not require overnight travel.

Committee members asked about a meeting in Gallup and explained that the Navajo Nation chapters need to be able to attend the meetings and the committee needs to be accessible to its constituents. Mr. Burciaga responded that the committee should make the request, along with a justification, in its proposed work plan and to present it to the LC.

The committee discussed covering issues that deal with the Indian Affairs Department (IAD) and other executive agencies when it is in Santa Fe, and that the committee deal with local issues when traveling to other places. Mr. Burciaga said that he would raise this issue with the LC and discuss it with Mr. Lara.

The committee had no more questions, thanked Mr. Burciaga and congratulated him on his new position as director of the LCS.

Summary of 2010 Legislation

Mr. Lara, staff attorney, LCS, gave a summary of the 2010 legislation related to Indian affairs.

2010 LEGISLATION SUMMARY

Bill No.	Sponsor	Summary
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Bills Chaptered

HB 90	Begaye	Allows students attending federal Bureau of Indian Education high schools in New Mexico to earn dual credit from higher education institutions, including accredited tribal colleges located within New Mexico.
HB 162	Lujan, B.	After January 15, 2012, appropriates 5% of annual severance tax bonding capacity for tribal infrastructure projects as certified by the Tribal Infrastructure Board.

HB 264	Lundstrom	Provides for Indian law institute training for New Mexico legislators to enable them to understand the foundational principles of Indian law.
SB 107	Lovejoy Madalena	Increases the penalties for willful violations of Section 30-33-9 NMSA 1978 to: a petty misdemeanor for property valued at less than \$250 instead of \$2,500; a misdemeanor for property valued from \$250 to \$500; a fourth degree felony for property valued from \$500 to \$2,500; a third degree felony for property valued from \$2,500 to \$20,000; and a second degree felony for property valued in excess of \$20,000.
SB 182 (SFC substitute)	Cisneros	Reverts over \$3 million in Native American projects and swaps over \$1 million in funding for Native American projects from the general fund to severance tax bonds.
SB 1 (2010 2nd special session)	Cisneros	Appropriates over \$2.5 million in general obligation bonds for senior center projects in Isleta, Santa Clara, Hondo Valley, Zuni, Ohkay Owingeh, Sandia, San Felipe, Kewa (Santo Domingo), Zia, Nambe, Pojoaque, San Ildefonso, Picuris and Taos and Navajo Nation chapters, including Baca, Nahodishgish, Crystal, Huerfano, Lake Valley, Shiprock, Tse'Daa'Kaan, Pinedale, Tohatchi and Whitehorse Lake. Appropriates \$1 million in general obligation bonds for tribal libraries. Appropriates \$5 million in general obligation bonds for Navajo Technical College, Southwestern Indian Polytechnic Institute, Santa Fe Indian School and Institute of American Indian Arts.

Memorials Signed

HJM 43	Begaye	Resolves that Medicaid be fully funded to meet enrollment needs and avoid cuts to eligibility and services. The request that the Human Services Department create a separate Medicaid eligibility category for Native Americans was struck.
HM 73	Madalena	Requests Congress to increase appropriations for the Southwestern Indian Polytechnic Institute.
HM 74	Garcia, M.P.	Requests the interim committees dealing with land grant issues and Indian affairs to hold a joint meeting during the 2010 interim to hear about issues facing the land grant and Native American communities.

SJM 51 Pinto Requests Congress to support and preserve the Navajo Code Talkers' legacy and substantial contribution to this country.

Action Postponed Indefinitely

HB 48 Begaye Expands eligibility for emergency medical services funds to Indian nations, tribes and pueblos.

HB 49 Begaye Expands eligibility for state fire protection funds to Indian nations, tribes and pueblos.

HB 91 Begaye Requires the Interagency Behavioral Health Purchasing Collaborative to take into consideration the need for out-of-state residential alcohol treatment if appropriate alcohol treatment is otherwise unavailable to a Medicaid recipient on tribal lands within New Mexico.

HB 102 Alcon Expands the legislative lottery scholarship program to allow students who attend New Mexico tribal colleges to receive lottery tuition scholarships.

HB 157 Madalena Requires reimbursement to counties for certain expenses at alternate early voting and mobile alternate voting locations on Indian lands.

HB 158 Madalena Appropriates \$75,000 from the general fund to the secretary of state for the purpose of funding early voting precinct staff, including native language interpreters, at early voting sites.

HB 265 Lundstrom Appropriates \$200,000 from the general fund for the purpose of creating a task force to study Native American arts and crafts.

HB 267 Jeff Provides for an automatic change of purpose for capital outlay funds appropriated for inactive capital outlay projects in tribal communities in order to fund viable capital outlay projects.

SB 196 Pinto Appropriates \$50,000 from the general fund to the IAD for the purpose of contracting to provide direct services, including advocacy, counseling and assistance in filing protection orders, to low-income victims of domestic violence in New Mexico communities of the Navajo Nation.

SB 206 Munoz Requires the Legislative Finance Committee to prepare a comparison of tribal versus nontribal cuts or reversions to capital outlay projects or funds by county.

Memorials Not Signed

- HJM 20 Madalena Requests county commissions and county attorneys to comply with the letter and spirit of monitoring agreements made with the federal government to prevent discrimination and allow Native Americans access to voting.
- SJM 50 Pinto Resolves that Medicaid be fully funded to meet enrollment needs and avoid cuts to eligibility and services and that a separate Medicaid eligibility category be created for Native Americans.

Mr. Lara stood for questions.

The committee asked what the enrollment is at Southwestern Indian Polytechnic Institute. Members explained that the institute needs exposure, and they expressed an interest in holding a meeting there.

The committee asked how HB 90 works and if it includes tribal colleges. Mr. Lara responded that, yes, it does include tribal colleges. He said that it expands cooperative agreements so the students will get college credits for high school classes. The committee asked if there are associated costs and who pays for the textbooks. Mr. Lara explained that many of those details are not yet ironed out and that, in some cases, the schools incur those costs.

The committee asked for a clarification about HB 264, regarding what entity pays the costs of attending the Indian law institute at the University of New Mexico (UNM). Mr. Lara responded that there are limited funds, which are for a half-day or one-day training. The funds, he said, might be focused on freshmen legislators.

The committee discussed that perhaps this money could be used to go to a conference on Indian gaming. However, the committee indicated that as a member state of the National Conference of State Legislatures, members are entitled to attend those meetings, which are paid for from other funds.

The committee discussed how many code talkers are still alive, indicating six, eight or nine, but three may have passed on just this year.

There were no more questions, and Mr. Lara thanked the committee members and reminded them to fill out a sheet with their correct address, phone number and email and denote their preferred method of contact. Mr. Lara explained that the LCS is trying to move toward electronic communications.

IAD — Priorities and Initiatives

Alvin Warren, secretary, IAD, introduced new staff and bid farewell to previous staff members. Rebecca Martinez has left, and Laurie Chapman is now the capital outlay manager.

Christina Stick has left, and Lisa Marie Gomez from the New Mexico Health Policy Commission is working with the IAD. Also, Leah Larranaga replaced Lisa Tolles.

Secretary Warren then gave a PowerPoint presentation. He explained the following six IAD core responsibilities:

- assist with developing and securing legislation and policy that benefit tribes and Native Americans;
- manage capital outlay funds appropriated to tribes by the state;
- administer the Tribal Infrastructure Project Fund and award grants to tribal entities;
- award and manage special projects and appropriation funding to tribal entities;
- provide training and technical assistance to tribes and state agencies; and
- maintain consistent high-level attention to tribal issues and concerns in state government.

Secretary Warren noted that the IAD has three open positions. The IAD employs only 15 people and needs to fill staff positions. He said the IAD can only deal with certain issues and that is where it focuses.

The IAD's 2010 priorities are Indian education, tribal infrastructure, state-tribal DWI coordination and economic development.

Francine Hatch of the IAD gave an update on the State-Tribal Collaboration Act (STCA). She said the IAD is working with tribes to implement the STCA and mentioned the following five items:

- annual summit;
- communication and collaboration policies;
- tribal liaisons;
- training for state employees; and
- annual report.

Secretary Warren spoke about the summit and said the position paper included in the file lays out the IAD positions. He said the Office of the Governor also took positions.

Ms. Hatch mentioned HB 162, Executive Order 2009-037 and HB 90.

Secretary Warren mentioned that tribal audits of school districts were taken up at the 2010 summit and that the IAD wants to explore the teaching of tribal languages through the Bilingual Multicultural Education Act. He also said that the IAD aims to create a memorandum of understanding to allow tribal governments access to student achievement information.

Secretary Warren also said that tribal infrastructure is a major concern, not just for the IAD but also for the Office of the Governor. Also of concern is state-tribal DWI coordination.

Marvis Aragon spoke about economic development incentives for tribes. Tax incentives are one piece of it. He is interested in developing the Enterprise Zone Act to see if changes might be made to it and the Enterprise Loan Fund to improve economic development for tribes. He also said that a report is online and that the IAD initiatives include the Green Jobs Initiative, ecotourism and the New Mexico Film Commission, which are ways to develop economic opportunities for the tribes.

Ms. Chapman, in charge of capital outlay for the IAD, said she has a small staff but a large objective. She wants to develop projects and offer assistance to others as consultants. She said SB 182 took away a lot of money (about \$7.8 million) from tribes, which was difficult, but with the Tribal Infrastructure Project Fund money, the IAD will do the best it can. She said that projects are being given extra time because the funding was frozen for seven months.

Secretary Warren said he is proud of the 18-month capital outlay projects. The projects do not count toward the seven-month freeze, because that was not the choice of the project administrators. He also said Medicaid is very important and that the IAD has created a committee to understand how to implement the recently passed national health care reform. Because Native Americans are exempt from the requirement that every individual have health insurance, this needs to be worked into hospital, government, Indian Health Service (IHS) and medical insurance company computer programs having to do with health care.

Secretary Warren next said that in Thoreau, the community is facing many suicides and suicide attempts. Dr. Steve Adelstein, UNM, and Jamie Lee Hall are part of the unified command group to help with suicide prevention. The Department of Health is working with the IHS to collect data and numbers on the suicides and suicide attempts in Thoreau.

Ms. Hatch said that the IAD is working to close the education gap for Native Americans. The IAD is looking at recommendations made by the Public Education Department as well as other committees and individuals that have been formed to deal with this issue. The IAD also provides recommendations to these committees so that the tribal perspective is taken into consideration.

Secretary Warren spoke of the IAD Sustainability Initiative. Because there is an upcoming transition in the Office of the Governor, the IAD has started a process to map initiatives so that the support processes that allow the IAD to function will promote efficiency in the transition, evaluate effectiveness and sustain the ability for improvement.

Finally, Secretary Warren asked to add four items to the work plan:

1. tribal economic development;
2. national health care reform and Medicaid reform;
3. implementation of the STCA; and
4. public safety (particularly state-tribal DWI coordination).

Secretary Warren, Ms. Hatch, Mr. Aragon and Ms. Larranaga stood for questions. Ms. Gomez left for a meeting on health care.

The first question was about Medicaid, who provides it and why it does not go directly to the tribes. The answer was that the state administers it, with a \$3.00 match from the federal government for every \$1.00 spent by the state. For Native Americans, the cost is totally covered by the federal government. For one-time funding, it might make sense for money to go directly to the tribes, but now there are 22 tribal leaders working together to organize it. Tribal medical technical assistance is necessary for the unique positions of Native Americans for whom 100% of medical costs are covered by federal money.

The committee asked Secretary Warren to please call Dr. Lujan and discuss this with him, and Secretary Warren agreed.

Next, the committee discussed the suicide problem in Thoreau and why the committee is only now addressing this issue. Secretary Warren said that the reality is that Native Americans have higher rates of suicide than the general public. This is true especially with the youth. There needs to be a different approach because this problem is not going to be solved in one place at one time. There needs to be different intervention and prevention strategies, which will be a challenge. Secretary Warren is on the Child Fatality Commission and was told that the structure of prevention activities in Thoreau was the best the commission had seen. Peter Winograd and Laura Bellotti from the Office of the Governor are also working with the IAD.

The committee then discussed Indian education. In regard to the 25% set-aside of impact aid, it is federal money to benefit Indian education, but it does not come with sufficient guidelines to force the school districts to use the money on Indian education. Secretary Warren said that federal money could be used better and that the Indian Education Advisory Council and the Native American Education Task Force have already made recommendations. He said the committee should look at those combined recommendations and that there is no need to reinvent the wheel.

The committee commented on SB 182, indicating that the state is still short of money and those projects need to get going so that they actually happen.

The committee sought clarification on how the Native American Education Task Force is different from the Indian Education Advisory Council and the need to make sure that the IAD's information and the tribes' information is consistent. Secretary Warren said that he did not want the Native American Education Task Force to duplicate the work of the Indian Education Advisory Council, so he made sure the board of one was on the other. Now, they have joint recommendations.

The committee asked about the maintenance of native traditions and languages and what is being done on that front. Secretary Warren said that the loss of native languages is a major problem for tribes in New Mexico and that the IAD is concentrating on existing funds for native language programs. The IAD recommends shifting the focus from teaching English to non-

English speakers to teaching native languages, and it is looking at federal funding to do just that. Currently, there is a youth program at the Pueblo of Cochiti, and programs at UNM and the Jicarilla Apache Nation are focusing on teaching native languages. The programs are administered by the tribes, so attendance numbers are not known by the IAD, but the department could present this information at the next meeting.

Native American Veterans' Income Tax Settlement Fund — Update

John Garcia, secretary, Veterans' Services Department (VSD), introduced Alexine Chavez, administrator for the Native American Veterans' Income Tax Settlement Fund, who also served two tours in Afghanistan. Secretary Garcia said Ms. Chavez processes claims. Currently, over \$400,000 has been paid from the fund. There is an outreach effort to the tribes to tell them that they qualify for the fund. All of this has been done since February.

Marilyn Hill, deputy secretary, Taxation and Revenue Department (TRD), spoke about SB 574, introduced by Senator Pinto, and how the fund is administered and distributed. The annual status report will be brought to the committee soon. As for outreach, tribes have an account with the TRD to get the funds out. There is a summary of the fund on page 8 of the purple-colored PowerPoint presentation.

The committee asked what the time frame is for refunds and if there is a cutoff. Secretary Garcia responded that there is no time frame. If one was taxed and applied for and deserves a refund, that person can get it. The fund has \$1 million and so far has used \$436,000. There are 9,700 Native American veterans in New Mexico that are domiciled on tribal lands. Native Americans who resided on their reservation, served up to 2007 and wore a U.S. uniform while they were assessed state taxes are eligible for a refund. For outreach, the VSD is going to the chapters and will do that again. Every time the VSD does outreach, it gets a flurry of applications.

The committee asked if the fund is capped at \$1 million. Secretary Garcia said that this is the question the VSD is asking the IAC and the legislature. The VSD and TRD reported that claims paid are halfway through the allocated funds. If the \$1 million is exceeded due to more applications, the legislature would have to allocate more money.

Office of Indian Elder Affairs (OIEA) — Update

Ray Espinoza, director, OIEA, told the committee that Alzheimer's disease and diabetes are booming and are a huge threat to the Native American population. He stated that the OIEA has very little money and that elders in New Mexico are living in third world conditions. Mr. Espinoza continued to say that there are virtually zero reversions and many senior centers have been remodeled. The centers now meet minimum standards and will not be condemned. As an example, Mr. Espinoza said the Taos senior center could have been condemned, but because it is under federal auspices, the state inspectors did not condemn it.

The OIEA had a 5.6% funding cut, and then it faced a further 2% cut because of this year's economic problems. If the federal matching assistance percentage (FMAP) for Medicaid is not approved this year, it would be a terrible hit for many New Mexicans, especially the elderly.

Even if the FMAP is approved, there may be a \$400 million deficit. If it is not approved, the deficit will be even worse.

On an administratively positive note, being this broke has really forced the OIEA to trim the fat and streamline its processes. Also, the group of providers works together very well, and the providers are dedicated people.

There was a discussion of the services that the OIEA offers seniors, which is included in its presentation handout. Also, there was a question about the difference in cost between home-delivered meals versus meals provided at senior citizens centers. The exact difference is unknown, but home-delivered meals are more expensive. The manner in which the federal money is accounted for by the tribes makes it hard to figure out exactly how much it costs for different types of food provisions.

The committee asked if all the tribes provide support to their elder programs. Mr. Espinoza said that most, but not all, do. The Navajo Nation provides significant money. He said that without the federal stimulus money, the OIEA would have been in serious trouble last year. If the OIEA does not receive money again, it will be in serious trouble.

The committee recognized that New Mexico has an aging population and asked how the OIEA is going to deal with that. Mr. Espinoza said that the aging population is a big, looming problem, and he is asking the committee to consider this. So far, the OIEA has relied on the amazing providers in this state. But the elderly population is growing.

Committee members commented that the state allocates more than \$5 million to elders, which is a significant percentage of the state budget. The state is very generous already and, in the recent past, the federal government and state did not provide help to anybody for elder care. A committee member gave a firsthand example of how a member had to take care of his parents without any government assistance. Families will have to just start taking care of their own. That is the way it used to be, but hopefully it will not be that way again. Committee members expressed concern that people do not realize how many services the state provides and how much good the funding accomplishes.

Mr. Espinoza said that is why home care services are so important and that an increasing number of the elderly are going to need to rely on Medicare for their services.

Discussion of Focus Areas, Work Plan and Meeting Schedule

Mr. Lara went over the proposed work plan items.

The committee proposed to explore and discuss the following topics during the 2010 interim:

1. capital outlay, including tracking the expenditure of allocated funds, alternative funding sources and coordination with the Navajo Nation;

2. funding of projects from the Tribal Infrastructure Project Fund, including projections of allocated amounts pursuant to HB 162;
3. the coordinated multi-agency five-year plan to address the uranium legacy and cleanup of abandoned uranium mining and milling sites led by the United States Environmental Protection Agency;
4. the implications of Mt. Taylor being designated a traditional and cultural property in coordination with the Land Grant Committee pursuant to HM 74;
5. the increase in hate crimes against Native Americans in recent years;
6. efforts to ensure an accurate count of Native Americans in the 2010 census;
7. tribal emergency management services;
8. settlement of state income tax refund claims from the Native American Veterans' Income Tax Settlement Fund;
9. the implications of *Garcia v. Gutierrez*, 2009-NMSC-044, on state and tribal jurisdiction on domestic matters;
10. the feasibility of establishing Shiprock Pinnacle as a state park pursuant to HJM 69, 2009 legislative session;
11. implementation of the increased penalties pursuant to the Indian Arts and Crafts Sales Act;
12. Native American education, including improvements to performance, and implementation of the Indian Education Act;
13. the disproportionate incarceration of Native Americans in relation to the general population;
14. health care, including mental health care, for Native Americans and in Native American communities, and addressing high rates of youth suicide among Native Americans;
15. status of the *Aamodt* and Pueblo of Taos and Abeyta Indian water rights settlements;
16. tribal economic development;
17. national health care reform and Medicaid reform;
18. implementation of the STCA;

19. public safety (particularly state-tribal DWI coordination); and

20. that the IAD and Native American legislators jointly plan Indian Day, which occurs every 60-day session.

The committee expressed that the state is pulling more schools and programs into the funding stream while general fund revenues are dwindling. Assistance from the Bureau of Indian Education and clarification on its role in the Indian Education Act are necessary.

After some deliberation, the committee proposed to request the following meeting dates and locations:

<u>Date</u>	<u>Location</u>
June 23	Santa Fe
July 12	Pueblo of Tesuque
July 13	Santa Fe
July 14	Ohkay Owingeh
August 19	Pueblo of Jemez
August 20	Pueblo of Zia
September 14	Gallup
September 15	Thoreau Chapter
October 11-13	Mescalero
November 23	Pueblo of Pojoaque
November 24	Santa Fe

Upon a motion by Representative Rodella and seconded by Senator Rodriguez, the committee voted, without objection, to submit the proposed work plan and meeting schedule as amended for approval by the LC.

Adjournment

There being no further business before the committee, the first meeting of the IAC for the 2010 interim was adjourned at 3:45 p.m.

**MINUTES
of the
SECOND MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**July 12-14, 2010
Camel Rock Casino, Pueblo of Tesuque
State Capitol, Room 307, Santa Fe
Ohkay Casino, Ohkay Owingeh**

The second meeting of the Indian Affairs Committee (IAC) was called to order as a subcommittee by Representative James Roger Madalena, co-chair, at 10:37 a.m. on Monday, July 12, 2010, in the conference room of Camel Rock Casino at the Pueblo of Tesuque. Representative Madalena asked Frederick Vigil, Governor, Pueblo of Tesuque, to give an opening prayer.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair (7/13, 7/14)
Sen. Rod Adair (7/13, 7/14)
Rep. Eliseo Lee Alcon (7/13, 7/14)
Rep. Ray Begaye
Rep. Sandra D. Jeff (7/12, 7/13)
Sen. Lynda M. Lovejoy (7/12, 7/13)
Rep. Jane Powdrell-Culbert
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Absent

Sen. Eric G. Griego
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Sen. John C. Ryan

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan
Sen. Richard C. Martinez
Rep. Debbie Rodella
Rep. Nick L. Salazar

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Damian Lara
Peter Kovnat
Adan Delval

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Monday, July 12 — Camel Rock Casino

Committee, staff and audience members introduced themselves.

Welcome; Pueblo of Tesuque Status Update

Governor Vigil welcomed the committee and introduced Roman Duran, lieutenant governor and tribal judge. Governor Vigil thanked the committee and stated that the 500-plus members of the pueblo appreciated the opportunity to host the committee. Governor Vigil personally thanked Speaker Lujan and Senator Carlos R. Cisneros for their efforts to secure an appropriation of \$1.5 million in capital outlay projects at the Pueblo of Tesuque. He reported that all capital outlay money had been spent.

Governor Vigil noted that federal, state and tribal cooperation on implementing national health care reform, especially the federal Indian Health Care Improvement Act, is important. He stated that the Pueblo of Tesuque is working with the Indian Health Service (IHS) proactively to improve health care and that Lieutenant Governor Duran and Governor Vigil are actively involved in the Medicaid Task Force. Governor Vigil asked the committee to maintain Medicaid services because behavioral health is important and the Pueblo of Tesuque cannot afford to lessen services in the area. The Pueblo of Tesuque is developing its own health plan after realizing how few of its members have health insurance. Governor Vigil stated that the pueblo's priorities are addressing health care and education. He invited the committee to visit on August 6 and 7, 2010 to join the pueblo as it works on these issues.

Former Pueblo of Tesuque Governor Mark Mitchell provided a short history lesson of the southern Tewa Indians and the current interest in the Galisteo Basin. He expressed concern about drilling for oil and gas in that basin. Governor Mitchell noted that New Mexico Governor Bill Richardson signed an elective order and that a Santa Fe City Council ordinance currently instituted a moratorium on drilling in that basin. Governor Mitchell recommended that the legislature limit residential housing and create buffer zones around the Galisteo Basin to prevent the southern Tewas from forever losing this cultural location.

Upon an inquiry from the committee, Governor Vigil clarified that behavioral health services and Medicaid are two different programs. Behavioral health services are administered by OptumHealth. Medicaid provides various additional health services and is administered by the U.S. Department of Health and Human Services. The Circle of Life program currently provides health care services, and the pueblo is working with other providers to administer out-of-state services to its members. Governor Vigil stated that, at this time, Medicaid funding is not earmarked for the tribes. In most cases, the federal government provides the state with a one-to-three match for Medicaid services. In cases related to tribal members who receive Medicaid services at an IHS facility or eligible tribal facility, the federal government pays for 100% of the services.

In response to committee questions, Secretary of Indian Affairs Alvin Warren stated that, although the state is considering potential cuts to Medicaid services, the tribes hope to create a special category that will allow the IHS and tribal facilities to continue to receive 100% federal reimbursement for current services covered by Medicaid. The state-tribal work group is currently working on creating this category. If the category for Native Americans receiving services at the IHS or tribal facilities is approved by the Centers for Medicare and Medicaid Services, New Mexico will be the first state to establish such a category. In addition, there is a national effort requesting Congress to consider all tribes as a fifty-first state in order to fund Medicaid services directly to IHS facilities in Indian country.

Governor Vigil concluded by stating that, in previous years, the Interagency Behavioral Health Purchasing Collaborative that serves the eight northern pueblos — local collaborative 18 was given \$21,000 in funding, but this fiscal year it will only receive \$30,000. There are also similar problems with the collaboratives in the Navajo Nation. He also expressed concern about subcontracting for services when money can be appropriated directly to the local collaboratives.

Aamodt and Taos-Abeyta Water Settlements

John D'Antonio, state engineer, and Estevan Lopez, deputy state engineer and director of the Interstate Stream Commission, gave a presentation on the *Aamodt* and Taos-Abeyta water rights settlements. Mr. D'Antonio stated that Section 72-1-11 NMSA 1978 requires the Office of the State Engineer to give an annual report on the settlements. Federal legislation was passed this year by the full U.S. House of Representatives and is now pending in the U.S. Senate to fund the *Aamodt* settlement. The Taos-Abeyta settlement was executed to resolve water rights claims on the Rio Hondo and on tributaries near the Pueblo of Taos; to preserve the current acequia water uses; and to allocate San Juan-Chama water. At this time, there is no money in the state fund, and the Interstate Stream Commission has not yet sold bonds as authorized by the legislature. The state's share of the cost to fund the pending water settlements is \$114 million. Fifty million dollars is for the Navajo settlement, \$50 million is for the *Aamodt* settlement, and \$14 million is for the Taos-Abeyta settlement.

In response to an inquiry from the committee, Mr. D'Antonio stated that all water rights are allocated. An individual seeking water rights must fill out the proper forms. In addition, non-pueblo water rights are secondary to Native American water rights. The main objective of the settlements is to connect most people to a regional water utility system. If a person moves into the area, the person should connect to the regional water utility system rather than drill a new well. If a person already has water rights, then that person may fill out paperwork to request the transfer of those water rights to another location or person. There will be an opportunity for people on domestic wells to switch to the regional water utility system and not depend on wells. Basically, a person has three options, which are as follows:

- sign on to the settlement and cap the well, and the connection to the water utility system is free;
- sign on to the settlement and keep the well, but you must pay for the connection to the water utility system; or

- do not sign on to the settlement and keep the well, but you will have limited water use or limited uses of water.

Thus far, the state has spent \$32.1 million on the proposed water utility system, but the federal government might give the state credit for half of the expenditures. If a person does not use the person's water rights for four years, that person's water rights will be forfeited.

***Aamodt* Water Settlement — Community Perspective**

Paul White and John Gutting of the Pojoaque Basin Water Alliance expressed differing views on the *Aamodt* settlement. They are not opposed to the settlement, but they are opposed to expenditures that will be required to provide water for the non-native people of the valley. They stated that there are more economical ways of achieving the settlement that have not been discussed.

Mr. Gutting commented on a U.S. Bureau of Reclamation report that points out pieces of the federal legislation authorizing the settlement that are not following federal requirements. He urged the committee to read the report, which is available electronically, and only then come to a conclusion. Mr. Gutting warned the committee that the cost will be two or three times what is being estimated currently. In 2007, Santa Fe County asked for \$202 million to extend the water utility system from the Pueblo of Tesuque to the top of Opera Hill. Mr. Gutting called pieces of the settlement that call for new acequia development with waters from the Rio Grande "egregious". Mr. Gutting feels that the settlement does not have clearly defined impairment rules, and there is no impairment fund or remedy for wells that run dry. The use of new deep wells will send water back into the aquifer with chemicals. Mr. Gutting stated that this settlement is yet another river diversion using paper water rights and should concern Buckman, San Ildefonso and other areas.

The committee expressed concern that presenters did not fully understand the intricacies and nuances of the settlement and the still-pending federal, state and tribal negotiations that are necessary to implement the settlement.

In response to the concerns raised by the presenters, DL Sanders, staff attorney at the Office of the State Engineer, informed the committee that several public meeting had been held on the issue and that most of the concerns raised by the presenters were already addressed or had to wait until Congress passes legislation authorizing the settlement. He said that a regional water utility system is preferable to relying on wells, which during dry years can be restricted to account for water used by Native Americans.

Indian Arts and Crafts — State and Federal Cooperation

Joyce Begaye-Foss, chair, Indian Arts and Crafts Board (IACB), U.S. Department of the Interior, and director of education at the state Museum of Indian Arts and Culture, informed the committee that the IACB has worked with New Mexico's attorney general to enforce the provisions of the federal Indian Arts and Crafts Act of 1990. One of the main functions of the museum is to educate people about Native Americans. A three-year investigation by the

attorney general exposed fraud in the selling of jewelry purported to be by Calvin Begaye. There have also been cases of fraud on eBay. There is also a problem with fraud in selling jewelry made by Native Americans using synthetic, rather than real, stones. The fraud occurs when people buy what they think is turquoise and it turns out to be plastic. New Mexico is only one of a handful of states that has an Indian arts and crafts law. The board believes that it is important for the state to have some kind of seal or certification for jewelry that is Indian-made.

Tribal-State Judicial Consortium — Major Issues for 2010 Interim

Lieutenant Governor Duran, who is the tribal co-chair of the Tribal-State Judicial Consortium, and Kathy Spurgin, statewide program manager, Administrative Office of the Courts, gave a presentation on the major issues being addressed by the Tribal-State Judicial Consortium. Lieutenant Governor Duran stated that the New Mexico Supreme Court's budget includes a line item, appropriated by the legislature, that funds the work of tribal judges. The consortium facilitates state-tribal cooperation, as with the case of a juvenile who fled custody of the Jicarilla Apache Nation and was recaptured in Albuquerque. Additionally, Project Passport creates uniform orders of protection in domestic violence cases by identifying the protected party and restrained party in all participating state and tribal jurisdictions. Lieutenant Governor Duran said that Tesuque and two other pueblos are the only pueblos that currently have not joined in this effort.

Lieutenant Governor Duran also informed the committee that the consortium is assisting in complying with the Sex Offender Registration and Notification Act. In response to committee questions, he stated that the U.S. marshal enforces the act and ensures compliance by non-Indians who fail to register on Indian lands. He noted that the tribes have no criminal enforcement power for non-Indians.

Lieutenant Governor Duran explained that in an effort to solve the issues with state versus tribal law and jurisdiction, the biggest challenge has been how problems can be resolved in an effective manner without advocating for one party over another. In addition, collaborative work on the Corrections Department and judiciary abridging sovereignty issues must also be implemented. Tesuque has entered an agreement to forward DWI information to the state. Although Tesuque is implementing this agreement, not all tribal courts do.

Representative Madalena recessed the meeting at 4:30 p.m.

Tuesday, June 13 — State Capitol, Santa Fe

The second meeting of the IAC for the 2010 interim was called back into session by Representative Madalena on Tuesday, June 13, 2010, at 10:15 a.m. in Room 307 of the State Capitol in Santa Fe.

He announced that the committee meeting was being webcast. Committee, staff and audience members introduced themselves.

2010 Census — Enumeration of Native Americans in Indian Country

Vicki McIntire, deputy director, and Amadeo Shije, tribal partnership coordinator, both of the Denver Regional Census Center, and Gina Valdez, New Mexico regional manager, all of the United States Census Bureau, explained that the census on tribal lands focused on outreach, public service announcements, radio spots and more. The Census Bureau undertook a two-year process to prepare for the 2010 census. More than 30,000 people were recruited and tested in order to hire 7,000 census takers, including 250 individuals from tribal lands. In New Mexico, 77% of the population had a correct mailing address. For those individuals who did not have a valid address, a follow-up visit was made to households that did not return the form. Mr. Shije commented on two ongoing programs to identify individuals without valid mailing addresses. The first program involves census takers returning to vacant homes. In the other, census takers return to locales not properly geo-coded.

Mr. Shije said that only three tribes chose the "mailout/mailback" system of enumeration; the other tribes had census takers visit tribal households and fill out the forms for the households. The deadline for the Census Bureau to publish the data for the 2010 census is April 1, 2011. In addition to the 2010 census, Congress has approved the American Community Survey. The survey is a year-to-year estimate for tribal lands and any other areas with a population of under 20,000. The survey provides a lot more detailed demographic information. Mr. Shije indicated that he is currently seeking feedback from census takers who were in the field. He noted that there are minor concerns raised by tribal liaisons, but nothing of significance. The Denver region, which is composed of 91 tribes, had achieved accurate numbers.

Upon an inquiry from the committee, Mr. Shije explained that individuals who refuse to be counted in the 2010 census may be fined. Mr. Shije added that census takers in Indian country did encounter resistance from people who did not want to be counted in the census. Fewer than 4% of the people enumerated decided not to participate, which is a low number. Even in this case, the people who decided not to participate are still counted. By determining an average number of household members in that particular area, workers can estimate an accurate count of households not participating. Mr. Shije also informed the committee that the Census Bureau hired a separate follow-up team to ensure the quality of work and accuracy achieved by the first wave of workers.

Minutes

Upon a motion by Representative Powdrell-Culbert, seconded by Representative Vaughn, the committee approved without objection the minutes from the June 23, 2010 meeting of the IAC.

Joint Meeting with the Radioactive and Hazardous Materials Committee

Multi-Agency Five-Year Plan for Uranium Legacy Cleanup

John C. Meyer, Superfund Division, Region 6, U.S. Environmental Protection Agency (EPA), informed the committees of the progress and activities underway with respect to the multi-agency five-year plan his agency is spearheading. Mr. Meyer explained that approximately 500 acres have been looked at and characterized according to gamma and radon levels, among other markers. He noted that the instruments used to detect radiation

contamination can only read up to five feet, but the entire property is tested. Mr. Meyer also explained that the five-year plan addresses water contamination. He stated that there are treatment solutions and equipment available. If the water in a family well is contaminated, the homeowner can dig the well deeper to avoid the contaminated water. If the contamination has extended beyond that area, more data are necessary to know how to fix the problem.

In order to add a property to the Superfund list, the EPA gathers information and follows the hazard rankings for the site. If a property ranks high enough to be put on the national priority list and the government agrees with the ranking, the property goes through a rulemaking procedure. If it survives the year- to year-and-a-half-long process, it gets on the Superfund list. The five-year plan aims to identify all the contaminated sites before cleaning them up. Working with other agencies ensures that the problems are tackled effectively.

Upon an inquiry from the committee, Mr. Meyer clarified that his agency cannot commit to do something it is not funded to do. He also clarified that environmental cleanup is a long process. The average time for cleanup is 15 years, and the hardest part of the cleanup is to understand the problem before any action on cleanup is done. According to the EPA, it cannot inject anything into an aquifer without being licensed by the Nuclear Regulatory Commission. Aquifer exemption is granted upon request and after a state underground injection control permit is issued.

In Situ Leaching, Uranium Mills and Ground Water

Bill Olsen, bureau chief, and Jerry Schoeppner, Ground Water Quality Bureau, Department of Environment, reported that prior to the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), screen data of Poison Canyon's 26 mines were screened. The mines were prioritized based on physical hazards, such as open shafts, vent holes, adits, declines, high walls in pits, environmental hazards and potential contamination of sewers and surface and ground water. Twelve mine sites were proposed for consideration for emergency response due to physical hazards, and nine mine sites were proposed for consideration for removal action due to ongoing radiological releases.

In response to a committee inquiry, Mr. Olsen stated that, pursuant to federal law, the public water utility systems are tested for levels of contamination every three years, including in the Village of Milan. He mentioned that the Department of Environment asked the Village of Milan to test its public water utility system every year. Thus far, the tests of the Milan public water utility system have indicated that the water is safe to drink. Mr. Olsen informed the committee that the public will be alerted if contaminants are found to exceed safe levels. He noted that the state cannot stop individuals from drinking water from their own private wells. While the Homestake Mining Company (Barrick Gold Corp.) will pay people to abandon their wells, individuals cannot be forced to abandon use of well water.

Uranium Mining Safety Standards

Rick Van Horn, Uranium Resources, Inc., and Juan Velasquez, Strathmore Minerals Corp., informed the committee that they own a mine that is not on Indian land, so they need to seek a permit from the State of New Mexico. Mr. Van Horn stated that the company purchased the

land more than 20 years ago and has spent \$23 million on the mine, but it has yet to begin mining.

In response to an inquiry regarding previous legislation from the committee, Mr. Van Horn affirmed that a surtax on uranium production has been and will remain on the table for consideration and support from the uranium industry. He highlighted that an in situ leaching mine creates approximately 120 jobs, a mill creates 70 to 80 jobs, and an underground mine creates about 400 jobs. He concluded that mine safety is much more important and protocols are strictly followed nowadays, which protects the well-being of the mine workers.

Upon an inquiry from the committee, Mr. Velasquez elaborated on reclaiming water to return it to its original contamination levels. For example, if the water supply was of irrigation quality, it would be irrigation quality after remediation, and if the water was of livestock drinking quality, it would be of livestock drinking quality once again. He explained that salt levels shoot up during the mining process; reverse osmosis is used during remediation to clean it up afterward. It is important to keep in mind that this was not drinking water to begin with, but it will be as good as before.

Uranium Mine Inventory — Status Update

Bill Brancard, general counsel, Energy, Minerals and Natural Resources Department, told the committee that there are many mines for which there is no record of reclamation. He stated that 79 mines were assessed, and they provided a better understanding of the uranium legacy. Mr. Brancard reminded the committee that just a few years ago, no one was addressing the cleanup of abandoned uranium mines, and the legislature decided that his department would initiate a uranium mine inventory project to assess and prioritize reclamation of abandoned uranium mines. He informed the committee that with the involvement of the federal government and the multi-agency five-year plan that the EPA is spearheading, his department is taking a more discreet role in addressing uranium legacy cleanup. The Bureau of Land Management has allocated federal money that his department can use for cleanup of a limited number of abandoned mines. Of highest priority are the uranium mines near Silver City that are very close to residential areas. The abandoned mine program focuses on public safety, and funds for this program were pulled from different sources in order to accomplish this work.

The Radioactive and Hazardous Materials Committee left at about 5:15 p.m.

Indian Health Care Improvement Act and Health Care Reform

Leonard Thomas, area chief medical officer, IHS, highlighted that the mission of his office is to raise the physical, mental, social and spiritual health of Native Americans to the highest possible level while assuring comprehensive and culturally acceptable personal and public health services. Mr. Thomas stated that the major advantages to national health care reform for Native Americans are increased direct health care services at IHS facilities, contract health care services at tribally operated facilities and urban health care services. Mr. Thomas stated that in 2009, the Albuquerque office served 85,946 patients. Patient services delivered included 574,747 outpatient visits, 5,322 inpatient days and 82,209 dental visits. Mr. Thomas explained that patients receive many other services, including pharmacy; nutrition; behavioral health; diabetes

treatment; the women, infants and children program; prenatal; dental; audiology; radiology; laboratory; elder care; urgent care; general medicine; pediatrics; obstetrics; substance abuse care; and surgery. Because services are expensive and congressional appropriations remain below need, prevention is a primary health care strategy for the IHS. In addition, it was indicated that addressing health care disparities among Native Americans is crucial. In Indian country, the rate of alcoholism is 740% higher than the national average, diabetes is 390% higher and suicide rates are 190% higher.

The committee expressed concern that Mr. Thomas did not give a presentation on the unmet needs of Native Americans in Indian country. The committee commented on the fact that, in many cases, health care services are denied until a patient becomes terminally ill. The committee asked Mr. Thomas to return and give a presentation on needs unmet by the IHS.

Representative Madalena recessed the meeting at 5:45 p.m.

Wednesday, July 14 — Ohkay Owingeh

Representative Madalena reconvened the meeting on Wednesday, June 14, 2010, at 9:15 a.m. at the Ohkay Owingeh Casino Conference Room. Committee members and the audience then introduced themselves.

Welcome; Ohkay Owingeh Status Update

Marcelino Aguino, Governor of Ohkay Owingeh, welcomed the committee to the "place or village of the strong people" and presented Tony White, Ohkay Owingeh sheriff; Larry Phillips former lieutenant governor; the executive director for housing; Pauline Wright, Head Start; Carolyn Cruz, diabetes director; Drew Setter, lobbyist; and Pam Mahood.

Governor Aguino spoke on the history of Ohkay Owingeh, stating that its traditional lands are vast — about 37,000 acres — but now it only has 12,200 acres. He noted that 7,000 inhabitants claim Ohkay Owingeh as their home. There is currently a population of 3,200 people living within the reservation area, and there are approximately 2,700 enrolled tribal members. Ohkay Owingeh worked closely with state and local governments to revitalize local culture. Formerly known as San Juan Pueblo, Ohkay Owingeh has returned to using its traditional name. The pueblo plans to re-create the traditional plaza and restore 46 original houses, of which 22 will be finished soon. Governor Aguino said the completion of the project is a top priority.

Other priorities of the pueblo include hiring judicial and police staff, renovating the senior center and library, building a combined recreation and community center, seeking private as well as state and federal funding and initiating cigarette and other taxes to provide the revenue necessary to meet the needs of the pueblo. He concluded by stating that Ohkay Owingeh is an active participant in the Tribal-State Judicial Consortium.

Upon an inquiry from the committee, Governor Aguino stated that the current senior center needs improvements to the concrete, kitchen facilities and various fixtures and sculptures. In regard to funding needs, Governor Aguino stated that the pueblo needs transportation funds and

is seeking grants from the federal Bureau of Indian Affairs and the state Department of Transportation. The current renovations were made thanks to a grant from the U.S. Department of Housing and Urban Development that was channeled through the New Mexico Finance Authority.

In response to committee questions, Governor Aguino explained that Ohkay Owingeh is taking steps to avoid double taxation on cigarettes and that the pueblo is working to minimize the negative effects of alcohol. The pueblo keeps a gross receipts tax difference of \$.17 on gasoline and \$.97 on cigarettes, which is written into state law.

The committee inquired about the airport at Ohkay Owingeh. Governor Aguino informed the committee that 90% of the airport has been completed, including the runway. Construction of hangars and a jet refueling area is under consideration. An air traffic control tower has not yet been considered but could be a possibility in the future. He invited the committee to tour the airport if time allowed.

Strong Starts for Pueblo Children Initiative

Amanda Garcia from the All Indian Pueblo Council informed the committee of Strong Starts' Youth Media Project (YMP). The YMP is a collaborative effort with the KUNM Youth Radio Project, Inspired Leadership, Inc., and each of the Strong Starts grantees in New Mexico. The All Indian Pueblo Council is currently seeking to recruit members from pueblo communities to be actively engaged with the Strong Starts for Pueblo Children Initiative. All members of the community are welcome to help the Strong Starts program.

Ms. Garcia stated that the All Indian Pueblo Council was selected as one of five New Mexico communities to join the "Strong Starts for Children" program, a new initiative that helps communities find ways for people to work together for the success of all children. In the Strong Starts for Pueblo Children Initiative, people will work to bring about success on issues, such as school readiness, linked systems for health and education, access for families to development and job training, financial literacy and educational opportunities.

Native American Medicaid Services

Regina Begaye Roanhorse, advocate, NM Health Advocacy Alliance, and Roxane Spruce Bly, director, Bernalillo County Off-Reservation Native American Health Commission, described the Medicaid agreement relationship between the federal government and Native Americans. Ms. Roanhorse commented that the IHS is the nation's first prepaid health plan. She explained that because Native American lands were taken away, the federal government in return provides Native Americans with free health care.

Ms. Roanhorse informed the committee that the IHS is not a mandatory program; it is discretionary and funded by the political will of Congress. The appropriation consists of \$4.03 billion, mostly for contract health services that are not provided at IHS facilities. Native Americans must seek and receive approval for contract health services, which she said are mostly denied. A patient must be near a terminal stage for approval to be given. Because the IHS is currently underfunded, Medicaid reimbursement from the federal government is critical.

Individuals who are enrolled in Medicaid receive health care services established by the state and approved by the Centers for Medicare and Medicaid Services. In most cases, the state receives \$4.00 in reimbursements from the federal government for every \$1.00 the state spends on providing health care services. For Native Americans enrolled in Medicaid and receiving health care services at an IHS or tribal facility, the federal government reimburses 100% of the cost of those health care services. Ms. Roanhorse explained that there is currently a \$160 million shortfall for FY 2011 and a \$320 million shortfall for FY 2010. She concluded by stating that there are approximately 62,000 people who are eligible for Medicaid but are not currently enrolled.

Department of Health — Initiatives and Priorities

Dr. Alfredo Vigil, secretary, Department of Health (DOH), and Dr. Ronald Reid, director and tribal liaison, Office of American Indian Health, informed the committee that the DOH has established partnerships to promote community development. The Office of American Indian Health facilitates collaboration between the DOH and Native Americans. Secretary Vigil stated that a meeting with Indian tribes took place to address issues relating to diabetes and obesity prevention and youth suicide. He also mentioned that the DOH worked in coordination with tribes to distribute H1N1 vaccines in Indian country. He also highlighted the 2010 IHS brochure, due in November, and the health disparities report card due in September.

Secretary Vigil presented the 2009 American Indian health disparities report card. In the report, Native Americans ranked lowest — that is, they have the highest (worst) rates on seven of 20 health indicators. He specifically mentioned alcohol-related deaths and said that New Mexico is substantially above national alcoholism figures, with Native Americans in New Mexico having the highest incidence.

The committee requested that Secretary Vigil give the committee a presentation specifically addressing youth suicide indicators and trends and the youth suicide intervention project.

Human Services Department and Aging and Long-Term Services Department — Initiatives and Priorities

Kathryn "Katie" Falls, secretary of human services, and Michael A. Spanier, secretary of aging and long-term services, informed the committee that their departments' missions are to support healthy aging and a good quality of life for all New Mexicans. Secretary Spanier stated that in 2015, approximately 350,000 New Mexicans will be 65 years or older, which will be 17% of the population of New Mexico. By 2030, the percent of New Mexican over the age of 65 is expected to be 26% of New Mexico's population. At that time, there will be more people over the age of 65 than under the age of 18. New Mexico will rank fourth among the states with the highest number of persons over the age of 65. The state's current rank is 44.

Secretary Falls said that the Supplemental Nutrition Assistance Program is the new name for the food stamp program. She said that reports indicate an increase in the amount of Native American enrollment in the food stamp program. The Temporary Assistance for Needy Families program is currently in crisis. The program is a federal block grant of \$110 million. In past

years, any money not spent was carried over and kept by the state. She said the state funded many other projects with that money. She indicated her concern that the money is running out and that the need for cash assistance benefits, child care and other important services has increased. These services may have to be cut. She noted that her department must become more efficient without cutting services, but achieving that goal has proven to be almost impossible.

Although Medicaid has funds for many people, some do not apply because they do not believe they meet the requirements. Children are healthy and therefore do not apply for Medicaid services. Native Americans know they will receive health care from the IHS even without being enrolled. She said the IHS will not receive reimbursement from the Centers for Medicare and Medicaid Services without patient enrollment.

Upon an inquiry from the committee, Secretary Falls explained the main difference between Medicaid and Medicare, which is that Medicaid enrollment is associated more with poverty and administered through the state. Medicare eligibility depends upon payments into the system and the age of the applicant and is administered directly by the federal government.

Adjournment

There being no further business before the committee, the second meeting of the IAC for the 2010 interim adjourned at 4:30 p.m.

MINUTES
of the
THIRD MEETING
of the
INDIAN AFFAIRS COMMITTEE

August 19-20, 2010
Walatowa Visitor Center, Pueblo of Jemez
Tribal Offices, Pueblo of Zia

The third meeting of the Indian Affairs Committee (IAC) was called to order as a subcommittee by Senator John Pinto, co-chair, at 10:19 a.m. on Thursday, August 19, 2010, in the Walatowa Visitor Center at the Pueblo of Jemez. Senator Pinto asked Joshua Madalena, governor, Pueblo of Jemez, to give an opening prayer.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair (8/20)
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Sen. Eric G. Griego (8/19)
Rep. Sandra D. Jeff
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Absent

Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Sen. John C. Ryan

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan (8/19)
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Damian Lara
Peter Kovnat
Adan DelVal

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Thursday, August 19 — Walatowa Visitor Center

Committee, staff and audience members introduced themselves.

Welcome; Pueblo of Jemez Status Update

Governor Madalena welcomed the committee and introduced Vincent Toya, tribal administrator, and April Wilkinson, contracts and grants officer. Governor Madalena thanked the committee and stated that the last time the Pueblo of Jemez hosted a meeting was in 2004. Mr. Toya also stated that capital outlay is important, especially the Highway Four bypass, which is the number one priority for the pueblo. In addition, the pueblo is currently working on formulating an infrastructure plan. Mr. Toya also mentioned that another top priority is the community water pipelines that have been there since the early 1960s. Mr. Toya commented that the water tank is clean, but the problem is that when the water is conveyed to the tap, the water lines could potentially contain asbestos. The Pueblo of Jemez plans to receive funding and completely replace the water pipeline system. Mr. Toya briefed the committee that the pueblo received funding for geothermal studies. Ms. Wilkinson commented that the Pueblo of Jemez provided adequate required justification to have 100% of its capital outlay projects unfrozen and then expended 100%. Ms. Wilkinson commented that Walatowa Charter High School had met adequate yearly progress (AYP), which was the only school in the Jemez Valley Public School District to make AYP. Ms. Wilkinson asked the committee to reconsider the small school size adjustment and the cap on future charter school development. This cap would limit future development of tribal charter schools.

Early Voting Sites and Accommodations for Sandoval County

Secretary of State Mary Herrera noted that in 2009, the legislature approved a law to allow Native American tribes to submit a request for early voting alternative locations. Four counties requested sites and have been refunded \$17,453. Sally Padilla, Sandoval County clerk, mentioned that the computers for early voting worked very well in Sandoval County. Despite the low turnout (16%) it was a success; in Sandoval County, there were 256 people who voted early. The sites for the general election are already in place, and there were nine requests for these early voting sites. Secretary Herrera indicated that the 2009 letter of request for early voting sites on Indian lands for the 2010 election was received from the following pueblos and tribes: Pueblo of Zia, Kewa Pueblo, Pueblo of Jemez, Pueblo of Cochiti, Pueblo of San Felipe, Pueblo of Zuni, Navajo Nation, Pueblo of Pojoaque and Jicarilla Apache Nation. In addition, there are other early voting sites for the following pueblos and tribes: Pueblo of Acoma, Pueblo of Laguna, Navajo Nation (Cibola County), Pueblo of Isleta, Navajo Nation (Bernalillo County), Pueblo of Pojoaque, Pueblo of Nambe, Pueblo of San Ildefonso, Pueblo of Tesuque and Mescalero Apache Tribe.

Upon inquiry from the committee, Secretary Herrera clarified that voting machines can no longer be requested for this year's elections. Voting machines have already been assigned to the pueblos that submitted the letter of request on time to receive early voting machines. According to Martin Aguilar, elections coordinator, Office of the Secretary of State, the request submission for early voting sites has to be done a year before the elections because the secretary of state has

to build into the budget the reimbursement to the counties. An adequate budget is necessary to pay for the reimbursement and the machines.

The committee expressed concern that the Navajo Nation needs outreach through the radio. The main message in the radio promotion should be to motivate people to vote early. Approximately 28% of statewide registered voters voted in the primary election, while for the tribes, turnout was approximately 25% of registered voters in Indian country.

The committee also expressed concern about the cost of early voting when there is low turnout. The committee commented that, as presented, approximately 250 people attended early voting and the counties were reimbursed \$17,000 for early voting sites. The cost per early voter is approximately \$21.00. Secretary Herrera stated that even though the price for early voting is high, the ballot-on-demand system is saving the state large amounts of money. She explained that with the ballot-on-demand system, when a person walks in to vote, the person's information is verified and then the ballot is printed. This method is saving money by not having all ballots printed ahead of time and is much more secure. Secretary Herrera highlighted that approximately \$303,000 was saved during the primary election.

State-Tribal DWI Collaboration

Michelle Brown-Yazzie, member, Governor's State-Tribal DWI Task Force, Rachel O'Connor, Governor Richardson's DWI czar, and Michael Sandoval, director, Motor Vehicle Division, Taxation and Revenue Department, discussed a strategic plan developed by the Governor's State-Tribal DWI Task Force. The purpose of the task force is to develop initiatives to stem DWI-related fatalities among Native Americans. Approximately 25% of DWI fatalities in New Mexico occur on tribal lands. Initiatives developed include intergovernmental agreements, public policy changes, stepped-up DWI enforcement, public education and increased treatment resources, among others. For example, a partnership has been created between the sheriff's office of McKinley County and the Navajo Nation authorizing each to patrol within the other's jurisdictions for drunk drivers. The New Mexico State Police is also working to develop cross-commissioned officers to patrol on tribal lands in San Juan, Sandoval and Cibola counties. In 2004, New Mexico began receiving funds from the National Highway Traffic Safety Administration to help counties hire extra deputies dedicated to full-time DWI enforcement and to purchase blood-alcohol testing equipment. In 2007, the state issued a billboard campaign against DWI. The campaign features prominent local celebrities and can be seen in Gallup, Grants, Farmington and Shiprock. The state has also produced television and radio spots against DWI.

The task force has identified projects within five core areas of focus: (1) tribal justice (police, courts and corrections); (2) information sharing; (3) treatment and intervention; (4) prevention; and (5) public awareness. The Tribal Justice Subcommittee is working on cooperative law enforcement projects between the state and New Mexico tribes, including combating sales of liquor to underaged individuals, cross-commissioning and cross-training of officers and building more tribal detention and treatment facilities. The Information Sharing Subcommittee has developed initiatives to share alcohol-related license revocation information and data on alcohol-related accidents and fatalities with the state and federal governments. The

Treatment and Intervention Subcommittee intends to develop culturally sensitive assessments to measure the severity of DWI problems and tribes' capacity to address those problems. The task force also intends to educate stakeholders within the justice system, such as judges and lawmakers, about DWI issues. The Prevention Subcommittee aims to hire and train tribal DWI prevention specialists; bring state anti-DWI prevention programs to tribes and pueblos; and enhance data collection. The Public Awareness Subcommittee intends to create a permanent committee to address DWI that will consist of state agencies, counties and tribes. It also seeks to collaborate with the Prevention Subcommittee in developing a culturally sensitive DWI assessment tool.

Ms. O'Connor discussed an effort by the state and tribes to coordinate DWI license revocations. Many tribal DWI offenders can still drive with a state license because the state recognizes tribal DWI citations as an exercise in tribal sovereignty. The new method, in which tribes voluntarily participate, brings tribal offenders within the revocation process of the state. Currently, the Pueblos of Laguna, Tesuque, Pojoaque and Sandia are the only tribes participating, but others are in the process of joining.

Fire Protection Fund

John Standefer, state fire marshal, Fire Marshal Division, Public Regulation Commission (PRC), reviewed the state's funding history of municipal and county fire departments. He identified a trend of inadequate funding for fire services, which has received only an 11% increase in funding over 13 years, while the costs of equipment, repairs and insurance premiums have skyrocketed. New Mexico currently has 369 fire departments serving 2.1 million people over 121,593 square miles. The funding formula for fire services has been increased periodically over the years, but it remains inadequate. The 2001 New Mexico Administrative Code expanded the qualifications for funding administration buildings and main stations. However, funding remains an issue despite the expansion. In 2003, a Fire Service Council consisting of state firefighters' associations identified funding as a top priority. Also in 2003, the local media publicized conditions of rural fire departments in New Mexico, leading to resolutions by the PRC, the New Mexico Association of Counties and the New Mexico Municipal League. The Legislative Finance Committee is currently reviewing a study of the funding status of fire departments in New Mexico and their claims of inadequate funding. Legislation to change distribution qualifications, including Native American fire departments, failed. The 2010 legislature has frozen the FY 2011 distribution to fire services at 13.4%.

Proposed Propane Rules

Roy E. Stephenson, director, Utility Division, PRC, summarized the rulemaking status pursuant to SB 468, which was passed into law in 2009 and directs the PRC is to adopt rules regulating the propane industry to protect consumer rights. The PRC issued an order directing that the rulemaking process be a collaborative, consensus-based group of propane stakeholders. A work group of PRC staff, propane industry representatives and consumer advocacy groups convened for that purpose. At present, two draft rules have been submitted to the rulemaking record. The first, submitted by Prosperity Works, a consumer advocacy organization, was objected to by the New Mexico Propane Gas Association, which subsequently submitted its own

draft rules. The two draft rules fundamentally differ from each other as to interpretation of the scope of SB 468 and continue to circulate for comment among the stakeholder work group.

After reviewing the proposed rules, the committee expressed specific concern on the rules as follows:

A. 17.8.1.8. Exemption and Variance: The committee supported the presumptions against the granting of exemptions and variance and the strong and clear language regarding the circumstances in which the presumptions can be rebutted. The committee, however, commented that the stay of application of the rules upon the filing for an exemption or variance defeats the purpose of the presumption and burden of proof.

B. 17.8.1.10. Budget Payment Plans: The committee supported the requirement that propane dealers offer a 12-month budget payment plan. Additionally, the committee supported the written disclosure of the method and inputs for the computation of the budget payment plan. The committee requested that the rules require that propane dealers provide written disclosure of all pricing categories, schedules of prices, schedules of charges, fees, penalties and services offered in that residential area.

C. 17.8.1.11. Payment and Payment Agreements: The committee supported the restrictions on propane dealers discontinuing service or refusing delivery. However, the committee requested that the rules use the words "shall not" rather than "may not" in Subsections F and G and that the word "cash" be deleted in Subsection G.

D. 17.8.1.12. Contents of Bills or Metered Fuel Tickets: The committee supported the transparency and written disclosures of pricing categories and residential delivery customer rate variations. The committee requested that, in addition to the propane customer bill of rights, propane dealers provide written disclosures biannually of all pricing categories, methodologies and inputs used to establish residential delivery customer rate variations and also upon initiation of service and upon changes to the pricing categories offered.

E. 17.8.1.14 and 17.8.1.15. Notice, Availability and Public Access: Again, the committee supported the transparency and disclosure of pricing categories, schedules of prices, schedules of charges, fees, penalties and services offered in a residential area by a propane dealer.

F. 17.8.1.18. Low or Minimal Use Charges: The committee supported the restriction against penalties for low or minimal usage and the use of strong and clear language.

G. 17.8.1.22. Delivery and Notice of Emergency Services: The committee supported the protection against customers losing service during storms or other declared emergencies. However, the committee requested that stronger and clearer language be used to ensure that propane dealers providing emergency services do not charge penalties or service fees that exceed the price of a customer's contract.

Upon a motion by Representative Rodella, seconded by Representative Vaughn, the committee voted without opposition to provide formal comments on those proposed rules consistent with the concerns expressed by the committee. Representative Madalena directed staff to draft the letter and submit it to the PRC.

Following the presentation on the proposed propane rules, Representative Madalena recessed the meeting at 5:15 p.m.

Friday, August 20 — Pueblo of Zia, Tribal Offices

The third meeting of the Indian Affairs Committee for the 2010 interim was reconvened by Representative Madalena on Friday, August 20, 2010, at 9:24 a.m. at the tribal offices of the Pueblo of Zia.

Welcome; Pueblo of Zia Status Update

Governor Marcellus Medina welcomed and thanked the committee for hosting the meeting at the Pueblo of Zia. Governor Medina informed the committee that more than 750 people live in the reservation, most of whom are ranchers, farmers and artisans. The Pueblo of Zia has been working for the past several years on securing funding for the new health clinic that opened earlier this year. Governor Medina thanked the members of the committee for their support, and he also thanked Representative Madalena and Senator Lovejoy for not only supporting the health clinic but also for providing capital outlay for the project. Governor Medina mentioned that prior to the opening of the new clinic, health care services were provided two days per week; with the opening of the new clinic, services are provided five days a week. In addition, the Pueblo of Zia is working aggressively to identify funds from state and federal sources for water and wastewater infrastructure and economic development assistance to develop properties that the pueblo owns in the towns of Bernalillo and San Ysidro. The Pueblo of Zia is also planning to develop the Warm Springs area. The pueblo has already done extensive studies to develop retail, light industry and other commercial activities at these sites; the problem it is currently facing is the lack of funds to develop some of the infrastructure. The Pueblo of Zia is exploring applications for federal funding through the United States Department of Agriculture, Bureau of Indian Affairs, Department of Commerce, Water Trust Board, New Mexico Finance Authority and the Tribal Infrastructure Board. The purpose of the proposed projects is to provide jobs close to home and business development opportunities for the people of the pueblo and to preserve community life without unwanted commercial buildup.

The initial plans include the following: (1) development of a Pueblo of Zia cultural and visitors center in collaboration with the state that would celebrate or commemorate the pueblo as the home of the state's Zia-Sun symbol; (2) food sustainability in the form of agricultural and water improvement projects that will enable the Pueblo of Zia to thrive and to contribute to the surrounding regional food supply, such as farmers' markets and commercial growing operations; (3) renewable energy development to potentially include wind, solar, geothermal and biofuels at Warm Springs and other sites both on- and off-reservation; and (4) film industry and eco-cultural tourism development using the pueblo's land and other resources, including areas in the Ojito Wilderness.

Governor Medina also commented that while he understands the budget shortfalls, the pueblo urges the committee to keep the Indian Affairs Department as a cabinet-level position, continue to implement the State-Tribal Collaboration Act, allow tribal governments to compete for funds for emergency fire protection services and continue to provide access to Medicaid funding for tribes and tribal people.

In addition, Governor Medina noted that the state currently makes capitated payments to the managed care organizations (MCOs) for Medicaid beneficiaries. These funds are used to pay claims for individuals who are provided with services during the month. Governor Medina added that it is possible to maintain the current benefits package for American Indians by exploring options within the capitated payment system. Molina Healthcare is currently piloting an "Accountable Care Organization" that offers incentives to providers who affect health outcomes. In 2004, the state paid \$24.4 million in capitated payments to the MCOs for services received by patients at Indian Health Service facilities in the Albuquerque area for 9,007 enrollees. In 2009, the state paid \$155.5 million to the MCOs. Governor Medina commented that there is a possibility that enough funding exists within the capitated payment system to preserve optional benefits for American Indian beneficiaries.

Upon the completion of the presentation by Governor Medina, the committee received a tour of the new medical clinic facilities.

Southwestern Indian Polytechnic Institute (SIPI) — Status Update

Dr. Sherry Allison, president of SIPI, introduced Monte Monteith, vice president of college operations, SIPI, and Valerie Montoya, vice president of academic programs, SIPI. Dr. Allison announced that the SIPI has lost its accreditation, but it has been placed on candidate status. She said that it is important to know that the committee is concerned because it shows the committee is concerned about education. Dr. Allison explained that the SIPI had renovated its mission statement as well as its vision statement in 2009. In her presentation, Dr. Allison noted that the SIPI is funded through the U.S. Department of the Interior. The SIPI's enrollment is limited to American Indians and Alaska Natives. She also mentioned that in 1994, SIPI was designated as a land-grant institution.

The enrollment for spring 2010 was as follows: 212 full-time commuter students, 106 part-time commuter students and 355 students who live in dormitories. The average age for most of the student enrollment at the SIPI is 26 years old. Dr. Allison commented that the total number of tribes represented at the SIPI is 63. Dr. Allison informed the committee that the SIPI does not charge students tuition; students are only charged student fees. The total amount in fees students have to pay per trimester is as follows: students who live in the dormitories pay \$280; full-time commuter students pay \$225; and part-time students pay \$150.

Dr. Allison commented that there is never enough money to run the programs. The SIPI receives congressional appropriations. The most recent appropriation for the SIPI to run its education services and programs was \$6,716,123. A separate amount of \$1,690,868 was appropriated for maintenance of the SIPI facilities. Over the years, the SIPI has worked very

hard to supplement the base funding with different grant programs, and the SIPI also has very good partnerships with different community-based programs.

Mr. Monteith commented that the SIPI is funded very differently than most post-secondary schools. The \$6,716,123 the school received is the amount it gets regardless of the student enrollment; the SIPI always receives the same amount of funding. The SIPI has no enrollment cap; if students interested in attending the SIPI provide the necessary documentation, they are admitted into the program. Dr. Allison commented that as the student enrollment increases, so do expenses for the buildings, educational services and programs. A funding formula was passed by Congress; however, the formula cannot be used unless Congress appropriates additional funding, which it has not done.

Dr. Allison told the committee that the Higher Learning Commission (HLC) made an on-site visit to the SIPI from December 7-9, 2009. During the visit, the HLC viewed records and documents from the past 10 years and it interviewed students, faculty, administrators and external constituents. At the exit meeting the SIPI had with the HLC, the HLC evaluation team mentioned that it had major issues with the SIPI and it was going to recommend sanctions, which could range from probation to withdrawal. When any institution is being sanctioned, there is a process that has to be followed, which includes a hearing. The SIPI and the HLC held a hearing on May 3, 2010. On June 3, 2010, the board of trustees committee had a hearing with the HLC. On July 2, 2010, the SIPI received a letter from the HLC in which the SIPI was notified that the HLC upheld the withdrawal of the SIPI's accreditation, but the SIPI was placed in candidacy status. Under this status, the SIPI still receives its regular funding, offers courses to students and allows for the transfer of credits. The candidacy status lasts for not less than one year but no more than four years.

Upon an inquiry from the committee, Dr. Allison clarified that the reason the SIPI cannot charge tuition is because a federal law prohibits it from doing so. She also clarified that students would be able to pay tuition with the help of financial aid, but the students are currently paying the fees with their own money. The SIPI is not actively recruiting, but it is still accepting students if they meet all the requirements.

Upon an inquiry from the committee, Dr. Allison specified that she is very confident about getting re-accredited. The letter that the SIPI received from the HLC lists the items the SIPI needs to fulfill in order to be re-accredited. The HLC is looking for two things in particular to accredit the SIPI again: (1) meeting the eligibility requirements; and (2) making progress in those areas of deficiency.

Finally, Dr. Allison clarified to the committee that the SIPI was not cited for anything that had to do with teaching and learning. The reason it was cited is because it did not do a very good job providing evidence documentation and tracking student and program outcomes.

Indian Education Act

Dr. Susanna Murphy, secretary-designate of public education, thanked the committee for the invitation and introduced Dr. Sheila Hyde, deputy secretary, Public Education Department

(PED); Barbara Alvarez, interim assistant secretary for Indian education, PED; and Dr. Anya Dozier Enos, high school redesign coordinator, learning and accountability, PED. Secretary-Designate Murphy shared information regarding the new leadership at the PED and provided previous duties of the leadership. Secretary-Designate Murphy informed the committee that the information presented was the preliminary AYP results, including the federal No Child Left Behind Act designation and achievement gap results. According to Secretary-Designate Murphy, from 2004 to 2010, New Mexico's students have gradually increased their overall proficiency in math by 12%, in reading by 3% and in science by 6%. The only exception to this positive trend is in eighth grade, where overall there was a 3% decrease from performance in 2009. In eighth grade, the subject of math saw the greatest decline, in which student scores decreased between 2% and 5% in every ethnic group. Moreover, the most significant decrease was seen in the English language learners category, which decreased by 5%. The PED has indicated that it will further analyze the data to determine the factors that have contributed to this decline. According to Secretary-Designate Murphy, New Mexico shows small and irregular growth in reading. She also indicated that the PED is planning to work with the districts to better align the curriculum to the state standards in reading. At the fourth-grade level, the AYP report indicates that reading proficiency has stabilized since its decline in 2008. The report also notes that Native Americans show the largest six-year gains, posting a 5% increase. Native Americans also showed the greatest three-year gains in math with an 8% increase, followed by Hispanics with a 7% increase.

Secretary-Designate Murphy indicated that the federal legislation mandates 100% proficiency for all students by school year 2013-2014. In order to reach this objective, New Mexico has established proficiency levels on an increasing scale since the law's enactment in 2001. For example, the proficiency level for math was increased to 52% in 2010 from 39% in 2008, or an overall increase of 13% over a two-year period. In addition, the proficiency level for reading was increased to 64.0% in 2010 from 56.0% in 2008, or an overall increase of 8.0% over a two-year period.

Secretary-Designate Murphy informed the committee about secondary education and the dual credit program. The PED is working to establish the dual credit program in tribal colleges. She also briefed the committee about the Graduate New Mexico Program, which is a new online option to earn a high school diploma; the program plans to recruit 10,000 dropouts by the fall of 2011.

Upon an inquiry from the committee, Secretary-Designate Murphy informed the committee that as of July 29, 2010, the Indian Education Fund balance is \$3 million, but the funds are obligated for programs. The contracts for Save the Children and Teach for America are currently in good shape. There are currently eight schools identified for the exemplary programs funded by the Indian Education Act (IEA). The number of Native American teachers who serve Native American children is increasing. In the 2009-2010 school year, there were 579 licensed Native American teachers; 42 Native American administrators, principals and supervisors; and 224 native language certificate holders, 58 of whom have teaching licenses.

Upon an inquiry from the committee, Dr. Dozier Enos stated that for the past two or three years, national organizations have brought national and international experts to create standards in math and English language arts. There are currently 48 states, including New Mexico, that are adopting the course standards. New Mexico's adoption process is unique; the PED has identified a committee to look at the math and English standards. The committee includes approximately 30 experts in the area of education.

Recommendations and Strategies to Improve Indian Education

Kevin Shendo, chair, Indian Education Advisory Council, and representative of the southern pueblos, introduced Francine Hatch, policy analyst, Indian Affairs Department. Ms. Hatch informed the committee that at the 2010 Tribal Leaders Summit, tribal leaders expressed the concerns pertaining to Indian education as follows: disparity between Native American students and all other students; accountability issues regarding impact aid funding and enforcement of the IEA; resources needed to support the teaching of indigenous languages; cultural competency of those who teach Native American students; and supplemental or enrichment programs with insufficient funding for Native American student achievement. She also stated that at the 2010 State Tribal Leaders Summit, tribal leaders proposed recommendations as follows: consider changes to the equalization formula of Title VIII so impact aid follows the student; craft and seek legislation to increase the authority of the Indian Education Advisory Council; craft and seek legislation amending appropriate statutes to direct a greater amount of funding to state agencies to improve Native American student achievement graduation rates; and craft and seek legislation withholding approval of a school district's budget for noncompliance with the IEA.

Ms. Hatch also noted that the 2009 Native American Education Task Force listed the following items as priorities and recommendations: limit school administrator salary increases if the IEA is not implemented; tie school district budgets to implementation of and compliance with the IEA; prevent earmarking of IEA funds; and provide more monetary resources to school districts serving Native American student populations. In regard to the language and revitalization and maintenance, the task force expressed recommendations on the following: review, align and use bilingual multicultural statutes to support proficiency in indigenous languages; formalize and strengthen native language and culture certification; designate a set aside percentage of bilingual multicultural funding; and use current funding to fund the tribal programs for longer than one year. Additionally, the pre-K-20 transition recommendations include demonstrating that resources are dedicated to tribes, parents and community parent-community planning; involving students in policymaking; increasing tribal and parental support for students; and provide funding to encourage tribal communities to form community planning committees.

Mr. Shendo mentioned that the state's proposed actions are the implementation of the Bilingual Multicultural Education Act and that meetings with superintendents and tribal leaders should be arranged for further discussion. To remove the 10% cap for Native American charter schools, one recommendation would be to amend the Charter Schools Act. Another recommendation is to expand the Reading First Program to encourage districts to develop programs to further motivate students to read.

The committee withheld comments and questions until after the conclusion of the IEA presentation.

Implementation of the IEA

David Atencio, superintendent, Jemez Valley Public School District, expressed that it is the schools' responsibility for their students to do well. The achievement gap in the Bernalillo Public School District has been reversed: Native American students are achieving at a much higher level than Caucasian and Hispanic students. Two years ago, the curriculum was altered, and, since then, the scores on the American College Test (ACT) have increased.

Upon an inquiry from the committee, Mr. Atencio explained that eliminating money is not the key; the key is changing the way traditional teachers teach. Mr. Atencio mentioned that students today are very different from the way they were 10 years ago. Much technology has been incorporated at the Jemez public schools, which is helping students engage in learning, but most importantly, it is teaching teachers to learn how to teach using technology as a resource. Teachers are teaching in the culture and the language that students live in and speak today. The school district is also teaching students to apply writing in their math classes. Teachers are having students write a thought process about how the students figured out a math problem. Mr. Atencio expressed that he believes that this is where a lot of school districts are falling off; they focus on subjects such as math but do not focus on the writing in the math class.

Dr. Ralph Friendly, superintendent, Bernalillo Public School District, also expressed that the way students learn is very different from the way they learned five years ago. He mentioned that students are as smart as they were many years ago, but teachers are not attacking the teaching methods from a modern perspective.

Mr. Atencio expressed that the Jemez Valley Public School District is proud to have its first charter school. The population of the charter school cannot exceed 10% of the town population, and charter schools are spending more per student than public schools. Schools are being asked why they are not meeting AYP; the reason why is because they are spending large amounts of money on after-school programs and not in the classroom settings.

The Jemez Valley Public School District is exploring various ways of increasing parent and community participation. The schools are having students present at parent-teacher conferences so that there is a higher percentage of attendance. By having students present, parents are more likely to attend school meetings to listen to their children. This has proven to be a means to further increase parent participation.

Adjournment

There being no further business before the committee, the third meeting adjourned at 4:30 p.m.

**MINUTES
of the
FOURTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**September 14-15, 2010
McKinley County Courthouse, Gallup
Thoreau Chapter House, Thoreau**

The fourth meeting of the Indian Affairs Committee for the 2010 interim was called to order by Representative Patricia A. Lundstrom at 10:04 a.m. on Tuesday, September 14, 2010, in the McKinley County Courthouse Rotunda in Gallup, New Mexico. The Indian Affairs Committee and the Land Grant Committee met in joint session on Tuesday morning to hear testimony on the House Memorial 74 status update. Representative Lundstrom asked Norman Cooyate, governor, Pueblo of Zuni, to give an opening prayer.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair (9/14)
Sen. Rod Adair (9/15)
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez

Absent

Sen. Eric G. Griego
Sen. George K. Munoz
Sen. John C. Ryan
Rep. Gloria C. Vaughn

Advisory Members

Rep. Ernest H. Chavez
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar (9/14)

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Damian Lara
Alise Rudio
Adan Del Val

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Tuesday, September 14 — McKinley County Courthouse Rotunda, Gallup

Committee, staff and audience members introduced themselves.

Welcome

Ernest Becenti, Jr., county commissioner, McKinley County, welcomed the committee to the courthouse and stated that he was very proud of the new building.

House Memorial 74 Status Update

Juan Sanchez, chair, Land Grant Council, told the joint session of the Indian Affairs Committee and the Land Grant Committee that the council was established by the legislature in 2009 to be the state agency for New Mexico community land grants. In 2004, land grants-mercedes were granted political subdivision status. However, as a consequence of that legislation, Mr. Sanchez said it is unclear whether land grant common lands are state lands. Mr. Sanchez said that the council wants legislation that clarifies that land grant common lands are not state lands.

Arturo Archuleta, executive director, Mexicano Land Education and Conservation Trust, said that the land grants want clarification on the law. He believes that an unintended consequence of the 2004 law making land grants units of government or political subdivisions is that a state committee applying the Cultural Properties Act interpreted land grant common lands as public lands. He said that this interpretation affected 19,000 acres of the common lands of the Cebolleta Land Grant and potentially affects all land grant common lands in the state. He said this interpretation is contrary to the intention of the political subdivision statute itself, which was designed to protect common lands and provide support to land grant communities that have lost millions of acres of land to the state and federal governments since 1848. He said the land grants want to adopt legislation to clarify the law. Mr. Archuleta said that the land grants recognize that the traditional cultural property designation is very important to the five nominating tribes and, thus, have requested a series of meetings with the tribes about the land grants' efforts. Mr. Archuleta asked the joint committee to come up with legislation to meet the needs of land grant communities throughout the state. Mr. Archuleta discussed proposed legislation that requires the approval of the board of trustees of a land grant before the common lands of a land grant may be designated as state or public land. According to the bill draft, a person who is not an heir and who has purchased or leased property within the limits of the land grant would not have a right to common lands. Mr. Archuleta said that the discussion had just begun, but he hopes to bring something to both committees for endorsement.

Lawrence T. Morgan, speaker, Navajo Nation Council, discussed the tribes' efforts to protect cultural property through the Cultural Properties Act, the Cultural Properties Protection Act and the New Mexico Prehistoric and Historic Sites Preservation Act. He said that in 2010, House Bill 26 was introduced to exempt land grants from the requirements of those acts. The Navajo Nation and other tribal entities were concerned about the implications of those actions on

the designation of Mount Taylor as a traditional cultural property. House Memorial 74 resolved to address the concerns both of tribes and land grants by requesting the Land Grant Committee and the Indian Affairs Committee to have a joint meeting during the 2010 interim to hear about issues facing both land grant and Native American communities. Speaker Morgan said that the Navajo Nation appreciates that there are common issues facing both communities, including recognizing the importance of protecting traditional and cultural properties. However, Speaker Morgan said that the proposed legislation jeopardizes the state's procedures for protecting sacred sites such as Mount Taylor. He said that the designation of being a political subdivision of the state creates advantages such as recognition as a governmental entity, the ability to procure state money and infrastructure and the ability to be granted lands and other property from the state without violating the antidonation clause. The designation as a political subdivision also creates obligations, he said, such as reporting requirements for funds and budgets, spending requirements for capital improvement funds and compliance with other state laws governing political subdivisions. Speaker Morgan said that the Navajo Nation supports the status quo. The Navajo Nation does not oppose the designation of land grants as political subdivisions but believes the land grants must accept the obligations of that designation, which means that the land grants cannot be treated differently from other political subdivisions.

Chandler Sanchez, governor, Pueblo of Acoma, said that there has been considerable discussion about the issues among legislators, land grant representatives, tribal leaders, attorneys, lobbyists and other interested parties. He reminded the two committees that state law requires tribal consultation and collaboration. He said that other tribes that have lands next to land grants should be part of the discussion because the proposed legislation would affect them as well. He thanked the Land Grant Council for allowing him to comment on the proposed legislation, but he said he thinks that the proposed legislation could severely impact existing state policies and requirements under existing law. Governor Sanchez said that the bill as drafted would allow land grants to maintain their status as political subdivisions but also will allow them to opt in or out by deciding which state or public land laws apply to them. He believes that if the new bill becomes law, land grants would be excluded from existing state laws that affect lands of political subdivisions, including laws that protect cultural property and prehistoric and historic sites. He also believes that the bill draft would affect the existing State-Tribal Collaboration Act, which applies to political subdivisions, and would reduce opportunities for collaboration. He also noted that the Pueblo of Acoma is in the midst of battling a major lawsuit involving the decision to designate Mount Taylor as a traditional cultural property and that any change to existing law would give the other side an unfair advantage and would be unconstitutional. He urged the committees to look at all sides of the proposed legislation, research the potential impacts on state laws and fully understand the consequences before supporting any change.

Frank Cerno, Governor's Office, Pueblo of Laguna, discussed the pueblo's concerns about pueblo lands abutting the land grant common lands and the impact on pueblo lands if a land grant is able to choose not to be part of a designation. He said he is also concerned about the potential impacts the proposed legislation might have on the State-Tribal Collaboration Act and on the requirement that a subdivision of the state notify the tribes about any impact on cultural resources in the area. He said that the pueblos would be concerned if the land grants are seeking

some sort of independent or sovereign status. Mr. Cerno said that the tribes have existed since time immemorial and have government-to-government status while land grants have been treated differently by the state throughout the years. He said that case law indicates that land grant boards are creatures of the legislature and have been defined as "quasi-municipal". He said that the authority of land grants is derived from statute and governed by state law.

Governor Coeoyate introduced Dancy Simplicio, lieutenant governor, Pueblo of Zuni, and Shelly Chimoni, council member, Pueblo of Zuni, and other members of the tribal council of the Pueblo of Zuni in the audience. Governor Coeoyate said that the Pueblo of Zuni is located in a rural, isolated reservation in McKinley and Cibola counties in west central New Mexico and in Apache County, Arizona. The land base is more than 723 square miles. The Pueblo of Zuni is one of the most remote and traditional of New Mexico's pueblos, with a population of more than 11,000. He said that the pueblo's community members hold their cultural and traditional values very dearly and have a great interest in any use of the land that impacts their cultural and religious views. Governor Coeoyate said that the pueblo is very active in the state's legislative and policymaking process and actively supported the passage of the State-Tribal Collaboration Act, the Tribal Infrastructure Act and the amendment to the New Mexico Subdivision Act requiring tribal notification. He said the pueblo is committed to improving governmental relations at all levels. The Pueblo of Zuni was one of the nominating tribes in the effort to designate Mount Taylor as a traditional cultural property and, as a result, participated in the discussions concerning both the legislation to exempt land grants and House Memorial 74. Governor Coeoyate urged the state to be consistent with implementing its laws and policies, including the designation of Mount Taylor as a traditional cultural property. He said the pueblo's concerns about any draft legislation relate to its effect on: (1) other tribes; (2) pending litigation; (3) the designation of Mount Taylor as a traditional cultural property; and (4) the unique status of tribes as sovereign entities with a government-to-government relationship with state and federal entities. Governor Coeoyate told the committees that Mount Taylor remains of paramount importance to the pueblo and that the pueblo would spare no effort to preserve the legal protections of the area.

The committees discussed the history of land grants in New Mexico. Some members suggested that the attempt of land grants to gain recognition as political subdivisions may have weakened attempts to get lands back at the state level. Upon inquiry from the committees, tribal leaders discussed the importance of meeting with land grant leaders and of notifying everyone in designating traditional cultural properties. The tribal leaders said that they recognize that land grants have been here almost as long as the tribes and that they should collaborate and consider whether land grants should be treated in any other way. Mr. Archuleta said that the proposed legislation was based on a concern about private individuals having influence over how the common lands were used. He said that the land grants are not trying to undermine the traditional cultural property designation of Mount Taylor, but simply want to hold onto their land and not allow access to private property owners. He said that the status of the land grants is unclear because of private tax lands. Land grants want status as political entities; however, it was never their intent to have the common lands be public lands. Mr. Archuleta said that land grants want to address their status as governments but are open to discussion about other legislation.

The committees discussed the need for tribal participation in order to come up with good legislation for everyone. The committees also discussed the importance of studying the legislation and not creating divides. The Indian Affairs Committee suggested that staff analyze the issues and help the committee become better educated before deciding whether to endorse a particular piece of legislation. The committee said it wants a consensus bill.

The Land Grant Committee members left at 12:45 p.m.

Counties as Alternative Fiscal Agents for Chapter Capital Outlay

Gloria Skeet de Cruz, coordinator, Baahaali Chapter, and Annie Descheny, secretary, Baahaali Chapter, told the committee that the Baahaali Chapter would like McKinley County to be its fiscal agent for capital outlay in order to expedite projects. Ms. Skeet de Cruz said that the Baahaali Chapter is one of six certified chapters of the Navajo Nation in New Mexico, which means that the chapters are delegated local government authority. Ms. Skeet de Cruz said that there are many barriers to using funds appropriated by the legislature when the Navajo Nation is given funds. Ms. Descheny said that the chapter has lost funding from the Navajo Nation and needs to do its own projects. Mr. Becenti, the county commissioner, said that McKinley County supports the proposal as an alternative for chapters in the county because the process of working with the Navajo Nation is too slow and cumbersome for the chapters. Doug Decker, county attorney, McKinley County, said that the county is ready, willing and able to become the fiscal agent for capital outlay projects for the chapters. He said that the county could help the chapters with capital outlay projects if it knew about the projects in advance so that the county could provide advice and expertise and the projects are ready to go before the chapters receive funding. He said that the county adopted a resolution in 2003 to become a fiscal agent with a 5% fee. He said that the county may waive the 5% fee at times.

Upon inquiry from the committee, Mr. Decker said that the county is willing to work with the Navajo Nation. Mr. Becenti discussed the possibility of entering joint powers agreements with the Navajo Nation for the county to maintain Bureau of Indian Affairs (BIA) roads. Navajo Nation Council Delegate Leonard Tsosie said that if he is elected this year, he will pursue the possibility of entering agreements with the county. However, he said that people cannot just blame Window Rock or the Navajo Nation for delays in developing projects. He told the committee that the Navajo Nation is wary of turning over roads to the county because the courts will interpret it as giving up jurisdiction. He also said that Arizona recently gave the Navajo Nation \$2 million to build a county courthouse. In contrast, Mr. Tsosie said, New Mexico's reimbursement system makes it difficult to fund projects. He said that it would be helpful if the state would provide funding in advance, including designating money for archaeological and environmental assessments.

The committee asked the parties to work together and to present any proposed legislation to the committee for endorsement at its November meeting.

***Aamodt* Litigation Settlement Act of Request for Support**

Charlie J. Dorame, chair, Northern Pueblos Tributary Water Rights Association, discussed the federal *Aamodt* Litigation Settlement Act and asked the committee for a letter supporting the

legislation. The bill includes four recent settlements, which are awaiting \$1.1 billion in funding. Two of the four settlements are New Mexico accords, one resolving claims of Indian water rights by the Pueblo of Taos and another settling claims by the four pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque. The bill passed the U.S. House of Representatives but has not been taken up by the full U.S. Senate. Mr. Dorame said that representatives of the four pueblos are returning to Washington, D.C., at the end of September to lobby for the bill and to seek a formal written endorsement from the Obama administration.

James Rivera, tribal council member, Pueblo of Pojoaque, joined in asking for a letter of support. He discussed the pueblo's involvement in developing a wastewater treatment project for Espanola and the Pojoaque Valley and the importance of the regional water system that will be constructed as part of the settlement act. He said that the pueblos are working with non-Indians to provide clean water in the Pojoaque Valley.

Representative Begaye made a motion, seconded by Representative Madalena, to write a letter supporting the legislation. The committee noted that the state has not yet funded its portion of the settlement, which is \$50 million. The committee asked staff to work with the panel to address language in the letter concerning state funding. The motion passed without opposition.

Strong Starts for Pueblo Children Status Update

Jonathan N. Pino, executive coordinator, All Indian Pueblo Council, and Kevin Shendo, education subcommittee member, All Indian Pueblo Council, provided an update on the Strong Starts for Pueblo Children Program. Mr. Pino said that early child development has been the focus of pueblo traditional teaching. The Strong Starts for Pueblo Children Program focuses on parent involvement, school readiness and creating healthy environments for learning and parenting while recognizing the special needs and strengths of the pueblo population. The program will devise plans to foster the health, employment and education of families and their children from birth. The program seeks to engage pueblo community members of all ages in problem solving, ideas for policy change, improved conditions using traditional ideas and methods, decolonization, racial and ethnic equity and political empowerment through a commitment to children and their future. Mr. Pino emphasized that the Strong Starts for Pueblo Children Program is trying to bring different people to the table to create a unique program. Mr. Pino presented the committee with a copy of the Strong Starts for Children Dialogue, which is a dialogue and problem-solving guide that Indian communities can use to begin discussing and planning ways to involve all community members in community improvement.

Mr. Shendo discussed his concerns about Indian education, including the disparity between Native American students and other students, accountability issues regarding impact aid funding and enforcement of the Indian Education Act (IEA), cultural competency of those who teach Native American students and the need for supplemental or enrichment programs with insufficient funding for Native American student achievement. He discussed the importance of ensuring that money follows the students, promoting proficiency in indigenous languages, ensuring that Native American teachers reflect the percentage of Native American students, providing pre-kindergarten services, defining "pre-kindergarten" in the IEA, addressing special

needs and providing support for young parents.

The committee expressed its support for the program and asked the panelists to put their requests for recommendations for the IEA in writing for distribution to the committee.

Government Restructuring and the Indian Affairs Department (IAD)

Alvin Warren, secretary, IAD, urged the committee to retain the IAD as a cabinet-level department, contrary to a proposal before the Government Restructuring Task Force (GRTF). Secretary Warren's discussion focused on three areas: (1) the history, role and importance of the IAD as a cabinet-level department; (2) the IAD's budget reductions; and (3) the IAD's efficiency measures. The IAD became the first cabinet-level Indian affairs department in the United States in 2003. According to Secretary Warren, the IAD serves a central role in facilitating communication and collaboration among the Office of the Governor, the other cabinet agencies and the 22 Indian tribes, nations and pueblos on programs and issues affecting Native Americans in New Mexico. The IAD has statutory authority to act upon Indian conditions and relations within New Mexico, including problems of health, economy and education and the effect of local, state and federal actions. The IAD reinforces tribal governmental efforts to ensure that Native American concerns are addressed in state policymaking decisions; manages and facilitates ways to increase state resources to benefit Native Americans; and collaborates with national, tribal, state and local entities. Secretary Warren said that the IAD's current staff consists of 14 people. Secretary Warren said that the IAD's appropriation was reduced by \$594,000 in fiscal year 2011, which resulted in decreased public information efforts, furloughs for all staff, an inability to replace key staff and reductions in grants to the Tobacco Use Prevention and Control Program and other special projects. According to Secretary Warren, the reduction in the IAD's general fund budget has affected its ability to provide services and to address the needs of Native American constituents in state policymaking. Secretary Warren said that the IAD has implemented efficiency measures, including not hiring a capital outlay engineer, eliminating positions, instituting a hiring freeze, reducing grants to tribes and organizations and reducing expenses for travel, supplies, training and advertising. Secretary Warren said that the IAD might also be able to save costs by increasing social networking and eliminating vehicles. Secretary Warren said that the IAD should be retained as a cabinet-level department in order to protect the commitment made to tribes and Native Americans; reflect the government-to-government relationship between sovereigns; maintain a position of authority with the Office of the Governor; effectively allocate and administer funding to tribes and Native Americans; and decrease Native Americans' historic lack of empowerment in state government. He also said that removing the IAD from the cabinet would not save significant general fund dollars but would likely cost the state more in delayed projects, inefficiencies and legal conflicts.

Bill Hume and June L. Lorenzo, commissioners, Indian Affairs Commission, spoke in support of retaining the IAD at the cabinet level. Mr. Hume said that tremendous progress has been made through cooperation between state agencies and Indian governments, notably in the areas of water rights settlements, education, health care and state capital outlay. Ms. Lorenzo said that New Mexico has the distinction of making Indian affairs a cabinet-level department, which is a nationwide model for government-to-government relationships. She said that the partnership has made a big difference in raising the profile of issues and is critical to the future.

Members of the audience who spoke in support of retaining the IAD as a cabinet-level department included: Governor Coeeyate; Governor Sanchez; Robert Ramirez, governor, Pueblo of Isleta; Mr. Rivera; Mr. Dorame; Conroy Chino, managing partner, Advocates for Business and Community Development LLC; Mr. Pino; Jarvis Williams, legislative staff assistant, Office of the Speaker, Navajo Nation; Omar Bradley, regional director, BIA; Isabelle Morgan, president, Baahaali Chapter; and Jeff Kiely, director, Northwest New Mexico Council of Governments.

The committee praised the IAD and discussed its support. Representative Begaye made a motion, seconded by Representative Jeff, to send a letter to the GRTF recommending that the IAD be retained at the cabinet level. The motion passed without opposition. The committee directed staff to write a letter in support of the IAD for the co-chairs to sign. The committee also discussed the need for input on all the recommendations that are being considered before the GRTF. Representative Rodella asked staff to go before the New Mexico Legislative Council at its next meeting to make all committee chairs aware of what sort of recommendations are being considered. Representative Begaye seconded the motion, and it passed without opposition.

Native American Issues and the Federal Patient Protection and Affordable Care Act

This presentation was postponed until the October meeting.

Following the presentation on government restructuring and the IAD, Representative Lundstrom recessed the meeting at 5:32 p.m.

Wednesday, September 15 — Thoreau Chapter House, Thoreau

Senator Lovejoy reconvened the committee at 9:05 a.m. on Wednesday, September 15, 2010, at the Thoreau Chapter House.

Committee, staff and audience members introduced themselves.

Thoreau Chapter Status Update

Valerie Yazzie, president, Thoreau Chapter, welcomed the committee and said that she was proud to have the meeting at the Thoreau Chapter House. Ms. Yazzie said that the chapter needs more economic development and more work done for the community. She said that the chapter has a high youth suicide rate, but it is working on the problem with the help of the Unified Command Center (UCC), which is composed of representatives from the state, Indian Health Service (IHS) and the Navajo Nation. The chapter is trying to find a permanent building for the UCC and has land for a facility near the chapter's vacant preschool building. Ms. Yazzie said the community needs more parks, daycare, playgrounds, road improvement and jobs. She said that alcohol consumption is another problem on which the chapter is working.

Edmund Yazzie, council delegate, Navajo Nation, thanked the committee for coming out to Thoreau and said it showed the committee's concern for the people. He said that Thoreau has seen a large number of youth suicides. He said that the community and state joined together to fight the problem. He commended the work of counselors and volunteers such as Juliana Ko,

who resigned from her teaching job to start an outreach program. He discussed the need to pull together to address the problem. Mr. Yazzie asked for support in establishing a Boys' and Girls' Club in Thoreau and in developing more recreational opportunities for youth such as boxing and a Ropes course. In addition to educating people about alcohol, he would like to have a special investigator for the area. He said that there are six liquor establishments in the community but that there are only two special investigators in San Juan and McKinley counties. He believes that liquor establishments are selling to intoxicated people and minors because there is no special investigator in the community.

The committee expressed concern about the problems in the community. In response to questions from the committee, Mr. Yazzie said that there have been two suicides in two months as well as other suicide attempts. He said that 80% of the suicide attempts are related to alcohol and that the average age of those who attempt suicide is close to 15. He believes that the liquor establishments are taking advantage of the problem. The committee discussed the importance of bringing awareness of the problem of youth suicide to the whole state. The committee expressed its appreciation for help from the Department of Health (DOH) and Secretary Warren. The committee supported the idea of establishing a Boys' and Girls' Club and encouraged involvement in other national movements and organizations.

Upon an inquiry from the committee, Ms. Yazzie said that the total population of the chapter is 3,500 to 4,000, that the average income is less than \$10,000 a year and that the community is losing its elders, with only 40 to 50 people using the senior center. The committee discussed how poverty and income level are tied to poor school performance, depression and alcoholism. Mr. Yazzie said that the Navajo Nation and the IHS are just now starting to take the lead in dealing with the problem of having four liquor establishments in a 13-mile area. When asked what the Navajo Nation is doing to help, Mr. Yazzie said that Navajo Nation Vice President Ben Shelly, who is from Thoreau, is 100% committed to helping the chapter and was instrumental in obtaining counselors for the victims. He said that the chapter's major goal is to obtain funding, including money for a Boys' and Girls' Club. Mr. Yazzie said that the primary financial responsibility of the tribe has been 50% from the Navajo Nation and 50% from the IHS. He said that the counselors from the Navajo Nation have been the backbone of the UCC.

Vice President Shelly welcomed the committee to Thoreau and said that it is "our kingdom". He thanked the people who are working on the youth suicide problem. He said that the chapter has taken immediate action to provide services with minimal financial support while waiting for resources for a full facility. He said that the Navajo Nation is working with the BIA to find a place next to a clinic that is being built so that the chapter can create a permanent command center. The chapter needs land and a large building that can accommodate all projects and services and 200 to 300 people so that it can handle any incident, including matters relating to homeland security. He said that because some of the clinic area is trust land and some is state land, the chapter is working with the state in a collaborative effort to deal with suicide prevention.

The committee acknowledged Vice President Shelly's wife in the audience as well as Mr. Bradley from the BIA. The committee discussed the importance of having a prelude to a Boys'

and Girls' Club and the need for programs and activities as well as a place for young people to come to every day. Mr. Yazzie said that the chapter has had family fun days, prayer days, activities with pastors, a community carnival with law enforcement and other small get-togethers and projects. The community also has encouraged education and music and has made a building available for students after school. He said that the community needs a place that is a refuge for youth.

Vice President Shelly pointed out that in addition to trust land, there is a lot of private and state land around Thoreau, as well as many Indians and non-Indians. He said that there are a lot of issues putting pressure on children and that the community needs more jobs and better teachers. He said it is important to look at the whole picture in trying to determine how to make things better. Vice President Shelly said that Thoreau is a pilot project for improving the community through collaborative efforts.

Unified Command Response to Crisis

Herbert Long, co-commander, Navajo Department of Behavioral Health Services (DBHS), discussed the community's need for help after a rash of suicides that began in May. Mr. Long said that the DBHS initiated meetings with the Navajo Nation, the IHS and the state. The Navajo Nation, which has 31 chapters in eastern New Mexico, declared a state of emergency. Health providers from the IHS set up an incident command post at the McKinley County Sheriff's Office in Thoreau. There was an immediate need to establish a crisis management team, a short-term need to stabilize circumstances and a long-term need to set up a permanent office. Mr. Long stated that the Navajo Nation is collaborating with locals, the IHS and the state to form a team to respond to the crisis and the future needs of the community.

Charles Stacey, clinical therapist and rapid assessment team member, DBHS, told the committee that any time a call comes through that involves suicide, the UCC calls a counselor who makes contact with the family and gathers information. Although there was a spike in suicides, Mr. Stacey said there is an ongoing problem that is like a gas leak that is waiting to explode. He said that the DBHS is trying to focus on the entire family and not just on individuals. He said that there is a significant number of homeless and jobless people and that counselors are looking at all the stressors. Since the UCC was set up in May, it has had 80 individual cases, including 37 individuals with suicide ideation and a plan, 18 individuals who attempted suicide and three individuals who completed suicide. He said that there have been 15 actual suicides in 31 chapters. The DBHS has chosen to focus on 17 chapters. Caseworkers focus on the family after a suicide by maintaining contact and trying to make a difference over time. Mr. Stacey said that the average age that young people start drinking is 13, and, although there is a problem with selling to minors, many start drinking with their families. He said that domestic violence and alcohol are problems that go hand-in-hand with suicide and play a major role. He said that before the UCC, all community members sought services from governmental agencies that acted like silos, separate and without any interaction. The UCC had the effect of pushing those silos closer together, and now the various governmental agencies provide social services in conjunction with each other for the benefit of community members. The casework has been home-based family therapy, and the UCC hopes to bring full-time people into the community once the initial deployment and short-term need is over.

Dr. Steven N. Adelsheim, director, Center for Rural and Community Behavioral Health, University of New Mexico, said that he was invited to be a partner in the UCC. He was involved in developing a response system and continues to be involved in community development and linking state services. He said that the situation is complex, with multiple systems and multiple providers. He discussed the support of the state, including financial support in working with the school system, the chapters, the Navajo Nation, the IHS and summer youth programs. He said that \$2 million will be allocated toward suicide and substance abuse prevention over the next three years through OptumHealth, with 80% going to programs that serve Native Americans and 20% going to programs that serve rural areas, including those with Native American populations. Dr. Adelsheim said that he is grateful for the funds and that the state is glad to be a partner.

Janie Lee Hall, school health advocate, Public Health Division, DOH, discussed being called in to assist the rural communities in responding to the youth suicide crisis. She said the initial response involved connecting with the schools and making a safe environment for the students. She said that "post-vention" is really prevention. The DOH is planning services for when school starts, including training high school students to identify at-risk youth among their peers. The UCC implemented two culturally appropriate suicide prevention programs specific for Native Americans: the Natural Helpers and Native Hope. She said the schools were very responsive and helpful, and she expressed hope that services will be even more integrated in the future.

Mike Salabiye, planner, DBHS, discussed the facilities needed to meet the goal of providing recreational opportunities and a drop-in center. He said that the UCC is preparing to move into the preschool building and to design a building for the community as a permanent shelter. McKinley County and the Thoreau Chapter are contributing land, and the county is offering help with grading and gravel to renovate baseball and softball fields. He thanked the state and the committee. Mr. Yazzie told the committee that 1% of a 4% tax that the Navajo Nation collects goes to correctional facilities and 1% of the tax should go to facilities such as treatment centers.

The committee members expressed concern about being in a fishbowl of destruction with domestic violence, low income, alcohol, drugs and casinos. The committee asked staff to follow up to see what percentage of money goes into addiction programs in McKinley County. The committee also asked staff to see what percentage of money from OptumHealth goes into McKinley County and how much flexibility there is when funds are released.

Dr. Adelsheim said that the funds were designated for suicide prevention and substance abuse and that the community put together the program and gave it to the state. He said the program was not top-down directed, but was driven by local efforts, with the state providing resources. Dr. Adelsheim said that if a request is made to use funds for family-based programs, the community can use those funds for family efforts.

Carolyn Thomas Morris, director of Native American affairs, OptumHealth, said the response to the crisis in Thoreau is a grassroots community effort and noted that a group of elders worked out of the McKinley County Sheriff's Department. In response to the committee's

questions about funding, she said that the state has contributed approximately \$125,000, including \$25,000 from the IAD, to support community suicide prevention efforts and behavioral health treatment in Thoreau. She said that OptumHealth decided to allocate \$2 million over the next couple of years, 80% of which will go to prevention services, but because of budget cuts, there is less money going to services.

Regina Begay-Roanhorse, partner consultant, the Griffin Group, said that she works with Ms. Hall in implementing the Native Hope Program. She said that it is difficult to recruit community volunteers because transportation and living stipends are not allowed for volunteers. She said that she believes in after-school programs and intervention. She said the Native Hope Program needs more money for a treatment facility and for culture-based, not evidence-based, programs. She said that a Native American-based prevention program is not funded here. She stated that a culturally appropriate program called "Project Venture" was important but lacked funding. The committee asked staff to follow up on the program and issues of funding.

Virgil Davis, representative, IHS, said that things are moving forward with the IHS, which has committed \$100,000. He said that the IHS has to abide by the federal regulations, including requirements for federal acquisition, spending documentation and funding segregation. His role is to account for summer services and to request additional money for federal funding. He is looking at how to expand mental health services and provide services after the summer.

Upon an inquiry from the committee, Paula White, compliance officer, Gallup-McKinley County School District, spoke about how much the UCC has helped the district's schools by providing resources, personnel, training and funding. She said she is grateful for the DOH's training on suicide prevention for students and teachers.

Asked if the programs are reaching high school students, Ms. Hall said that summer activities were attended mostly by younger students. Native Hope involves ninth graders and Natural Helpers will be implemented in the high school in Thoreau as well as in 31 other high schools; both are peer-to-peer programs. She said that the school district is targeting the age group that needs integrative and behavioral health, but that it also needs to be thinking about 19- to 30-year-olds. She said that neither the school district nor the UCC have good strategies for dealing with that age group. She also said that the school district and the UCC need to do a better job of reaching high-risk teens.

In response to a question from the committee about whether there are clusters or correlations of the suicides in the community, Mr. Long said that the DBHS is continuing to work with epidemiologists, but it is not seeing clusters outside of families.

Mr. Long thanked everyone for coming in and thanked the committee members.

Mental Health and Native American Youth

Dr. Jack Callaghan, director, Public Health Division, DOH, discussed the division's involvement in mental health with respect to youth suicide prevention. Dr. Callaghan introduced Dr. Mary Ramos, school health officer, DOH, Nancy Kirkpatrick, health services administrator,

DOH, and Ms. Hall. Dr. Ramos discussed the background, strategies, partnerships and specific efforts of the DOH's youth suicide prevention efforts in Native American communities. According to the DOH, the New Mexico youth suicide rate has been approximately twice the national rate. In 2007, the rate was 21.0 per 100,000 while the national rate was 9.8 per 100,000. Within the past 12 months in New Mexico, American Indian students were almost twice as likely as white students to make a suicide attempt. From 2007 to 2008, the youth suicide rate for New Mexico American Indian youths age 15 to 24 years was 29.7 per 100,000, while the rate for white non-Hispanic youth was 19.8 per 100,000. In 2007, the national American Indian youth suicide rate was 20.3 per 100,000. The DOH's youth suicide prevention strategies include supporting collaborative suicide prevention efforts, reducing stigma, identifying at-risk youth, offering early intervention and treatment and promoting positive youth development in communities, schools and workplaces. The DOH works in partnership with numerous state, tribal and federal entities as well as with local school districts and community members. Specific DOH youth suicide prevention efforts include those in its Epidemiology and Response Division, which collects, analyzes and reports on youth suicide behaviors, makes recommendations on effective evidence-based strategies for prevention and coordinates youth violence prevention programs throughout the state; and those in the Public Health Division, which oversees the Office of School and Adolescent Health (OSAH). The OSAH's goal is to improve the health of all students and adolescents with priorities in school-based health centers, adolescent health promotion and youth suicide prevention. The budget for OSAH youth suicide prevention activities in the state is \$644,600, with an estimated \$344,800, or 53.5%, allocated for services in tribal communities. The Coalition for Healthy and Resilient Youth of McKinley County implements the Rez Hope Curriculum and Natural Helpers and Native Hope programs at Gallup High School and Thoreau middle and high schools. Natural Helpers is a peer-to-peer education program that engages youth as prevention educators for youth suicide, and Native Hope is an indigenous approach to youth engagement and empowerment that focuses on youth suicide prevention.

Ms. Hall stated that the Public Health Division has a presence in every community in the state. She said it was a privilege to work with the community in Thoreau and in a system that tried to break down the barriers to governmental agencies working together to serve community members. She also spoke of the importance of integrating funds. The committee expressed concern that the amount of money dedicated to youth suicide prevention in the state is way too low. In response to an inquiry from the committee, Ms. Hall said that \$125,000 from the state was going toward summer youth activities and upcoming programs. She said there is a need for ongoing school health programs and that additional schools and behavioral health service providers all will need funding. She said that intervention and prevention services are needed in the schools and that the programs need an effective approach in the community to try to reach at-risk youth who are not in school.

Upon an inquiry from the committee about how data were collected, Dr. Ramos said that she would be happy to follow up to get more detailed information. Ms. Hall said that if anything, the data were underreported. Dr. Adelsheim commented that the numbers can differ based on whether an autopsy is performed. He said that the appearance of clusters of suicides attracts people's attention, but the rate of suicides in the state has been stable since 2007. He

would like to see the model used in Thoreau developed in other situations over time. Dr. Callaghan noted that though the Public Health Division's mission is both prevention and treatment, prevention becomes almost symbolic because of the lack of funding. From the state's perspective, the Public Health Division would like to have a daily presence but ends up doing crisis management. He said \$644,000 is not a lot to work with.

Minutes

Upon a motion by Representative Alcon, seconded by Representative Madalena, the committee passed the minutes of the third meeting of the Indian Affairs Committee without objection.

Tour — Solid Waste Infrastructure

After adoption of the minutes, the committee received a tour of the Northwest New Mexico Regional Solid Waste Authority Red Rocks Landfill Facility.

Adjournment

There being no further business before the committee, the fourth meeting of the Indian Affairs Committee adjourned at 2:54 p.m.

**MINUTES
of the
FIFTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**October 11-12, 2010
Inn of the Mountain Gods Resort & Casino, Mescalero**

The fifth meeting of the Indian Affairs Committee (IAC) for the 2010 interim was called to order by Representative James Roger Madalena at 10:14 a.m. on Monday, October 11, 2010, at the Inn of the Mountain Gods Resort & Casino in Mescalero, New Mexico. Representative Madalena asked Mark Chino, president of the Mescalero Apache Tribe, to give an opening prayer.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Sen. Eric G. Griego (10/11)
Rep. Sandra D. Jeff (10/11)
Rep. Patricia A. Lundstrom
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Absent

Sen. Rod Adair
Sen. Lynda M. Lovejoy
Sen. George K. Munoz
Sen. John C. Ryan

Advisory Members

Rep. Ernest H. Chavez
Rep. Debbie A. Rodella

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Rep. Nick L. Salazar
Sen. William E. Sharer

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Damian Lara
Alise Rudio
Adan DelVal

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Monday, October 11 — Inn of the Mountain Gods Resort & Casino, Mescalero

Committee, staff and audience members introduced themselves.

Welcome and Status Update

President Chino welcomed the committee to Mescalero and to the Inn of the Mountain Gods Resort & Casino and gave a status update for the Mescalero Apache Tribe. President Chino told the committee that the tribe is blessed that it still resides on its ancestral homelands in the shadow of Sierra Blanca. He told the committee that he recently attended the grand opening of the American Indian Student Center at New Mexico State University (NMSU) in Las Cruces. The center will provide American Indian college students with a place to relax, study, eat traditional food and visit with other Indian students. President Chino told the committee that when he started college at the University of Arizona in 1972, he experienced culture shock and only lasted one semester. President Chino said that it is important for Indian students to have a place in school that is the next best place to home. He asked the committee to continue to support the center and the establishment of similar centers at other educational institutions in New Mexico.

President Chino said that the tribe is involved in trying to obtain a waiver for Medicaid so that beneficiaries can continue to obtain services through the Indian Health Service (IHS). He said that it is important for people to have adequate health care, especially in a time of budget cuts. President Chino said that the IHS is struggling to meet the needs of his tribe. He is the co-chair of an IHS work group on health care. He said that contract health care for the IHS is seriously outdated. The IHS funding formula is based on the number of tribal members, which is 4,600. However, the local service unit provides services to twice the number of members because the formula does not take into account Native Americans from other tribes. The IHS has to make unfortunate service choices; an individual has to be in danger of losing life or limb to receive services. The hospital has to lock down at night because it does not have staff or resources to provide basic services. President Chino said that a critical situation exists in Indian country. He said that he would like the situation to move from appropriation to entitlement. He is hoping for a legislative fix and more funds from Congress, but he also hopes that the federal government and states will work together.

President Chino said that the tribe would like to discuss the possibility of leasing water rights in order to gain income and benefit the surrounding communities. The Village of Ruidoso recently asked the tribe about leasing its water rights, but federal law prohibits tribes from leasing water rights. President Chino said that he met with the Office of the State Engineer to solicit support in asking New Mexico's congressional delegation for legislation to allow the tribe to lease its water rights. President Chino asked the committee to support the tribe's efforts to gain the support of the state engineer and the congressional delegation.

In other matters, President Chino asked the committee for its support in trying to obtain the

Fort Stanton property from the state. He said that the tribe has sentimental, cultural and historical ties to the property. He said that the property is languishing, and the tribe does not want to see developers fighting over it or using it for something that is not culturally appropriate. President Chino thanked the committee for its support with infrastructure money, technical assistance and capital outlay funds. He said that he appreciates the state's friendship and assistance.

President Chino introduced his wife, Selena L. Chino, who serves as a tourism commissioner for the Tourism Department and an outreach coordinator for Heal, Inc., a domestic violence prevention program in Ruidoso Downs. Ms. Chino discussed the funding battles for tourism and emphasized that the focus of tourism in New Mexico is and should remain on Indian culture. She also discussed domestic violence programs in the area and the need for a facility in Mescalero. She said that domestic violence is the number one killer in Indian country and that more funding and shelters are needed.

The committee expressed a concern regarding the meeting with the state engineer and indicated that staff would contact the Office of the State Engineer to address the issue.

Upon inquiries from the committee, President Chino said that the tribe is addressing the problem of elk overpopulation and reported that the fish hatchery is doing well but is in need of a permanent funding source.

The committee noted that it would like to see an expansion of human services and encouraged the tribe to submit requests for funds. President Chino also discussed the response to the youth suicide problem in Mescalero.

Upon a motion made by Representative Jeff, seconded by Representative Vaughn, the committee voted without opposition to draft a letter to the Tourism Department discussing the importance of tourism in the state and the need to continue to focus on Native American culture.

Long-Term Care at Fort Defiance Indian Hospital

Dr. Leland Leonard, interim chief executive officer, Fort Defiance Indian Hospital Board, Inc., told the committee that the board wants to build a skilled and nonskilled nursing facility to serve the Fort Defiance area. Dr. Leonard explained that pursuant to Public Law (PL) 93-638, the Indian Self-Determination and Education Assistance Act, tribes have the option to assume the operation of health care services in their communities from the IHS. He said that 16 chapters in the Fort Defiance service unit endorsed the board, which is a nonprofit corporation, to provide health care services pursuant to PL 93-638. After contracting with the IHS, the board began delivering health care services to the Fort Defiance area on March 29, 2010. The board is not an arm of the Navajo Nation but is approved as a tribal organization. Dr. Leonard requested help from the committee for funding a skilled and nonskilled nursing facility to serve the Fort Defiance area. The Fort Defiance Indian Hospital is in Arizona, just across the border from New Mexico. Sixteen chapters feed into the hospital. The board wants to build the nursing facility next to the hospital, in New Mexico, on a seven-acre parcel of land secured through the Navajo Nation. Dr. Leonard explained that the hospital had 1,674 users in the 61-70 age group in 2009,

which is a 30.7% increase from 2005. Dr. Leonard said that urban Navajos increasingly are returning to the Navajo Nation to live. Arizona and New Mexico have high-density populations of Native American residents over 60, but the elderly have to leave the area to find suitable nursing facilities. Although the board has start-up money to begin planning, Dr. Leonard requested help from the legislature for funding basic infrastructure and health care program development. The board also wants support with federal and foundation funding applications. Dr. Leonard said that the board is also pursuing other funding sources.

The committee asked Alvin H. Warren, secretary, Indian Affairs Department (IAD), if any federal funding is available for nursing facilities. Secretary Warren said that there are no appropriations, but there is authorization.

Upon an inquiry from the committee about which entity would pay for the general operation, Dr. Leonard said that he does not think that the Navajo Nation supports elder care. Roy B. Dempsey, board member, Fort Defiance Indian Hospital Board, Inc., and a Navajo Nation Council delegate, told the committee that the Navajo Nation understands that there is a need for elder care but is not yet prepared to build and operate facilities. Mr. Dempsey said that he wants the legislature's support.

Upon a motion by Representative Lundstrom, seconded by Senator Rodriguez, the committee voted without opposition to send a letter asking the New Mexico Finance Authority to conduct an assessment of the board's basic infrastructure needs.

Upon a motion by Representative Lundstrom, seconded by Representative Rodella, the committee voted without opposition to send a letter asking the University of New Mexico at Gallup to design a work force development training program for skilled nursing facility staff.

Upon a motion by Representative Lundstrom, seconded by Senator Pinto, the committee voted without opposition to send a letter informing the new president of the Navajo Nation after the general election that the legislature will work with the new president to enter into a joint powers agreement to fund programs for the elderly.

Caleb Roanhorse, secretary, Fort Defiance Indian Hospital Board, Inc., introduced other board members who were in the audience. Secretary Warren told the board members that the IAD could also provide assistance.

Tribal Infrastructure Fund Report

Before beginning the presentation, Secretary Warren said that he was grateful for the committee's strong support of the IAD before the Government Restructuring Task Force. Laurie Chapman, capital outlay manager, IAD, presented the committee with the Tribal Infrastructure Fund (TIF) Fiscal Year 2011 Report. The report identifies TIF projects that are on target and those that have been canceled or are having problems. The problem projects include those that are approaching an end date at which money will revert back. Ms. Chapman said that the emphasis right now is on getting projects going again after the capital outlay freeze. The 2009 progression is set for a quicker time frame. The 2010 projects are all just beginning again, so the

report does not contain much information on those projects. She also provided an analysis of TIF applications for fiscal year 2011.

The committee expressed concern about the lack of activity in the Cutter Lateral Project, which is a component of the San Juan River settlement. Because the project involves federal matching funds, the committee wants to be informed by the IAD if the committee needs to intervene. In response to questions from the committee about various other projects and the need to monitor progress, Ms. Chapman discussed the importance of direct communication with the individual chapters of the Navajo Nation overseeing the projects. Secretary Warren said that the IAD lost its capital outlay engineer, which means that the IAD cannot conduct site visits or devote as much time to direct communication as in previous years. The IAD is trying to obtain grant money for site visits.

Upon a motion made by Representative Begaye, seconded by Representative Vaughn, the committee voted without opposition to write a letter to the Legislative Finance Committee about the importance of filling the capital outlay engineer position.

Medicaid Task Force Update

Secretary Warren asked the committee for its formal support in the IAD's efforts to protect Medicaid benefits for American Indians. Lisa Marie Gomez, policy analyst, IAD, told the committee that in 2010, Kathryn "Katie" Falls, secretary, Human Services Department (HSD), established the Tribal-State Workgroup on Medicaid Redesign. The work group, which includes representatives from 18 tribes, nations and pueblos, met to address the protection of American Indian beneficiaries from potential Medicaid cuts to medical services offered through the IHS and tribal PL 93-638 facilities. The work group developed a proposal that is designed to protect access to existing Medicaid state plan services delivered at the IHS and tribal PL 93-638 facilities. The work group also wants to explore the possibility of: (1) expanding the benefits package to include services outside the IHS; and (2) developing a comprehensive set of benefits to include long-term care services. Ms. Gomez said that the proposal makes sense for the state because it attempts to make sure that federal dollars are available for New Mexico's residents. The proposal seeks to protect American Indian beneficiaries from the impacts of state budget shortfalls based on the unique legal and political status of American Indians. Due to the trust obligation, the federal government treats American Indian beneficiaries differently.

Ms. Gomez said that the state can contain Medicaid costs through eligibility, enrollment, benefits and rates. If no action is taken, she said that cost-containment strategies will adversely affect the health care of tribal members. As a result, the work group is proposing to submit a waiver application to the Centers for Medicare and Medicaid Services (CMS) in order to exempt American Indian beneficiaries from changes to the benefits package. The proposal will allow the state to protect for American Indian Medicaid beneficiaries services that are provided at the IHS and tribal PL 93-638 facilities and funded with 100% federal financial participation. The HSD is in the process of developing the waiver application and will submit it to the CMS, which must approve the waiver. At least 10 tribal governments and health organizations have submitted resolutions and letters supporting the proposal to the IAD and the HSD. If the CMS does not approve the waiver, the IHS and tribal PL 93-638 facilities will lose Medicaid funding

and be obligated to deliver services using their limited appropriations. Ms. Gomez said that a significant number of questions have developed concerning the waiver application and that the state is seeking guidance from the CMS on other options for implementing the proposal. Secretary Warren said that this is the first time a state has tried to obtain a waiver, and he asked for the committee's support.

Upon a motion made by Senator Griego, seconded by Representative Lundstrom, the committee voted without opposition to send a letter to the CMS and to copy New Mexico's congressional delegation in support of the proposed Medicaid waiver.

Senator Rodriguez requested the IAD to provide information at the committee's November meeting about which facilities are IHS facilities and which are PL 93-638 facilities.

Native American Issues and the Federal Patient Protection and Affordable Care Act (PPACA)

Ms. Gomez said that the five provisions of the PPACA that will have the largest impact on the states and their Native American populations relate to: (1) health exchanges; (2) Medicaid and the State Children's Health Insurance Program (SCHIP); (3) the IHS; (4) the Indian Health Care Improvement Act (IHCIA); and (5) grant opportunities for Native Americans, tribes and tribal organizations. The PPACA includes three provisions that treat Indians differently with respect to health exchanges: (1) providing for more frequent enrollment periods; (2) eliminating cost sharing; and (3) eliminating a minimum coverage penalty. In relation to Medicaid and SCHIP, the PPACA provides that the IHS, tribes, tribal organizations and urban Indian organizations qualify as express-lane agencies that are capable of collecting information and making a determination regarding program eligibility requirements. In addition, grants are available to the IHS and tribes to facilitate outreach and enrollment with Medicaid. With respect to the IHS, the PPACA: (1) provides that health programs operated by the IHS, tribes, tribal organizations and urban Indian organizations are the payer of last resort for services provided to Indians; (2) eliminates the sunset provision for some Medicare services furnished by certain Indian hospitals and clinics; and (3) includes certain costs incurred by the IHS for purposes of calculating out-of-pocket thresholds for Medicare. With respect to the IHCIA, the PPACA incorporated the IHCIA and made the reauthorization of the IHCIA permanent. The IHCIA authorizes the provision of health care to American Indians and Alaska Natives. The PPACA amends the Community Health Aide Program (CHAP) nationally. The CHAP allows tribes to elect to implement dental health aide therapist programs. The IHCIA provides grants and contracts with the IHS, Indian tribes, tribal organizations and urban Indian organizations to facilitate outreach, enrollment and coverage of Indians under social security health benefit programs, including Medicaid and SCHIP. Finally, the PPACA contains other grant opportunities for Native Americans, tribes and tribal organizations in the areas of maternal and child health services, trauma centers and education and training in health care.

Secretary Warren said that the PPACA marks a paradigm shift in Indian health care. He said it is important to understand that Indian people have limited access to health care and that now there are more options, but there is also more confusion. To ensure that the provisions in the PPACA that relate to Indians are implemented in New Mexico, the IAD is working with the

state to maximize funding, collaborate on health care reform initiatives and policies that will affect American Indians, ensure that state agencies include actions to implement the IHCIA and establish a work group to oversee implementation of the IHCIA. Secretary Warren said that the IAD will ask the committee for help with legislation to make sure that state agencies implement and adhere to certain provisions of the PPACA.

Following the presentation on the PPACA, Representative Madalena recessed the meeting at 4:20 p.m.

Tuesday, October 12— Inn of the Mountain Gods Resort & Casino, Mescalero

Senator Pinto reconvened the meeting at 9:09 a.m. on Tuesday, October 12, 2010, at the Inn of the Mountain Gods Resort & Casino. Secretary Warren gave an invocation.

Committee, staff and audience members introduced themselves.

Indian Resource Development (IRD) Program

Joe Graham, director, IRD program, NMSU, stated that the IRD program's mission is to assist tribal students in becoming agriculturalists, business people, engineers, resource managers and scientists who can contribute to the development and management of tribal resources in a culturally appropriate manner. The IRD program complies with Sections 21-10-1 through 21-10-3 NMSA 1978. Mr. Graham said that he has been working at NMSU for 30 years and that he has learned that it is important to engage the community as well as the university in the progress of Native American students. Mr. Graham discussed the IRD program's four community outreach objectives. First, to provide a measure of financial support to science and academic programs, the IRD program is collaborating with the American Indian Program at NMSU; Native Americans in the Science, Technology, Engineering and Mathematics Program at the University of New Mexico; and the American Indian Science and Engineering Society at the New Mexico Institute of Mining and Technology. Second, to provide development activities for tribal youth, the IRD has developed the Dream Makers Summer Program, the Dream Keepers longitudinal study and the Southwestern Indian Polytechnic Institute (SIPI) talent search. Third, to collaborate with academic institutions, programs and agencies to create beneficial opportunities for tribal students, the IRD program collaborated with the Navajo Agricultural Products Industry scholars program, tribal extension program activities, the SIPI natural resources program and the Pueblo of Laguna academic capital study. Fourth, to assist tribal entities in their engagement of academic institutions, the IRD program has developed business plans through the Arrowhead Center at NMSU and the Pueblo of Laguna elder bi-national indigenous exchange. In addition, the IRD program's institutional objectives include the following: (1) developing a vehicle for advocacy on behalf of tribal members within the NMSU system by incorporating the Tribal Voice working group and by recruiting and retaining tribal members as faculty; (2) providing professional development opportunities for tribal students nearing the completion of their degrees; (3) exposing tribal students to traditional, wise, novel and innovative concepts through the presentation of the work of tribal leaders, philosophers and academics; and (4) engaging the NMSU in promoting the program as an integral unit within the state land grant university.

Several students testified about their experiences with the IRD program. Alexandra Carlisle, an animal science major pursuing a degree in veterinary medicine, said that she decided to attend NMSU after participating in the Dream Makers Summer Program. Charlene Carr, who is pursuing a master's degree in soil science, said that by using the resources the IRD program offered, she was given the opportunity to present research, which helped her to overcome her fears about public speaking. Ms. Carr plans to pursue a doctoral degree and teach at NMSU. Jennifer Hill is a nontraditional student who said the IRD program helped her return to NMSU. Kai-T Blue Sky is a graduate from NMSU who now works at the Mescalero Apache Tribe's fish hatchery. He has given back to NMSU and tribal students by inviting participants in the Dream Makers Summer Program to the fish hatchery for a chance to gain hands-on experience.

When asked by the committee about budget concerns, Mr. Graham said that he had not spoken with the new NMSU president but that Wendy Wilkins, NMSU provost, is very supportive of the IRD program. The committee thanked Mr. Graham for his passion and dedication to Native American students.

Minutes

Upon a motion by Representative Lundstrom, seconded by Senator Rodriguez, the committee adopted the minutes of the fourth meeting of the IAC without objection.

Mescalero Response to Crisis

Dorlynn Simmons, chief executive officer, Mescalero Service Unit, IHS, said that after Mescalero experienced an initial cluster of suicides in 2009, she was dispatched for 90 days as the incident commander. From January 2009 to January 2010, there were five suicides, 60 suicide threats and 19 suicide attempts. Of the 19 individuals who attempted suicide, all were hospitalized. The first suicide was in August 2009, followed by four additional suicides. Most of the suicide threats occurred between September and November 2009. A coordinated crisis response was developed to determine the steps that needed to be taken, depending on whether the individual was an adult or a minor and whether the individual was intoxicated or sober. To prevent additional suicide attempts and suicide completions, the coordinated crisis response involved collaboration from local, county, state and national entities. In addition, suicide prevention activities were initiated. The response team provided training and support for emergency medical service providers and Bureau of Indian Affairs (BIA) law enforcement and tribal conservation officers; in addition, the response team trained medical providers in suicide risk assessment. The response team presented workshops in schools and in the community. In the three schools in the Ruidoso area, prevention groups provided training in suicide prevention and awareness. The response team also provided additional activities for the communities. The response team also met weekly with the tribal council.

Mescalero does not have a permanent mental health provider and needs to fill vacancies for a psychologist and a social worker. To meet continuing needs, services are being provided through telehealth services and temporary 120-day assignments from the IHS. In order to sustain a healthy community, the following actions are being considered: the reorganization of PL 93-638 funds; use of PL 93-638 social service programs; tribal funding of vacant positions; and obtaining grants. Ms. Simmons stated that grants should only be considered temporary or

short-term solutions. She said that Mescalero received a systems of care grant from the Substance Abuse and Mental Health Services Administration, which will provide about \$1 million per year for the next five years. Mescalero also received a Project SERV (School Emergency Response to Violence) grant from the U.S. Department of Education. Ms. Simmons said that she is pursuing additional funding opportunities as well.

Upon inquiry from the committee, Ms. Simmons stated that the response team has been very involved with schools in Mescalero, Tularosa, Ruidoso and Hondo, including offering health services, mental health services, suicide prevention groups and evening prevention activities. The response teams collaborates with the local Boys' and Girls' Clubs to provide additional evening and weekend activities. Ms. Simmons said that most of the suicide attempts and suicide completions were related to depression, family issues at home and the feeling that there is no one to talk to about problems. The age range for individuals who completed suicide was 14 through 23 years of age.

President Chino suggested that the committee hear from Coloradas Mangas, a 16-year-old who had serious problems and obtained help through the Honor Your Life Program. Mr. Mangas testified before Congress in March about suicide on the reservation.

Tribal Extension Program

Leah Stevenson, home economist, Tribal Extension Program, NMSU, introduced Kathy Landers, county program director, McKinley County Extension Office, NMSU, and Jeff Bader, northern district director, Cooperative Extension Service, NMSU. Ms. Stevenson said that because teaching Navajo culture to youths is important, tribal elders are volunteering to work with 4-H groups and to participate in various home economic projects. In addition, NMSU brings its programs to the community, such as providing programs about diabetic cooking, stress management and healthy eating habits. Ms. Stevenson said that the frequency of activities is limited due to budget cuts. There are tribal extension centers in Shiprock and Crownpoint. The centers' main focus is working with youths and making healthy after-school snacks, but the centers also conduct community service programs for elders. The Tribal Extension Program provides financial management workshops to teach high school students to budget and manage bills. Additional activities include 4-H junior livestock shows and workshops on various subjects such as self-esteem, greenhouses, landscaping, sewing and braiding and working with leather. Ms. Stevenson said that in one 4-H project, Navajo youths learned about traditional cooking and Indian tea wrapping for the Northern Navajo Fair in October. Mr. Bader said that the 4-H program is traditionally based on family involvement. Ms. Landers said that 4-H is about bringing children and parents together to do something fun.

Gallup Public Defender Office

David Eisenberg, deputy chief public defender, Gallup, reported on the status of trying to establish a public defenders office in Gallup. He noted that the public defenders in Gallup serve a substantial Native American population. He said that a request for proposals for a building was completed, a bidder was awarded the project, drawings were made and a lease was signed, but the process might have to start all over because the lease did not work out. The public defenders might move into the sheriff's office temporarily and then eventually move into the

county courthouse office complex. Mr. Eisenberg said that the Public Defender Department is committed to getting the Gallup office open. The department has hired three attorneys for the Gallup office; two are locals who are committed to working in the local community.

The committee noted that the Gallup public defenders serve a high population of Native Americans and carry a caseload that is second only to Bernalillo County. The committee approved the idea of locating the office at the county courthouse office complex.

Upon a motion by Representative Lundstrom, seconded by Representative Rodella, the committee voted without opposition to send a letter congratulating the Public Defender Department on its work and encouraging collaboration with the county.

Gaming Revenue Distribution

John Monforte, executive director, Gaming Control Board (GCB), presented the 2009 Compulsive Gambling Funds Report. Mr. Monforte broke down the gaming economic landscape by industry in fiscal year 2010. He said that New Mexico has 56 nonprofit gaming operator licenses, five racetrack gaming operator licenses, 24 tribal gaming operations and two proposed tribal gaming operations.

Georgene Louis, state gaming representative, GCB, said that her primary responsibility is to monitor compliance of 14 tribal-state class III gaming compacts. She said that compulsive gambling issues have always been a high priority. The compacts require a gaming enterprise to spend no less than .25% of its net win annually to support programs for the treatment and prevention of compulsive gambling in New Mexico. The compacts require that a substantial portion of funds be distributed to an organization that provides counseling, intervention or other services for compulsive gamblers in New Mexico, without regard to race or tribal membership. The 2007 compact requires nine gaming tribes to publish their compulsive gambling expenses. Ms. Louis said that the tribal audit methodology includes: calculating the amount tribes are required to spend based on their net win from the last audited fiscal year, verifying the amount by inspecting source documents; confirming the amount; and requiring compliance, if necessary. Some tribes report the information based on the calendar year and some on the fiscal year. Ms. Louis told the committee that of the \$1,828,562 that was spent in 2009 on compulsive gambling expenses, 19.43% went to training and administration; .04% went to Victory Outreach Ministry; 2.19% went to the New Mexico Asian Family Center; 18.4 % went to The Evolution Group, a private counseling firm; 14.43% went to the New Mexico Council on Problem Gambling (NMCPG); 24.6% went to the Responsible Gaming Association of New Mexico (RGANM); 17.23% went to tribal health centers; and 3.68% went to marketing. Individual spending in 2009 by the tribes was as follows: the Pueblo of Isleta was required to spend \$231,142 and reported spending \$249,023; the Pueblo of Laguna was required to spend \$236,831 and reported spending \$254,437; Ohkay Owingeh was required to spend \$47,168 and reported spending \$55,176; the Pueblo of Sandia was required to spend \$407,028 and reported spending \$463,040; the Pueblo of San Felipe was required to spend \$45,668 and reported spending \$52,495; the Pueblo of Santa Ana was required to spend \$131,354 and reported spending \$224,961; the Pueblo of Santa Clara was required to spend \$52,796 and reported spending \$65,003.87; the Pueblo of Taos was required to spend \$21,938 and reported spending \$41,275; and the Pueblo of Tesuque was

required to spend \$55,626 and reported spending \$79,868. For the most part, the tribes spent more than required. Racetrack gaming operators, which are required to spend .025% of net take to support programs for the treatment and assistance of compulsive gamblers, spent \$646,175 in 2009. Nonprofit gaming operators are not required to spend such funds. The gaming industry spent a total of \$2,474,737 to support compulsive gambling programs in 2009.

Upon an inquiry from the committee, Ms. Louis said that 19.43%, or \$284,000, of the \$1.8 million goes to administration of programs. She said that the RGANM, which is made of 12 to 13 gaming tribes, trains employees at casinos and is not directed at individuals who have gambling problems. The Evolution Group offers three programs and in-house treatment facilities. The New Mexico Asian Family Center treats compulsive gambling. Victory Outreach is a church organization that has counseling services.

Demesia Padilla, board member, GCB, said that 2% of gamblers will become compulsive gamblers. The board requires gaming operator licensees to complete a gambling assistance plan upon licensure. Components of the plans include working with the Department of Health, conducting employee training and advertising and making available a toll-free telephone message about compulsive gambling. The board also implements a self-exclusion program that allows problem gamblers to exclude themselves from tribal gambling facilities.

Levi Tenbrink, training coordinator, NMCPG, said that the NMCPG provides services for problem gamblers and thanked the tribes for their support. Mr. Tenbrink said that the NMCPG is one of the top three programs in the nation for problem gambling and that Florida is the only state that comes close to New Mexico in terms of expenditures. The NMCPG operates a toll-free 24-hour hotline, holds conferences for training counselors, provides information on the help line for intake and provides vouchers to clinicians for counseling.

Upon an inquiry from the committee, Mr. Tenbrink said that it is difficult to pinpoint treatment because gambling can be a substitute addiction. Gambling addicts require long-term treatment and suffer from a high rate of relapse. He said, however, that the treatment fund has made a huge difference, and New Mexico has one of the lowest rates of compulsive gambling.

The committee requested that the NMCPG provide its financial and compliance audits to the committee. Mr. Tenbrink indicated that he would provide them to the staff.

Native American Health Care Needs and the IHS

Rear Admiral Richie Grinnell, acting director, Albuquerque Area IHS, gave the committee an overview of the Contract Health Services (CHS) Program. Rear Admiral Grinnell said that the IHS delivers health care services to eligible American Indians and Alaska Natives through direct health services and the CHS. The services vary widely, depending on the site. There are three medical centers nationwide, including two federal facilities and one tribal facility. Some of the medical service sites do not have inpatient or outpatient facilities and rely totally on the CHS. In order to receive treatment, a patient must provide proof of being an enrolled member, or a descendant of an enrolled member of a federally recognized tribe. Rear Admiral Grinnell said that the CHS is an integral part of the IHS because the IHS purchases health care services from

non-IHS providers to support direct care facilities. CHS funds are used for a wide range of services including primary care, laboratory and emergency care services. CHS regulations allow funds to be expended when: (1) there is no accessible direct care facility; (2) necessary services, such as emergency or specialty care, are not available at the IHS or tribal facility; and (3) demand is greater than capacity. To be eligible for the CHS program, patients must reside in a the CHS delivery area as a member of the specific tribe in the area, or in a CHS delivery area and have close economic and social ties to a tribe, such as being married to a tribal member or employed by a tribe. Other persons eligible for the CHS are non-Indian women who are pregnant with the child of an eligible Indian, certain non-Indian members of the household of an eligible Indian and adopted and foster children and stepchildren. According to Rear Admiral Grinnell, funds are distributed using a 2001 formula. In 2001, the CHS received approximately \$431 million; in 2005, the CHS received approximately \$480 million; and, in 2010, the CHS received approximately \$731 million in funding. A new funding formula consists of three basic factors multiplied together: (1) the active user population; (2) the relative cost of purchasing services; and (3) access to care.

Dr. Leonard Thomas, chief medical officer, CHS Program, said that there are a high number of cases with unmet needs because the CHS probably receive half of what it needs. He said that smaller sites are able to serve the needs of some lower-priority cases because money from catastrophic cases goes back into the budget. He said that the IHS director should improve collaboration and consultation with tribes by improving data sources and establishing health care priorities and conducting quarterly budget reviews, promoting transparency, improving the quality of care and improving Indian health care internally through customer service and support staff.

Upon an inquiry from the committee, Dr. Thomas said that co-payers such as Medicare and Medicaid pay first, and then the CHS pay the remainder. When asked about the problems in Mescalero with the hospital having to close its doors at night, Dr. Thomas said that the IHS offered after-hours and weekend urgent care, but that there are no full-time emergency room services. He said that due to lack of funding and staff, emergency services are not adequate for the population.

Representative Madalena asked staff to draft a house joint memorial requesting Congress to make the IHS an entitlement program. Representative Madalena also asked IHS staff to come before the legislature to provide information on Indian health care issues.

Adjournment

There being no further business before the committee, the fifth meeting of the IAC adjourned at 3:43 p.m.

**MINUTES
of the
SIXTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**November 23-24, 2010
Room Vista A, Buffalo Thunder Resort, Pueblo of Pojoaque
Room 322, State Capitol, Santa Fe**

The sixth meeting of the Indian Affairs Committee (IAC) for the 2010 interim was called to order by Representative James Roger Madalena at 10:21 a.m. on Tuesday, November 23, 2010, at the Buffalo Thunder Resort in the Pueblo of Pojoaque.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Rep. Sandra D. Jeff (11/24)
Rep. Patricia A. Lundstrom (11/24)
Sen. George K. Munoz (11/23)
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez

Absent

Sen. Rod Adair
Sen. Eric G. Griego
Sen. Lynda M. Lovejoy
Sen. John C. Ryan
Rep. Gloria C. Vaughn

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan
Sen. Richard C. Martinez (11/24)
Rep. Debbie A. Rodella
Rep. Nick L. Salazar (11/24)

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

Guest Members

Rep. Thomas A. Anderson (11/24)

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Damian Lara, Staff Attorney, Legislative Council Service (LCS)
Alise Rudio
Adan Delval

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Tuesday, November 23 — Pueblo of Pojoaque

Committee members introduced themselves.

Welcome; Pueblo of Pojoaque Status Update

Governor George Rivera welcomed the committee to the Pueblo of Pojoaque and Buffalo Thunder Resort. He thanked the committee for supporting Buffalo Thunder Resort and for helping Indian Country become more economically self-sufficient. Governor Rivera said that the resort, which has been open two years, initially started with about 100 employees and now has about 1,800 employees. The resort employs about 150 of the pueblo's 417 members but benefits the whole community. Governor Rivera discussed the refinancing and restructuring of bonds for Buffalo Thunder, which, by restructuring debt based on the next four to five years, will give the resort time to move out of the recession. Governor Rivera said that there might be some gaming issues coming before the legislature when the session begins. He said that he believes that the Gaming Control Board has gone beyond its authority in the way that it calculates net win. He said that the issue of whether the board is trying to collect additional revenue affects all gaming tribes. He said that it would be ideal to work something out with the legislature and Governor-Elect Susana Martinez. Governor Rivera noted that the *Aamodt* Litigation Settlement Act passed the U.S. Senate and would continue to the U.S. House of Representatives. Governor Rivera said that President Barack Obama has said that he would sign the bill. Governor Rivera thanked the committee for its work.

The committee expressed concern about the impact of a recent Ninth Circuit Court case, *Rincon Band v. Schwarzenegger*, and its impact on the gaming compacts and a state's ability to tax tribes if revenue is put in the general fund. The committee asked staff to review the case. The committee suggested that new legislators take a Native American studies class to learn about how the state does business with New Mexico's nations, tribes, pueblos and urban Indians. The committee said that the biggest concerns for new legislators usually relate to tribal jurisdiction with respect to liquor licensing, tobacco regulation and the enforcement of driving while intoxicated (DWI) laws. Governor Rivera said that the Pueblo of Pojoaque has the toughest DWI laws anywhere. The committee expressed its concern about citing non-Native individuals in tribal court for civil fines in order to raise money for the pueblo. In response, Pojoaque Judge Frank Demolli said that he did not think that tribal officers were stopping people to raise funds. He said that the road through the Pueblo of Pojoaque used to be considered one of the most dangerous highways in the country but that has changed due to strong law enforcement from the pueblo.

Indian Water Rights Settlement Report

John R. D'Antonio, Jr., state engineer, introduced Estevan Lopez, Interstate Stream Commission director, who discussed the Office of the State Engineer's 2010 Indian Water Rights Settlement Fund Report. The report discussed: (1) the status of proposed Indian water rights settlements requiring state financing; (2) the distribution of funds from the Indian Water Rights Settlement Fund to implement approved settlements; and (3) recommendations on appropriations to the fund necessary to implement timely Indian water rights settlements.

Status of Proposed Indian Water Rights Settlements

There are currently three water rights settlements pending: the Navajo Nation settlement in the San Juan River adjudication, the settlement agreement with the Pueblos of Nambe, Pojoaque, Tesuque and San Ildefonso in the *Aamodt* adjudication and the Taos Pueblo settlement in the Rio Pueblo de Taos/Rio Hondo adjudication. Mr. D'Antonio said that the Navajo Nation settlement will provide associated water development projects for the benefit of the Navajo Nation and non-Indian communities in exchange for a release of Navajo water claims that potentially could have displaced existing non-Indian water rights in the basin. The *Aamodt* settlement agreement will adjudicate the water rights of the four pueblos in the ongoing adjudication of water rights in the Nambe-Pojoaque-Tesuque stream system. Finally, the Taos Pueblo settlement will adjudicate the Pueblo of Taos' claims and will expedite the adjudication of non-pueblo claims to water rights in the ongoing Taos area water rights adjudication suit. In addition to resolving the claims of the Pueblo of Taos, the settlement agreement addresses several issues of concern to non-Indian water rights owners, including the preservation of existing acequia water uses, the preservation of existing acequia water-sharing arrangements between the pueblo and non-Indian acequias on the Rio Lucero and the Rio Pueblo and the allocation of San Juan-Chama Project water available for the settlement.

Distribution of Money from the Indian Water Rights Settlement Fund

The \$10 million appropriated in 2007 is the first appropriation made to the fund since the fund was created in 2005. The \$10 million is no longer in the fund; it was taken out by the 2009 legislature and replaced with a severance tax bonding fund authorization in the amount of \$10 million.

Funding Recommendations

The total cost share for each of the three settlements is as follows (figures indicated are in thousands): \$50,000 for Navajo; up to \$50,000 for *Aamodt*, plus construction cost increases; and \$14,490 for Taos. This totals \$114,490. The Office of the State Engineer and the Interstate Stream Commission recommend that the 2011 legislature appropriate a total of \$15.2 million to the Indian Water Rights Settlement Fund. This is included in the Interstate Stream Commission's budget request.

Upon inquiry from the committee, Mr. D'Antonio expressed concern that if the U.S. House of Representatives goes forward with the Indian water rights settlements, the state will not have matching funds. Mr. D'Antonio said that the settlement explains how much water the Navajo Nation will receive for particular projects and discusses management of the water. He said that the Navajo Nation will control its own water; however, the nation has agreed that the state

engineer will have jurisdiction over transfers of water off the reservation. The committee expressed concern about budget cuts to the Office of the State Engineer. Mr. D'Antonio said that the office has had to cut meetings and travel, which help to educate pueblos, tribes and surrounding communities about the settlements.

Fort Sill/Chiricahua-Warm Springs Apache: Past, Present and Future

Jeff Houser, tribal chair, Fort Sill Apache Tribe, introduced Leland Michael Darrow, tribal secretary, Fort Sill Apache Tribe. Mr. Darrow said that the Fort Sill Apache Tribe is made up of the descendants of the Chiricahua Apache who were held as prisoners of war by the United States from 1886-1914. The Chiricahua Apache speak a southern Athabascan dialect and are most closely affiliated with the Mescalero Apache, Jicarilla Apache, Lipan Apache, Kiowa Apache and Western Apache and the Navajo. The ancestral homelands of the Chiricahua Apache include what is now known as southern Arizona, southern New Mexico, northwestern Sonora and northeastern Chihuahua. Mr. Houser said that in 1968, the Indian Claims Commission found that approximately 15 million acres of land were taken by the United States from the Chiricahua, Warm Springs and Fort Sill Apache tribes without payment or compensation.

Mr. Darrow said that in 1980, the tribe began efforts to secure land in its ancestral homelands but lacked funding. In 1998, the tribe found funding and bought a 30-acre parcel in Luna County, which was taken into trust for the tribe in 2002. In 1999, the tribe acquired a half-acre parcel of trust land in Lawton, Oklahoma, where they opened a casino; however, the Comanche Nation filed lawsuits that blocked approval of the Fort Sill Apache gaming compact with Oklahoma. In 2007, the United States ratified a settlement to the lawsuit, in which the United States stipulated that the Fort Sill Apache Tribe has no reservation on Oklahoma but is a successor-in-interest to the Chiricahua and Warm Springs Apache tribes. According to the settlement, the United States agreed to accept an application for a reservation proclamation for a parcel of trust land at Akela, New Mexico. In 2007, the Fort Sill Apache Tribe built a temporary casino at Akela, but the United States still has not processed the reservation proclamation application. When the tribe attempted to offer bingo in 2009, it received a notice of violation from the National Indian Gaming Commission. The tribe is appealing the notice of violation; meanwhile, the tribe continues to operate a restaurant and smoke shop at Akela. The tribe would like to expand its operation at Akela, has acquired a parcel of land at the former Warm Springs reservation and is exploring development at Truth or Consequences. Mr. Houser said that the tribe is currently operating a casino in Oklahoma that has 300 employees. The tribe would like the committee's support in its efforts to return to its homelands in New Mexico.

The committee acknowledged the trauma caused to the tribe by the federal government and the military and noted that many other tribes in New Mexico experienced similar histories.

Representative Madalena recessed the meeting at 3:34 p.m.

Wednesday, November 24 — Room 322, State Capitol

Representative Madalena reconvened the meeting on Wednesday, November 24, 2010, at 9:18 a.m. in Room 322 of the State Capitol in Santa Fe.

Native American Veterans' Income Tax Settlement Fund Report

Dorothy Rodriguez, secretary-designate, Taxation and Revenue Department, introduced Ron Cruz, deputy director of taxation and revenue. Secretary-Designate Rodriguez discussed department efforts to administer the Native American Veterans' Income Tax Settlement Fund by consulting with tribal leaders, developing regulations, creating and distributing forms, posting information on web sites and processing claims. She said that the department has received 1,068 claims, issued 609 refunds and denied 428 claims and has 31 pending claims. She said that the total appropriation for the fund was \$1 million, that \$756,832 has been paid from the fund, with an average refund amount of \$1,243, and that the fund balance is now down to \$99,760. It was originally estimated that approximately 7,000 Native American veterans might qualify, but that estimate was a little off and now the fund will be depleted fairly soon.

Upon inquiry from the committee, Secretary-Designate Rodriguez said that the application process takes approximately 30 days and that the process can be slowed down if it goes to the federal government for further review. She said that outreach was attempted through radio and newspaper announcements. Mr. Lara said that outreach has been reduced due to the lack of money left in the fund.

Minutes

Upon a motion by Representative Jeff, seconded by Senator Rodriguez, the committee adopted the minutes of the fifth meeting of the IAC without opposition.

Cigarette Tax Credit Stamps as Units Sold in Indian Country

Attorney General Gary King and Albert Lama, chief deputy, Office of the Attorney General (OAG), told the committee that changes were made to the tax on tobacco sales. Attorney General King said that it is important to make sure that packs of cigarettes are not being sold without a stamp because the state loses out on tax revenue. He said that in 1999, the OAG reached a major settlement with the tobacco companies. According to the Master Settlement Agreement, the state will receive \$40 million based on units sold. The money goes straight into the general appropriation fund after certification. The money from this settlement is to be used to ameliorate the effects of smoking on health care costs. Attorney General King said that a mistake was made in a bill in 2010 that did not clearly define one set of cigarettes. Thus, a bill is being introduced to correct that mistake. Attorney General King also said that state attorney generals across the nation are also looking at the increased rate of smoking among teenagers.

Nan E. Erdman, assistant attorney general, Litigation Division, OAG, said that the proposed bill makes two specific changes. It changes the definition of "units sold". The new definition includes tax credit sales on nonparticipating manufacturers. It also clarifies the use of stamps on packs of cigarettes, which makes enforcement easier.

Upon inquiry from the committee, Attorney General King said that the proposed bill should not impact the tribes because the tribes can still charge less tax, approximately \$.75 per package versus \$2.66 off the reservation. Under the Master Settlement Agreement, tobacco companies that are participating in the settlement have to pay \$5.50 per carton, while those who are not participating do not. The proposed legislation will require nonparticipating companies to pay \$5.50 per carton into escrow. After 25 years, if the OAG does not file suit against the nonparticipating companies, the companies can keep the money in the escrow accounts. Attorney General King said that if the nonparticipating companies are required to pay into escrow, there could be an impact on tribes if the nonparticipating companies increase their prices and fewer people buy cigarettes on the reservation. However, he said, the increased cost also could have a health benefit.

The committee requested that the OAG work with the Indian Affairs Department and tribal leaders to gain consensus on the proposed legislation.

Endorsement of Legislation

Mr. Lara addressed the committee in regard to proposed legislation for the 2010 legislative session.

Bill A

Sponsored by Senator Munoz, the bill proposes to add the following text: "The state also recognizes a local county government as having the capability and capacity to act as a fiscal agent for the chapters of the Navajo Nation within the exterior boundaries of the county."

Mr. Lara stated that the Navajo Nation has not yet seen the proposed legislation. He also indicated that there are some cases where the Navajo Nation likes to see that all projects go through its capital improvements office. Secretary of Indian Affairs Alvin Warren stated that there are pros and cons to be considered with the new administration. The committee also stated that the legislature should seriously consider the government-to-government relation with the Navajo Nation. In addition, the committee indicated that the bill is permissive because it includes the word "may" and not "shall" and therefore does not impose a requirement.

Upon motion by Representative Lundstrom, seconded by Representative Begaye, the committee voted without objection to table the bill and let the new Navajo Nation government discuss these issues.

Bill B

Sponsored by Representative Begaye, the bill proposes providing the lottery scholarship for residents who attend tribal colleges. Committee members stated that this legislation has been proposed before. The bill has passed in the house of representatives but has died in committee in the senate.

Upon motion by Representative Lundstrom, seconded by Senator Rodriguez, the committee voted without objection to endorse the bill. Senator Pinto will co-sponsor the bill on the senate floor.

Memorial C

Sponsored by Representative Madalena, the memorial proposes returning control of the Jemez State Monument to the Pueblo of Jemez.

Upon motion by Representative Lundstrom, seconded by Representative Powdrell-Culbert, the committee voted without objection to endorse the memorial.

Memorial D

Sponsored by Representative Madalena, the memorial proposes changing the funding mechanism for the Indian Health Service to an entitlement program.

Upon motion by Representative Lundstrom, seconded by Representative Powdrell-Culbert, the committee voted without objection to endorse the memorial.

Memorial E

The memorial proposes to assist the Navajo Nation to develop a foster care and subsidized adoption program plan.

Upon motion by Representative Lundstrom, seconded by Representative Alcon, the committee voted without objection to endorse the memorial, with Representative Begaye as sponsor.

Adjournment

There being no further business before the committee, the sixth meeting of the IAC adjourned at 12:07 p.m.

ENDORSED LEGISLATION

INTERIM INDIAN AFFAIRS COMMITTEE
2010 PROPOSED LEGISLATIVE ENDORSEMENTS

<u>202 File #</u>	<u>Type</u>	<u>Sponsor</u>	<u>Description</u>
.182787.1	Bill	Sen. Munoz	Clarifying that counties may act as fiscal agents for chapters of the Navajo Nation
.183389.1	Bill	Rep. Begaye	Providing lottery scholarships for residents attending tribal colleges

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<u>202 File #</u>	<u>Type</u>	<u>Sponsor</u>	<u>Description</u>
.183107.1	Memorial	Rep. Madalena	Returning control of the Jemez State Monument Heritage Area to the Pueblo of Jemez
.183106.1	Memorial	Rep. Madalena	Changing the funding mechanism for the Indian Health Service to an entitlement program
.183324.1	Memorial	None*	Assisting the Navajo Nation to develop a foster care and subsidized adoption program plan

* Indian Affairs Department Request