

INDIAN AFFAIRS COMMITTEE

NEW MEXICO STATE LEGISLATURE

2005

INTERIM REPORT



December 2005

*New Mexico Legislative Council Service
411 State Capitol
Santa Fe, NM 87505*

INDIAN AFFAIRS COMMITTEE 2005 INTERIM SUMMARY

At its initial meeting of the 2005 interim, the Indian Affairs Committee (IAC) identified 10 areas upon which it intended to focus during the 2005 interim: 1) education for Native American students; 2) health care in Native American communities; 3) the relationship among the state, the Navajo Nation and the federal Bureau of Indian Affairs; 4) revenue and taxation issues in Indian country; 5) funding of temporary assistance for needy families (TANF) programs for tribal entities; 6) assistance programs for New Mexico veterans and members of the military services; 7) Native American art, the authenticity of Native American handicrafts and enforcement of existing federal and state laws dealing with these topics; 8) voting and elections in Native American communities; 9) law enforcement in Native American communities and the so-called "checkerboard area"; and 10) capital outlay appropriations. Following its traditional scheduling procedure, the IAC scheduled many of its meetings to be held at chapters of the Navajo Nation, pueblos and Indian-related institutions. IAC meetings were conducted at the following locations in addition to the State Capitol: the Huerfano, Iyanbito, Nenahnezad, Tohatchi, Torreon and Upper Fruitland Chapters of the Navajo Nation, the Pueblos of Nambé, Tesuque and Zia, Ohkay Owingeh, the Jicarilla Apache Nation in Dulce, Santa Rosa and the McKinley County Courthouse in Gallup. A meeting at the Mescalero Apache Tribe was canceled due to the special legislative session. At each meeting located at a chapter house or pueblo, the committee began its meeting with a presentation by the chapter president or pueblo governor on matters of local concern.

At its initial interim meeting in May, the IAC was welcomed to Santa Rosa by Representative Jose A. Campos, who also serves as mayor of Santa Rosa. Staff attorneys Chase Van Gorder and Jennie Lusk reviewed what had happened to each of the legislative proposals that had been endorsed by the committee in the prior year. Benny Shendo, Jr., secretary of Indian affairs, then reviewed with the committee the fate of all of the legislation for the 2005 session that would have affected Native American interests in particular. In the area of capital outlay projects, the appropriations for Native American projects totaled nearly \$40 million, twice the amount that had been approved the prior year. Secretary Shendo described changes in the department's Capital Outlay Unit and set forth what was going to be done in the coming year to reduce the reversion rate of capital outlay funds. He also reviewed areas in which he hoped to work with the committee during the coming interim. Stuart Ashman, secretary of cultural affairs, addressed the committee regarding the new Bosque Redondo Memorial that was to be dedicated the next day. Frank Dayish, vice president of the Navajo Nation, commented on the importance of the Bosque Redondo Memorial to the Navajo Nation and discussed President Shirley's and his objectives for the coming year. The meeting concluded with the drafting of the committee's work plan for the 2005 interim.

The second interim meeting of the IAC was held at the Jicarilla Apache Nation in Dulce, the Torreon Chapter of the Navajo Nation and the Pueblo of Zia. President Levi Pasata of the Jicarilla Apache Nation and members of the nation's council briefed the committee on matters of importance to their tribe, and other tribal presenters addressed capital outlay needs. The committee toured the new Jicarilla Apache health care facility funded jointly by the tribe and the

Indian Health Service. In Torreon, the committee heard a presentation on a New Mexico company's provision of solar-powered energy to remote rural homes that have been without electricity. A panel of transportation experts described problems with transportation and roads in Indian country and efforts that were being made to improve transportation in rural areas. At the Pueblo of Zia, the secretary of veterans' services described the efforts the state was making to assist its military veterans, including those who are Native American. The adjutant general for the New Mexico National Guard briefed the committee on the experience of New Mexico units that had been activated for the war on terrorism. The director of the Office of Homeland Security explained how federal funds were being used to assist in security efforts in Indian country.

The third interim meeting of the IAC was held in the Gallup area at the Tohatchi and Iyanbito Chapters of the Navajo Nation and at Gallup High School. At the meeting in Tohatchi, the committee was advised on problems the state had encountered in getting appropriated funds to the Pueblo of Zuni and the Navajo Nation for use in TANF programs. Jerry King, assistant commissioner for surface resources with the State Land Office, addressed how the state would use the \$250,000 appropriated during the 2005 legislative session to resolve right-of-way problems for Native American families living in the so-called checkerboard area of the state. Representatives from the state Economic Development Department, the Navajo Nation Division of Economic Development and Pittsburgh and Midway Mining Company (P&M) discussed efforts that were being made to plan for the redevelopment of the P&M McKinley North Mine upon its planned closure in 2008. A feasibility study is expected to be completed by the end of the year. A major unanswered question is whether the mine lands will revert to the original owners of grazing rights once the mining area has been reclaimed. Steffani Cochran, assistant attorney general, reviewed problems in enforcing the Indian Arts and Craft Sales Act and proposed amendments to that act that would enhance its enforceability. Representatives of the Gallup Area Jewelers Association expressed their concern and opposition to the proposed amendments. Representatives of the Navajo Nation updated the committee on plans of the Navajo Nation to build gaming facilities following the November 2004 vote of the Navajo Nation to allow gaming on the Navajo reservation. Important issues include President Shirley's position that gaming operations are a central government function and cannot be controlled at the chapter level. No decision had been made regarding the potential location of gaming operations. Representatives of administrative agencies briefed the committee on issues related to health care for Native Americans and implementation of the Indian Education Act. The last day of the meeting was a workshop with representatives of the Navajo Nation and the Indian Affairs Department to investigate and discuss in depth problems experienced in getting capital outlay funds for chapters of the Navajo Nation expended before they revert.

The fourth interim meeting of the IAC was held in the Farmington area at the Nenahnezad, Upper Fruitland and Huerfano Chapters of the Navajo Nation. The committee received detailed updates on two controversial projects in Indian country: the proposed Desert Rock Power Plant and the resumption of uranium mining on the Navajo Nation. The committee was also advised regarding recent amendments to the education portion of the Navajo Nation Code, voting and election issues in Native American communities, alcohol and behavioral

counseling, including the impact of the Detoxification Reform Act passed in the 2005 legislative session, efforts to deal with domestic violence in Native American communities and law enforcement in the checkerboard area.

Originally, the fifth interim meeting of the IAC was scheduled to be held in Mescalero at the Mescalero Apache Tribe. That meeting was canceled due to the special legislative session and will be rescheduled for the 2006 interim. The fifth interim meeting of the IAC was held north of Santa Fe at Ohkay Owingeh and the Pueblos of Tesuque and Nambé. The first day of the meeting included an update on efforts to fund the TANF programs at the Pueblo of Zuni and Navajo Nation and an extensive review of efforts to improve coordination between the state and the Navajo Nation regarding the expenditure of capital outlay appropriations for projects at local chapters. The second day of the meeting included an update on Native American language programs at the University of New Mexico and the status of the so-called "prosecution-free zones" in areas that were formerly parts of the pueblos. The last day of the meeting included an update on the extension of Paseo del Norte in Albuquerque and extension of eligibility of lottery scholarships to students at New Mexico's tribal colleges.

The sixth and final interim meeting of the IAC was held at the State Capitol in December. The state engineer gave an update of the status of Indian water rights settlements as required by Laws 2005, Chapter 172. The chair of the Governor's Task Force on Payday Lending and the chief of the Consumer Protection Division of the Office of the Attorney General updated the committee on efforts to draft a consensus bill to regulate that industry, and to regulate that industry through rules promulgated by the attorney general. Dr. Pepion, director of the American Indian program at New Mexico State University, discussed efforts the university was making to recruit, retain and successfully graduate more Native American students. The committee was also briefed by administration and legislative representatives on procedures for capital outlay appropriations for the upcoming legislative session. On the last day of that meeting, the committee considered and voted on a variety of initiatives for the 2006 legislative session, including substantive legislation, memorials and appropriations. The committee voted to support the legislative initiatives of the Indian Affairs Department and to endorse the following proposals:

Memorials

- congratulating Governor Joe Garcia on his election as president of the National Congress of American Indians;
- recommending the establishment by the Navajo Nation of a capital improvement loan fund for the benefit of New Mexico chapters;
- recommending the promulgation of rules by the Indian Affairs Department for meaningful tribal consultation; and
- recommending full funding in the amount of \$75 million for Indian water rights settlements.

Appropriations

- \$1.5 million for tribal TANF funds;
- \$1 million for the Tribal Extension Initiative of the NMSU Cooperative Extension Service;
- \$62,000 for a recruiter for the NMSU American Indian program;
- \$52,000 for a counselor for the NMSU American Indian program;
- \$90,000 for an additional full-time employee at the Jemez and the Coronado State monuments;
- \$2.6 million for the expansion of the Jemez State Monument by approximately 700 acres; and
- earmark five percent of the Indian gaming revenues (approximately \$2 million) for the Lottery Tuition Fund.

Substantive Bills

- regulate the payday lending industry;
- extend the Lottery Tuition Fund to include students at New Mexico tribal colleges; and
- extend the College Affordability Act to include students at New Mexico tribal colleges.

At the conclusion of its meetings for the 2005 interim, the IAC had heard testimony regarding all of the elements of its work plan as proposed at its initial meeting and approved by the New Mexico Legislative Council. By conducting its meetings at various pueblos, chapters of the Navajo Nation and the Jicarilla Apache Nation, the IAC has sought to bring the legislative process to locations where the Native American population of the state can observe its proceedings and provide direct input.

**2005 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
Sen. Dianna J. Duran
Rep. Irvin Harrison
Rep. Manuel G. Herrera
Rep. Patricia A. Lundstrom

Sen. Lidio G. Rainaldi
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Don L. Tripp
Sen. Leonard Tsosie
Rep. W. C. "Dub" Williams
Rep. Teresa A. Zanetti

Advisory Members

Sen. Ben D. Altamirano
Sen. Joseph J. Carraro
Rep. Ben Lujan
Rep. Fred Luna
Sen. Richard C. Martinez

Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Sen. William E. Sharer
Rep. Avon W. Wilson

WORK PLAN

The Indian affairs committee has existed since 1989 as a result of post-session New Mexico legislative council action each year. In view of the fact that the committee's work addresses issues relating principally to New Mexico's Native American population, the committee strives to conduct its meetings in locations that are accessible to the state's tribal members and their leaders. The committee views its meetings as an essential way of relating the work of the legislature to this segment of its constituency. This year, the committee plans to meet at both the Jicarilla Apache Nation and the Mescalero Apache Tribe, at five chapters of the Navajo Nation and at four of the pueblos.

A. The Indian affairs committee proposes to explore and discuss the following topics during the 2005 interim:

1. education for Native American students, including implementation of current laws, the Native American division in the public education department, teaching Native American languages and cultures, lottery scholarships at tribal colleges and defining "rural school districts";

2. health care in Native American communities, including school-based health clinics; the status of Indian health service facilities and staffing; so-called "638" contracts where tribal entities administer health funds themselves; the extent and treatment of problems with illegal drugs; and suicide prevention;

3. the relationship among the state, the Navajo Nation and the federal bureau of Indian affairs, including concern with maintenance of roads and the impact on rural transportation;
4. revenue and taxation issues in Indian country;
5. the status of funding of TANF programs for tribal entities, including the Navajo Nation and Pueblo of Zuni;
6. assistance programs for New Mexico veterans and members of the military services, including homeless veterans and Native American veterans;
7. Native American art, the authenticity of Native American handicrafts and enforcement of existing federal and state laws;
8. voting and elections in Native American communities, including meeting with bureau of election directors and Native American voting coordinators in counties that are subject to consent decrees;
9. law enforcement issues in Native American communities and the so-called "checkerboard area", including selective DWI enforcement; the status of projects being undertaken by the Native American domestic violence coalition, including the domestic violence initiative; and the involvement of tribal entities in homeland security; and
10. capital outlay, including tracking through the Indian affairs department of the expenditure of allocated funds; streamlining, planning and assessing projects; coordination with the Navajo Nation; and implementation of the Tribal Infrastructure Act.

B. The committee will coordinate, as needed, with other committees regarding presentations of subject matter of common concern.

APPROVED MEETING SCHEDULE

<u>Date</u>	<u>Location</u>
June 3	Santa Rosa
July 6-8	Dulce/Torreon Chapter/ Zia Pueblo
August 1-3	Gallup/Tohatchi/ Iyanbito Chapters
September 14-16	Nenahnezad/Huerfano/ Upper Fruitland Chapters
October 12-14	Mescalero
November 7-9	San Juan/Tesuque/ Nambe Pueblos

May 13, 2005

TENTATIVE AGENDA
for the
INDIAN AFFAIRS COMMITTEE

June 3, 2005
Ramada Inn
Santa Rosa, New Mexico

Friday, June 3

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Welcome**
—Representative Jose A. Campos, Mayor, City of Santa Rosa
- 10:15 a.m. **2005 Legislation — Summary**
—Chase Van Gorder, Staff Attorney, Legislative Council Service
—Jennie Lusk, Staff Attorney, Legislative Council Service
- 11:00 a.m. **Indian Affairs Department — Update**
—Benny Shendo, Jr., Secretary of Indian Affairs
- 12:00 noon **Lunch**
- 1:00 p.m. **Bosque Redondo Memorial**
—Stuart Ashman, Secretary of Cultural Affairs
- 1:30 p.m. **Tribal Leadership — Commentary**
—Joe Shirley, Jr., President, Navajo Nation
—Mark Chino, President, Mescalero Apache Tribe
—Amadeo Shije, Chairman, All Indian Pueblo Council
- 3:00 p.m. **2005 Interim Work Plan and Meeting Schedule Development**
—Chase Van Gorder, Staff Attorney, Legislative Council Service
—Jennie Lusk, Staff Attorney, Legislative Council Service
- 4:00 p.m. **Adjourn**

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

**June 3, 2005
Ramada Inn, Santa Rosa**

The first meeting of the Indian Affairs Committee for the 2005 interim was called to order by Senator John Pinto, co-chair, on Friday, June 3, 2005, at 10:15 a.m. at the Ramada Inn in Santa Rosa.

Present

Rep. James Roger Madalena, Co-chair
Sen. John Pinto, Co-chair
Sen. Rod Adair
Rep. Ray Begaye
Sen. Dianna J. Duran
Rep. Manuel G. Herrera
Sen. Lidio G. Rainaldi
Rep. Teresa A. Zanetti

Absent

Rep. Irvin Harrison
Rep. Patricia A. Lundstrom
Sen. Nancy Rodriguez
Sen John C. Ryan
Rep. Don L. Tripp
Sen. Leonard Tsosie
Rep. W. C. "Dub" Williams

Advisory Members

Sen. Ben D. Altamirano
Sen. Richard C. Martinez
Rep. Nick L. Salazar

Sen. Joseph J. Carraro
Rep. Ben Lujan
Rep. Fred Luna
Rep. Debbie A. Rodella
Sen. William E. Sharer
Rep. Avon W. Wilson

Staff

Charles H. Van Gorder
Jennie Lusk

Guests

The guest list is in the meeting file.

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

Friday, June 3

Welcome

Representative Jose A. Campos, who is also the mayor of Santa Rosa, welcomed the committee to Santa Rosa. Representative Campos introduced the committee to the city and described many of the area's assets and natural attractions. He described the recent economic growth of Santa Rosa, including the impact of the state correctional facility and the General Motors transportation facility. The commercial downtown area has become healthier over the past seven years with only a single vacancy where there had been seven vacant store fronts. Where there had been a significant housing vacancy rate, there has been a tremendous growth in housing demand with over 200 homes having been built in recent years. Tourism accounts for about 65 percent of the city's economy with lodgers' tax contributing approximately \$300,000 annually. There are plans for additional new lodging facilities and a downtown plaza development. There has also been a grant to build a new hospital within the next two years.

Summary of 2005 Legislation

Chase Van Gorder and Jennie Lusk, staff attorneys with the Legislative Council Service, reviewed what happened to the legislation endorsed by the committee during the 2005 legislative session:

HB 115	Native American Bilingual School Programs	Died on Senate Floor
HB 223	Indian Child Welfare - Cultural Needs	Pocket Veto (See SB 214)
HB 415	Indian Water Rights Settlement Fund	Died - House Appropriations & Finance Committee
HJR 4	Extend Legislative Terms	Died - House Voters & Elections Committee
HJM 2	Federal Enforcement of Indian Arts & Crafts Act of 1990	Died - Senate Rules Committee
HJM 6	Hogback Bridge	Died - Senate Indian & Cultural Affairs Committee
HJM 16	Radioactivity Testing of Homes	Passed
SB 46	Intertribal Ceremonial Act	Died - Senate Finance Committee
SB 214	Indian Child Welfare - Cultural Needs	Signed - Chapter 188
SJM 14	Federal Enforcement of Indian Arts & Crafts Act of 1990	Died - Senate Rules Committee
SJM 19	Radioactivity Testing of Homes	Died - Senate Indian & Cultural Affairs Committee
SJM 33	Radioactivity Testing of Homes	Passed
SM 5	Navajo Radiation Exposure Compensation	Passed

They also distributed to the committee two legislative summaries prepared by the Indian Affairs Department and an abbreviated version of the final "Locator" publication showing the fate of substantive bills related to Native American issues. They suggested that during the upcoming interim, committee members let either of them know whenever a member has an idea for proposed legislation. This would permit the committee staff to open a 202 file and draft the requested bill in time for the member to review the draft bill, present it to the committee for endorsement and request that it be approved for introductions during the 2006 "short" legislative

session.

Indian Affairs Department

Secretary Benny Shendo, Jr., of the Indian Affairs Department appeared to report to the committee on his view of the 2005 legislative session and the department's plans for the interim. The legislature passed 420 bills, of which 351 were signed into law by Governor Richardson. Of those bills, 26 will directly or indirectly impact Native American tribes and nations in New Mexico. The legislature also passed 18 other Indian-related measures that did not require the governor's signature to become effective. Two particularly important bills that were signed into law were House Bill 868 (Chapter 146) that created the Tribal Infrastructure Fund and Senate Bill 482 (Chapter 155) that expanded the definition of "resident student" to include a member of an Indian tribe or nation located wholly or partially within New Mexico, thereby qualifying such a student for in-state tuition rates and state schools. Governor Richardson approved nearly \$40 million in Indian-related projects, including \$31 million for tribal capital outlay projects of which \$19 million will be administered by the Indian Affairs Department. This figure is approximately twice the amount that was authorized for tribal entities in 2004.

The department's capital outlay unit has a staff of three-and-one-half FTEs with a fourth to be added this month. Secretary Shendo identified the following as the primary goals of the capital outlay unit: 1) to reduce the project backlog; 2) to establish policies and procedures to formalize the department's processes for consistency and accuracy; 3) to establish performance measures and strengthen the monitoring process; and 4) to initiate a program to pay contractors directly instead of through tribal governments. The secretary then reviewed the performance measures that had been included in the department's report to the State Budget Division of the Department of Finance and Administration and the financial numbers for capital outlay projects under the department's administration in fiscal years 2004 and 2005. The secretary commented that the department was attempting to draft one "super" joint powers agreement (JPA) that could be used for all projects involving the Navajo Nation rather than having to have separate JPAs processed and approved for each project. He also reviewed the department's efforts to train representatives of tribal entities in submitting and completing capital outlay project requests.

The secretary concluded his remarks by suggesting that the department would like to work with the committee during the 2005 interim to address the following areas of concern: Indian health care and funding disparities and related urban Indian health issues; resources available to Native American veterans to increase access to services for the improvement of their quality of life; tribal leadership training and cooperative efforts in the drafting of legislation; and capital outlay requests within the department's areas of interest. The secretary then responded to questions from members of the committee. Representative Begaye suggested that the committee might write a letter to the Navajo Nation regarding funding of capital projects.

Following Secretary Shendo's presentation, the committee recessed for lunch.

Bosque Redondo Memorial

Secretary Stuart Ashman of the Cultural Affairs Department addressed the committee regarding the Bosque Redondo Memorial, which was to be dedicated the following day. The secretary reviewed the history of the memorial and noted that the memorial was financed through a \$2 million appropriation from the federal Department of Defense and a total of \$800,000 appropriated by the state legislature in 2003 and 2004. The city of Fort Sumner donated 60 acres for the location of the memorial. The memorial is intended to educate people as to what occurred to the Native Americans who were forcibly interred at the Bosque Redondo in the 1860s. The secretary referred to the memorial as a "museum of conscience" or "site of

shame" and indicated his hope that the memorial would help ensure that such events do not happen again. Committee members suggested the department work to get accurate accounts of the Bosque Redondo history into school textbooks.

Tribal Leadership - Commentary

Frank Dayish, vice president of the Navajo Nation, appeared before the committee to share his thoughts regarding issues of importance for the Navajo Nation. He remarked that projects such as Bosque Redondo encourage people not to rewrite history, but to carefully document what really happened. He views the memorial not as a celebration but as a recognition of how history played out in this location. The fact that there is peace between Navajos and those who caused 8,000 deaths is remarkable.

Mr. Dayish reported that President Bush has done an excellent job in establishing government-to-government relations with the Navajo Nation, and that such relationships need to continue to expand. The vice president reported that education is the Navajo Nation's top priority and it is pushing for a conference on education with industry leaders so that the nation can focus on training young people to be employed in industry. The nation will look to the state for its continued support in educating Navajo students. He discussed problems with federal funding for the Indian Health Service, particularly in remote areas, and about the obligations of the federal government as spelled out in various treaties with the Navajo Nation. He also mentioned an expanded focus on economic development, expanding facilities, law enforcement, art enterprises such as Governor Richardson's filmmaking ventures and tourism. In response to questions from committee members, Vice President Dayish reported that a potato chip plant on the Navajo Nation did not materialize. He offered to get committee members a publication on the Navajo Nation budgetary process and to send agendas of the Navajo Nation Council meetings to members.

Development of Work Plan and Meeting Schedule

Chase Van Gorder and Jennie Lusk presented the committee with the master calendar for interim committees which had been drafted at the request of the Legislative Council, and with a draft of the proposed work plan, meeting schedule and budget for the committee. Following a discussion among committee members, Representative Zanetti moved and Senator Pinto seconded a motion that the committee meet on the following dates for the 2005 interim, as proposed in the master calendar: July 6-8, August 1-3, September 14-16, October 12-14 and November 7-9. The motion was approved without objection. The staff reported that in response to a letter sent to all tribal leaders on behalf of the committee, the committee had received invitations to meet at the following locations during the 2005 interim: the Nenahnezad, Tohatchi and Iyanbito Chapters of the Navajo Nation and the Pueblos of San Juan, Tesuque and Nambe. Following a discussion among committee members, Representative Zanetti moved and Senator Duran seconded a motion that the committee meet at the following locations during the 2005 interim: July - Farmington area; August - Gallup area; September - Dulce area (Jicarilla Apache Nation); October - Ruidoso area (Mescalero Apache Tribe); and November - Santa Fe area. The motion was approved without objection.

The committee then discussed possible topics to address at its meetings during the 2005 interim, including those contained in the proposed work plan prepared by the staff. Upon motion by Senator Rainaldi seconded by Representative Zanetti, the committee determined without objection to address the following topics during the 2005 interim:

* education for Native American students, including a Native American history component, the implementation of current laws, Native American emphasis within the Public Education Department, teaching Native American languages and cultures, lottery scholarships for students at tribal colleges and the definition of a "rural school district";

* health care in Native American communities, including school-based health clinics, the status of Indian Health Services facilities and staffing, 638 contracts, the extent and treatment of problems with illegal drugs and suicide prevention;

* the relationship between the Navajo Nation and the federal Bureau of Indian Affairs, including concern with maintenance of roads and the impact on rural transportation;

* revenue and taxation issues in Indian country;

* the status of funding of TANF programs for tribal entities, including the Navajo Nation and Pueblo of Zuni;

* assistance programs for New Mexico veterans and members of the military services, including homeless veterans and Native American veterans;

* Native American art, the authenticity of Native American handicrafts and enforcement of existing federal and state laws;

* voting and elections in Native American communities, including meeting with bureau of election directors in counties that are subject to consent decrees;

* women's issues in Native American communities;

* law enforcement issues in Native American communities and the so-called "checkerboard area", including selective DWI enforcement and the status of projects being undertaken by the Native American Domestic Violence Coalition, including the domestic violence initiative, and the involvement of tribal entities in homeland security; and

* capital outlay, including tracking through the Indian Affairs Department of the expenditure of allocated funds, streamlining, planning and assessing projects, coordination with the Navajo Nation and implementation of the Tribal Infrastructure Act.

The committee is also interested in meeting with one or more members of the state's congressional delegation. It was agreed that the final proposed work plan for the 2005 interim would be prepared by the staff and approved by the committee co-chairs prior to being submitted to by the Legislative Council for approval on June 29.

Other Business

There was no other business brought before the committee.

Adjournment

Upon motion by Senator Pinto, seconded by Senator Duran, Representative Madalena adjourned the meeting at 3:55 p.m.

TENTATIVE AGENDA
for the
INDIAN AFFAIRS COMMITTEE

July 6-8, 2005
Dulce, New Mexico
Torreon Chapter, New Mexico
Pueblo of Zia, New Mexico

Wednesday, July 6 - Dulce, Jicarilla Apache Nation

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Welcome**
 —Levi Pasata, President, Jicarilla Apache Nation
- 10:15 a.m. **Jicarilla Apache Nation — Status Update**
 —Levi Pasata, President, Jicarilla Apache Nation
- 11:30 a.m. **Capital Outlay Projects**
 —Elizabeth Muniz, Director of Higher Education, Jicarilla Apache Nation
 —T. Rose Vigil, Director, Jicarilla Public Library
- 12:00 noon **Lunch**
- 1:30 p.m. **Native American Health Care**
 —Rick Mize, Director, Jicarilla Apache Healthcare Facility
- 3:00 p.m. **Tour of New Healthcare Facility**
- 4:00 p.m. **Recess**

Thursday, July 7 - Torreon Chapter, Navajo Nation

- 9:00 a.m. **Torreon Chapter, Navajo Nation — Status Update**
 —Joe L. Cayaditto, Jr., Chapter President
 —Leo L. Charley, Chapter Vice President
 —David B. Rico, Chapter Delegate to Navajo Nation Council
 —Lavern A. Wagner, Chapter Delegate to Navajo Nation Council

- 10:00 a.m. **Navajo Nation Chapter Status Update**
—Samuel Sage, President, Counselor Chapter
—Jeanette Toledo Vice, President, Ojo Encino Chapter
—Frank Chee Willetto, Sr., President, Pueblo Pintado Chapter
- 11:00 a.m. **Rural Electrification/Renewable Energy Resources**
—David Melton, Principal, Sacred Power Corporation
—Chris Wentz, Director, Energy Conservation and Management Division,
 Energy, Minerals and Natural Resources Department
- 12:00 noon **Lunch**
- 1:00 p.m. **Public Education**
—Pancho Guardiola, Superintendent, Cuba School District
—Joe Mendez, Bureau Chief for Transportation, Public Education Department
- 2:30 p.m. **Road Maintenance**
—Herb Larsen, Division of Transportation, Bureau of Indian Affairs
—Robert Ortiz, Deputy Secretary of Operations, New Mexico Department of
 Transportation
—Larry Maynard, District Engineer, District 6, New Mexico Department of
 Transportation
—Billy Moore, Chair, McKinley County Board of Commissioners
—David Acosta, Road Superintendent, McKinley County
—Thomas Platero, Director, Department of Transportation, Navajo Nation
- 4:00 p.m. **Recess**

Friday, July 8 — Pueblo of Zia

- 9:00 a.m. **Pueblo of Zia — Status Update**
—Teofilo Pino, Governor
—Lawrence Kewanwytewa, Lt. Governor
- 10:00 a.m. **Veterans' and Military Affairs**
—John M. Garcia, Secretary Veterans' Services
—Delano J. Garcia, Department of Military Affairs
- 11:00 a.m. **Homeland Security in Indian Country**
—Tim Manning, Acting Director, Office of Homeland Security
- 12:00 noon **Lunch**
- 1:00 p.m. **Adjourn**

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

**July 6-8, 2005
Jicarilla Apache Nation, Dulce
Torreon Chapter, Navajo Nation
Pueblo of Zia**

The second meeting of the Indian Affairs Committee for the 2005 interim was called to order by Senator John Pinto, co-chair, on Wednesday, July 6, 2005, at 10:19 a.m. at the conference room of the Jicarilla Supermarket in Dulce.

Present

Rep. James Roger Madalena, Co-chair
Sen. John Pinto, Co-chair
Sen. Rod Adair
Rep. Ray Begaye
Rep. Manuel G. Herrera
Rep. Patricia A. Lundstrom (7/6 & 7/7)
Sen. Lidio G. Rainaldi
Sen. Nancy Rodriguez (7/7 & 7/8)
Sen. John C. Ryan
Sen. Leonard Tsosie (7/6 & 7/7)
Rep. Teresa A. Zanetti (7/8)

Advisory Members

Rep. Fred Luna (7/7)
Sen. Richard C. Martinez
Rep. Debbie A. Rodella (7/6)
Rep. Nick L. Salazar
Sen. William E. Sharer (7/6)

Absent

Sen. Dianna J. Duran
Rep. Irvin Harrison
Rep. Don L. Tripp
Rep. W. C. "Dub" Williams

Sen. Ben D. Altamirano
Sen. Joseph J. Carraro
Rep. Ben Lujan
Rep. Avon W. Wilson

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

Staff

Charles H. Van Gorder
Jennie Lusk
Larry Matlock

Guests

The guest list is in the meeting file.

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

Wednesday, July 6 - Jicarilla Apache Nation, Dulce

Introductions

Representative James Roger Madalena explained the purposes of the interim committee and members of the committee and the audience introduced themselves.

Jicarilla Apache Nation - Status Update

Jicarilla Apache Nation President Levi Pasata introduced members of the Jicarilla Legislative Council who were attending the meeting with him. He noted that the nation and the state legislature have had a good working relationship and he hopes that it will continue. President Pasata then reviewed matters that are of particular concern to him regarding the nation. The first area of concern is problems related to drug abuse both within the nation and across the state. The nation has started an initiative declaring a war on drugs and is close to issuing a proclamation. The president urged the committee to persuade state government to help in solving a persistent drug problem on the nation, and he reported the nation is training drug dogs, but needs more police and related training. A second issue of concern, according to President Pasata, is the economic development within the nation.

Following President Pasata's remarks, various members of the council addressed the committee. Council member Troy Vicente reported the nation needs more electricity and the lack of reliable electricity is hindering building efforts. Without new transformers, the nation could be unable to install new computers and provide power to new buildings. He also mentioned that the nation is in need of a new law enforcement building. Council member Lester Andrez observed more improvement is needed in the area of recreation development and asked that committee members help with the nation's efforts to expand its fish hatcheries, to develop more recreational areas and to build more access roads in the back country. Council member Leon Reval asked the committee members to open their hearts and minds and thanked them for coming. Council member Kerwin Tafoya said that while the state has received \$8 million per year in oil and gas taxes on reservation lands, totaling over \$100 million through the years, the nation has not received an equitable amount back in financial assistance. The nation needs a cultural center, a civic center and day care facilities.

In a discussion involving committee members, several additional topics were noted: 1) when the state could not tax the elk herd, it found another way to raise taxes from the nation; 2) the nation has entered into agreements with various municipalities to supply them with water, particularly in times of drought; and 3) there is a lack of sawmills for processing timber cut on reservation lands.

Capital Outlay Projects

Presenters included the following people from the nation who requested the committee's support for the following projects:

Elizabeth Muniz, higher education director for the nation, explained the need for a multi-purpose classroom for the Jicarilla Higher Education Program (\$250,000) to help and encourage young Jicarilla residents to complete their schooling; Rose Vigil explained the need for adding a conference room to the existing library (\$175,000); Lorraine Willis, director of the Cultural Affairs Office, discussed cultural issues facing the nation and explained the proposal for building a Jicarilla Apache Cultural Center, for re-establishing special project funding and for architect

design for a cultural center — the nation requested an appropriation in the amount of \$200,000 in the most recent legislative session but received only \$50,000; Mariam Cachucha from the Jicarilla Apache Department of Youth discussed the nation's need for a new youth center to address the needs of the nation's youth and to give them a place to go and things to do — the nation's youth is its greatest asset and they need to be better served; Iola Begay from the Jicarilla Department of Education described the progress that was being made on developing a tribal education code and preparing a "State of the Reservation Education Report", and discussed problems the schools have experienced with absenteeism; Loretta Vicente from the Jicarilla Department of Education discussed problems resulting from the difference in mandatory school attendance for the nation (18 years old) and for the state (16 years old) and the need for technical assistance to the nation for education. Following these presentations was a general discussion with questions from committee members.

Minutes

The minutes of the committee's June 3, 2005 meeting were unanimously approved.

Recess

Following the presentations on behalf of the Jicarilla Apache Nation, the committee recessed at 12:30 p.m. for lunch and to travel to the Jicarilla Apache Healthcare Facility.

Jicarilla Apache Healthcare Facility

The committee reconvened at 2:00 p.m. at the Jicarilla Apache Healthcare Facility. Rick Mize, director, explained how the Jicarilla Apache Nation and the Indian Health Service were able to work together to jointly fund the construction, furnishing and staffing of the new facility. Following a description of the services available at the clinic and the technological capabilities that have been built into the clinic, Mr. Mize conducted a tour of the facility for committee members, including a photograph of Senator Ryan's right retina. Following the tour, the meeting was recessed at 4:00 p.m.

Thursday, July 7 - Torreon Chapter, Navajo Nation

The second meeting of the Indian Affairs Committee for the 2005 interim was reconvened by Senator Pinto on Thursday, July 7, 2005, at 9:25 a.m. at the chapter house of the Torreon Chapter, Navajo Nation. The co-chair turned the meeting over to Representative Begay and members of the committee and people in the audience introduced themselves.

Torreon Chapter, Navajo Nation - Status Update

Chapter President Joe Cayaditto introduced Chapter Administrator Wally Toledo and Vice President Leo Charley, described the people of the chapter and its history and informed the committee that roads and rights of way are the most important issues at the chapter. President Cayaditto distributed and then reviewed a list of tribal priorities. That list is included in the meeting file and includes the following: a senior center building, fire department/police substation building, waterline project, youth center building, extension of solar electricity, economic development, road construction and maintenance, and a recreation park. Vice President Charley commented on the chapter's youth program, erosion control efforts, Native American arts and crafts activities, including the chapter's annual fair, and veteran code talkers from the chapter.

On questioning from Senator Adair, the president noted that there are 184 to 200 houses in the chapter's area that have no water and 35 percent that have no electricity. Michelle Brown-Yazzie, deputy secretary of the Indian Affairs Department, confirmed that an estimated 48 percent of the homes on the Navajo Nation throughout New Mexico, Arizona and Utah are without utilities and noted that the purpose of establishing the Tribal Infrastructure Fund was to emphasize the need on the Navajo Nation for basic services. The committee discussed issues related to capital appropriations and improvements for chapters of the Navajo Nation, and Chase Van Gorder indicated this would be a topic to be discussed at the committee's August meeting in Gallup. The committee requested staff to draft a memorial from the Indian Affairs Committee to the Navajo Nation regarding setting aside money for chapters for reimbursement of infrastructure investments. The committee requested that Ms. Brown-Yazzie create a flow chart indicating how funds flow through the Indian Health Service, the Bureau of Indian Affairs (BIA), the county and state, or provide the one created for the Legislative Finance Committee. Committee members also requested a map indicating where each of the chapters lies.

NOTE: A packet was handed out to committee members on behalf of Dave Rico, who was unable to attend the meeting. Mr. Rico is the delegate to the Navajo Nation Council representing the Pueblo Pintado, Whitehorse Lake and Torreon/Star Lake chapters of the Navajo Nation. A copy of the handout is in the meeting file.

Education Issues

Chee Smith, Jr., a school board member for the Pueblo Pintado BIA School, asked to address the committee on a number of issues. He mentioned the following areas of concern: 1) references by the Public Education Department to the Navajo language as a "foreign" language; 2) incomplete facilities at the new school at Pueblo Pintado; 3) lack of progress in the construction of highway maintenance yards by the state and the Navajo Nation; 4) lack of progress on the construction of a new senior center in the Whitehorse Lake Chapter and potential reversion of capital outlay funds; 5) the need for a new bridge and improved road to the new school in Pueblo Pintado; and 6) how the BIA has agreed to build a new elementary school in Pueblo Pintado with construction to begin in September.

Rural Electrification/Renewable Energy Resources

David Melton, president and CEO of Sacred Power Corporation, gave a PowerPoint presentation about the products and projects his company is undertaking in the area of solar-powered energy. He advised committee members about new developments in providing alternate sources of energy to rural tribal homes and described the generation units his company has provided to rural homes in the Torreon and Ojo Encino chapters of the Navajo Nation through a competitive grant program of the United States Department of Agriculture. The products include portable solar cells that stretch along the ground and cost approximately \$17,000 per home as opposed to the \$35,000 to \$50,000 it costs to put in one mile of electric power. The ideal is to have standard electric access augmented by the solar cells, but where that is not possible the portable solar panels can be used. Senator Rodriguez moved that the committee write a letter to the United States Department of Agriculture in support of Sacred Power's grant application to provide additional solar power units to tribal homes in rural areas. Senator Pinto seconded the motion and it passed unanimously.

Chris Wentz, director of the Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department, gave a presentation reviewing the "Clean

Energy Initiatives" programs that are being implemented by the department. These projects include renewable energy resources such as solar, wind, biomass and geothermal, energy efficiency and clean fuels. He reviewed places within the state where these programs are being implemented and stated the benefits from these programs include economic development and a cleaner environment. He noted that the division has shrunk from 20 to 11.5 employees, although it operates under a statutory mandate for clean energy. He reported that the division got two major capital outlay programs last year: a \$2.65 million capital outlay project at Jemez Mountain School for biomass generating from wood chips and a clean energy grants program.

Public Education

Pancho Guardiola, superintendent of the Cuba School District, and Emily Vigil, assistant superintendent, presented to the committee the strengths and weaknesses of the Cuba School District. Mr. Guardiola acknowledged that truancy and substance abuse have been major problems in the district, but reported that the district now has a grant through the Public Education Department (PED) to stop truancy. The district also has special staff to deal with substance abuse on the reservation, although the policy is fairly controversial. Teachers are trying to meet with parents at the chapter houses in order to increase parental involvement. Money has been appropriated to renovate the middle school and the district is applying for money to rebuild the elementary school. Ms. Vigil report on the freshman academy program that is supported by an Indian education grant, which is intended to help students succeed in high school. She indicated they are looking at Navajo language and history classes and a mentoring program for students. The main challenges the district faces include gangs, graffiti, a lack of certified Native American teachers and the transfer of students between schools.

Joe Mendez, bureau chief of transportation for the PED, reported on problems with access to bus routes. He noted that local school boards contract for bus service, although the PED covers all 89 school districts and charter schools and moves 167,000 students daily. He said that three-fourths of New Mexico students are on traditional yellow buses. He reported that the Cuba district has a problem because it is losing student population and therefore faces a reduction in transportation funding.

Highway Construction and Maintenance

A large panel representing the Navajo Nation, the state Department of Transportation, the BIA and McKinley County discussed with the committee problems of road construction and maintenance and access to Navajo homes. Tom Platero, director of the Navajo Nation Department of Transportation, described his organization and the efforts his department is making to coordinate activities with other agencies as demonstrated by the recent transportation summit meeting held in Window Rock, Arizona. The Navajo Nation is trying to expand its capability to get aggregate and its ability to acquire rights of way. Mr. Platero described specific projects in which his department is currently involved. At this point, agencies have agreed on projects including a road from Albuquerque to the Alamo Navajo reservation and improvements to Route 236 from Shiprock to Farmington. A principal recommendation is to enter into cooperative agreements with other agencies. David Acosta, McKinley County road superintendent, reported the biggest problem his agency faces is the acquisition of rights of way for road construction or improvement. His agency concentrates on school bus routes as those are the roads that are the most heavily used. The county has appealed to Washington, D.C., for improving school bus funding. McKinley County Commissioner Billy Moore observed that all of the agencies have the same concerns and have been working over the past year to improve

their working relationship. He also stated that the anti-donation clause of the state constitution can be a problem for dealing with private road situations. He noted that the county might be able to make more efficient use of road equipment that is purchased by chapters with state funds. Deputy Secretary Robert Ortiz led a contingent from the Department of Transportation that included Tom Teegarden, tribal liaison, and Larry Maynard and Lisa Vega from District 6. Deputy Secretary Ortiz presented the committee with a report detailing the department's maintenance operations and its relationship with tribal entities and with copies of the department's "Strategic Plan Performance Report". The department is conducting regional meetings to solicit input for the proposed GRIP 2 program. Mr. Maynard explained the workload faced in District 6 and indicated that the department is entering into memoranda of understanding with tribal governments to increase efficiency in operations. He reported that the collaborative efforts of the panelists indicate that they are working together well to meet intergovernmental challenges and that problems can be overcome. He said that the state's anti-donation clause hinders the department in emergencies where a school bus route includes a private road for a few miles, for instance. Ms. Vega explained how the Local Government Road Fund works, and Mr. Teegarden explained the purpose of his newly created position as tribal liaison. Irvin Bekis, division manager with the BIA's Division of Transportation, reviewed the division's sources of funding, which are always less than adequate. The division has asked for \$30 million but received only \$6 million for 5,000 miles of BIA roads and 175 bridges, 24 of which are deemed to be "severely deficient". He observed that the BIA has entered into a partnership with the state of Arizona for road maintenance and improvement and suggested that the same thing could be done in New Mexico.

Following the presentations regarding road and transportation issues, Representative Begaye recessed the meeting at 5:35 p.m.

Friday, July 8 - Pueblo of Zia

The second meeting of the Indian Affairs Committee for the 2005 interim was reconvened by Representative Madalena on Friday, July 8, 2005, at 9:30 a.m. at the tribal administrative offices of the Pueblo of Zia.

Pueblo of Zia - Status Update

Teofilo Pino, governor of the Pueblo of Zia, welcomed the committee and mentioned that he is new as governor and that he relies often on Ken Lucero, tribal administrator, who appeared with the governor before the committee. Governor Pino distributed to the committee a report updating a number of projects that the pueblo is undertaking. Projects funded by the state legislature include an intergenerational center, an ambulatory health center and a Head Start bus. There was a discussion about whether some of the funds may have expired or could be reauthorized so that the pueblo does not lose the funding. Current priorities for the pueblo include the following: 1) progress on settlement of the dispute with the state regarding the use of the Zia sun symbol; 2) completion of the intergenerational and ambulatory care centers; 3) implementation of Executive Order No. 2005-004 regarding the statewide adoption of pilot tribal consultation plans; 4) specific proposed GRIP 2 projects; and 5) federal funding of the Albuquerque Indian Healthcare Center through the passage of Senate Bill 972 in Congress. Senator Rodriguez moved that the committee send an appropriate letter of support to the state's congressional delegation expressing its support for that legislation. The motion was seconded by Senator Rainaldi and passed unanimously. The pueblo also discussed its hopes that a settlement

regarding the state's use of the Zia sun symbol is in the works, avoiding more litigation while recognizing the tribe's contribution of the symbol. A task force exploring settlement options has been meeting.

Veterans' and Military Affairs

John M. Garcia, secretary of veterans' services, along with Farrell Udell, state director for veterans' centers, Joe Lucero, director of constituent services, and Lou Halwig, management and training for the Veterans' Services Center, gave a presentation regarding services rendered by the Veterans' Services Department to the 180,000 veterans residing in New Mexico (of which approximately 15 percent are Native American). The state is number one nationally in the number of veterans receiving benefits, totaling approximately \$372 million last year. The department is aggressively seeking to increase the amount of money flowing to New Mexico veterans. The state appropriated \$21.2 million for veterans' services in 2005, \$2.5 million of that for Native American veterans. In a written submission contained in the meeting files, the secretary addressed concerns of the committee, including ensuring that Native Americans have access to all available veterans' services, services and benefits offered by the department generally to veterans, the plight of homeless veterans, services offered to veterans returning from Iraq and Afghanistan and legislative priorities for 2006. The tribal veteran outreach programs now include four regional centers for Native American services, all of which offer clinical counseling as well as outreach. The department has met with tribal officials and requested that they appoint tribal veterans' service officers.

Kenny Montoya, adjutant general for the New Mexico National Guard, briefed the committee on the status and role of the Army and Air National Guard in New Mexico. There are approximately 4,000 members of the New Mexico National Guard, of which 1,000 are with the Air National Guard. Approximately 3,000 members have been deployed for active duty related to the global war on terrorism. There have been no fatalities to date among National Guardsmen on duty in Iraq and Afghanistan, although 16 Purple Hearts have been awarded. General Montoya described the role of the National Guard in both military service and community service. Approximately four percent of the National Guard members are Native American, and only 10 tribes are represented in the Honor Circle. The National Guard has four new Native American recruiters. General Montoya thanked committee members for the \$100,000 appropriation for guard equipment and he acquainted committee members with the Youth Challenge program, housed at Roswell, where high school dropouts, drug offenders and others take something like basic training and have an opportunity to improve themselves and become eligible for the guard.

Homeland Security in Indian Country

Tim Manning, director of the Office of Homeland Security, presented information to the committee regarding the role of the office in distributing funds from the federal government to local communities for enhancing their capability to respond to incidents of terrorism. He detailed funds that have been made available to various tribal entities within the state. For the most part, these funds must be used for equipment rather than for personnel. Mr. Manning indicated that he will be meeting with Secretary Shendo to determine if the Indian Affairs Department can assist in establishing relationships with tribal governments. He and Secretary Shendo will have a meeting soon to discuss areas where they can more successfully collaborate.

Housing at Pueblo of Jemez

Representative Madalena asked that Dave Cade from the Pueblo of Jemez' Housing Department be allowed to describe his affordable housing program to the committee. Mr. Cade explained the program to the committee members and introduced his new intern, Darryl Madalena. The committee was invited to attend the pueblo's first annual housing fair to be held on August 19.

Other Business

Upon a motion by Senator Pinto, seconded by Representative Zanetti and passed without objection, the second meeting of the Indian Affairs Committee for the 2005 interim was adjourned at 1:10 p.m.

**TENTATIVE AGENDA
for the
INDIAN AFFAIRS COMMITTEE
August 1-3, 2005
Tohatchi Chapter, New Mexico
Iyanbito Chapter, New Mexico
Gallup, New Mexico**

Monday, August 1 - Tohatchi Chapter, Navajo Nation

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Tohatchi Chapter, Navajo Nation — Status Update**
—Herman R. Morris, Chapter President
—Edwin J. Begay, Chapter Vice President
—Peterson B. Yazzie, Chapter Delegate to Navajo Nation Council
—Edison D. Jones, Chapter Delegate to Navajo Nation Council
- 11:00 a.m. **Temporary Assistance for Needy Families (TANF)**
—Katie Falls, Director, Income Support Division, Human Services Department
—Terrelene Gene, Tribal Liaison, Human Services Department
- 12:00 noon **Lunch**
- 1:00 p.m. **Rights of Way in the Checkerboard Area**
—Jerry King, Assistant Commissioner for Surface Resources, State Land Office
- 1:30 p.m. **Pittsburgh & Midway Coal Mining Company Reclamation Project —
McKinley North Mine**
—Frank Rivera, Senior Mine Engineer/Environmental, Pittsburgh & Midway
Coal Mining Company
—Tim Hagaman, Community Development Representative, Economic
Development Department
- 2:00 p.m. **Native American Arts & Crafts**
—Steffani Cochran, Assistant Attorney General
- 2:30 p.m. **Navajo Nation Gaming — Update**
—Michelle Dotson, Legal Counsel, Office of the President/Vice President,
Navajo Nation
—Raymond Etcitty, Chief Legislative Counsel, Navajo Nation Council
- 4:00 p.m. **Recess**

Tuesday, August 2 - Iyanbito Chapter, Navajo Nation

- 9:00 a.m. **Iyanbito Chapter, Navajo Nation — Status Update**
—Karl Katenay, Chapter President
—Edward J. Duffy, Sr., Chapter Vice President
—Lawrence T. Morgan, Chapter Delegate to Navajo Nation Council
- 10:00 a.m. **Health Issues: Suicide, Drug Abuse, School-Based Health Clinics**
—Michelle Lujan Grisham, Secretary of Health
- 12:00 noon **Lunch**
- 1:00 p.m. **Public Education Issues**
—Penny Bird, Deputy Secretary of Public Education
- 3:00 p.m. **Rural Business Start-Ups**
—Phil W. Jesse, Jesse Consulting
—Greg Kulka, Director of Private Investments, State Investment Council
- 4:00 p.m. **Recess**

Wednesday, August 3

- 9:00 a.m. **Coffee, Pastries & Fruit**
- 9:45 a.m. **Introductions**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
—Benny Shendo, Jr., Secretary of Indian Affairs
- 10:00 a.m. **Capital Outlay Process — State Perspective**
—Rebecca Martinez, Capital Outlay Manager, Indian Affairs Department
—Priscilla Thomas, Capital Outlay Analyst, Indian Affairs Department
- 11:00 a.m. **Capital Outlay Process — Navajo Nation Perspective**
—Lena Arviso, Accounting Manager, Controller's Office, Navajo Nation
—Arbin Mitchell, Acting Director, Division of Community Development, Navajo Nation
—Casey Begay, Manager, Capitol Improvement Office, Navajo Nation
—Cordell Shortey, Contracting Officer, Office of Management and Budget, Navajo Nation
- 12:00 noon **Lunch**

- 1:00 p.m. **Capital Outlay Process — Chapter Perspective**
—Johnny Johnson, President, Eastern Navajo Agency Council;
 President, Standing Rock Chapter, Navajo Nation
—Tommy McDonald, Vice President, Eastern Navajo Agency Council;
 President, Casamero Lake Chapter, Navajo Nation
—Calvert Garcia, President, Nageezi Chapter, Navajo Nation
- 2:00 p.m. **Capital Outlay Process — Legislator Dialogue**
—Lawrence T. Morgan, Speaker, Navajo Nation Council
—Danny Simpson, Huerfano Delegate, Navajo Nation Council
—Dave Rico, Whitehorse Lake, Torreon/Star Lake, Pueblo Pintado Chapters
 Delegate, Navajo Nation Council
- 3:00 p.m. **Capital Outlay Process — Discussion of Alternatives for Improvement**
—Jeff Kiely, Facilitator
—Rebecca Martinez, Capital Outlay Manager, Indian Affairs Department
—Ben Shelley, Vice Chair, Budget and Finance Committee, Navajo Nation
 Council
—Mark Grant, Controller, Navajo Nation
- 4:45 p.m. **Closing Remarks**
—Representative James Roger Madalena, Co-Chair, Indian Affairs Committee
—Benny Shendo, Jr., Secretary of Indian Affairs
- 5:00 p.m. **Adjourn**

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

**August 1-3, 2005
Tohatchi Chapter, Navajo Nation
Iyanbito Chapter, Navajo Nation
Gallup, New Mexico**

The third meeting of the Indian Affairs Committee for the 2005 interim was called to order by Senator John Pinto, co-chair, on Monday, August 1, 2005, at 10:24 a.m. at the Tohatchi Chapter House.

Present

Rep. James Roger Madalena, Co-chair (8/3)
Sen. John Pinto, Co-chair
Sen. Rod Adair (8/2, 8/3)
Rep. Ray Begaye
Rep. Manuel G. Herrera (8/2, 8/3)
Rep. Patricia A. Lundstrom
Sen. Lidio G. Rainaldi
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. Leonard Tsosie (8/1, 8/2)
Rep. Teresa A. Zanetti (8/2, 8/3)

Absent

Sen. Dianna J. Duran
Rep. Irvin Harrison
Rep. Don L. Tripp
Rep. W. C. "Dub" Williams

Advisory Members

Rep. Fred Luna (8/2)
Sen. Richard C. Martinez
Rep. Nick L. Salazar (8/2, 8/3)

Sen. Ben D. Altamirano
Sen. Joseph J. Carraro
Rep. Ben Lujan
Rep. Debbie A. Rodella
Sen. William E. Sharer
Rep. Avon W. Wilson

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

Staff

Charles H. Van Gorder
Jennie Lusk
Larry Matlock

Guests

The guest list is in the meeting file.

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

Monday, August 1 - Tohatchi Chapter, Navajo Nation

Tohatchi Chapter President Herman Morris opened the meeting with an invocation, following which everyone in attendance introduced themselves.

Tohatchi Chapter - Status Update

President Morris introduced himself and the chapter officers. President Morris then reviewed the historical background of the chapter, explained the chapter's name and commented on the present status of the chapter, including its population (about 3,800) and its geography, including Chuska Mountain. The chapter has a history of its members serving in the United States armed forces, including in Iraq, and is the only chapter within the Navajo Nation that has its own veterans' organization. President Morris reviewed the economic and agricultural activities within the chapter and listed its community services. Vice President Edwin Begay voiced the chapter's desire for economic development and listed goals for hotels, a conference center, a fitness center and a local branch of a university. He also reviewed the status of the existing senior center that is in need of repair. Other facilities needing improvement include the chapter house, the warehouse and housing. Improvements are scheduled for Highway 491 but construction has yet to start. Vice President Begay also presented the committee with resolutions from the Navajo Nation District #14 Council regarding improvements to Highway 491 and capital outlay projects for several individual chapters. Emma Watchman, supervisor for the senior center, briefed the committee on the status of the senior center and its activities.

Following the chapter's presentation, Representative Begaye explained the process for requesting funding for proposed capital projects. He suggested the chapter write the Navajo Nation president and council to request that funds be set aside (\$3 million to \$10 million) in a revolving fund to help finance local capital improvement projects, which funds would be replenished through individual state-financed projects. Other committee members commented on the capital outlay funding process and the need to get the chapters involved in establishing project priorities. On motion of Representative Begaye, seconded by Senator Pinto, the committee voted as a subcommittee to send a letter to Deborah Armstrong, secretary of aging and long-term services, and to Rhonda Faught, secretary of transportation, asking whether each New Mexico chapter of the Navajo Nation has been contacted about deadlines for submitting priorities for capital outlay improvements and GRIP 2 projects.

Temporary Assistance for Needy Families (TANF) Programs

Katie Falls, director of income support at the Human Services Department, and Terralene Gene, Native American liaison for the Children, Youth and Families Department, reported to the committee on the status of the 2005 appropriation in the amount of \$250,000 for Navajo Nation and Pueblo of Zuni TANF programs. They explained what steps must be followed to get those funds distributed, and both have talked with Michelle Walela at the Pueblo of Zuni and Roxanne Gorman at the Navajo Nation about the process of getting funds to the tribes. They will send Ms. Gorman a template for the required joint powers agreement. They also discussed the reasons why nearly \$1.5 million that had been appropriated in 2004 federal funds for the Pueblo of Zuni and Navajo Nation TANF programs could not be spent for that purpose.

Phil Lynch Death

On motion of Representative Lundstrom, seconded by Senator Pinto, the committee voted as a subcommittee to send a letter of condolence to the family of Legislative Council Service bill drafter Phil Lynch, who had died over the prior weekend, expressing thanks for his good work in the health care area.

Montana Representative

President Morris introduced Joey Jayne, a state representative in Montana who is serving her third term in the Montana House of Representatives. Representative Jayne, who was born and raised in Tohatchi, was visiting her mother, Dorothy Bitsiti, while on vacation.

Rights of Way in the Checkerboard Area

Jerry King, assistant commissioner for surface resources, introduced himself and former Public Regulation Commissioner Jerome Block, presently employed by the State Land Office, and Keven Groenewold, executive vice president and general manager of the New Mexico Rural Electric Cooperative Association. Mr. Block reviewed the background of the problem relating to Navajo Nation families living on state trust land in the checkerboard area. In 2005, the legislature appropriated \$250,000 "to settle outstanding trespass issues of Native American homes and roads and other access on or across lands held in trust pursuant to the Enabling Act." He then described efforts that the State Land Office has undertaken to meet with legislators, chapter officials and affected families to determine how to implement a program for accomplishing the intent of the legislation. Commissioner King reviewed the work that had been done in conducting field studies in areas, including the Baca, Haystack and Pinedale chapters of the Navajo Nation. Mr. Groenewold discussed issues related to obtaining rights of way for the extension of utilities to families living on state trust lands. Questions raised by committee members included whether state trust lands would be sold to non-Native Americans (the answer appears to be no), whether state trust lands would be acquired in the name of the Bureau of Indian Affairs or individual Native American families (unknown at this time) and the status of mineral rights (they cannot be sold). On motion of Representative Lundstrom, seconded by Senator Rodriguez, the committee voted as a subcommittee to request that it be able to review any proposed rules for the implementation of the program to transfer trust properties before those rules are adopted and implemented. Commissioner King was requested to return to the committee to discuss the proposed memorandum of understanding between the State Land Office and the Indian Affairs Department.

Pittsburgh & Midway Coal Mining Company Reclamation Project - McKinley North Mine

Tim Hagaman, community development representative, Economic Development Division, Economic Development Department, discussed the organization of a Navajo Nation Task Force, which includes John Plummer and Frank Rivera of the Pittsburgh and Midway Mining Company (P&M), to address the planned closure in 2008 of the McKinley North Mine. Mr. Hagaman is responsible for hiring a consultant to work with the task force to prepare a feasibility plan for the closure and redevelopment of the 27,000 acre area around the mine. He distributed copies of the request for proposal (RFP) and proposed scope of work to the committee. This study will be funded in part by \$128,250 appropriated by the legislature for that purpose in the 2005 session. The consultant is scheduled to be selected by the end of August and the feasibility study is to be presented by the end of the year. Mr. Hagaman is now involved in meetings at chapter houses and drawing up a memorandum of understanding between the state and the Navajo Nation. Theo Shorty, senior economic development specialist with the Navajo Nation Division of Economic Development, explained the Navajo Nation's involvement in

efforts to plan for the development and reuse of the McKinley North Mine upon its scheduled closure in 2008. The process includes the preparation of a proposed reuse plan that must be approved by P&M as well as the Office of Surface Mining, the United States Department of the Interior and the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department. All improvements to the mining property must be removed unless the reclamation plan is amended to permit the retention of specified improvements. Mr. Plummer, president of the Diné Coal Mine Coalition, expressed concern regarding the involvement of grazing rights holders for property within the mine area. Frank Rivera, senior mine engineer/environmental for P&M, was present for the presentation and participated in answering questions from the committee.

On questions from committee members, the presenters explained that the 800 current employees at the mine will be the subject of a feasibility study that is part of the redevelopment plan. The Economic Development Department is already looking into potential companies to replace the mine. Community members protested that they had not been given adequate opportunity to participate in the task force's work with the chapters. The presenters acknowledged that the status of grazing leases in place when P&M started mining is still a legal question. The presenters were instructed to send information to Chase Van Gorder, LCS staff attorney, to distribute to the committee members on the status of grazing rights and whether such rights will be recognized. The reclamation plan states that there will be a 10-year waiting period before families can move back to areas that have been mined.

Representative Lundstrom directed the presenters to keep a running sign-in sheet and minutes with public comments for facilitation during the coming months, as she will want to see that the preliminary infrastructure was inclusive. On a motion by Representative Lundstrom, seconded by Senator Tsosie, the committee voted as a subcommittee to write the Navajo Nation Department of Justice on the issues of eminent domain and the legality of Navajo grazing permits.

Native American Arts and Crafts

Steffani Cochran, assistant attorney general, reviewed the history of enforcement of the Indian Arts and Crafts Sales Act, noting that the legislature appropriated money in 1998 to investigate six businesses. Since that year, however, there has been no appropriation for the attorney general to use in enforcing the act. During the 2004 session, there was a proposed appropriation for additional enforcement personnel in the Office of the Attorney General, and the attorney general proposed an amendment to the act to correct some language that makes the act all but unenforceable; neither of those proposals passed the legislature. Currently, there is one investigation pending. The attorney general continues to get consumer complaints on authenticity of Native American crafts and receives requests to investigate these complaints. In commenting upon legislation that could be proposed for the 2006 session, Ms. Cochran suggested the bill should be drafted as part of the Unlawful Practices Act rather than as a criminal statute, as satisfying the criminal standard of proof (beyond a reasonable doubt) is more difficult than the civil standard. She suggested amending the purpose of the law, requiring more stringent labeling and placing the burden on wholesale companies to clearly and conspicuously label items that are not made by Native Americans. She advocated increasing the penalty for unfair practices. Finally, she also advocated providing funding for all costs, including experts, as well as for investigative personnel. Discussion ensued on the conflicts between bills introduced by two committee members last session and about the measure of intent that should be punished.

Speakers from the Gallup Area Jewelers Association (GAJA) addressed the committee to speak against amending the current law. One speaker noted that the act covers rugs, kachinas and other items beyond jewelry and argued that the federal Indian Arts and Crafts Act of 1990 provides adequate protection for purchasers on Native American arts and crafts products.

On a motion by Representative Lundstrom, seconded by Senator Rodriguez, the committee voted as a subcommittee to ensure that there be an opportunity for input from a broad range of craftspeople and producers, including GAJA and the Navajo Nation, if legislation amending the Indian Arts and Crafts Sales Act is reintroduced during the 2006 legislative session.

Navajo Nation Gaming

Navajo Nation Council delegate Peterson Yazzie, Michelle Dotson, legal counsel for the Office of the President/Vice President of the Navajo Nation, and Theo Shorty, senior economic development specialist with the Navajo Nation Division of Economic Development, reported to the committee regarding the status of proposals to permit gaming activities on the Navajo Nation. Their presentation included the following points: 1) in November 2004, the voters agreed with the Navajo Nation Council's decision to permit gaming activities on reservation land; 2) President Shirley authorized a gaming marketing study, which has been completed and is available to the committee; 3) the next step in the process is to conduct a feasibility study for specific proposed operations; 4) an executive director for gaming operations must be in place before such operations begin and they hope to present for approval to the council in the near future a highly qualified individual; 5) an attorney from Phoenix has been retained to draft appropriate policies, including personnel policies; 6) an administrative assistant has been hired to set up an office for the executive director; 7) the Office of the Controller has prepared an RFP that went out last week for a gaming consultant to advise the Navajo Nation on planning and developing gaming facilities; and 8) there is a debate about who has gaming authority, and it is the position of the president that it is an authority at the national level rather than at the chapter level.

Discussion ensued regarding potential locations of a Navajo Nation casino, controls on the number of casinos on reservation land, revenue sharing and the use of gaming profits for "general welfare" of the Navajo Nation, financing of casinos, whether the casino may be placed on allotment lands, disparities between Arizona and New Mexico gaming laws and Native American hiring preferences. Ms. Dotson responded that the Navajo Nation is not interested in developments on allotment lands or in contracting with individuals. She noted that under the Indian Gaming Regulatory Act, casinos are authorized on tribal lands and the federal law does not recognize chapters. Therefore, casinos are a "central government function" and must be built on land that has been approved by the Navajo Nation. A resolution of support by a chapter would be a prerequisite for any specific gaming proposal.

Recess

The meeting was recessed by Senator Pinto at 5:15 p.m.

Tuesday, August 2 - Iyanbito Chapter, Navajo Nation

The meeting was reconvened by Senator Pinto, on Tuesday, August 2, 2005, at 9:35 a.m. at the chapter house of the Iyanbito Chapter, Navajo Nation. An invocation was given by

President Karl Katenay of the Iyanbito Chapter, after which those in attendance introduced themselves.

Iyanbito Chapter - Status Update

President Katenay briefed the committee on the chapter, which has a population of 1,500 and has the smallest land base of all of the chapters of the Navajo Nation. The chapter is trying to acquire land between its present boundaries and Interstate 40. The chapter has been trying to proceed with a number of capital outlay projects, including a new senior center, air conditioning for the chapter house, improvement of the road leading into the chapter and 29 new housing units. President Katenay observed that while significant funding has been forthcoming from the New Mexico Legislature, the Navajo Nation in Window Rock has been extremely slow in approving projects, which has resulted in delays and significant cost increases.

Lawrence Morgan is the delegate to the Navajo Nation Council representing the chapter, but he also serves as the speaker for the council. Speaker Morgan identified the intersection of the road into the chapter with the frontage road along Interstate 40 as the most dangerous area in the chapter because there is a grade railroad crossing at that intersection and the road is the only way into the chapter. Speaker Morgan also addressed the issue of processing chapter capital outlay projects through the Navajo Nation and indicated that there is a need to review and improve the process, although Window Rock is not the only entity to blame for delays. He also observed that Arizona and Utah do not contribute capital outlay funds to chapters in the manner done by New Mexico. Louise Mariano, chapter coordinator, also addressed the committee and emphasized the dangerous intersection at the beginning of the road leading into the chapter. Albert Shirley, a resident of the chapter, commented on the contaminated water in the community, the status of the Fort Wingate Army Depot and education of the youth of the community.

On a motion by Senator Rodriguez, seconded by Representative Luna, the committee voted as a subcommittee to write a letter to the Navajo Tribal Utility Authority requesting that it re-evaluate its billing system if the authority is billing residents of the Iyanbito Chapter for water that is not potable.

Health Issues: Suicide, Drug Abuse and School-Based Health Clinics

The following representatives of the Department of Health briefed the committee on issues related to health care for Native Americans: Karen Meador, director, Behavioral Health Services Division; Brenda Martinez, program manager, Prevention Services, Behavioral Health Services Division; Kris Carrillo, program manager, Mental Health, Office of School Health; and Janie Lee Hall, school health advocate, Region 1. The panel distributed and discussed a handout addressing drug-related deaths, suicide, school-based health centers, statewide prevention efforts, the Office of Policy and Multicultural Health, behavioral treatment programs for Native Americans, Native American prevention programs, the results of the 2003 Youth Risk and Resiliency Survey addressing health risk issues and the Project Venture program based in Gallup. Other issues addressed during questioning by the committee included the quality of the water in the Iyanbito Chapter and substance abuse treatment.

Public Education Issues

The following representatives of the Public Education Department briefed the committee on issues related to the Indian Education Act and other Native American education issues:

Penny Bird, assistant secretary of education for Indian education, James Ball, assistant secretary for educator quality, and Arlene Romero, education administrator, Bilingual/Multicultural Education Bureau. Also presenting was Larry Emerson, chair of the Indian Education Advisory Council. The panel distributed and discussed a handout addressing new and continuing Indian education initiatives, efforts to increase the number of Native American teachers and administrators, Native American language programs, ongoing research at the University of New Mexico, standards for cultural competence, tribal departments of education, tribal elders in classrooms and Native American students in urban schools. Other issues addressed during questioning by the committee included adequate yearly progress results, school curricula and reports that students in McKinley County cannot take books home at night.

Minutes

There being present a quorum of the voting members of the committee, Representative Lundstrom moved that the minutes from the committee's July meeting be approved as submitted. The motion was seconded by Senator Rodriguez and passed without objection. The committee also ratified without objection the prior motions that had been approved by the subcommittee earlier in the day and on the previous day.

Rural Business Start-Ups

Phil Jesse with Jesse Consulting briefed the committee regarding concerns he has regarding state financial assistance to start-up companies in rural parts of the state. He detailed problems he experienced when he submitted an application for assistance in raising capital to start up a restaurant project in Gallup. Greg Kulka, director of private investments with the State Investment Council (SIC), explained to the committee the SIC programs to provide financing and investments in start-up companies in New Mexico and the guidelines for approving investment proposals. These programs include debt financing as well as equity financing through either the New Mexico Private Equity Program or the New Mexico Small Business Investment Corporation. He also outlined the guidelines used in determining whether investment proposals are to be funded and instances where start-up businesses in rural areas of the state have been approved. Assisting in the presentation was Paul Goblet of Asset Advisors, LLC, who advises the New Mexico Small Business Investment Corporation. Other issues addressed during questioning by the committee included the record of investments in rural businesses, advisors who assist in managing the investment funds and review of investment proposals. Representative Lundstrom asked that the committee be provided with a copy of the report being provided to the Legislative Finance Committee by the SIC the following week at the LFC meeting in Farmington.

Predatory Lending Practices

Joel Cruz-Esparza, chief of the Consumer Protection Division, Office of the Attorney General, addressed the committee to brief them on what his office has done since the close of the 2005 legislative session to address the continuing problem of predatory lending in New Mexico. He reviewed the nature of the problem with so-called "payday loans" and the results of his office's review of collection cases filed in McKinley County. In addition to continuing to consider proposed legislation for the next legislative session, the Office of the Attorney General is considering taking alternative actions to address the problem that do not require new legislation: 1) review payday loan practices as extensions of credit that may be regulated pursuant to the Unfair Practices Act and institute litigation if such practices are found to violate that act; 2) promulgate administrative rules regarding the extension of credit; 3) undertake

consumer education efforts; and 4) issue a series of civil investigative demands to gather more information regarding the payday loan industry. There was also a discussion of the use of pawn shops and car title loans. The committee discussed when this can be scheduled for consideration again by the committee, including a report from the task force being put together by the lieutenant governor and input from the industry as well.

Recess

The meeting was recessed by Senator Pinto at 5:05 p.m.

Wednesday, August 3 – Gallup High School

The meeting was reconvened by Senator Pinto on Wednesday, August 3, 2005, at 9:30 a.m. at Gallup High School for a special meeting on the capital outlay process, involving state, chapter and Navajo Nation stakeholders. Senator Pinto requested that Senator Rainaldi preside at this meeting.

The initial presentation was done by a panel representing the Indian Affairs Department, including Benny Shendo, Jr., secretary of Indian affairs, Michelle Brown-Yazzie, deputy secretary of Indian affairs, Rebecca Martinez, capital outlay manager, and Priscilla Thomas, capital outlay analyst. In his introductory remarks, Secretary Shendo described the capital outlay process in New Mexico and identified problems that result in the failure of some appropriated funds to be expended in a timely manner, resulting in their reversion to the state. He emphasized the need for a common understanding among all interested parties on how the process works. Deputy Secretary Brown-Yazzie described the efforts the department has undertaken during the past year to minimize the problem of reverting capital outlay funds. She indicated that over \$900,000 in approved capital outlay funds appropriated to pueblos and chapters of the Navajo Nation for projects approved as far back as 1998 were scheduled to revert back to the state. Ms. Martinez reviewed for the committee the numbers for capital outlay appropriations to the chapters and indicated the status of those appropriations as of July 29, 2005. On that date, there was \$29.6 million in active projects being administered through the department, of which \$6.4 million was awaiting approval by the Navajo Nation. Ms. Martinez reviewed the flow chart outlining the capital projects funding process, including the involvement of the Navajo Nation. Finally, Ms. Martinez reviewed six suggestions regarding ways in which the capital outlay process, may be improved to reduce the reversion of funds to the state. These documents are included in the meeting file. Committee members and departmental staff engaged in a lengthy discussion of many points regarding the capital outlay process, including joint powers agreements (JPA), the Infrastructure Capital Improvement Plan (ICIP) process and priorities, project-ready proposals, coordination between governmental entities and the anti-donation clause of the New Mexico Constitution.

After lunch, there was a presentation giving the perspective of the Navajo Nation regarding the state's capital outlay process. The panel included Arbin Mitchell, director, Division of Community Development, Cordell Shorty, contracting officer, Office of Management and Budget, Casey Begaye, manager, Capital Improvement Office, and Lena Arviso, accounting manager, Controller's Office. Mr. Mitchell, representing the Office of the President/Vice President, stated the two main problems are not to have appropriated funds revert to the state and to complete capital projects in a timely manner. His office is committed to improving the process and it is a priority. They have already set up a joint corrective action team