INDIAN AFFAIRS COMMITTEE

2012
INTERIM
FINAL REPORT

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

INDIAN AFFAIRS COMMITTEE
2012 INTERIM FINAL REPORT

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2012 Interim Summary

INDIAN AFFAIRS COMMITTEE
2012 INTERIM EXECUTIVE SUMMARY

Since its inception in 1989, the Indian Affairs Committee (IAC) has addressed, by post-session action of the New Mexico Legislative Council, issues that disproportionately affect Native Americans residing in New Mexico. In fulfillment of its mission, the IAC held seven meetings during the 2012 interim, conducted at six pueblos, one chapter of the Navajo Nation, the Jicarilla Apache Nation, Navajo Technical College and other locations accessible to tribal leaders and Native Americans.

This interim, the members of the IAC focused on the priorities and concerns of the Indian Affairs Department (IAD), the Department of Environment, the Navajo Nation and tribal leadership. The Public Regulation Commission urged tribes to fill out Native American utility and telecommunications tax exemption forms to aid in projects, and the New Mexico Gas Company stated that there are tribes in New Mexico that are eligible for gross receipts tax exemptions. Moreover, the IAC received a presentation on expanding utility service to Indian country.

The Human Services Department provided an update to the IAC on the importance of tribal input into the Medicaid Centennial Care plan, stating that the department had met with almost 900 Native American consumers and reviewed 70 pages of Native American stakeholder analysis and recommendations from tribal leadership, tribal stakeholders, individual entities and organizations.

The IAD discussed with the IAC the 2001 Indian Gaming Compact that is set to expire in 2015. The governor does not have a timetable for negotiations. Tribes expressed concerns that compacts could expire before negotiations are complete. Additionally, the tribes reminded the IAC that the state is required to negotiate in good faith. The IAC requested a follow-up meeting on this issue at the end of the interim.

The IAC received a presentation on domestic violence in tribal communities, where the rate of victims is significantly higher than in the non-Native American population. The presenters stressed the need for cultural awareness training for law enforcement officers to prepare them for domestic violence cases, as well as the need for resources and a safe place for victims to stay.

A presentation from the Joint Education Tribal Team (JETT) prompted the IAC to consider the effect that a well-managed impact aid program, as well as an Indian policies and procedures (IPP) plan, could have in reducing the disparities that Native American communities experience. The IAC also discussed the formation of a Navajo charter school, a joint project between New Mexico and Arizona that would be the first charter school developed within the Navajo Nation.

The IAC also discussed, in conjunction with the tribes and the Office of the State Engineer, the Aamodt settlement. Funding the state's share for the Aamodt, Taos and Navajo water settlements was of greatest concern.

Finally, the IAC endorsed six pieces of legislation for the 2013 legislative session.

2012 Approved Work Plan and Meeting Schedule

2012 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
INDIAN AFFAIRS COMMITTEE

Membership

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Ray Begaye
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. Richard C. Martinez
Sen. George K. Munoz
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. James E. Smith

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Ernest H. Chavez
Sen. Eric G. Griego
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Antonio "Moe" Maestas
Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Sen. William E. Sharer

Work Plan

The New Mexico Legislative Council first created the Indian Affairs Committee (IAC) in 1989 and has continuously created the IAC ever since. On May 9, 2012, the IAC was once again created by the New Mexico Legislative Council to address issues and policies that impact Native Americans in New Mexico. In view of the fact that the IAC aims to address issues and policies relating principally to New Mexico's Native American population, the IAC strives to conduct its meetings in locations that are accessible to the state's tribal members and their leaders. Moreover, meeting at the various Indian nations, tribes and pueblos in New Mexico facilitates government-to-government cooperation. The IAC meetings are essential to the work of the legislature in addressing the needs of this constituency.

Because the issues that affect Native Americans transcend any one subject matter, the committee will coordinate, as needed, with other committees regarding presentations of subject matter of common concern. The committee proposes to explore and discuss the topics in each major issue area affecting Native Americans during the 2012 interim as follows:

A. State-Tribal Relations:

1. study the feasibility of state programs to increase marketing efforts to promote Native American enterprises pursuant to SM 61 (2012);

2. review the process for entering into and renewing the Indian Gaming Compact;
3. study the process to establish state recognition of Indian nations, tribes and

pueblos in New Mexico;

4. review the progress of the coordinated multiagency five-year plan to address uranium legacy and cleanup of abandoned uranium mining and milling sites led by the federal Environmental Protection Agency;

5. discuss state resources available to Native American farmers and ranchers affected by severe drought conditions and Indian resource development institutes focused on agriculture, engineering and business education;

6. assess state resources for recovery assistance to the pueblos affected by the severe wildfires of 2011;

7. reevaluate the settlement of state income tax refund claims from the Native American Veterans' Income Tax Settlement Fund;

8. review voter redistricting in communities of interest;

9. review state-tribal jurisdiction on domestic matters, including enforcement of protective orders; and

10. evaluate state agency reports on activities pursuant to Section 11-18-4 NMSA 1978.

B. Health:

1. assess health care for Native Americans and in Native American communities;

2. evaluate response to suicides in Indian country, including:

    a. implementation of a statewide clearinghouse for Native American suicide prevention and culturally based suicide prevention initiatives for Native Americans as mandated by SB 417 (2011 regular session); and

    b. investigations of deaths due to exposure or on railroad tracks;

3. review mental health programs and services for Native Americans; and

4. explore issues of domestic violence against Native American women and children.

C. Development in Indian Country:

1. discuss capital outlay concerns, including tracking the expenditure of allocated funds, alternative funding sources and coordination with the Navajo Nation, including chapter certifications under the Navajo Nation's Local Governance Act;

2. review the funding of projects from the Tribal Infrastructure Project Fund, including the projections of allocated amounts pursuant to Section 7-27-10.1 NMSA 1978;

3. review the funding of the Indian water rights settlements, including the Navajo, Aamodt and Taos Pueblo, and Abeyta Indian water rights settlements, including the use of severance tax bonding capacity;

4. study the feasibility of installing center median guardrails on rural United States Highway 550 for public safety pursuant to SM 36 (2012); and

5. explore tribal utility projects on Indian lands, including gas and electric projects.

D. Education:

1. evaluate the implementation of the Indian Education Act, the American Indian Post-Secondary Education Act and general education of Native Americans, including improvements to performance;

2. review Native American study programs and resources at higher education institutions; and

3. study the feasibility of providing lottery scholarships to otherwise eligible students who attend tribal colleges.

Indian Affairs Committee
2012 Approved Meeting Schedule

Date	Location
June 21	State Capitol, Santa Fe
July 26-27	Dulce/Beclabito Chapter
August 30-31	Albuquerque/Pueblo of San Felipe
September 24-26	Pueblo of Laguna/Crownpoint/Gallup
October 25-26	Pueblos of Santa Clara/San Ildefonso
November 26-27	Pueblo of Pojoaque/Santa Fe

Agendas

Revised: June 19, 2012

TENTATIVE AGENDA
for the
FIRST MEETING
of the
INDIAN AFFAIRS COMMITTEE

June 21, 2012
Room 307, State Capitol

Thursday, June 21

10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

10:05 a.m. **Programs and Personnel of the Indian Affairs Department (IAD)**
—Arthur P. Allison, Secretary, IAD

11:00 a.m. **Tribal Infrastructure Funds and Projects and Capital Outlay Projects**
—Arthur P. Allison, Secretary, IAD
—Graham Knowles, Community Services Manager, Department of Environment

12:00 noon **Lunch**

1:00 p.m. **2012 State-Tribal Summit — Summary**
—Terry Aguilar, Governor, Pueblo of San Ildefonso
—Sherrick Roanhorse, Chief of Staff, Office of the President and Vice President, Navajo Nation
—Arthur P. Allison, Secretary, IAD
—Autumn Monteau, General Counsel, IAD

3:00 p.m. **2012 Legislation — Summary**
—Damian Lara, Staff Attorney, Legislative Council Service (LCS)
—Melissa Candelaria, Law Student Intern, LCS

3:30 p.m. **Discussion of Focus Areas, Work Plan and Meeting Schedule**
—Damian Lara, Staff Attorney, LCS
—Melissa Candelaria, Law Student Intern, LCS

4:00 p.m. **Adjourn**

Revised: July 24, 2012

TENTATIVE AGENDA
for the
SECOND MEETING
of the
INDIAN AFFAIRS COMMITTEE

July 26, 2012
Administration Building, Hawks Drive
Jicarilla Apache Nation, Dulce

July 27, 2012
Beclabito Chapter House, Beclabito

<u>Thursday, July 26</u> — Administration Building, Hawks Drive, Dulce

10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

10:05 a.m. **Welcome and Status Update — Jicarilla Apache Nation**
—Levi Pesata, President, Jicarilla Apache Nation

11:00 a.m. **Capital Outlay Projects**
—Arthur P. Allison, Secretary, Indian Affairs Department (IAD)
—Jerry Sandoval, Economic Development Director, IAD

12:00 noon **Lunch**

1:00 p.m. **State-Tribal Consultation Protocol for New Mexico Health and Human Services Departments**
—Arthur P. Allison, Secretary, IAD
—Sidonie Squier, Secretary, Human Services Department
—Catherine D. Torres, M.D., Secretary, Department of Health
—Jason Sanchez, Director, Administrative Support Division, Aging and Long-Term Services Department (ALTSD)
—Ray Espinosa, Director of Indian Area Agency on Aging, ALTSD
—Yolanda Berumen-Deines, Secretary, Children, Youth and Families Department (CYFD)
—Bernie Teba, Native American Liaison, CYFD

3:00 p.m. **Indian Gaming Compact Negotiations Process**
—Arthur P. Allison, Secretary, IAD
—Autumn Monteau, General Counsel, IAD

4:30 p.m. **Recess**

<u>Friday, July 27</u> — Beclabito Chapter House

10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

10:05 a.m. **Welcome and Status Update — Beclabito Chapter**
—George Kelly, Jr., President, Beclabito Chapter, Navajo Nation

11:00 a.m. **Agricultural Science Center**
—Dr. Mick O'Neill, Professor, and Jose Fernandez, Memorial Chair in Crop Production, Agricultural Science Center at Farmington, New Mexico State University

11:30 a.m. **Carrie Tingley Youth Advisory Project**
—Shade Rodriguez (Navajo), Student, V. Sue Cleveland High School

11:45 a.m. **Bond Proceeds Expenditures for Capital and Tribal Infrastructure Project Fund Projects**
—Ryan Gleason, Director, Local Government Division, Department of Finance and Administration (DFA)
—Autumn Monteau, General Counsel, IAD

12:30 p.m. **Lunch**

1:30 p.m. **Local Government Act: Direct Funding for Certified Chapters**
—Luralene Tapahe, Assistant Attorney General, Department of Justice, Navajo Nation
—Autumn Monteau, General Counsel, IAD
—Ryan Gleason, Director, Local Government Division, DFA

2:30 p.m. **Tour**

4:30 p.m. **Adjourn**

Revised: August 28, 2012

TENTATIVE AGENDA
for the
THIRD MEETING
of the
INDIAN AFFAIRS COMMITTEE

August 30, 2012
Indian Pueblo Cultural Center
Albuquerque

August 31, 2012
San Felipe Hollywood Casino Showroom
Pueblo of San Felipe

<u>Thursday, August 30</u> — Indian Pueblo Cultural Center, 2401 12th St. NW, Albuquerque

9:30 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

9:45 a.m. **Welcome and Status Update**
—Charlie Dorame, Vice Chair, All Indian Pueblo Council
—Michael Canfield, President and Chief Executive Officer, Indian Pueblo Cultural Center, Inc.
—Dwayne Virgint, Chief Operating Officer, Indian Pueblo Cultural Center, Inc., and Indian Pueblos Marketing, Inc.

10:45 a.m. **Combating Domestic Violence Against Native Women and Children: Legal and Policy Considerations**
—Barbara Creel, Associate Professor of Law, University of New Mexico (UNM) School of Law (SOL)
—Melanie P. Fritzsche, Staff Attorney, American Indian Law Center, Inc.
—Tassy Parker, Ph.D., R.N., Director, Center for Native American Health (CNAH); Associate Professor, Department of Family and Community Medicine; and Assistant Dean for Academic Affairs, UNM Health Sciences Center and School of Medicine

12:00 noon **Lunch**

1:00 p.m. **Combating Domestic Violence Against Native Women and Children: Service Provider Considerations**
—Gwendolyn Packard, Program Specialist, National Indigenous Women's Resource Center
—Louisa Baca, Family Advocate Co-Coordinator, Tewa Women United
—Frances Abeyta, Tribal Prep Co-Coordinator, Tewa Women United

2:00 p.m. **Available Resources: Southwest Indian Law Clinic and the UNMSOL**
—Kevin Washburn, Dean, UNMSOL
—Barbara Creel, Associate Professor of Law, UNMSOL

2:45 p.m. **Available Resources: CNAH**
—Tassy Parker, Ph.D., R.N., Director, CNAH

3:30 p.m. **Available Resources: Indigenous Design and Planning Institute**
—Geraldine Forbes Isais, Dean, UNM School of Architecture and Planning
—Ted Jojola, Ph.D., Distinguished Professor and Regents' Professor, UNM

4:15 p.m. **Recess**

Friday, August 31 — San Felipe Casino Hollywood Showroom, 25 Hagen Road, Pueblo of San Felipe

9:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

9:15 a.m. **Welcome and Status Update — Pueblo of San Felipe**
—Anthony Ortiz, Governor, Pueblo of San Felipe

10:30 a.m. **Native American Utility and Telecom Tax Exemption**
—Demesia Padilla, Secretary, Taxation and Revenue Department (Invited)
—Theresa Becenti-Aguilar, Commissioner, District 4, Public Regulation Commission (PRC)
—Lisa Ortiz, Native American Liaison, Utility Compliance Officer, PRC
—Roy Stephenson, State Electricity Regulators Assistance Grant Specialist, PRC
—Joe Garcia, Consultant and Owner, Mistylake Consulting
—Donna Venable, Billing Specialist, Continental Divide Electric Co-operative, Inc.

12:00 noon **Lunch**

1:00 p.m. **Expanding Utility Services into Indian Country: Gas and Electric**
—Thaddeus L. Garcia, Tribal Government Affairs Administrator, New Mexico Gas Company, Inc. (NMGasCo.)
—Rebecca Carter, Regulatory Affairs Manager, NMGasCo.
—Sayuri Yamada, State Government Director, Public Service Company of New Mexico (PNM)
—Cathy Newby, Tribal Relations Manager, PNM

2:00 p.m. **Tribal Economic Development Bonds for Infrastructure Projects**
—John Gasparich, Interim Chief Executive Officer, New Mexico Finance Authority (NMFA)
—Matthew Jaramillo, Director of Government Affairs, NMFA

3:00 p.m. **Tribal Infrastructure Funding: Process, Outreach and Training**
—Arthur P. Allison, Secretary, Indian Affairs Department
—Graham Knowles, Community Services Manager, Department of Environment

4:00 p.m. **Adjourn**

Revised: September 21, 2012

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
INDIAN AFFAIRS COMMITTEE

September 24, 2012
Pueblo of Laguna

September 25, 2012
Navajo Technical College, Crownpoint

September 26, 2012
University of New Mexico-Gallup Branch

<u>Monday, September 24</u> — Dancing Eagle Casino, Pueblo of Laguna

9:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

9:15 a.m. **Welcome and Status Update — Pueblo of Laguna**
—Richard B. Luarkie, Governor, Pueblo of Laguna

10:15 a.m. **Joint Education Tribal Team: Policies and Procedures on Public Education**
—Randall Vicente, Governor, Pueblo of Acoma; Acoma Board of Education
—Richard B. Luarkie, Governor, Pueblo of Laguna; Laguna Education Task Force
—Cecil Lewis, President, Navajo Baca/Prewitt Chapter

11:15 a.m. **Public Education: Adequate Funding and Accountability Measures**
—Dr. Ferlin Clark, Assistant Secretary for Indian Education, Public Education Department (PED)
—Paul Aguilar, Deputy Secretary of Finance, PED
—Matt Montano, Division Manager, PED

12:15 p.m. **Lunch**

1:30 p.m. **Public Education for Native Students: Improvements for Implementation**
—David Atencio, Superintendent, Jemez Valley Public Schools
—Kilino Marquez, Superintendent, Grants-Cibola County Schools
—Ray Arsenault, Superintendent, Gallup-McKinley County Schools
—Victoria Tafoya, Executive Director for Federal, Bilingual and Native American Programs

—Carrie Loretto, Public Relations Officer, Native American Parent Advisory Committee
—Hayes Lewis, Superintendent, Zuni Public Schools

3:00 p.m. **Economic Development: the Role of Community Development Financial Institutions**
—Marvin Ginn, Director, Native Community Finance

3:45 p.m. **Jicarilla Power Project — Status Update**
—Nann Winter, Counsel to Jicarilla Apache Nation

4:30 p.m. **Recess**

<u>Tuesday, September 25</u> — Navajo Technical College, Crownpoint

9:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

9:15 a.m. **Welcome and Status Update — Navajo Technical College**
—Dr. Elmer Guy, President, Navajo Technical College

10:00 a.m. **Crownpoint Chapter**
—Rita Capitan, Vice President

10:30 a.m. **Tse'ii'ahi' (Standing Rock) Chapter**
—Johnny Johnson, President

11:00 a.m. **Becenti Chapter**
—Benjamin Benally, President

11:30 a.m. **Nahodishgish Chapter**
—Lloyd Morgan, President

12:00 noon **Lunch**

1:00 p.m. **Transportation Infrastructure in Indian Country**
—Alvin Dominguez, P.E., Secretary, Department of Transportation (DOT)
—Tamara P. Haas, P.E., District 3 Engineer, DOT
—Miguel Gabaldon, P.E., District 5 Engineer, DOT
—Larry Maynard, P.E., District 6 Engineer, DOT

2:30 p.m. **Uranium Legacy Cleanup: Five-Year Plan Status Update**
—Fernando Martinez, Mining and Minerals Division Director, Energy, Minerals and Natural Resources Department
—Dana Bahar, Department of Environment

3:30 p.m. **Electric Cooperatives and the Pueblo of Acoma**
—Randall Vicente, Governor, Pueblo of Acoma

4:30 p.m. **Recess**

<u>Wednesday, September 26</u> — University of New Mexico-Gallup Branch (UNM-Gallup)

9:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

9:15 a.m. **Welcome and College Resources for Native Americans**
—Wynn Goering, Ph.D., Special Assistant to the President for Branch Affairs, UNM-Gallup

9:45 a.m. **Higher Education: Successful Graduation Rates for Native Americans**
—Ricky Serna, Vice President for Institutional Advancement, Northern New Mexico College (NNMC)
—Matthew J. Martinez, Ph.D, Director of Northern Pueblos Institute and Assistant Professor of Pueblo Indian Studies, NNMC

10:45 a.m. **Consumer Protections for Native American Taxpayers**
—Shawn Spruce, First Nations Development Institute
—Cherolynda Bennett, Taxpayer

11:30 a.m. **State-Tribal Collaboration: Improving the Working Relationship**
—Chandler Sanchez, Chair, All Indian Pueblo Council (AIPC)
—Charlie Dorame, Vice Chair, AIPC

12:30 p.m. **Lunch**

1:30 p.m. **Economic Development Initiatives and Programs in Indian Country**
—Arthur P. Allison, Secretary, Indian Affairs Department
—Steve Gonzales, Team Leader for Community Business and Rural Development, Economic Development Department

2:30 p.m. **Marketing Indian Country as a Tourist Destination**
—Monique Jacobson, Secretary, Tourism Department
—Mark Trujillo, Director of Indian Tourism, Tourism Department

3:30 p.m. **Tohatchi Red Willow Farm (TRWF)**
—Dorothy Bitsilly, President, TRWF
—Leonard McReeves, Vice President, TRWF
—Lucinda Barney, Treasurer, TRWF

4:00 p.m. **Tohatchi Chapter**
—TBD, Tohatchi Chapter Official

4:30 p.m. **Adjourn**

Revised: October 23, 2012

TENTATIVE AGENDA
for the
FIFTH MEETING
of the
INDIAN AFFAIRS COMMITTEE

October 25, 2012
Pueblo of Santa Clara

October 26, 2012
Pueblo of San Ildefonso

<u>Thursday, October 25</u> — Administration Building, 1 Kee St., Pueblo of Santa Clara

9:30 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

9:45 a.m. **Welcome, Status Update and Tour — Pueblo of Santa Clara**
—Walter Dasheno, Governor, Pueblo of Santa Clara

12:15 p.m. **Lunch**

1:30 p.m. **Continued Wildfire Recovery Efforts: The Aftermath of Las Conchas Fire**
—Walter Dasheno, Governor, Pueblo of Santa Clara
—Michael Chavarria, Acting Forestry Director, Pueblo of Santa Clara

3:30 p.m. **Charter Schools**
—Alfred Barney, President, Red Lake Chapter, Navajo Nation
—Richard Bitsie, Vice President, Red Lake Chapter, Navajo Nation
—Jake Jackson, Representative, Red Lake Chapter, Navajo Nation

4:30 p.m. **Recess**

<u>Friday, October 26</u> — Tewa Visitor Center, Povi Kaa Dr., Pueblo of San Ildefonso

9:30 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

9:45 a.m. **Welcome and Status Update — Pueblo of San Ildefonso**
—Terry Aguilar, Governor, Pueblo of San Ildefonso

11:00 a.m. **Indian Water Rights Settlements: State Funding Recommendations**
—Estevan López, P.E., Director, Interstate Stream Commission (Invited)
—D.L. Sanders, Chief Counsel, New Mexico State Engineer

12:00 noon **Lunch**

1:00 p.m. **Fire Protection Fund and Funding for First Responders in Indian Country**
—John Standefer, State Fire Marshal

2:00 p.m. **Navajo Nation Department of Emergency Management (DEM)**
—John Billison, Division Director, Division of Public Safety
—Herbert Tsosie III, Program Manager, DEM

3:00 p.m. **Program Evaluation: Navajo Nation Emergency Management**
—Duane Duffy, Deputy Cabinet Secretary, IAD
—Lillian Brooks, Administrative Services Director, IAD

3:30 p.m. **Adjourn**

Revised: November 20, 2012

TENTATIVE AGENDA
for the
SIXTH MEETING
of the
INDIAN AFFAIRS COMMITTEE

November 26, 2012
Pueblo of Pojoaque

November 27, 2012
Room 307, State Capitol
Santa Fe

Monday, November 26 — Buffalo Thunder Casino, Pueblo of Pojoaque

9:30 a.m. **Call to Order**
—Senator John Pinto, Co-Chair

9:45 a.m. **Welcome and Status Update — Pueblo of Pojoaque**
—George Rivera, Governor, Pueblo of Pojoaque

11:00 a.m. **Statewide Tribal Education Status Report**
—Dr. Ferlin Clark, Assistant Secretary for Indian Education, Indian Education Division, Public Education Department

12:00 noon **Lunch**

1:30 p.m. **State-Tribal Collaboration: Improving the Working Relationship and Addressing the Concerns of the All Indian Pueblo Council (AIPC)**
—Chandler Sanchez, Chair, AIPC
—Charlie Dorame, Vice Chair, AIPC

2:30 p.m. **State-Tribal Collaboration Act: 2012 Agency Reports**
—Duane Duffy, Deputy Secretary, Indian Affairs Department (IAD)
—Autumn Monteau, General Counsel, IAD

3:30 p.m. **Jicarilla Power Project — Status Update**
—Nann Winter, Counsel to Jicarilla Apache Nation

4:00 p.m. **Recess**

<u>Tuesday, November 27</u> — Room 307, State Capitol

9:30 a.m.	**Call to Order** —Senator John Pinto, Co-Chair
9:45 a.m.	**Economic Development in Indian Country** —Jon Barela, Secretary, Economic Development Department
11:00 a.m.	**Native American Suicide Prevention and Data Clearinghouse** —Robert M. Apodaca, Consultant, Motiva Corporation
12:00 noon	**Lunch**
1:00 p.m.	**Navajo Nation and State Land Office Land Exchange** —Ray Powell, M.S., D.V.M., Commissioner of Public Lands
2:00 p.m.	**Endorsement of Legislation** —Damian Lara, Legislative Council Service
4:00 p.m.	**Adjourn**

Revised: December 19, 2012

TENTATIVE AGENDA
for the
SEVENTH MEETING
of the
INDIAN AFFAIRS COMMITTEE

December 20, 2012
Room 322, State Capitol
Santa Fe

<u>Thursday, December 20</u> — Room 322, State Capitol

9:30 a.m. **Call to Order**
—Senator John Pinto, Co-Chair

9:45 a.m. **Tribal-State Gaming Compact Negotiations: State Perspective**
—Written Testimony Provided by the Office of the Governor

10:15 a.m. **Tribal-State Gaming Compact Negotiations: Tribal Perspectives**
—George Rivera, Governor, Pueblo of Pojoaque **(invited)**
—Conroy Chino, Lobbyist, Pueblo of Acoma
—Frederick Chino, Sr., President, Mescalero Apache Tribe **(invited)**

10:45 a.m. **Calculation of Net Win for Revenue Sharing: Gaming Control Board (GCB) Perspective**
—Frank Baca, General Counsel and Acting Executive Director, GCB
—David Norvell, Board Member and Acting State Gaming Representative, GCB

11:45 a.m. **Calculation of Net Win for Revenue Sharing: Tribal Perspective**
—Wayne Bladh, Attorney, Nordhaus Law Firm, LLP

12:45 p.m. **Adjourn**

Minutes

MINUTES
of the
FIRST MEETING
of the
INDIAN AFFAIRS COMMITTEE

June 21, 2012
Room 307, State Capitol
Santa Fe

The first meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on Thursday, June 21, 2012, at 10:07 a.m. 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. Ray Begaye
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Sen. Richard C. Martinez
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Rep. James E. Smith

Absent
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Sen. John C. Ryan

Advisory Members
Rep. Eliseo Lee Alcon
Rep. Ernest H. Chavez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Sen. Eric G. Griego
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

Staff
Damian Lara, Legislative Council Service (LCS)
Peter Kovnat, LCS
Melissa Candelaria, LCS

Guests
The guest list is in the meeting file.

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

Thursday, June 21

Call to Order

Committee members, staff and the audience introduced themselves.

Arthur P. Allison, secretary of Indian affairs gave an invocation.

Programs and Personnel of the Indian Affairs Department (IAD) and Tribal Infrastructure Funds and Projects and Capital Outlay Projects

Secretary Allison said that the IAD's mission is to seek legislation on behalf of Indians, to keep tribal issues on the state's agenda and to secure capital outlay for projects on native and tribal lands.

Lillian Brooks, director, Administrative Services Division, IAD, introduced Duane Duffe, deputy secretary, IAD, and the new staff members at the IAD.

Ms. Brooks identified the 12 programs that receive special funding from the IAD for fiscal year (FY) 2012 as follows: $30,000 to the Jemez Pueblo-Walatowa Center, $30,000 to the Cochiti summer youth language program, $25,000 to the Isleta recreation program, $235,000 for Navajo Nation emergency management, $35,000 for Navajo Nation uranium workers, $28,000 to the American Indian chamber of commerce-economic summit, $28,000 to the Jicarilla Apache heritage preservation project, $35,000 for the University of New Mexico (UNM) tribal language certification, $22,000 to the McKinley County Tohatchi empowering youth program, $145,000 to the Albuquerque Indian Center Administration, $275,000 to the Santa Fe Indian School leadership academy and $10,000 to the UNM Indigenous Design and Planning Institute, for a total of $898,000.

Requests

The committee requested that everyone presenting before the committee provide a written summary of their presentations, testimony and prepared remarks so that committee members can follow along with the presentation.

The committee requested that the IAD provide a presentation, with participation from the Department of Finance and Administration (DFA), if necessary, regarding Rule 2.61.6 NMAC and the use of bond proceeds expenditures for Tribal Infrastructure Project Fund projects and capital outlay projects.

The committee requested that Mr. Sandoval and Secretary Allison give a presentation at the next meeting regarding Mr. Sandoval's duties and responsibilities at the IAD.

Questions and Answers

Responding to a committee member's question, Secretary Allison stated that pursuant to the State-Tribal Collaboration Act, the IAD provides training to all state agency managers and employees who have ongoing communication with Indian nations, tribes or pueblos to support cultural competency in providing effective services to Native Americans.

Secretary Allison also responded to committee questions in regard to state collaboration with the Indian nations, tribes or pueblos, that the IAD is looking at the homeland security needs of the local Native American communities because fires have been a big homeland security issue and the IAD is working with other departments to guarantee public safety in Indian country.

Responding to a committee member's question, Ms. Brooks replied that there was an across-the-board 33% funding cut for special funding and that funding for each of the 12 programs was reduced equally by 33%. She noted that a quarterly report provides measurable outcomes for the 12 programs and that the report will be ready by the end of July.

The committee raised concerns that the IAD responsibility for Native American capital outlay projects in Indian country is being moved to the DFA. The committee also raised concerns about changes in personnel at the IAD, specifically regarding the position of the capital outlay manager and the new position of economic development director held by Jerry Sandoval.

Secretary Allison responded that capital outlay decision-making and project management will remain the responsibility of the IAD and that the DFA will help the IAD with the accounting of the programs. In the past, he said, there have been problems with some of the funds, including a missing $1 million discovered by audits. The IAD traced the problem back to undertrained accounting and fiscal control staff and realized that it needed some third-party involvement to achieve efficiency and transparency.

Regarding Mr. Sandoval, Secretary Allison said that he does not know him well, but he is an asset to the state and to Native American communities in particular. Next, Secretary Allison said that the state and tribes are working together to focus on economic development based on energy.

The committee expressed concern that Secretary Allison has weakened the IAD by shifting duties and responsibilities to the DFA and that the secretary's reasoning did not warrant the shift.

Representative Madalena concluded the presentation because the committee was falling behind schedule, and he thanked Secretary Allison and Ms. Brooks.

Navajo Nation Report; Beclabito Chapter Resolution

Arbin Mitchell, executive director, Division of Community Development, Navajo Nation, and Casey Begay, director, Capital Improvement Office, Navajo Nation, discussed capital outlay projects that are occurring on the Navajo Nation. Mr. Mitchell noted that reversions to the state were due to savings each year after all the projects were completed. In 2011, the Navajo Nation capital outlay unit sent back $98,000. In 2012, $104,000 was sent back. The capital outlay unit is already ahead of schedule for 2013 and 2014.

In regard to the Tribal Infrastructure Project at Beclabito Chapter, Mr. Mitchell explained that there was money to buy equipment, but the DFA ruling that the equipment must be rented or leased prevented that from happening. He noted that this was specialized equipment, and the

DFA ruling paralyzed the project, which was close to being done. Mr. Mitchell asked if there is a way to provide a waiver for this kind of situation.

The committee was also provided with a resolution by the Beclabito Chapter, which recommends that the IAD and DFA approve reimbursement for the Beclabito geographic information systems database and design equipment and furniture.

Questions and Answers

A committee member noted that with a new administration, new procedures are in place. For example, the Office of the Governor said there was an 80% chance that projects not on the Infrastructure Capital Improvement Plan (ICIP) would get vetoed and projects on the ICIP were more likely to be signed by the governor.

In response to a question regarding what furniture can be purchased using capital outlay, Autumn Monteau, general counsel, IAD, said that for reimbursement, furniture must be affixed, thus computers do not fit the description of a permanent capital project.

Requests and Motions

Upon a motion by Representative Begaye, seconded by Senator Pinto, the committee voted without opposition to write to the IAD and DFA regarding the Beclabito Chapter resolution that requests reimbursement for specialized equipment and that the committee consider funding the request through an appropriation bill.

The committee asked that someone from the DFA or the State Board of Finance come before the committee to explain the rules about renting or leasing rather than buying and what furniture can be purchased using capital outlay dollars. For example, vans for seniors are more expensive to rent or lease than to buy. The point was made that tribes are sovereign, yet they are negatively affected by these decisions, even after not being given a voice in the decision-making.

State-Tribal Summit — Summary

Terry Aguilar, governor, Pueblo of San Ildefonso, discussed the 2012 State-Tribal Leaders Summit held on June 8, 2012 in Mescalero, New Mexico.

Ms. Monteau explained that a survey went out to discover what the participants thought should be discussed at the summit. Based on the results, the issues covered at the summit were Indian education, water rights and natural resources, tribal infrastructure and economic development and implementing state-tribal relations. Four issue statements were made by the IAD to convey a commitment to addressing these issues.

Ms. Monteau noted some of the concerns raised within each of these four target areas. Regarding Indian education, tribal leaders identified concerns about the use of impact aid funds, the need for an administrative code made in consultation with the tribes and the cultural competence of teachers. In response, Governor Susana Martinez and the State of New Mexico committed to having the PED coordinate with the IAD to offer cultural competency training for teachers and $8.5 million of next year's budget to close the achievement gap.

As for water rights and natural resources, tribal leaders urged the state to fully fund the state's obligations for the Taos, Aamodt and Navajo water settlements and to coordinate to comply with environmental regulations. According to Ms. Monteau, Governor Martinez supported providing $15 million for the Indian Water Rights Settlement Fund, but that appropriation did not pass the legislature.

Regarding tribal infrastructure and economic development, the tribes requested technical assistance for Indian tribes, nations and pueblos to identify and secure funding sources for infrastructure and economic development ventures. Governor Martinez committed to veto any measure that will hurt business and to have the IAD's Economic Division director meet with each tribe to provide training and technical assistance.

With respect to implementing state-tribal relations, tribal leaders asked that there be tribal consultation on the New Mexico Centennial Care Plan and that the government-to-government relationship be kept open and strong. The governor and others in the state executive branch expressed interest in continuing to collaborate with tribal leadership.

Finally, Ms. Monteau also said that this was just the fourth annual summit, and she asked the committee members for their suggestions to make the summit better in the future.

Governor Aguilar said that the collaboration among tribes was beneficial.

Sherrick Roanhorse, chief of staff, Office of the President and Vice President, Navajo Nation, apologized that Navajo Nation President Ben Shelly was unable to attend. Mr. Roanhorse discussed the importance of water rights and water rights settlements. Next, Mr. Roanhorse spoke about Indian education and said that the Indian Education Act can be strengthened. He explained the benefits of government-to-government collaboration between Governor Martinez and the Navajo Nation.

A third legislator asked about the budget and noted that by the time it got back to the house of representatives, some of the appropriations were taken out. Next, the legislator discussed Indian education and the years' worth of letters he wrote to the last three New Mexico governors to get more money dedicated to Indian education. He mentioned how difficult it is for tribes to participate and to have the PED address their needs; for example, to extend participation in the New Mexico Reads to Lead! program.

Governor Aguilar said that this is an example of why the legislature should have a tribal summit sees of its own.

Mr. Roanhorse said that the planning committee of leaders for the tribal summit sees this as an opportunity to have discussions with Governor Martinez and the executive branch.

A legislator said she is disturbed by the exclusion of the legislators in the summit when the funding for all these state entities comes from the legislature. She said legislators on the IAC introduced the bills that became the laws that exist today to improve the lives of Indians in New

Mexico, including the Indian Education Act. She said that the co-chairs of the IAC need to be involved in any collaboration between the state and the tribes.

Another legislator said that there are hard decisions to be made about Medicaid, and these decisions are made by legislators. Other issues that need to be discussed, but were rushed during the last legislative session, are the third grade retention bill and the immigrant driver's license issue. According to the legislator, there was no time for tribal leaders to have their voices heard.

Another legislator noted that there was not a discussion of veterans at the state-tribal summit, and that this is an important topic.

Governor Aguilar said that one of the difficulties of the summit is to know what to discuss and what to leave out. He said that there are a lot of things that cannot be accomplished at a single meeting. Despite that fact, the summit still has value because the people in attendance now have a history of working together.

A legislator asked what had been accomplished since the enactment of the State-Tribal Collaboration Act.

Secretary Allison said that it is an opportunity to look at the governor's policies from the standpoint of the tribes.

Ms. Monteau discussed the cultural competency training required by the State-Tribal Collaboration Act and said it is very useful. Also, the tribal liaisons from every state department were at the summit, which is also required by the State-Tribal Collaboration Act. The post-summit meeting was to be held the next day, on June 22, and Ms. Monteau said the concern that the legislature was not included in the summit will be noted at that meeting.

Mr. Roanhorse said that much has been accomplished since the enactment of the State-Tribal Collaboration Act. He said that the Navajo Nation has a good relationship with all the states in which the Navajo Nation lies, but nowhere is it stronger than in New Mexico. In fact, he said a legislator in Arizona is considering introducing a memorial for the State of Arizona to pass legislation similar to New Mexico's State-Tribal Collaboration Act.

A legislator mentioned an appropriation to buy a county sheriff vehicle to patrol the area of Highway 550, but the governor vetoed that appropriation.

Another legislator brought up the issues of sovereignty and discrimination and said that they should be discussed at future summits. She asked about where Governor Martinez stands on the five Indian gaming compacts that are opening up for renegotiation.

A third legislator asked about the disconnect between the tribes and between the Navajo Nation and the individual chapters.

Mr. Roanhorse said that each local community has its problems to solve — the things it sees as the most important problems to fix. However, he said, in one day, with leadership representing such diverse communities, it is impossible to fix everything to the satisfaction of everyone.

A legislator asked why health care was not one of the topics covered at the summits. Ms. Monteau said that the survey responses showed health care as an important issue, but it was not in the top four. She also said it is hard to fit everything into an eight-hour day. She noted that the governor requested that any capital outlay request the summit hears also be forwarded to her office.

Secretary Allison told the legislators to get the tribes and pueblos in their areas to get on the web site and sign up their projects on the ICIP list.

A legislator asked Secretary Allison to keep the seniors in mind because they need all the help they can get.

A committee member inquired about the status of the completed Indian water rights settlements and any new Indian water right negotiations that may be necessary in the near future. The legislator mentioned the Navajo and Aamodt settlements, saying that they may be the last state settlements. The legislator asked about the Cultural Properties Review Committee.

Secretary Allison said the IAD is working with the Office of the Governor.

Indian Education Status Update

Ferlin Clark, assistant secretary for Indian education, PED, distributed the Tribal Education Status Report to committee members (see handout) and noted the willingness of the IED to make a presentation before the committee during the interim.

Discussion of Focus Areas, Work Plan and Meeting Schedule

Mr. Lara and Ms. Candelaria stated that the work plan topics include state-tribal relations, health education and economic and infrastructure development on Indian land.

Committee members discussed adding to the work plan a discussion of the gasoline tax and revenue-sharing back to the state to address highway maintenance, but since a request would be made to the New Mexico Legislative Council (LC) to approve the creation of a transportation task force instead of adding an item to the IAC work plan, the committee decided to request that some members of the IAC be included on the transportation task force.

After discussion of the meeting schedule, a committee member requested that one of the days of the first meeting take place at Beclabito Chapter House. There was no objection from the other committee members.

Motion

Upon a motion by Representative Rodella, seconded by Representative Powdrell-Culbert, 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, upon a motion by Representative Alcon, seconded by Representative Powdrell-Culbert, the first meeting of the IAC adjourned at 4:10 p.m.

MINUTES
of the
SECOND MEETING
of the
INDIAN AFFAIRS COMMITTEE

July 26, 2012
Jicarilla Apache Nation Administration Building, Dulce
July 27, 2012
Beclabito Chapter House

The second meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on Thursday, July 26, 2012, at 10:23 a.m. at the Jicarilla Apache Nation (JAN) Administration Building in Dulce. Committee members, staff and the audience introduced themselves. Levi Pesata, president, JAN, offered an invocation.

Present
Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Rep. Ray Begaye
Rep. Sandra D. Jeff (7/26)
Sen. Lynda M. Lovejoy
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez (7/27)
Rep. James E. Smith

Absent
Sen. Rod Adair
Rep. Patricia A. Lundstrom
Sen. Richard C. Martinez
Sen. George K. Munoz
Sen. John C. Ryan

Advisory Members
Rep. Eliseo Lee Alcon (7/26)
Rep. Ernest H. Chavez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar (7/26)

Sen. Eric G. Griego
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, Legislative Council Service (LCS)
Peter Kovnat, LCS
Melissa Candelaria, LCS
Theresa Rogers, LCS

Guests
The guest list is in the meeting file.

Handouts

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

Thursday, July 26

Welcome and Status Update — Jicarilla Apache Nation

President Pesata indicated that his second term in office expired in September and introduced his successor, Ty Vicente, president-elect, JAN, as well as Ernest Petago, vice president-elect, JAN. There are 5,000 inhabitants in Dulce, 3,000 of whom are enrolled tribal members. President Pesata said that the JAN employs over 1,000 people and has 75 service departments. The JAN is a self-sustaining government, but the drop in the price of oil and natural gas has impacted its ability to be self-sustaining. The unemployment rate on the reservation is 30%.

President Pesata discussed the state's Severance Tax Permanent Fund. The severance tax is not imposed on the tribe, but it is imposed on non-Indian companies that produce energy minerals on tribal land.

The JAN is currently developing projects to better serve tribal members, including an independent power authority, 140 new apartments and a dialysis unit. A local dialysis unit will save tribal members significant time and money as they currently must travel to Farmington or Durango to receive dialysis. The JAN is also developing a gravel operation to generate money for the tribe.

Next, President Pesata spoke of the need to strengthen the Indian Education Act. His suggestions are to tie approval of school budgets to tribal consultation; to provide more autonomy to local schools; to stop grading schools; to change the way teacher evaluations are done; and to not hold back third graders. President Pesata said that third grade is a time when students are excited about school; to hold them back then would have a deep emotional impact. If a student needs to be held back, he suggested doing so earlier, perhaps in first grade.

President Pesata discussed state-tribal relations and said that recent relations with the legislature have been good, but that relations with the executive branch could be improved. He noted that the State-Tribal Collaboration Act is a good law, but has not borne results. President Pesata noted that the JAN provides the state with significant revenue via oil and gas taxes, but that it receives little in return — just a few loans from the New Mexico Finance Authority and an agreement to provide water to Gallup once the pipeline is completed. The JAN wants the state to fix and maintain state roads on the reservation, especially NM 537, which is neglected in Rio Arriba County.

Some of the JAN's most pressing concerns are the possibility that oil and gas companies may begin leaving the state; the current low oil and gas prices; the lack of housing; the need for adequate wildfire response; state/tribal jurisdiction concerning domestic matters; the availability of medical care to tribal members; and the ongoing need of capital outlay projects.

President Pesata rounded out his presentation by mentioning that the JAN is one of the tribes negotiating the new gaming compact and is working with the governor's office to work out some of the sticking points.

Upon a motion by Representative Begaye, seconded by Representative Rodella, and without objection, the committee requested that a letter be written to the Department of Transportation (DOT), District 5, to request a new traffic light in Dulce, removal of a traffic island and the improving and widening of NM 537. The letter to the DOT should note the possibility of a private/public partnership to maintain NM 537 and the state highway yard, a possible memorandum of understanding and the fact that the DOT has been unresponsive to prior attempts by the JAN to resolve this.

When asked how many Jicarilla tribal member children speak Apache, President Pesata said the majority of Jicarilla are 18 to 23, and there is work being done to preserve the language, but there is language loss. Part of the Indian Education Act is to provide money to local schools to maintain traditional languages, and the JAN is planning to utilize the money this upcoming school year.

Leon Reval, public relations officer, JAN, spoke about technological and educational improvements. He said that the state should pay for roads to support tourism in the area. Mr. Reval said that there is a plan to build a cultural center, although it is currently a low priority. The committee stressed that the community needs to take an active role in Native children's education, including Native language acquisition.

In an effort to address some of the concerns raised by members of the JAN, a committee member commented on the gas tax, transportation and road issues and the need to hold a meeting with DOT Secretary Alvin C. Dominguez, the directors of the seven transportation districts and the chair of the House Transportation and Public Works Committee. Then the committee member said that the 5% severance tax is unfair and should be done away with and that everyone should be given money for infrastructure. Finally, upon a motion by Representative Jeff, seconded by Representative Begaye, and without objection, the committee requested that a letter be written to New Mexico's congressional delegation to have the Indian Health Service improve services.

Capital Outlay Projects

Arthur P. Allison, secretary, Indian Affairs Department (IAD); Duane Duffy, deputy secretary, IAD; Lillian Brooks, administrative services director, IAD; and Jerry Sandoval, economic development director, IAD, discussed capital outlay projects that are active or ending in fiscal year 2012. There are 14 closed capital outlay projects, 12 remaining projects and 14 new projects. Capital outlay has gone from $90 million to $13 million. Mr. Duffy noted that Rosemary Whitegeese, chief financial officer, IAD, will be working with the Department of Finance and Administration (DFA) to oversee Native capital projects. Mr. Sandoval introduced Theresa True, senior economic development and tourism specialist, IAD, and said that with one more hire, the IAD will have filled all its full-time-equivalent positions and have 15 employees.

Next, Mr. Sandoval discussed his transition from the Economic Development Department (EDD) to the IAD and said that the IAD is developing its own Economic Development Division. Mr. Sandoval discussed Senate Memorial 61 (2012) and the promotion of Native American enterprise, as well as a study that would look at Native employment percentages at casinos. He also said that the Community Development Financial Institutions Fund from the United States Department of the Treasury is also very important, as is the Tribal Economic Development Advisory Council.

Finally, Mr. Sandoval addressed a concern from the previous IAC meeting about the DFA taking on the auditing role from the IAD by saying the DFA is already set up and staffed to do this and that it is more efficient to do it that way.

In response to a question from the committee about duplication of EDD efforts with tribal liaisons, Secretary Allison said that the policy of the IAD is to look at not only state but also federal funding for economic development and that there is no duplication of effort. Mr. Sandoval said that the EDD liaisons prioritize their regions and only after that do they prioritize the tribes' economic development. He ended by reiterating that tribes are still a priority.

The committee requested that Mr. Sandoval, Secretary Allison, EDD Secretary Jonathan L. Barela and Tourism Department Secretary Monique Jacobson attend the Gallup-area meeting to see if there is duplication with departments and to answer the question, "Are we wasting resources by having the IAD do the work of agencies' tribal liaisons?". Secretary Allison said that duplication merits looking into, but to be careful what the committee asks for, because Native issues are finally being addressed.

Responding to a question about how Native enterprise could look for specific designations in order to get some federal and state support, Mr. Sandoval said there are enterprise zone designations, but the last appropriation for enterprise zones was 10 years ago by the federal government. A lot of pueblos have the 8(a) designation, which is a business development/ mentoring program administered by the federal Small Business Administration, but do not know what to do with it. The IAD is working with the tribes to educate them to take advantage of the various designations.

Secretary Allison noted that the Pueblo of Zia has already committed $7 million of a $35 million project and that the IAD is looking at getting tax increment financing money to fund the next phase of the project. He said that is one way the IAD is supporting economic development of the tribes. Also, Secretary Allison wants to seek federal Department of Housing and Urban development block grants to supplement state money.

Next, Mr. Lara read a state proclamation to outgoing President Levi Pesata.

State-Tribal Consultation Protocol for New Mexico Health and Human Services Departments

The presenters were Secretary Allison; Sidonie Squier, secretary, Human Services Department (HSD); Dr. Mike Landen, M.D., Department of Health (DOH); Jason Sanchez,

director, Administrative Support Division, Aging and Long-Term Services Department (ALTSD); Ray Espinosa, director, Indian Area Agency on Aging, ALTSD; Yolanda Berumen-Deines, secretary, Children, Youth and Families Department (CYFD); and Bernie Teba, Native American liaison, CYFD.

Secretary Squier spoke about the HSD's relationship with the tribes and how government-to-government formal communication is critical. The HSD has three tribal liaisons, one for Medicaid, one for behavioral health and one for the office of the secretary. Regarding Medicaid Centennial Care, Secretary Squier said that the HSD met with almost 900 Native consumers and providers to implement it in the most effective manner. Regarding the quality of the services provided with Centennial Care, Secretary Squier said that the HSD is spending money but they do not yet know what they are buying. She did note that managed care organization employees will receive cultural diversity training. Secretary Squier finished by saying that co-pays generally do not apply to the tribe and that the HSD is taking it one step further and asking the federal government to allow a waiver of co-pays for Native customers at non-tribal medical facilities. In response to a question about some tribes taking their Indian Health Service money to administer their own health services, Secretary Squier said the department is consulting with and will continue consulting with the Pueblo of Jemez, which is self-administering medical services.

Dr. Landen discussed data sharing to better understand disease in Native populations. He also mentioned tribal health and wellness events around the state. Some of the DOH priorities include school-based health centers, suicide intervention, breast and cervical and comprehensive cancer screening, immunization, tobacco use prevention, oral health and diabetes prevention control and education. In response to a question about long-term care for those with disabilities, Dr. Landen said that it is difficult to offer the expensive services that are required for the long-term care of those with disabilities, especially with a diminished budget. The committee asked staff to find out how many tribal liaisons the DOH employs and what their jobs entail, as well as who the IAD is directly working with from each executive department.

Next, Mr. Sanchez and Mr. Espinosa discussed how individuals can obtain resources from the state for the elderly. Mr. Sanchez also noted that there is an Alzheimer's program being implemented as well.

Secretary Berumen-Deines introduced Mr. Teba, who discussed policy changes at the CYFD to help Native communities. Mr. Teba said that the CYFD has had great success working with Native communities and said he believes that is because the tribal liaison at the CYFD works very closely with the secretary. Mr. Teba also noted that he used to work at the EDD and that there is a $1.8 million bonding capacity for tribal bonding from the EDD.

Secretary Berumen-Deines also mentioned that she is working to pass legislation to better share background information on potential employees on tribal land, especially where there have been issues of abuse or neglect. She said that Representative Madalena sponsored a bill last year, but it was a short session and time ran out. Then, in response to a question about Casa San

Jose, Secretary Berumen-Deines said that there were complaints, and that for safety reasons investigations were done.

Finally, a committee member expressed the hope that people would watch the Public Broadcasting Service (PBS) show on suicide that evening as it is an important issue in Native communities and is only being addressed sporadically. Also, the committee member asked the department secretaries who were present to better use their budgets to serve the elderly, as they are often unable to get transportation, to get food delivered or to use state services effectively.

To end the presentation, Secretary Allison said that he has worked well with the other secretaries presenting.

Indian Gaming Compact Negotiations Process

Secretary Allison, Deputy Secretary Duffy and Autumn Monteau, general counsel, IAD, noted that Jessica Hernandez, general counsel for Governor Martinez, is negotiating the Indian gaming compacts on behalf of the state. The secretary assigned Ms. Monteau to work for the department regarding the compact though the IAD is in a support role only, and not part of the negotiating team.

Ms. Monteau discussed the existing compacts, the 2001 compact, which will expire in 2012, and the 2007 compact, which will expire in 2037. The five tribes that are parties to the 2001 compact — the JAN, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Acoma and the Pueblo of Pojoaque — have asked the state to enter negotiations.

Once the state and tribes have agreed upon a proposed compact, the governor will submit it to the Legislative Committee on Compacts for possible suggested modifications, and the legislature can then approve or disapprove the compact.

In response to a question from the committee, Ms. Monteau said that the governor does not have a time limit to negotiate and that the compacts could expire. Secretary Allison said that the governor wants to move this along speedily, and so that will probably not be an issue. Ms. Monteau noted that the state is required to negotiate in good faith. The committee requested an update on this issue for the last IAC meeting this interim to learn if there have been any other meetings between the tribes seeking new compacts and the state.

In response to a question, Mr. Lara said the Senate Committees' Committee and the speaker of the house would name the Legislative Committee on Compacts, which is made up 50%-50% Democrat-Republican, and 50%-50% house and senate.

At 5:25 p.m., the meeting recessed for the day.

Friday, July 27

The second day of the second meeting of the IAC was called to order by Representative Begaye on Friday, July 27, 2012, at 10:05 a.m. at the Beclabito Chapter House. Committee members, staff and the audience introduced themselves. Frank John, Sr., vice president, Beclabito Chapter, Navajo Nation, offered the invocation.

Upon a motion by Representative Madalena, with a second by Senator Rodriguez, without objection, the minutes from the first IAC meeting were adopted.

Upon a motion by Senator Lovejoy, with a second by Representative Madalena, with objection from Representative Powdrell-Culbert, the committee was asked to write a letter to ask the secretary of transportation and the DOT district engineers that have Indian nations, tribes or pueblos in their areas to come before the committee with their maintenance and improvement plans for roads. A committee member urged the committee to let the transportation subcommittee deal with this issue, as the gas tax issue will already be dealt with in a way that includes all Native leadership and DOT leadership, and not in a piecemeal manner. Another legislator said this is about road maintenance in rural areas with Native populations and that it needs its own discussion.

In response, Melissa Kelly, community services coordinator, Beclabito Chapter, said that she is working with the local federal Bureau of Indian Affairs (BIA) offices out of Gallup and Shiprock to fix some washed-out culverts and to repair a 12-mile stretch of road.

George Kelly, Jr., president, Beclabito Chapter, Navajo Nation, and David Tom, council delegate, Beclabito Chapter, welcomed the committee. There are 1,000 members of the Beclabito Chapter, including 600 registered voters, and it is 17 miles from the Shiprock turnoff. President Kelly said that Beclabito has a four-year strategic plan for projects, some of which are state-funded. Beclabito became a Local Governance Act (LGA) certified chapter in 2012. The time line shows that the chapter resolution occurred on February 21, 2010, the DOT traffic study was on September 17, 2010, the DOT road safety audit (RSA) was completed in May 2012 and the RSA was finalized on June 25, 2012. According to President Kelly, the Beclabito Chapter faces safety hazards related to roads and needs turn-off lanes and street lights.

The chapter complex serves a variety of purposes and consists of a chapter house, a senior citizen center, a Head Start school, a community health building, a warehouse, a picnic area, a store and the Yucca Heights housing units.

President Kelly outlined the things that the Beclabito Chapter seeks from the state: improving NM 64; paving BIA Route 5113 and the senior citizen parking lot; finishing the surveying project; building a multipurpose community center and an addition to the chapter house (from the infrastructure capital improvement plan list); wiring, plumbing, septic and weatherization work to bring 80% of the houses that currently do not meet acceptable requirements up to code; and providing emergency preparedness help.

Nicole Luna, college student, Beclabito Chapter, spoke of her desire to succeed at San Juan College and then go to Fort Lewis College to study veterinary medicine. She hopes to see a state scholarship for average students. She said that average students sometimes need to take time off to take jobs to support themselves and their dependents and that scholarships would help defray the costs they face. She also thinks the Beclabito Chapter needs a recreation center for younger people to congregate.

The committee noted that the Beclabito Chapter got state funds to build the senior citizen center and discussed getting the parking lot paved and getting a pedestrian overpass. In response to a question regarding whether school bus route funds can be accessed to improve some of the transportation issues, President Kelly said that they can only access a force account, which is an expense account that is funded by the employment of a labor force, such as garbage collection and street maintenance. A legislator made clear to President Kelly that people will ask what other sources of funding they are looking at and urged him to have an answer at the ready.

In response to a question about houses that are not up to code, President Kelly said that they are private residences, not Federal Housing Administration homes. The committee noted that the housing issues may be helped by getting the out-of-code units grandfathered in to the Construction Industries Division of the Regulation and Licensing Department.

A committee member noted that the Public Education Department Secretary-Designate Hanna Skandera refused to separate the Kirtland school district and urged her to reconsider.

Agricultural Science Center

Dr. Mick O'Neill, professor and Jose Fernandez Memorial Chair in Crop Production, Agricultural Science Center at Farmington, New Mexico State University (NMSU Farmington), gave an overview of the center. He said that San Juan College has the highest Native American population of any two-year college in the U.S. and that is one of the reasons why NMSU Farmington partnered with it. Dr. O'Neill said that it is important to note that San Juan County has over 19,000 active oil and gas wells and that approximately 12,500 new wells are expected over the next 20 years.

Dr. O'Neill covered topics ranging from weed control to a pollinator plant project and discussed the center's gardening for health program. He said that the center has built a scape demonstration garden where there are sections that use no water next to a section that uses 40% of the typical amount of water, next to a section that uses 60% of the typical amount of water.

When asked if he is seeking legislation, Dr. O'Neill said that the center could no longer cover the gap in staffing by reallocation of funds and seeks to have reinstated the $80,000 reduction in budget. In response to a question about the relationship between the center and the Navajo Nation, Dr. O'Neill said that it works with the Navajo Nation, but also with local chapters along the San Juan River. According to both the Beclabito Chapter and the center, they look forward to working together, perhaps to form a pilot project for drip irrigation agriculture.

Carrie Tingley Youth Advisory Project

Shade Rodriguez, student, V. Sue Cleveland High School, discussed the Carrie Tingley Youth Advisory Project and expressed hope that state and Navajo representatives will tour the facility and collaborate with the facility to help families with health care issues.

A legislator noted that a tour was done by state and Navajo officials a few years ago and advocated doing do so again.

Bond Proceeds Expenditures for Capital and Tribal Infrastructure Project Fund Projects

Ryan Gleason, director, Local Government Division, DFA, Ms. Monteau and Mr. Duffy discussed bond proceeds expenditures for the Capital Projects Fund and the Tribal Infrastructure Project Fund (TIF) projects.

Ms. Monteau said that the state finances certain capital projects through the issuance of severance tax bonds. These bonds can be either tax-exempt or taxable. Tax-exempt status remains throughout the life of the bonds, but this status can be lost if certain applicable federal laws do not remain satisfied. Under federal law, tax-exempt bond proceeds may only be used for capital projects, not operating expenses, and this applies to TIF and capital outlay projects. Under state law, according to the Severance Tax Bonding (STB) Act, Section 7-27-10.1 NMSA 1978, the 5% of the estimated bonding capacity that goes to TIF projects may only be used for "direct project costs". This language is specifically included in the provision related to the TIFs standing appropriation of funds. Taxable bond proceeds may be used for any project allowed under the Tribal Infrastructure Act, but only the "direct costs" of that project. Thus, operating expenses and indirect expenses cannot be reimbursed with STB funds.

The committee discussed the fact that this leads to equipment being leased in lieu of purchased, which costs the state money. In response to a question about how the joint powers agreement (JPA) affects this agreement between two sovereign governments and the possible waiver of the policy regarding no reimbursement for purchased equipment, Ms. Monteau said that this is how the law works. Ms. Monteau explained that equipment that is not part of a capital project (i.e., laptops, worktables, etc.) cannot be reimbursed. She said that if it is leased equipment, that amount can be reimbursed. So, if the equipment becomes an asset, it is not reimbursable. Once the equipment has been purchased, reimbursement is impossible.

In response to the question about JPAs, Mr. Gleason said that in entering into JPAs, the DFA cannot violate state or federal law. So when looking at TIFs, the DFA must square what it does or what it okays others to do with Internal Revenue Service (IRS) rules, state appropriation rules and state authorization rules. To make the change the committee is seeking would, at a minimum, require changing state law and perhaps federal law before it can move forward. There may, however, be a way to calculate the value of the equipment over the course of the project, such as the depreciation schedule in the Internal Revenue Code. Currently, state law does not allow that action. A question about a cell tower, which is regarded as a fixed asset, and the computer that is required to run it, which is an operating expense, was an example Mr. Gleason stated that illustrates the differences between capital costs and operating expenses.

A committee member discussed the difference between a tax fund and a bond. To be bonded, a project must be bonded for 10 years. There are no businesses operating in the area that will lease the necessary equipment. Regardless, if the business did exist, the business would have to be bonded by the Navajo Nation as well. The committee noted that the law creates a conflict with statute and reality.

President Kelly said that, currently, the Beclabito Chapter has paid $11,000 in equipment and a $25,000 consultant fee. President Kelly asked how to make a computer a fixed asset for reimbursement. He noted that the classification schedule is preventing pueblos, tribes and chapters from moving ahead with projects. The rules are preventing tribes from accessing money that the legislature has already appropriated to them.

Mr. Gleason said that the words in the statute matter. If "furnish" was used, it would likely improve this situation. It is not, so the DFA cannot reimburse in this case.

Ms. Monteau said that the reimbursement issue in this case is resolved and no reimbursement is forthcoming. Mr. Lara said that the project was approved when the money was coming from general fund money and not STB funds. Ms. Monteau said that the department looked into it, but that does not change the outcome.

In response to a question from the committee regarding the chance that the $36,000 be made into an appropriation from the general fund or if there can be an extension of the reimbursement decision to reach a better outcome, Mr. Gleason said that the issue is not only the source of funding, it is also what the project is stated to accomplish. If the project is to create a plan, there will be a plan. There will not be a computer on which to save that plan, or a file cabinet in which to store the maps of the plan. The law will not allow it to be another way. In fact, if it had been done that way, there would likely be a negative audit by the Legislative Finance Committee.

The committee considered whether changing the funding source midstream and having the TIF board come back and amend the language would allow for reimbursement.

A committee member addressed the audience and said that there needs to be better planning for requests, and not just a slew of requests on Indian Day during session. People who are seeking capital outlay need to plan ahead and be careful with language.

Local Government Act: Direct Funding for Certified Chapters

Luralene Tapahe, assistant attorney general, Department of Justice, Navajo Nation, Ms. Monteau and Mr. Gleason discussed Title 26 of the Navajo Nation Code, the LGA and getting direct funding for certified chapters.

Certified chapters are allowed to enter into agreements with the state as long as they are approved by the Intergovernmental Relations Committee of the Navajo Nation Council. But there is a catch-all provision that the agreement must not run contrary to Navajo law. Ms. Tapahe said that LGA-certified chapters can be their own fiscal agents, but that even where there was reimbursement for a project, the project is usually paid out of the Navajo Nation general

fund, and this is the fund that should be reimbursed. She said that when the money comes from a LGA-certified chapter, the money should go back to the chapter.

In response to the question of whether one certified chapter may use another certified chapter as its fiscal agent, Ms. Tapahe said that she needs to analyze that from a legal standpoint. Because there is a specific delegation of authority to specific chapters, it is her opinion that they cannot then re-delegate that authority.

After a committee member asked if certified chapters can sell, rent or lease property, Ms. Tapahe said yes, they do have the authority. They would need money to do it and must keep in mind that trust land property has some limits. If the land is off the Navajo Nation and is fee land, then it can be leased, but to make that fee land into trust land is a complicated process. She explained that land withdrawals were approved by advisory committees, which predate chapters as local governing entities. So to clear up the land withdrawal, one must trace back to the time of the withdrawal to see which law applies. Accordingly, chapters can seek general funds from the state to purchase land, but only if they follow the requirements of the LGA.

When asked to clarify "but not limited to" in Section 103D of the LGA, Ms. Tapahe said that the LGA tried to provide governance and authority to the certified chapters without appearing to indicate that the authority did not already exist. Removing the "but not limited to" language is among some amendments to the LGA that are currently being considered.

To clarify whether an asset belongs to the chapter or the Navajo Nation, Ms. Tapahe said that it is tricky. She noted that the Navajo Nation insures all these assets, so while there appears to be autonomy as far as certified chapters and the LGA, when there are problems, it is the Navajo Nation that fixes them. However, according to a provision in the Navajo Nation Code, certified chapters do have the power to sole source projects.

Next, Anita Hayes, manager, Hogback Chapter, Navajo Nation, discussed $300,000 that was given to the Hogback Chapter. Originally, $500,000 was provided to the chapter for a major powerline project. At that time, the Hogback Chapter was not LGA-certified, so the money was to be managed by the Navajo Nation. The project's slated time ran out, so the legislator that originally secured the funding got the money reauthorized. By the time the funding was reauthorized, the Hogback Chapter was LGA-certified.

The Navajo Nation did not finish the project, but the Hogback Chapter did, and then, when it was reimbursed, the Hogback Chapter spent that money on other powerlines, following the intent of the project. However, Navajo Nation funds were used originally, so Ms. Tapahe said that the money should then have been reimbursed to the Navajo Nation and not to the Hogback Chapter.

In a response to a question about how reimbursement works when money is appropriated to the Navajo Nation and earmarked for a non-LGA certified chapter, but becomes an LGA-certified chapter after the appropriation, Ms. Monteau said that the state can only reimburse the entity with which it has the agreement.

To close, the committee asked Ms. Tapahe for a copy of the proposed revisions to the LGA and she agreed.

At 3:30 p.m., the meeting adjourned.

MINUTES
of the
THIRD MEETING
of the
INDIAN AFFAIRS COMMITTEE

August 30, 2012
Indian Pueblo Cultural Center, Albuquerque

August 31, 2012
San Felipe Hollywood Casino Showroom, Pueblo of San Felipe

The third meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on Thursday, August 30, 2012, at 9:45 a.m. at the Indian Pueblo Cultural Center in Albuquerque.

Present
Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair (8/31)
Rep. Ray Begaye
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Sen. Richard C. Martinez
Sen. George K. Munoz (8/30)
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez

Absent
Rep. Patricia A. Lundstrom
Sen. John C. Ryan
Rep. James E. Smith

Advisory Members
Rep. Eliseo Lee Alcon
Rep. Ernest H. Chavez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Sen. Eric G. Griego
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, Legislative Council Service (LCS)
Peter Kovnat, LCS
Theresa Rogers, LCS

Guests
The guest list is in the meeting file.

Handouts

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

<u>Thursday, August 30</u>

Welcome and Status Update

Committee members, staff and the audience introduced themselves. Charlie Dorame, vice chair, All Indian Pueblo Council (AIPC), offered an invocation.

Mr. Dorame expressed regret that Chandler Sanchez, chair, AIPC, was unable to attend the meeting and welcomed the committee on behalf of the 19 governors and the 19 New Mexico pueblos that comprise the AIPC. Mr. Dorame said that the AIPC will meet to discuss its reaction to attorney Patrick Rogers' email comments and that the AIPC does not tolerate language like that expressed by Mr. Rogers.

Among concerns for the pueblos are the gasoline tax, gaming and free play and water rights. Mr. Dorame noted that without the gasoline tax, the Indian Pueblo Cultural Center would not be able to function. As for gaming and free play, there is some confusion. The current agreement is that a percentage of the gambling revenue will be paid to the state. There is nothing in the agreement about "free" anything. Mr. Dorame said that there should be a discussion between the governor of New Mexico and the governors of the pueblos to come to an agreement on the free play issue. Regarding water rights, Mr. Dorame expressed concern that the legislature failed to approve money for a project near Albuquerque, which will result in a loss of federal funding. He hopes that the situation will be rectified.

In closing, Mr. Dorame made a call for action for some issues discussed at the State Tribal Leaders Summit held in Mescalero in June 2012, and he wants the issues to be added to the agenda of the Pueblo of Laguna IAC meeting to discuss them.

Michael Canfield, president and chief executive officer, Indian Pueblo Cultural Center, Inc., introduced Dwayne Virgint, chief operating officer, Indian Pueblo Cultural Center, Inc., and Indian Pueblos Marketing, Inc., and stated that the cultural center is very important and serves as an anchor enterprise for the North Valley neighborhood in Albuquerque.

Mr. Virgint said that the cultural center relies on the tobacco tax and supports itself with the help of Indian Pueblos Marketing, Inc., the for-profit part of the enterprise. In order to expand, the cultural center is seeking to purchase an adjacent plot of land for $2 million. The adjacent land is the site of the former Albuquerque Indian School, and the plan is to redevelop it to support a self-sustaining micro-economy with office space, retail and lodging. The development plan will follow green development practices and will maximize the return to the native community.

When asked about the funding for the former Albuquerque Indian School plan, Mr. Virgint said that bonds will be used to raise money for the first two buildings and the cultural center is

trying to raise the rest of the money needed. Currently, the cultural center is renovating a charter school using a traditional bank loan. The entire development is slated to cost between $200 million and $300 million. There are strict guidelines for federal buildings, so the center will abide by those rules in order to attract federal government agencies to lease office space at the facility. The time line is set to start by the end of next year. The charter school will start in September or October 2012. The entire enterprise will be owned by the 19 pueblos and leased out.

When asked if there is financing for Native American entrepreneurs, Mr. Canfield said that there are no grant funds available from the cultural center, but it plans to facilitate access to grants for entrepreneurs where available. The planned infrastructure includes not only space to lease, but also assistance to gain access to available money.

In response to a concern that Albuquerque Old Town businesses would feel threatened by the new development, Mr. Canfield said that Old Town businesses do not see the cultural center as competition. In fact, the cultural center and Old Town businesses plan to work together and are going to have shuttle buses between the two. The cultural center is also getting feedback from its neighbors, whom it wants to invite into the process so it can get the right businesses leasing space right from the start.

As far as green space in the development, there is a park just east of the property, and there will be a sculpture garden in the middle. Mr. Canfield explained that the development will be pedestrian- and bike-friendly.

Combating Domestic Violence Against Native Women and Children: Legal and Policy Considerations

Barbara Creel, associate professor of law, University of New Mexico (UNM) School of Law (SOL), discussed the federal Violence Against Women Act (VAWA). She said that the VAWA and people's understanding of violence against women are based on some facts and some myths. Ms. Creel said that native women are subjected to violent victimization more than any other group, even other minorities. The federal Tribal Law and Order Act was passed in 2010 to address the issue, but according to Ms. Creel, it missed the mark. Enhancing tribal jurisdiction did not help because most of the perpetrators were non-native, and tribal courts have no jurisdiction over non-natives for criminal acts. The state, not the federal government (for the most part) or tribal courts, has jurisdiction over crimes perpetrated by non-natives on Native American land.

The United States Senate's attempt at the reauthorization of the VAWA, Senate Bill 1925, had measures to provide tribal court jurisdiction over non-natives where the crime takes place on tribal land. The United States House of Representatives, however, passed a very different bill. Federal full-faith and credit grants deference and respect to tribal court orders, and vice versa. However, the United States Senate and the United States House of Representatives versions of the bills to reauthorize the VAWA are based on misconceptions on the jurisdiction question, so tribal officers do not think they have arrest power when in fact they do. Ms. Creel said that this misunderstanding can be resolved with training.

Melanie P. Fritzsche, staff attorney, American Indian Law Center, Inc., described the law center as a national Indian-controlled and -operated advocacy organization dedicated to creating native institutions, including tribal courts. Ms. Fritzsche discussed the tribal court training program, which has an in-person and an online training component. One aspect of the training program, the domestic violence virtual courtroom, is an online course where the user, a tribal court judge, can do the training from anywhere.

Ms. Fritzsche said that funding for the training program is from the federal Bureau of Indian Affairs (BIA), but that funding is coming to an end. The training program is available to tribal courts around the state, and according to Ms. Fritzsche, it does help reduce domestic violence. Ms. Fritzsche requested funding from the state to continue offering the training program.

Tassy Parker, Ph.D., R.N., director, Center for Native American Health (CNAH); associate professor, Department of Family and Community Medicine; and assistant dean for academic affairs, UNM Health Sciences Center and School of Medicine, discussed the social aspects of domestic violence against native women and children. Domestic violence is a pattern of assaultive behavior, and many women stay in the situation because they do not have the means to leave. In fact, 25% of women will suffer from adolescent domestic violence in their lifetimes.

Ms. Parker noted that the epidemic of domestic violence is not limited to adults and that adolescent domestic violence is on the rise. Boys that witness domestic violence are twice as likely to perpetrate it later in life. Those same boys are also more likely to engage in stalking. Child abuse and father absence have also been shown to be contributing factors to domestic violence.

In New Mexico, victims of domestic violence as reported by law enforcement were predominantly female (72%) and 19 to 45 years old (68%). Hispanics (52%) and Native Americans (16%) were represented significantly more among victims than their representation in the state population (46% and 9%, respectively). Perhaps even more disturbing than the statistics that illustrate how widespread domestic violence is in New Mexico is the fact that many cases go unreported, so the statistics underrepresent the reality.

Ms. Parker offered policy recommendations and the continuation of promising practices, including the creation of a task force or a clearinghouse that is fully funded to provide guidance to those suffering from all the effects of domestic violence. Ms. Parker also recommended the creation of a brochure describing what appropriate relationships consist of and that is geared toward men. Ms. Parker ended by saying that as a society, people need to be proactive, not reactive, to deal with this problem.

In response to a question, Ms. Fritzsche said that since April 2012, the training program has been used by 15 people, but the marketing of it has just started. In some circumstances, face-to-face training may be more effective because that type of interaction makes it easier to know what is clear and what is not. A committee member opined that the funding may be better

utilized by doing the training program in person and that bringing people together for the training will make it more effective.

Helen Padilla, director, American Indian Law Center, Inc., said the BIA asked the law center to develop this project and the majority of the training project is for in-person training. The trainings take place in Albuquerque and are free to tribal judges and tribal law enforcement relevant to domestic violence. There was $600,000 from the BIA provided for two years that will run out at the end of this calendar year, and all of that money has been received. However, Ms. Padilla said, the online training version is especially important for rural tribal individuals who cannot travel to an in-person training.

A committee member asked if tribal law enforcement personnel know that they can enforce domestic violence laws against non-natives on tribal lands. Ms. Creel said that there is federal jurisdiction for major crimes on tribal lands and that the VAWA aims to include domestic violence as a designated major crime so that the federal government, not the state, has jurisdiction over domestic violence crimes. To address this issue, Ms. Creel suggested Indian law training for legislators, including an update on what is happening with the VAWA and its reauthorization; the creation of a clearinghouse to allow parties to come together to address this issue; and training for local law enforcement. Ms. Creel said that currently, the questions being asked are the wrong ones. It is not who is native or non-native, it is whether the victim or potential victim is safe.

In response, a committee member said that it is law enforcement, primarily tribal law enforcement, that needs training and needs to be willing to show up in magistrate court, along with the victims, so the cases do not get dismissed.

A committee member mentioned a crime committed near Gallup where the perpetrator crossed into Navajo land and the Navajo police did not cooperate, so nothing happened. Ms. Creel responded that it is state law enforcement's responsibility to enter Native American land to apprehend the non-native offender regardless of where the crime occurs. In this instance near Gallup, the committee member said, both the perpetrator and the victim were Native American, and the local police did not have jurisdiction to go onto native land to arrest a native person, and the Navajo police did not respond. All that can be done is to file a report and give it to the prosecutor.

When asked if there is a specific amount of funding being sought, Ms. Fritzsche asked for $300,000, which would match a year of the federal funding that will expire this year. Another committee member recommended funding a task force to address domestic violence.

A legislator suggested doing something similar to what the Pueblo of Laguna has done by making traffic offenses civil offenses. Tribal courts have jurisdiction over non-natives for civil violations on Native American land, so perhaps domestic violence can be made a civil charge so that a non-native can be taken into tribal court and the victim can seek monetary restitution. Ms. Creel responded that it is an interesting idea, but a key difference between the United States

House of Representatives and Senate versions of the VAWA is that the Senate version says civil protection orders can be ordered by tribal courts, but the House version does not.

Another committee member suggested that a Navajo cross-commission law enforcement agreement may be another avenue that could work to solve the jurisdictional problems. The committee member asked Mr. Lara to look into what other states do vis-a-vis domestic violence, police jurisdiction and the range of authority for the various courts.

Finally, a committee member expressed deep gratitude for the presenters' work fighting domestic violence, which is something that many people feel uncomfortable discussing and confronting.

Combating Domestic Violence Against Native Women and Children: Service Provider Considerations

Gwendolyn Packard, program specialist, National Indigenous Women's Resource Center, said that domestic violence is not an isolated issue. There is often also animal abuse and child abuse that go hand-in-hand with domestic violence. Native American women suffer from domestic abuse four times more than the general population, and the majority of the domestic violence is perpetrated by non-natives.

Frances Abeyta, tribal prep co-coordinator, Tewa Women United, discussed Tewa Women United, a support group for women concerned with alcoholism, suicide and domestic and sexual violence. Ms. Abeyta provided committee members with an investigation checklist to aid victims, their advocates and law enforcement to handle violent situations. She said that tools like these are useful and should be made available to law enforcement personnel statewide. She was critical that law enforcement personnel do not attend cultural sensitivity training sessions, which do exist.

Tewa Women United is using traditional values of community to combat domestic violence. Ms. Abeyta said that when a person is traumatized, there is a physical effect. This effect may hurt in the effort to investigate or prosecute the crimes because there appears to be a failure of corroboration, but that is trauma-induced memory loss. One way to address this is to provide guardian ad litems for victims of abuse.

Louisa Baca, family advocate co-coordinator, Tewa Women United, said that escaping families need funds to relocate, and homeless shelters do not always work because sometimes there is a male child, and some shelters will not allow males into the shelters.

In response to a question, Ms. Abeyta said that Tewa Women United is not for Tewa-speaking women only, but for Tewa, Tiwa, Towa and any other native women. Also, she said that many of the employees at Tewa Women United are working with the National Congress of American Indians task force on violence against women.

When a committee member expressed concern about law enforcement not attending the cultural sensitivity training, Ms. Abeyta said that many, not all, law enforcement agencies are

unwilling to learn the protocols or procedures that they need to be culturally competent. These domestic violence cases, especially the sexual abuse ones, need to be dealt with immediately, so the training has to take place beforehand. When the crime occurs, it is unclear to law enforcement who is going to take on the responsibility, and so the officers often give up rather than figure it out.

Upon a motion by Representative Rodella, with a second by Representative Powdrell-Culbert, and without objection, Mr. Lara was asked to write a letter from the IAC to the Office of the United States Attorney requesting training or a meeting with the Tewa Women United so that officers are more culturally sensitive to native domestic violence issues.

Available Resources: Southwest Indian Law Clinic (SILC) and the UNMSOL

Kevin Washburn, dean, UNMSOL, discussed what the SILC offers Native American people and presented Ms. Creel and introduced two UNMSOL students, Aubeney Burns and Leah Stephens Block. Dean Washburn explained that UNMSOL asked the Legislative Finance Committee to restore $37,000 in funding for the SILC, so the total funding request for the SILC is $203,900.

Dean Washburn said that the SILC is ranked number seven in the nation, and has three charges: to educate the students, to educate the bench and to represent Native Americans. When asked if the SILC takes cases where both litigants are native, Dean Washburn said that the guidelines of the SILC are that no client can make more than 125% of the federal poverty level. Also, the SILC considers if it is a good case for student learning, and when the SILC does not take a case, it can at least point the non-client in the right direction as far as securing legal representation.

Ms. Creel said that the SILC trains judges about the jurisdictional questions raised at this meeting at the New Mexico Judicial Conclave, and now the SILC has some BIA funding to train tribal court personnel specifically.

Ms. Burns introduced herself and mentioned that she was a law enforcement domestic violence officer for eight years and knows how serious a problem domestic violence is. Ms. Block introduced herself and said she was the associate editor of the *Native Law Journal*, and, through the clinic, she is already representing native clients.

The dean thanked the committee for allowing the students to make their presentations, which is a great opportunity that the SILC also can provide due to the close relationship between UNMSOL and the legislature.

The committee congratulated Dean Washburn on his nomination by President Obama to be assistant secretary for Indian affairs in the Department of the Interior.

Available Resources: CNAH

Ms. Parker discussed the CNAH, its vision and mission. The center aims to provide New Mexico with Native American health work force creation, health equity promotion and healthy

communities support and development. The CNAH has created a model for Native American student development in health sciences. The CNAH maintains sustained exposure with its community with workshops that include high school students, college students and families. Currently, there are eight Native American faculty members and 92 Native American students in the UNM School of Medicine, the colleges of nursing and pharmacy, and the Health Sciences Library and Informatics Center.

The CNAH collaborates with the Indian Health Service and has $175,000 a year for a program to develop the interest and success of Native American students in the health professions. This program is in three schools. The program is effective, and it is expected that funding will be renewed. The CNAH leverages what it does with S.M.A.R.T. (specific, measurable, attainable, realistic and timely) goals, which keeps it evaluating itself and improving. It is notable that no Native American medical students withdrew or were dismissed, and the nursing and pharmacy schools are also popular. There is almost a zero attrition rate. The CNAH is committed to these students' success, and it is working. Now, two physical therapy slots a year have been earmarked for Native American students.

A committee member mentioned the importance of preventative medicine as a focus. In fact, Ms. Parker said that one of the grants that the CNAH just got is a pediatric care grant that focuses on children before they are school age, which will prevent early obesity and stave off diabetes.

Regarding behavioral health collaborative providers, Ms. Parker said that the CNAH supports traditional healing methods, and she said that while the state may be behind the times, Medicare and the United States Department of Veterans Affairs do recognize traditional healing methods.

When asked by the committee if the CNAH is seeking any legislation in the upcoming legislative session, Ms. Parker stated that the CNAH is seeking $80,000 to hire a new position.

Available Resources: Indigenous Design and Planning Institute

Geraldine Forbes Isatis, dean, UNM School of Architecture and Planning, discussed the Indigenous Design and Planning Institute (IDAPI), the only institute of its kind in the United States, which has a mission to educate people about culturally appropriate design, which values continuity and stewardship. There are currently 33 Native American students at the IDAPI.

Ted Jojola, Ph.D., distinguished professor and regents' professor, UNM, says that this is an important area of study, but it does get the respect it deserves. Dr. Gigolo showed committee members a map of the projects that the IDAPI is doing. That map and an update of the projects are included in handouts. Dr. Gigolo extended an invitation to the committee to visit the facility to get to know what is happening there.

When asked if chapters seeking money for new chapter houses can get help from the IDAPI, Amanda Manda, program specialist, IDAPI, said that input might work, but it depends

on whether or not there is the necessary infrastructure for a design project to move forward, i.e., wastewater and efficient design.

Dr. Gigolo discussed the ongoing financial needs of the IDAPI and said it was able to raise $1.6 million as an endowment. Dean Forbes explained that the owners of the Frontier Restaurant were very generous, but the IDAPI needs more.

A committee member said there is still money in the Tribal Infrastructure Project Fund, and he suggested that people at the IDAPI ask Secretary of Indian Affairs Arthur P. Allison to tap into the fund. Another recommendation is to seek funds out of the taxes collected by the Navajo Nation. Dr. Gigolo said that this is an ongoing discussion and that he hopes to see funding come from it. In Dr. Gigolo's opinion, the goal is to work with diverse groups to accumulate experience that will benefit both the IDAPI and the groups. The committee member said it may be helpful to work with the local chapters and perhaps tap into local tax revenue. Dr. Gigolo discussed the Local Governance Act initiative to allow chapter houses to develop their own land use plans.

For the ongoing success of the IDAPI, Dr. Gigolo said that the athletic model is the way to go. The IDAPI needs to recruit students with a likelihood of success and follow them through so that they do not fail.

Friday, August 31

The second day of the third meeting of the IAC was called to order by Senator John Pinto, co-chair, on Thursday, August 31, 2012, at 9:20 a.m. at the San Felipe Casino Hollywood Showroom. Committee members, staff and the audience introduced themselves. Anthony Ortiz, governor, Pueblo of San Felipe, offered an invocation.

Welcome and Status Update — Pueblo of San Felipe

Governor Ortiz welcomed the committee and said the pueblo has great needs in many areas, including education, health care and domestic water. The water system is from the 1960s, and there needs to be an upgrade. The Pueblo of San Felipe is working with Sandoval County on upgrades to the water system. Also, there is only one road for ingress and egress to the village, and traffic is a concern for emergency vehicles. Several construction projects for wastewater and for a fire station are under way. The fire station closed, and now the response time for a fire emergency is too long. The Pueblo of San Felipe is working toward providing its community the same things that other communities have.

Dennis Peralta, tribal utilities director, Pueblo of San Felipe, introduced Isaac Perez, tribal housing director, Pueblo of San Felipe. The Pueblo of San Felipe Housing Authority (TDHE) was created in 2000 with the mission to provide quality housing services by building and renovating homes to fit the traditional and cultural customs of the tribal members of the Pueblo of San Felipe.

With the help of a $2 million federal American Recovery and Reinvestment Act of 2009 grant and some Title 6 block grants, a subdivision, Black Mesa View (BMV), was created. The tribal council donated 100 acres on the south side of the reservation. By doing so, the pueblo created a community of elders, and it was done in such a way that tribal members got initial help but could then assume the mortgage payments and be on the path to homeownership. The TDHE envisions not only building a subdivision but a sustainable economy. The entire project should be done by 2015. However, based on the ongoing needs of the subdivision, the TDHE also hopes to secure other sources of funding, including capital outlay. Mr. Perez said that all people hoping to get a house in the BMV have to declare their incomes, and there is more than a 60% poverty rate on the pueblo, so that makes getting federal funds easier.

Mr. Peralta discussed desired infrastructure expansion, including a walking path from the BMV to the elementary school, a south end bridge, many roads, a solid waste bin system upgrade, a pump house, a connection for the frontage roads and an upgrade of the sewer and water systems.

Esther Tenorio, health and wellness director, Pueblo of San Felipe, discussed the substance abuse and mental health services that the pueblo offers. The main goals of her program, Ms. Tenorio said, are to increase youth and family participation, improve interagency collaboration and establish financial infrastructure to support sustained delivery of the highest quality community-based services.

When asked if there are easements granted to Public Service Company of New Mexico (PNM) and other utilities on the BMV, Mr. Perez said that there are agreements for rights of way with the BIA, which are required for projects like these. Mr. Perez explained that there is a joint use utility agreement with Qwest and PNM, and that the pueblo did a National Environmental Policy Act clearance of the whole area, so there was already an environmental impact statement, which made the whole process easier.

To get funding for water, the Pueblo of San Felipe is using funds from the federal Environmental Protection Agency and the Indian Affairs Department (IAD). According to Mr. Peralta, the relationship with the Middle Rio Grande Conservancy District could be better. There is a consortium of pueblos to deal with both water and fire issues along the Rio Grande and in the region.

A committee member congratulated the Pueblo of San Felipe on being self-sufficient, particularly with housing, and asked if other pueblos are doing similar things. Mr. Perez said that he has met with folks from 16 other pueblos to explain how the Pueblo of San Felipe did what it did and got the money to do so.

Native American Utility and Telecommunications Tax Exemption

Theresa Becenti-Aguilar, commissioner, District 4, Public Regulation Commission (PRC), thanked the committee and said she wants to work together and for the public to hear what decisions are being made. Commissioner Becenti-Aguilar introduced her staff and Joe Garcia,

and thanked him for creating a working group to solve issues regarding the Native American tax exemption.

Commissioner Becenti-Aguilar urged people that live on Indian land to fill out the tax exemption form, as it is their right. Commissioner Becenti-Aguilar said that the PRC is willing to meet at pueblos and have people come and fill out their forms. This allows the PRC to figure out tribal enrollment. Some tribes have been better at outreach, so it may be more effective to have a PRC person to look up tribal affiliation and have the PRC person put the individual on the list of exemptees.

Lisa Ortiz, Native American liaison, Utility Compliance Officer, PRC, discussed the history of Native American tax exemption. As a result of a workshop conducted by the PRC on July 11, 2008, an informal working group convened to develop a consensus approach to creating a Native American tax exemption. The group first met at the State Library in Santa Fe on August 22, 2008 and selected Joe Garcia, consultant and owner, Mistylake Consulting; Roy Stephenson, PRC; and Mark Cessarich, PRC, as co-chairs. Since then, the group has been meeting on a regular basis, and representatives of 19 pueblos and the Navajo Nation have participated in the working group meetings, along with representatives of utility and telecommunications service providers. The working group has established several subcommittees to address specific components of the project.

Mr. Cessarich explained the relevant laws, statutes and rules that guide the policies of the PRC in regard to utility agreements with the tribes and pueblos. He noted that there are threshold questions that determine if the Native American tax exemption applies. It is critical to know who the parties are, what the transaction is for, what taxes or charges apply and where the transaction occurs or the services are performed.

Mr. Stephenson said the working group is all about different groups with different interests working together. The tax exception used to be done through an extremely onerous process, but once the tribes started thinking about and treating it as their issue and the PRC got on board, the various pueblos brought their needs to the table and together they found solutions. Mr. Stephenson said that individuals need to file papers with a number of utility providers, and that is where Ms. Ortiz, as the tribal liaison, comes in.

Mr. Garcia gave an overview of the working group, and he noted that taxation on Indian land is complicated. Under federal law, state and local governments may not impose taxes on a transaction occurring on Indian land where the recipient is a tribal member residing on tribal land. Despite this, some service providers have taxed tribal community members within the boundaries of their land. New Mexico provides an exemption from taxation for those services. The way those exemptions have been provided has been uneven and inconsistent. The working group strives to overcome that and has made significant progress, but there is still work to be done. Beyond the question of who qualifies as a tribal member, there are questions of what constitutes a utility. For example, it has yet to be established if cell phone service or cable television packages qualify for the exemption.

Donna Venable, billing specialist, Continental Divide Electric Cooperative, Inc., said that after the cooperative started using self-certification for customers, it took the exemption percentage from 80% to 90% of customers. The cooperative currently offers a blanket exception with PNM to allow customers to get on a list that will exempt them from paying the utility tax at all. However, the cooperative has experienced some difficulty getting its reimbursement from the Taxation and Revenue Department (TRD).

As noted by a committee member, the utility company does not feel the loss because it is just a pass-through entity, but the general fund will feel the loss. Either the utility collects from the consumer or gets reimbursed by the TRD, but either way, this triggers concern for legislators because either the money is being taken from their constituents or from the general fund, which is a larger pot of money that the legislature controls.

Regarding the possibility of a state law to exempt all tribal people from taxation, Ms. Venable said the cooperative wants tribal leadership to be involved and to let each tribal member choose how he or she wants to handle the exemption.

A committee member congratulated Mr. Garcia for getting all the tribes together to collaborate on this but expressed concern that it took so long for the exemption to be integrated and used.

In response to a query from a committee member, Mr. Lara explained that a non-native living on tribal land and married to a tribal member qualifies for the exemption even if the utility bill is in the non-native's name.

Expanding Utility Services into Indian Country: Gas and Electric

Thaddeus L. Garcia, tribal government affairs administrator, New Mexico Gas Company, Inc. (NMGasCo), mentioned the tax exemption and the progress that NMGasCo has made. The NMGasCo works with 15 tribes in New Mexico: 10 where customers were determined to be eligible for the New Mexico gross receipts tax exemption, including the Pueblos of Isleta, Acoma, San Felipe, Tesuque, Santa Ana, Santo Domingo, Sandia, San Ildefonso, Cochiti and Ohkay Owingeh; and five tribes on which customers exemptions are pending, including the Pueblos of Santa Clara, Nambe, Pojoaque, Taos and Laguna.

Rebecca Carter, regulatory affairs manager, NMGasCo, said that each tribe needs to be recertified each year, per TRD regulations. Utilities can globally exempt Naive Americans living on tribal land. Out of the 15 tribes with which NMGasCo works, 10 have been universally exempted. The Pueblo of Isleta is the biggest pueblo with which the company works. How it works is that NMGasCo uses mapping data and matches the global positioning system data to the billing system. Once the tribe agrees that the list is complete, the tribe signs off on it, and then it is put into NMGasCo's system as those that get the tax exemption. The Pueblos of Isleta and Santa Ana are going into their third year of recertification, so that information is almost 100% accurate.

Still, individual customer's forms will still be accepted, so those that are not in the exemption system still have recourse. This has reinforced and enhanced NMGasCo's relationship with the tribes, and because recertification is annual, it is the ongoing contact.

NMGasCo is leveraging various forms of funding to construct new ways to provide services, and the United States Department of Agriculture has been helpful in that process. A joint well agreement is currently under way on the Pueblo of Laguna to install 19 miles of infrastructure to provide 4,000 more people with natural gas.

The Pueblo of San Felipe has not tapped into the natural gas line that runs nearby. The pueblo is planning on connecting to that natural gas main. The project was approved by the San Felipe Tribal Council; work started a few weeks ago and is projected to be completed by March 2016, and the project is totally financed by pueblo funds. The average savings per customer of a residential unit using 600 gallons of propane versus natural gas is $1,000 a year.

Cathy Newby, tribal relations manager, PNM, spoke about how PNM is handling the tax exemption. Ms. Newby discussed expansion of utility services in Native American communities. PNM and NMGasCo are two of the utility companies that have the most interaction with native communities in the entire nation. Ms. Newby said that input and consultation is critical to the relationship between PNM and the tribes. In fact, the substation at the exit of the Pueblo of Santo Domingo and I-25 has gone from a contentious issue to a collaborative effort. Ms. Newby also mentioned a number of ongoing projects and said that since 2004, PNM has provided $177,000 in reimbursements to Native American customers.

When asked who serves the Pueblos of Nambe and Pojoaque, Ms. Newby said that cooperatives serve them, but that any agreements as far as rights of way are with the tribal governments, not individual customers. As for the Jemez Valley, Ms. Newby said that San Ysidro is the closest place for natural gas service, but there have been no serious talks with the Pueblo of Zia or the Pueblo of Jemez to look into the possibility of natural gas service.

A committee member said that with transmission lines or gas lines servicing tribal customers or tribal governments, there is usually a fee to use tribal land. There are cases pending on that issue right now regarding rights of way. When the agreements that exist expired, there have been accusations of trespassing. The concern is that this will affect people's access to power. The committee member urged legislators to not rush to do a bill regarding taxation until the working group makes its findings.

Mr. Stephenson said that rights of way used to be negotiated by the federal government rather than the tribes, but many of the right-of-way agreements have expired. The original agreements are now being renegotiated tribe by tribe, and there is an understanding that the price will now go up.

Tribal Economic Development Bonds for Infrastructure Projects

John Gasparich, interim chief executive officer, New Mexico Finance Authority (NMFA), discussed the projects funded by the NMFA, broken down by the Water Trust Board (including

the Navajo-Gallup Water Supply Project, which should affect that whole part of the country), Water and Wastewater Project Grant Fund, Public Project Revolving Fund (PPRF) (which is the NMFA's main fund) and new market tax credits. In total, the projects account for $166,804,142.

Mr. Gasparich explained that the loans provided are the best loans that the NMFA is able to secure, and any savings can be passed along. The NMFA is competitive, but perhaps not the best in comparison to the rate a larger government or governmental entity can get. Also, he explained, there needs to be legislative approval for projects that come from the PPRF. The loans are secured by a dedicated revenue stream. If the stream is not there, which has happened, it is up to the NMFA and the borrower to work something out. The NMFA might have to take a loss, but that usually does not happen. To insulate itself from defaults, the NMFA will not loan based on a revenue stream one for one. The NMFA considers entities that make 30% more than they will have to repay in order to protect the loan repayment from fluctuations in that revenue stream.

When asked if an entity can use capital outlay funds to repay an NMFA loan, Mr. Gasparich said that the loans are usually based on a pledge of an ongoing revenue stream, so capital outlay is unlikely to be used.

Tribal Infrastructure Funding: Process, Outreach and Training

Autumn Monteau, general counsel, IAD, said the IAD and the Department of Environment community services group conducted tribal infrastructure project workshops around the state and that over 220 tribal administrators, leaders, officials and consultants participated. Tribal communities seeking to obtain consideration for funding completed and submitted 86 tribal project interest forms, including 40 planning projects, four design projects, 23 design and construction projects and 19 construction projects. The top rankings of those projects were presented to the Tribal Infrastructure Fund board, and 28 projects were fully funded, with $13,207,965.

Graham Knowles, community services manager, Department of Environment, said that the change in the funding stream from the general fund to the severance tax fund and the enhanced planning effort and work with the Department of Environment has brought results. He said that providing potential applicants with an action checklist provides ideas for a more refined and robust application. Mr. Knowles was clear that the action checklist does not provide suggestions, but it does provide ideas that may make it a better long-term sustainable project. Mr. Knowles noted that the return on investment and job creation due to the funding of these projects would be substantial.

A committee member said that the Pueblo of San Ildefonso was given money for a housing project and that the tribal infrastructure project may be a perfect model for the San Ildefonso project.

Another legislator noted that because the Navajo Nation is in the middle of an election cycle, no trainings should occur until after November so it is clear that the appropriate people are making decisions.

There being no further business, the third meeting of the IAC adjourned at 3:30 p.m.

MINUTES
of the
FOURTH MEETING
of the
INDIAN AFFAIRS COMMITTEE

September 24, 2012
Pueblo of Laguna

September 25, 2012
Navajo Technical College, Crownpoint

September 26, 2012
University of New Mexico-Gallup Branch

The fourth meeting of the Indian Affairs Committee (IAC) was called to order by Representative James Roger Madalena, co-chair, at 9:25 a.m. on Monday, September 24, 2012, at the Event Center of Dancing Eagle Casino in the Pueblo of Laguna.

Present
Rep. James Roger Madalena, Co-Chair (9/24, 9/25)
Sen. John Pinto, Co-Chair (9/24)
Rep. Ray Begaye
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy (9/24, 9/25)
Rep. Patricia A. Lundstrom
Sen. Richard C. Martinez
Sen. George K. Munoz (9/25, 9/26)
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez

Absent
Sen. Rod Adair
Sen. John C. Ryan
Rep. James E. Smith

Advisory Members
Rep. Eliseo Lee Alcon
Rep. Ernest H. Chavez
Rep. Debbie A. Rodella
Sen. Eric G. Griego
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Antonio "Moe" Maestas
Rep. Nick L. Salazar
Sen. William E. Sharer

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

Staff
Damian Lara, Legislative Council Service (LCS)
Peter Kovnat, LCS

Theresa Rogers, LCS

Guests

The guest list is in the meeting file.

Handouts

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

<u>Monday, September 24</u> — Dancing Eagle Casino, Pueblo of Laguna

Committee and staff introduced themselves. The meeting started as a subcommittee until a quorum was present. Governor Randall Vicente of the Pueblo of Acoma gave an invocation.

Welcome and Status Update — Pueblo of Laguna

Richard B. Luarkie, governor, Pueblo of Laguna, introduced and thanked Governor Vicente and Cecil Lewis, president, Navajo Baca/Prewitt Chapter of the Navajo Nation, for their service. He also introduced the Pueblo of Laguna board of trustees and board of education staff.

Governors Vicente and Luarkie described the Joint Education Tribal Team (JETT), composed of the governors of the Pueblos of Acoma and Laguna, their respective boards of education, the Laguna Education Task Force members and the Navajo Baca/Prewitt Chapter president. The JETT was formed in 2012 to address the use and intent of Public Law 874 and the impact aid funds generated by Native American students enrolled in the Grants-Cibola County School District (GCCSD). The JETT emphasized the effect an efficiently implemented impact aid program and Indian policies and procedures (IPP) can have in reducing the disparities that Native American communities experience.

The JETT asked for legislative action on the following points.

1. Establishment of a joint committee to focus on a review and report regarding the implementation and use of the state equalization guarantee (SEG) formula and impact aid in comparison to other states. The committee would be composed of legislators, state staff and tribal representatives as well as a diverse composition of public school staff.

2. Action to ensure the proper use of impact aid funding to improve educational outcomes and to provide Indian add-on funding that would be spent directly on Indian students.

3. Enforcement by the Public Education Department (PED) of Title VIII of the federal Elementary and Secondary Education Act of 1965, including the special impact aid provisions for local education agencies that claim children residing on Indian lands.

4. Oversight of the Indian Education Act and the State-Tribal Collaboration Act by the IAC to honor the sovereign status of tribes and ensure that state employees are adequately educated in the intricacies of the acts.

The JETT has found that collaboration is necessary for the success of schools on tribal lands. Inconsistencies that exist among the school districts regarding who officially signs off on an IPP must be clarified. For example, the tribes typically sign off on the IPP and submit their application, but the Bernalillo Public School District, which is on non-native land, independently submitted its IPP application although the governors had not signed off on it.

The present IPP application process is not acceptable and must be revised and correctly implemented. The IPP must meet all eight federal regulations and receive consistent support from the PED to hold school districts accountable. The Indian Education Act and State-Tribal Collaboration Act need to be enforced, and all districts must be in compliance with state laws. Currently, there are no penalties for noncompliant districts.

The JETT requests that the legislative earmarks in the Indian Education Act be removed in order to allow tribes full access to the funds. Dr. Guy Archambeau, member of the Acoma education board and task force, described PED data sets regarding Native American students' proficiency levels in math and reading. The data are giving tribes a better understanding of proficiency trends in students entering high school. Native American student performance rates are similar when compared to non-natives. Performance levels are low, but they show where resources and collaborative efforts should be dedicated to improve performance.

The JETT members concluded that the data collected demonstrate the JETT's growing maturity and its understanding of how to change performance as well as the diverse factors affecting schools. The percentage of Native American students who achieve academic proficiency is unacceptable. The tribes have not received a separate report on the performance of Native American students to date.

A committee member expressed disappointment that there were no staff members from the Indian Affairs Department (IAD) present. Their presence is necessary to foster cohesion and collaboration. Effective reporting from all agencies involved is needed to solve complex problems affecting tribes.

A committee member stated that funding is distributed outside of the intended limits. Proliferation of funds creates additional districts, making it harder to track the use of the funding. The way the state takes credit for impact aid must change. The member asked the JETT's opinion on third grade retention. Governor Vicente responded that this is a concern and that the resulting data are being studied. The Pueblo of Acoma might recommend that impact aid be redefined to flow directly to student programs to assist the two-thirds of Native American students needing remedial education.

A committee member stated that once the legislature approves the education budget, the money is distributed to the school districts. Because the school boards for each district are elected, legislators have no say in how the funding is used.

Representative Lundstrom requested that the flow chart that school boards follow to distribute funding be given to the committee for review. LCS staff agreed to provide the information at the next meeting.

George Rivera, governor of the Pueblo of Pojoaque, explained how the Pueblo of Laguna implemented a policy last year based on the third grade retention model. The pueblo included parent input in the model to enhance student achievement and to understand current problems more thoroughly.

The JETT asked that the LCS aid in researching the status of Senate Joint Memorial 35 (2011) and requested that the Legislative Education Study Committee report on the use of impact aid set-aside money for Indian education.

JETT: Policies and Procedures on Public Education

Dr. Ferlin Clark, assistant secretary for Indian education, PED, explained that impact aid is a federal program providing revenue to local government entities in lieu of property taxes not received from federal lands, including those of the U.S. Forest Service, the U.S. Bureau of Land Management and Indian reservations. One hundred percent of federal impact aid goes directly to school districts, not to the state. New Mexico, as an equalized state, considers all revenue sources in meeting annual program costs. As a result, the state takes credit for 75 percent of all federal impact aid payments to the districts as well as mill levies and forest reserve payments. This ensures that all public school students receive equal access to programs and services as per the SEG.

Dr. Clark explained that there are four parts to impact aid: (1) basic payment; (2) Indian set-asides; (3) special education add-ons; and (4) construction funds. The Indian set-aside is a payment to local school districts based on Native American student enrollment. The state only takes credit for the basic payment portion of impact aid. The PED reinstated a budget questionnaire last year, prioritizing the direct channeling of impact aid to Native American students.

Matt Montano, division manager, PED, explained that Bernalillo County is heavily affected by impact aid. When an IPP request with missing signatures is submitted to Bernalillo County, private consultations are held with the tribe to address any issues.

A member stated that creating a stand-alone Native American public education department, connected to the secretary of public education, should be a priority. Another member responded that making more laws and departments may not be the best approach; some problems must be addressed administratively or within the schools. Governor Susana Martinez and Hanna Skandera, secretary-designate of public education, have prioritized information sessions regarding impact aid funding initiatives.

James Rivera, council member, Pueblo of Pojoaque, asked why $1.3 million from the Indian Education Act is being distributed to Teach for America, a for-profit organization in New York. Mr. Rivera stated that he is unable to locate a report or other information about Teach for

America in New Mexico. Dr. Clark answered that this component of the budget was added by the legislature. Teach for America responded to a state request for proposals.

A member stated that past support for the proposal was due to an understanding that the money would be spent solely in Native American areas. Mr. Montano explained that Teach for America's central office is in New York, and it serves non-Indian areas of New Mexico out of its national budget.

Representative Lundstrom requested that the Legislative Finance Committee submit a report on the PED's distribution of funds for Teach for America.

Public Education: Adequate Funding and Accountability Measures

Dr. Clark explained that his attendance at JETT meetings was to help the tribes understand the new PED budget questionnaire and how to best distribute funds throughout the tribal districts. The school district submits the applications to the federal government; funds are then distributed directly to the school districts. The money is distributed to the districts in line-items categories. The application must be signed off by tribal governments or tribal government designees residing within school district boundaries. The signatures verify that the tribes agree to the IPP pursuant to federal regulations. The tribes' understanding of the IPP sign-off is very important.

Victoria Tafoya, executive director for federal, bilingual and Native American programs, Rio Rancho Public School District, explained that the SEG calculates all class units from kindergarten to high school and assigns a unit cost by multiplying total units by $3,000 to equal the total program cost. The SEG formula is created by the legislature.

The idea that the state sends 75 percent of federal impact aid funds to non-native schools throughout the state before sending the remaining 25 percent to schools serving Native American students is false. The school district will receive impact aid and SEG funding from the state. Impact aid school districts receive more funding overall than non-impact aid schools receive. If the SEG were diluting the money from districts, there would be no interest in applying for impact aid.

The members discussed how money affects students, the value of supportive parenting and the importance of preserving language and culture.

Public Education for Native Students: Improvements for Implementation

Representative Rodella requested that the LCS draft a letter on behalf of the committee to Paul Aguilar, deputy secretary of finance, PED, expressing disappointment in his absence from the Indian Affairs Committee meeting.

Hayes Lewis, superintendent, Zuni Public School District, explained that the Zuni Public School District conducted focus groups for families, educators and students to improve learning measures and outcomes. The school district found that there was a lack of connection between

the schools and the community. In response, the district used the context of culture to bridge the gap and strengthen bonds between parents and educators.

The Zuni Public School District standardized lesson planning to take into account a common core, and it created a scoring rubric to incorporate school grades, proficiency and sustainability of excellence. The district is currently localizing programs to various schools to translate data into meaningful numbers that enable the financing of programs for children.

The Zuni Public School District considered how to improve student performance as a function of school performance. The district created teacher and principal competency forms that have added two competency categories: community engagement levels and core curriculum measures.

David Atencio, superintendent, Jemez Valley Public School District, stated that the school district is committed to pueblo and tribal involvement through cooperative communication, listening and respect. The Jemez Valley Public School District has 100 percent parent contact, an increase from 30 percent just four years ago. Superintendent Atencio stated that schools are not necessarily always failing, but they may not meet the standards the state has set.

The Jemez Valley Public School District has taken action with elementary school students in preparing them for high school. Actions include math and reading blocks, imagination learning programs, the addition of full-time reading coaches, common core standards and intervention response built into school schedules.

Ray Arsenault, superintendent, Gallup-McKinley County School District (GMCSD), stated that his district actually saw a decrease in the number of students, but the numbers are now stable. Many of the district's schoolchildren are eligible for free lunches, are English language learners and are non-Anglo.

Sequestration efforts by Congress may make it impossible for the district to know how to balance its budget. Superintendent Arsenault is ensuring that the district is working heavily with the PED, the Navajo Nation and parents to create the budget. Carmen Moffett, director, GMCSD, explained the improvement priorities set in place for the school districts. Common core standards include examining student work, sheltered instruction to help Native American students learn and Tier II, a program for those not meeting grade-level requirements. The district increased the number of Navajo teachers from 12 to 39 in the last four years; two of these teachers are assigned to the central office to provide assistance and help. In May 2012, the school district and Navajo Nation signed a memorandum of understanding (MOU) to bring more Native American teachers into classrooms.

Max Perez, assistant superintendent for learning services, GMCSD, stated that budget challenges inspire creativity in bridging gaps. Common core standards are important. The GMCSD is encouraging more parent involvement through teams and groups, PED audits, shifts in hiring practices, accountability measures at all levels, principal expectation rubrics and community collaboration.

Ms. Tafoya described the Rio Rancho Public School District as serving 926 Native American students, 59 percent of whom qualify for free lunches and seven percent of whom are English language learners. Of these students, 13.3 percent are disabled and 2.9 percent are gifted learners. The Rio Rancho Public School District receives no impact aid or set-asides. Title VIII and Indian education funding is used as a supplement to the strong comprehensive core programs offered at each school.

Carrie Loretto, public relations officer, Native American Parent Advisory Committee, explained how she is helping schools establish tutoring programs, after-school enrichment, lunchtime credit recovery programs and testing fee help. Teachers are receiving better direction and funding to spend directly on students. Ms. Loretto helped start the Native American Academy, which focuses on academics, reading, writing, math and science, as well as cultural enrichment that ties into a thematic learning unit.

Ms. Tafoya explained, in response to a member's question, that the Rio Rancho Public School District does not have any IPP or impact aid funding because there are no Native American lands in the district. Instead, the district's Native American Parent Advisory Committee is very active.

When asked what the cure to failing schools could be, panel members said that poverty and lack of parental involvement at home are major concerns. Additionally, adequate funding is a concern. In particular, sequestration at the federal level will affect New Mexico, especially in untaxed lands. Superintendent Arsenault stated that the total funding loss to the state will be around $5 million. Schools must set a clear budget for the future and attempt appropriation requests to maintain their current budgets.

The members further discussed the importance that poverty plays upon education and the importance of tribal involvement in Title VIII and existing MOUs with school districts.

Economic Development: The Role of Community Development Financial Institutions

Marvin Ginn, director, Native Community Finance, stated that tribal communities continue to experience asset challenges, primarily monetary, because assets flow into the community but are spent outside the community. Challenges include:

1. Construction lending on trust land in New Mexico. Most federal Department of Housing and Urban Development lenders do not offer construction lending, including one-time close lending.

2. Predatory lending. Outlets loan money with a high interest rate accrual, making it nearly impossible to pay the loan off, which is an asset drain for tribes.

3. Lack of education. The lack of education surrounding homebuying and other financial systems within Native American communities causes debt and stress within the community.

4. Lack of business loans. A lack of funding makes it difficult for tribes to generate start-ups or expand existing companies.

Solutions include collaboration with the IAD. Native Community Finance is the only New Mexico-certified Native American community development financial institution (CDFI) that works with all Indian tribes, pueblos and nations. It may also be the first Native American private/public venture in the United States. The CDFI has the ability to apply for funding for which the state is not eligible, thereby creating the future possibility of a loan fund for tribal access. The CDFI is also working on establishing an economic development fund and a Native American credit union.

Mr. Ginn also described how the CDFI could save tribes money in the Internal Revenue Service's Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly programs classes, as well as offering construction loans. Predatory lenders are a large threat, as they hold social security cards and birth certificates as collateral on loans. Native Community Finance has 119 current loans with tribes for a total of $785,432. There is still $624,041 outstanding.

Jicarilla Power Project — Status Update

Nann Winter, counsel to the Jicarilla Apache Nation, provided the committee with an update on the Jicarilla 115kv transmission line project. The Jicarilla Apache Nation has experienced blackouts and power supply shortages with the Northern Rio Arriba Electric Cooperative (NORA). There was a moratorium placed on the construction of the new line in Dulce because of the NORA. Ms. Winter provided a handout detailing the time line of the project.

The Jicarilla Apache Nation power authority is a department of the tribe. The power line the tribe is building runs 60 miles south to a point 12 miles north of Highway 537 and Highway 550. Major problems arise from a large line that runs from Chama to Dulce. This line needs maintenance.

Representative Rodella requested a follow-up report on the Jicarilla power project, especially in the event that tribes claim eminent domain.

Minutes

On a motion by Representative Madalena, seconded by Representative Jeff, the minutes for the August 30-31, 2012 meeting of the committee were adopted without objection.

Representative Rodella requested that the LCS draft a letter on behalf of the committee to the GCCSD, requesting its presence at the next meeting of the committee.

Following the presentation on the Jicarilla Power Project, Representative Madalena recessed the meeting at 5:20 p.m.

<u>Tuesday, September 25</u> — Navajo Technical College, Crownpoint

Call to Order

Senator Lovejoy reconvened the meeting at 9:38 a.m. at the Navajo Technical College (NTC). Committee members introduced themselves to the audience.

Welcome and Status Update — Navajo Technical College

Dr. Elmer Guy, president, NTC, welcomed the committee to the hospitality and culinary arts building. A few years ago, the hospitality and culinary arts school was awarded accreditation from the American Culinary Federation. NTC has also taken advantage of capital outlay dollars to increase internet services, which has allowed NTC to host data centers. These centers work in close collaboration with Los Alamos National Laboratory and the National Aeronautics and Space Administration.

NTC operates satellite campuses in Chinlee, Arizona; the Four Corners area; and Phoenix, Arizona. NTC does offer scholarships to its students. To qualify, students must take a class in Navajo studies. Enrollment has tripled in six years, and graduation and retention rates are 80 percent. NTC concentrates heavily on science, technology, engineering and mathematics (STEM) fields, especially those that directly benefit the community. The NTC focuses mainly on STEM degrees, while its sister college, Diné College, is more geared to humanities.

NTC works with seven high schools in the area in order to reduce the need for remedial education. NTC also participates in public service projects and collaborates with the Central Consolidated School District and Shiprock High School. These are dual credit programs.

A member asked if NTC is lottery-scholarship eligible. Dr. Guy answered "no", but he said that it would be beneficial to the school. NTC does receive College Affordability Act funds for students, however.

Representative Lundstrom requested that the LCS ascertain the benefit of Navajo studies classes at the University of New Mexico main campus.

A member noted that, in the past, the legislature has unsuccessfully tried to include institutions serving Native Americans in the lottery scholarship system.

Tse'ii'ahi' (Standing Rock) Chapter

Johnny Johnson, president of the Tse'ii'ahi' (Standing Rock) Chapter of the Navajo Nation, and Rosaline Smith, Tse'ii'ahi' (Standing Rock) Chapter administrative coordinator, presented to the committee a resolution passed by the chapter on September 18, updating its infrastructure capital improvement plan listing. The chapter has a list of 25 current projects, including local road and utility projects. The chapter receives matching funds from the Navajo Nation for road projects and is using tribal infrastructure funds (TIF) dollars for sewer, water and green waste projects. The chapter also recently finished a senior center and a community warehouse.

The chapter's priority projects are a waterways project, a chapter parking lot, renovation of the Head Start facility, bathrooms and a natural gas pipeline.

A member asked if any of the chapter's projects were vetoed in the 2012 session. One project was vetoed. The members of the chapter will be following up on this request in the next session.

Pinedale Chapter

Anselm Morgan, president of the Pinedale Chapter of the Navajo Nation, presented the committee with a request for 7.5 miles of road improvements in the Pinedale area. The Navajo Division of Transportation conducted a study showing that more than 700 people travel on the road per day. The chapter compiles road projects under the umbrella of McKinley County because of the highly stringent Navajo Division of Transportation process.

The Pinedale Chapter has requested assistance in building a fire station for at least 25 years. The chapter is within District 19 of the McKinley County Volunteer Fire Department. District 19 is a large service area with high accident rates. Response teams come from Gallup and Crownpoint. Average response time is 33 minutes to 55 minutes. The chapter has requested $200,000 to complete this project.

The Pinedale Chapter's outdoor sewage systems are inadequate. The Navajo Nation encourages these types of projects. The chapter expedited its contract with Continental Divide Electric Cooperative on September 24, 2012, and it is hoping to expedite the funding process.

Representative Lundstrom requested that a letter be written from the committee asking McKinley County to grant matching funds from the county environmental services gross receipts tax for the fire station project.

Responding to a committee member's question regarding funding phases of projects such as the fire station, Arthur P. Allison, secretary of Indian affairs, stated that the IAD is working with the state fire marshal to conduct a risk assessment of all Native American areas. A regionalized approach is necessary in order to successfully navigate different areas' funding mechanisms.

Darryl Madalena, Sandoval County commissioner, Pueblo of Jemez, described the regional law enforcement response team system that was created in Sandoval County. The law enforcement complex was built with county and state funds. The project's regional status allows it easier access to funds at the regional and federal levels, as well as fire tax revenue.

A member asked how fire taxes are collected. Mr. Morgan responded that the county collects the money and the county commission distributes the funds.

The committee members discussed emergency management funding and the prioritization of TIF projects and funding.

Transportation Infrastructure in Indian Country

Alvin C. Dominguez, professional engineer (P.E.), secretary, Department of Transportation (DOT), stated that collaboration between the tribes and the DOT is invaluable. Currently, the DOT is waiting for a report from a contractor conducting a safety corridor analysis. The report is due in November 2012.

The completion of the U.S. 491 corridor, a Governor Richardson Investment Partnership (GRIP) project, is very important. A second phase will be funded from money saved by the DOT from underbid projects.

The DOT collaborates with the tribes through local technical assistance program trainings, commercial driver's license training and road construction and safety training. Many of these trainings are held in local communities.

Tamara P. Haas, P.E., District 3 engineer, DOT, stated that she has completed numerous projects in collaboration with the tribes, including the Interstate 40 westbound offramp at the Pueblo of Laguna, improvements at N.M. 16 at the Pueblo of Cochiti; improvements at N.M. 22 at the Pueblo of Santo Domingo; improvements at N.M. 13 at the Pueblo of San Felipe; improvements at N.M. 22 at the Pueblo of Cochiti; improvements at N.M. 47 at the Pueblo of Isleta; P.R. 84 and T.R. 85 at the Pueblo of San Felipe; and Interstate 40 at Rio Puerco and the Pueblo of Laguna.

Miguel Gabaldon, P.E., District 5 engineer, DOT, described his completed projects, including U.S. 491 at Shiprock and U.S. 64 north of Taos. Mr. Gabaldon's active projects include U.S. 64 at Hogback, U.S. 84/285 at West Gutierrez Street, U.S. 84/285 at the North Pojoaque interchange and N.M. 371. District 5 meets with tribes on an ongoing basis to address operational needs and to provide assistance in emergency situations.

Larry Maynard, P.E., District 6 engineer, DOT, explained that the district builds partnerships by building durable relationships. He stated that consultation is a process, not a guaranteed outcome. Mr. Maynard shares joint rights and responsibilities with the Navajo Nation, the Pueblo of Acoma, the Pueblo of Zuni, the Pueblo of Jemez and the Pueblo of Laguna. An example of collaboration between the DOT and the Pueblo of Acoma involved the renaming of the Khe Sanh Bridge in honor of those who fought at Khe Sanh during the Vietnam War.

A member asked if there is any federal funding in the pipeline for more road improvement projects. The panel responded that funding is increasingly hard to receive. In the past, money for worthy projects had been redistributed and lost due to administrative changes and legal issues such as rights of way. The DOT has also lost access to the state excise tax, making improvement projects more difficult to fund.

The committee agreed that cabinet secretaries need to increase budgets for projects that help the people of New Mexico. In the meantime, capital outlay funding needs to be pooled and devoted to projects.

In response to a member's question, the panel explained that highway districts were last drawn in 1976. Congress recently passed a transportation bill, effective October 1, giving New Mexico $400 million in federal dollars. A large portion of this money will go toward paying GRIP loans.

Committee members discussed DOT staffing shortages and thanked Mr. Dominguez and his staff for the work they have done to benefit New Mexico.

Uranium Legacy Cleanup: Five-Year Plan Status Update

Fernando Martinez, director, Mining and Minerals Division (MMD), Energy, Minerals and Natural Resources Department, stated that New Mexico is one of the largest producers of uranium in the world. There are several new mines negotiating to come online in New Mexico. However, the state is struggling to address concerns regarding the reclamation of abandoned mines. Two hundred fifty-nine abandoned mines exist in the state, and 122 of those mines had some reclamation work performed. The MMD is focusing on the 137 mines that have experienced no reclamation work.

Dana Bahar, Department of Environment (NMED), described the efforts of the NMED in cleaning up legacy mines and assessing the contamination levels of water supplies. The NMED developed a generic field investigation and soil sampling plan in compliance with state regulations to test contamination levels.

Laura Watchempino, member of the Multicultural Alliance for a Safe Environment, asked that stakeholders in these projects be specifically engaged and have access to these reports.

Mr. Martinez, in response to a member's question, said there is no federal money in the pipeline for cleanup projects and that federal government interest seems low, particularly in cleaning uranium sites.

Following the presentation on the status of uranium legacy cleanup, Representative Madalena recessed the meeting at 4:25 p.m.

<u>Wednesday, September 26</u> — University of New Mexico-Gallup Branch (UNM-Gallup)

Call to Order

Representative Lundstrom reconvened the meeting at 9:10 a.m. in Room 200 of UNM-Gallup. The Tohatchi Veterans' Association posted the colors, and Representative Begaye led the committee in the Pledge of Allegiance. The committee members and staff introduced themselves.

Welcome and College Resources for Native Americans

Wynn Goering, Ph.D., special assistant to the president for branch affairs, UNM-Gallup, welcomed the committee to the Gallup campus. The Gallup branch was established in 1986 and serves approximately 2,100 Native American students.

Dr. Goering explained that in any given cycle, community college enrollment is inversely related to the economy. UNM-Gallup, using the fall of 2000 as a benchmark, has experienced three percent growth in enrollment, peaking in 2012 with a 13 percent increase. UNM-Gallup is currently working toward the accreditation of its nursing and laboratory technician certificates.

UNM-Gallup is collaborating with McKinley County schools to decrease the need for remedial education by breaking remedial courses into smaller, more manageable units.

A committee member asked if there are any MOUs between the Navajo Nation and the UNM College of Education and if there are any programs for loan relief for teachers who return to the Navajo Nation to teach. Dr. Goering responded that he is not aware of any programs, but he will provide an answer to LCS staff.

A committee member asked about the difficulties UNM-Gallup faces in addressing child care. Dr. Goering responded that providing safe child care is difficult and that a search is currently open for a child care director. UNM-Gallup has also considered options such as contracting with outside child care providers.

A committee member asked for clarification regarding the 1.2 percent tax that the UNM president will assess on all branch campuses to support the UNM Foundation. Dr. Goering replied that this tax does not require branch campus board approval, but every branch campus' operational budget would be taxed to support the foundation. UNM's president is aware of constituent concerns regarding this tax.

Higher Education: Successful Graduation Rates for Native Americans

Ricky Serna, vice president for institutional advancement, Northern New Mexico College (NNMC), stated that "NNMC is a Hispanic and Indigenous-serving institution dedicated to student achievement and the advancement of our community".

NNMC operates both as a four-year and a two-year college. NNMC is the only four-year institution in New Mexico where over 10 percent of current students are Native American. Most of these students major in business, nursing or education. Currently, 12 percent of students are Native American, of whom 13 percent are male and 12 percent are female. Sixty-five percent of Native American students are traditional students and 35 percent are nontraditional. NNMC tries to help students through constant contact and via the American Indian Center on campus.

Matthew J. Martinez, Ph.D., director, Northern Pueblos Institute (NPI), and assistant professor of pueblo Indian studies, NNMC, stated that the mission of the NPI is to cultivate student leadership and tribal advocacy to create a successful future for tribes. The NPI was established by an MOU between the eight northern pueblos and NNMC. The Pueblo Indian studies program encourages students to merge their studies in business, biology, nursing and education with their cultures.

Native American students are not eligible to obtain dual credit at tribal schools because these schools are not part of the state funding formula, despite House Bill 90 (2010). Therefore,

it is important to increase tribal teacher training to prepare Native American students for higher education.

A member stated that, for certain students, it is very hard to re-engage in learning and earn a general equivalency diploma (GED). Dual credit may motivate students to pursue a GED because they would already be earning college credits.

A member described the current challenges faced by the Higher Education Department (HED) in looking for a coordinator who can manage the flux between four-year colleges and the tribes. Establishing MOUs between these colleges and tribes could help. Dr. Martinez responded that this is very necessary, although it would be piecemeal.

Consumer Protections for Native American Taxpayers

Shawn Spruce, First Nations Development Institute, told the committee that more than 50 percent of all tax filers in New Mexico used a paid preparer to file their returns. First Nations Development Institute has sent mystery shoppers all over Northern New Mexico to rate these preparers. The studies reveal excessive fees, lack of disclosure, incompetence, failure to safeguard critical personal data and aggressive marketing of high-cost bank products and refund anticipation loans. Many of these preparers hold social security cards and birth certificates as collateral on loans and services and charge high prices for preparing filings that have small return values.

Cherolynda Bennett, a taxpayer who has used a tax preparer, described her experience to the committee. Ms. Bennett, a single mother who is unemployed and a student, stated that her experience with these companies was unprofessional and shocking. The company kept her children's original birth certificates and social security cards on file as collateral, rendering her unable to secure any state services for them. The company did not deposit her tax return on time, forcing her to take another loan to support herself. As a taxpayer, Ms. Bennett wants to be treated more respectfully.

A member of the committee asked Mr. Spruce how these companies are selected to be studied. Mr. Spruce stated that the companies are chosen at random and are both major national chairs and local shops. Generally, national chains are more accurate in their returns, but they are expensive. Some stores are not registered with the Internal Revenue Service.

Mr. Spruce stated that an ideal piece of legislation would encompass full disclosure of fees associated with preparation, standardized disclosure related to bank products and refund anticipation loans, research and regulation of the small loan industry in New Mexico, improved training for taxpayers and the continued support and growth of the VITA program. Fines for those who provide these services are recommended to be the standard punitive penalties, three times the charges in damages.

A member suggested that because it was so hard to pass payday legislation in the past, it might be best to write a brand new bill addressing tax preparers instead of adding on to the previous bill.

Mr. Spruce detailed that all 22 of the firms he has visited over the last two tax seasons have required critical information to secure services. One firm required that the consumer sign a 10-year power of attorney to ensure that the consumer stays loyal to the firm.

A committee member stated that it would be interesting to hear from the companies themselves and hear their explanation behind the fees and services. Another member stated the importance of educating people in ways they can prepare their taxes other than through tax preparation firms.

Representative Powdrell-Culbert made a motion to move forward on writing legislation to address tax preparers and predatory lending. The motion was seconded by Representative Begaye and passed with no objection.

Representative Jeff made a motion to write a letter to New Mexico's congressional delegation to change federal laws surrounding tax preparers and predatory lending and detailing the effects this business has on the population, with a copy to the federal Bureau of Indian Affairs. The motion was seconded by Representative Begaye and passed with no objection.

State-Tribal Collaboration: Improving the Working Relationship

Chandler Sanchez, chair, All Indian Pueblo Council (AIPC), told the committee that the AIPC requested several times to meet with Governor Martinez to discuss collaboration between the tribes and the state. The AIPC, composed of 19 pueblos, has met with resistance from the Martinez Administration, despite the importance of plans addressing gaming, health and taxation.

The tribes have many needs, including cultural preservation, health care education and changes surrounding the federal Patient Protection and Affordable Care Act and water settlements. These needs and recommendations were formed at tribal summits and have received no feedback from the governor.

Secretary Allison stated that the IAD works hard to collaborate with the AIPC. The IAD has been on the agenda many times and has been able to answer myriad questions. The State-Tribal Collaboration Act identifies tribal summits as being critical. Involvement from the Office of the Governor is mandatory.

Autumn Monteau, legal counsel, IAD, outlined four issues chosen as critical by the AIPC: education, water rights, economic development and state-tribal relations. An issue paper was written for each topic to help focus discussion and solutions. The summit set a goal to resolve each issue before the next year's summit. The current collaborations between the AIPC and the Homeland Security and Emergency Management Department, the NMED, the PED and the HED are invaluable.

Leonard Tsosie, Navajo Nation delegate, stated that he has had a favorable experience with the Office of the Governor. The Gallup-McKinley County School District school board voted to consolidate three schools. The governor helped reverse the school board's decision. The schools were never closed.

Collaboration on all levels is necessary, especially in regard to water, roads, taxation and clean energy. A member suggested that working with trucking and production companies in financing local roads should be considered.

Representative Lundstrom requested that a letter, signed by the co-chairs, be written requesting a report from each tribal liaison addressing the four major issues outlined by the AIPC.

Representative Rodella requested that Secretary Allison provide the committee with a list of all tribal liaisons to state agencies and tribes.

The members expressed their appreciation of Secretary Allison's work throughout the state. The members asked to be updated more frequently on the progress and projects of the IAD.

Economic Development Initiatives and Programs in Indian Country

Steve Gonzales, team leader for community business and rural development, Economic Development Department (EDD), described to the committee the importance of collaboration with the IAD and described examples of current programs.

The EDD's Community, Business, and Rural Development Team, whose members are commonly known as "regional representatives", helps communities through activities such as leadership training and identifying strategic opportunities. Mr. Gonzales outlined three programs currently offered.

1. The tribal liaison program aids in helping Indian tribes, nations and pueblos overcome barriers and allow opportunities for economic development. The EDD has five tribal liaisons and a primary liaison.

2. The community assistance/certified community initiative program helps communities create new jobs by offering a phase-in approach to capacity building.

3. The financial development team assists new and existing business through business incentives, financial packaging and review and interpretation of financial statements, etc.

Jerry Sandoval, economic development and tourism director, IAD, described initiatives to develop Native American land economically. The IAD leveraged EDD expertise to make the Pueblo of Zuni a MainStreet community, as well as creating MOUs with Native American Finance, an MOU with the Indian Chamber of Commerce and pilot programs to create grants between surrounding tribes and Los Alamos National Laboratory. The IAD is working with Theresa True, the new IAD tourism director, to build restrooms and visitor centers and hire visitor guides to attract economic development.

Representative Rodella requested that a letter be drafted to Jonathan L. Barela, secretary of economic development, expressing disappointment in his absence from the committee meeting.

In response to a committee member's question, Mr. Sandoval answered that, at one point, he was the only tribal liaison in the state. It is very demanding to help all of the tribes with all of their concerns alone.

A member asked if there have been any projects or businesses started under the last administration that are still successful now. Mr. Sandoval stated that Raytheon Missile Systems, Boeing and Los Alamos National Laboratory pilot programs are all doing well. Raytheon used TIFs to expand its Farmington facility, where all new jobs are held by Navajo Nation members.

Marketing Indian Country as a Tourist Destination

Monique Jacobson, secretary of tourism, said that New Mexico's tourism industry has grown five percent between 2010 and 2012 and generates $5.5 billion a year. The Tourism Department continues to build a strong brand for New Mexico through the "New Mexico True" campaign. The campaign has been launched in Texas, Arizona and Colorado. The Tourism Department also launched a redesigned web site that enables visitors to plan a trip, as well as enabling New Mexico communities to develop their own "New Mexico True" campaigns.

Mark Trujillo, director of Indian tourism, Tourism Department, described his efforts to collaborate with New Mexico's 22 tribes to learn what their tourism needs are. Mr. Trujillo developed a Native New Mexico tour guide and is collaborating with the "Go West Summit" to create a "Go Native" summit.

Responding to a member's question, Ms. True stated that of the northern tribes, so far only the Pueblo of Taos has a packaged tour.

Secretary Jacobson stated that she does not feel that her department overlaps with the efforts of the IAD. The Tourism Department focuses on marketing an existing product, while the IAD develops the infrastructure and organization needed to create a product.

Tohatchi Red Willow Farm (TRWF) and Tohatchi Chapter

Charles Aruiso, Tohatchi veteran; Larson Manulito, Tohatchi Chapter president; Leonard McReeves, TRWF board; Julie Badonie; Hoskie Bryant, Naschitti Chapter; Peterson B. Yazzie, Tohatchi Chapter; and Mel R. Begay, Navajo Nation Council delegate, presented their concerns surrounding the Tohatchi Chapter.

The TRWF is currently seeking funds to complete the third phase of its farm project — infrastructure for a water well. The TRWF has already completed two phases: irrigation piping and fencing. Funding applications were submitted for money from the TIF, Navajo Nation funding sources, capital outlay, the Bureau of Indian Affairs, the U.S. Department of Agriculture and other resources, but they were not granted. The TWRF board is seeking help in finding

funding for the farm project. Board members described how they must generate at least five percent in matching funds to qualify for TIF money.

Representative Lundstrom made a motion to draft a letter regarding TIFs, with a copy to the Navajo Nation, detailing the priority of this project to the committee. The motion was seconded by Representative Alcon and passed with no objection.

The representatives from the Tohatchi Chapter described their efforts in planning a multiuse veteran's center; emergency management and strategic development; and grant proposals relating to U.S. 491. The Tohatchi Chapter is working hard toward becoming an economically self-sufficient chapter and developing economic development. The Tohatchi Chapter does recognize the need for assistance in creating many of these plans.

Representative Jeff made a motion to request the LCS to contact the DOT, insisting that it open to the public the October 1, 2012 meeting of the Tohatchi Chapter at 5:00 p.m. at the Twin Lakes Chapter House. The motion was seconded by Representative Powdrell-Culbert and passed with no objection.

Adjournment

There being no further business before the committee, the fourth meeting of the IAC for the 2012 interim adjourned at 4:50 p.m.

MINUTES
of the
FIFTH MEETING
of the
INDIAN AFFAIRS COMMITTEE

October 25, 2012
Senior Citizen Center
Pueblo of Santa Clara

October 26, 2012
Tewa Visitor Center
Pueblo of San Ildefonso

The fifth meeting of the Indian Affairs Committee (IAC) was called to order by Representative Debbie A. Rodella at 9:55 a.m. on Thursday, October 25, 2012, in the Senior Citizen Center at the Pueblo of Santa Clara.

Present
Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Rep. Ray Begaye
Rep. Sandra D. Jeff (10/25)
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. Richard C. Martinez
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez

Absent
Sen. Rod Adair
Sen. George K. Munoz
Sen. John C. Ryan
Rep. James E. Smith

Advisory Members
Rep. Eliseo Lee Alcon
Rep. Ernest H. Chavez
Rep. Debbie A. Rodella

Sen. Eric G. Griego
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Antonio "Moe" Maestas
Rep. Nick L. Salazar
Sen. William E. Sharer

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

Staff
Damian Lara, Legislative Council Service (LCS)
Peter Kovnat, LCS
Theresa Rogers, LCS

Guests

The guest list is in the meeting file.

Handouts

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

<u>Thursday, October 25</u> — Senior Citizen Center, Pueblo of Santa Clara

Committee and staff members introduced themselves. The meeting started as a subcommittee until a quorum was present. Governor Walter Dasheno of the Pueblo of Santa Clara gave an invocation.

Welcome, Status Update and Tour — Pueblo of Santa Clara

Governor Dasheno thanked the committee for coming to the pueblo and discussed the devastating effects on Santa Clara Canyon of the Las Conchas fire and the flooding that followed. The sandbags that are evident all around the pueblo are used to combat the effects of the flooding, which are expected to continue for the next few years.

Next, Governor Dasheno led the committee on a tour of the Senior Citizen Center and the Adult Daycare Center, both of which were built with state funding. Then the committee boarded a van for a tour of Santa Clara Canyon. In the canyon, the committee saw the devastation brought on by a series of fires and floods.

Continued Wildfire Recovery Efforts: The Aftermath of Las Conchas Fire

Governor Dasheno discussed the cleanup of Santa Clara Canyon and said it is an immense undertaking. The Santa Clara Creek Watershed Area comprises 31,400 acres, and the total burn area is 15,516 acres. So roughly 50% of the entire watershed was affected.

The clean-up effort to remove the flood debris and restore Santa Clara Canyon is financed by the pueblo, which contributes 12.5%; the state, via the Homeland Security and Emergency Management Department, which contributes 12.5%; and the federal government, which contributes 75%. The current financial commitment is $56 million. Governor Dasheno estimates that it will take $100 million and 100 years to restore Santa Clara Canyon.

The Federal Emergency Management Agency (FEMA) and state funding process includes the coordination of a number of entities and a number of steps before money can reach the targeted emergency.

Michael Chavarria, acting forestry director, Pueblo of Santa Clara, discussed the history of forestry at the pueblo. The pueblo did not have a forest management department until 2000, but there were already serious issues with which to contend. The Oso Complex fire of 1998 burned more than 1,500 acres of forested land on the pueblo, and the Cerro Grande fire of 2000 burned over 6,700 acres of forest on the pueblo.

After the two fires, the Pueblo of Santa Clara made an enormous effort to get funding to manage its forest resources. Currently, the pueblo has contracts under Public Law 93-638 for forest development, forest management, fire preparedness and hazardous fuel reduction. These contracts are critical because the clean-up effort requires $17,000 a month just in fuel costs to operate the machinery.

Governor Dasheno noted that the pueblo's experience with self-governance has helped guide the pueblo in working with other agencies on the clean-up effort. The pueblo was the first in the southwestern United States to organize under self-governance, starting the process in 1994. Self-governance allows tribes to manage and control their own programs and resources and provides broad flexibility in using resources and redesigning programs to meet tribal needs. Before self-governance, all programs, services, functions and activities of the Pueblo of Santa Clara were performed by the Northern Pueblos Agency/Southwest Regional Offices.

Questions

When asked to follow up on an issue raised during the tour of Santa Clara Canyon, Governor Dasheno explained that 50% of the debris in one pond was cleared at a cost of $300,000, but that in a single day, rain caused sediment to refill the pond completely. Governor Dasheno stressed that if the cleanup does not start upstream and work its way downstream, all the work may be for naught. The governor emphasized that debris collection structures must be put in place to prepare for the next monsoon season.

In response to a question about self-governance, the governor explained that the Pueblo of Santa Clara has been functioning under self-governance for 15 years and that, typically, self-governance is renewed annually, but there is flexibility in how the agreements are structured.

In closing, Governor Dasheno said that his focus is to promote the health, social welfare and economic well-being of the pueblo and its people. He said that it is critical to work with other agencies to come up with a plan to best accomplish those goals, and that the pueblo must rely on others for help in accomplishing those goals.

Minutes

On a motion by Representative Madalena, seconded by Representative Powdrell-Culbert, the minutes for the September 24-26, 2012 meeting of the IAC were adopted without objection.

Charter Schools

Alfred Barney, president, Red Lake Chapter, Navajo Nation, presented a letter of intent to establish a charter school within the Red Lake Chapter. The charter school would be a joint project between New Mexico and Arizona, because the chapter lies on the border of both states and serves community members on both sides of the state line. It will be one of the first charter schools established in the Navajo Nation. The school will educate the local population and increase the number of children who will stay in the community.

Richard Bitsie, vice president, Red Lake Chapter, Navajo Nation, said that many of the young people in Red Lake have dropped out of high school and that some vocational programs,

particularly animal sciences and agriculture, would serve the needs of the community. Even the young people who go away to college and come back cannot find jobs when they return.

Jack Jackson, representative, Red Lake Chapter, Navajo Nation, said schools on the Navajo Nation used to teach real-life skills, but they no longer do. He said that relevant education, with Navajo input, is critical to the success of students on the Navajo Nation. Also, Mr. Jackson said that the Red Lake Chapter is seeking help to understand the process for starting the charter school and for putting in a modern irrigation system and the training to use it.

Questions

A committee member noted that the Legislative Finance Committee has done an extensive assessment on opening a charter school on the Navajo Nation. The process started when the consolidation of two McKinley County schools was being considered, and a charter school was envisioned as a way to offer an alternative to students and their parents. Those schools have yet to be consolidated, but the assessment could still prove valuable.

The committee member said that there are a few Native American charter schools and that schools can be chartered by the state or by the local school district. However, the funding formula is going to change, and funding might no longer go through the district. The current moratorium on new charter schools is still in place, but once the moratorium ends, the establishment of a charter school in the Red Lake Chapter deserves support. It is critical to identify possible obstacles that the Red Lake charter school will face and adjust to them now, so that when the moratorium ends, Red Lake is well-positioned to get a charter school.

Another committee member mentioned an issue in Red Valley, Arizona, where students that live in Utah cross into Arizona to go to school. When the school was audited by the state, the tuition for those students needed to be repaid.

Dr. Ferlin Clark, assistant secretary for Indian education, Public Education Department, said the department and the chapter are working together to get the Red Lake charter school started. Dr. Clark cited an attorney general's opinion that was very helpful in that undertaking and noted that 25% of the local school district impact aid funds would support the school budget. He said this does raise the question of how difficult it will then be for other schools, which will have less money.

A committee member said that it is important to take advantage of the charter school idea while it is available, as communities in the Rio Grande Valley have done. The committee member then asked whether a charter school can take over a public school that closes. Dr. Clark said that there is a whole process to follow, but since the infrastructure is all in place, it would make sense. Dr. Clark explained that there are more than 89 charter schools in the state currently, higher than the number of school districts. That is why the moratorium was put in place. This is also a funding issue, which is driving the consolidation of schools in the first place, which then drives interest in charter schools.

Another committee member said she thinks that the Navajo Nation needs to make a commitment to charter schools, but a lot of charter schools are failing kids, so the Red Lake Chapter needs to be careful to ensure that its charter school is well-planned so that it will be successful.

The presentation ended with a discussion of funding for technical assistance to develop a plan for a program like the Red Lake charter school.

The committee recessed at 4:40 p.m.

<u>Friday, October 26</u> — Tewa Visitor Center, Pueblo of San Ildefonso

Representative Madalena reconvened the meeting at 9:47 a.m. on Friday, October 26, 2012, in the Tewa Visitor Center at the Pueblo of San Ildefonso. Committee, staff and audience members introduced themselves. Elmer Torres, former governor of the Pueblo of San Ildefonso, offered an invocation.

Welcome and Status Update — Pueblo of San Ildefonso

Terry Aguilar, governor, Pueblo of San Ildefonso, introduced Perry Martinez, former governor, Pueblo of San Ildefonso, and other members of the tribal council. Governor Aguilar invited legislators to the January 23 feast day at the pueblo. The governor noted that respect for elders is paramount to the pueblo, as is protection of the people and the land.

The governor talked about the Aamodt settlement and said that not just the pueblos but all those involved are working together to resolve water rights issues. He next highlighted two projects at the pueblo, the wastewater system and the gas station. Governor Aguilar made the point that as a non-gaming tribe, the gas station and the gas tax are the tribe's main sources of income.

The Pueblo of San Ildefonso is not a gaming tribe by choice, but that makes the gas tax that much more important. The money from the gas tax serves the needs of the pueblo, and the governor asked the committee for continued support of the tax in the face of ongoing efforts to repeal it.

Mr. Martinez greeted the committee and stated that he is a member of the New Mexico Native American Petroleum Coalition (NMNAPC) and spoke about the importance of the gas tax to the Pueblo of San Ildefonso. The state agreed not to tax gasoline sold on Indian land as long as the tribe imposes a gas tax equal to that of the state. This agreement was the result of extensive negotiation and compromise, and efforts to change this tax policy would have a substantial negative impact on tribes. Mr. Martinez was adamant that the NMNAPC stands opposed to any change in the status quo regarding the gas tax.

Questions

In response to a question, Governor Aguilar said there are currently about 750 members of the pueblo, and the pueblo is made up of 54,000 acres since its reacquisition of some land.

Regarding the Aamodt negotiations, the governor said that some tribes, including San Ildefonso, had some concerns about the settlement, but the tribal councils got together and came to an agreement. Currently, the Pueblo of Pojoaque and the Pueblo of Tesuque have not signed on to the settlement, although the governor said that those two pueblos do agree with the settlement and are prepared to sign on.

Mr. Martinez answered a committee member's question by noting that the gas tax existed for 10 years, and was reauthorized for another 10 years. Mr. Martinez clarified that the tribes are not involved in the diesel fuel tax.

A discussion of different funding opportunities ensued. A series of memorials were introduced to address the issue, but some confusion was created by different findings by different agencies. Assessment of the revenue produced by the gas tax ranges from $34 million to $54 million. The committee directed staff to look into the true revenue amount that comes from the gas tax to determine the amount against which it is bonded.

From the audience, James Rivera, tribal council member, Pueblo of Pojoaque, spoke of the importance of the gas tax. He listed infrastructure projects that would not have been possible without the gas tax. He said that it is not a lot of money, but that it does help with a broad range of projects.

Indian Water Rights Settlements: State Funding Recommendations

DL Sanders, chief counsel, Office of the State Engineer (OSE), said the Aamodt, Taos and Navajo water agreements are ongoing, and each has its own obstacles. Mr. Sanders cited the 2012 Indian Water Rights Settlement Fund Report as a good source of information for committee members.

Mr. Sanders cited the Winters Doctrine, set out in the United States Supreme Court case of *Winters v. United States*, which delineates tribal water rights. The Winters Doctrine states that:

1. rights are defined by federal law;
2. establishment of a reservation by treaty, statute or executive order includes an implied reservation of water rights in sources within or bordering the reservation;
3. based on date, users with prior appropriation dates under state law take precedence over Native American rights, but those with later dates are subordinate;
4. the quantity of water reserved is the amount sufficient to irrigate all irrigable land on the reservation; and
5. rights are not lost due to non-use.

Regarding the Navajo settlement, Mr. Sanders said the December 2013 deadline for the settlement was threatened by nine motions that Mr. Sanders believes are obstructionist in nature.

This is a problem because the City of Gallup is a party to this agreement and will run out of water soon. One of the motions is a notice of cessation of state funding for the water settlements. This helps opponents of the settlements and misleads people as to the message to be read from the legislature's actions of the recent past: that the legislature does not support the Indian water rights settlements because $15 million was pulled from the previous year's budget. A committee member said that it is important that the Department of Finance and Administration recommit the $15 million that was vetoed in that budget. The member then posited that an alternative funding route may be achieved by working with the governor's office and that a solution is critical to avoid jeopardizing federal matching funds.

Mr. Sanders said that all parties must be involved, including the county, because there needs to be buy-in to whatever solution is reached. He then made the point that with many new members of Congress taking office, it is important to emphasize how much work has gone into this over the past 40 years.

The project is expected to cost $1 billion, with the federal government paying $870 million and the rest coming from the state and the Navajo Nation. The project is on track to meet the deadline and pay its share, thereby not overrunning costs. Mr. Sanders noted that despite the protests, the settlement appears to be equitable and that time will bear that out.

As for the Aamodt settlement, the federal government will require 25,000 acre-feet of additional water to meet the needs of all the people, Native and non-Native, in the area. Without a pipeline, this will prove impossible. However, the United States Department of the Interior said that because it is the middle of an election cycle, it is unlikely there will be action on this right now. Mr. Sanders said that this whole process has been so complicated that the take-away for all parties involved is how not to go about this kind of undertaking.

Gregory C. Ridgely, deputy counsel, OSE, discussed the Taos settlement, which is in the process of being conformed to federal regulation. The Taos settlement is the least expensive of the three settlements at $145 million, with the state only responsible for $20 million, and state money will be used for mutually beneficial projects. The state has already committed $6.3 million through the Indian Water Rights Settlement Fund.

To summarize from the perspective of the state's obligation, the Navajo settlement is $10 million away from complete funding, the Aamodt settlement still needs $45 million and the Taos settlement still requires $13.7.

Myron Armijo, tribal liaison, OSE, expressed the OSE's support for the funding commitment so far and wants to know when the state will commit the remaining money that is required.

Questions

Committee members expressed frustration at what one member called misguided legal motions aimed at destroying the progress made by the Navajo agreement. The member noted that the legislature does indeed support the $15 million in funding.

In response to a comment about concerns with the Navajo settlement by farmers in the San Juan River region, Mr. Sanders said that New Mexico produces 2.7% of the water in the San Juan River, but pursuant to the Upper Colorado River Basin Compact, New Mexico gets 11% of the San Juan River water rights. The difference exists because when water rights were being assigned, Native Americans were given the opportunity to become agrarian societies, which require a certain amount of water. Under the current agreement, the Navajo Nation agreed to subordinate its water rights, which are senior rights, in order to enter the agreement. However, it is doubtful that the Navajo Nation will ever need to access water beyond what it currently uses, so it is giving up a right to something it does not use. Mr. Sanders said that however many times it is explained, people who are opposed to it will never accept the agreement.

Mr. Sanders went on to explain that if water is not used, it is not banked. The Upper Colorado River Basin Compact requires that water be sent downstream. The state gets credit for the unused water, but the unused percentage does not accumulate for use in later years.

Committee members then discussed the creation of a funding mechanism to provide the water settlements with revenue. Annual funding needs to be sought because the state is a party to the agreements and, as such, is obligated to pay whether it wants to or not. Upon a motion by Representative Begaye, with a second by Senator Lovejoy, and without opposition, staff was directed to work with the appropriate parties to find a consistent funding mechanism to provide the water settlements with revenue.

Next, some questions were raised about the state's financial burden for these projects and any limits that exist. Mr. Sanders said that the state can only carry some of the financial burden. Officially, the state's position is that it does not pay for Indian infrastructure, which is the job of the federal government. Accordingly, no Indian infrastructure costs are being borne by the state. The cost to the state is for non-Indian infrastructure, construction and employment. However, Mr. Sanders said that if the state wants to bear some of the cost for Indian infrastructure, that is a possibility.

A committee member said that there needs to be outreach to tribes so that they understand what the settlements encompass. Otherwise, people will feel left out of the process. Also, the timing of approval for funding is important because so many project proposals are time- sensitive. While many of these issues were discussed at the state-tribal summit that occurred in 2012, legislators were not a part of that discussion because they were not at the summit. Committee members reiterated what was said at earlier IAC meetings: that they want to be involved in the state-tribal summit and that communication is important. A suggestion was made to amend the Indian Education Act and the State-Tribal Collaboration Act to include some interaction and feedback from the legislature.

Mr. Sanders closed by saying that the OSE has aggressively sought to work with the tribes and pueblos and the Navajo Nation and that the Pueblo of San Ildefonso is collaborating with the OSE and Secretary of Indian Affairs Arthur P. Allison, too.

Fire Protection Fund and Funding for First Responders in Indian Country

John Standefer, state fire marshal, noted that fire protection is expensive. He quoted the adage that law enforcement requires one person, one gun and one car, but fire protection requires four to six people, a huge truck and a lot of equipment.

Mr. Standefer discussed the Fire Protection Fund FY13 distribution handout, which broke the distribution down by county, pueblo and chapter. The fund comes from a surcharge of 3% of home and auto insurance in the state. When the fund was created, there were no county fire departments. Now, by and large, the creation of a fire department requires a municipality or county to organize it.

Currently, the Fire Marshal Division is reaching out to Native American tribes and pueblos to create fire departments. A potential complication is that even when a new fire department is created, the county owns all the equipment. So even if the tribe owns the station and the land itself, there is nothing to prevent the county from taking the equipment and leaving the tribe without the means to fight fires.

Bernie Moller, deputy state fire marshal, said the Fire Marshal Division's work requires collaboration with a number of state agencies, tribal governments and communities. Mr. Moller said this type of collaboration is the best way to address fire safety issues without duplication of efforts.

Mr. Moller explained that if an area wants improved fire protection, it must get the county to do a feasibility study and satisfy some requirements, including having an adequate communications system and an adequate water supply, and buildings also must meet some minimum standards. He reiterated that the first step has to be with the county. If a pueblo wants help in setting up communications with a county to provide fire assistance, the state fire marshal will help.

Mr. Standefer explained that the Fire Marshal Division is available to improve fire protection services around the state, and it is open to innovative approaches. As for any proposed legislation, Mr. Standefer said that the division has no opinion and will carry out the letter of the law. Mr. Standefer explained that it takes legislative action for the division to treat the Fire Protection Fund differently. When and if the law changes, the division will change how it implements its services.

Questions

In response to a committee member's question, Mr. Standefer said that volunteer firefighters do have a retirement fund and that $75,000 goes into that fund annually. Despite that, the fund is not doing well currently and it may require increasing the amount annually put

into the fund to keep the account solvent. The way it works now is if someone volunteers for 10 years, she can draw $100 a month; 20-year volunteers can draw $200 a month.

When asked, Mr. Standefer said he hopes that a fire protection solution for the Pueblo of Sandia is arrived at soon to prevent a tragedy from happening. As it stands, the Pueblo of Sandia has no fire station, which is why it could not lend assistance at the nearby Corrales fire that occurred during the summer of 2012.

A committee member inquired about the state of fire protection in Sandoval County, which covers a lot of area. Mr. Standefer said there are 10 county fire departments and four municipal fire departments in Sandoval County. In fact, he said, the 10 county fire departments are run as one department, and while each department has its own chief, they all report to a single administrative body.

In terms of specific Native American fire departments, Mr. Standefer said that the Pueblo of Santa Ana fire station is an excellent facility, while the pueblos of San Felipe and Kewa are looking into how to best proceed. In the Pueblo of Jemez, a district will be created and come into existence soon.

Finally, Mr. Standefer mentioned that the Pueblo of Laguna was operating as an Insurance Services Office, Inc., (ISO) class 10, but that after the pueblo was reevaluated, it was rerated as an ISO 6, which gives the pueblo better fire protection services.

Program Evaluation: Navajo Nation Department of Emergency Management (NNDEM)

Duane Duffy, deputy secretary, Indian Affairs Department (IAD), introduced Lillian Brooks, administrative services director, IAD, and they discussed the funding provided for the NNDEM.

The IAD has received requests to speed up the funding process, but to do so, the IAD needs to get some clear deliverables to assess the return on investment. For example, in one instance where an emergency was declared, some hay for livestock was handed out to families in the affected area. The IAD considers that to be more a subsidy than a measure dealing with an emergency.

The committee reserved its questions until after the subsequent presentation by the NNDEM.

NNDEM

John Billison, director, Navajo Nation Division of Public Safety, introduced his co-presenters: Faye Platero, emergency services coordinator, NNDEM, and Rosalita Whitehair, incoming director of NNDEM.

Mr. Billison discussed the background and role of the NNDEM and said that he hopes the IAC will understand that there is hope that recovery of affected areas will be apparent after seven years of hard work. The task is enormous. The NNDEM field offices are located in New

Mexico, and the service area is composed of 13,520 square miles, with a population of 150,000. Since 1995, the NNDEM has responded to more than 10,000 incidents, saving lives and helping families rebuild their lives. Often, the services provided by the NNDEM are provided to the elderly and high-risk individuals, so the work is critical.

Questions

A committee member gave kudos to the NNDEM and noted his years of support for the agency. However, he said that there has been no state money given to the NNDEM for the past few years, and without that money, important services cannot be provided to match the need. He said the Navajo Nation does not have much money, so the state needs to help. The committee member asked that all legislators support his appropriation request in the 2013 legislative session.

Another committee member asked if state dollars are supposed to be used for equipment only and if, despite that, salaries are being paid out of the state dollars that go to the NNDEM. Deputy Secretary Duffy said that is a problem. When an audit was done of the NNDEM, it appeared that money was indeed being used for salaries. He said that state money administered through the IAD was not supposed to be a consistent funding stream for the Navajo Nation, pueblos and tribes. The problem, the committee member noted, is that it is unclear what money would be used to replace that funding if state funds were not used to pay those salaries.

Mr. Billison said that his department does not know what pot of money is used for what, and that the department needs to get that information to the committee. Secretary Allison said that this year, the IAD allowed for money to be used for salaries, but the hope is to use it only for equipment next year. He said that extra help was needed this year to deal with emergencies.

Secretary Allison said that the IAD's budget was cut, too, and that the IAD is limited in the amount of help it can provide. He expressed hope that by working with the Homeland Security and Emergency Management Department, more funds could be accessed. Secretary Allison asked the IAC for a letter to the Homeland Security and Emergency Management Department asking it to work with the IAD to look at the emergency management needs of the 22 tribes in New Mexico. Upon a motion by Representative Powdrell-Culbert, with a second by Senator Pinto, and without objection, the IAC passed a motion to write a letter to the Homeland Security and Emergency Management Department, asking it to work with the IAD to look at the emergency management needs of the 22 tribes in New Mexico.

Adjournment

There being no further business before the committee, the fifth meeting of the IAC for the 2012 interim adjourned at 2:55 p.m.

MINUTES
of the
SIXTH MEETING
of the
INDIAN AFFAIRS COMMITTEE

November 26, 2012
Buffalo Thunder Resort & Casino
Pueblo of Pojoaque

November 27, 2012
Room 307, State Capitol
Santa Fe

The sixth meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on Monday, November 26, 2012, at 9:45 a.m. at Buffalo Thunder Resort & Casino at the Pueblo of Pojoaque.

Present
Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Rep. Ray Begaye
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. Richard C. Martinez
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez

Absent
Sen. Rod Adair
Sen. George K. Munoz
Sen. John C. Ryan
Rep. James E. Smith

Advisory Members
Rep. Eliseo Lee Alcon
Rep. Ernest H. Chavez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

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

Staff
Damian Lara, Legislative Council Service (LCS)
Peter Kovnat, LCS
Theresa Rogers, LCS

Guests
The guest list is in the meeting file.

Handouts

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

<u>Monday, November 26</u> — Buffalo Thunder Resort & Casino, Pueblo of Pojoaque

Senator Nancy Rodriguez chaired the first day of the meeting. Representative-Elect Sharon Clahchischilliage and Senator-Elect Benny Shendo, Jr., were in attendance. The invocation was offered by Senator-Elect Shendo. The committee members, staff and audience introduced themselves.

Welcome and Status Update — Pueblo of Pojoaque

George Rivera, governor, Pueblo of Pojoaque, noted his appreciation for the committee's willingness to collaborate with the pueblos and the entire Native American community. Buffalo Thunder is the largest resort in the state and is an example of how collaboration among groups can create jobs. The Pueblo of Pojoaque employs 1,700 people, making it the largest employer in the area. Governor Rivera said that the boys' and girls' club, the wellness center and the senior center were created with the help of the state and are run almost 100% by the pueblo. He said that these entities have benefited the entire region, not just the pueblo. He said that more than just being proud of these accomplishments, completing projects such as these are the mission of leaders such as himself and the legislators.

Governor Rivera focused his comments on the critical issues of gaming and water. Regarding gaming, he said that compact negotiations are ongoing with the five groups that are parties to the compacts that are set to expire in 2015. Those five are the Pueblo of Acoma, the Jicarilla Apache Nation, the Mescalero Apache Tribe, the Navajo Nation and the Pueblo of Pojoaque. Eight months into the meetings, a stalemate has been reached. Despite the fact that the compact expires in 2015, the hope is to deal with it proactively. A central issue has been revenue sharing, and Governor Rivera mentioned the *Brown v. Rincon Band of Luiseno Mission Indians* case. According to Governor Rivera, the state cannot collect revenue from the tribes and put it in the general fund; that money has to go back to the tribes. He said that in New Mexico, the key to the relationship between the tribes and the state has always been collaboration.

Governor Rivera said that there is no exact time frame set out for finalizing the compact negotiations and that if there is something that comes together for the 2013 legislative session, the Pueblo of Pojoaque is willing to work with that.

The free play issue is a big sticking point between the Gaming Control Board (GCB) and the tribes. Governor Rivera explained that free play is not considered revenue under the current compact. In fact, nowhere in the current compact is free play mentioned, but the GCB thinks free play should be considered as revenue. If it is revenue as the GCB insists, it would mean millions of dollars owed by each tribe involved in the compact. The governor believes that this treatment of free play by the GCB is a violation of the agreement signed in the current compact. In Governor Rivera's estimation, the GCB has overstepped its authority and this could compromise revenue sharing in the first place. Governor Rivera asked for an LCS opinion on free play, whether it should be considered revenue and whether revenue is owed.

Questions

A committee member noted that the GCB was invited to this meeting but requested not to be on the agenda because the free play issue was being negotiated and it did not want to endanger any advancements that were made. The tribes dealing with the free play issue have been negotiating over the past two years and they met last week, but the tribes did not have an update ready for this committee meeting. So, both the tribes and the GCB asked not to come before the committee during this meeting to discuss any agreements reached in private.

Governor Rivera said that the Pueblo of Pojoaque was involved in last week's meeting and the stalemate continues on the free play issue. Last week's meeting was supposed to be confidential, but the GCB shared information from the meeting and the *Albuquerque Journal* printed an article while the meeting was still ongoing.

A committee member noted that federal law does not allow for taxation of the tribes, but it does allow for revenue sharing, as long as there is exclusivity. Exclusivity was part of the agreement that the tribes got in exchange for the revenue-sharing agreements with the state. That exclusivity is at risk, so negotiations, though sadly at a stalemate, are critical to both sides.

According to the committee member, the state currently gets $65 million from tribal gaming. In response to a question, Governor Rivera said that if free play is considered revenue, the revenue-sharing amount would go from 8% to 10.43%, which is a significant increase.

Another legislator commented that the GCB needed to be here, and, as a state agency, it needs to come before the IAC. The legislator said that the GCB needs to provide Mr. Lara with the GCB's position on the issue of free play, in writing, to provide to the committee. It was noted that the chair of the GCB was at the interim legislative Revenue Stabilization and Tax Policy Committee meeting. The legislator asked Mr. Lara to request another IAC meeting so the GCB can come before the committee.

A representative suggested that the IAC send a letter to the GCB in support of the tribes regarding free play as it is not in the 2001 compact. Another member said that the letter of support should wait until the IAC hears from the GCB on this issue, and to send the letter now would be premature and would indicate that the IAC is not listening to the GCB's position in good faith.

Eli Romero, member, Pueblo of Pojoaque, said that free play functions like a discount card at a retailer. The casino should be taxed on the price paid by the consumer, not the pre-coupon price. To clarify, Mr. Romero said that the free play amount cannot be cashed out.

Switching to the issue of water, a committee member said that $80 million was allocated toward the Aamodt Water Settlement, which passed the United States (U.S.) Congress in 2009. The state responsibility is to fund non-native infrastructure within tribal lands, which amounts to $50 million, $20 million of which was put in two years ago. Last year, the money was cut out of the state budget. So, to stay on schedule, the state would need to pay about $30 million to make up for last year's missed funding. Without the settlement, there will be an inadequate amount of

water for everyone. To be clear, a committee member said, the state is required by the agreement to come up with $75 million by 2017, so it makes sense to phase those payments in and not wait until the very end. There is lag time between the time the legislature authorizes the severance tax bonds and from the time the State Board of Finance issues the bonds, they are sold and the money gets distributed. If the legislature does not stay on schedule, the state will be charged the increased costs in inflation and overrun costs.

In closing, Governor Rivera thanked the committee for the opportunity to present.

Statewide Tribal Education Status Report

Dr. Ferlin Clark, assistant secretary for Indian education, Indian Education Division (IED), Public Education Department (PED), introduced Clarice Cadda Montoya, IED, and discussed the Statewide Tribal Education Status Report and said that, for the first time, this report was released by its statutory due date. However, he said the deadline presents a challenge because it does not give the schools much time to provide the data needed to put together this report.

Dr. Clark discussed the reading, math, science and social studies proficiency levels as measured by the New Mexico standards-based assessment, broken down by ethnicity and by grade level among American Indian students. Other aspects of the report highlighted by Dr. Clark were the student safety indicators, including truancy and emergency response, parent involvement and bilingual programs.

The 2011 four-year graduation rate shows that 60.5% of American Indian students graduated. Among school districts, the Magdalena Municipal School District showed the highest graduation rate at 91.5%, while the Jemez Valley Public School District had the second highest at 90.9%. The Gallup-McKinley County School District had the largest number of graduates at 989.

To fully evaluate state tribal education, Dr. Clark said that one must look for trends among student achievement, or the lack thereof, and consider curriculum for culturally relevant aspects. As for funding, two teacher support programs won competitive bids.

Questions

A committee member requested that if there is another IAC meeting this interim, Dr. Clark speak on the possibility of creating a multistate charter school on the Navajo Nation. The member is working with Dr. Clark on the charter school idea and extended an invitation to these talks to the other IAC members. The member thanked legislative colleagues for orchestrating the Indian Education Act, but questioned its effectiveness, and said that it needs to be tweaked to be made more effective. The member asked how useful the Indian Education Act is if it is not aligned with tribal law. The question was raised of why memoranda of understanding (MOUs) and memoranda of agreement are being entered into when they are not legally binding.

Another committee member said that the Navajo community must come together on the charter school issue and that the funding and facilities need to be ironed out first before the state gets involved.

In response to the question of whether state standards-based assessment assesses student growth, Stan Holder, acting associate deputy director, Division of Performance and Accountability, Bureau of Indian Education (BIE), said that he is working with the Legislative Education Study Committee to figure out how curriculums can be aligned so that if students transfer between the BIE and state schools, or whatever type of school, they can be assessed in the same manner.

Ms. Montoya said that community-based programs are important, but that it is difficult for language programs to have consistency, because they are all different. Programs lump all English-language learners together, despite all of them not being in bilingual programs. When asked about the authority to provide a language program to non-natives, Dr. Clark said that is up to the particular school district, and if the district is okay with it, so is the PED. However, issues of where the funding comes from and how its use is limited must be worked out.

A committee member expressed frustration that grants were given to the Los Alamos Public School District, but not to the Zuni Public School District, and that seems wrong. Native American schools still lag behind in achievement and to remedy that, money needs to go to those schools. The member hopes for an increase in funding in the next fiscal year for the Indian Education Act. Dr. Clark said that in 2012, Governor Susana Martinez did not want any increase, but with strong advocacy, more money, at least $10 million more, could be requested.

Dr. Clark said he knows the students are failing, but the question is how to deal with it. The different tribes and pueblos are in different places, and the attempts to help out must be done in a sensitive way to maintain respect for the tribes and pueblos. For years, legislators have tried to reach out to the BIE, and it finally seems to be coming around.

State-Tribal Collaboration: Improving the Working Relationship and Addressing the Concerns of the All Indian Pueblo Council (AIPC)

Chandler Sanchez, chair, AIPC, and Charlie Dorame, vice chair, AIPC, said that Governor Martinez has not met with the AIPC. The governor has directed the agencies to work directly with the tribes, but not with the AIPC. The AIPC cannot be left out of the loop. It is not being notified of decisions being made. This is problematic because the tribes look to the AIPC to know what the relationship is with the state.

Mr. Dorame said that he wants to make it clear that it is critical that the state continue to fund the Water Trust Fund. He said that the funding goes to help non-Indian communities and does not go to the tribes. Without the money, the federal government will not provide the funding needed to build the Navajo-Gallup water pipeline.

It is troubling, Mr. Dorame said, that he has not heard anything about the compact negotiations, especially because he is a member of the Native American Gaming Association.

Mr. Sanchez said that the common thread of the problems identified is the lack of communication with Governor Martinez. The AIPC wants a closed-door meeting with tribal leadership and the governor. The AIPC also wants to work with Secretary of Indian Affairs Arthur P. Allison on a number of issues before going into the 2013 legislative session.

The AIPC has sent letters to the Office of the Governor, but the only response was two years ago, and it did not even mention the AIPC. The issues concerning the AIPC were put forward to the cabinet secretaries at the Mescalero State-Tribal Summit in 2012, but no responses regarding these issues have been received.

Questions

Upon a motion by Representative Lundstrom, seconded by Representative Rodella and without objection, a special meeting was requested, on behalf of the tribes and pueblos, that the AIPC meet with legislative leadership in early January, before the session starts. The hope is that the meeting may get Governor Martinez and the executive branch to understand that the tribes are working with the legislature. Native American leaders should choose who from the Native American community should be at the meeting. On the legislative side, it should include leadership from both the house and the senate. Also, the new Native American legislators should be involved in this discussion. One suggestion was to hold this meeting in February on Indian Day. Mr. Sanchez said that most of January is dedicated for traditional activities and the blessing of new tribal leadership, but the AIPC would love to find a date to have this meeting.

A committee member said that perhaps the agenda for the annual state-tribal summit is based on common issues for all the tribes, such as water, gaming, education and health care, and that it may be by design not to include issues such as free play.

Another member said that the IAC should speak for the tribes and that it has fought for years so that tribes can sit at the table and collaborate with the state. Good laws have been made to give tribes opportunities, which do not exist in other states. The member said that New Mexico has become a model for laws to include Native Americans in decision-making.

Upon a motion by Representative Lundstrom, seconded by Representative Rodella and without objection, the committee urged that federal Indian law be included as part of the legislator orientation on December 13, 2012.

Mr. Sanchez and Mr. Dorame thanked the committee, and Mr. Dorame invited IAC members to the next state-tribal summit as guests of the Pueblo of Tesuque.

State-Tribal Collaboration Act: 2012 Agency Reports

Duane Duffy, deputy secretary, IAD, provided an update on the tribal liaison survey. There were 20 responses, which reveal that different agencies treat the role of tribal liaison quite differently. In some cases, it is the liaison's primary job, whereas for twice as many liaisons, that aspect is merely an additional duty. There is general agreement among the liaisons that responded that their agencies have effectively implemented tribal collaboration and communication policies. However, it is notable that, as often as not, the same respondents were

not the contact person responsible for maintaining communication between the agency and Indian nations, tribes and pueblos.

Next, Mr. Duffy provided highlights from fiscal year 2012 agency annual reports. Agencies discussed included the Children, Youth and Families Department; Department of Health; Energy, Minerals and Natural Resources Department; Human Services Department; Corrections Department; Department of Environment; PED; and Tourism Department.

Questions

A committee member said that the reports are based on ongoing work that different agencies are involved in, and was particularly impressed by the Corrections Department conducting sweat lodges at the maximum security prison in Santa Fe.

Another member encouraged the IAD to work with the Workforce Solutions Department and the Department of Military Affairs and said that New Mexico has one of the highest percentages of Native Americans who enlist in the armed forces.

A member asked about water issues and the recent New Mexico Supreme Court decision to give the state engineer authority over water decisions. Mr. Duffy said that, as of yet, no requests have been fielded by the IAD regarding the New Mexico Supreme Court decision, although it is recognized as an important decision.

The sentiment arose that it is good to see collaboration, but the question remains of how this is improving people's quality of life. When asked what kind of progress has been made in terms of economic development, Mr. Duffy said that projects exist, but he currently does not know what information is public and, therefore, what he can reveal.

Autumn Monteau, general counsel, IAD, answered some questions that arose at the IAC Gallup meeting. Regarding the state-tribal summit, a decision was made not to hold it while the legislature is in session. Also, Governor Martinez did ask the AIPC to join the Summit Planning Committee. Regarding the issues covered at the summit, the summit agenda is based on survey results. Ms. Monteau said that this is the most efficient way to discuss tribal issues, and because there is only one meeting day, hard decisions must be made because every concern cannot be covered.

As far as the complaint that the AIPC is not consulted enough about Native American issues, Ms. Monteau said that it is difficult to figure out if the best thing to do is to work with the AIPC or with tribal leaders.

Jicarilla Power Project — Status Update

Nann Winter, counsel to the Jicarilla Apache Nation, provided a status update for the committee. The Bureau of Indian Affairs has issued and approved the right of way for the 115-kilovolt distribution line between Chama and Dulce. Currently, the issue is in tribal court, and an agreement to build power lines on a particular plot of land has yet to be reached.

At 3:40 p.m., the IAC stood in recess.

<u>Tuesday, November 27</u> — Room 307, State Capitol, Santa Fe

The second day of the sixth meeting of the IAC was called to order by Senator Pinto on Tuesday, November 27, 2012, at 9:50 a.m. in Room 307 of the State Capitol in Santa Fe. The committee members, staff and audience introduced themselves. The invocation was offered by Representative Madalena. Representative Jeff chaired the second day of the meeting.

Economic Development in Indian Country

Jon Barela, secretary, Economic Development Department (EDD), discussed the EDD's five tribal liaisons. Each liaison has a region and is actively working on projects with Native American communities.

Also, Secretary Barela said that the EDD's Office of Business Advocacy is available to help small businesses and tribal governments throughout the state. Another resource offered by the EDD is a data center to assist local or tribal governments in finding market opportunities. The data center can be used from everything to finding available commercial sites to assisting in the grant-writing process to seek financing.

The MainStreet Program is a key component of the EDD outreach and, to date, has created 592 jobs and seen over $9 million in private sector reinvestment. MainStreet is primarily a rural program, with 97% of its funding going to rural areas. Notable is the Zuni MainStreet, which is the first Native American MainStreet in the country.

Another bright spot of the New Mexico economy has been the doubling of exports in the last two years. Secretary Barela said that tribal governments with products for export should work with the EDD to galvanize this economic development opportunity.

One of the best tools for business recruitment and expansion on tribal or pueblo land is the Job Training Incentive Program (JTIP), for which $4.75 million will be requested in the upcoming legislative session. For a Native American enterprise or one that is located on Native American land, 75% of the work force training costs for the first six months will be reimbursed.

Secretary Barela concluded by saying there is still an infrastructure gap, and he is committed to working with tribal governments to figure out how to bridge that gap.

Questions

The issue of duplication by agencies was something that the committee wants to discuss with Secretary Allison, who at a previous IAC meeting showed the committee a chart illustrating that all the work the IAD does is dedicated to economic development. However, Secretary Allison had yet to arrive, and Secretary Barela said that he cannot speak about how the IAD sets up this effort. Secretary Barela did emphasize that there is collaboration with other departments to promote economic development and growth in the state.

Secretary Barela said that he does not presume that tribal governments need help from the EDD, but said that if asked, the EDD is ready to provide assistance.

A comment was made about the EDD having five tribal liaisons working with tribes and how that seems to duplicate the efforts of the economic development role in the IAD. In response, Jerry Sandoval, economic development and tourism director, IAD, discussed the role of the tribal liaisons and how they develop programs to help build capacity in tribal communities.

A committee member said that it is critical to delineate the roles of the departments so that there is not duplication. Secretary Barela said communication is critical to avoid mission creep; luckily, that communication exists. Having tribal liaisons in various departments may lead to agency creep, and perhaps, as suggested, the communication needs to be formalized in MOUs to prevent duplication of efforts.

The committee's concern is that money is being spent unnecessarily. For example, the EDD has contracts with grant writers, but the IAC hired a grant writer, too. Can both departments use one grant writer? A committee member said it is best not to reinvent the wheel, but rather to use the expertise that already exists.

Another committee member extended a welcome on behalf of the IAC to the IAD lead tribal liaison Steve Gonzalez.

Native American Suicide Prevention and Data Clearinghouse

Robert M. Apodaca, consultant, Motiva Corporation, read and discussed the AIPC Resolution Number 2012-11, Support for the Five Sandoval Indian Pueblos, Inc., Suicide Prevention Community Programs and Technical Assistance Centers.

Steven Adelsheim, M.D., director, University of New Mexico (UNM) Center for Rural and Community Behavioral Health (CRCBH), introduced Sheri Lesansee, program manager, UNM CRCBH, and gave a history of legislation regarding this issue. Senate Bill 417 (2011) passed without funding. In 2012, a senate bill approved $100,000 for the Native American Suicide Prevention Clearinghouse but not the additional $300,000 that was requested.

Ms. Lesansee discussed the clearinghouse web site and how it is used to disseminate information about resources, programs, initiatives, research data, coalition building information and contacts for tribes. She talked about bringing awareness about suicide to communities, which needs to be done in a sensitive manner. Building strength in communities is about resiliency, mental health access and substance abuse counseling, all the time keeping a deep sense of cultural awareness.

Doreen Margaret Bird, community-based research specialist, UNM Health Sciences Center, spoke about suicide research and said that it has been posited that tribes that are really closely connected and have a high level of cohesion are less likely to have suicides. But, just

two days ago, there was a suicide within a tribe considered to be closely connected. Therefore, it is still critical to work to address all the contributing factors in suicides.

Questions

A committee member asked about getting the additional $300,000 to have the Native American Suicide Prevention Clearinghouse program fully funded. Another member said the clearinghouse was very fortunate to get the funds it did with the budget deficit that has existed for the past few years.

The committee discussed the huge role that the UNM Psychiatry Department plays in the effort to prevent suicide by offering its expertise and clinical experience. One criticism, however, was the focus on Albuquerque, as Thoreau and other more rural communities are suffering from a rash of suicides.

Upon a motion by Representative Madalena, seconded by Senator Lovejoy and without objection, a motion was made to support the legislature approving $300,000 for culturally based youth suicide prevention initiatives.

Questions for Secretary Allison

Secretary Allison arrived and discussed duplication of efforts by agencies. He said he used to work as a director for a Fortune 500 company, and then became the economic development director of the Navajo Nation. So, that is what he felt was his strength that he brought to the table when he was made the secretary of Indian affairs.

The state can play a major part in economic development, but often there is simply not enough staff to do so. It is important to leverage the expertise of both Secretaries Barela and Allison to generate real economic development, especially now when serious job cuts threaten the economic health of the region. Even San Juan County, which has always been an area of consistently low unemployment, will lose jobs because of less energy production in the area.

Secretary Allison said he wants to have someone on his staff that he can consult every day to address the needs of the state's Native American communities.

A committee member said that the AIPC wants to collaborate with the Office of the Governor and asked if Secretary Allison can help make that meeting happen. Secretary Allison said that he hears that at every monthly AIPC meeting and has brought this issue before the Office of the Governor's staff, and he will continue to take that message to her. Governor Martinez has said that she has an open door policy, but she has not been able to go to the AIPC meetings.

Secretary Allison asked that the committee request a meeting with Governor Martinez's Chief of Staff Keith Gardner or Governor Martinez to address the issues raised by the AIPC regarding free play, water settlements and taxation. In response, a committee member said that the AIPC does not want to meet with the second or third in command. Secretary Allison said that he would do his best to make this concern known to the governor.

Another legislator said that although Governor Martinez has an open door policy, many times tribal leaders have traveled to her office and the governor has not been there. Unfortunately, the State-Tribal Collaboration Act does not have any mandate to force meetings between the executive and tribes. All meetings are discretionary. The committee expressed that the governor must fulfill her agreements to meet with tribal leaders and that it will be working hard to get tribal leaders meetings with the governor.

Minutes

Upon a motion by Representative Lundstrom, seconded by Representative Rodella and without objection, the committee moved to approve the minutes as amended for the 9/24-9/26 IAC meeting. Upon a motion by Representative Rodella, seconded by Representative Madalena and without objection, the committee moved to approve the minutes for the 10/25-10/26 IAC meeting.

Navajo Nation and State Land Office Land Exchange

Senator Pinto introduced members of the Navajo Division of Transportation and Ray Powell, M.S., D.V.M., commissioner of public lands. Commissioner Powell said that this is a highlight of his term as commissioner and thanked Senator Pinto for facilitating this land transfer, which is a win for all parties involved.

Ben Shelly, president, Navajo Nation, introduced his staff and thanked Commissioner Powell, Senator Pinto, the Navajo-Hopi Land Commission Office and the IAC for all the help to resolve this critical land issue in the eastern Navajo Nation.

Senator Pinto said that based on the land in question, the Navajo Nation has to pay $200,000 a year in property tax, which it cannot afford. The memorial to transfer the land will help alleviate that cost.

A committee member said that Senator Pinto did great work in ushering this land transfer through the legislature and gave kudos to him. The member also thanked Paulson Chaco, director of the Navajo Division of Transportation, who also worked hard to make this transfer happen.

The committee noted how it truly supports this land transfer, which means a lot to a lot of people. The members noted that they are grateful to Commissioner Powell, and that this is a great example of governments working together for the benefit to all.

President Shelly said that there is a long way to go before the state of Navajo transportation is perfect, but that this is a great win-win for all parties.

The land transfer document was signed by President Shelly, Senator Pinto and Commissioner Powell.

Endorsement of Legislation

Mr. Lara explained .190655.1, a bill regarding the youth suicide prevention initiatives that appropriates $300,000, $100,000 for each of the three initiatives. Upon a motion by Representative Rodella, seconded by Representative Begaye and without objection, the committee moved to endorse the bill, which will be carried by Representative Madalena.

Next, Mr. Lara discussed .190683.1, a bill appropriating $172,000 to New Mexico State University (NMSU) for the statutorily created Indian Resources Development Program. Mr. Lara introduced Dr. Joe Graham, director, NMSU Indian Resources Development Program. Dr. Graham said that while the program is being funded at 56% and by being frugal, until now, the program was able to function. However, all the money is now spent, and the program needs more money to continue. By statute, the program must work with NMSU, UNM and the New Mexico Institute of Mining and Technology. Without new money, the program will no longer be able to fund the highly successful DreamMakers two-week summer youth program.

A committee member said that in the 1970s, he provided some support to the program, and it has been very successful.

Ricardo Rel, director, NMSU government affairs, spoke in support of the DreamMakers program. Mr. Rel said the plan is to get IAC support and then add it to House Bill 2.

Upon a motion by Representative Rodella, seconded by Representative Chavez and without objection, the committee moved to endorse the bill, which will be carried by Representative Madalena.

The committee then considered .190656.1, a bill expanding the eligibility of the lottery tuition scholarship to students attending tribal colleges. Upon a motion by Representative Rodella, seconded by Representative Powdrell-Culbert and without objection, the committee moved to endorse the bill, which will be carried by Representative Alcon.

The next bill up for potential IAC endorsement was .190754.1, an appropriation of $203,900 to UNM for the Southwest Indian Law Clinic at the UNM School of Law. The current funding for the clinic is $174,000, and the request is for an additional $30,000. Upon a motion by Representative Chavez, seconded by Representative Rodella and without objection, the committee moved to endorse the bill, which will be carried by Representative Rodella.

Mr. Lara then explained .190654.1, a joint memorial requesting that the U.S. Congress continue to pay its share of the costs associated with the benefits received by tribes and the U.S., as trustee, for settling Indian water rights disputes. The joint memorial provides clauses that set out that the U.S. is a trustee for tribes and the Winters Doctrine, which states that when the U.S. sets aside money for Indian reservations, the U.S. also impliedly sets aside water rights for those reservations at that time and into the future.

A committee member noted that it is important to be careful with the language, and that it could come back to haunt the same people it is supposed to help due to unintended consequences.

Another committee member asked how this relates to the Taos and Aamodt settlements, specifically, if the water settlements have yet to be signed, how will this affect the settlements? While the settlements have not been signed by some parties, Congress has authorized and appropriated the money for them. There is about an 18-month lag time that exists with issuing bonds and selling them, so, to remain on schedule and to not incur inflation and increased construction costs, this is an important memorial.

In response to a request from one committee member citing the need to be more specific, another committee member agreed to work with Mr. Lara to specifically name certain tribes and pueblos in the memorial. Upon a motion by Senator Pinto, seconded by Representative Madalena and without objection, the committee moved to endorse the bill, which will be carried by Representative Madalena.

The final bill the IAC considered for endorsement was .190755.1, which enacts the Refund Anticipation Loan (RAL) Act, which would require the licensing, bonding and regulation of businesses offering RALs. The act would require certain disclosures, and oversight would be the responsibility of the Regulation and Licensing Department. The bill also provides remedies for violation of the provisions of the act. This act would bring RALs, which are not currently regulated, into line with payday loan regulation. Upon a motion by Senator Pinto, seconded by Senator Lovejoy and without objection, the committee moved to endorse the bill, which will be carried by Representative Powdrell-Culbert.

There being no more business before the committee, the chair thanked the committee for its hard work this interim and thanked Senator Lovejoy for her years of hard work for the state, the people of New Mexico and Native Americans.

Adjournment

There being no further business before the committee, the sixth meeting of the IAC for the 2012 interim adjourned at 2:10 p.m.

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MINUTES
for the
SEVENTH MEETING
of the
INDIAN AFFAIRS COMMITTEE

December 20, 2012
Room 322, State Capitol
Santa Fe

The seventh meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, at 9:50 a.m on Thursday, December 20, 2012, in Room 322 of the State Capitol. A moment of silence was observed for the late Speaker of the House Ben Lujan. Then, committee members, staff and the audience introduced themselves.

Present
Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Ray Begaye
Rep. Sandra D. Jeff
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. John C. Ryan

Absent
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. Richard C. Martinez
Sen. George K. Munoz
Rep. James E. Smith

Advisory Members
Rep. Eliseo Lee Alcon
Rep. Ernest H. Chavez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Sen. Eric G. Griego
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

Staff
Peter Kovnat, Legislative Council Service (LCS)
Damian Lara, LCS
Theresa Rogers, LCS

Guests
The guest list is in the meeting file.

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

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Thursday, December 20

Tribal-State Gaming Compact Negotiations: State Perspective

There were no representatives from the Office of the Governor present to discuss the gaming compact negotiations from the state's perspective.

Tribal-State Gaming Compact Negotiations: Gaming Control Board (GCB) Perspective

David L. Norvell, board member and acting state gaming representative, GCB, discussed the use of the term "free play" in the 2001 and 2007 compact. Mr. Norvell stated that the term "free play" is not mentioned in either the 2001 or 2007 compacts. The term was made ubiquitous by the gaming industry to describe promotional gaming. Mr. Norvell stated that the GCB has been diligently enforcing the laws created by the legislature and the compacts surrounding free play, and that the interpretations of these laws are at the center of compact negotiations. Of the 14 tribes in New Mexico with gaming compacts, two of the tribes are paying the appropriate costs under the compact, 11 are not paying the appropriate costs and one tribe does not engage in any free play.

Mr. Norvell said that the 2001 compact is slightly different in its language from the 2007 compact where it describes the determination of net win and revenue shares. Both contracts, however, are interpreted by the GCB to reach the same conclusion.

Frank A. Baca, general counsel and acting executive director, GCB, stated that the two tribes paying the appropriate share of their free play revenue to the state independently interpret the law in the same way as the GCB. Mr. Baca emphasized that free play debates and litigation are not unique to New Mexico. The underlying legal issue is the term "wager" and its definition.

The GCB interprets a gambling wager as requiring three parts: 1) consideration for exclusivity to conduct Class III gaming; 2) prizes; and 3) an outcome based on random chance. The GCB hinges its legal position on the term "wager". The 2001 and 2007 compacts use the term to calculate the amounts they owe in revenue shares on Class III gaming machines.

The GCB is fully aware of the tribes' positive impact in New Mexico and, because of this, fostering their success is integral.

A committee member asked for clarification regarding consideration of a wager, which requires something in exchange. The member stated that there is no tangible object in return for consideration, only a chance of winning. Mr. Baca responded that if there is no consideration, there can be no determination for revenue sharing.

A member stated that the generally accepted accounting principles do not recognize free play as revenue, and that in the 2007 compact, tribes were not able to negotiate free play terms.

Committee members expressed concerns that the reopening of the gaming compacts would break good relationships forged between the state and the tribes. They also discussed the Rincon Compact in California, which found the State of California to have negotiated in bad

faith, resulting in severe consequences for the state. Mr. Baca stated that New Mexico stands to gain tens of millions of dollars if the tribes are required to fulfill unpaid free play revenue sharing.

A committee member asked whether the U.S. Department of the Interior has ever rejected compacts sent for final approval. Mr. Baca said he was not aware of any rejected compacts, but that if a compact were rejected, it would be remanded back to the state for negotiation. Mr. Baca went on to say that in 2000, when free play began gaining popularity, it was difficult to write rules surrounding it. Since 2000, free play has experienced significant growth and change, which needs to be considered in the future. A good-faith negotiation, with the support of the legislature and an understanding of the stance of the U.S. Department of the Interior, will be crucial. In response to these steps, the GCB will uphold the approved compacts and curtail illegal activity. Mr. Baca clarified further that if the language in the current compacts were further updated and clarified, the amount the tribes owe the state in revenue would not change very significantly.

A committee member stated that it is well known that the compacts require the tribes to pay a percentage of their net win, including net cash prizes, in revenue sharing. Clarifying definitions that fall under non-cash revenue should be a major initiative. The member stated that it may be best to have all the tribes on the same compact in order to eliminate confusion and maintain equality. The committee member expressed concern that the governor had no representation present, and that there are no signs of progress toward a resolution. The committee asked Secretary of Indian Affairs Arthur P. Allison to coordinate with the GCB to help push toward a resolution and maintain hard-earned relations between the state and the tribes.

Tribal-State Gaming Compact Negotiations: Tribal Perspectives

George Rivera, governor, Pueblo of Pojoaque, expressed that the tribes of New Mexico are very concerned about the progress of the compact negotiations with the state, especially surrounding the issue of free play. Governor Rivera stated that the agreement with the state to pay eight percent of revenue is being breached and should be protected.

Conroy Chino, lobbyist, Pueblo of Acoma, explained that although many of the tribes were invited to the committee meeting to give statements, they were advised not to appear in order to preserve the integrity of the ongoing negotiations, in hope of meeting a negotiation deadline of presenting a new compact before the 2013 legislative body.

Mr. Chino stated that the discussion currently centers around the length of the compacts. The tribes entered into mediation with the state in November 2012 but were unable to reach an agreement after two days of mediation. The tribes stressed in the mediation that they believe they are in compliance with the current compacts and that they have paid their fair share of revenue. The tribes also believe that the state calculates revenue in a way that drains tribal resources, and that "revenue", as defined in the compacts, means net revenue less the amount paid out in prizes. The tribes argue that they are properly deducting these prizes and that

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revenue collected on Class III machines is being properly reported. Further, they posit that free play has allowed state revenues to grow.

Governor Rivera and Mr. Chino urged the IAC to continue to support their negotiations toward a new compact and welcomed committee members' insight and feedback on the finished product.

Calculation of Net Win for Revenue Sharing: Tribal Perspective

Wayne Bladh, attorney, Nordhaus Law Firm, LLP, stated that the term "wager" is not defined in the compact to which the parties agreed. Mr. Bladh explained that the definition the GCB is promoting is a definition formed by the National Indian Gaming Commission (NIGC) in the 1980s and 1990s. The NIGC does not define free play as a wager, thereby forbidding deduction of any prizes won. Other states have changed their statutes to reverse this stipulation.

The National Society of Accountants does not consider free play to be revenue, Mr. Bladh said. Mr. Bladh also pointed out that Section 4, Subsection C of the 2007 compact helps define Section 11 of the 2007 compact by stating that a "financial statement shall be prepared in accordance with generally accepted accounting principles and shall specify the total amount wagered . . . for the purposes of calculating 'Net Win' under section 11 of this compact".

Mr. Bladh explained free play by relating it to a sale or discount at a retail store. The store offering a discount on a sweater will not pay taxes on the sweater's full price. It will pay taxes on the discounted amount for which the sweater sold. Similarly, the tribes should not pay revenue sharing on money the tribes never received.

Minutes

The committee adopted the minutes of the November 26-27, 2012 meeting with no objection.

Adjournment

There being no further business before the committee, the seventh meeting of the IAC for the 2012 interim adjourned at 1:35 p.m.

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