



FINAL REPORT INDIAN AFFAIRS COMMITTEE 2009 INTERIM

Table of Contents:

Final Report and Summary of 2009 Interim Work
Uranium Policy Subcommittee's Summary of Interim Work
2009 Work Plan
Uranium Policy Subcommittee's Meeting Report
Agendas for the Full Committee
Agendas for the Uranium Policy Subcommittee
Minutes for the Full Committee
Minutes for the Uranium Policy Subcommittee

Final Report and Summary of 2009 Interim Work

Overview

The Indian Affairs Committee (IAC) again traveled to pueblos and Navajo Nation chapters, but, because of a special session in October to cut the budget, again was forced to cancel a planned meeting at the Mescalero reservation in southern New Mexico.

The committee did meet at the Pueblos of Santa Ana, Santa Clara and Tesuque; at Navajo chapter houses in Manuelito (west of Gallup), in Hogback and Nenahnezad (both between Farmington and Shiprock); and in Gallup. In addition, the committee met at a variety of places for items of particular interest to Native American voters and their legislators, including the University of New Mexico (UNM) School of Law, where a Native American scholar had just been named dean; at Red Rocks State Park in Gallup, where members received a behind-the-scenes tour of the Gallup Intertribal Ceremonial; at the Big Rock Casino in Espanola, where a new hotel is being built under the auspices of the Pueblo of Santa Clara; at the UNM student union ballroom, where a joint meeting of the IAC and the Radioactive and Hazardous Materials Committee (RHMC) had the opportunity to question federal and state staff about the cleanup of abandoned uranium mining and milling sites; at the Indian Pueblo Cultural Center in Albuquerque, where staff from the newly formed Indian Health Commission of Bernalillo county visited; and at San Juan College, where Farmington residents could attend.

A subcommittee on uranium legacy issues — that is, contamination and pollution remaining after uranium mines and mills closed — was created, comprising IAC and RHMC members. The subcommittee focused on increasing the federal commitment to cleaning up radioactive waste sites, and it received some federal commitments to clean up waste sites in New Mexico that have been excluded from federal cleanup budgets for decades.

Accomplishments and Persistent Problems

The Economy

New Mexico is no different from most other states in the country in facing a terrible economic year with few bright spots on the horizon. However, the state economy may be more fragile than most because a high percentage of its residents live in poverty. If the end of calendar year 2008 was alarming, calendar year 2009 brought near panic to legislators and their constituents. During an October special session, legislators "swept" various state funds that held unspent money in order to fill gaps in the state budget. Shortly thereafter, severance tax-generated capital projects were "frozen" with a plan to "swap" the severance funds appropriated for physical projects for general funds, which are available for operation of agencies.

For a number of years, legislators have complained that many Native American capital outlay projects — for new senior centers; for improvements to buildings on the verge of collapse; and for roads, fresh water and power — are delayed beyond reason. The requirement that a chapter house must gain approval, and sometimes gain funding, under two entirely different bureaucracies — the Navajo Nation and the State of New Mexico — may condemn a perfectly worthwhile, or even a much-needed, capital project.

Where possible, IAC members have worked to maximize the funds already appropriated for projects in Indian country, even with the governor's order that those not under contract revert to help save the statewide budget. They have worked closely with the Indian Affairs Department (IAD) and local constituent leaders. Even so, at the end of the calendar year, IAC constituents stood to lose millions of dollars for badly needed projects. The committee wrote the governor and the secretary of finance and administration to request an exception to the freeze and to the reversion of projects that required approval from two different jurisdictions. By year-end, the committee had not received a positive response.

Dealing with the Legacy of Uranium Mining

The committee successfully increased attention placed on cleaning up uranium mining sites and nearby areas of concern in cooperation with the RHMC. See full report below.

Regulating the Authenticity of Native American Arts and Crafts

The committee again heard about false advertising and deceptive marketing of non-Indian jewelry as Native American or as Indian-made. According to Tony Erachio, a Zuni tribal member who has made educating New Mexicans and others about Native American crafts his calling, fake Indian jewelry not only takes money away from New Mexico artists, but it also undermines appreciation of and pride in their unique creations. Mr. Erachio suggested that the state could aid local artists by strengthening its Native American Authenticity Commission, which is composed of various tribal members active in the arts from areas with dense populations of tribal members; by presenting educational exhibits at state-sponsored events on how to distinguish fake from real jewelry; and by keeping its commitments to other states in advertisements promoting authentic jewelry. The Gallup Intertribal Ceremonial's contribution to authentic Native American arts production was well-noted in the discussion, especially after the committee viewed the prizewinning entries in the 2009 ceremonial.

Recently, the attorney general successfully prosecuted a dealer on the Santa Fe Plaza under the Indian Arts and Crafts Sales Act. The committee endorsed a bill to increase penalties under the act, as suggested by the attorney general.

Power and Roads

The IAC successfully facilitated a \$500,000 appropriation to finish connecting a power line near the Hogback chapter of the Navajo Nation. The chapter and the community celebrated and honored the IAC leadership during a dedication of the line. Some of the people whose homes received power for the very first time in the 21st century celebrated with the committee and the chapter in November, and committee members toured the area to see where new power lines connected with established lines. Unfortunately, the freeze on capital projects left three homes unconnected to the powerline. The approximately \$190,000 left from the one-half million dollar appropriation was in jeopardy because of the freeze and the funding swap. The Hogback celebration turned into a tragedy as committee members began to see that some chapter members may be without power for another generation.

Medicaid Funding

The committee spent an entire day hearing about two recently overhauled state programs that have a big impact in Indian country: the new Native American Behavioral Health Collaboratives (BHC) and Coordinated Long-Term services (CoLTS) initiative through the Aging and Long-Term Services Department (ALTSD). During a hearing in August, it quickly became clear that even if the new administration for the BHC was enthusiastic, it was not efficiently or smoothly organized to respond to the needs of people on Indian land. Although the BHC organized a total of six tribal "collaboratives" to deal with a fundamental level of services in Indian country, there was some confusion regarding how a client could call for help. Both programs — for care for persons who are elderly or who have long-term physical or mental disabilities and for people with behavioral health problems, including substance or alcohol abuse — are critical in remote areas where many Native American residents live. Both are funded in part through federal Medicaid funds.

Gordon Nez, a coordinator with an out-of-state substance and alcohol abuse treatment facility, said that other states allow for placement with his program and payment for his program through Medicaid dollars. However, though the new administration agreed to pay without changes in law or rule for out-of-state treatment when available and necessary, the new administrators did not ever work with the out-of-state provider. One of the few committee-endorsed bills required the state to pay for out-of-state treatment for tribal members when no comparable services are available in the state. By the end of the calendar year, the new administration was under sanctions for its poor performance.

Several persons with long-term disabilities appeared before the committee to complain about services rendered by CoLTS administrators. Under the new program, an elderly person or person with a developmental disability may avoid hospitalization by enrolling in a privately administered entity. However, some of those who spoke noted that trying to get services has been difficult. One person presented an identification card at one hospital for treatment during an asthma attack only to be told that the hospital did not help that particular provider's enrollees. Although hers was a crisis situation, she was still told to go to a different hospital where enrollees in the alternate program could seek and receive treatment.

Voting

The IAC began working toward an accurate, full count in the upcoming census. In part because of an awareness by tribal leaders that a good count will help tribal members get more federal support to supplement state funding, members investigated ways to maximize tribal participation in the census and in the 2010 elections. In July, the committee brought together: tribal members who requested, but had been denied, new polling locations and precincts; the federal monitor for consent decrees that are designed to ensure that discrimination by counties on the basis of race does not go undetected; county clerks; and Native American Election Information program coordinators for the secretary of state. Various stakeholders discussed impending problems, including getting adequate access to polls, and educated each other about activities to promote participation in voting and in the census. In December, Amadeo Shije, the U.S. Census Bureau's regional director for Native American census issues, appeared before the

committee to explain the connections between the census and the upcoming elections, emphasizing that participation benefits Native American constituents.

Education

The committee endorsed two bills proposed by the Higher Education Department (HED) — one requiring dual enrollment opportunities for students at Bureau of Indian Education (BIE) schools and one to permit use of the state's lottery scholarship at tribal colleges. The HED has begun implementation of the new Indian Education Act, which is applicable to colleges and universities and is operating with leadership that is strongly supportive of improving Native American student involvement and completion of undergraduate school. Its new secretary, Viola Florez, and its new director of Indian education, Matthew Martinez, appeared at the Nenahnezad chapter to talk about accomplishments and improved scores for Native American students.

The committee also heard a good deal of information on the successes of and problems with elementary school and secondary school public education.

Public Education Department (PED) Deputy Secretary Catherine Cross-Maple and assistant secretary for Indian Education Nancy Martine-Alonzo appeared before the committee and distributed a PED report on the status of Indian education in elementary and secondary schools. Great concern was placed on whether money appropriated for Indian education was being adequately spent, and Deputy Secretary Cross-Maple and Ms. Martine-Alonzo explained that this is the last year of the past five that it would have money left unspent from an appropriation.

Adequate Community Services

The IAC endorsed a bill qualifying Native American nations, tribes and pueblos for emergency funding and ensuring that Native American nations, tribes and pueblos receive ample funds for fighting fires.

Uranium Policy Subcommittee

Summary of Interim Work

At the beginning of the 2009 interim, the New Mexico Legislative Council authorized the creation of the New Mexico Uranium Mining and Tailings Task Force. This small group of legislators, staff members and experts traveled to Washington, D.C., for the specific purpose of learning how the federal government was or was not addressing the uranium legacy in New Mexico. The task force met with all five members of the New Mexico congressional delegation; the chair of the House Appropriations Subcommittee on Energy and Water; the chair of the House Committee on Natural Resources; a commissioner of the Nuclear Regulatory Commission; and top officials from the Environmental Protection Agency (EPA), the Department of the Interior (DOI) and the Department of Energy (DOE). The task force made the federal government aware of the uranium legacy in New Mexico and the serious need for comprehensive uranium waste cleanup. The federal agencies recognized that responsibility for uranium waste cleanup had been delegated in a piecemeal fashion to various federal agencies. Given the complex regulatory scheme and numerous federal statutes, cleaning up the uranium has been very slow. Past efforts by the state legislature to seek a comprehensive uranium waste cleanup had been met with resistance, delay or transfer to other federal agencies. As a result of the trip to Washington, D.C., numerous federal agencies agreed to appear before a joint meeting of the IAC and the RHMC.

The IAC requested the continuation of the task force as a subcommittee of both the IAC and the RHMC. The Uranium Policy Subcommittee was created by the New Mexico Legislative Council for the specific purpose of addressing the uranium legacy in New Mexico and to providing the IAC and the RHMC with recommendations on how to address the uranium legacy. The subcommittee met twice during the 2009 interim. At its first meeting, the subcommittee continued to formulate recommendations for federal agencies and for action by the two committees. The subcommittee also built on its accomplishments in Washington, D.C., and expanded its coordination with additional federal, state and tribal agencies as well as with representatives from the uranium industry and public interest groups. The subcommittee presented a series of recommendations from its first meeting at a joint meeting of the two interim committees. The recommendations were amended by the two committees.

Following the joint meeting, the subcommittee addressed at its second meeting the concerns of the two committees and presented a series of letters to be sent on behalf of the two committees to the New Mexico congressional delegation, the EPA, the DOI and the DOE. The letters outlined and advocated for several actionable priorities by the federal government.

Of greatest urgency for the subcommittee was addressing the Office of Surface Mining Reclamation and Enforcement's regulatory changes in response to the Surface Mining Control and Reclamation Act (SMCRA) Amendments of 2006. Those regulations severely limited the amount of funds available for abandoned uranium mine reclamation. With the assistance of the New Mexico congressional delegation, the two committees were able to convince the DOI to

review those regulations. Unfortunately, the DOI maintained its interpretation of the 2006 SMCRA amendments. Shortly after that announcement, U.S. Senator Jeff Bingaman introduced S. 2830, which amends SMCRA explicitly to redress the DOI's restricting funds for reclamation of abandoned uranium mines.

Additionally, the subcommittee recommended the formulation of a coordinated, multi-agency five-year plan to begin comprehensive uranium waste cleanup. An informal technical working group composed of various federal and state agencies with responsibility for uranium waste cleanup began meeting after the task force's trip to Washington, D.C. That technical working group has begun to formulate a five-year plan for uranium waste cleanup in the Grants Mineral Belt. While Region 6 of the EPA has taken the lead in formulating and implementing the five-year plan, the subcommittee has recommended and urges the active cooperation and coordination of all federal agencies with any authority to address the uranium legacy. The subcommittee expects a draft of the five-year plan by the second quarter of 2010.

The five-year plan will rely heavily on the assessment and characterization of the uranium legacy. While the subcommittee has received much anecdotal evidence of health hazards associated with the uranium legacy, quantifiable studies are necessary to determine the extent and nature of the hazards as well as to prioritize cleanup of contaminated sites. The New Mexico Abandoned Uranium Mine Inventory Project was created to ascertain the extent of the occurrence of abandoned uranium mines. The program is funded through a combination of state and federal funds. The Energy, Minerals and Natural Resources Department will also receive funding for its abandoned mine lands program. On November 23, 2009, the U.S. Bureau of Land Management posted a notice of intent to enter into a cooperative agreement to remediate environmental and physical hazards at abandoned mine sites. The total funding for the program is estimated at \$5 million.

The subcommittee recommended that it continue meeting in the next interim with the caveat that the new subcommittee be referred to as the Subcommittee on the Uranium Legacy, because it deals exclusively with cleanup issue. The subject of possible future uranium mining in New Mexico is outside the purview of the subcommittee and often confused and delayed the work of the subcommittee.

Conclusion

Since its inception, the IAC has involved itself in affairs affecting Native Americans living in New Mexico. This year was no different. However, the committee made strides in finding a consensus approach supported both by the uranium industry and anti-uranium advocates to clean up the uranium contamination already affecting communities in the northwestern part of the state and in engaging federal agencies and lawmakers in organizing and financing that effort. The committee continued to support involvement with tribal governments, improved health and education for Native American residents and requiring agencies to justify their actions, budgets and policies regarding their Native American constituents.

**2009 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
INDIAN AFFAIRS COMMITTEE**

Members

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

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

Advisory Members

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

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

Work Plan

The Indian Affairs Committee (IAC), again created by the New Mexico Legislative Council to address issues that have a primary effect on the state's Native American population, proposes to address cross-jurisdictional issues, give its input on priority funding under the federal stimulus package, hear the state's first Native American law school dean and tour the new Sundance Institute for Native American and Hispanic filmmakers. In addition, it proposes to travel to three pueblos, three chapter houses, San Juan College and Red Rocks State Park, as well as to meet jointly with the Radioactive and Hazardous Materials Committee (RHMC) in Albuquerque on uranium mining.

The committee proposes to focus in large part on the federal American Reinvestment and Recovery Act of 2009 (ARRA) initiatives affecting pueblos and tribes to ensure that money allotted to the Navajo Nation is spent proportionally in New Mexico and to minimize duplication in services and benefits funded both by the state and by the federal government.

The committee is also proposing to focus on three federal-state issues: Native American voting rights, uranium cleanup and crime bill amendments that significantly affect native sovereignty. Staff from the United States Department of Justice will appear at the committee's July 15 meeting on Native American voting rights, when the committee will discuss Native American voting in the 2010 election and methods to ensure that every Native American is counted in the coming census. Staff members from the federal Environmental Protection Agency have agreed to come for a joint meeting with the RHMC designed to spotlight problems from past uranium mining activities. A

federal public defender, a state public defender and the Navajo Nation public defender will brief the committee on proposed amendments before the United States Senate Indian Affairs Committee (SIAC) in Washington, D.C., and address the disproportionate incarceration of Native Americans.

The committee also proposes to examine:

- * Native American law programs in addition to the state-tribal law consortium and common legal pleadings; and full faith and credit in domestic violence matters;
- * requiring uniformity in statistical compilations for the number of tribal members;
- * policies and procedures related to the authentication of Native American arts and crafts;
- * concerns about progress or regression in the care of elders resulting from new contracts for adult services;
- * changes in the Navajo Nation due to the opening of a new casino;
- * improvements needed in school transportation and school performance in areas with a high percentage of Native American students;
- * the effects of the ARRA on Native American in terms of employment, highway construction, housing, health, economic development, broadband and "smart grid" development and the provision of electric and gas utilities;
- * the status of settlement of water rights that affect Native American communities;
- * implementation of the Indian Collaboration Act;
- * the Public Education Department assessment of the status of Indian education and the effect of impact aid on Native American schools and students;
- * tribal emergency management in coordination with homeland security;
- * tribal child support, early education, veterans' issues and cooperation with utility providers;
- * improvements in tribal capital outlay accounting;
- * DWI issues;
- * the use of methamphetamine, alcohol and other addictive substances by Native Americans;

- * the implications of registering Mt. Taylor as a cultural property;
- * the pros and cons of making Shiprock a state park;
- * domestic violence in Indian country;
- * tribal investments and the creation of a permanent source of funding for the Tribal Infrastructure Fund; and
- * other related tribal concerns.

Where other issues overlap with another committee, the IAC will attempt to consolidate information and avoid duplication.

Subcommittee

The IAC voted to request New Mexico Legislative Council approval for the creation of a subcommittee on uranium cleanup, to include members from the IAC and the RHMC, on both tribal and privately held lands in New Mexico, which proposes to meet four times in addition to the IAC meetings. The subcommittee was approved for one meeting that will be two days.

2009 APPROVED MEETING SCHEDULE

Date	Location
May 28	Santa Fe
July 13-15	Albuquerque (Law School and Pueblo of Santa Ana)
August 10-12	Gallup area (Red Rocks, Church Rock and Manuelito)
Sept. 8-10	Pueblo of Santa Clara, Alcalde (near Espanola) and Albuquerque (Joint meeting with RHMC)
October 19-21	Mescalero
November 18-20	Shiprock area, San Juan College and Nenahnezad

URANIUM CLEANUP SUBCOMMITTEE

A single two-day meeting will be scheduled in consultation with the subcommittee members, including members from the IAC and the RHMC, who will be named by the New Mexico Legislative Council.

**Uranium Policy Subcommittee
of the
Indian Affairs Committee
and the
Radioactive and Hazardous Materials Committee**

**August 24-25, 2009
MEETING REPORT**



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

TABLE OF CONTENTS

Executive Summary	1
Background and History	1
Measurable Outcomes	2
Meeting Summary and Methodology	3
Subcommittee Recommendations	3
Subcommittee Members and Special Guests	7

Executive Summary

At the first meeting of the Indian Affairs Committee (IAC) on May 28, 2009, Representative Patricia A. Lundstrom moved that the IAC, perhaps with members of the Radioactive and Hazardous Materials Committee (RHMC), form a uranium subcommittee, pending approval by the New Mexico Legislative Council, specifically to look at the issues of abandoned uranium mines (AUMs), uranium mill tailings, resulting ground water contamination and related health issues. The motion passed unanimously. The Legislative Council approved the request and reserved the right to have leadership appoint the members and co-chairs of the subcommittee. The Legislative Council appointed the same members who made up the ad hoc Uranium Mining and Tailings Task Force, with the exception of Representative W. Ken Martinez, who was replaced by Senator Vernon D. Asbill. The Legislative Council approved a two-day meeting for the subcommittee to continue the work of the legislature in addressing uranium legacy.

The Uranium Policy Subcommittee held a two-day hearing in which the actions, outcomes and response to the legislature's work was provided by the presenters. The subcommittee also brought together a wide range of stakeholders to provide testimony and secure a general consensus on the legislative action needed to address uranium legacy in the short term. At the end of the meeting, the Uranium Policy Subcommittee formulated a series of recommendations to present before the joint meeting of the IAC and RHMC on September 10, 2009.

The subcommittee recommends that the IAC and RHMC send joint letters to the New Mexico congressional delegation and federal agencies requesting they take action to address uranium legacy in New Mexico. The subcommittee also recommends that the IAC and RHMC formally request the governor to become more personally engaged in the issue and place the topic on the proclamation for the special session tentatively planned for later this year.

Background and History

The history of uranium mining in New Mexico has involved a wide variety of activities, including exploratory drilling, small "mom and pop" surface and underground mines and large-scale commercial surface and underground mines. The New Mexico Bureau of Geology and Mineral Resources has identified nearly 600 mine and exploration sites in McKinley, Cibola and Sandoval counties alone. The Mining and Minerals Division (MMD) of the Energy, Minerals and Natural Resources Department has identified 259 mining sites in New Mexico that produced uranium. Of these sites, 137 have no record of any reclamation activity. In addition to uranium mines, mills used to process uranium ore into yellowcake were constructed and operated at seven sites in New Mexico. The uranium industry operating in New Mexico in the twentieth century, which mainly occurred prior to the creation and implementation of federal or state regulations, left a legacy of unreclaimed mines, contaminated mining and milling sites and contaminated underground aquifers.

With respect to uranium milling sites, surface reclamation has been completed at six of the seven mill tailing facilities in New Mexico, and four of the seven sites have been turned over to

the Office of Legacy Management within the federal Department of Energy (DOE). Reclamation activities continue at the Homestake Milan, Church Rock and Rio Algom mill sites pursuant to the Nuclear Regulatory Commission (NRC) license requirements and at the Shiprock mill site under DOE oversight. Ground water and aquifer contamination continues to be a problem even where surface contamination has been cleaned up or contained. The extent of uranium contamination and the cost for reclamation of AUMs and remediation of ground water remain unknown. The impacts of past discharges of mine water on regional ground water quality are also not known.

The uranium mining and milling activities that took place in New Mexico in the twentieth century were undertaken in large part to benefit the federal nuclear weapons program. The federal government in 1978 recognized its responsibility to assist financially in the cleanup of contamination from past uranium milling activities through the passage of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), which provided that the federal government would pay for the cleanup of mill sites that produced uranium solely for government use. Title X of the federal Energy Policy Act of 1992 also provided that the federal government would pay for the cleanup of mill sites that produced uranium for both government and private use in proportion to the amount of uranium that was used for government purposes. In 2007, Congress continued to recognize the federal government's responsibility for the uranium legacy. The United States House of Representatives Committee on Oversight and Government Reform conducted a series of hearings on uranium legacy on the Navajo Nation. As a result of those hearings, the Environmental Protection Agency (EPA), Bureau of Indian Affairs, DOE, NRC and Indian Health Service developed a coordinated five-year plan with specific milestones to address uranium legacy on the Navajo Nation. If the federal government is responsible for the cost of cleaning up mill sites that produced uranium for national defense purposes, it should also be responsible for the cost of closing and cleaning up the mines that produced the ore for the uranium mills and remediation of ground water contaminated by past uranium mining and milling activities.

Measurable Outcomes

As a result of the work of the New Mexico Legislature, including meetings between the ad hoc Uranium Mining and Tailings Task Force and members of Congress and federal agencies, there have been measurable outcomes addressing uranium legacy in New Mexico. The MMD has conducted on-the-field AUM evaluations. Congressman Ben Ray Lujan has drafted legislation "to provide for a study of abandoned uranium mines in the southwest, to provide for abandoned uranium mine cleanup across jurisdictional lines, including boundaries between tribal land and public land, to establish an intergovernmental Abandoned Legacy Cleanup Program, and for other purposes". Senator Tom Udall included language in the United States Senate Committee on Appropriations report for both the Energy and Water Appropriations and Interior Appropriations bills, requesting a "five-year plan" similar to that of the Navajo Nation Five-Year Plan requested by the U.S. House Committee on Oversight and Government Reform for "New Mexico and other states with uranium contamination". An informal "technical working group" to address uranium contamination in the Grants Mineral Belt was established consisting of the various federal and state agencies with authority to address uranium legacy. The EPA has taken the lead on drafting a

"five-year plan" similar to that of the Navajo Nation Five-Year Plan requested by the U.S. House Committee on Oversight and Government Reform. The Bureau of Land Management (BLM) has made money available for uranium legacy cleanup. The MMD will be awarded \$750,000 over one year for AUM reclamation on BLM land in New Mexico.

Meeting Summary and Methodology

On August 25, 2009, the subcommittee invited special guests to take part in a roundtable discussion to provide advice and guidance on short-term actions to address the uranium legacy left behind by past mining and milling activities. The special guests represented stakeholders from various categories, including local and land grant governments, tribal governments and communities, the uranium mining industry, economic development agencies, affected community advocates, state government agencies and technical and research experts. The meeting was facilitated by a professional, and all participants were in general agreement on the recommendations articulated by the subcommittee at the end of the meeting. Those recommendations were compiled with the motions for action set forth by the subcommittee on August 24, 2009.

Subcommittee Recommendations

The Uranium Policy Subcommittee recommends that the IAC and RHMC:

- A. request that the New Mexico Institute of Mining and Technology and the Grants Campus of New Mexico State University to work with the United States Geological Survey to produce and provide educational materials for public dissemination regarding uranium legacy concerns in New Mexico;
- B. vote to send a letter on behalf of both committees to Senator Jeff Bingaman, Senator Tom Udall, Representative Ben Ray Lujan and Representative Harry Teague requesting that they hold joint field hearing-style meetings in the Grants Mineral Belt region on the topic of uranium legacy in New Mexico;
- C. vote to send a letter on behalf of both committees to Governor Bill Richardson requesting that he place uranium legacy cleanup on the proclamation for the special session tentatively planned for later this year and, if necessary, provide a special message to consider bills related to uranium cleanup during the second session of the forty-ninth legislature;
- D. vote to send a letter on behalf of both committees to Interior Secretary Ken Salazar to immediately revise Solicitor Opinion M-37014 and the resulting Office of Surface Mining and Reclamation Enforcement (OSM) regulations limiting use of replacement funds pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for non-coal mine reclamation;
- E. vote to send a letter on behalf of both committees to Department of Energy Secretary Steven Chu, Under Secretary Kristina M. Johnson and Assistant Secretary for Environmental

Management Inés Triay requesting them to fund uranium mine and regional ground water cleanup activities because the abandoned uranium mines are a result of the United States defense program similar to the Title II uranium mills;

F. vote to send a letter on behalf of both committees to the New Mexico congressional delegation members requesting that they:

(1) introduce new federal legislation or amend existing legislation, such as the UMTRCA, to expand federal authority to: a) reclaim AUMs with a record of production; b) remediate ground water contamination and allow flexibility to address the spread of ground water contamination beyond site-specific ground water cleanup and the NRC maintenance plans; and c) set aside \$1.5 billion from the sale of the uranium inventory held by the DOE specifically for AUM reclamation and remediation of ground water contamination caused by past uranium mining and milling activities;

(2) urge Interior Secretary Ken Salazar to revise Solicitor Opinion M-37014 and the resulting OSM regulations limiting use of replacement funds pursuant to SMCRA for non-coal mine reclamation;

(3) ensure that any future amendments to SMCRA explicitly provide funding flexibility for non-coal mine site reclamation similar to the flexibility provided by S.2779 in the 110th Congress;

(4) continue to seek the enactment of S.796, the Hardrock Mining and Reclamation Act of 2009;

(5) seek appropriations for the EPA to coordinate with the DOE, NRC, the Department of the Interior, including the BLM, the United States Forest Service and the OSM, and state governments to formulate a five-year plan similar to the one created for the Navajo Nation, with annual benchmarks for the cleanup of uranium mines, mill sites and resulting ground water contamination throughout New Mexico and other states with uranium contamination;

(6) request the NRC to review cleanup and ground water plans and the background levels of aquifers affected by uranium mining and milling activities and seek sufficient assurance that current reclamation and long-term maintenance plans of New Mexico milling sites provide containment of ground water contamination and a level of stabilization and protection for public health and safety and the environment from radiological and non-radiological hazards associated with the milling activities that are equivalent to or more stringent than the level required by Appendix A to 10 CFR Part 40 and the standards promulgated by the EPA in 40 CFR Part 192, Subparts D and E;

(7) seek a National Academy of Sciences study for the reclamation of uranium mines and remediation of ground water contamination caused by uranium mining and milling activities, including cost analysis, cleanup technology and funding of abandoned mine cleanup; and

(8) amend the Radiation Exposure Compensation Act of 1990 to include uranium miners who worked after 1971; and

G. during the September 10 joint meeting, respectfully express to the federal agencies collaborating on a New Mexico five-year plan to address uranium legacy cleanup the importance of including:

(1) an electronic clearinghouse of relevant uranium legacy data compiled from federal and state agencies and company reports assessable to federal and state agencies;

(2) two comprehensive peer-reviewed studies — one to fill in the data gaps related to current uranium legacy contamination of both surface land and surface and ground water on a regional level; and the other to identify diseases or conditions caused by radiological or heavy-metal exposure as a result of past uranium mining and milling activities, including birth defects and kidney failure;

(3) proper funding and commitment in order to duplicate the success of the EPA Region 9 in reaching benchmarks on the Navajo Nation five-year plan;

(4) community input before the final version is completed; and

(5) respectfully request that the EPA include a model in which the tailings piles at the Homestake site are completely removed in the optimization study currently underway.

The subcommittee also recommends that the IAC and RHMC secure formal endorsement and support from the affected tribes, acequias and land grants for the letters sent by the joint committees.

There was heavy debate on the feasibility of holding a decision-makers field conference due to the lack of funding for the New Mexico Bureau of Geology and Mineral Resources to host the conference for IAC and RHMC members. The out-of-pocket cost for a decision-makers conference is approximately \$75,000. While the subcommittee members agreed that the conference is beneficial and should take place, no consensus among the members could be made on how to recommend funding for the conference.

Finally, the subcommittee directed Legislative Council Service staff to request another subcommittee meeting in December to follow up on the recommended action and the letters sent to the New Mexico congressional delegation and federal agencies.

APPENDIX A
ROUNDTABLE DISCUSSION PARTICIPANTS

Members

Representative Patricia A. Lundstrom (IAC)

Senator Lynda M. Lovejoy, Co-Chair (IAC and RHMC)

Representative John A. Heaton (RHMC)

Representative Jeannette O. Wallace (RHMC)

Senator David Ulibarri (RHMC)

Senator Vernon D. Asbill (RHMC)

Special Guests

Joe Lister, Rio Grande Resources

Walter Baca, Juan Tafoya Land Corporation

Mark L. Pelizza, Uranium Resources, Inc.

Bill Olson, Ground Water Quality Bureau

Jerry Schoeppner, Ground Water Quality Bureau

Tanya Gallegos, United States Geological Survey

Bill Brancard, Mining and Minerals Division

Secretary Alvin Warren, Indian Affairs Department

Frank Cerno, Pueblo of Laguna

Chris Shuey, Southwest Research and Information Center

Dana Ulmer-Schole, New Mexico Institute of Mining and Technology

Doug Bland, Bureau of Geology and Mineral Resources

Nadine Padilla, Multicultural Alliance for a Safe Environment

Mitchell Capitan, Eastern Navajo Diné Against Uranium Mining

Ed Michael, Cibola County and Cebolleta Land Grant

**INDIAN AFFAIRS
COMMITTEE
AGENDAS**

Revised: May 27, 2009

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

**May 28, 2009
Room 322, State Capitol**

Thursday, May 28

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Interim Committee Protocols**
—Paula Tackett, Director, Legislative Council Service (LCS)
- 10:35 a.m. **2009 Legislation — Summary**
—Chase Van Gorder, Staff Attorney, LCS
- 11:00 a.m. **American Recovery and Reinvestment Act of 2009 (ARRA) Stimulus Funds**
—Former New Mexico Governor Tony Anaya, Executive Director, New Mexico Office of Recovery and Reinvestment
- 11:30 a.m. **Lobbying Trip to Washington, D.C. — Summary**
—Damian Lara, Staff Attorney, LCS
- 12:00 noon **Working Lunch**
- 1:00 p.m. **Indian Affairs Department — Update and Stimulus Funding Overview**
—Alvin Warren, Secretary of Indian Affairs
—Marvis Aragon, Deputy Secretary of Indian Affairs
—Peter Pino, Competitive Grants Advisory Team (invited)
- 1:30 p.m. **Native American Veterans State Income Tax Settlements — Update**
—John Garcia, Secretary, Veterans' Services Department
- 2:30 p.m. **Public Utility Taxation on Tribal Lands — Update**
—Roy Stephenson, Co-Chair, Tribal Tax Executive Working Group
- 2:55 p.m. **Capital Outlay Update for Aging and Long-Term Services Department in Indian Country**
—Handout
- 3:00 p.m. **2009 Interim Work Plan and Meeting Schedule Development**
—Jennie Lusk, Staff Attorney, LCS
—Damian Lara, Staff Attorney, LCS

3:30 p.m. **Shiprock Home for Women and Children Construction Problems**
—Jackson Gibson, Session Staff for Representative W. Ken Martinez

3:45 p.m. **Adjourn**

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

July 13-15, 2009

**Moot Courtroom, UNM School of Law, July 13
Pueblo of Santa Ana Prairie Star, July 14-15**

Monday, July 13

10:00 a.m. **Call to Order**

10:05 a.m. **UNM School of Law — Introduction to Native American Programs and Priorities**

—Kevin Washburn, Dean, UNM Law School

11:30 a.m. **Pre-Law Summer Institute for American Indians and Alaska Natives**

—Terrelene Massey (Navajo Nation) and Veronique Richardson (Pueblo of Laguna), Teaching Assistants

12:00 noon **Lunch**

1:00 p.m. **American Indian Law Center (AILC) and AILC Appellate Project**

—Helen Padilla, Esq., Director, AILC

—Melissa Candelaria, Senior Policy Analyst, AILC

2:00 p.m. **Tribal-State Judicial Consortium**

—Honorable Roman J. Duran, Associate Judge, Jicarilla Apache Tribal Court,
Co-Chair

—Debra Seeley, Domestic Violence Commissioner, Second Judicial District

3:00 p.m. **Concerns About Changes in Indian Country Criminal Laws Proposed in Federal Legislation**

* Potential for Triple Jeopardy

* Problems with Recognition of Tribal Sovereignty

* Issues with Opening Federal Prisons to Prisoners from Tribal Courts

* Licensing of Attorneys in Indian Country

—Kathleen Bowman, Director, Attorney, Office of Navajo Public Defender;

Member, New Mexico Criminal Defense Lawyers Association, Arizona

Public Defender Association and National Association of Criminal Defense

Lawyers

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

Tuesday, July 14

9:00 a.m. **Welcome**

—Lt. Governor Myron Armijo, Pueblo of Santa Ana

9:45 a.m. **American Recovery and Reinvestment Act of 2009 Provision for Corrections and Public Safety**

—Alvin H. Warren, Secretary, Indian Affairs Department

10:45 a.m. **Disproportionate Incarceration in Indian Country**

—Stephen McCue, Federal Public Defender

11:30 a.m. **Lunch**

1:00 p.m. **Public Defender Office Plans for Gallup**

—David Eisenberg, Deputy Chief Public Defender, Public Defender Department

2:00 p.m. **Committee Discussion: Potential Endorsements and Activities**

I. Endorse changes to state voting laws?

1. Use tribal boundaries, among other boundaries, for forming precincts
2. Reduce from 800 to 500 the number of voters in all-tribal precincts required before a new precinct must be formed
3. Clarify that "in person" votes include early voting
4. Require county clerks to provide an alternate voting site when requested by an Indian nation, tribe or pueblo with a boundary located less than 15 miles from the office of a county clerk

II. Author letters?

1. To the U.S. Federal District Court for NM: add tribal registration lists to the lists used for jury selection
2. To the Department of Environment: make IAC a "stakeholder" or "consulting party" for purposes of the governance of Mt. Taylor
3. To Federal ARRA: create a pilot project for a tribal prosecutor, funded with federal stimulus money
4. To the Navajo Nation: use stimulus money to improve jails

III. Prepare for Voting Rights.

1. Review Sandoval County Stipulated Agreement 2008

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

Wednesday, July 15 — Voting Rights Day

9:00 a.m. **Native American Election Information Program Coordination — Preparing for the 2010 General Election**

—Mary Herrera, Secretary of State

—Native American Election Information Program (NAEIP)

- State Coordinator Martin W. Aguilar (Pueblo of San Ildefonso)
- State Coordinator Savaleah Begay-Tsosie (Navajo)
 - NAEIP Coordinators
 - Sandoval County-Pueblo of Jemez: Peter Magdalena
 - Bernalillo County: Shirlee Smith
 - Socorro County: Vince Abeyta
 - San Juan County: Arlenta Horse-Dickie, Bilingual Coordinator
 - Santa Fe County: Hvtce Miller
- San Juan County Clerk, Debbie Holmes

10:00 a.m. **Minority Language Assistance Requirements Under Section 203 of the Federal Voting Rights Act**

- Richard Dellheim, Trial Attorney, Voting Section of the Civil Rights Division of the U.S. Department of Justice

12:00 noon **Lunch**

1:30 p.m. **The Need for a Regional Polling Place and Early In-Person Voting at the Pueblo of San Felipe**

- Charlotte Little, President and Chief Executive Officer, Little and Associates

2:00 p.m. **Roundtable Discussion: Preparing for the 2010 Census and Getting Out the Vote — Maximizing the Effect of Redistricting, Networking with Voters and Potential Voters**

- Amber Carrillo, Voter Engagement Consultant, Native American Vote Director, National Obama Campaign
- Charlotte Little, President and Chief Executive Officer, Little and Associates
- Martin W. Aguilar, Secretary of State's Office, NAEIP Coordinator
- Kimmeth Yazzie, Program and Project Specialist, Navajo Election Administration
- Merlin Cassador, Jicarilla Apache Election Administration

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

Revised: August 7, 2009

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

**August 10-12, 2009
Red Rock State Park Hospitality Room, August 10 and 11*
Manuelito Chapter House, August 12****

Monday, August 10

Authenticity and Recognizing Quality in Native American Arts and Crafts

10:00 a.m. **Call to Order**

10:30 a.m. **Native American Crafts Authenticity and Preservation**
—Tony Eriacho, Pueblo of Zuni

12:00 noon **Lunch**

1:00 p.m. **Prosecution Under the State Indian Arts and Crafts Sales Act; Increasing State Law Penalties**
—William Keller, Assistant Attorney General, Consumer Protection Division,
New Mexico Attorney General's Office

2:00 p.m. **Economic Value of Native Arts and Culture to the State of New Mexico**
—Dr. Bruce Bernstein, Executive Director, Southwestern Association for Indian
Arts

3:00 p.m. **Tour of Inter-Tribal Ceremonial Crafts Competition**
—Joe Tanner, Head Judge

4:00 p.m. **Adventure Tourism**
—Olan Klaussen, President, Adventure Gallup and Beyond
—Doug Decker, Past President, Adventure Gallup and Beyond
—Chuck Van Drunen, *Gallup Journey* Magazine

4:30 p.m. **Hike to Pyramid Park**

Tuesday, August 11

Delivery of Behavioral Health Care and Coordinated Long-Term Services

9:00 a.m. **Out-of-state Recovery Resources**
—Gordon Nez, Case Manager, Friendship House

9:45 a.m. **Behavioral Health Organization, Services and Transfer**

Behavioral Health Collaborative Overview

- Linda Roebuck, Chief Executive Officer, New Mexico Behavioral Health Collaborative
- Sandy Forquer, Executive Director, Optum Health

Native American Initiatives

- Kim Horan, Native American Liaison, Behavioral Health Services Division, Human Services Department (HSD)

Native American Local Collaboratives

- Suzanne Pearlman, Cross Agency Team Manager for Local Collaboratives
- Native American Local Collaborative (LC) Representatives: LC 14, LC 15 (Regina Roanhorse), LC 16 (Wilson Quintana), LC 17, LC 18 (Rick Vigil, former Governor, Pueblo of Tesuque)

Navajo Total Community Approach (TCA)

- Harrison Kinney, Executive Manager, Behavioral Health Services Division, HSD
- Judith Arciniaco, Director of Justice Systems, Optum Health
- Dr. Carolyn Morris, Director of Native American Affairs, Optum Health
 - TCA Youth Treatment and Care Coordination
 - Coalition for Healthy and Resilient Youth
 - Teen Court
 - Project Northland
 - LC 15

12:00 noon **Lunch**

1:00 p.m. **Navajo Nation Behavioral Health Services**

- Theresa Galvan, Acting Department Manager, Navajo Department of Behavioral Health Services; Albert Long, Troy Hunt, Zella Weaver, Leonard Begay, Jeannette Vice, Ben Bennett, Navajo Department of Behavioral Health Services

1:30 p.m. **Home Care Options Needed**

- Stacie Pozernick, R.N., M.S.N., Home Care Options, Inc.

2:00 p.m. **Coordinated Long-Term Services (CoLTS)**

- Larry Heyeck, Deputy Director, HSD
- Amerigroup
- Laura Esslinger, Executive Director, Evercare of New Mexico

3:00 p.m. **Problems with the Coordinated Long-Term Care Plan on Tribal Lands—Service Coordination and Client Communication**
—Joseph Ray, Executive Director, Independent Living Center
—Erik Lujan, Personal Care Coordinator, Positive Outcomes

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

Wednesday, August 12

9:00 a.m. **Problems with Tribal Libraries Program and Tribal Liaison Position with the State Library, House Memorial 59 from 2009 Legislative Session**
—Janice Kowemy, Library Director, Pueblo of Laguna, and President, Native American Library Special Interest Group
—Noland Valdo, Director, Acoma Community Library

9:45 a.m. **Update on the State Library's Work with Tribal Libraries**
—Susan Oberlander, New Mexico State Librarian

10:15 a.m. **Zuni Temporary Assistance for Needy Families (TANF)**
—Gus Keene, Jr., Pueblo of Zuni Education and Career Development Center
—Bernadette Panteah, Pueblo of Zuni Education and Career Development Center

10:45 a.m. **Navajo Nation TANF**
—Anthony Dine-Yazzie, Policy Research Coordinator
—Marlena Halona, Field Supervisor, Gallup
—Michelle Haswood, Field Supervisor, Crownpoint

11:15 a.m. **Community Pantry Needs**
—Hilda Kendall, Logistics Coordinator, Gallup Community Pantry

12:00 noon **Adjourn**

*To reach Red Rock State Park, take Exit 33 from I-40 (east of Gallup). Go three miles on the frontage road, then turn right at State Road 566. Go one-fourth mile and take a left into Red Rock State Park. Follow the road, and eventually you will see the convention center. The Hospitality Room is behind the convention center. Some parking is available behind the convention center, but most of us will walk around the convention center to reach the Hospitality Room. Look for the salmon-colored signs.

** To reach the Manuelito Chapter House, take I-40 west from Gallup to Exit 8 (about eight miles east of the state line, about 12 miles west of Gallup). Stop at the stop sign, which is State Highway 118. Take the highway west (left) for approximately three-fourths to one mile, pass a church and then you will see the chapter house. Look for the salmon-colored signs.

Revised: September 3, 2009

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

**September 8, 2009*
Pueblo of Santa Clara**

September 9, 2009
Indian Pueblo Cultural Center**

September 10, 2009*
Ballroom B, University of New Mexico
302 Cornell Dr. NE
Albuquerque**

Tuesday, September 8

- 10:00 a.m. **Welcome**
 —Walter Dasheno, Governor, Pueblo of Santa Clara
- 10:30 a.m. **Tour of the Regional Adult Day Care Center**
- 10:45 a.m. **Driving Tour to Puye Cliffs**
- 11:45 a.m. **Tour of Big Rock Hotel**
- 12:00 noon **Lunch at the Big Rock Casino Cafe**
- 1:00 p.m. **Tribal Capital Outlay**
 —Alvin Warren, Secretary, Indian Affairs Department (IAD)
 —Rebecca Martinez, Capital Outlay Manager, IAD
- 2:30 p.m. **Federal Stimulus Benefit in Indian Country and Report on the Tribal
Infrastructure Fund**
 —Marvis Aragon, Deputy Secretary, IAD
- 4:00 p.m. **Recess**

Wednesday, September 9

- 9:00 a.m. **State-Tribal Leader Summit Legislation: Gross Receipts Tax Rebate As Business Incentive for Locating on Tribal Land**
—Rick Preston, Attorney, Taxation and Revenue Department
- 10:00 a.m. **Bernalillo County Off-Reservation Native American Health Commission (BCONAH) and Plans for Urban Indian Health Improvement**
—Roxanne Spruce-Bly, Director, BCONAH
—Norman Ration, Chair, BCONAH
- 11:30 a.m. **Tribal Development Task Force Appointees**
—TBA
- 12:00 noon **Lunch**
- 1:00 p.m. **Addressing Concerns with the Arts and Crafts Administration; Problems with the Tribal Library System**
—Anne Green-Romig, Director of Legislative Affairs, Cultural Affairs Department (CAD)
—Susan Oberlander, State Librarian
- 1:45 p.m. **Appointment of Chair of the Native American Arts and Crafts Commission**
—Sam Cata, Tribal Liaison, Historic Preservation Division, CAD
- 2:00 p.m. **Native American Human Rights Issues (Responses to the Spate of Beatings of Homeless Native American Men in Gallup)**
—Juanita Martinez, Investigations Officer/Section Head, Human Rights Office, City of Albuquerque
- Initiatives to Increase Number of Native American Police Officers
 - Memorandum of Agreement with the Navajo Nation
- 3:30 p.m. **Indian Education Reform in the Urban Setting**
—Keith Franklin, National Indian Youth Council (NIYC)
- 4:00 p.m. **Framework for Urban Indian Health Care**
—Norman Ration, Executive Director, NIYC
- 4:30 p.m. **Follow-Up from August Indian Affairs Committee Meeting**
—Inter-Tribal Ceremonial
—Plans for Federal and State Coordination of Authenticity Efforts
- 5:00 p.m. **Recess**

Thursday, September 10 — Ballroom B, UNM, Albuquerque

- 9:00 a.m. **Call to Order**
—Senator Richard C. Martinez, Chair, Radioactive and Hazardous Materials Committee
—Representative James Roger Madalena, Co-Chair, Indian Affairs Committee
- 9:05 a.m. **Welcome**
—Dr. Julia E. Fulghum, Vice President for Research, University of New Mexico
- 9:15 a.m. **Uranium Legacy Impacts: Regional Ground Water, Environment and Health**
—Marcy Leavitt, Director, Water and Waste Management Division, NMED
—Jerry Schoeppner, Uranium Project Team Leader, Department of Environment (NMED)
- 9:45 a.m. **Abandoned Uranium Mines Inventory — Assessment and Reclamation Status Update**
—Bill Brancard, Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department
—Tony Herrell, Deputy State Director, Bureau of Land Management (BLM)
- 10:15 a.m. **Report of Uranium Policy Subcommittee**
—Senator Lynda M. Lovejoy, Co-Chair, Uranium Policy Subcommittee
—Representative Patricia A. Lundstrom, Co-Chair, Uranium Policy Subcommittee
—Damian Lara, Legislative Council Service
- 11:00 a.m. **Reclamation and Remediation Standards of Uranium Mill Sites**
—Keith McConnell, Deputy Director, Division of Waste Management and Environmental Protection, Nuclear Regulatory Commission
- 11:45 a.m. **Legacy Management: Long-Term Management and Containment of Ground Water Contamination**
—Ray Plienness, Director, Site Operations, Office of Legacy Management, Department of Energy
- 12:30 p.m. **Working Lunch**

Homestake Site — Status Update
—Representative, Homestake Mining Company

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

**October 19-21, 2009
Inn of the Mountain Gods
Mescalero, New Mexico**

Monday, October 19

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Welcome**
—Carleton Naiche-Palmer, President, Mescalero Apache Tribe
- 10:30 a.m. **New Approaches to Native American Education**
Charter Schools
 —Walatowa Charter School, Jemez
 —Native American Charter Academy, Albuquerque
Work Force Education Combined with Academic Education
 —SAI Tech, Albuquerque
- 12:00 noon **Lunch**
- 1:00 p.m. **Roundtable Discussion — PED Implementation of the Indian Education Act**
—Dr. Veronica Garcia, Secretary, Public Education Department (PED)
—Catherine Cross-Maple, Deputy Secretary, PED
—Nancy Martine-Alonzo, Assistant Secretary of Education, Indian Education Division, PED
—Dannette Burch, Deputy Director, Department of Finance and Administration (Invited)
—Paul Aguilar, Analyst, Legislative Finance Committee (Invited)
—Kevin Shendo, President, Indian Education Advisory Council
—Peter Winograd, Education Coordinator, Office of the Governor
- 3:30 p.m. **New Indian Education Department at the Higher Education Department (HED)**
—Dr. Viola Florez, Secretary, HED
—Dr. Matthew Martinez, Director of Indian Education, HED, Tribal Liaison
- 4:30 p.m. **Recess**

Tuesday, October 20

- 9:00 a.m. **Project Updates**
—Eastern Navajo Agency Executive Committee
- 10:30 a.m. **Native American Film Opportunities**
—Gwyn Savage, President, Filmsavage.com
- 12:00 noon **Lunch with Mescalero Tribal Council**
- 1:30 p.m. **Oral Health Initiative — The Alaska Model**
—Dolores Roybal, Executive Director, Con Alma Health Foundation
- 2:30 p.m. **Mandatory Sentencing for Methamphetamine Manufacturers**
—Matt Chandler, District Attorney, Curry County
- 3:30 p.m. **Governor Richardson's Native American DWI Initiatives**
—Michelle Brown-Yazzie, New Mexico Tribal DWI Coordinator
—Rachel O'Connor, DWI Czar

Wednesday, October 21

- 9:00 a.m. **Update on Uranium Subcommittee Activities and Plans**
—Representative Patricia A. Lundstrom and Senator Lynda M. Lovejoy, Co-Chairs
- 10:30 a.m. **TBD**
- 12:00 noon **Adjourn**
- 12:45 p.m. **Environmental and Technical Capabilities — Characterizations and Assessments**
—Carol Brewer, Environmental Program Manager, RAMS, USACE
—Tony Herrell, Deputy State Director, BLM
—Linda S. Weiss, Director, USGS New Mexico Water Science Center
- 1:30 p.m. **Multi-Agency Five-Year Plan to Address the Uranium Legacy in New Mexico**
—Sam Coleman, Director, Superfund Division, Environmental Protection Agency (EPA), Region 6
—John Meyer, Chief, Site and Risk Assessment Section, Superfund Division, EPA, Region 6
—Jon Rinehart, Scene Coordinator, EPA, Region 6
- 2:30 p.m. **Navajo Nation Five-Year Plan — Status Update**
—Clancy Tenley, Acting Branch Chief, EPA, Region 9
—Stephen B. Etsitty, Navajo Nation EPA

- 3:15 p.m. **Mt. Taylor Current Developments—Status Update**
—Nancy Rose, Forest Supervisor, Cibola National Forest and Grasslands, United States Forest Service
- 4:15 p.m. **Uranium Legacy Impacts on Health of Residents**
—Dr. Johnnye Lewis, The Diné Network for Environmental Health (DiNEH) Project
—Steve Dearwent, Branch Chief, Agency for Toxic Substances and Disease Registry, Department of Health and Human Services
- 5:00 p.m. **Adjourn**

* The first morning is largely a caravan to important developments on the Pueblo of Santa Clara, led by Governor Dasheno. To reach Santa Clara, enter Espanola from Hwy 284/285 and turn left (the only way you can) at the Dandy Burger traffic light. Take that street, go through a traffic light and then turn left (south) on the Los Alamos Highway, approximately one-half mile from the stop light. You will see a sign for the Santa Clara Pueblo on the left. Go through the entrance on a paved road, and pass the tribal office approximately four blocks from the sign. Pass the offices, and the Adult Day Care Center will be on your right. Look for parking for the committee and attendees there. Come into the center and meet with Governor Dasheno.

From the Adult Day Care Center, a caravan will drive to Puye Cliffs, which has just reopened after the Los Alamos fire. The caravan will head back to the Big Rock Hotel and Casino in time for a lunch at the Big Rock Cafe. If you come late and need to find the hotel directly, follow these directions: go to Espanola on Hwy 284/285. The Big Rock Hotel and Casino is on Riverside Drive on the west side of the road. Enter through the Santa Clara Bowling Alley. The Big Rock Event Center is located between the bowling alley and the casino.

** To reach the Indian Pueblo Cultural Center: take the exit from I-40 that goes to 12th Street (from the east, the exit is "6th to 12th Street"). The IPCC is just north of the shopping center that has Walgreens and Lowe's.

*** To find the University of New Mexico Student Union Ballroom, walk from the main visitor parking building near the Stanford entrance to the main campus (just north of Central Avenue). Pass the Luis Jimenez "Dancers" sculpture and a little fountain and you will see the main mall just ahead of you. The Student Union Ballroom is on the left (west) side of the mall.

Revised: November 16, 2009

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

**November 18, 2009
Hogback (Tse' daa k'aan) Chapter House***

**November 19, 2009
Nenahnezad Chapter House****

**November 20, 2009
San Juan College, Farmington***
Henderson Fine Arts Center, Room 9012**

Wednesday, November 18

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Dedication Ceremony for the South Hogback Power Line and Home Tour of
New Connections**
—Hogback Chapter Residents
- 12:00 noon **Lunch**
- 1:00 p.m. **Allegations of Discrimination Against Navajos at Northwestern Motor
Vehicle Division (MVD) Offices**
—Mike Sandoval, Director, MVD, Taxation and Revenue Department (TRD)
—Paul Montoya, Deputy Director, MVD, TRD
- 2:30 p.m. **Update on Designation of Mount Taylor As a Cultural Property — Litigation
Status Report**
—Sam Cata, Tribal Liaison, Historic Preservation Division, Cultural Affairs
Department
- 3:30 p.m. **Discussion**

Thursday, November 19

- 9:00 a.m. **Indian Education: K-20, Public Education Department (PED)**
—Nancy Martine-Alonzo, Assistant Secretary for Indian Education, PED
- Indian Education Fund Update
 - Indian Education Assessment
 - Report from the Government-to-Government Meeting
- 10:00 a.m. **Higher Education — Update on HB 50 Since Creation of the Indian Education Division of the Higher Education Department (HED); HED Initiatives**
—Dr. Viola Florez, Cabinet Secretary, HED
—Matthew J. Martinez, Ph.D., Director of Indian Education
—Brandon Trujillo, Government Affairs Director, HED
- 11:00 a.m. **Tribal Infrastructure Fund and Other Concerns**
—Alvin J. Warren, Secretary, Indian Affairs Department (IAD)
- 11:30 a.m. **Indigenous Soccer Study (SM 4)**
—Francine M. Hatch, Senior Policy Analyst, IAD
—Mark Siemon, R.N., B.C., M.P.H., M.S.N., Fellow Robert Wood Johnson Foundation Center for Health Policy, University of New Mexico (UNM) College of Nursing
—Marie Lobo, R.N., Ph.D., Professor, Graduate Program Director, UNM College of Nursing, Food Allergy and Anaphylaxis Network
—Alec Rekow, Executive Director, Southwest Youth Services
—Boyna Bear, Soccer and Wellness Director, Southwest Youth Services
- 12:00 noon **Working Lunch — Representative Sandra D. Jeff Legislation**
- 1:00 p.m. **Tribal Capital Outlay**
—Rebecca Martinez, Capital Outlay Manager, IAD
- 2:00 p.m. **New Mexico State University (NMSU) Tribal Extension Agency**
—Frank Hodnett, Department Head, Extension 4-H Youth Development, Cooperative Extension Service, College of Agricultural, Consumer and Environmental Sciences, NMSU
—Kathy Landers, County Program Director and Tribal Extension Program Coordinator, McKinley County Extension Office, Cooperative Extension Service, College of Agricultural, Consumer and Environmental Sciences, NMSU
—Leah Shendo, Home Economist Agent, Shiprock Agency, Cooperative Extension Service, College of Agricultural, Consumer and Environmental Sciences, NMSU
- 2:30 p.m. **Alaska Model for Oral Health Services in Remote Areas**

—Dolores Roybal, Con Alma Health

3:15 p.m. **Native American Film Opportunities**
—Gwen Savage, Owner, FilmSavage

4:00 p.m. **Tribal DWI**
—Michelle Brown-Yazzie

4:30 p.m. **Voting Follow-Up**
—Martin W. Aguilar, State Coordinator, Native American Election
Information Program, Office of the Secretary of State

Friday, November 20

9:00 a.m. **Plans for Uranium Policy Subcommittee**
—Senator Lynda M. Lovejoy and Representative Patricia A. Lundstrom, Co-
Chairs, Uranium Policy Subcommittee

10:00 a.m. **Bill Endorsements**

12:00 noon **Adjourn**

* To reach Hogback from Cuba, go west on Highway 64 heading to Shiprock. Approximately five miles east of Shiprock, you will see a digital sign near mile marker 27. Turn at the digital sign and cross the bridge. The chapter house is the first building. To reach Hogback from Gallup, go through Shiprock and head about five miles east, then take the same road and watch for the same markers.

** To reach Nenahnezad from Farmington, take Highway 64 west to Kirtland. Go through Kirtland and make a left at County Road 6675 south. When you come to an intersection, stay on County Road 6675 and pass a gas station. Keep going straight past the post office. Cross the San Juan River bridge, and immediately after the bridge, turn right onto Navajo Route 365, which will take you to the chapter house.

*** To reach San Juan College, see attached directions and map. When using the south entrance of the college at Campus Avenue, turn left at the first opportunity onto Golden Circle, and then park. The Henderson Fine Arts Center will be on the right, on Fine Arts Alley, across from the bookstore.

Revised: December 2, 2009

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

**December 3-4, 2009
Room 322, State Capitol
Santa Fe**

Thursday, December 3

- 9:00 a.m. **Indian Education Funding and Performance**
—Catherine Cross-Maple, Deputy Secretary, Public Education Department (PED)
—Nancy Martine-Alonzo, Assistant Secretary of Indian Education, PED
—Paul Aguilar, Analyst, Legislative Finance Committee
—Kevin Shendo, President, Indian Education Advisory Council (IEAC)
—Dr. Lester Sandoval, Vice President, IEAC
—Clarice Cata-Montoya, Secretary, IEAC
- 10:30 a.m. **Follow-Up on OptumHealth and Behavioral Health Issues on Indian Land**
—Linda Roebuck, Chief Executive Officer, Interagency Behavioral Health Purchasing Collaborative
- 11:45 a.m. **SAPT Grant with NCI (Na'nizhoozhi)**
—Dr. Kevin Foley
—Nadine Tafoya
- 12:00 noon **Working Lunch**
2010 State Budget Projections and Capital Outlay after the Special Session
—Cathy T. Fernandez, Deputy Director, Legislative Finance Committee
—Kyle Burns, Capital Outlay Analyst, Legislative Finance Committee
- 2:00 p.m. **Uranium Subcommittee Report**
—Representative Patricia A. Lundstrom
—Senator Lynda M. Lovejoy
- 2:30 p.m. **Capital Outlay for Native American Elders**
—Ray Espinoza, Director, Indian Area Agency on Aging, Acting Director, Office of Indian Elder Affairs

- 3:30 p.m. **New Mexico State Highway Projects on Indian Lands**
—Jackson Gibson, District 6 Commissioner, State Transportation Commission
—Roman Maes, District 5 Commissioner, State Transportation Commission
—Speaker (Invited) Navajo Nation Department of Transportation

Friday, December 4

- 9:00 a.m. **Maximizing the Native American Count in the 2010 Census**
—Amadeo Sheji, Tribal Partnership Coordinator, United States Census Bureau
—Vicki McIntire, Deputy Director, Denver Regional Census Center

- 10:00 a.m. **Indian Water Rights Settlement Fund Report**
—State Engineer John D'Antonio

- 11:00 a.m. **Native American Veterans Settlement Act Implementation**
—Rick Homans, Secretary, Taxation and Revenue Department
—Alvin Warren, Secretary, Indian Affairs Department (IAD)
—John M. Garcia, Secretary, Veterans' Services Department

- 12:00 noon **Working Lunch**
Capital Projects for Special Consideration by the Department of Finance and Administration
—Arbin Mitchell, Executive Director, Division of Community Development, Navajo Nation
—Marvis Aragon, Deputy Secretary, IAD
—Rebecca Martinez, Capital Outlay Manager, IAD

- 1:00 p.m. **Traditional Cultural Property Designation and Historic Preservation**
—Jan V. Biella, State Historic Preservation Officer (Interim),
Acting State Archaeologist

- 3:00 p.m. **Follow-Up Discussions on Proposed Legislation**
—Representative Sandra D. Jeff, Capital Outlay Proposal
—Martin W. Aguilar, Office of the Secretary of State, Voting Issues

- 3:30 p.m. **Endorsements**

Adjourn

**URANIUM POLICY
SUBCOMMITTEE
AGENDAS**

**New Mexico Uranium Mining and Tailings Task Force
Meeting with Nuclear Regulatory Commission
Wednesday, May 6, 2009, 2:45 p.m.
Cannon House Office Building, Room 441**

Participants

New Mexico State Legislators

Rep. John A. Heaton, Chair, Interim Radioactive and Hazardous Materials Committee

Sen. Lynda M. Lovejoy, Chair, Senate Corporations and Transportation Committee, Member
of the Navajo Nation

Rep. Patricia A. Lundstrom

Rep. W. Ken Martinez, Majority Floor Leader

Sen. David Ulibarri

Rep. Jeannette O. Wallace

Staff and Experts

Damian Lara, Legislative Council Service, Delegation Contact (Cell: 505-514-1612)

Bill Brancard, Division Director, Mining and Minerals Division, Energy, Minerals and
Natural Resources Department

Jon Indal, Industry Representative

Chris Shuey, Southwest Research and Information Center, Community Representative

Nuclear Regulatory Commission

Dr. Peter Lyons, Commissioner

Staff

New Mexico Congressional Delegation Staff

Congressional/staff members wishing to learn more on this topic are invited to sit in on the
meeting.

Purpose and Topics

The task force will meet with Commissioner Lyons to discuss the Nuclear Regulatory Commission's regulatory program based on the Uranium Mill Tailings Radiation Control Act of 1978, which governs the remediation of legacy sites, concurrence or approval on specific items in the cleanup of uranium contamination by the United States Department of Energy and use of liners and ground water monitoring for tailings impoundments, and possibly for disposal cells, to prevent ground water contamination.

**New Mexico Uranium Mining and Tailings Task Force
Meeting with Department of Energy
Thursday, May 7, 2009, 2:30 p.m.
Cannon House Office Building, Room 441**

Participants

New Mexico State Legislators

Rep. John A. Heaton, Chair, Interim Radioactive and Hazardous Materials Committee

Sen. Lynda M. Lovejoy, Chair, Senate Corporations and Transportation Committee, Member
of the Navajo Nation

Rep. Patricia A Lundstrom

Rep. W. Ken Martinez, Majority Floor Leader

Sen. David Ulibarri

Rep. Jeannette O. Wallace

Staff and Experts

Damian Lara, Legislative Council Service, Delegation Contact (Cell: 505-514-1612)

Bill Brancard, Division Director, Mining and Minerals Division, Energy, Minerals and
Natural Resources Department

Jon Indal, Industry Representative

Chris Shuey, Southwest Research and Information Center, Community Representative

Department of Energy

Dave Geiser, Director, Office of Legacy Management

Mike Moore, Site Support Specialist, Office of Environmental Management

New Mexico Congressional Delegation Staff

Congressional staff members wishing to learn more on this topic are invited to sit in on the
meeting.

Purpose and Topics

The task force will meet with Mr. Geiser and Mr. Moore to discuss the Department of Energy programs based on the Uranium Mill Tailings Radiation Control Act of 1978, which governs the remediation and long-term maintenance of legacy sites. Specific items of discussion include the cleanup and long-term maintenance of uranium contamination by the Department of Energy, ground water remediation authority, possible use of liners and ground water monitoring for tailings disposal cells to prevent ground water contamination and possibly providing authority for the Department of Energy to begin an abandoned uranium mines reclamation program.

Revised: August 14, 2009

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
URANIUM POLICY SUBCOMMITTEE
of the
INDIAN AFFAIRS COMMITTEE
and the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**August 24-25, 2009
Gallup, New Mexico
Grants, New Mexico**

Monday, August 24 — Red Rock State Park, Gallup, New Mexico

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Welcome and Introductions**
- 10:10 a.m. **Outcomes of Washington, D.C., Trip — Status Update**
—Damian Lara, Legislative Council Service
- 10:30 a.m. **Uranium Legacy Impact on Regional Ground Water Quality**
—Bill Olson, Chief, Ground Water Quality Bureau, Department of
Environment
 (NMED)
—Jerry Schoeppner, Uranium Project Team Leader, NMED
- 11:30 a.m. **Abandoned Uranium Mines — Status Update**
—Bill Brancard, Division Director, Mining and Minerals Division, Energy,
 Minerals and Natural Resources Department
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Navajo Nation Five-Year Plan**
—Stephen B. Etsitty, Navajo Nation Environmental Protection Agency
- 2:30 p.m. **Community Concern: Complete Cleanup**
—Chris Shuey, Southwest Research and Information Center
—Nadine Padilla, Multicultural Alliance for a Safe Environment

3:30 p.m. **Closing Remarks**
—Senator Lynda M. Lovejoy
—Representative Patricia A. Lundstrom

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

Tuesday, August 25 — Cibola County Convention Center, Grants, New Mexico

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

9:05 a.m. **Welcome and Introductions**

9:15 a.m. **Roundtable Discussions**
—Special Guests

12:00 noon **Lunch**

1:30 p.m. **Roundtable Discussions**
—Special Guests

3:30 p.m. **Public Comment**

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

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
URANIUM POLICY SUBCOMMITTEE
of the
INDIAN AFFAIRS COMMITTEE
and the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**October 28, 2009
Room 305, State Capitol
Santa Fe**

Wednesday, October 28

- 9:00 a.m. **Call to Order**
 —Senator Lynda M. Lovejoy
 —Representative Patricia A. Lundstrom
- 9:05 a.m. **Action on Subcommittee Recommendations — Status Update**
 —Damian Lara, Legislative Council Service
- 9:30 a.m. **Multi-Agency Coordinated Five-Year Plan — Status Update**
 —Bill Brancard, Director, Mining and Minerals Division, Energy, Minerals
 and Natural Resources Department
- 10:15 a.m. **Discussion on Final Subcommittee Recommendations**
- 2:00 p.m. **Adjourn**

**INDIAN AFFAIRS
COMMITTEE
MINUTES**

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

**May 28, 2009
Room 322, State Capitol
Santa Fe**

The first meeting of the Indian Affairs Committee (IAC) for the 2009 interim was called to order by Senator John Pinto, co-chair, on Thursday, May 28, 2009, at 10:11 a.m. at the State Capitol in Santa Fe, New Mexico.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Rep. Jane E. Powdrell-Culbert
Rep. Gloria C. Vaughn

Absent

Sen. Eric G. Griego
Sen. George K. Munoz
Sen. Nancy Rodriguez
Sen. John C. Ryan

Advisory Members

Rep. Ernest H. Chavez
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Sen. William E. Sharer

Staff

Damian Lara
Jennie Lusk
Tamar Stieber
Chase Van Gorder

Guests

The guest list is in the meeting file.

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

Thursday, May 28 — State Capitol, Santa Fe

Interim Protocols

Paula Tackett, director, Legislative Council Service (LCS), briefed the committee on various topics concerning protocol during interim committee meetings, including quorums, adjusting committee membership, chairing a committee, committee resignations, subcommittees, voting, calendar conflicts, seating, per diem and mileage, attending conferences and the sound system.

2009 Legislation — Summary

Mr. Van Gorder, staff attorney, LCS, reviewed the fate of IAC-endorsed bills in the recent legislative session. He said the committee did fairly well in terms of moving its endorsed packages forward, including passage of 23 out of 26 bills that were not endorsed by the committee but were of interest to it.

IAC-endorsed legislation that passed includes:

- House Bill 37, which amends the New Mexico Subdivision Act to include tribal notification;
- House Bill 50, the Post-Secondary Indian Education Act;
- House Bill 316 on predatory mortgages;
- Senate Bill 196 on state-tribal collaboration;
- Senate Bill 541 on tax refunds for Native American veterans; and
- Senate Joint Memorial 15 on federal financial assistance to clean up abandoned uranium mines.

IAC-endorsed bills that died during the session included:

- House Bill 49 on a dual credit program;
- House Bill 84, the Uranium Legacy Cleanup Act;
- House Bill 92, the Indian Arts and Crafts Sales Act;
- House Joint Memorial 6 for a uranium mining task force;
- Senate Joint Memorial 9, on the federal Radiation Exposure Compensation Act (RECA); and
- Senate Joint Memorial 10 for cleanup of Fort Wingate.

Of the \$7.192 million in appropriation requests endorsed by the committee, only \$200,000 was awarded, according to a handout Mr. Van Gorder distributed to the committee. He said it was a "thin year" for appropriations and noted that committee endorsements do not mean as much as they once did. He said it is up to committee members to press their agendas forward and work for passage of their bills.

Representative Lundstrom asked whether bills endorsed by a committee have a higher status than unendorsed bills. Ms. Lusk responded that endorsed bills do not have to pass through as many committees as unendorsed legislation. Mr. Van Gorder said he is unaware of provisions in the rules giving preference to endorsed bills, but said that standing committee chairs should facilitate passage of endorsed bills and give them priority for hearings. He suggested that the IAC discuss the matter with the leadership.

Representative Lundstrom made a motion for staff to draft a letter asking the leadership for clarification on committee-endorsed bills. She used as an example the Indian Arts and Crafts Sales Act, which died on the Senate floor. She noted that the bill has been endorsed by the IAC for the past five or six years, but it has never received the priority it should have had. She wondered why an interim committee should go through "the whole rigamarole" of endorsing bills if they do not get priority.

Senator Lovejoy seconded Representative Lundstrom's motion, saying that many bills never get out of the Senate Rules Committee. Senator Martinez agreed, saying that bills often are referred to the rules committee that have no business being there and that they usually die there. He said it is frustrating when bills die without ever being heard and that he supports drafting a letter to express the IAC's frustration.

The motion passed without objection.

Tribute to Chase Van Gorder

The committee paid tribute to Mr. Van Gorder, who has resigned from the LCS to move to Manhattan with his wife. Mr. Van Gorder has staffed the IAC since 2003. The co-chairs thanked Mr. Van Gorder for his service, saying that he has "done well" and that the committee will miss him. Representative Lundstrom echoed the co-chairs' comments and extended particular thanks from Gallup and McKinley County. Senator Lovejoy thanked Mr. Van Gorder for his help and patience in taking on Native American issues, which she said are particularly complicated because of jurisdictional overlaps. She said Mr. Van Gorder grasped the importance of, and the strong emotions around, Indian land and the environment, which she described as "our very nature, our very core". Representative Vaughn thanked Mr. Van Gorder for helping her on a variety of issues, including some that were not related to Indian affairs.

Mr. Van Gorder said his favorite part of his job at the LCS was staffing the IAC and visiting the pueblos and chapter houses, where he said the hospitality is "amazing" and will not be duplicated elsewhere.

Representative Madalena, on behalf of the committee, presented Mr. Van Gorder with a card of appreciation and a ceramic pot from the Pueblo of Laguna.

Federal American Recovery and Reinvestment Act of 2009 Stimulus Funds

Former New Mexico Governor Toney Anaya, executive director, New Mexico Office of Recovery and Reinvestment (NMORR), and NMORR Deputy Director Dona Cook, deputy secretary, Taxation and Revenue Department (TRD), provided details on New Mexico's present and future portion of the federal American Recovery and Reinvestment Act of 2009 (ARRA) funds and how they will benefit Indian country.

The NMORR's mission includes identifying, and informing stakeholders about, available ARRA funding opportunities for New Mexico; ensuring that the state competes effectively for the funds; and facilitating compliance with ARRA requirements. Governor Anaya stressed the importance of understanding and following the application rules, which he

said change on a daily basis and often differ from agency to agency. He said that if the state is not in compliance, it will not receive funds. He noted that the state is also eligible for funds through federal agencies, such as the Bureau of Indian Affairs (BIA), the Indian Health Service (IHS) and the national laboratories.

Governor Anaya said the NMORR has thus far identified \$3 billion in federal stimulus funds for which New Mexico is eligible within the next 18 to 24 months, including:

- \$545.1 million for Medicaid;
- \$470.8 million for public education;
- \$418.4 million for the environment;
- \$369.9 for infrastructure;
- \$296.6 for transportation;
- \$244.7 for benefits to individuals and families;
- \$191.4 for higher education;
- \$115.3 for unemployment benefits and services;
- \$82.3 million for energy efficiency;
- \$57.9 million for other government services; and
- \$32.1 million for public safety.

Governor Anaya said the line items can be misleading because they replace, rather than supplement, expenditures the state already budgeted but for which there is now a shortfall. They "plug up" a deficit that would otherwise require the state to make substantial cuts, especially in Medicaid and public education, he explained. He emphasized that the funds are one-time appropriations, so agencies that hire additional employees using ARRA funds will have to make a contingency plan to pay those salaries if the state's economy does not improve.

Governor Anaya said Congress will be auditing the expenditure of the stimulus funds very carefully to prevent fraud, waste and abuse. He said he wants the NMORR to be on the "front end" of that process and that the agency planned to bring in a compliance officer within the next week.

Governor Anaya anticipates the state will receive several hundreds of millions of dollars in competitive ARRA mega-grants, including a portion of:

- \$10.6 billion for energy efficiency and conservation;
- \$9.7 billion for transportation;
- \$7.2 billion for broadband infrastructure;
- \$6 billion for health and science;
- \$5.7 billion for education;
- \$4.4 billion for green grid;
- \$3.2 billion for housing;
- \$2.5 billion for economic development and training;
- \$2 billion for health information technology;
- \$1.8 billion for public safety; and
- \$0.8 billion for watersheds, wildlands and the environment.

Governor Anaya said that the state has taken the lead in three of those grants: broadband, green (smart) grid and health information technology. His office is inviting any New Mexico entity, including all tribal governments, to join in those applications.

Governor Anaya summarized the NMORR's Native American outreach, including his personally leading a team to the Pueblo of Acoma for two days of meetings with tribal leaders from around the state and encouraging them to apply for competitive grants as well as for money available through state agencies. He also met with the BIA and the state Indian Affairs Department (IAD), and he has been invited to meet with the Navajo Nation for two days in June. In addition, he said, Governor Richardson has met with all tribal governors and presidents. He noted that tribal governments are eligible for direct funding in addition to funds coming through the state. The amount is yet to be determined, he said, though he estimated that the Navajo Nation will get around \$180 million. He stressed that the state will not decide how the tribes will spend the money they receive directly from the federal government, though the state will cooperate in maximizing the amount tribes receive.

Responding to questions from the committee, Governor Anaya said:

- the NMORR oversees ARRA funds that go to state agencies;
- Governor Richardson will have "a lot to say" about the \$57.9 million in discretionary funds for which the state is applying, and there is a lot of debate within the executive branch on how that money could best be used — i.e., whether to reserve it in case of a shortfall or invest it in projects to stimulate the economy;
- Indian tribes, nations and pueblos may apply directly to the federal government for ARRA funds;
- applications for ARRA funds to be administered by the state, including those from tribal governments, must first go through the NMORR, which will ask applicants how they intend to spend the money to ensure the application adheres to the federal guidelines;
- the appropriate state agencies decide which applications they will accept and determine their own procedures for applications;
- applications from local units of government will go to one of three places: a state agency, the NMORR or the Office of the Governor;
- state agencies will not be able to meet even 10 percent of the requests that come in;
- there is money for new construction in addition to projects that have already been started;
- the NMORR will provide technical assistance to applicants; and
- individual legislators may apply for federal funds, but only for specific projects that meet the ARRA requirements.

Comments and concerns committee members voiced included the following topics:

- using federal stimulus funds to finish construction of Highway 491 and other tribal infrastructure and capital projects left unfunded by the state, including:
 - a new public school in Crownpoint (Senator Lovejoy);
 - Head Start buildings on the Navajo Nation and in Grants, Belen and Los Lunas (Representatives Jeff and Alcon);

- street and other improvements to the Pueblo of Acoma's Sky City (Senator Pinto);
- building an overpass to Red Rocks State Park for easier access to the annual Inter-Tribal Ceremonial (Senator Pinto); and
- purchasing a dump truck to pick up garbage in winter and a school bus for Head Start children (Representative Vaughn);
- ensuring adequate oversight of federal money allocated for broadband, smart grid and other information technology (IT) in Indian country; and
- assuring that the NMORR is more accessible by telephone and fax.

Governor Anaya said he has accepted an invitation by the Navajo Nation to talk about the ARRA stimulus funds during a two-day summit in June. Responding to a question from Representative Begaye, he said he would discuss his presentation first with staff from the IAD. Representative Begaye asked whether ARRA funds allocated to the Navajo Nation, both by the state and the federal government, will go to the Navajo Nation Council or to the residents of the Navajo Nation. He is concerned that if funds go to the Navajo Nation Council, New Mexico Navajos will not get their share. He explained that most of the state and federal money the Navajo Nation receives winds up in Arizona, with little left for New Mexico, because New Mexico usually gets outvoted. He said he is concerned that the NMORR may not be knowledgeable about how to work with the enormous bureaucracy of Navajo government. Without expertise in the system, he said, "You'll be battling like me to put money in the Navajo Nation and find out it's not workable".

"You need a Tonto on your team," Representative Begaye said. "I wish you well and hope you utilize the best resources there are."

Governor Anaya said that after 30 to 40 years in public service in New Mexico, he is as aware as a non-Navajo can be of those issues and that he is continuing to learn. That is why he is making such strong outreach efforts to the Navajo Nation and other Native Americans throughout the state, he said. He assured Representative Begaye that his office not only works closely with the IAD, but it relies heavily upon the department for tribal expertise.

Representative Lundstrom suggested that the committee express to the Navajo Nation the importance of dividing the federal stimulus money it receives proportionately by the Navajo population in each of the three states that cross the nation: New Mexico, Utah and Arizona. Noting that the committee cannot dictate to a sovereign nation, she said it would help if the Navajo Nation leadership has a sense that some of that money should go to New Mexico. Representative Jeff suggested that the committee send a letter to the president and vice president of the Navajo Nation explaining that the New Mexico portion of the Navajo Nation has great need for some of the stimulus money that will go directly to the Navajo Nation. Representative Begaye agreed that the committee can make recommendations, not directives, and made a motion to write such a letter and include as recipients the judicial and legislative branches of the Navajo Nation. Representative Lundstrom seconded the motion, which passed without objection.

On other matters, Governor Anaya assured the committee that the NMORR will provide oversight on IT and other projects funded by ARRA money to state agencies. He said his office will ultimately sign off on those projects and will be charged with auditing them, which he said will be a "massive" project. Those and other challenges are part of the planning process in anticipation of receiving the stimulus funds, he explained. He noted that the funds are paid out as reimbursements, which means that an entity must pay for a federal stimulus project up front and then get reimbursed. He said his office is working to shorten the time frame for reimbursement. Representative Salazar said it will be problematic for tribal and county governments to come up with the money and wait for reimbursement.

Governor Anaya provided a partial list of grants and projects eligible for federal stimulus money, including:

- Army Corps of Engineers projects;
- Department of Housing and Urban Development projects;
- guarantees for home construction;
- community development block grants;
- Economic Development Administration grants; and
- clean water, drinking water and rural water systems.

Representative Lundstrom asked about using the federal stimulus money as a basis for matching funds. Ms. Cook said most of the stimulus money is in the form of bonds and loans and, in general, cannot be used to get matching federal funds. However, she said, the United States Department of Agriculture has discussed the possibility of providing matching funds for certain rural projects.

Recess

The committee recessed at 12:20 p.m. and reconvened at 12:45 p.m.

Lobbying Trip to Washington, D.C. — Summary

Mr. Lara, LCS staff attorney, presented to the committee a summary of the May 5-8 visit to Washington, D.C., of the New Mexico Uranium Mining and Tailings Task Force, which the legislature created in November 2008 to press for federal action to clean up uranium contamination in New Mexico from mining and milling activities and to advocate for New Mexicans affected by those activities. Mr. Lara said the task force's goals in visiting the nation's capital included:

- securing a commitment from the federal government to address the "uranium legacy" in New Mexico;
- seeking enactment of federal legislation to mandate the cleanup of uranium by appropriate federal agencies;
- identifying and securing federal appropriations to reclaim abandoned uranium mines (AUMs) and ground water contamination caused by past mining and milling activities; and
- addressing the health and environmental impacts of uranium exposure on workers in, and residents near, uranium mines and mills.

Mr. Lara said the task force helped federal lawmakers, including New Mexico's congressional delegation, understand why New Mexico, Arizona, Colorado and Utah require Congress to enact legislation authorizing the Department of Energy (DOE) to reclaim AUMs; to increase the DOE's flexibility in remediating ground water at mill sites and surrounding regions affected by uranium mining and milling; and to amend the RECA to include uranium miners who worked after 1971.

The task force includes Representatives John A. Heaton, Lundstrom, W. Ken Martinez and Jeannette O. Wallace and Senators Lovejoy and David Ulibarri. Bill Brancard, director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department; attorney Jon J. Indall; and Chris Shuey of the Southwest Research and Information Center joined Mr. Lara in providing the task force with legal and technical assistance. The delegation met with the U.S. Department of the Interior (DOI), the Nuclear Regulatory Commission (NRC), the Environmental Protection Agency (EPA) and the DOE in addition to key federal lawmakers.

Mr. Lara described the problems with current federal legislation for uranium cleanup as "two-pronged":

1) In 2006, the solicitor of the DOI issued an opinion that funds previously used to reclaim non-coal mines may not be replaced with treasury funds. The task force has drafted legislation urging Secretary of the Interior Ken Salazar to revisit that opinion.

2) The Surface Mining Control and Reclamation Act of 1977 (SMCRA) does not include authority for the DOE to clean up AUMs.

Mr. Lara described the task force's trip as successful. Among its accomplishments were:

- identifying \$1.5 billion in uranium inventories that the DOE can sell to fund AUM reclamation;
- arranging for the appropriate federal agencies to work together in drafting a comprehensive five-year plan to remediate AUMs and mills, particularly on the Navajo Nation; and
- forming a plan to seek assurances from the NRC that it is abiding with EPA standards.

Mr. Lara noted that U.S. Senator Jeff Bingaman introduced the Hardrock Mining and Reclamation Act of 1979 (S.796), which, among other things, would require mining companies to provide financial and other assurance for long-term remediation of ground water contamination from mining and milling activities. The bill includes a provision that the National Academy of Sciences do a cost analysis and review legal and other requirements applicable to the development of uranium on federal lands. Senator Bingaman and other members of the New Mexico congressional delegation have asked that the IAC and other interim committees seek requests from the NRC.

Representative Salazar said it will be hard for so many agencies to coordinate with one another and it would be better for one agency to be in charge of the cleanup. Mr. Lara agreed, identifying in particular the DOE's Office of Legacy Management (OLM). Unfortunately, Mr. Lara said, the OLM does not have the authority to undertake a unilateral, comprehensive cleanup, nor does any other one agency.

Responding to a question from Representative Alcon about why uranium miners were not covered for radiation-related illnesses after 1971, Mr. Lara explained that prior to that time, the U.S. government was the sole legal purchaser of uranium products and, thus, covered uranium workers for radiation-related illnesses. After 1971, when uranium could be sold to "quasi-private/quasi-governmental" agencies to fuel nuclear power plants, those same workers were no longer covered. He said many of the miners and their families, as well as other people living near uranium mines and mills, suffer from kidney disease, cancers and other serious maladies.

Representative Vaughn said the state should make the uranium mining companies "clean up their own mess". Mr. Lara said the federal government is attempting to identify the responsible parties to do just that. If it cannot, or if the responsible parties do not have the means to reclaim their mines, the government will undertake the cleanup, he said.

Representative Vaughn asked why companies cannot be forbidden from opening new mines until they have cleaned up their old ones. Mr. Lara said the task force members asked the same question and agreed that significant barriers to renewing uranium development must be implemented until past uranium contamination is remediated.

Representative Alcon noted that landowners who get royalties from uranium mining should also be held responsible for cleaning up abandoned mines on their properties.

Representatives Lundstrom and Powdrell-Culbert asked about studies correlating specific illnesses to uranium exposure. Mr. Lara said that while some studies link ingestion of heavy metals with certain carcinogens, there is not a comprehensive study dealing specifically with uranium exposure. Representative Powdrell-Culbert noted that, in the absence of a comprehensive study, the affected individuals and states are likely to "get the runaround" from federal agencies charged with overseeing the health effects associated with uranium exposure. She said that while the EPA, the DOI and the DOE have known for years that people working in or living near uranium mines and mills have experienced unusually high levels of cancer and other illnesses, nobody has yet addressed the issue seriously.

Representative Lundstrom moved that the IAC, perhaps with members of the Radioactive and Hazardous Materials Committee (RHMC), form a uranium subcommittee, pending approval by the New Mexico Legislative Council, specifically to look at the issues of AUMs, uranium tailings and related health issues. The motion passed unanimously.

Indian Affairs Department — Update and Stimulus Funding Overview

Alvin H. Warren and Marvis J. Aragon, Jr., secretary and deputy secretary, respectively, of Indian affairs, briefed the committee on the IAD's activities during and since the last legislative session.

Secretary Warren said the IAD tracked 150 Indian-related bills during the session, focusing particularly on Senate Bill 196 dealing with state-tribal collaboration and House Bill 37, which amends the New Mexico Subdivision Act to include notice from subdividers to Indian tribes, nations and pueblos about how the subdivider's proposed plat may affect cultural properties, archaeological sites and unmarked burials. Among the other legislation the IAD tracked were:

- House Bill 2 (the General Appropriation Act of 2009), which decreases tobacco awards to tribes by \$150,000, but includes partial funding for a new full-time employee at the IAD and \$5 million for the Tribal Infrastructure Fund (TIF);
- House Memorial 59, which requests that the IAD meet with various agencies to study programs provided to Native American students at the University of New Mexico; and
- Senate Memorial 4, requesting the IAD to evaluate the cost-effectiveness and health outcomes of the Native American soccer program and annual Indigenous Soccer Cup organized by Southwest Youth Services, Inc.

Secretary Warren said all but one of New Mexico's 22 Indian nations, tribes and pueblos participated last May in the first annual tribal summit, where a planning committee of tribal leaders proposed focusing on health care, economic development, infrastructure and education in Indian country. The committee will provide issue papers on those topics to the governor, who Secretary Warren said has directed the Department of Finance and Administration to work together with the tribes on the TIF, including:

- TIF policies and procedures;
- new markets and tax credits;
- industrial revenue bonds; and
- broadband technology.

Other IAD activities included:

- working with the Department of Health to develop innovative programs for recruiting and retaining Native Americans in the health professions;
- developing a communication policy between the state and tribal governments, including online training for state employees;
- designating tribal liaisons in all cabinet-level agencies; and
- helping state agencies prepare their annual reports on services provided to Native Americans.

Secretary Warren said his department sent out two detailed surveys to tribal leaders and, based on their responses, suggested to the committee that it include the following topics in its work plan for the interim:

- economic development, which he said was the top issue raised by tribal leaders;

- tax incentives;
- the public school equalization formula;
- recruitment and mentoring of Native American high school students;
- a permanent funding stream for the TIF;
- water rights and resources;
- improving state-tribal relations, including providing an orientation or some other training or workshop on tribal issues for new legislators; and
- the Shiprock Home for Women and Children.

Representative Begaye suggested that cabinet-level tribal liaisons also receive an orientation in the protocols of dealing with tribal governments, how Native governments are organized and contacts at each tribe, nation or pueblo. Secretary Warren said an orientation is scheduled for the fall.

Senator Lovejoy said she and Representative Begaye serve on the Legislative Education Study Committee (LESC), which met throughout the state during the last interim. She said she was surprised that no one from the Indian Education Advisory Council (IEAC) attended any of the LESC meetings, not even the one in Farmington, to hear or comment about the equalization formula. She said that she is hoping the LESC meets in Gallup and that someone from the IEAC attends.

"If tribal leaders continue to bring up matters that are being dealt with at the state level, they've got to participate", she said. "If we're going to be leaders, we've got to jump on the bandwagon."

Deputy Secretary Aragon read through a handout on ARRA funding for Native Americans, including the amounts and types and the application process. He explained that he is the lead contact for tribes applying for ARRA funds.

Peter Pino, tribal administrator for the Pueblo of Zia and a member of the Competitive Grants Advisory Team (CGAT), said that the CGAT met for the first time in April and held several more meetings throughout the state since then. The team met for the last time two days earlier, he said, and made several recommendations to the governor, including maintaining regular email communication with team members; updating the CGAT web site continuously so that the process is transparent and the agencies involved are accountable; and developing resources to assist tribal governments in achieving shovel-ready status for projects.

Mr. Pino said that entities applying for a smart-grid mega-grant would have to opt into the state program. He urged counties, cities and communities to collaborate on proposals and work with their councils of government. He said the CGAT also encourages tribes to work with federal agencies and programs. There is a strong push to help get regional areas a share of the federal funding, he said.

Representative Salazar noted that many tribes are not prepared for the paperwork involved in applying for competitive grants. Deputy Secretary Aragon responded that each

tribe has its own capacity and capability, and that it may behoove a tribe to establish protocols and systems to apply for competitive grants — especially, he said, because "three billion dollars is a lot of money to spend in a short time". He said the IAD is looking to the NMORR for guidance and assistance in meeting application deadlines.

Noting that the deadlines are approaching, Mr. Pino agreed that meeting them will be hard work, but that a completed application has a good chance of getting funded, especially for smart-grid, broadband and health information technology funding requests.

Shiprock Home for Women and Children

Rebecca Martinez, capital outlay manager, IAD, took questions from the committee about the still unfinished shelter. She said the IAD has received reauthorization for \$1.145 million to complete the project and is in the process of getting the construction under contract.

Representative Begaye said the home for women and children is caught in the middle of a shift in leadership in the Navajo Nation's Division of Community Development. He said the shelter is facing eviction in six months by the Navajo Housing Authority while it awaits funding to finish construction of its new location. He is concerned that the funding will get held up by bureaucratic wrangling and made a motion to send a letter to Navajo Nation President Joe Shirley, Jr., to move the process along more quickly. Representative Vaughn seconded the motion, which passed without objection.

Native American Veterans State Income Tax Settlement

John Garcia, secretary, Veterans' Services Department (VSD), said the department is hoping for a public hearing in October on the status of Native Americans who qualify for a refund of state income taxes that were withheld while they were on active duty in the military. He introduced Libby Gonzales, director of the Revenue Processing Division in the TRD.

Mr. Garcia said the VSD, the TRD and the IAD have reached out to Native American veterans across the state to let them know that they may be eligible for a tax refund. The VSD is contacting tribal leaders for approval of the proposed regulations and application process and is asking for their help in doing outreach. He said the VSD will handle all the intake and verification of veteran status and forward the applications to the TRD for confirmation. If a veteran does not have proof of the taxes withheld, the TRD will work with the federal Department of Defense (DOD) to provide the necessary documentation, he said. He distributed a copy of the claim form to the committee.

Responding to questions from committee members, Mr. Garcia and Ms. Gonzales provided the following information:

- family members of deceased veterans will be able to file a claim and get money back;
- the VSD will consider a variety of methods and contacts to get the word out to Native American veterans;
- the TRD has a contact at the DOD with access to archival data to determine which veterans had taxes improperly withheld;

- all a veteran has to provide is some proof of service, not necessarily a military discharge form; and
- the VSD's tribal liaison is Al Martinez.

Mr. Garcia said he visited the previous day with the All Indian Pueblo Council's tribal veteran's liaison and plans to work closely with the pueblos and the Apache and Navajo Nations. He said he will provide the committee with a follow-up report before its last interim meeting in case the committee needs to request additional appropriations during the next legislative session. Mr. Garcia thanked the committee for its work on the Native American income tax settlement, saying that New Mexico has set a precedent and will be a model for other states.

Public Utility Taxation on Tribal Lands — Update

Roy Stephenson, co-chair, Tribal Tax Executive Working Group, updated the committee on the status of taxing public utilities on tribal lands. He said the good news is that tribal governments are succeeding in creating their own databases to determine who should be notified of reimbursement owed and that the working group is finishing a handbook of taxation on tribal lands.

Describing the project as "my baby", Senator Lovejoy said she is most concerned with public utilities on the Navajo Nation, because it has the largest land base and has more than three service providers. Mr. Stephenson said he intends to address that issue. Representative Begaye said jurisdictional issues are complicated and pooling information poses a challenge. Mr. Stephenson said the working group has a map that shows the territories of service providers in Indian country. He said he hopes to get a map on the working group's web site that allows users to pinpoint a utility company by entering geographical coordinates. He said he will have more information for the committee within the next few months.

Interim Work Plan and Meeting Schedule

The committee approved a work plan for the interim that includes the following meeting schedule:

- July 13-15 — Albuquerque, Pueblo of Santa Ana;
- August 10-12 — Gallup area (Red Rocks, Church Rock, Manuelito);
- September 8-10 — Pueblo of Santa Clara, Alcalde, Albuquerque;
- October 19-21 — Mescalero; and
- November 18-20 — Shiprock area, San Juan College, Nenahnezad.

The committee agreed to request four days of meetings for the proposed uranium cleanup subcommittee. At its June meeting, the New Mexico legislative council approved a single two-day meeting and suggested that the committee return if another day is needed.

Adjourn

The committee adjourned at 4:00 p.m.

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

**July 13, 2009
University of New Mexico School of Law
Albuquerque**

**July 14 and 15, 2009
Prairie Star
Pueblo of Santa Ana**

The second meeting of the Indian Affairs Committee (IAC) for the 2009 interim was called to order by Senator John Pinto, co-chair, on Monday, July 13, 2009, at 10:08 a.m. in the moot courtroom at the University of New Mexico (UNM) School of Law in Albuquerque, New Mexico.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Sen. Eric G. Griego (7/13)
Rep. Sandra D. Jeff
Sen. George K. Munoz (7/14, 7/15)
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. John C. Ryan (7/13, 7/15)
Rep. Gloria C. Vaughn

Absent

Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan (7/13)
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

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

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

Staff

Damian Lara
Jennie Lusk

Joshua Sanchez
Tamar Stieber

Monday, July 13 — UNM School of Law

Welcome and Introductions

Senator Pinto asked committee, staff and audience members to introduce themselves. He then turned the meeting over to Representative Salazar to chair.

UNM School of Law — Native American Programs and Priorities

Kevin Washburn, dean, UNM School of Law, introduced himself and members of the law school staff to the committee. Dean Washburn is a member of the Chickasaw Nation of Oklahoma and the first Native American to be dean of UNM's law school and one of very few Native Americans to be dean of any law school in the nation. He noted that he has only been on the job for 12 days.

Dean Washburn described the Indian Law program as one of the law school's marquis programs. He thanked the committee and the legislature for their generous appropriations, which he said make tuition relatively affordable. Still, he said, with tuition at \$12,000 a year plus room and board, law students who complete the three-year program will graduate with a debt load of at least \$90,000.

Dean Washburn said the Indian Law program began about 40 years ago and has been churning out 25 to 30 Indian graduates each year, which he noted is more than at any other law school in the nation and for a much longer time. To date, the program has graduated about 260 Native Americans. The Indian Law program now has competitors, he said, though none has as large a staff as UNM. He recognized law school faculty member Gloria Valencia-Weber, who in 1992 established the Indian Law Certificate program, which Dean Washburn said has granted certificates to well over 100 Native American students. To get a certificate, students must take specialized courses in Indian law; do an externship, often in a tribal court or organization; and write a senior thesis focusing on an issue of Indian law. Certificate students may also work on a law review called the "Tribal Law Journal". Dean Washburn said the Indian Law Certificate program draws students and professors from all over the country and is not just geared toward American Indians.

Introducing additional law school faculty and staff members and describing their areas of expertise, Dean Washburn said that UNM has more tenure track professors in Indian law than anywhere else in the nation and that, together, they comprise the strongest Indian law faculty in the nation.

Indians represent 10 percent of the student population at the law school, with about 30 Native American students enrolled there at any one time, Dean Washburn said. Last year, he said, 31 of the law school's 330 or 340 students were Indian. The Native American Law Student Association vies with the Mexican American Law Student Association as one of the largest and most active student organizations on campus, he said.

Dean Washburn said that UNM has one of the strongest American Indian law curricula in the country, which makes it not just a law school for New Mexico, but for the entire country. One of the reasons for this is its proximity to 22 Indian tribes, nations and pueblos and the law school's connection to those communities. He said he recently sent a letter to each of New Mexico's tribal chairs, inviting them to visit the law school at any time and thanking them for providing funding and other resources — including scholarships for Indian students, who, he said, are often impoverished — that have helped the law school establish its national reputation in Indian law.

Southwest Indian Law Clinic

Dean Washburn said UNM's Southwest Indian Law Clinic provides an answer to the oft-heard criticism that law schools concentrate too much on classroom, rather than hands-on, learning. The clinic is an effort to get law students practicing law under the supervision of a practicing lawyer before they take the bar exam. Students often represent indigent people from tribes and tribal organizations, e.g., a parent in a child custody lawsuit or a criminal defendant in tribal court, or they might help write bylaws for a Navajo chapter.

The clinic has existed for 40 years and is a model for the rest of the country, Dean Washburn said. He noted that it is an expensive program because the clinic professors work with very few students per semester — something that would be impossible at a larger law school. The clinic receives \$220,000 a year from the legislature, which Dean Washburn said goes toward salaries and fringe benefits for professors and adjunct professors. He said it is a lot of money, "but it is a good investment both for students and the Indian people they help". He added that the clinic has only two full-time faculty members and needs more faculty if it is to run as a year-round operation.

Dean Washburn said that the clinic is a special project and that special projects "have bad names right now". He asked the committee's help in continuing to keep the program funded, even during a time when budgets statewide are hurting, calling it one of the most important operations of the law school. He said he has already reached out to tribal leaders about getting more money for training and assistance, and he has spoken to Uday Desai, who is the director of the School of Public Administration, about a joint training session to teach public employees how to run government bureaucracies better. The training would encompass legal and ethical issues specifically with regard to Indian law. He said he needs to raise funds for scholarships, which requires his talking to people in a private sector around the state and reinvigorating alumni. He added that the law school needs more faculty.

Questions and comments from the committee, and answers from Dean Washburn and faculty members, included the following:

- *Have Indian casinos contributed to funding for the Indian law program?* "Not that I'm aware of". Dean Washburn said he is bashful about asking gaming tribes for money until the law school serves them in some way, especially because gaming tribes complain that people often ask them for money without offering any services.

- *How much support do tribes provide to their own law students?* The Navajo Nation and the law school have a memorandum of understanding whereby they split the tuition costs for Navajo students. A tribe from Connecticut donated \$25,000 toward the program. Local tribes primarily provide students, not funding.
- *Is Dean Washburn the first Native American law school dean?* He is the first at UNM and the second in the country.
- *Why is there no training for the judiciary at the law school?* The law school sends faculty to a national judicial college to teach, but it should probably bring that home.
- *What happens to students who get their law degrees in another state and come to New Mexico to take the bar exam?* The law school does not serve those students directly, though they are welcome to take a course at UNM and/or study there for the bar. The bar passage rate at UNM in February was 100 percent.
- *Can the law school provide some sort of training to navigate and fill in the Navajo Nation Code, particularly in the areas of contracts, joint powers agreements and shepherding projects through the Navajo Nation system?* Federal contracting and appropriations are very challenging under tribal law, and the law school would like to get more involved in those areas. UNM has a business law clinic designed to deal with economic development and business issues, and some of the students in the Indian law program are working in those clinics. The law school will see if there is a way to interact with the Navajo Nation to help write its code.
- *What percentage of enrolled students actually get their degree?* Well above 95 percent get a law degree.
- *Can the law school get Native American high school students involved in a law program?* The law school sponsors major outreach events to minorities — particularly Native Americans, Hispanics and African Americans — in high schools throughout the state to explain what it means to study and practice law. Several faculty members have traveled to reservations in New Mexico to do mock law classes. There is also a collaboration between the UNM law school office of admissions with other undergraduate programs where law students share their experiences.
- *Is the Indian pre-law program open to all students?* It is aimed specifically at Indians and Alaskan natives. Programs such as the Council for Legal Education Opportunity are open to other minority students.
- *What if students score low on the entry exam?* The test is pretty good at predicting success, but some very good students may not be "test-savvy".

- *There is a dearth of people of color, particularly of Native Americans, in the judiciary, and there is no federal judge who is an American Indian.* Part of the law school's mission is to grow leaders that look like New Mexico.

Pre-Law Summer Institute for American Indians and Alaska Natives

Teaching assistants Terrelene Massey of the Navajo Nation and Veronique Richardson of the Pueblo of Laguna provided a history of the Pre-Law Summer Institute and explained how it works. They said this year's class of 37 students was the largest in its history. They described the program as an "eight-week boot camp" with very high standards to prepare students to be successful in law school. They said the program is sensitive to students' backgrounds and gives Indian students an "alternative basis" for admission to law school. They stressed that the program does not recommend every student, especially if it is in the best interest of either the school or the student not to place that student. "We must maintain our reputation", Ms. Richardson explained.

The program follows the Socratic method of teaching and offers courses in tort and property law, civil procedure and legal writing and analysis. It also provides courses in Indian law, which Ms. Richardson said is unique. Students must take mid-term and final exams, and the teachers grade them as if they were first-year law students. Students are expected to write internal memos as if they were writing to a judge and to make oral arguments before a panel of judges and attorneys.

Questions and comments from the committee included the following:

- *Can a student repeat the program if necessary?* Yes.
- *The program sounds very rigorous. How does one have a family or a job and attend the program?* There are students who have children or are married. They have to balance those issues. They have to make some sacrifices. Scholarships are available.
- *Who provides the scholarship money?* The American Indian Law Center (AILC) through the Bureau of Indian Education (BIE); the Law School Admissions Council, which provides funding for legal education; the UNM law school through private donations; and some Indian tribes and pueblos that have agreements with the law school to pay part of their students' tuition costs.

AILC and AILC Appellate Project

Helen Padilla introduced herself as a member of the Pueblo of Isleta, a practicing attorney, former vice chair of the Laguna Gaming Control Board and former general counsel of the Indian Affairs Department (IAD). She said that the AILC provides training in Indian tribal law to tribal leaders and tribal courts throughout the southwest and would be happy to provide the same training to New Mexico legislators.

Ms. Padilla said the Southwest Intertribal Court of Appeals (SWITCA) is administered through the AILC, which she stressed is separate from the UNM School of Law and gets no

state funding through UNM. As a separate nonprofit organization, it receives grants and donations from numerous organizations and entities, including tribal governments.

Ms. Padilla gave a brief review of tribal court systems and how they differ from other American courts. The Pueblo of Santo Domingo, for example, has a traditional court system that she said is unlike a modern Western-style court. In contrast, the Navajo Nation court system is a combination of traditional and modern. She said that most pueblos utilize a modern system while allowing parties to request to be heard in a traditional court. She described tribal courts as administering a different form of justice than that to which the "typical New Mexican" is accustomed. A tribal council can sit as the appellate court of the tribe, though the SWITCA will often assign judges to sit at the appellate level to make decisions.

Melissa Candelaria, senior policy analyst, AILC, Pueblo of San Felipe, said the AILC's mission includes the following:

- safeguarding the natural resources, health and safety of Indian people;
- building tribal capacity;
- developing tribal justice;
- fostering tribal leadership; and
- assisting tribal leaders at being more effective at their jobs.

Ms. Candelaria said the AILC is working on a number of projects, including:

- simplifying tribal and state government permitting with funding from an environmental justice grant from the federal Environmental Protection Agency;
- conducting traditional planning meetings with the state Department of Environment; the Energy, Minerals and Natural Resources Department; and the Office of the State Engineer regarding preserving Mount Taylor as a sacred site; and
- facilitating discussions between the Bureau of Indian Affairs (BIA) and Indian tribes on procedures involving land interests.

The AILC's goals include:

- improving tribal-federal relations through formal and informal dialogue;
- protecting Indian arts and crafts from exploitation; and
- designing a curriculum in Indian law for tribal leaders.

Responding to questions from the committee, Ms. Padilla and Ms. Candelaria provided the following information:

- the AILC was established in 1988;
- individuals who receive training through the SWITCA must adhere to tribal law;
- the AILC can provide training on the federal principles of Indian law, including recognition of tribal sovereignty;
- the AILC hopes committee members and tribal leaders can work together on the issue of uranium cleanup;

- the AILC will not work on the process of federal recognition of tribes because that is the bailiwick of the federal Department of the Interior;
- the AILC does not have litigators; it provides policy analysis;
- the federal Indian Child Welfare Act of 1978 does not always have a role in placing foster children, who often fall through the cracks; and
- DWI reporting is complicated by jurisdictional issues, which are very sensitive. Requiring tribes to report DWI statistics to another government is an erosion of their sovereignty.

Audience member Joe Lew said he oversees national tribal courts across the country and that they are constantly dealing with the issue of which jurisdiction — tribal, federal, state, etc. — prosecutes a crime committed in Indian country and/or by a Native American. He said the law is split on the issue. He said that tribes could get access, and provide information, to the National Crime Information Center (NCIC), which is a computerized index of criminal justice information (i.e., criminal records, history and information, including fugitives, stolen property, missing persons, etc.), but that they do not uniformly do that. He said the U.S. Department of Justice (DOJ) will not provide funding or award grants to entities that are not tied into the NCIC.

Questions and comments from the committee included the following:

- *Will passage of U.S. Senator Byron Dorgan's bill enhancing law enforcement efforts in Indian country mean mandatory two-year prison sentences for misdemeanor crimes?* Eventually, criminals who face small sentences in tribal courts could face three-year sentences under the Dorgan bill.
- *What about incest?* It is a federal crime in Indian country, which means that the DOJ has jurisdiction.

Tribal-State Consortium

Roman Duran, associate judge, Jicarilla Apache Tribal Court, gave a history of the Tribal-State Consortium and a synopsis of what it has done in the past and what it is working on currently. The consortium is composed of seven state judges appointed by the New Mexico Supreme Court and seven by the Colorado-New Mexico Indian Court Judges Association. The consortium began in 2000 as a cultural exchange whereby the judges could discuss common issues they face on their respective benches. It focuses on:

- questions of jurisdiction and sovereignty;
- domestic violence;
- custody, support, neglect and abuse of children; and
- juvenile justice.

The consortium's goals include facilitating communication between state and tribal judicial systems and improving awareness about their different judicial and legal systems. The organization has collaborated with the Domestic Violence Commission to draft legislation; it has worked with Project Passport, an organization dedicated to protecting domestic violence victims who flee to a different jurisdiction than the one that issued a protective order; and it is co-sponsoring a four-state symposium in September on drug trafficking issues in and around Indian country.

The consortium was originally funded by the legislature. Now it receives its funding from the New Mexico Supreme Court, Mr. Duran said.

Debra Seeley, domestic violence commissioner, Second Judicial District Court, said the Albuquerque court hears 300 domestic violence cases a week. She said the consortium has been invaluable in helping the court protect domestic violence victims in Indian country by ensuring that protective orders transition smoothly between tribal and state courts and from state to state. She described a case in which a New York woman got an order of protection against her long-time abuser. When she moved out of state, her abuser followed her and threatened her. She called the police department and was told that it did not recognize New York's protection order. Her abuser murdered her later that day. Today, Ms. Seeley said, a police officer on the Navajo Nation can look at a protective order from Taos and recognize it immediately. She said that this is thanks to efforts by the State-Tribal Consortium in designing a uniform protective order recognized by all jurisdictions.

Questions and comments from the committee included the following:

- *There seems to be a lack of control and uniformity between the tribal court system and the state courts; thus, it is hard to track crimes and criminals. How can that be resolved?* Criminals are very clever about evading arrest. There is not much one can do about it.
- *Tribes need to enter into a joint agreement with the state regarding apprehension, prosecution and sentencing of criminals, especially repeat offenders.* This is complicated by issues of sovereignty. Legislating that jurisdictions share crime data, e.g., for DWIs, is up to "you guys" (the legislature) and the tribal councils.
- *A person will be extradited from one end of the state to another because the person owes money, but someone who violates a restraining order will not be extradited. Why are these people not extradited back to where the restraining order was issued?* That is a jurisdiction problem. Hearing officers do not have the statutory authority to do that.
- *Are men victims of domestic abuse?* Yes, but it is more difficult for a man to admit being abused and to ask for help.

Several committee members asked staff to draft legislation for state and tribal law enforcement and judicial entities to collaborate. Ms. Lusk explained that the state cannot tell tribal governments what to do. On a motion made, seconded and passed without objection, the committee agreed, instead, to write a letter supporting funding mechanisms for state/tribal collaboration.

The Dorgan Bill — Proposed Federal Legislation Changing Criminal Laws in Indian Country

By way of introducing the next speaker, Ms. Lusk noted that the IAC takes great interest in ensuring that Native American defendants are properly represented in criminal proceedings and that Native American prisoners have decent prison conditions.

Kathleen Bowman, director, Office of Navajo Public Defender, explained that the reason for Senator Dorgan's bill is because of the "huge jurisdictional gap" in Indian country,

much of which came to light because of hearings on violence against Native American women, she said. Tribes have no jurisdiction among non-Indians, so Native American women abused by non-Natives have no legal recourse, she said.

Ms. Bowman said DWI suspects will often plead guilty in a tribal jurisdiction because they are told by jailhouse lawyers that even if they plead guilty, they will not go to jail because there is no room in the tribal jails. In the Navajo language, she explained, guilty or not guilty translates to, "Did you do it?". Many defendants will say, "yes", with no opportunity to give an explanation. Ms. Bowman said her concern is that a huge number of people who plead guilty in tribal courts are then convicted in state or federal court, often without an attorney, when they may have had a legitimate defense.

Ms. Bowman explained that the Dorgan bill will make most sentences in Indian country an automatic three years and that tribes can send their prisoners to federal prisons at no cost to the tribe. She said this provides an incentive to incarcerate Indians in federal prisons, which are usually far from their families and friends. Native Americans accused of major crimes are tried in federal court, where sentences are much harsher than in tribal or state courts.

Ms. Bowman said she had a client who was in jail for 584 days instead of his sentence of 364 days because he was told he could not get out of jail until he paid \$90.00 for a window he broke while committing his crime. This is tantamount to an open-ended sentence, she said. She told of a judge who sentenced the father of a special needs child to 30 days in jail because he tried to speak for his son, who was unable to speak for himself. She described a case in which a child defendant with attention deficit hyperactivity disorder was taken off his medications during his hearings. She said these are just a few examples from her 15 years as a public defender that explain why tribal defenders and judges should be trained in law school and licensed by a state court.

Questions and comments from the committee included the following:

- *What is a "public law 280 state"?* This is a state that has opted to take on the criminal jurisdictions of all the tribes in the state. New Mexico is not a public law 280 state.
- *Would public law 280 help in providing properly trained individuals?* No, because the law is an unfunded mandate. Congress did not give the states money to pay for extra judges, increased patrols, etc. So even public law 280 states have jurisdictional gaps because of lack of funding.

The committee recessed at 5:00 p.m.

Tuesday, July 14 — Pueblo of Santa Ana

Senator Pinto reconvened the committee at 9:15 a.m. He asked committee members to introduce themselves. He turned the chair over to Representative Madalena, who welcomed the people from his district.

American Recovery and Reinvestment Act of 2009 (ARRA) Provisions for Corrections and Public Safety

Alvin H. Warren, secretary, IAD, outlined the ARRA funding related to corrections and public safety for which his department has applied, including:

- \$225 million for correctional facilities on tribal lands;
- \$21 million in set-asides to tribal governments for the STOP Violence Against Women program and transitional housing;
- \$17 million for BIA construction of a rehabilitation and detention center;
- \$125 million for rural law enforcement;
- \$5 million for victims' compensation;
- \$225 million in Byrne competitive grants;
- \$1 billion to hire law enforcement officers for three years;
- \$125 million to protect the U.S./Mexican border; and
- \$210 million for assistance to firefighters.

Questions and comments from the committee included the following:

- *Are the Mescalero Apache Tribe and other tribes aware of the available funding?* The IAD sent out notices, but some tribes are just starting to get things in order.
- *To whom and how do the tribes apply for the funding and how are the applications evaluated?* They apply through the internet to the federal agencies handling the funds. Some applications are peer-reviewed; others are reviewed internally.
- *Does former Governor Toney Anaya, who heads the New Mexico Office of Recovery and Reinvestment, have a role in approving tribal projects?* No, but Governor Richardson may ask Governor Anaya for recommendations on \$50 million of Governor Richardson's discretionary ARRA funds.

Representative Jeff asked about stimulus funding for a pending medical/trauma center in Gallup, which she said is urgently needed. She asked if it is on the priority list for the Indian Health Service (IHS) and asked how the IHS selects recipients for ARRA funding. Secretary Warren said that while he knows that the IHS has a process for prioritizing projects, he does not know what that process is. Senator Munoz said that if Gallup can get a \$1 million loan for land for the medical/trauma center, the federal government would help fund the project, and it could get started. Senator Rodriguez agreed that the medical/trauma center needs to be a priority and that it needs to get into the right hands. Secretary Warren said that it is part of the IAD's job to help shepherd along such projects, but that nobody from the medical center has asked the IAD to get involved. He said he would work on getting the project reauthorized, and he encouraged the committee to write a letter to New Mexico's congressional delegation in support of the medical/trauma center. Representatives Salazar and Vaughn reminded the committee that projects have to be "shovel-ready" to be approved. Secretary Warren agreed that it would be a big challenge to get the medical center approved if it is not shovel-ready.

On a motion made, seconded and unanimously approved, the committee agreed to write a letter to Governor Richardson asking him to support in principle and with funding the construction of a Gallup regional medical/trauma center.

Secretary Warren said the IAD's biggest challenge is to get information back from the tribes about which projects need funding. With 22 tribes, his department has not been able to track projects on a daily basis. However, the department had just created a new position specifically to track stimulus funding in Indian country. The position has not yet been filled, he said, but the department is advertising it.

Representative Jeff said she is concerned that tribes will lose opportunities for funding because of missed deadlines. She asked how the IAD determines which tribes get awards. Secretary Warren said the state has no role in deciding which tribe gets money directly from the federal government; it can only make those decisions if the money comes through the state.

Senator Adair asked about state-funded projects with two-year deadlines for which there have not yet been allocations, in some cases because regulations to apply for and use the funds were not issued. He said that it would behoove the state to extend those deadlines. Secretary Warren said that if a tribe asks him to request a deadline extension from the governor, he would be happy to do that.

Representative Madalena asked if New Mexico could get Alaska's stimulus money since Alaska said it did not want it. Secretary Warren said, "Absolutely. We're going next week and we'll bring a big bag."

An audience member from Zuni noted that it is not just deadlines that hamper tribes in getting federal and state funding, but also that many tribes have not complied with the state Audit Act, which requires entities receiving public money to be audited annually so the granting agencies can look at the prior funding history and see how the entities spent the money. She extended an invitation to the committee to attend a three-day sexual offender seminar sponsored by the Pueblos of Acoma, Isleta and Zuni. Among the topics of discussion will be whether Indian tribes opt in to the national sex offender registry.

Minutes

The committee unanimously adopted the minutes of the previous meeting without objection or discussion.

Disproportionate Incarceration in Indian Country

Stephen McCue, federal public defender, provided the committee with a copy of the federal statute that places major crimes committed on Indian land under federal jurisdiction. The rationale, he explained, was to protect Native Americans from states that were not particularly sensitive to treaty rights or the rights of tribes. "We say, 'With friends like these, who needs enemies' ", Mr. McCue commented. A "garden variety" aggravated assault case that might warrant 18 months incarceration or probation in a state district court could earn a 10-year sentence in federal court, where there is no parole, he explained. For New Mexico Indians, that not only means much longer sentences, but it is also tantamount to banishment from their tribes because there are no federal prisons in New Mexico. Mr. McCue said his clients typically wind up in Arizona, Texas or Colorado, while sex offenders go to special facilities on the east coast.

Mr. McCue referred to statistics from the Federal Bureau of Prisons indicating that of the 3,700 Native Americans in federal prisons, a substantial number come from the southwest. He said he was unable to get more specific information, but estimates that at least several hundred are from New Mexico. Typically, he said, the crimes are either alcohol-driven or violent or sexual in nature. Sex offenses carry "extraordinarily severe sentences" of 30 years, he said, and the victims are often family members who want their abusers to get help, not go to prison.

Mr. McCue said that federal prisons make no attempt at helping released prisoners reintegrate into society. Sex offenders are usually forbidden by the courts to be around children. For released prisoners who come from multi-generational families, that means they cannot go home, and they often cannot find the means to visit their families. Mr. McCue said defendants and victims would be better served by tribal courts than in the federal system.

Questions and comments from the committee included the following:

- *What is the statute of limitation for molestation charges?* There is no statute of limitation for sex crimes.
- *What determines whether a person is charged in state or federal court?* The jurisdiction is determined by where the crime occurs. If the crime was committed on a reservation and the defendant is Indian, it goes to federal court. If a Native American is charged with a crime off native land, that person is tried in state district court. Interstate commerce usually involves the federal courts.
- *Racial profiling is not uncommon and it is unfair. Some Native Americans are innocent and go to prison.* The system really is stacked against Native Americans.
- *How do Native Americans get representation when their attorneys are 200 miles away?* That is a problem. The frame of reference is skewed. An attorney has to go out there and sit down and talk to a defendant and get a sense of reality and how things actually work.
- *How many Native American public defenders are there?* There are no Native American federal public defenders. The state has two or three.
- *How long does it take to settle a case under your purview?* There is not a set time to complete an investigation. Some cases move very quickly; others might still be pending a year later.

Public Defender Office Plans for Gallup

David Eisenberg, deputy chief public defender, state Public Defender Department, said his department "felt it incumbent upon us" to use a small budget increase of \$267,000 to open a public defender office in Gallup with an anticipated opening date of March 2010. The office will be under the auspices of the Aztec district public defender and will have 14 full-time staff members, including six lawyers. The office should be able to handle up to 50 percent of the caseload in the Gallup area. He said the department will eventually have 19 employees, at which time it will handle 70 percent of the cases.

Mr. Eisenberg said the department is actively searching for attorneys with a heavy recruitment effort at the UNM School of Law. He said the department will hire promising

young attorneys contingent upon their passing the bar exam. He said it is important to have Native American lawyers representing the native population in Gallup.

Noting that he was a magistrate judge for two years in Gallup, Representative Alcon expressed concern that the new lawyers will be trained in metropolitan court but will be representing clients in magistrate court, calling the courts "two different animals". Mr. Eisenberg said both courts handle misdemeanors, so the transition should be smooth. He said more senior lawyers will handle felony cases. Representative Alcon said he expects that Mr. Eisenberg will have "very discouraged public defenders on your hands".

Senator Munoz said he does not think \$267,000 will suffice to run an office of 14 people. Mr. Eisenberg assured him that the budget will be supplemented by the approximately \$500,000 the department pays to contract lawyers. Senator Munoz also said he was worried that lawyers fresh out of law school would not have the experience to provide adequate representation to their clients. Senator Martinez, who was a magistrate judge in Rio Arriba County, said he would be "in awe" if the Public Defender Department put three new attorneys in Espanola and said he is 100 percent in favor of the department's efforts. "I applaud you. I support you. You have a friend here", he told Mr. Eisenberg. "I sit on the judiciary committee. Let me know if there is anything I can do to support you." Representatives Jeff, Powdrell-Culbert and Rodella also expressed their strong support.

The chair recognized the governor of the Pueblo of Zia before recessing for lunch at 12:15 p.m. The committee reconvened at 12:46 p.m.

Gallup Inter-Tribal Indian Ceremonial Association

Ernest C. Becenti, commissioner, McKinley County, told the committee that the Gallup Inter-Tribal Ceremonial does not have enough funding to put on its upcoming 88th annual event, scheduled to open in six weeks. He asked the committee to write a letter to Governor Richardson requesting that he allocate emergency funds to support the event. Mr. Becenti said he is requesting \$179,000 to put on this year's event and another \$121,000 — for a total of \$300,000 — for "any future consideration". On a motion by Representative Jeff and seconded by Representative Alcon, the committee unanimously approved writing a letter to the governor urging him to use emergency funds to ensure that the 88th Gallup Inter-Tribal Indian Ceremonial goes on as scheduled.

Letters

The committee agreed to write letters to the U.S. Federal District Court for New Mexico regarding adding tribal registration lists to be used in jury selection and to the Department of Environment requesting that the IAC become a stakeholder or consulting party for purposes of governing Mount Taylor. The committee also agreed to review a 2008 Sandoval County stipulated agreement.

The committee recessed at 2:30 p.m.

Wednesday, July 15 — Pueblo of Santa Ana

Representative Jeff reconvened the committee at 9:07 a.m. and asked committee and staff members to introduce themselves. She then asked members of the next panel to introduce themselves. They included Martin Aguilar, Larry Dominguez and Savaleah Begay-Tsodie, Bureau of Elections, Secretary of State's Office; and Native American Election Information program (NAEIP) coordinators Peter Magdalena from Sandoval County, Shirlee Smith from Bernalillo County, Vince Abeyta from Socorro County, Arlenta Horse-Dickie from San Juan County and Hvtce Miller from Santa Fe County. Secretary of State Mary Herrera sent her regrets.

NAEIP Coordination — Preparing for the 2010 General Election

The committee listened to a freewheeling discussion of voting issues in Indian country by election officials from several counties and representatives of the NAEIP. Among the issues raised were the following:

- voting sites should have enough room for at least five voters simultaneously;
- Native American voting coordinators are working on a joint powers agreement to ensure that voting sites in Indian country conform to requirements for all voting sites, including all necessary voting equipment, translators and federal Americans with Disabilities Act of 1990 accessibility, and that they have fax capabilities, broadband internet access and telephone access so precinct officials can contact their county clerks, if necessary. These minimal requirements apply to early voting sites and mobile voting units as well;
- in Zuni, voters were not aware of the mobile voting unit; and precinct officials closed it for two hours at lunch when it should have stayed open for eight straight hours; and
- currently, McKinley County has one mobile voting unit; additional mobile units would enfranchise more Native American voters.

Representative Jeff said she was disappointed that McKinley County did not send a representative to the day's meeting. Other comments and questions from the committee included the following:

- *McKinley County only has three commissioners that decide on issues concerning uranium, development and other concerns that affect the community, but the community is not truly represented by those commissioners. Can the commission be expanded?* The Bureau of Elections would have to look at the requirements of the statute to see if the commission can be expanded. Everything has to happen in a legal way.
- *How does a county commission expand from three to five commissioners?* The board of county commissioners by unanimous vote can increase the size of the board.
- *Are voting information ads, including those for early voting, provided in native languages?* Yes, primarily on local radio stations. In San Juan County, many Navajo people use pictorial ballots.

- *Has anyone, including the American Civil Liberties Union, sued for putting pictures on the ballot?* No, because the pictures are only on the sample ballots.
- *Is there specific authority under law or regulation to put pictures on a ballot?* It is done because it is thought to be the right thing to do. (Senator Adair said he "sure would have voted for Sarah Palin based on this".)

Minority Language Assistance Requirements Under Section 203 of the Federal Voting Rights Act

Richard Dellheim, trial attorney, Voting Section, Civil Rights Division, DOJ, explained that Section 203 of the federal Voting Rights Act requires that if more than five percent of the population of an area speaks another language or has limited English proficiency, then voting materials must be provided in their language. Eighty-seven political subdivisions across 17 states are subject to Section 203, he said. In New Mexico, they include Bernalillo, Cibola, McKinley, Rio Arriba, San Juan, Sandoval, Socorro and Valencia counties. The requirement applies not only to the ballot, but to all election information, including ballot registrations, sample ballots, polling place information, absentee ballots, etc.

Because Native American languages tend to be oral, that poses additional challenges, Mr. Dellheim said, including properly trained translators. Mr. Dellheim gave an example of a ballot containing a proposition for a judicial retention. A poll worker translated "judge" as "the man who puts you in jail". So the ballot question read, "Should the man who puts you in jail be retained?". The answer was, not surprisingly, "no", Mr. Dellheim said.

Mr. Dellheim said he filed lawsuits in Cibola, McKinley, Sandoval and Socorro counties that resulted in negotiated court-ordered consent decrees to fund Native American election programs that open the process up to Indians, including many who do not speak English, and included hiring voting rights coordinators trained in all aspects of the election process and making sure tribal officials follow the rules.

The consent decrees also require that county governments open satellite election offices at or near tribal offices so tribal members can register to vote or file absentee ballots. Mr. Dellheim said that McKinley and Sandoval counties have fulfilled their consent decrees while Cibola and Socorro counties are still bound by them. He said his department is in active litigation with Cibola County. He said his department hopes it can achieve a resolution short of contempt proceedings.

Sandoval County has been under a consent decree the longest — since 1988, said Mr. Dellheim. The decree was extended numerous times, he said, most recently in the 2008 election cycle. In the view of his department, Sandoval County has made "substantial compliance", so the department will allow most of the provisions of the consent decree to expire. Responding to questions from the committee, Mr. Dellheim said that the Sandoval County clerk in the 1980s was "particularly hostile" to the Minority Assistance Language program, which is why the responsibility for the consent decree was transferred from the county clerk to the county attorney. The current county clerk is "interested and cooperative", Mr. Dellheim said.

Sandoval County Attorney David Matthews said he and Mr. Dellheim have been working closely on the county's compliance with the consent decree. He said Keres-speaking pueblos are particularly problematic because of the difficulties and nuances of their language. He compared the voting experience of Keres-speaking voters to "dropping me in Cajun country on election day".

Mr. Matthews said the Pueblos of Jemez and Zia took language training courses, and he hopes the Pueblos of San Felipe and Santo Domingo do the same, especially because voter registration at the pueblos has increased tremendously. He said his department has also invited the Pueblos of Santa Ana and Cochiti to join the language training. He stressed that his group is nonpartisan.

Representative Alcon asked if members of Mr. Matthews' staff personally deliver ballots and, if so, how they know where to go. Mr. Matthews said his department gets \$29,000 a year to deliver ballots, which enabled him to hire 12 to 15 people to work the elections. All must speak the native language, he said. They can get an alphabetized list of registered voters and their addresses from the county clerk's office.

Senator Adair asked whether people in Rio Rancho get the same service. Mr. Matthews said they do not. Senator Adair asked where the fairness is. Mr. Matthews replied that it is part of the service his department provides to Native American voters to increase their participation in the election process. He said Indian country is a "unique community" and that his liaisons know the voters. Senator Adair said that if the service is not available to Spanish- or English-speaking voters, then it is not covered by the Voting Rights Act in New Mexico. Mr. Matthews said that his staff does hand-carry ballots to voters who request them, and he said he believes that they are following the Voting Rights Act. "We have the authority under federal law", Mr. Matthews said.

Tribal Justice Support

Joseph Little of the Mescalero Apache Tribe, who developed the Division of Tribal Justice Support for the BIA and helped implement the Indian Tribal Justice Act of 1993, said the division has an office in Albuquerque in order to be near the Indian nations. Regarding the Dorgan bill, he said that three-year sentences are not mandatory for the tribal court system; rather, he said, the bill offers an opt-in provision for tribes, provided that any attorneys handling those cases are licensed and that the tribal courts' policies are transparent. Long sentences are subject to federal review under the federal Indian Civil Rights Act of 1968 and generally result in habeas corpus trials. He stressed that these requirements demand a court system that can withstand such scrutiny, which means that a lot of tribal courts will not opt in, he said.

Mr. Little said that U.S. attorneys often decline cases from Indian country because litigation standards in federal court are high and "they don't like to lose". These cases should go back to the tribal courts, he said, but there is a very large gap of cases that are not being tried at all. He said the DOJ is looking at establishing new federal court districts to handle the case overflow, though he cautioned that it will not happen any time soon. However, he said,

there may be an opportunity to pressure Congress to establish additional federal magistrate courts, such as Colorado is doing in Durango to accommodate the Ute Mountain Ute Tribe.

Mr. Little told the committee that the DOJ is "about as confused as you" regarding federal stimulus money, but that the department has \$225 million in the pipeline to be used toward construction of federal detention facilities in Indian country. He said the DOJ will make the final decision as to where any such facilities will be located, but it is likely that two of them will be in New Mexico.

Regarding access to crime information, Mr. Little said the BIA has direct access to the NCIC through the DOJ. He said the DOJ is looking at giving tribes direct access.

Questions and comments from the committee included the following:

- *Is it possible to develop a protocol with the courts and the police for tribes to get access to the NCIC?* New Mexico has been working with a consortium to allow tribes not only access to, but also to input information into, the NCIC, but that requires being audited to ensure that an entity is adding correct information.
- *What is the incentive for Senator Dorgan's bill?* It establishes how the DOJ works in Indian country. The DOJ feels there is a lack of law enforcement in Indian country, including too few law enforcement officers, and additional training to include homeland security issues.

Voting at the Pueblo of San Felipe

Charlotte Little, president and chief executive officer of Little and Associates, a government relations firm, and a tribal administrator for the Pueblo of San Felipe, said voter turnout at the Pueblo of San Felipe is increasing every year. Last year's presidential election marked the highest turnout rate ever, she said, partly due to the "Next Step" absentee ballot project, which provided another way to follow up on absentee ballot requests.

Reading from a handout, Ms. Little described the history of voting turnout at the pueblo and the tribe's commitment in 2006 to increase turnout through education and easily accessible voter information. The tribe plans to provide early in-person voting sites for tribal members at least seven miles from a county courthouse as per Senate Bill 685. Ms. Little thanked committee members for supporting that legislation.

Electronic Communications in Indian Country

Former state Senator Leonard Tsosie asked the committee to endorse a shovel-ready communications venture to bring internet, radio, television and cell phone service to Indian country. He said it would require putting up a tower, but not on sacred land. He said it is a joint venture with the State of New Mexico and will cover areas represented by Senator Munoz and Representatives Begaye and Jeff. He said the signal will not go much beyond Window Rock, but that it will represent an expansion westward to "bring down the digital divide" by bringing new technology to Indian communities.

Upon a motion made and seconded, the committee voted without objection to write a letter to Governor Richardson and to the New Mexico congressional delegation supporting the use of federal stimulus money for the project.

Preparing for the 2010 Census; Getting out the Vote

The committee listened to a panel discussion on the upcoming census and how it relates to getting out the vote. Speakers included Amber Carrillo, voter engagement consultant, Native American vote director, National Obama Campaign; Ms. Little; Mr. Aguilar; Kimmeth Yazzie, program and project specialist, Navajo Election Administration; and Merlin Cassador, Jicarilla Apache Election Administration. Discussion points included the following:

Voting

- Locating rural voters in Indian country is challenging.
- Locating Native American voters in urban centers is challenging.
- Getting accurate information to voters can be more difficult than getting people to the polls.
- The Bureau of Elections has a Native American Election Information program whose basic objective is to help Indian tribes understand the Election Code and to assist them in interpreting the laws.
- The Navajo Nation is working with counties and the states of New Mexico and Arizona to implement an election information program with an emphasis on primary elections, in which "elections are won", according to Mr. Yazzie.

Census

- Education and advertising are essential to taking an accurate census in Indian country, which traditionally has been undercounted. There is a public campaign underway to dispel the mistrust and fear of the census and census workers.
- Monetary awards for cooperating with the census provide a strong incentive for participating.
- It is important to get native census takers, who look like the people they are interviewing and speak their language.
- The U.S. Census Bureau has opened a temporary regional office in Window Rock and is talking about making it permanent.
- There is great concern about redistricting based on the census.
- Representatives from the U.S. Census Bureau will be invited to a future IAC meeting.

Adjourn

The committee adjourned at 3:50 p.m.

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

**August 10-11, 2009
Red Rock State Park Hospitality Room
Gallup**

**August 12, 2009
Manuelito Chapter House
Gallup**

The third meeting of the Indian Affairs Committee for the 2009 interim was called to order by Senator John Pinto, co-chair, on Monday, August 10, 2009, at 10:13 a.m. in the Hospitality Room at Red Rock State Park in Gallup, New Mexico.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair (8/10)
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Sen. Eric G. Griego (8/10)
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Absent

Sen. John C. Ryan

Advisory Members

Rep. Ernest H. Chavez
Sen. Richard C. Martinez
Rep. Debbie A. Rodella

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

Guest Legislators

Sen. Timothy M. Keller (8/10)

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

Staff

Damian Lara
Jennie Lusk
Tamar Stieber

Monday, August 10**Welcome and Introductions**

Senator Pinto asked Representative Lundstrom to chair the meeting. Because the committee was one person shy of a quorum, she declared it a subcommittee and asked committee, staff and audience members to introduce themselves.

Native American Crafts Authenticity and Preservation

Tony Eriacho, Pueblo of Zuni, president of the Council for Indigenous Arts and Culture (CIAC), briefed the committee on a consumer education program that educates consumers about real and fake American Indian jewelry. Mr. Eriacho, who is instrumental in that program, also described a program in Flagstaff, Arizona, in which the U.S. Forest Service participates in inspecting and certifying Indian jewelry as authentic. In contrast, he said, New Mexico uses the honor system, which he said does not work. There are inspectors and there are rules, but the inspectors do not enforce the rules, he said.

Mr. Eriacho asked committee members to surround a display he brought with him showing a side-by-side comparison of Zuni jewelry that was handmade (authentic native materials; handmade by a Zuni artist), handcrafted (plastic, composite and/or imported materials; hand- or machine-made by a Zuni artist) and fake (not Indian-made). Noting that they look the same, he said there is nothing to distinguish the real from the fake. He also presented a display of several dozen colored stones of which only nine were real. Buyers do not usually ask about the authenticity of the Indian crafts they buy and often pay a lot of money for plastic and/or imported goods, he said.

Mr. Eriacho said it is currently up to vendors to represent accurately what they are selling, though many do not. He said the industry needs more stringent rules and oversight, especially because native artists and vendors are finding it difficult to compete against cheap fakes. Representative Lundstrom pointed out that Gallup is one of the worst areas for fakes. Mr. Eriacho said Indian artists and vendors need financial and other help in educating the public about fakes. In the meantime, he said, the CIAC has collaborated with the New Mexico and Arizona tourism departments in printing 34,000 glossy color brochures called "Which Is Authentic Indian Handmade?".

At 11:10 a.m., Representative Lundstrom announced the presence of a quorum and reconvened as a committee. She asked the committee for recommendations on the issues of authenticity and consumer protection with regard to Indian arts and crafts.

Senator Griego said Senate Memorial 55, which passed in the last session, asks the federal government to prohibit detachable country-of-origin stickers on imported items and

instead to require some sort of permanent marking. He said he will support any measure to get the issue on the "radar screen" of New Mexico's congressional delegation and made a motion to send a letter to the delegation, with Senate Memorial 55 attached, for a federal rule change requiring permanent markings on imported goods. Senator Lovejoy seconded the motion, which passed unanimously.

Representative Jeff moved to send a letter to the congressional delegation asking that a similar letter be sent to the appropriate federal agency asking that such a rule be implemented immediately. Senator Griego seconded the motion; it passed unanimously.

Representative Begaye made a motion to send a letter to the Tourism Department asking for financial and other support for the CIAC's work. Senator Lovejoy suggested putting up billboards that warn consumers about fake Indian jewelry. Representative Lundstrom asked that the motion be amended to include billboards. Representative Begaye concurred. On a second by Representative Jeff, the motion was unanimously approved.

Marvis Aragon, deputy secretary of the Indian Affairs Department (IAD), said he was very taken with Mr. Eriacho's presentation. He said the IAD will work closely with Travis Suazo, tribal liaison for the Tourism Department, on promoting awareness about counterfeit Indian arts and crafts. Representative Lundstrom said the IAD should be the major player on the issue, not the Tourism Department. Representative Begaye said the IAD should be the conduit for all money coming into Indian country. He said he realizes that it would be a huge task for the IAD, but that perhaps the department could hire a contractor to do the work.

Representative Begaye asked for copies of past legislation on Native American arts and crafts authenticity. Representative Lundstrom requested information on the state's authority to regulate vendors and provide consumer information along federal roads.

Senator Keller said that the issue of authenticity has been around for hundreds of years, and the fact that it remains unsolved is an embarrassment for the state. He asked Deputy Secretary Aragon why the IAD has not been more involved in making Native American arts and crafts authenticity a strategic priority because "it seems like a good issue to champion". Deputy Secretary Aragon said the IAD has made its priorities such issues as health and economic development, acknowledging that the authenticity issue is related to economic development. Senator Keller said it would be a great public service if the state provided some proof of authenticity, though it might upset some vendors. Representative Lundstrom suggested that authentication might be performed on-site. Senator Griego said that authenticating Indian art is not only a matter of consumer protection but also one of intellectual property, and that both areas fall under federal jurisdiction. Representative Lundstrom suggested that the committee's next agenda include a discussion on intellectual property.

Representative Jeff made a motion to request that funds be made available in the 2009 state fair budget for on-site authentication of Indian crafts at Indian Village, that staff put together recommendations on how that might work and that those recommendations be

brought to the governor's cabinet. Seconded by Senator Lovejoy, the motion passed without objection.

Senator Keller suggested that agencies such as the All Indian Pueblo Council and the Consumer Protection Division (CPD) of the Attorney General's Office (AGO) might want to join forces to sue counterfeiters. Representative Jeff said she was particularly concerned about unauthorized use of the Zia symbol by such entities as the City of Santa Fe and Southwest Airlines. Representative Lundstrom asked for a briefing on that topic.

The committee recessed for lunch at 12:12 p.m.

Indian Arts and Crafts Sales Act

The committee reconvened at 1:14 p.m. with a presentation from William Keller, assistant attorney general, CPD, AGO. Mr. Keller distributed an internet advertisement for "authentic" Navajo-style jewelry that is made in Thailand. He said more than 90 percent of so-called authentic Indian crafts are imported and arrive in the United States with country-of-origin stickers that can be peeled off, making it easy for vendors to represent the items as authentic.

Mr. Keller said the AGO last year filed suit against two Santa Fe stores selling fake Indian jewelry in violation of the state's Indian Arts and Crafts Sales Act. In the case against Golden Bear Trading in Santa Fe, the judge handed down a consent decree by which Golden Bear Trading will pay restitution both to defrauded customers and to the artist, Calvin Begay. The owners also have to pay a \$10,000 civil penalty to the AGO as well as \$2,500 in legal costs to the AGO and the Department of the Interior's Indian Arts and Crafts Board (IACB), which helped with the investigation, including supplying "buy money" for undercover purchases of fake items.

Mr. Keller noted that Golden Bear Trading is only one of hundreds of companies "doing the same deal". He said that amending the Indian Arts and Crafts Sales Act to augment the penalties for fraud will encourage compliance. He noted that House Bill 92 from the 2009 session, which would have made a felony any fraud involving property valued at a minimum of \$500 — rather than \$10,000, as the law currently reads — never made it to the Senate floor. Representative Madalena sponsored the bill, which Mr. Keller expects to be reintroduced in the 2011 session. In the meantime, his office will continue to work with the IACB as well as state and local Indian arts and crafts associations and groups like Mr. Eriacho's to educate consumers.

Mr. Keller said his office is very much committed to doing enforcement in this area, but he sometimes feels like he and his colleagues are "holding back the ocean with our hand", especially with so many staff vacancies due to the state's hiring freeze.

Representative Lundstrom asked why, if fraud is both a federal and a state crime, it is not prosecuted in both jurisdictions. Mr. Keller said his office can only bring cases under the state's Indian Arts and Crafts Sales Act. The U.S. attorney can prosecute under the federal Unfair Practices Act, which has penalties that are far stiffer. However, he said, federal

prosecutors generally will not take cases involving property valued at less than \$50,000. By way of comparison, the Golden Bear Trading case involved only \$2,400. Federal prosecutors also tend to prioritize terrorism and drug cases, he said.

Representative Lundstrom commented that all roads lead to enforcement and wondered if the AGO should be the lead agency in dealing with the issue rather than the Cultural Affairs Department, as is currently the case. Mr. Keller said he is not in a position to answer that question, but that "talks could occur".

Responding to questions from Senator Keller, Mr. Keller said he is unaware of any Native American artisans attempting to regulate the industry on their own. What would be most helpful, he said, would be passage of the bill enhancing the penalties for selling counterfeit goods. "I think the most effective enforcement is to get someone in jail", he said.

Representative Alcon said he agrees that bringing the value down to \$500 for a felony prosecution is appropriate because as the law stands now, the state has dozens of misdemeanor cases. Representative Powdrell-Culbert agreed, saying it would hit the counterfeiters so hard that it might be a deterrent. At present, she said, it is like swatting the flies in the meeting room. "You swat one and 10 others come. It has no impact.". She suggested that the Native community work with the AGO to file a major suit. Mr. Keller said it might be good to sit down together and have a summit, but that the best thing to do is get federal prosecutors involved because their penalties are far more stringent.

Senator Griego said the federal government is more experienced at, and has more resources to devote to, such issues as patenting, copyright, intellectual property, importation, etc. As such, he said, the attorney general should "figure out how to get the feds more on-board with this". He added that he knows "terrorism is a big thing, but there's not a lot of difference".

Senator Keller commented that, with passage of the State-Tribal Government Collaboration Act, sponsored by Senator Pinto, the issue could be raised in that arena. He suggested that the committee might want to put that issue on a future agenda.

Referring to a brochure the AGO co-produced to educate the public about fraudulent Indian art, Representative Lundstrom asked how "Ma and Pa Kettle from Oklahoma" might get a copy when buying Indian arts and crafts at the state fair. Mr. Keller said they would have to pick up a brochure at the Consumer Affairs booth. Representative Lundstrom said that approach is ineffective. Mr. Keller replied that if she can figure out a way to get him out of his booth, he would be happy to do it. Mr. Eriacho said he agrees with Representative Lundstrom that the government has no real mechanism to educate the general public. Representative Lundstrom said there needs to be a better way, something with a little "sex appeal", to get the word out and get people to look at it.

Responding to questions from Representative Vaughn, Mr. Keller said the members of the Native American Arts and Crafts Authenticity Task Force are appointed by the governor, and no one from the AGO is on the committee. "You should be", Representative Vaughn

said, adding that she would like the task force to report to the Indian Affairs Committee. Representative Lundstrom said she is concerned about gubernatorial appointees leading the task force because the task force would then become subject to the "whim of the governor's office".

Economic Value of Native Arts and Crafts to New Mexico

Bruce Bernstein, Ph.D., executive director, Southwestern Association for Indian Arts (SWAIA), said the economic impact on New Mexico, not only of native arts and crafts but also of native culture, is huge, accounting for approximately half the state's \$4 billion tourist industry. He said those dollars are important to the well-being of New Mexico. For example, he said, some 80 percent of the Zuni population, and between 50 and 75 percent of the much larger Navajo population in New Mexico, make all or some of their income from the arts. He stressed, however, that his numbers are all "estimates and foggy", which he said makes it difficult to pinpoint the true impact that native arts and culture have on New Mexico's economy.

Mr. Bernstein said Native American arts and crafts are a \$500 million business, including \$200 million from Santa Fe's two-day Indian Market, which SWAIA puts on annually in late August. While SWAIA spends a year certifying the artists that participate in Indian Market — some of whom make 50 percent to 80 percent of their yearly income during those two days — the majority of the Indian art market is a "free-for-all", Mr. Bernstein said. He suggested creating some type of regulatory body — similar to the commissions that oversee restaurants, for example, or barber and beauty shops — to oversee the native art market.

Representative Lundstrom made a motion that staff work with local experts to draft a bill creating regulatory mechanisms for Indian arts and crafts. Representative Vaughn seconded the motion, which passed unanimously.

Representative Powdrell-Culbert asked about certification at the state fair's Indian Village and was surprised to hear that there is none. She said she would be pleased to be on a task force that would help establish broader protection of native industries.

Senator Lovejoy complimented SWAIA on its work and noted that people who complain about the expense of participating often forget that SWAIA functions almost entirely through the work of volunteers. She said that her son sells jewelry at Indian Market and will not let his brother help make the jewelry because of the stringent rules requiring artists to do all their own work.

Mr. Bernstein said it surprises and frustrates him that the state pays so little attention to its native cultures; e.g., it offers no financial support, including advertising, for Indian Market, even though it is the biggest cultural event of the year in New Mexico. He thanked the committee for endorsing Senate Memorial 42, designating the third full week in August as Indian Arts and Culture Week, which Senator Pinto sponsored and the governor signed. Although there is no money attached to the bill, Mr. Bernstein said he thinks of it as a "foundational aspect" upon which to build.

Representative Lundstrom called Mr. Bernstein's comments about the state's lack of attention to native arts "a profound statement" and asked what the committee can do about it. Representative Madalena said education should be at the forefront, calling that a "no-brainer". Mr. Eriacho said SWAIA has the volunteers and the economic means to educate the public at Indian Market. Mr. Bernstein reminded Mr. Eriacho that SWAIA offered him a free booth a year ago to provide educational materials to the public, but that Mr. Eriacho has not taken advantage of the offer.

Responding to a series of questions from Representative Jeff, Mr. Bernstein explained that SWAIA:

- charges \$500 for a five-foot by 10-foot booth and \$650 for a 10-foot by 10-foot booth at Indian Market and will raise funds for qualifying artists who cannot afford the booth fee;
- covers only 20 percent of its operating costs, including putting on Indian Market, with the booth fees and raises funds to cover the remaining 80 percent of its operating costs;
- is a nonprofit organization that employs only nine staff members and depends heavily on its 540 volunteers to operate;
- holds Indian Market in Santa Fe because that is where Indian Market started 88 years ago and because Santa Fe is a center for the arts; and
- has a board of directors that is 51 percent Native American.

Representative Jeff said the booth fees are too expensive and asked Mr. Bernstein for a financial breakdown of SWAIA's operations so she could be sure the organization is not making a profit. Mr. Bernstein reminded Representative Jeff that SWAIA is a private, nonprofit organization (which means its books are not public records). He also pointed out that for the cost of their booth fee, artists at Indian Market get free advertising, have access to hundreds of thousands of potential customers and are on a world stage, so they get the dollars and the prestige. Representative Powdrell-Culbert said the booth fees at Indian Market are the going rate — equivalent to what the state fair and the Juneteenth festival charge.

Gallup Inter-Tribal Indian Ceremonial

Representative Lundstrom and Louie Bonaguidi, president, Gallup Inter-Tribal Indian Ceremonial, discussed the status of the ceremonial, which celebrates its 88th year in August and is suffering a shortfall in funding. Representative Lundstrom said funding for the ceremonial was released only a week before it was set to begin and at only a portion of what it received in previous years, so organizers could only "hobble together" this year's ceremonial. She said she hopes people will not be disappointed.

Senator Munoz said he would like funding restored for the ceremonial and included in the IAD budget. Representative Begaye asked why the governor restructured the board and pulled out money. Representative Lundstrom said it was one of the governor's many line-item vetoes and just one of numerous casualties of the state's \$700 million budget deficit. She suggested the committee write a letter to the Legislative Finance Committee (LFC) and to the

governor requesting full funding for next year's ceremonial. Senator Rodriguez suggested adding to the letter the amount of money the ceremonial generates.

Senator Lovejoy described the ceremonial as an "orphan trying to find a fiscal agent" and said she does not think the IAD is the right fiscal agent. Mr. Bonaguidi said he would like the county to be the fiscal agent because the ceremonial belongs to the community. He said the ceremonial is in desperate need of a director. The board asked the previous director to resign because she was not showing up for work despite drawing \$1,000 a week in salary.

Representatives Jeff and Begaye said the board needs restructuring. Representative Lundstrom agreed but said it is more urgent right now to get the state funding in place. She said she would bring to the committee a business plan the ceremonial board prepared for the LFC, which agreed to reinstate funding after the beginning of the current fiscal year if the ceremonial adheres to its business plan. Senator Adair pointed out that the fiscal year began 40 days ago. Mr. Bonaguidi said it was at that time that the LFC released \$75,000, which was the balance remaining from previous fiscal years.

Senator Adair said the number of tenants for the ceremonial has dwindled to a fraction of what it has been in previous years. Mr. Bonaguidi said the ceremonial is like any other business: its merchandise mix changes, and what was a draw in the 1950s and 1960s is no longer a draw today. He said he recalled when Native Americans from across the state and the country arrived for the ceremonial in wagons and camped on the hillside. He said the wagons are gone, but the quality of the art is better than it has ever been.

Senator Adair asked about the law for line-item vetoes. Representative Lundstrom said it is against the law to cut more than 50 percent of an agency's budget. She said the ceremonial originally had a budget of \$175,000 and ended up with \$12,000, and two staff positions were cut. Senator Adair said the veto was a clear violation of the law and asked why it could not be fixed immediately. Senator Munoz said a California state senator sued Governor Arnold Schwarzenegger over line-item vetoes.

In response to questions from Representative Alcon, Mr. Bonaguidi said the ceremonial received state funding from 1936 until 1996, when Governor Gary Johnson cut the funding. He said he does not expect to receive state funding for the ceremonial forever, especially because the ceremonial sometimes has flush years. After one of the better years, it bought the Red Rock State Park, he said.

Following the discussion, the committee previewed the ceremonial's crafts competition.

Adventure Tourism

Karl Loman, vice president, Adventure Gallup and Beyond, and Chuck Van Drunen of *Gallup Journey* magazine, asked that the committee support initiatives boosting adventure tourism in the Gallup area. That includes hiking, biking and a variety of other outdoor activities, some of them along 26 miles of trails that the Youth Conservation Corps built under the tutelage of Mr. Loman and his associates.

Mr. Loman said Gallup's open spaces and magnificent landscape are a natural draw for tourists and, as such, a commodity for the community, which he said has a "fire in its belly when it comes to entrepreneurship". Mr. Van Drunen, who is an avid mountain biker, said that the Zuni Mountains provide some of the finest mountain biking he has ever experienced — and that includes Utah and Colorado and even Ecuador and the Dominican Republic — and that Gallup is a gateway to the Grand Canyon. He asked for the committee's help in advertising Gallup as a destination for adventure tourism.

Following their presentation, Mr. Loman and Mr. Van Drunen led a few hardy committee, staff and audience members on a five-mile round-trip hike to Pyramid Peak.

Tuesday, August 11 — Behavioral Health Care and Long-Term Services

Senator Pinto reconvened the meeting at 9:18 a.m. and turned the chair over to Representative Jeff. She introduced former Navajo Nation President Nelson Begaye, Church Rock Chapter Vice President Robinson Kelly and former state Senator Leonard Tsosie.

Out-of-State Recovery Resources

Gordon Nez, case manager, Friendship House Association of American Indians, Inc., of San Francisco, discussed issues surrounding drug and alcohol abuse among Native Americans, including causes, treatment and prevention. He said there are few adequate recovery resources available for Indians outside of urban areas, but that centers such as Friendship House, a nationally accredited residential treatment center that specializes in services to Native Americans, can fill the void. Founded by a Crownpoint, New Mexico, native, Friendship House offers treatment based on best practices and proven methodologies combined with traditional native practice — a combination Mr. Nez said helps people stay sober longer.

Mr. Nez explained that the nonprofit Friendship House is a Medicaid provider for California and Arizona residents but not for New Mexicans, because the HSD does not fund out-of-state treatment under Medicaid. This is a problem for New Mexico Native Americans seeking addiction treatment — especially in Gallup, which Mr. Nez called the "Indian capital of the world" — because of the dearth of treatment options in the state and the high costs and long waits for residential treatment. Mr. Nez asked the committee for its support in making treatment options like Friendship House available to New Mexico Indians.

Mr. Nez said Friendship House charges \$125 a day. Arizona Medicaid can pay up to \$187 a day for residential treatment for Arizona residents. Friendship House is funded through the Indian Health Service and, in Arizona, sub-grants from the state, he said.

Questions and comments from the committee included the following topics:

- people with addictions often wind up in jail rather than get treatment;
- jail time alone does not work for drug and alcohol addictions but must be combined with behavioral treatment;
- the liquor lobby "swarms like bees during session", when legislators try to carry legislation that is tough on drunk drivers;

- how can New Mexico get reimbursed for sending people to facilities like Friendship House?;
- the state is short \$300 million for Medicaid;
- Governor Richardson wants higher mandatory sentencing for DWI with court-ordered treatment, but perpetrators forced to undergo treatment often wind up drinking again within months; and
- funds for returning veterans to get treatment might be available to Native Americans seeking treatment.

Behavioral Health Collaborative Overview

Linda Roebuck, chief executive officer, New Mexico Behavioral Health Collaborative (BHC), briefed the committee on the collaborative, a cabinet-level group comprising 15 state agencies, including the IAD, that work with the Office of the Governor to improve mental health and substance abuse services in New Mexico. The collaborative awarded a contract in January to a company called OptumHealth, represented at the meeting by executive director Sandy Forquer. OptumHealth took over from ValueOptions the management of benefits for Medicaid and other publicly funded behavioral health programs. The contract will be in effect through June 30, 2013. The FY10 contract includes the following agencies and funds:

- the Aging and Long-Term Services Department (ALTSD): \$59.4 thousand from the general fund;
- the Children, Youth and Families Department (CYFD): \$9,458.8 thousand from the general fund and federal funds;
- the Department of Health: \$5,757.5 thousand from the general fund and federal funds;
- the Corrections Department: \$6,593.5 thousand from the general fund;
- the Human Services Department (HSD):
 - \$53,320.8 thousand from the general fund and federal block grants for non-Medicaid services;
 - \$256,424 thousand from the general fund and federal funds for Medicaid managed care; and
 - \$46,306.5 thousand from the general fund and federal funds for Medicaid fee-for-service.

Representative Lundstrom asked Ms. Roebuck to prepare a spreadsheet to show by department the types and locations of services provided, the contract price and the funding sources.

Ms. Roebuck said the BHC has paid a total of \$226,757,363 for services and has served a total of 63,682 individuals, including 6,719 Native Americans in FY08 and 5,674 Native Americans in the first three quarters of FY09. Recently, she said, the collaborative expanded from 15 regional centers to 18. It has also applied for a grant from the Substance Abuse and Mental Health Services Administration (SAMHSA) for returning soldiers suffering from post-traumatic stress disorder and is requesting grant money from an access-to-recovery program. In response to a question from Senator Pinto, Ms. Roebuck said the BHC needs another \$500,000 for veterans' behavioral health services, especially in San Juan County, which she said has a very high proportion of veterans among the native population.

Senator Pinto said he thought committee members could request \$1 million. "If you can give us more, we can spend it", she said. At present, however, the collaborative's ability to get funds has stagnated, she said.

Questions and comments from the committee and answers from Ms. Roebuck included the following subjects:

- What is the lead agency to which the BHC must report? (The collaborative is formally under the Department of Health but the only permanent co-chair of the collaborative is secretary of human services. The collaborative must be responsive to the other departments that comprise it.)
- How does the money flow and how are services delivered? (This will be discussed in further detail in front of the House Appropriations and Finance Committee.)
- What percentage of its funding comes from federal stimulus money? (Ms. Roebuck did not have the information but promised to get it for the committee.)
- How does the BHC approach the issue of drunk driving? (Ideally, one wants to find a balance between criminal sanctions and treatment.)
- The BHC has expanded its presence on Indian reservations.
- Where do people go if they need mental health services or help with a substance abuse problem? (They can call a hotline or go to a local community mental health or substance abuse program.)
- What recourse do consumers have if they are unhappy about their care? (They can speak with an ombudsman.)
- What kind of outreach is being done on the Navajo Nation, and why is there not more funding there? (The BHC is simply trying to hold on to the money it has been allocated because it will go away next year.)
- The need is greater than the dollars available to treat those needs.
- There is a disconnect with service providers.

Dr. Forquer said OptumHealth has already contracted with 179 clinics. Another 58 are still in the application process, which will make a total of 237 clinics. That compares to ValueOptions' 201 clinics. In the meantime, said Dr. Forquer, no one has been turned away. Emergency cases are treated within two hours, she said.

Responding to Representative Begaye's concern about a "disconnect" with service providers, particularly with multistate contracts, Kim Horan, Native American liaison with the HSD's Behavioral Health Services Division (BHSD), assured the committee that the division would work with Medicaid if and when providers become Medicaid providers. Dr. Forquer said that OptumHealth does not provide contracts in dollars with Medicaid providers but instead uses "quality of care" contracts. When asked about accountability and transparency, Dr. Forquer said it was a "very collaborative process".

Ms. Horan told the committee that the CYFD has a year-long contract with American Indian Development Associates to offer such activities as drum groups, talking circles and sweat lodges to Native American children in the juvenile justice system, particularly at the Youth Diagnostic and Development Center (YDDC).

The committee recessed for lunch at noon and reconvened at 12:45 p.m.

Local Collaboratives

Suzanne Pearlman, cross-agency team manager for local collaboratives, joined representatives from five local collaboratives in explaining how the collaboratives work, individually and collectively, and where they are located. The way each local collaborative works is driven by the specific needs of that community, she said. Some might concentrate on the needs of children while others might spend more time working with she said people on probation or parole. In the latter case, she said the Corrections Department would have a representative on the collaborative, for example. The top three priorities of a local collaborative are transportation, housing and crisis intervention, she explained.

Judith Arciniaco, director of justice systems, OptumHealth, said the most common court-imposed behavioral health modalities for people on parole or probation include substance abuse treatment, anger management or specific behavior modifications related to the crime. The Corrections Department will contract with a regional provider to monitor parolees and probationers and to provide treatment. It is up to the individual to provide his or her own transportation. Sometimes the charges might be dropped if the person completes the program.

Regina Roanhorse of local collaborative (LC) 15 in the Gallup area described the "total community approach" (TCA) of the local collaboratives. TCA is a partnership between the BHC, the "statewide entity" (OptumHealth) and local communities most affected by substance abuse. It integrates local treatment services, prevention activities and law enforcement. The legislature made \$3 million available to local collaboratives in FY08 and FY09 for such TCA projects as a central intake system in LC 4 (San Miguel, Mora and Guadalupe counties); "multi-systemic therapy" for adolescents in LC 5 (Chaves, Lea and Eddy counties); adult drug court, intensive outpatient treatment and a range of prevention services for substance and alcohol abusers in LC 6 (Grant, Luna and Hidalgo counties); prevention activities for at-risk youth in LC 15 (the Navajo Nation); a central assessment and referral site in Rio Arriba County (part of LC 1); and mobile individual/group/family treatment in LC 8 (Colfax County).

Ms. Roanhorse discussed issues specific to the Navajo Nation that could benefit from behavioral intervention, including high unemployment, high crime, extreme poverty, a high suicide rate, high numbers of alcohol-related deaths, etc. In particular, Project TRUST — a New Mexico partnership developed with the University of New Mexico (UNM), the Department of Health, the New Mexico Assembly for School-Based Health Care Policy Project, the Navajo area Indian Health Service, the McKinley Coalition for Healthy and Resilient Youth and other organizations in Indian Country — set out to determine why evidence-based behavioral health services were not meeting the needs of Native American youth, many of whom exhibit behavioral health disparities, including suicide and underage drinking. The goals of Project TRUST, an acronym for "truth", "responsiveness", "understanding", "self-determination" and "transformation," are to

develop a model and guidelines for culturally appropriate, client-centered approaches to behavioral health care for Native American youth and their families.

The panel also briefed the committee on a suicide prevention program called "Native Hope".

Representative Lundstrom requested that staff get information on the total amount of money each collaborative receives. She noted that although they all get the same amount of money for outreach, some collaboratives have greater needs, especially those in Indian country and other areas where outreach must be done in multiple languages and where there is a lack of public media outlets. The discrepancy is particularly keen in rural versus urban areas, she noted.

Other questions and comments from the committee on TCAs and local collaboratives covered the following topics:

- the role of TCA coordinators, such as Ms. Roanhorse;
- the lack of trust in Indian country of state entities;
- that money for teen suicide prevention programs should go primarily to high-risk areas; and
- that the distribution of money for programs is insufficient and poorly planned.

Noting that the committee was three hours behind schedule, Representative Jeff gave a few minutes to the remaining speakers to introduce themselves before moving on to the next agenda item. The speakers included Rick Vigil, former governor, Pueblo of Tesuque; Harrison Kinney, executive manager, BHSD; Carolyn Morris, director of Native American Affairs, OptumHealth; and Alicia King, Coalition for Healthy and Resilient Youth.

Following the presentation, Representative Lundstrom moved to request an appropriation of \$820,000 for behavioral health and human service programs for the Eastern Navajo Agency in McKinley County. Representative Begaye, who sponsored a similar bill that did not pass during the last legislative session, seconded the motion, which passed unanimously.

Navajo Nation Behavioral Health

Albert Long, Navajo Department of Behavioral Health Services, said he had hoped to give a PowerPoint presentation of his organization's work, but recognizing the lateness of the hour, deferred. Instead, he invited the committee to tour the agency's new 72-bed behavioral health facility in what used to be the Shiprock hospital. He said the center would hold an open house on December 22, 2009 and that it would receive patients beginning January 10, 2010. He said the facility will provide treatment services using three modalities: a western medical approach; alternative treatments, including traditional native medicine and practices; and "faith-based initiatives".

Coordinated Long-Term Services (CoLTS)

Stacie Pozernick, R.N., M.S.N., administrator for Home Care Options, Inc. of Gallup and a member of New Mexico CoLTS, stressed the importance that a home health care coordinator not only understand how to navigate the system of home health care options but also understand the community being served. She distributed handouts with home health care statistics, such as the ratio of providers to clients, in Indian country.

Representative Jeff asked home health care workers in the audience to introduce themselves and invited them and their clients to voice their complaints about the two CoLTS providers, Evercare of New Mexico and Amerigroup. Complaints included that:

- it can take up to six weeks to get clients' benefits approved;
- clients can wait as long as six months for much-needed medical equipment;
- clients often wait hours to be transported home from clinics;
- navigating through the providers' systems is difficult — dealing with Medicaid was much simpler; and
- it can take up to two months for home health workers to get paid, as opposed to the previous provider, which sent checks every week.

Cindy Padilla, secretary, ALTSD, said she appreciates that there have been problems since Evercare and Amerigroup came on board, that she realizes the complaints that consumers and workers expressed need to be addressed and that she will get back to the committee with answers. She said she is humbled by the level of commitment of home health care workers as represented by those in the audience. She distributed a hard copy of a slide presentation she had planned for the meeting but for which time did not allow. She said society needs to have a "long conversation" about aging in place and how to care for elders living with disabilities.

Representative Lundstrom made a motion that staff get a breakdown of the contracts with Amerigroup and Evercare, including what the state pays them and who manages the contracts. The motion was seconded and passed unanimously.

Representative Powdrell-Culbert said she concurs with many of the issues presenters raised about Amerigroup and Evercare, having experienced them personally when trying to help low-income people get services. She said the frustration level of dealing with the companies is "unbelievable" and that representatives have been rude to her. The fact that she has to use her position as a state legislator to try to get services for her clients means "that there's something wrong with the system", she said.

Laura Hopkins, chief executive officer, Amerigroup, responded to the complaints as follows:

- the average turnaround to pay home health care workers is 15 to 17 days — less than the 30-day maximum;
- based on a survey of its clients, Amerigroup determined that half were receiving no services, no care coordination and no care support prior to her agency becoming a CoLTS provider;
- clients are difficult to locate;

- Amerigroup "liberated" 67 people from nursing homes, moving them back into the community; and
- there is no incentive for the company not to act as quickly as possible if someone needs services because the sooner the company responds, the sooner it gets paid.

Ms. Hopkins acknowledged that there have been "bumps in the road" and that her company has made mistakes, but, she added, providers have made mistakes, too. She said the company has helped providers fix their mistakes, including teaching them how to get supplies for their clients and how to bill for their services. With regard to problems specific to Indian country, she said Amerigroup has worked very hard to get Native American entrepreneurs involved in the program.

Larry Heyek, deputy director, HSD, said the department contracted with Amerigroup and Evercare in July 2008 because Medicaid was unable to keep track of clients and one-third of mailings to registered clients were coming back to the HSD. Amerigroup and Evercare actually go out into the community to locate people, he said. They also identify people who may not currently need services but will need them in the near future. For example, he said, the department now has 38,000 people in the system who were healthy when they first registered but now need services. The department realizes that "mistakes were made", he said, and the department is attempting to inform consumers and providers about services available through Amerigroup and Evercare and how to get them. He said the two agencies currently employ hundreds of people in New Mexico.

Ms. Esslinger, executive director, Evercare of New Mexico, said she is thrilled to be a partner in the CoLTS program and is especially honored to be serving so many Native Americans. She said the agency hired 16 Native Americans to be on staff and will hire more. As part of a new program, Evercare has an opportunity for improvement, she said. She identified the following "challenges":

- difficulty in physically locating clients;
- client access to services in rural areas;
- transportation for clients; and
- providers' confusion on how to bill Evercare.

Representative Jeff said she is very concerned that providers are not getting paid regularly and pointed out that Ms. Hopkins and Ms. Esslinger are probably getting paid regularly every week or every other week. Representative Vaughn demanded a commitment that Evercare and Amerigroup will try to help the clients who voiced complaints during the meeting and said she wants a follow-up report. Senator Pinto wanted to know how much money the agencies get from the state and federal governments.

Other committee questions and comments included the following topics:

- How much state and federal money do Amerigroup and Evercare receive?
- Why are clients on waiting lists for services or not getting services at all?

- How are clients prioritized for service?
- Are clients contacted while they are on a waiting list so they know they have not been forgotten?
- Coordination of care is of major importance.

Senator Lovejoy said Amerigroup and Evercare are "top-heavy" on administrators. She said she hopes that when Ms. Hopkins and Ms. Esslinger return to their air-conditioned offices, they will make plans to communicate better with their providers and clients. She said that health care should not be a money-making business, but that she is sure that Ms. Hopkins and Ms. Esslinger are making good salaries, and that they should be willing to earn smaller salaries and spread their services out in rural areas. She added that she is disappointed in Amerigroup, Evercare, the ALTSD, the HSD and the lobbyist who reassured her during the legislative session that problems would be resolved. She asked that they come up with better approaches and fix their missteps.

Recess

The committee recessed at 4:32 p.m.

Wednesday, August 12 — Manuelito Chapter House

Welcome and Introductions

Speaking in Navajo, Senator Pinto reconvened the meeting at 9:05 a.m. in the Manuelito Chapter House in Gallup. He asked committee members and staff and members of the audience to introduce themselves. An honor guard presented the colors. Zuni Governor Norman Cooyate led the Pledge of Allegiance. A young girl sang the "Star-Spangled Banner". Senator Pinto passed the gavel to Representative Lundstrom at 9:34 a.m.

Tribal Libraries

Janice Kowemy, director and librarian at the Laguna Public Library, and Tamara Sandia of Jemez Pueblo Community Library identified for the committee some needs of libraries serving Indian nations, tribes and pueblos. They include:

- funding for salaries;
- funding for library expansions and upgrades;
- hiring a tribal libraries coordinator;
- reducing current funding restrictions; and
- professional development training and opportunities for degrees and certifications.

Ms. Kowemy and Ms. Sandia requested that the committee address those issues and endorse legislation that would meet those needs.

Representative Lundstrom asked State Librarian Susan Oberlander to update the committee on the State Library's work with tribal libraries. Ms. Oberlander said the New Mexico State Library regularly offers the following to public and tribal libraries:

- on-site visits, including 10 to tribal libraries last year;
- library training both at local libraries and in Santa Fe;
- preparation for summer reading programs, including training and materials;
- assistance to new libraries — for example, at the Pueblos of San Ildefonso and Nambé;
- distribution of state funding, including state grants-in-aid money that can now be used for operational expenses; and
- database services, newspaper subscriptions and state licensing fees for online magazines.

Regarding the hiring of a tribal libraries coordinator, Ms. Oberlander said the State Library had filed an advertisement with the State Personnel Office (SPO) just as the governor announced a hiring freeze. She noted that the State Library has nine other vacancies in addition to that of tribal libraries coordinator, and she does not know of any other alternatives except to wait for the hiring freeze to end. Ms. Oberlander stressed that despite being short of staff, the State Library has not cut back on services and is trying to attend to tribal libraries as best as it can under the current economic circumstances. She said the State Library will be working with the Bureau of Business and Economic Research at UNM to look at funding in the state for all public and tribal libraries.

Comments and questions from the committee included concerns that:

- smaller libraries will suffer more than larger libraries because the funding formula distributes funds proportionate to the size of the library;
- many rural libraries, especially those not open full-time, did not receive adequate, if any, notice about the deadline for state grants-in-aid, and that they may have missed the deadline to expend those funds;
- the IAD is not doing all it should to help keep tribal libraries operating; and
- the funding process for smaller libraries is not clear-cut.

Representative Alcon said that if the tribal libraries coordinator position were filled, that would solve a lot of the problems facing tribal and other small libraries. Upon a motion made, seconded and approved unanimously, the committee agreed to send a letter from the committee co-chairs to the secretary of finance and administration, with a copy sent to the SPO, requesting that the position of tribal libraries coordinator be exempt from the state hiring freeze. Ms. Oberlander told the committee that the Department of Finance and Administration and the SPO rejected the State Library's request to fill the position. Representative Lundstrom said the executive branch may reconsider its position after receiving a strong letter from the committee.

Representative Lundstrom also requested a breakdown of how much funding each tribal library in the state receives and said she will ask the LFC to review the funding process.

Zuni Temporary Assistance for Needy Families (TANF)

Governor Cooney told the committee that the Pueblo of Zuni needs additional funding for its TANF program, which he said has been hit especially hard by the country's

economic woes. For example, he said, there are more low-income families needing financial assistance, teen pregnancies are on the rise, and the increase in the minimum wage has eaten up much of the pueblo's funds. He asked the committee to endorse legislation that would allow unused TANF funds from the Navajo Nation, which often does not expend all its TANF money, to be reallocated to the Pueblo of Zuni.

On a motion from Representative Alcon and seconded by Representative Jeff, the committee voted unanimously to send a letter to the U.S. Department of Health and Human Services asking that any unexpended TANF funds be redistributed to tribes and pueblos that need additional TANF money to help low-income families.

Navajo TANF

Anthony Dineyazzie, senior program and project specialist with the Policy, Research and Data Section of the Navajo Nation Program for Self-Reliance, gave a shortened overview of the Tribal Family Assistance Plan (TFAP), whose mission is funded in part by TANF and includes ending the dependence of Indian families on government benefits. Committee members asked how much TANF money remains unspent at the end of the year. It was \$12,000 last year, Mr. Dineyazzie said.

Senator Lovejoy pointed out that a portion of Navajo TANF funds reverts back to the federal government every year. She said that is unacceptable — that there is great need for that money within the Navajo Nation, and it is not being used. "If you keep reverting money back, someone is going to come and take it away from you", she said, reminding Mr. Dineyazzie of the Pueblo of Zuni's request to use those reverted funds.

Community Pantry

Hilda Kendall, logistics coordinator, Gallup Community Pantry, gave the committee a brief history of the pantry and described its programs, which include:

- free fresh produce to needy families;
- an "emergency food box", which provides families with up to two weeks' worth of food up to four times a year;
- "food for kids", which serves between 25 and 30 children who otherwise might go hungry;
- the emergency food assistance program, which distributes food to approximately 2,000 people a month;
- the agency program, which distributes food to local nonprofit agencies and churches for distribution to clients; and
- the "dollar stretcher" and "meat box" programs, which provide low-cost food to families.

On a motion made, seconded and approved, the committee approved a capital outlay request for \$150,000 for the pantry.

Other Committee Business

The committee voted unanimously to write a letter to Governor Richardson requesting that at least 10 percent of any budget item involving DWI be used toward

counseling and rehabilitation. The committee discussed the need to come up with recommendations for the Public Education Department's Indian Education Advisory Council on spending state funds earmarked for education. Ms. Lusk told the committee that Nancy Martine-Alonzo, assistant secretary for Indian education, will be available to answer questions on that topic at the committee's October meeting in Mescalero. Representative Madalena requested that someone from the IAD also be present at the October meeting. IAD Deputy Secretary Aragon said someone from his department will be there. Responding to a complaint from the committee at its August meeting, he assured the committee that the department is working with UNM to create an Indian resource guide.

The committee adjourned at 1:00 p.m.

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

**September 8, 2009
Pueblo of Santa Clara and City of Espanola
September 9, 2009
Indian Pueblo Cultural Center
Albuquerque**

**September 10, 2009
University of New Mexico
Albuquerque**

The fourth meeting of the Indian Affairs Committee (IAC) for the 2009 interim was called to order by Senator John Pinto, co-chair, at 10:05 a.m. in the conference room of the adult senior day care program at the Pueblo of Santa Clara. Santa Clara Lieutenant Governor Bruce Tafoya gave an opening prayer. Senator Pinto asked the committee members to introduce themselves, followed by the audience. Among the tribal leaders present were the new director of the adult day care center, Leo Gonzales; special projects director, Mel Tafoya; Julie Shipwa; Matthew Cisneros; and Joseph Gutierrez.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair (9/8 and 9/10)
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Sen. Eric G. Griego (9/8 and 9/10)
Rep. Sandra D. Jeff (9/8 and 9/9)
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom (9/10)
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan (9/8)
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Absent

Sen. George K. Munoz
Sen. John C. Ryan

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

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

Staff

Jennie Lusk
Damian Lara
Tamar Stieber

Guests

The guest list is in the meeting file.

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

Tuesday, September 8 — Pueblo of Santa Clara and the Big Rock Casino

Governor Walter Dasheno welcomed the committee to the Pueblo of Santa Clara. In his opening remarks he paid tribute to Gregorita Echavarita's vision of creating a place at the pueblo where elders could gather to share stories and where the younger generation could leave a parent or grandparent in safety while tending to work or errands. The pueblo's new adult day care center is the manifestation of her vision, though she did not live to see it open. The center will provide programming and meals for senior citizens in the area. The adult day care center is 94% to 95% finished, but the pueblo will need operational funds, the governor said. The pueblo will request \$648,486.80 from the legislature for this purpose.

The governor reviewed the pueblo's other funding priorities as well. (See handout.)

After a brief tour of the adult day care center, the governor and staff and three tribal council members took the committee on a tour of Puye Cliffs, which has opened for the first time since the Los Alamos fire eight years ago. The ancient ruins were abandoned in the 1300s, and most of the people moved to the current site of the Pueblo of Santa Clara or to the pueblos of the Rio Grande. The tourist site of the cliffs was a Fred Harvey operation for many years. Visitors are not allowed to roam freely at the site, but guided tours will take them to the ancestral ruins atop the cliff, to which most Pueblo of Santa Clara residents trace their lineage.

From the cliffs, the governor and his staff brought committee members to the Big Rock Casino for lunch and then led a tour of a hotel under construction adjacent to the casino in Espanola.

Co-Chairs Madalena and Pinto welcomed the audience and presenters during the afternoon as the committee heard from the Indian Affairs Department (IAD) about fiscal affairs between the state and various tribes and pueblos.

Tribal Capital Outlay

The IAD's capital outlay manager, Rebecca Martinez, reported good news to the committee, fulfilling the IAD's statutory obligations to summarize the new year's capital outlay projects and applications. She also distributed handouts on the Tribal Infrastructure Fund (TIF), a list of capital outlay requests and a formal department report. Ms. Martinez reported that the total number of applications for tribal capital outlay was 418 this year, a higher number than in years past. The number of applications is up, the numbers of applicants is up, the number of timely closures of finished projects is up, and little money has reverted. In previous years, state dollars for projects in tribal areas reverted to the general fund, because projects that had to be done in cooperation with other governments could not be completed before the money was lost. After the legislature created the TIF, money for projects in Indian country reverts to the TIF rather than to the state's general fund. Because of that, funds that could help Native American projects are held in a specific fund rather than being diverted to another use.

According to Ms. Martinez, only \$12,000 remains unspent from the \$5.9 million appropriation in Laws 2005. For Laws 2006, all \$4.9 million of the \$5 million appropriated has been spent. The money for Mexican Springs projects that was appropriated in Laws 2007 has not been spent, and a project in Huerfano was withdrawn by the Navajo Nation as a "nonworking project". All of the funds from the Huerfano project — some \$340,000 — revert to the TIF. Some \$4.8 million was appropriated, and only \$2.2 million has been spent thus far for the current fiscal year.

There are no delinquent scopes of work, and there are five projects pending closeout. A total of 21 projects will close on July 1, 2010.

Senator Lovejoy made, and Representative Begaye seconded, a motion to support a \$5 million appropriation to the IAD as a recurring item in the budget, and it passed unanimously. Speaker Lujan suggested that the committee write a letter to the legislature and the governor requesting permanent funding status as an earmark from the TIF.

Senator Lovejoy moved to write to the governor to request that money unspent in tribal areas be given an extension, but the motion failed for lack of a second.

The minutes of the previous IAC meeting were passed unanimously on a motion of Representative Begaye and a second by Representative Powdrell-Culbert.

Because the committee was running late, the presentation by IAD Deputy Secretary Marvis Aragon was postponed until the next day.

The committee recessed at 5:10 p.m.

Wednesday, September 9 — Indian Pueblo Cultural Center

Senator Pinto reconvened the committee at 9:15 a.m. at the Indian Pueblo Cultural Center. Committee members and the audience introduced themselves, and Ron Soliman,

Indian Pueblo Cultural Center director and vice chair of the All Indian Pueblo Council, opened with an invocation.

Gross Receipts Tax Rebate As a Business Incentive for Locating on Tribal Land

Rick Preston, staff attorney and tribal liaison with the Taxation and Revenue Department (TRD), gave the committee an overview of a tax mechanism that could benefit tribes as they seek economic development. The program is in existing law, but only approximately one-half of the eligible tribes participate.

The tax program allows tribes and pueblos to enter into an agreement with the TRD whereby the department collects gross receipts taxes from businesses on tribal land. If the business is tribally owned, 100% of the sales tax is returned to the tribe. If it is not tribally owned, the tribe receives 75% of the tax less a small amount for administration by the TRD. Once tribes collect the money, they can keep it for approved projects, pay it to new businesses as an incentive for locating on tribal lands or use it for another governmental purpose.

Only certain gross receipts taxes qualify, as detailed in Section 7-9-88.1 NMSA 1978. The qualifying gross receipts, sales or similar tax levied by the tribe shall be limited to taxes that: (1) are similar to those imposed by the Gross Receipts and Compensating Tax Act; (2) do not unlawfully discriminate based on membership in the tribe; (3) are not higher than the total of the gross receipts tax rate and local option gross receipts tax rate imposed by New Mexico outside the boundaries of the tribe; (4) provide credit against the tribe's taxable transactions; and (5) are made on the basis of a cooperative agreement between the tribe and the secretary of finance and administration.

In 2007, according to Mr. Preston, \$1.27 million was collected under agreements for the tribal gross receipts tax. Another \$5 million was collected from nontribal entities, resulting in \$3.8 million paid to tribes under the 75%-25% split provided for in statute. The total in 2008 was \$6.5 million. The law provides for tribes to enter agreements for the tax arrangement, but tribal entities can also enter into such agreements, as has the recent Albuquerque Indian School on behalf of all 19 pueblos.

Tribes already participating in the tax structure are the Jicarilla Apache Nation; the Pueblos of Laguna, Pojoaque, Santa Clara, Cochiti, Nambe, Santo Domingo, Taos and Sandia; and Ohkay Owingeh.

The Navajo Nation has a unique taxation agreement with the state that predates the law in Section 7-9-88.1 NMSA 1978, and thus its arrangements for collection of taxes by the state are entirely separate from those under the current discussion.

Tribal Stimulus Funds Update

IAD Deputy Secretary Aragon presented the committee with an update on federal stimulus dollars released to New Mexico tribes. Representative Alcon requested that the update be modified to list the dollars by tribe rather than by project name.

Among the federal grants awarded to tribal entities were: \$5 million for drinking water and \$13 million for a clean water set-aside through the Environmental Protection Agency; a \$6.8 million award through the Indian Housing Block Grant; \$7.7 million for energy efficiency through the Department of Energy; \$212 million for tribal nutrition; \$855,000 for child care; \$15.9 million for persons in the Temporary Assistance for Needy Families program; and \$863,750 for transportation through the Department of Transportation.

In answer to a question from Representative Madalena, Deputy Secretary Aragon said that discretionary money provided by the governor to tribes has a deadline for applications. Deputy Secretary Aragon said the deadline had passed for the discretionary money, but the governor will release more information on his discretionary awards by October.

Off-Reservation Native American Health

Roxanne Spruce-Bly, director, and Norman Ration, board president, Bernalillo County Off-Reservation Native American Health Commission, reported to the committee that House Bill 235, which passed in the regular session of 2008, is being implemented. Members of the commission were appointed on September 23, 2008. The current priority is completion of a comprehensive strategic health plan. The draft report of the commission is ready to send to the Department of Health (DOH), and a final report will be issued to the legislature. Nandini Kuehn, the DOH tribal liaison, said the department is helping the commission and is seeking ways to fund better prevention services.

The staff was instructed to invite departmental tribal liaisons to every presentation and to invite the governor's health staff as well.

Representative Begaye suggested that the committee write a letter requesting that reversions of funds for preventive health be directed to the commission.

Representative Jeff suggested that a letter of support for the commission be written to DOH Secretary Alfredo Vigil noting the importance of the commission's role in decreasing health disparities. On a later motion by Representative Jeff, the committee voted to write Secretary of Human Services Pamela Hyde and Secretary Vigil to request that reverting dollars be sent to the commission. Only one legislator voted against the motion.

Senator Pinto asked how many urban Indians living off-reservation need medical insurance. He was told that approximately 25% of urban Indians access insurance through their employers.

Representative Powdrell-Culbert asked for information regarding the Indian Health Service (IHS) and Native American coverage and was told that there is no difference between a Native American's ability to get care at the University of New Mexico (UNM) hospital and any other person's ability to do the same. However, the

United States signed treaties acknowledging its obligation to provide health care for native people when Native Americans gave up their lands to the U.S. government. Thus, Native Americans have a treaty right to health care, whereas nontribal people do not. Further, a Native American who seeks emergency care at UNM may not be eligible for other government programs, such as Medicaid, because of the local IHS contract. IHS care is not "portable", and it is not "coverage". Rather, IHS is a static system of care financing.

The commission recommended adding preventive care, including wellness programs and health literacy, to its mandate. Part of the inventory the commission is currently doing seeks to establish how many providers have a contract with UNM that would allow tribal persons to get care — particularly preventive care — and if there is money to pay for the care. Currently, a person who seeks an appointment will wait between three weeks and a month to get an appointment, then wait several months to get approval for a referral. Two-thirds of these requests are denied because there is no money to pay for contracts under the IHS budget.

Representative Salazar suggested that every letter written by the committee request a response in writing.

Representative Madalena made, and Representative Jeff seconded, a motion that the IAC endorse a joint memorial requesting a study of whether UNM is living up to the commitment to Indian tribes by treaty, including an analysis of the administration of the indigent fund. The request would go to both houses of the legislature. The working group established through such a memorial should determine, among other things, what percentage of funding goes to administration of the hospital and how the UNM hospital participates in the indigent fund.

Mr. Solimon suggested that the problem with funding preventive care for Native Americans lies at the federal level with the IHS, which needs to improve its government-to-government relationships. He suggested that the state reach out to others to achieve change at the federal level. Probably an Indian "money-follows-the-person" act or something similar could solve many of the funding issues with the IHS.

Innovative Education Approaches for Tribal Students

Jeanne O'Dean of the Universal Telesis 6 Institute told the committee that the purpose of a bill defeated in 2009 is being fulfilled with private funding. Senate Bill 670 from 2009 (virtual 3D academies for lifelong learners in New Mexico) failed. It requested \$6 million and placement of the academies in the Higher Education Department.

Since the session, Ms. O'Dean has found \$8 million in private funds and has arranged for a pilot project at the SIA Technical Charter School located near the Indian Pueblo Cultural Center. The school is working on the pilot project in conjunction with the center, the U.S. Department of Labor and the Job Corps.

The charter school targets high school dropouts and uses free software available for student use. The software and in-person learning tools at the charter school include work force training as well as academic subjects. The school curriculum is based on a European model whereby "lifelong learning" credits are earned and banked along with high school and college diplomas. Potential employers can review applicants' skills as well as their formal education credentials.

Ms. O'Dean presented Harvard University studies and other support for the proposition that regular "online" learning is not effective. Translating words on a page to words on a computer is not effective for learners whose first language is not English or who are more comfortable in languages that are spoken rather than written. She said that students from Native American homes have a more intuitive understanding of learning through storytelling, and storytelling is especially compelling in the "virtual" three-dimensional world. Native American students are more visual, she said, and can both perform and learn more easily in a "virtual" world than through verbal written presentations on paper or on the computer screen. Rather than merely reading about information, a student experiences through the 3D virtual environment the topic at hand.

At this point, a half billion people have been in the "second world" of virtual reality. Now, 80% of English universities teach through virtual worlds. Military surgeons are performing surgery through 3D virtual reality. Also, the virtual world Ms. O'Dean seeks to include in the public school curriculum is "open source" — that is, free. Like Wikipedia, the knowledge attained through participation in the 3D program is "bottom up" and is constantly under revision.

Ms. O'Dean invited committee members to a planning meeting the last week of September at SAI Tech to work on skills and academics.

Tribal Libraries — Funding and Rules Update

Susan Oberlander, state librarian, appeared before the committee for a second time since the last IAC meeting and circulated the library's new rules affecting tribal libraries and answered questions from committee members. In addition, librarians from several tribal areas attended the meeting and responded to concerns about the need for a tribal coordinator at the state library.

Representative Powdrell-Culbert questioned the definition of a "fully developed" library and was told that the definition requires a certain number of operating hours, local acquisition funds and volunteers.

Ms. Oberlander said that the library has added the responsibilities of the tribal liaison to the job description of another staffer because the hiring freeze precludes hiring another liaison. Representative Alcon questioned whether the tribal librarians know who to contact, and Ms. Oberlander responded that they have been notified.

Ms. Oberlander described the process for becoming eligible to be a developing library and acknowledged that the common time frame can be expedited with enough persistence and dedication. She noted, however, that most libraries rely on little state funding for operation or acquisitions. The average grant for law libraries is \$7,000 to \$10,000, but tribes typically receive \$6,000 to \$7,000 at most.

Representative Begaye asked the librarian to respond to the specific requests of the tribal librarians for salary increases, upgrades and expansions, a coordinator, funding restrictions and professional development. Ms. Oberlander said that the majority of operational money should be sought at the local level and that all libraries want more state money. As to flexibility, the librarian said she changed two of three pots of money to be more accessible to tribal libraries; the third, which is from general obligation bonds, cannot be changed. As to expansion, beginning in 2008, an increase will be granted through general obligation bonds. All libraries will experience "a significant increase". The Pueblo of Santa Clara will go from a budget of \$12,000 in 2006 to a budget of \$110,000 in 2007. As to the library coordinator slot, hiring will require the governor's intervention.

The librarian and Secretary Alvin Warren from the IAD have collaborated to raise awareness of the problem of operating without a tribal coordinator for the tribal libraries and together are raising awareness to increase tribal library funding.

The tribal librarians gathered included Janice Kowemy from the Pueblo of Laguna; Dell Connor from the Pueblo of Pojoaque; Cynthia Crespín from the Pueblo of Santo Domingo; Joyce Medina from the Pueblo of Zia; and Mildred Waters, Tracey Charlie and Alana McGrath from the Santa Fe Indian School. Ms. Kowemy noted that few tribal libraries can meet guidelines under the new rules. Ms. Medina said she needs staff as well as capital outlay. Ms. McGrath said that the New Mexico Library Association in 1980 formed the Native American Library Group. She noted that the School Library Materials Act had not included tribal libraries until last year. However, there is no money to implement the act.

Secretary Warren thanked the tribal librarians for the work they do for his own family in the Pueblo of Santa Clara and told the committee that he and the state librarian would sit down and see what they could do together to get funds for a tribal coordinator "unfrozen".

Appointment of a Chair to the Native American Arts and Crafts Commission

Sam Cata, cultural affairs tribal liaison, was named chair of the Native American Arts and Crafts Commission in August, an appointment that the committee urged the governor and Secretary of Cultural Affairs Stuart Ashman to make.

Mr. Cata said the commission had a good Santa Fe town hall meeting and will have one in Gallup soon. The priorities for the commission in the coming year are law enforcement (based on Representative Madalena's bill from last session), re-engaging with

the Attorney General's Office and addressing an economic study of the impact of Native American arts and crafts in New Mexico. The commission is working with the Bureau of Business and Economic Research at UNM to complete the impact statement. The commission is well aware of the financial limitations in New Mexico at this point, Mr. Cata said, but it will do various inexpensive projects to raise awareness of the problem of inauthentic marketing.

Mr. Cata also said he talked to Tony Erachio to help establish some Indian arts groups featuring 7,000 Indian artists and the "gonativearts.com" web site for educational programs and to decide how to spend stimulus money raised through the portal program in Santa Fe.

A discussion on approaches to guaranteeing authenticity followed. Mr. Cata suggested looking at the Alaska model, which coordinates law enforcement with other tribal problems.

Representative Salazar noted that six of the 11 Native American arts and crafts commissioners are from Santa Fe and that neither Gallup nor Taos was represented on the commission. When asked why, Mr. Cata said that the members were chosen some eight to nine months ago, depending on their specialties.

Human Rights Presentation

Juanita Martinez, the investigations officer of the Albuquerque Human Rights Office, told the committee about initiatives against persons who discriminate against Native Americans. The presentation came on the heels of a summertime print media series about people who target and beat up Native Americans who sleep on the streets for want of a better place.

Although the state Human Rights Office had given Ms. Martinez a contact for cutting-edge developments in Indian country, there was a comment to the effect that Ms. Martinez should not have been invited to appear alone. Ms. Martinez divided the topic area of human rights into segments expressly mentioned in state law, including housing discrimination and employment discrimination. The state organization does not work on housing discrimination at this point, and, due to a lack of funding, most investigations of complaints are handled out of the Fort Worth, Texas, office. Ms. Martinez mentioned studies she and her office have been doing, including discriminatory conduct by a potential employer who did not want to hire a Native American employee and different treatment in rental spaces for Native American clients. Ms. Martinez said that she noted only six police officers are Human Rights Office-ready and that her office is working with tribal governments to recruit more Native American police officers.

Urban Indian Education and Health Concerns

Keith Franklin, National Indian Youth Council (NIYC), released to the committee his studies on Native American students in urban areas and noted that over 1,000 children in Albuquerque live without a roof over their heads. The legislators commented that the

data Mr. Franklin presented contradict data made available by the Public Education Department indicating that Native American students are making gains in reading and math.

Mr. Franklin requested that the Indian Education Advisory Council come before the IAC.

Norman Ration, also with NIYC, raised the issue of the obligations of the UNM hospital to set aside a certain number of beds for Native Americans. Representative Madalena said that he and Senator Lovejoy had asked Dr. Paul Roth at UNM Medical Center for data by tribe as to persons who have used the beds.

Recess

The committee recessed at 4:40 p.m.

Thursday, September 10

The IAC and Radioactive and Hazardous Materials Committee (RHMC) met in joint session to hear testimony, consider recommendations from the Joint Subcommittee on Uranium Legacy Management and discuss methods to coordinate state and federal efforts to clean up radioactive waste. The two committees decided to meet jointly following two hearings conducted in the state's primary uranium production belt for the purpose of persuading the federal government to take more financial responsibility for cleanup of uranium tailings, waste disposal sites and ground water left from previous mining, much of it conducted by contractors with federal weapons programs. Representative Madalena called the meeting to order at 9:10 a.m. and Dr. Julia E. Fulghum, vice president for research at UNM, welcomed the members, presenters and audience.

Minutes

Minutes from the August 2009 meeting of the IAC passed without objection.

Uranium Legacy Impacts: Regional Ground Water, Environment and Health

Bill Olson, bureau chief at the Department of Environment (NMED), and Jerry Shoepfner, uranium project team leader at the NMED, discussed the department's efforts to clean up and monitor the Grants Mineral Belt, an area approximately 100 miles long and 20 miles wide in a strip running from the Pueblo of Laguna to Shiprock.

Navajo Nation representatives, updating the status on a project with the federal Environmental Protection Agency (EPA), reported that they have completed a five-year plan for addressing the problems of contamination due to uranium mining. The NMED is seeking a similar plan for the State of New Mexico.

Contamination detected by the NMED at the Ambrosia Lake area (approximately 25 miles north of Gallup) is made all the more serious by the fact that the contamination

sites are interconnected, the department reported. There is little pre-mining ground water data to establish responsibility for the cleanup, and there are serious gaps in data because the EPA standards for uranium mining remediation were established in 2000; thus, it is difficult to establish responsibility for the pollution.

Assessment and Reclamation of Abandoned Uranium Mines

Bill Brancard, director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department (EMNRD), and Tony Herrell, deputy state director of the Bureau of Land Management (BLM), joined Mr. Olson to review problems with dealing with uranium contamination.

Mr. Brancard said that the federal government does not have the ability to fix the mines that industry has abandoned. However, beginning three years ago, the ENMRD has built databases from all the mines in the area and visited sites out in the field. The EMNRD is now working with other agencies and estimates that more than 1,500 locations had a "disturbance" related to uranium. Therefore, the department is focusing on locations that were actually mined. One database has been created to track mines that were once active, and another database has been created for all other mines.

Of the 259 New Mexico mines in 18 counties that reported uranium production, 137 have no record of any reclamation efforts. Focusing on the mines where no record of reclamation exists, the EMNRD has safeguarded 15 abandoned uranium mines from the early 1990s. It identified a need for maintenance at 21 sites on public land between the summer of 2007 and the summer of 2008. In 2009, the department got more detail on seven mines in the Poison Canyon area and did site assessment and surveys. With a \$150,000 appropriation sponsored by Senator Lovejoy, the department hopes to complete 20 site assessments, leveraging state, federal and tribal grants.

There have been three periods of BLM activity in the area — one with an inventory of locations in the 1980s, one abandoned mine land inventory from 1990 to 2006 and an abandoned mine site cleanup module from 2006 to the present.

The last time the department received significant funding, however, was in the 1980s, at which time the BLM surveyed 40 sites for remediation and did work on physical hazards on 12 sites. The inventory included meter readings for radioactivity.

The federal BLM funding for New Mexico was \$125,000 in 2000 and \$675,000 by 2009.

Mr. Herrell said that the BLM has a \$7 million agreement with the U.S. Department of the Interior (DOI) to work for five years on the issue of uranium legacy. The BLM has transferred \$325,000 for 2009 and \$450,000 for 2010 for uranium legacy issues and has targeted \$450,000 to the Ambrosia Lake cleanup. In 2000, the funding was only \$125,000 for the New Mexico uranium legacy.

Questions and discussion ensued on the possibility of adding federal stimulus funds to the effort, the role of the federal Department of Energy (DOE) in the cleanup and a request for staff to find out how much has been spent for the Homestake Mine cleanup.

Report of the Joint Subcommittee on Uranium Legacy

Senator Lovejoy and Representative Lundstrom, aided by LCS staff attorney Damian Lara, reported to the full committees that the joint subcommittee came to consensus on short-term recommendations. The co-chairs of the subcommittee gave a brief history of the establishment of the subcommittee, noting that a delegation of legislators from both committees had traveled to Washington, D.C., last spring to talk with the New Mexico congressional delegation about the legacy of uranium mining. The group was trying to get more federal funds for cleaning up contamination from uranium mining from the post-World War II period up through the 1980s.

The report of the subcommittee included consensus priorities requesting that the New Mexico congressional delegation:

(1) introduce new federal legislation or amendments to the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) to expand federal authority to reclaim mines that were active, remediate ground water contamination and address the spread of ground water contamination and to set aside \$1.5 billion for reclamation and remediation caused by past uranium and milling activities;

(2) work with Interior Secretary Ken Salazar to revise limitations on use of funds in the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for non-coal mine reclamation;

(3) ensure that any future amendments to the SMCRA provide explicit funding flexibility for non-coal mine site reclamation;

(4) support the federal Hardrock Mining and Reclamation Act of 2009;

(5) seek money for the EPA to coordinate with the DOE, the Nuclear Regulatory Commission (NRC), the DOI and state governments to create a five-year plan for cleanup of uranium mines, mill sites and groundwater contamination;

(6) ask the NRC to review cleanup and ground water plans and review the background levels of aquifers affected by uranium mining and milling activities;

(7) seek a National Academy of Sciences study on reclamation of uranium mines and remediation of ground water contamination caused by uranium mining and milling activities; and

(8) amend the federal Radiation Exposure Compensation Act of 1990 to include uranium miners who worked after 1971.

The co-chairs of the subcommittee noted that the only bone of contention among subcommittee members concerned a recommendation that New Mexico help to fund a field conference at New Mexico Institute of Mining and Technology this coming spring because the state is so short on funding. Therefore, that consensus point was dropped. The report of the subcommittee then was written to include only points that were passed by vote. After approval by the IAC and the RHMC, the subcommittee planned to seek endorsement of recommendations by both the governor and tribal leaders across the state.

A motion for approval of the subcommittee's recommendations failed the RHMC but passed the IAC on a vote of seven to three. After much discussion, during which some subcommittee members denied that consensus had been reached, Senator Carroll H. Leavell of the RHMC moved, and Representative John A. Heaton of the RHMC seconded, a motion to strike numbers four and six of the consensus points, which both committees approved. Ultimately, members of the IAC and the RHMC voted unanimously to support the motion of Senator Vernon D. Asbill, which was seconded by Senator David Ulibarri, to request the New Mexico Legislative Council to approve a second joint committee meeting and one more subcommittee meeting. Representative Heaton made the motion, which Representative Powdrell-Culbert seconded, and the two committees unanimously voted to direct staff to redraft letters to the New Mexico congressional delegation, Secretary of the Interior Salazar and Secretary of Energy Dr. Steven Chu to reflect the deletion. Members of both committees approved.

There was no opposition to the motion by Senator Asbill to request the New Mexico Legislative Council to approve an additional day for a joint committee meeting.

Multi-Agency Five-Year Plan to Address the Uranium Legacy in New Mexico

Staff from Region 6 of the EPA addressed the committee over a working lunch. Sam Coleman, director of the Superfund Division, EPA, said that the current Region 6 plan encompasses cleanup of the San Mateo Basin as a priority. He said the agency is collecting input from the state, from tribes and from other states to see which parties need to be included in creating a five-year plan similar to the one that the EPA and the Navajo Nation had created. He expects to release a five-year plan in spring 2010, but he noted that the plan is only a starting point. The EPA is working with the state's Mining and Minerals Division and the NMED's Water and Waste Management Division in the early planning stages.

Mr. Coleman suggested that organizations and governments decide upon the scope of work, and he agreed to send the draft scope of work to the subcommittee.

It is likely that, with the support of each of the committees, the EPA would move more quickly to establish a firm plan of action.

Long-Term Legacy Management and Containment of Ground Water Contamination

Ray Pleiness, director of site operations at the DOE's Office of Legacy Management (OLM), explained to the committees that the state and the DOE do not have

a cooperative agreement for site maintenance. The OLM's support to the NMED is in data sharing, nitrate sampling beyond basic requirements and sampling in general. The OLM has invited NMED participation, including joint sampling and visiting of sites.

To assuage the NMED's concerns about ground water, the OLM will install a shallow monitor, Mr. Pleiness said. On questions from committee members, Mr. Pleiness said that the DOE has the authority to fix sites and has responsibility for mill sites to protect ground water.

To address the lack of communication among different levels of government and different departments within federal, state and tribal governments, a memorandum is being drafted to coordinate all legacy management agencies.

Homestake Site — Status Update

The Homestake Mine, operated from 1956 to 1990 in Milan near Grants, generated 22 million tons of mill tailings over its 30 years of operation. Only the pilings remain now, stored in two huge piles. One pile covers 200 acres and is 100 feet high. The other covers 40 acres and stands at 25 feet tall. The Homestake Mine was declared a Superfund site and is now under assessment by the Agency for Toxic Substances and Disease Registry (ATSDR), a federal public health agency that is part of the U.S. Department of Health and Human Services.

Mine representatives presented the report released on June 26, 2009. Among the findings were that: (1) the uranium, selenium and molybdenum concentrates found in private wells near the Homestake site in the 1970s to 1990s were, in some cases, up to 100 times greater than those over the most recent three years; (2) while some persons took advantage of using alternate water from the City of Milan between 1985 and 1995, others may have continued using their well water and may have been exposed to the contaminants; (3) the ATSDR did not sample soil or vegetables to learn to what extent they were affected by the contaminants; (4) residents of the area might be using contaminated ground water for irrigation and watering livestock, and residents meeting with the ATSDR in 2005 did not report any adverse health effects in the livestock; and (5) water tested between 2005 and 2007 had levels of uranium and selenium concentrates above the minimum but below standards setting a risk of adverse health effects.

Testimony before the committees included that the EPA lowered its standard of 5,000 parts per billion of uranium allowed per million to only 30 contaminant parts per billion in 2000. The standard means that many areas that were approved in previous years are not considered safe now. Also, contamination from the mine is not, as is usually believed, spreading underground. Homestake's representative challenged the legislators to provide any evidence that it is spreading.

Homestake reported that the NMED has not approved its permits for more mining for the past 32 months, and the statement was met with disbelief. Asked why the permit has not yet been approved, Homestake's representative said he did not know. Mr. Olson

said the EMNRD formerly had an issue on the size of the pond and of "radiation migration". Now a public meeting for the public and tribal leaders is set for November 2009 for approval of a restart of the mine.

Representative Lundstrom requested a written response to her question of why the permits for the Homestake Mine still have not been approved.

So far, estimates are that \$100 million will have been spent by 2017 for remediation. The report also mentioned that Homestake's obligation to take remedial action to clean the ground water expires in 2015. Even after the mine's obligation to remediate the ground water ends in 2015, uranium and selenium levels will still be above safe standards for drinking water standards.

The mine has capped the large tailings pile with a radon barrier and an erosion-protection cover on its sides and an interim soil cover on its top. After the tailings are flushed, the small tailings pile will also be capped by an interim soil cover. When the ground water restoration is complete, a final radon barrier will be constructed.

Reclamation and Remediation Standards of Uranium Mill Sites

Keith McConnell, deputy director of the Division of Waste Management and Environmental Protection at the NRC, discussed the roles and responsibilities for "Title I" sites in New Mexico: the EPA is in charge of cleanup and disposal; the DOE is in charge of remediation of sites to EPA standards; the DOE remediates properties close to the mining sites; and the NRC evaluates the work and lets the DOE know about any remaining concerns. The goal is to return the sites to a background level or a maximum contaminant level. Title I sites in New Mexico include Shiprock, where there is active ground water remediation in two areas, and Ambrosia Lake.

Title II sites were determined by agreement with the State of New Mexico in 1974. These include milling activities through 2002 at Ambrosia Lake. Superfund sites are at Homestake and Church Rock. The Title II sites include ARCO at Bluewater, the Homestake Mine in Grants, Ambrosia Lake, Church Rock, L Bar and HRI in Crownpoint. Of these, Ambrosia Lake and Homestake are being decommissioned. The decommissioning sites were the result of a facilitated meeting.

Senator Lovejoy mentioned that the subcommittee met with Commissioner of Public Lands Patrick Lyons on establishing "alternate concentration" limits. These are established at varying levels depending on the site. She noted that the NRC standards sometimes are different from those established by the EPA or DOE. Mr. McConnell said that it is not unusual for state standards to be stricter than the federally established standards, as is the case in New Mexico. Discussion ensued on how the NRC establishes the standard "background" of radiation at a site. The NRC has allowed certain sites simply to raise that "background" level rather than establishing "alternate" standards.

Environmental and Technical Capabilities

Carol Brewer, environmental program manager with the U.S. Army Corps of Engineers (USACE), and Mr. Herrell talked about their recent work on water resources, addressing planning, study and design of "non-coal" mines. The two agencies have \$20 million authorized now and will ask for \$7 million more for 2010.

Representative Madalena asked the USACE to do a study on tribal contract lands (638 contracts). Ms. Brewer said they are working directly with the tribes. The agency's data are available to anyone and are posted on the web at www.usgs.gov.

Mt. Taylor Current Developments — Status Update

Nancy Rose, forest supervisor at the Cibola National Forest and Grasslands, United States Forest Service (USFS), made a brief presentation. Ms. Rose reported that Murex Energy wanted to dig 21 "exploration" holes on the mountain. Because the mountain contains sacred sites, the exploration holes were not dug. The USFS also rejected one application from La Jara Mesa, and three others are in preliminary discussions.

The USFS will begin the National Environmental Policy Act assessment for uranium in 2011. At that time, all the builder proposals will be combined into one environmental impact statement. A decision is expected next spring.

Uranium Legacy Impacts on Health of Residents

Dr. Johnnye Lewis, principal investigator of the Navajo Nation Uranium Assessment and head of the Diné Network for Environmental Health Project, and Steve Dearwent, branch chief of ATSDR at the federal Department of Health and Human Services, reviewed their work with 20 chapters from the Eastern Navajo Agency. Among the questions the study recently asked were what level of exposure to uranium causes physical damage and what is the extent of the damage.

The studies have indicated a high rate of kidney disease exists among Navajos in areas with significant uranium exposure. The study shows that 30% of Navajos had access to regulated water, compared with only 0.6% of the United States as a whole. This number translates to 12% of the nationwide count of Native American people. Some prevalence of kidney disease may be attributed to a genetic sensitivity to uranium, Dr. Lewis said, but exposure to all metals can destroy kidneys. People who are healthy can resist some level of exposure, but if a person has diabetes, the exposure can accelerate the diabetes.

Dr. Lewis' study includes 300 people spanning three generations that were exposed to uranium. The population manifested hypertension, kidney disease, diabetes and a high percentage of other autoimmune diseases, all of which increased as the number of mines in a chapter increased. Some 19% to 25% of the respondents were unaware that they were living near a uranium mine.

Dr. Dearwent said his study, the Church Rock Uranium Monitoring Project and Uranium Assessment and Kidney Health Project, assesses the health effects of hazardous substances in the environment. He noted that "exposure routes" for uranium include both inhalation and ingestion, which produce kidney disease, lung cancer, developmental delays, DNA damage and endocrine disruption. His study asks about exposure levels in the population and what activities contribute to the exposure, and the study found that living near waste and living in contaminated buildings as well as relying on contaminated water has an effect.

Legislators discussed whether the level of a single exposure was as significant a contributor to illness as the amount of exposure over a lifetime.

Adjournment

The meeting adjourned at 5:45 p.m.

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

**November 18-20, 2009
Hogback Chapter House
Nenahnezad Chapter House
San Juan Community College
Farmington, NM**

The fifth meeting of the Indian Affairs Committee (IAC) for the 2009 interim was called to order by Senator John Pinto, co-chair, at 10:15 a.m. on Wednesday, November 18, 2009, in the community meeting room of the Hogback Chapter house. The meeting opened with comments from many community members who gathered to celebrate the near-completion of a new power line, and then committee members toured the area where some residents had light and power for the first time in their lives. On returning from the tour and eating together, committee members and tribal leaders introduced themselves and proceeded with the agenda.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair (11/19,11/20)
Rep. Eliseo Alcon
Rep. Ray Begaye
Rep. Sandra D. Jeff (11/18, 11/19)
Sen. George K. Munoz (11/19)
Rep. Jane E. Powdrell-Culbert (11/19,
11/20)
Sen. Nancy Rodriguez

Advisory Members

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

Absent

Sen. Eric G. Griego
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. John C. Ryan
Rep. Gloria C. Vaughn

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

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

Staff

Jennie Lusk
Damian Lara

Guests

The guest list is in the meeting file.

Handouts

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

Wednesday, November 18 — Hogback Chapter

Committee members were greeted by Will Foster, a project director of the final trunk of the South Hogback power line being dedicated. Mr. Foster thanked the state legislature for making it possible for more people to have operating power lines. Chapter President Charlie Jones, Jr., also spoke, as did the chapter's delegate to the Navajo Nation chapter, Ervin Keeswood. Among those at the initial gathering prior to a tour of the area, were power line recipients Mary Begaye, Hilda Begaye and Mr. Foster and his wife, Rosie. Mr. Foster told legislators that the power line project started when he was 26, so seeing the project complete now that he is 53 years old is very satisfying. He told legislators, "When we got a water line, we were happy not to haul water. Now that we have a power line, we're happy. Now, we are going to ask you for gas and phones. We appreciate what we have. We enjoy the light, but expect us to keep asking."

Eugene John, assistant manager of the Shiprock area Navajo Tribal Utility Authority (NTUA) also spoke, noting that Dale George and Delbert Curley from his agency also helped to construct, and build and complete the project.

Senator Pinto, addressing the group gathered to celebrate the completion of the power line, noted that all the votes on the project in the New Mexico legislature were unanimous. He said that he introduced an appropriations bill for the power line in 2004 and was continuously contacted by Hogback Chapter Secretary Anita Hayes, who arranged for the day's celebration.

Russell Hayes, staff assistant to the president of the Navajo Nation, conveyed the nation's congratulations.

Motor Vehicle Department

Mike Sandoval, director, Motor Vehicle Division (MVD), Taxation and Revenue Department (TRD), responded to allegations of discrimination at the MVD office in northwestern New Mexico by explaining that the division follows state personnel rules, which function to keep the names, race and gender of candidates private until interviews. Complaints are received only in writing, and all complaints are sent to all personnel at all offices so that one area can learn from its neighbor. The MVD is developing a training program that includes diversity training and holds regular monthly staff meetings.

Members of the committee were invited to come or to send someone to a monthly meeting for input directly to the manager. Mr. Sandoval said that the City of Farmington and the City of Bloomfield run their own offices under contract with the MVD. The director brought Paul Montoya, field operations director, MVD, Ric Preston, attorney, TRD, and Toby Williams, field operations manager, MVD, with him for the presentation.

Mr. Williams oversees the Gallup, Farmington, Aztec and Bloomfield offices. He reported that in Farmington, one of eight staff members is Native American; in Grants, two of five staff members are Native American; and in Gallup, four of nine staff members are Native American. Candidates for work at the MVD report their own ethnicity on an optional line on the application form. He said a report on the offices recently found that there was a 15- to 20-minute wait at the least efficient offices. Although the MVD uses both Spanish and English languages to announce the availability of an MVD clerk, the director said he would look into providing the service in Navajo as well. He also said he would send someone unannounced into field offices over the next two to three months to double check reports he has received as to the efficiency and courtesy in the offices.

Community members requested that an MVD office be created in Crownpoint, Shiprock, Ramah or elsewhere in the far northwest area of the state so that people do not have to travel so far to get a license renewed. As to questions about proof of identity, the director stated that the law requires one proof of identification and two proofs of residency. He and the MVD have made concerted efforts to accommodate individuals who need some flexibility in the registration process and discussed the availability of forms to delay the need to register or to avoid penalties from late registration based on a car's being out of service.

Although there is no cultural sensitivity training at present, Mr. Sandoval said he is considering creating a cultural sensitivity class and welcomes suggestions as to trainers and a curriculum. He also said he would check into complaints that auto registrations expire without notice.

Ms. Foster, a community member, suggested that the MVD create a standard way of handling individuals who do not have street addresses because they do not have physical addresses at all. Navajo Nation residents probably do not have a utility bill because most have few, if any, public utilities. Bailey Jim, another community member, suggested that translators should be on hand to help people pass their driving tests.

Chapter Proposals

Charlie Jones, president of the Hogback Chapter, lodged a request with committee members for a new power line extension, a new natural gas line, a new bridge at Hatahlie and improvements to the chapter's senior center.

Senator Pinto offered, and Representative Jeff seconded, a motion to endorse the chapter's proposals later in the week when the rest of the legislation is scheduled for discussion, and there was no objection.

Thursday, November 19

The second day of meetings opened with introductions by Juanita Begaye, secretary, Hogback Chapter.

Indian Education

Nancy Martine-Alonzo, assistant secretary for Indian education, Public Education Department (PED), began the review of educational progress for Native American students in New Mexico and offered committee members a copy of a lengthy report on academic improvements. The PED originally planned public education for students from kindergarten to twelfth grade ("K-12"), she said, but now is responsible for "zero to 20". She said the Indian Education Act is the most comprehensive such act in the United States.

The state has started collecting data on its 22 indigenous tribes and is collecting enrollment data at the state level for individuals up to 22 years old.

Ms. Martine-Alonzo detailed the spending of all appropriations in recent years and announced that for fiscal year 2010, grants and projects have been awarded. The money remaining over four years will be spent through awards to tribes by the end of 2010. The program will request the same funding as it did in 2009. Ms. Martine-Alonzo and committee members discussed the Save the Children rural literacy project and Vote for America program as well as educational programs prepared by the PED for Native American students in New Mexico. The perspective of many Native American communities is that the two private nonprofit programs disenfranchised regular school teachers and that competition was especially difficult in that they had to match the budgeted appropriation 10 to one under the statute authorizing Save the Children. The PED now is focusing on improving Native American teacher skills. At present, all eight indigenous languages are taught in the public schools.

Dr. Viola Florez, secretary, Higher Education Department (HED), reported to the committee on the implementation of HB 50. Dr. Florez said she is new at the HED, but that she has been involved at least 13 years in education and has studied children in preschool through age 20. She said that recognizing the need to integrate the PED and the HED was critical in order to improve Indian education. In general, she said, higher education courses are well-articulated and well-aligned, making it possible for students attending tribal or other community colleges to leave after two years and then go straight into four-year college programs. She is gathering information that has never before been gathered on Native American students in higher education and on partners with the PED. Articulation between two- and four-year colleges is close to seamless, she said, but where it is not seamless, the PED and the HED must work together more closely. Students now can go online and get the K-12 courses they need in a dual partnership.

Dr. Matthew J. Martinez, director of Indian education, HED, said that diversity, teacher quality, dual credit, clean energy, nursing, legal planning and research continue to

improve for Indian education planning at the HED. Only 9.7% of Native Americans now complete an associate's degree, nationwide as well as within the state. However, between the associate's degree and a bachelor's degree, the percent of completion drops to 4.28%, according to Dr. Martinez. The need to work on the transfer from community college to university is underscored by such numbers, he said, noting that articulation between levels of post-high school education is improving in the state, with Central New Mexico Community College (CNM) feeding into the University of New Mexico (UNM) and San Juan College feeding into New Mexico State University (NMSU).

Representative Alcon commented that many members of the public assume that Native American communities receive help for education from their own tribes and consequently do not need state funding for higher education. However, he said, while some students may get financial help from a tribe, high school students do not regularly receive such funds. In general, he emphasized, Native American high school students must compete with all other students for scholarships for higher education. Representative Madalena said that Indian tribes do not want to support a "we-versus-them" policy and want to avoid tensions among children who all need the scholarships.

Representative Jeff made, and Senator Rodriguez seconded, a motion requesting that the PED streamline the process for contracting under the Indian Education Act. The motion passed unanimously with the revision that the letter also request that the assistant secretary for Indian education be moved higher in the organizational chart so that the Indian Education Division has more direct contact with the PED.

Minutes

The minutes of the July and September IAC meetings were approved unanimously upon on a motion by Representative Madalena and a second by Representative Jeff.

Lunch Discussion of Capital Outlay

Representative Jeff and Leonard Tsosie, former New Mexico senator, presented a bill for discussion among committee members that suggested changes in procedures to for reauthorizing capital projects in Indian country. The bill, formerly introduced as SB 579, would provide a way to change a capital outlay project's purpose automatically after a certain period of time. The committee heard from Alvin Warren, secretary, Indian Affairs Department (IAD) regarding some concerns about the bill, among them its violations of the anti-donation clause and whether chapters that want to change the purpose of a capital project are be properly certified under both state and Navajo Nation law to receive the funds. He suggested modifying existing language in the bill to provide that a change be made "so long as doing so does not violate Navajo Nation law". Another of Secretary Warren's concerns was that one section of the bill may imply, to some, that severance tax bonds could be used for incidental expenses. He suggested that that section be modified to reflect a different source of funding. Finally, Secretary Warren noted that while an automatic change of purpose begins to solve a very common problem, the language of the bill does not make clear who decides whether tribal support is adequate. The question

remains as to whether a tribe would want to leave the adequacy decision to a New Mexico state agency, such as the IAD.

Mr. Tsosie explained that the anti-donation problem is solved by clarifying that indigency is an exception to the constitutional prohibition on state funds going to a non-state entity. The anti-donation clause of the Constitution of New Mexico provides at Article 4, Section 31, that:

No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state, but the legislature may, in its discretion, ***make appropriations for the charitable institutions and hospitals***, for the maintenance of which annual appropriations were made by the legislative assembly of nineteen hundred and nine. (emphasis added).

However, with the passage in 2006 of Section 6-28-7 NMSA 1978 the constitutional language was modified. The new law states that:

For the purposes of capital outlay projects located within Indian country and authorized to the Indian affairs department, pursuant to Subsection A of Section 14 of Article 9 of the constitution of New Mexico, persons who reside in Indian country who are not served by electric service, water service, indoor plumbing, sewers, telecommunications or related infrastructure are presumed to be indigent. State agencies may contract with and make payment to local tribal entities to assist the indigent in local tribal entities.

The committee suggested making changes and bringing the proposed bill back for endorsement and to circulate the draft to the Department of Finance and Administration (DFA) for its comments and to include a discussion of the bill on the interim Revenue Stabilization and Tax Policy Committee's agenda.

Rebecca Martinez, capital outlay manager, IAD, articulated problems faced by many tribal entities because Governor Richardson froze all capital outlay projects unless they are under contract with a third party. Because the projects are frozen, only those with third-party contracts will be saved from reverting. Apparently, even though another \$200,000 in state appropriations should be available to complete the Hogback power line, the project may be left incomplete because of the freeze and re-contracting. Staff was directed to write a letter to the governor requesting special consideration for Native American capital outlay projects.

On questions from committee members, Ms. Martinez stated that through the special session, the LFC and the DFA are to find \$150 million in capital projects to cut. She said that she has been aware of the Hogback problem, but will meet with the NTUA and meet with all the representatives of the area to find a way, if possible, to free the funds. Shelbert Curley, NTUA, said there is a third-party contract for the Hogback area, but that the Navajo Nation is waiting for a letter from the treasury showing that the project

is viable. He hopes to get out of administrative review for this contract by the end of December. There is room for exceptions to the rule that some projects revert, and projects may be considered on a case-by-case basis. The department is working on these issues and is waiting for further communication from the DFA on the next steps.

Representative Madalena made, and Representative Jeff seconded, a motion to write to the governor requesting clarification of the freeze on capital projects and pointing out that tribal committees are sovereign. The motion passed without objection.

Tribal Infrastructure Fund

Secretary Warren, reported that planning and projecting for the coming year will be difficult because there is no long-term source of funding for projects to be funded through the Tribal Infrastructure Fund (TIF). The IAD has requested \$5 million in recurring funds and a permanent funding source.

The IAC letter requesting that the governor help find a permanent source of funding brought a response from the governor. After that response, the secretary convened four special meetings of the TIF board to consider recommendations for a permanent source of funding. The board's final session will be the same as the IAC's — Friday, December 4, 2009. The department completed a list of potential funding sources, noting which sources required a state or tribal match, and discovered that the United States Department of Agriculture (USDA) received no applications for funding from New Mexico tribes. The money not awarded will be redistributed elsewhere throughout the country for USDA grantees.

The secretary also reported that he is trying to get all funding sources together to begin to align funds with project needs.

Indigenous Soccer

A working group was formed, pursuant to Senate Memorial 4 from the 2009 session, to evaluate the benefits of indigenous soccer leagues. The group included representatives from the Robert Wood Foundation, the IAD, the Department of Health and Southwest Services. Alec Rikow, executive director, and Byna Bear, soccer and wellness director, both of Southwest Services, described how indigenous soccer tournaments developed four years ago, with tournaments lasting a week and participants getting a chance to compete and make friends across campuses. The initiative is growing. The Native American Soccer League can be replicated across the state, not just at tribal colleges and charter schools. The two who spoke, and others from the working group, thanked the committee for its support.

Tribal Extension Services

Leaders of the tribal extension services program of NMSU thanked the committee for its previous and current support. Frank Hodnett, Kathy Landers and Lea Shendo explained the functions of the NMSU program. Responding to questions from committee members, presenters explained that the NMSU money goes to Gallup and thence to the

local service area of the extension agency. The Navajo Nation Department of Agriculture provides funding for the Crownpoint office. Even remote tribal areas are able to receive services through the network of extension offices.

Con Alma

Dolores Roybal, director, Con Alma Foundation, reported that she had partnered with the Kellogg Foundation on midwifery and nurse-practitioner and other mid-level professional models for delivery of services. Under a new program piloted in Alaska, Con Alma, along with Kellogg, is funding an important oral health project that trains community residents as oral health providers for their neighbors. These mid-level professionals can earn a degree while remaining at home, and their local communities can expect progress in oral health. New Mexico, she emphasized, is forty-ninth in the nation in oral health. Bad oral health has demonstrable links to heart disease as well as other ills.

Nenahnezad Water Pipeline

Morris Johnson talked about the water pipeline project, which has taken the Nenahnezad Chapter three years to finish. It has been difficult to find ways to expedite services, but even so, on December 19, the local project will be complete and dedicated.

Medicaid Cuts for Tribal Persons

Joseph Ray, executive director, Native American Independent Living, spoke with representatives about the problems that will result from cuts in Medicaid, and he requested that legislators do their best to prevent cuts for Native American services. He especially urged members to hold harmless those who need services but do not want to leave their homes for that care; independence is critically important.

Voting

Martin W. Aguilar, Native American Election Information Program (NAEIP) coordinator, Office of the Secretary of State, presented bills for endorsement on behalf of that office. The first, an appropriations bill for running the primary and general elections, needs an appropriation of approximately \$90,000 to \$100,000 for tribal community elections. The second bill is a revision of Representative Madalena's HB 390 from last session. Subsection G of HB 390 provides that the secretary of state reimburse counties that provide early voting sites. Some counties have interpreted that bill to mean that only tribes that create *new* early voting sites after passage of HB 390 may be reimbursed. The secretary of state wants to ensure that *all* counties that establish an early voting site in Indian country are reimbursed. With assurance of reimbursement, counties will be more likely to cooperate in opening new offices. The third, a bill clarifying language in the state's voting laws regarding Native American voters, would require certain counties to create a new precinct upon request of a tribe if the tribe's precinct has 800 voters or more during early voting and election day voting combined. The bill also makes special provisions for counties that have been under federal monitoring for voting rights violations to make more voting sites available in Native American communities.

Follow-up questions involved discussion of the availability of NAEIP managers to reach out to people who get most of their information at chapter houses, registered voters versus actual voting and alleged manipulation of absentee voting.

Friday, November 20

Review of Uranium Legacy Subcommittee Work

Mr. Lara presented a revised copy of the letter that was discussed at the joint meeting of the IAC and the Radioactive and Hazardous Materials Committee in September. The letter had been revised based upon discussions at the joint meeting. Representative Madalena moved for endorsement of the revised letter. Representative Alcon seconded the motion and it passed with unanimous approval.

Endorsements

Members reviewed bills already prepared for endorsement, making requests that some bills be revised and brought back next month. The bills, their sponsors and the vote were as follows:

Subject of Bill	Sponsor	Action
1) Medicaid: allow out-of-state placement for tribal members in alcohol residential treatment	Sen. Lovejoy, Rep. Begaye	Motion by Sen. Pinto, second by Sen. Adair, unanimous, Endorsed
2) Increase penalties under the Indian Arts and Crafts Sales Act		Is AG getting message? Bring back on Dec. 4.
3) Voting: clarifying statutory language (add "combined")		Review with SoS. Bring back on Dec. 4.
4) Voting: \$175,000 appropriation		Double-check amount. Bring back on Dec. 4.
5) Voting: SoS reimbursement to counties for early voting on tribal lands		Bring back on Dec. 4; needs sponsor.
6) Tribal library appropriation		Two objections. Needs sponsor.
X) Capital outlay auto extension		Bring back on Dec. 4.
Y) making tribes eligible for state fire protection funds	Rep. Begaye	Bring back on Dec. 4. Tabled for IAD review.
Z) Tribal emergency protection	Rep. Begaye	Bring back on Dec. 4.

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

**December 3-4, 2009
Room 322, State Capitol
Santa Fe**

The sixth meeting of the Indian Affairs Committee (IAC) for the 2009 interim was called to order by Senator John Pinto, co-chair, on Thursday, December 3, 2009, at 9:30 a.m. in Room 322 of the State Capitol in Santa Fe, New Mexico.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair (12/4)
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Sen. Eric G. Griego (12/3)
Rep. Sandra D. Jeff (12/3)
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Jane E. Powdrell-Culbert (12/4)
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Absent

Sen. John C. Ryan

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar (12/3)

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

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

Staff

Damian Lara
Jennie Lusk
Tamar Stieber

Guests

The guest list is in the meeting file.

Handouts

All handouts are in the meeting file.

Thursday, December 3

Subcommittee

The IAC met as a subcommittee until 10:00 a.m., when a quorum was present and noted. Senator Pinto asked committee, staff and audience members to introduce themselves. Following the introductions, Senator Pinto recited an invocation in Navajo and English.

Indian Education and Performance

Catherine Cross-Maple, deputy secretary, Public Education Department (PED), and Nancy Martine-Alonzo, assistant secretary of Indian education, responded to the committee's concerns that educators who contract with the PED through the Indian Education Division (IED) are not getting paid in a timely fashion. Committee members worry that those educators, including private individuals and small businesses, may not apply for contracts in the future because of the long delays. In a December 2 letter to Governor Bill Richardson and Secretary of Public Education Veronica Garcia, the committee requested that Ms. Martine-Alonzo be moved up in the PED's organizational chart so that she can be more directly involved in decision-making and expedite Indian education priorities.

Deputy Secretary Cross-Maple said the PED has worked hard to see that the Indian Education Act is fully implemented and the Indian Education Fund fully utilized. Ms. Martine-Alonzo presented a report (in the meeting file) summarizing the history of and justification for the fund and showing appropriations and distributions beginning in fiscal year (FY) 2004 and projected through FY 2011. For the current fiscal year, there will be a \$5.5 million carry-over, which will be included in the budget for FY 2011. She said the carry-over is due, in part, to the fact that the IED is a new department in the PED and because it changed its contracts from joint powers agreements to intergovernmental agreements. She said the division has taken a lot of care to spend down its carry-over funds and ensure that projects are sustainable.

Paul Aguilar, an analyst for the Legislative Finance Committee (LFC), said he sees several basic problems with the IED:

- Despite annual expenditure projections showing it will spend all its money, the IED's money does not get spent.
- The vast majority of IED funds pay for programs focused on native language and culture. While he described that as "vitaly important", Mr. Aguilar said the division ignores the other charge of the Indian Education Act: helping Native American students achieve learning goals statewide.

- The IED operates more like a contract management division than an educational assistance division.

In addition, said Mr. Aguilar, there does not appear to be a request for proposals (RFP) or other application process at the IED. He said the division seems to be sending tribes and pueblos checks for either \$40,000 or \$60,000 and letting the tribes and pueblos figure out what to do with the money after the fact. It would be a better use of the funds if the pueblos and tribes came up with programs before getting money earmarked for Indian education, he said. Mr. Aguilar noted that the LFC was meeting at that moment and was about to learn that state revenues have dropped another \$50 million. He said he feared that the LFC will not recommend earmarks for the Save the Children or Teach for America programs, both of which had contracts with the IED, unless it receives direction to do so from the IAC.

Tina Deschenie of Farmington, who sits on the Indian Education Advisory Council (IEAC), said the council has had the same concerns, and it made a written request for a breakdown by fiscal year of IED programs and grants, funds expended, funds reimbursed and carry-over amounts. The council also requested records of all correspondence between the IED and New Mexico tribes. She said the council is still waiting for the information.

Deputy Secretary Cross-Maple said the IED is working with a federal technical assistance center and the Southwest Comprehensive Center to help Native American students meet education goals. The division is also developing a web-based tool that monitors the needs and requirements of Indian school districts throughout the state, she said.

Senator Munoz asked why Teach for America is a sole-source contract and why the contract has not yet been signed. Ms. Martine-Alonzo said the process to engage Teach for America, a national organization whose aim is to end educational inequity in the United States, began as an RFP and then changed, mid-stream, to a sole-source contract, which required resubmitting the request. The Department of Finance and Administration (DFA) still has questions about the contract, and flagged it because the IED requested that it be retroactive to the beginning of the fiscal year. The contract is now back with the IED for responses to the DFA's concerns.

Representative Begaye asked why the DFA was not present to address the committee. Ms. Lusk said the DFA told her that the PED is in a better position to answer the committee's questions.

Deputy Secretary Cross-Maple said that backdating an application could present a procurement violation. She said the PED was ready to issue the contract in August, but the department had the "brakes put on" when the request was changed to a sole-source contract. The RFP process would have moved the process more quickly than an

application for a sole-source contract, she said, adding, "We felt that would have been the cleanest route."

Deputy Secretary Cross-Maple referred the committee to attachments to Ms. Martine-Alonzo's handout that show the contract process, and particularly to the DFA review process, which she stressed could require the contract going back and forth between the two departments more than once. "We are trying to be as responsive as possible in a timely manner to the DFA's request for information", she said. Deputy Secretary Cross-Maple also noted that preparing for the October special session further delayed the contract approval process.

Senator Munoz said that 3,000 people applied for 67 jobs "in the middle of nowhere" in McKinley County. Because of the delays in approving the Teach for America contract, he said, the county will be 67 teachers short. "It's a big issue", he said. "We've got to get this contract done. They've basically been screwed by the school system and by the state. We're going to lose it. They'll go to another part of the state where they don't have these problems."

Other questions and comments included the following:

- *How many people staff the IED?* The IED has a staff of nine.
- *Who oversees contracts for services?* There is a part-time individual in the PED to provide assistance in handling funds.
- *Why is there a middleman and what are her services to the Indian Education Fund?* Her name is Pashella Reynolds-Forte. Her role is to bridge the gap. She works for the assessment division. She has 27 years of state finance administration under her belt. Her functions are to assist in getting funds appropriately budgeted, help applications go through the contract process and make sure vendors get paid. She is a liaison between the finance and program sides. If it were not for Ms. Reynolds-Forte, nothing would have moved. She takes ownership of a project and shepherds it through the entire process. She has been a huge asset to the IED, the Special Education Division, the assessment division and the department in general.
- *Would Ms. Martinez-Alonzo have better control of the funds if she handled them herself?* Initially, the role that Ms. Reynolds-Forte provided was necessary because of a backlog of funds. She has been helpful to the IED.
- *How is Ms. Reynolds-Forte paid?* Don Moya, deputy secretary of education, said the IED tracks her hours and makes sure she is paid from the appropriate source. He said it is a "slippery slope" to focus on the role of a single individual in the PED.

Mr. Aguilar said the IED's budget is good; it just needs to be executed. Noting that the fiscal year is half over and the division has not moved any money, he said, "If the division can execute a budget and get down to current funding in fiscal year 2010, it would be amazing.". He added that the IED often takes 60 days to pay contractors.

Deputy Secretary Moya said the department currently averages 31 or 32 days to pay contractors.

Senator Lovejoy asked how the committee can help the IED to iron out glitches in its system. She pointed out that it took two years to get the IEAC started, and she would like to see the council do its job. Representative Vaughn said that she, too, would like to see the council do some of the work. Ms. Martine-Alonzo responded that the role of the IEAC is to advocate for tribes.

The chair recognized Regis Pecos, former governor of the Pueblo of Cochiti and currently chief of staff for Speaker of the House Ben Lujan. Mr. Pecos pointed out that the poor academic performance among Native American students is a result of unique circumstances and logistics that have not changed in 60 years, i.e., tribes not investing money to "grow our own" educational leaders. There are very few native teachers and school administrators, he said. Thus, despite some Indian school districts having more education money than neighboring non-native districts, the Indian students rank much lower in academic achievement than non-Indians, he said. He asked who will guide the research on these disparities and suggested investing in a technical assistance center to provide staff and curriculum development.

Deputy Secretary Cross-Maple said the PED's philosophy is to have a comprehensive, integrated team approach such that all divisions work together to close New Mexico's achievement gap. She said the department has seen tremendous improvement in math and language skills. Also, while improvements may not be fast enough, she said the state needs to "celebrate" any progress.

Representative Vaughn said she would like to see more stress on academics, such as reading and science, and less on culture so that young Native Americans can earn a living and not depend on welfare.

OptumHealth

Linda Roebuck Homer, chief executive officer, Interagency Behavioral Health Purchasing Collaborative, and Katie Falls, secretary-designate of human services, briefed the committee on sanctions the state imposed on OptumHealth, the state's "single entity" (SE) provider for behavioral health services, for not complying with its contract. Primarily, she said, OptumHealth does not have a fully functioning claims system, which has created very significant problems in paying providers and has left many providers in financial straits. She is concerned that if providers are not paid, consumers will not get needed services.

Since July 1, according to a handout, OptumHealth has only expended \$112.1 million of the \$122 million it received from the state. Of 117,286 claims to the company, 12,765 remain unpaid. The SE, by contract, is required to maintain a working electronic claims management system, promptly pay claims, make every effort to reduce administrative burdens on providers and provide consistent and user-friendly forms and

procedures. The SE did not have or did not adequately use a computer system to pay pending claims, and many provider claims were lost even before they entered OptumHealth's tracking, according to Ms. Roebuck Homer. The collaborative has imposed the following sanctions on OptumHealth:

- instituting a "direct corrective action plan" requiring OptumHealth to remediate its noncompliance in the areas of:
 - claims;
 - service registration;
 - authorizations;
 - funds mapping;
 - filing an audit; and
 - financial reporting;
- monetary penalties, including:
 - a lump-sum fee of one percent of the total contract amount (\$1.2 million); and
 - a daily prorated fee of \$10,000 per day beginning November 1 until OptumHealth can show it is paying providers on time;
- actual damages, including:
 - paying providers 1.5 percent interest on all unpaid claims from the date that providers submitted their claims; and
 - all costs incurred by the collaborative in remedying OptumHealth's noncompliance; and
- appointing a state monitor who:
 - is selected by the collaborative;
 - reports to the collaborative;
 - is paid for by OptumHealth; and
 - continues its supervision until OptumHealth:
 - has a fully functioning provider payment system; and
 - can prove it is making every effort to reduce administrative burdens on providers.

Ms. Roebuck Homer said that OptumHealth is disputing the sanctions and claims to have a fully functioning claims management system. She said the company is opposing the civil monetary and actual damage penalties. A hearing on the matter is scheduled for January 7.

Secretary-Designate Falls said the Human Services Department (HSD) is looking at options in the event that it needs to terminate its contract with OptumHealth.

Questions and comments from the committee included the following:

- *ValueOptions had the contract for four years. Was the system broken at that time?* Under state procurement laws, the HSD had to rebid the contract after four years.
- *Did ValueOptions challenge that?* There has been litigation about specific elements.

- *When OptumHealth submitted its proposal, the state knew it did not have the capabilities, but it contracted with OptumHealth anyway. Do you think that is the case?* Ms. Roebuck Homer said she thinks OptumHealth believed it could provide what was necessary, but that when it "went live" and was hit with a big volume of claims, problems emerged.

State Budget Projections/Post-Special-Session Capital Outlay

Cathy T. Fernandez, deputy director, and Kyle Burns, capital outlay analyst, LFC, gave a status update of capital outlay following the October special session and the outlook for the upcoming 2010 legislative session as it relates to Indian affairs. Their presentation included the following:

- Senate Bill 29 (Chapter 7) voided 243 general fund projects totaling \$136.1 million and reauthorized 196 of the voided projects for a total of \$124.5 million in senior severance tax bonds (STBs). However, the governor vetoed 47 of the reauthorized projects, including six located on Native American land totaling \$700,000.
- House Bills 17 and 13 (Chapter 5) reduce general fund appropriations by directing that \$150 million in unexpended general fund appropriations be voided and submitted as a bill in the 2010 session. Projects with a third-party contract valid prior to October 31 will be allowed to continue.

Ms. Fernandez and Mr. Burns passed out a list of capital outlay projects and their fates. The committee had the following questions and comments:

- *Is the state coming into the next session \$500 million short?* Yes, and with recently determined additional deficits, the state will be short another \$62.3 million for a total shortfall of about \$560 million.
- *Reducing the Gallup Intertribal Ceremonial Office by 3.5 percent is "absolutely unacceptable".*
- *The legislature worked so hard for many years to get this money for these projects. How does it get this back?* That funding is gone.
- *Some items on the list that had a valid contract were vetoed.* If a contract is in place, the state has an obligation to pay.
- *Why were some items moved to STBs and others not?* For the general fund projects that are outstanding, the funding is intact, but it is on hold.
- *When will the money be unfrozen? What is the process? Where do we go?* The LFC staff is developing a time line with the Legislative Council Service and the DFA for presentation to the LFC on December 5. Projects will remain frozen until the legislative session.

Representative Alcon said he does not want to be informed at the last minute about which projects will be cut, which is what happened during the special session. Mr. Burns said it will probably be a short time frame this time around, too — "pretty much the eleventh hour, I believe", he said. Representative Alcon said that is being done on purpose so that legislators will not have time to work on keeping their projects. Mr. Burns said that it is not the intent of the LFC to be "sneaky".

Ms. Fernandez said LFC members were very concerned about the legality of the executive order to freeze capital outlay projects because appropriations are the purview of the legislature. She said it would take a legal challenge to stop the governor's order. The executive branch will say the order is legal because it is not really stopping appropriations, only freezing them.

Senator Lovejoy wanted to know why representatives from the DFA, which is part of the executive branch, were not present. LFC staff members were "just the angels who brought the message to us".

Uranium Subcommittee Report

Senator Lovejoy and Representative Lundstrom, co-chairs, Uranium Policy Subcommittee, and Mr. Lara, subcommittee staff member, reported on the activities of the subcommittee, which is composed of members of the IAC and the Radioactive and Hazardous Materials Committee (RHMC). Those activities included visiting the Grants Uranium Belt and meeting in Washington, D.C., with members of Congress and federal agencies involved with cleaning up abandoned uranium mining and milling sites. The subcommittee also met with stakeholders, including community leaders, uranium workers, residents in the uranium belt and members of the uranium industry.

Senator Lovejoy noted that the legacy of uranium mining and milling, of which the primary beneficiary was the federal government, has affected the health of Native Americans disproportionately and that the correlation has not been studied adequately. She added that several companies have applied to start mining uranium again, so it is important to get the legacy issues settled.

Representative Lundstrom agreed that New Mexico must become "proactive" in addressing issues of the uranium legacy, particularly because with increasing international energy demands, there is an increased demand for uranium. She noted that the Economic and Rural Development Committee was presented with pending uranium mining permits. When the public finds out, she said, "all hell will break loose". She said the subcommittee is working with all stakeholders to develop a five-year plan to clean up abandoned mines and enact tighter regulations.

Both Representative Lundstrom and Senator Lovejoy noted that the subcommittee is hampered because it does not have full-time staffers. They requested that the subcommittee continue into the next interim, that it be approved for another trip to Washington, D.C., and that a federal congressional hearing be scheduled in the uranium belt.

Mr. Lara said the subcommittee:

- has identified \$1.5 billion in uranium inventories that the federal Department of Energy can sell to fund abandoned uranium mine (AUM) reclamation;

- has arranged for the appropriate federal agencies to work together in drafting a comprehensive five-year plan to remediate AUMs and abandoned uranium mills, particularly on the Navajo Nation; and
- is forming a plan to seek assurances from the Nuclear Regulatory Commission that it is abiding with Environmental Protection Agency standards.

Representative Lundstrom recommended changing the name of the subcommittee to the Uranium Legacy Cleanup Subcommittee to avoid any confusion that the committee will take a position for or against uranium mining.

Senator Griego said he supports not putting the uranium legacy issue on the back burner. Representative Alcon asked for a definition of "uranium legacy". Representative Lundstrom explained that it refers to past mining and milling activities that left a legacy of contamination because of improper or no cleanup. Representative Alcon said he worked in an underground uranium mine for seven years and saw water running through unmined uranium on a daily basis and that there was no contamination. Representative Lundstrom and Mr. Lara explained that uranium in its natural, unmined form is not toxic because it has not been oxidized.

Representative Lundstrom pointed out that she and Representative Alcon live in the heart of the Grants Uranium Belt and that her mother lives one-eighth of a mile from the largest Superfund site in the state. She said that she is shocked to find how little testing has been done in that area, particularly in light of the high incidence of health problems there.

Capital Outlay for Native American Elders

Ray Espinoza, director, Office of Indian Elder Affairs, Aging and Long-Term Services Department (ALTSD), told the committee that his office has worked hard to secure funding for programs for Native American seniors, and he does not want to lose that funding. While some of those programs are moving very slowly, he said it is due to "reasons beyond our control", i.e., the bureaucracy of Indian governments, particularly on the Navajo Nation.

Fiona Calabasa and Bernadine Salazar of the capital outlay unit said that while there was a great number of reversions back to the general fund for projects in Indian country — primarily because funds had not yet been obligated through a contract — there were far fewer reversions recently than in prior years.

Senator Lovejoy said she received a list of 15 Navajo Nation projects for which the funding was not obligated, which she finds very disturbing. She suggested that capital outlay relating to projects earmarked for Native American elders should fall under the Indian Affairs Department (IAD) instead of the ALTSD. Mr. Espinoza explained that Indian aging programs come through the ALTSD because the department has a process for identifying statewide projects and prioritizing them.

Charlie Gorman, governmental affairs liaison for the Pueblo of Tesuque, described the capital outlay cuts and freeze as being "unilateral". He said the tribes never had a chance to comment. When one government takes money from another government, he said, it has an impact across the board. "We have to be very careful how we continue the process of cutting funding when it affects Indians", he said.

Highway Projects

Jackson Gibson, District 6 commissioner, and Roman Maes, District 5 commissioner, State Transportation Commission (STC), updated the committee on the status of highway projects on Indian land. They noted that the Department of Transportation (DOT) suffered a \$40 million cut in its operating budget.

Mr. Gibson said District 6 encompasses 3,350 miles of roadway in a 20,000-square-mile swath across Cibola, Catron, San Juan, Sandoval and Valencia counties. He passed out a booklet with details about road projects in his district.

Mr. Maes said District 5 has 2,166 miles of roadway in Los Alamos, Rio Arriba, San Juan, San Miguel, Santa Fe, Socorro, Taos and Torraine counties and takes in 10 tribal entities: the Jicarilla Apache Nation, the Navajo Nation and the Pueblos of Nambé, Ohkay Owingeh, Picuris, Pojoaque, San Ildefonso, Santa Clara, Tesuque and Taos. He said 92 percent of District 5 roads are above 6,000 feet, which means that major repair and maintenance requirements, especially during inclement weather, often require well over \$1 million each.

Noting that the state is \$300 million short to meet its needs, Representative Lundstrom asked if the DOT will weigh in and present ideas for next session. She said that the state pulls transportation-related dollars from health care, corrections and many other areas. Without commitments from the governor and the DOT, and without the backing of the STC, legislators are "wasting our time" endorsing transportation projects, she said, adding, "It's hard to ask legislators to stick our necks out during an election year and have the commission be namby-pamby about it." There are a lot of projects that are only halfway done with insufficient funds to complete them, and there are millions of dollars worth of backlogged maintenance projects, she said. "This is a bad way to operate and I'm concerned about it", she said, adding that the state "can't get enough backbone out of the commission to say this is what we want to do".

Mr. Maes acknowledged the problems. He said that constituents make so many demands of the STC that it is difficult to satisfy them all. He agreed that the DOT needs a committed source of funding, and he promised to take Representative Lundstrom's message back to the commission and get answers. He also suggested that the committee draft a letter with recommended legislation to the governor, including a "lock-in dollar amount" to go into a fund for the DOT. Representative Lundstrom pointed out that it is too late to draft a bill because the interim is at an end. She moved that the committee draft a letter to the governor urging his staff to review the House Memorial 5 report from last year's legislative session, which she said lays out the needs of the DOT and what could

happen if they are not adequately funded. Representative Vaughn seconded the motion, which passed without objection or further discussion.

Other questions and comments from the committee included the following:

- *Will the DOT be able to handle the demands made upon it?* The department chose to take its cuts primarily in salary and benefits, so with a light winter, it should be able to provide necessary road maintenance.
- *Many contracts are going to out-of-state bidders, so the state is losing all the way around. It is only fair to keep people in New Mexico working.* The low bidder gets the job, but 88 percent of GRIP II contracts have gone to New Mexico contractors.
- *What is the status of the U.S. 491 project?* Of \$169 million the DOT received in federal stimulus money, almost one-fourth — \$40 million — went into U.S. 491. When compared to the other five districts in the state, "that's quite a chunk". The Navajo Nation contributed \$6 million to the project.
- *What is the tribal liaison's job?* The liaison makes presentations about federal American Recovery and Reinvestment Act funding to tribal governments, researches the shovel-readiness of projects and helps with documentation, among other things.

Recess

The committee recessed at 4:44 p.m.

Friday, December 4

Representative Jeff, acting as co-chair, reconvened the meeting at 9:16 a.m.

Census

U.S. Census Bureau (USCB) representatives Amadeo Sheji, tribal partnership coordinator, Vicki McIntire, deputy director of the Denver Regional Census Center, and Joe Maestas, partnership specialist, provided an overview of their work, including specific initiatives and accomplishments on tribal lands.

Ms. McIntire said the bureau has three functioning offices in the New Mexico area, including one that opened in Window Rock three days earlier. She said the bureau will start delivering questionnaires in March that, for the first time in the history of the census, will be both in Spanish and in English. Also for the first time, the bureau will send reminder postcards to areas with traditionally low response rates before census workers start knocking on doors. Other initiatives specific to Indian country include:

- hiring tribal members to do outreach, knock on doors, collect completed census forms, identify households and do enumeration;
- refraining from sending out any nontribal census workers without express permission from a tribal governor;
- speaking personally to each of the 91 tribal leaders in a 10-state area for a minimum of two hours each;

- attempting to get tribes to appoint a tribal liaison; and
- sharing address lists and maps with tribal nations.

Mr. Sheji listed some accomplishments of the Denver USCB office as they pertain to Native America, including:

- finishing the first phase of the census count, which includes identifying habitable homes and giving them addresses;
- recruiting local census workers; and
- strategizing with tribal leaders on how to get information out to tribal members and how to achieve an accurate count.

Mr. Sheji asked committee members to encourage tribes to participate and to explain that an accurate count means more money to the community.

Mr. Maestas, who is the mayor of Espanola, provided the following statistics:

- Between 1990 and 2000, New Mexico's population increased from 1.5 million to slightly over 1.8 million, which represents a 16 percent growth rate.
- The 2010 population projection for New Mexico is 1.98 million — an eight percent increase.
- There is out-migration from California to the Rocky Mountain states, so the region will pick up congressional seats.
- New Mexico and Colorado are not expected to pick up any additional congressional seats, but Arizona will get two and Texas will get four.
- The additional seats could make the western states a "power block".
- New Mexico's response rate for the 2000 census was 62 percent, which compares to a 76 percent response rate nationally.
- The highest response rate in 2000 was in Los Alamos County, the lowest in Lincoln County, with 81 percent and 39 percent, respectively. Also low were Catron County, with a 44 percent response rate, and Colfax, Mora and Rio Arriba counties, with a 45 percent response rate each.

Mr. Maestas said he wants to create a friendly competition between counties to help improve on the 2000 response rate and make sure that counties get their fair share of the \$400-plus billion in federal formula funding. He stressed that his office will not just focus on highly populated cities, but also on rural communities that traditionally are undercounted. This is especially true in the northern part of the state, which is sparsely populated and traditionally has low counts, he said.

Mr. Maestas gave examples of partnerships throughout the state that are working to get a more accurate census count, including the following:

- Bernalillo County is working the South Valley's hard-to-count international population by enlisting the clergy and faith-based organizations and targeting community events and committees.
- Santa Fe is working with the deacon of Our Lady of Guadalupe Church.

- There are efforts throughout the state to get youth-serving and pro-immigration organizations to assist people in filling out the questionnaires.
- Educators and schoolchildren are also being enlisted to spread the word about the census.
- Chambers of commerce can also help get the word out.

Representative Begaye said people are wary of the census in his district. He said that residents often throw the census form in the trash and walk away. Among the problems causing mistrust are census takers who go to the same house two or three times and, in one case, a census worker who entered a house through a window because no one came to the door. Census workers also often just walk off the job, he said.

Other questions and comments from the committee included the following:

- *How do you count people who get their mail at post office boxes?* The census only counts people at their physical addresses.
- *What is the follow-up in counties that have a low response rate?* If someone refuses to participate in the census, the bureau will get information from neighbors or other sources.
- *What is the pay level for census workers?* It ranges from \$7.65 an hour to \$16.00 an hour. Field positions pay much higher than the minimum wage, and field workers get reimbursed for mileage.
- *What are the minimum qualifications to become a census worker?* One must be at least 18 years old and a U.S. citizen. However, if there are no citizens available to fill a language need, the census bureau will hire a non-citizen. Field workers outside of urban areas must have a driver's license and a car.
- *How does someone apply for a census job?* Call 1-866-861-2010 to learn where to apply locally. Applicants take a three-minute test for basic skills, are fingerprinted, undergo a background check and receive a home visit.
- *How long do census jobs last?* Field workers will finish next June. Office workers will finish in September.
- *What is the importance of a region reaching a population of 50,000?* That is the minimum population necessary to become a municipal planning organization (MPO). MPOs receive dedicated planning funds to manage their own transportation and can make policy decisions. Roswell is striving to reach the 50,000 population level.

Indian Water Rights

State Engineer John R. D'Antonio and Estevan Lopez, director, Interstate Stream Commission (ISC), presented a statutorily required annual update on the Indian water rights settlements. They addressed the status of the proposed settlements, the distribution of money from the Indian Water Rights Settlement Fund and their recommendations on appropriations to the fund as necessary to implement the settlements. Reading from a handout, they provided the committee with the following information:

Status of Proposed Indian Water Rights Settlements

- New Mexico has three settlements pending: 1) the Navajo Nation settlement in the San Juan River adjudication; 2) the settlement agreement with the Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque in the *Aamodt* case; and 3) the Pueblo of Taos settlement in the Rio Pueblo de Taos/Rio Hondo adjudication.
- The settlements were executed in 2005 and 2006, but the United States will not sign any of the agreements until Congress passes specific enabling legislation authorizing the secretary of the interior to sign.

Distribution of Money

There is no cash in the fund at this time. The ISC has not exercised its authority to sell bonds.

Funding Recommendations

The Office of the State Engineer and the ISC recommend that the 2010 legislature appropriate \$15.2 million to the Indian Water Rights Settlement Fund. This request is included in the ISC's budget request.

Questions and comments from the committee included the following:

- *Are there a lot of revisions to the Navajo settlement?* There are minor changes; nothing of substance.
- *Can the state use gross receipts taxes to fund the request of \$15.2 million?* Speaker Lujan said the New Mexico Finance Authority oversees those funds.
- *What is the state's total share of the Aamodt settlement?* Of a total cost of \$286.2 million, the state's share is \$50 million and the federal share is \$169.3 million. The rest will be paid by the City of Santa Fe and Santa Fe County. The state will receive an undetermined amount of credit for prior construction that satisfies portions of the settlement.
- *A poll that Santa Fe County requested about the water settlement was premature and was a setback for any movement in Congress on the Aamodt settlement.* The poll underrepresented the value of the San Juan-Chama drinking water diversion project and garnered an unfavorable response. There is a lot more support than that poll indicated.

DL Sanders, chief counsel, Office of the State Engineer, said there is nothing in the *Aamodt* settlement requiring people to cap their wells unless they choose to do so and, instead, hook up to the pipeline. It is entirely elective, he said, adding that there is a lot of "disinformation" about what the settlement does or does not do.

Charlie Dorame, chair of the Northern Pueblos Tributary Water Rights Association and a former governor of the Pueblo of Tesuque, said he supports the state engineer's recommendation to appropriate \$15.2 million to the water rights settlement.

Representative Jeff moved that the committee write a letter of support for the settlement. Upon a second by Representative Vaughn, the committee unanimously voted in favor of the motion. Mr. D'Antonio said his office will assist in drafting the letter.

Veterans Withholding Settlement

John M. Garcia, secretary, Veterans' Services Department (VSD), Rick Homans, secretary, Taxation and Revenue Department (TRD), and Alvin H. Warren, secretary, IAD, briefed the committee on the status of the Native American Withholding Settlement. They said that, to date, the legislature has appropriated \$1 million to make settlement payments to Native American veterans who had state taxes illegally withheld from their service pay starting in 1977. Payments will include the income tax withheld. The TRD will administer the fund and create procedures and rules. The VSD will assist in filling out the form and in getting the necessary paperwork, such as discharge papers or W-2 tax withholding forms. Secretary Homans said the first application for reimbursement arrived two days earlier.

All the panelists agreed that outreach will be vital in contacting eligible veterans. Secretary Warren asked for the committee's help in getting out the word.

Questions and comments from the committee were as follows:

- *What if a tribe drags its feet in signing the necessary paperwork for a veteran to get paid?* If someone is getting stonewalled, the proper authorities will personally get involved.
- *Can families of deceased veterans file on their behalf?* Yes.

Capital Projects

Arbin Mitchell, executive director, Division of Community Development, Navajo Nation, distributed a report on the status of 261 Navajo Nation capital outlay projects. The Navajo Nation feels that 105 of those projects are "safe", said Mr. Mitchell. He requested that the committee support 97 other projects that are making their way through the Navajo Nation bureaucracy and that could be in jeopardy because they are not yet under contract. They total approximately \$8,122,000, he said, adding that the Navajo Nation did submit exception letters on those projects, and it is waiting for a response from the DFA. Mr. Mitchell said the Navajo Nation did a good job on spending money allocated to it.

Anselm Roanhorse, executive director, Navajo Division of Health, said his division was having trouble expending state funds on projects for the elderly despite having put out money and other resources on planning, design, construction and renovation of senior centers. He said that is due, in large part, to trying to navigate the administrative requirements of the Navajo Nation in addition to fulfilling state requirements. Many requests come directly from local communities, which, though well-intended, can lack the professional expertise necessary to get them through the process. The projects fall into three categories: 1) those that have completed the bidding process, including some projects already underway (\$1,299,655); 2) projects that have not yet been

advertised (\$779,843); and 3) non-exceptional projects that have not yet met all the requirements (\$621,500).

Secretary Warren said he and his staff are working diligently to identify projects and determine which ones have third-party contractors already in place, the amount for which the state is obligated and when the contracts were entered into. He said the IAD is doing its best to work with the tribes, particularly the Navajo Nation. Many have extenuating circumstances and could be good candidates for exception letters explaining why the balance of funds should be extended.

Rebecca Martinez, capital outlay manager, IAD, said she met with the DFA the previous day until 6:00 p.m. and was "grilled" on each project for which the department is seeking an exception. She said that vendors are waiting in line to get paid and that she and her staff are doing their best to assure the DFA that the projects satisfy the rules and regulations. She hopes to have agreements out in the next week.

Representative Alcon said capital outlay money often sits unused for three, four or five years. He asked why anyone is shocked if that money reverts back to the general fund. Mr. Roanhorse said one of the reasons money remains idle is because many projects are underfunded from the start. Under Navajo law, he explained, projects cannot be completed in phases. They must be fully funded at the outset. He said he supports Representative Jeff's initiative allowing communities to pool their funding to complete projects. Ms. Martinez said she wants to vouch for Mr. Mitchell's projects being underfunded. That is the core of why projects are not moving, she said, adding that "bureaucracy cripples the system". Now, she said, it is almost like a panic because people are looking at considerable amounts of money that may be reverting.

Representative Powdrell-Culbert suggested that, rather than waste time on projects that clearly will not be salvaged, the capital outlay staff address only those contracts that are in place.

Representative Lundstrom moved to table Representative Jeff's bill, which would allow tribes to pool capital outlay money from inactive tribal projects and use it for viable tribal projects. Speaker Lujan said that if money is designated for certain projects, chapters cannot decide on their own to designate it for something else. That has to be done legislatively and signed by the governor, he said. It has to be reauthorized, Senator Rodriguez said. Representative Jeff withdrew the bill.

Representative Begaye moved to write a letter to Secretary of Finance and Administration Katherine B. Miller supporting streamlining capital outlay swaps on the Navajo Nation. Senator Pinto seconded the motion. Representative Madalena suggested that Ms. Martinez make recommendations on swapping project funding. Ms. Martinez said that, typically, when a grant agreement is already in place, her office would amend it rather than initiate another full-blown grant agreement. She said there is a swap process for the pueblos, too.

The motion passed with no additional discussion.

The committee also voted to write a letter in support of the projects Mr. Mitchell presented. The motion passed without objection.

Anthony Begay, president of the Mariano Lake Chapter of the Navajo Nation, said the chapter was shocked to learn that Governor Richardson vetoed a \$175,000 appropriation for a parking lot because the chapter had an intergovernmental agreement with McKinley County since 2008 to do the work. Despite it being a valid contract, the governor determined that the contract was "inactive" and "unsalvageable", said Mr. Begay. Speaker Lujan said he does not believe the project was vetoed but that the money was transferred from severance tax bonds to the general fund. Representative Jeff said the governor assured her during a meeting that the money is still there and can be salvaged as long as there is a contract.

Ms. Martinez said she would look into the issue. She said her office also needs to clarify the purpose and intent of Senate Bill 29, which canceled general fund appropriations and then re-established those funds as STBs.

Representative Jeff moved that the committee write a letter to the Navajo Nation on the subject. Representative Madalena brought an end to the discussion before the committee voted on the motion.

Mt. Taylor

Jan V. Biella, acting state archaeologist and interim state historic preservation officer, briefed the committee on Mt. Taylor's status as a traditional cultural property (TCP). She distributed a letter the attorney general wrote to Representative Alcon and Senator Ulibarri concluding that the Cultural Properties Review Committee did not violate the Open Meetings Act in connection with its decision at a June 5 meeting to designate Mt. Taylor permanently as a TCP. She also distributed the final order approving the nomination of Mt. Taylor for listing on the state Register of Cultural Properties.

Representative Rodella reiterated concerns she expressed during a Land Grant Committee meeting in which land grant heirs testified that 5,000 acres of their property were included in the TCP designation. The problem, she explained, is that with a new law allowing land grants to become political subdivisions and, thus, eligible for capital outlay money, their land can be considered state property and be subject to the TCP designation. The issue is now in litigation. "I think the legislature's intent was clearly not to make land grant property become state-owned property", Representative Rodella said. She said that until the issue is resolved, the state could wind up defending another case, which will be a huge financial burden, especially given the current budget crisis.

Data on Uranium Exposure

Mr. Lara presented to the committee a letter requested by Representatives Lundstrom and Madalena asking the state to collect data on the correlation between

exposure to uranium and the incidence of certain diseases in the Grants Uranium Belt. Senator Martinez asked if the letter was proposed to the Uranium Policy Subcommittee. Mr. Lara said it was not. Senator Martinez, who chairs the RHMC, said that it is inappropriate for the letter to go out from the IAC. It should at least be presented to the subcommittee before the IAC approves it, he said, adding, "That was the purpose behind the subcommittee.". Representative Madalena said he raised that question the previous day, but subcommittee Co-Chairs Lovejoy and Lundstrom pointed out that the subcommittee would not be meeting again. Senator Martinez added that he was disappointed not to have had a say as to the members of the Uranium Policy Subcommittee.

On a motion by Representative Alcon and a second by Representative Rodella, the committee voted unanimously to table the letter.

Minutes

The committee approved the minutes, as amended, from the November 18-20 meeting in Shiprock.

Endorsements

The committee endorsed the following bills for introduction in the 2010 legislative session:

Subject of Bill	Sponsors
Allow out-of-state placement for tribal members in residential alcohol treatment centers	Representative Begaye
Dual credit enrollment	Representative Madelena
Lottery tuition scholarships at tribal schools	Representative Madalena
Increase penalties under the Indian Arts and Crafts Sales Act	Representative Madalena
Tribal eligibility for state fire protection funds	Representative Begaye
Tribal emergency protection	Representative Begaye

Adjournment

The committee adjourned for the interim at 3:15 p.m.

**URANIUM POLICY
SUBCOMMITTEE
MINUTES**

MINUTES
of the
URANIUM POLICY SUBCOMMITTEE
OF THE INDIAN AFFAIRS COMMITTEE AND
OF THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE
August 24-25, 2009
Red Rock State Park, Gallup, NM
Cibola County Government Center, Grants, NM

The first meeting of the Uranium Policy Subcommittee was called to order by Senator Lynda M. Lovejoy, co-chair, on Monday, August 24, 2009, at 10:10 a.m. in Red Rock State Park, Gallup.

Present

Rep. Patricia A. Lundstrom, Co-Chair
Sen. Lynda M. Lovejoy, Co-Chair
Sen. Vernon D. Asbill (8/24/09)
Rep. John A. Heaton
Sen. David Ulibarri (8/25/09)
Rep. Jeannette O. Wallace

Absent

Guest Legislator

Sen. George K. Munoz (8/24/09)

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

Staff

Damian Lara
Joshua Sanchez

Guest List

The complete guest list is in the meeting file.

Monday, August 24 — Red Rock State Park

Welcome and Introductions

The subcommittee members introduced themselves and thanked all guests and community members in attendance. Senator Lovejoy indicated that the two days of meetings would focus on uranium legacy issues. These issues are controversial and are in great need of attention by the legislature. These issues will be the focus of future meetings in the coming months. Presenters were asked to focus on the issues on the agenda.

Update on Washington, D.C., Trip

Mr. Lara, Legislative Council Service (LCS), gave an update on the outcomes of the trip to Washington, D.C., regarding uranium legacy cleanup. The meetings were focused on cleanup of uranium mines in New Mexico. As a result of the meetings between the ad hoc Uranium Mining and Tailings Task Force and members of Congress and federal agencies, action to clean up the uranium legacy has taken place. Congressman Ben Ray Lujan has drafted legislation "to provide for a study of abandoned uranium mines in the southwest, to provide for abandoned uranium mine cleanup across jurisdictional lines, including boundaries between tribal land and public land, to establish an intergovernmental Abandoned Legacy Cleanup Program, and for other purposes". Senator Tom Udall included committee report language, for both the energy and water appropriations and interior appropriations bills, requesting a "five-year plan" similar to that of the Navajo Nation Five-Year Plan requested by the U.S. House Committee on Oversight and Government Reform for "New Mexico and other states with uranium contamination" and hopes to include the language in the actual appropriations bills. State and federal agencies have increased dialogue, coordination and cooperation in relation to uranium legacy cleanup. An informal "technical working group" to address uranium contamination in the Grants Mineral Belt was established consisting of the various federal and state agencies with authority to address uranium legacy. The Environmental Protection Agency (EPA) has taken the lead on drafting a "five-year plan" similar to that of the Navajo Nation Five-Year Plan requested by the U.S. House Committee on Oversight and Government Reform. The Bureau of Land Management has made some grant money available for uranium legacy cleanup. Finally, the various federal agencies with authority for uranium legacy cleanup will present before the joint meeting of the Indian Affairs Committee (IAC) and the Radioactive and Hazardous Materials Committee (RHMC) on September 10, 2009, regarding action plans and their commitment to the "five-year plan".

In response to subcommittee questions on federal legislation regarding appropriations for future cleanup, Mr. Lara replied that Representative Ben Ray Lujan will have to take the appropriations to the appropriations committee because the bill only authorizes expenditure of \$4 million and does not fund the program. Mr. Lara added that Senator Jeff Bingaman has introduced a hard rock mining bill. The bill will most likely not get a vote on the floor at this time due to the current health care priorities in Congress. The New Mexico congressional delegation has supported Senator Bingaman's bill, but no further action has been taken on the issue.

The subcommittee commented that the New Mexico congressional delegation should have gotten more involved with this issue because it impacts many New Mexico communities and state agencies. The subcommittee requested that LCS staff continue to follow up on this issue, adding that in New Mexico "uranium mines should get more attention than coal mines".

The subcommittee asked Mr. Lara to go over the eight points of a previous letter sent to the New Mexico congressional delegation by the Uranium Mining and Tailings

Task Force and the status of the delegation's actions on those points. Point one was the introduction of federal legislation to establish authority and funding for abandoned mine reclamation, regional ground water remediation and set-aside money from the sale of uranium held in the Department of Energy (DOE) for uranium legacy cleanup activities in New Mexico. Representative Ben Ray Lujan is currently working on draft legislation that covers the first two points.

The second point was to urge Interior Secretary Ken Salazar to revise Solicitor Opinion M-37014 and the resulting Office of Surface Mining and Reclamation Enforcement (OSM) regulations that limited use of replacement funds for non-coal mine reclamation. None of the New Mexico congressional delegation sent a letter to Secretary Salazar, despite draft language being provided to them by LCS staff.

The third point simply asked that future funding pursuant to the Surface Mining Control and Reclamation Act of 1977 explicitly provide flexibility for non-coal mine site reclamation. All of the New Mexico congressional delegation members indicated that they supported flexibility through informal channels of communication.

The fourth point simply asked support for Senator Bingaman's hard rock mining bill. Most of the New Mexico congressional delegation members have become co-sponsors of that legislation.

The fifth point requested the delegation to seek appropriations for a five-year plan similar to that of the Navajo Nation Five-Year Plan requested by the U.S. House Committee on Oversight and Government Reform and on the ground action by federal agencies such as the EPA, DOE and Department of Interior (DOI).

The sixth point asked the delegation to urge the Nuclear Regulation Commission to review cleanup and ground water plans and the background levels of aquifers to ensure cleanup standards that are equivalent to or more stringent than the levels required by Appendix A to 10 code of federal regulations Part 40 and the standards promulgated by the EPA in 40 code of federal regulations Part 192, Subparts D and E. To the knowledge of Mr. Lara, none of the delegation members have taken any action on this point.

The seventh point asked the delegation to seek a National Academy of Sciences study for the reclamation of uranium mines and remediation of ground water contamination caused by uranium mining and milling activities, including cost analysis, cleanup technology and the funding source of abandoned mine cleanup. To the knowledge of Mr. Lara, none of the delegation members have taken any action on this point.

The eighth point asked the delegation to amend the Radiation Exposure Compensation Act of 1990 (RECA) to include uranium miners who worked after 1971. Mr. Lara indicated that Representative Ben Ray Lujan's office had been in contact

regarding this point and seemed interested in drafting legislation. As of yet, Representative Ben Ray Lujan's office had not shared any draft language.

Upon motion by Representative Heaton, seconded by Representative Lundstrom, the subcommittee voted without objection to recommend that the joint committees send letters to Energy Secretary Steven Chu, Under Secretary Kristina M. Johnson and Assistant Secretary for Environmental Management Inés Triay requesting them to fund uranium mine cleanup activities because the abandoned uranium mines are a result of the United States defense program similar to the Title II uranium mills.

Upon motion by Representative Lundstrom, seconded by Representative Heaton, the subcommittee voted without objection to recommend that the joint committees send a letter once again outlining the eight points in the letter previously sent to the New Mexico congressional delegation and emphasizing the need for a timely OSM rule change on non-coal funding flexibility to the New Mexico congressional delegation, Governor Bill Richardson and Lieutenant Governor Diane Denish.

In response to an inquiry from the subcommittee, Mr. Lara clarified the Governor's Office was asked to participate and work with the subcommittee on uranium legacy issues. Mr. Lara informed the subcommittee that invitations were sent to the governor's staff and that staff replied to indicate they were unable to attend the meeting.

Upon motion by Representative Lundstrom, seconded by Representative Heaton, the subcommittee voted without objection to recommend that the joint committees send a letter to Interior Secretary Ken Salazar, Solicitor Hilary Tompkins and OSM Acting Director Glenda Owens to revise Solicitor Opinion M-37014 and the resulting (OSM) regulations that limited use of replacement funds for non-coal mine reclamation.

Upon motion by Representative Lundstrom, seconded by Senator Lovejoy, the subcommittee voted without objection to request the New Mexico Legislative Council to approve the Uranium Policy Subcommittee to travel to Washington, D.C., to hold future meetings regarding uranium legacy in order to inform the joint committees of the progress made by the federal government.

The subcommittee emphasized that the New Mexico Legislature is a citizen legislature with no full-time staff dedicated solely to stay current on information and work with the federal government. Another trip and help from the Governor's Office would be a great benefit, because this subcommittee has only one staff member following the issue on a regular basis along with many other duties.

Uranium Legacy Impact on Regional Ground Water Quality

Bill Olsen, chief of the Ground Water Bureau of the New Mexico Department of Environment (NMED), and Jerry Schoeppner, uranium project team leader of the NMED, were present to give a presentation. Mr. Olsen presented the responsibilities for the NMED in regard to cleanup of uranium mining sites, issues in water quality permits for

uranium mines, uranium mine closure activities and coordination with the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department (EMNRD). Mr. Olsen informed the committee that, typically, the NMED addresses cleanup in a three-point criteria of 1) closure; 2) abatement and plans under Water Quality Control Commission regulations; and 3) Superfund. Mr. Olsen added that there is currently active cleanup. The NMED is having problems finding responsible parties to commence cleanup activities. The problem arose because some of the mining companies no longer exist.

Mr. Schoeppner informed the subcommittee on details of the Grants Uranium Belt in regard to geographic location, geological hydrological locations and contamination impact, disbursement of contamination, mining de-watering and discharge into surface water, leaching problems and windblown contamination. Thirteen mines are currently under state regulations.

Mr. Schoeppner also informed the subcommittee that the information being presented was taken from historical data on old mines and new mine site measurements. Mr. Schoeppner also explained the criteria used to determine the extent of cleanup implemented for each mine. He described two concepts being used in uranium mine cleanup. Both concepts are based on historical data and the identity of the owner of the mine. The two concepts are baseline and background. Planned future activities use the compiled historical data to: form current outlooks of mining cleanup and emergency removal assessments; sample current water wells; assess risks and hazards; and plan for placement of air and water monitors. Mr. Schoeppner concluded his presentation by stating that even with the current collaboration with other state and federal entities, the cleanup planning and implementation process will remain challenging.

The subcommittee directed LCS staff to research the roll of the national resource trustee. The subcommittee requested both Mr. Olsen and Mr. Schoeppner to provide the joint committees with more detailed information on baseline and background levels in regard to cleanup standards.

Abandoned Uranium Mines — Status Update

Bill Brancard, director of the Mining and Minerals Division (MMD) of the EMNRD, gave an overview of all projects worked on related to active and abandoned uranium mines cleanup. He informed the subcommittee that the focus of current efforts is in abandoned uranium mines that are 30 years old. The primary focus is on surface disturbances of those abandoned uranium mines. The MMD has compiled a database of abandoned uranium mines, in cooperation with the NMED. The MMD has two lists of mines. The first list includes mines that actually produced uranium, which totaled 259 mines, and the second list consists of mines that have no recorded production, including those used for exploratory information. The majority of these mines are located in Cibola, McKinley and San Juan counties. Some sites have reclamation; 137 do not have any record, and they are the ones that are the focus of this project. Twenty-seven sites are joint state and federal project efforts; the legislature has partially funded this effort.

Mr. Brancard explained that his projects have been done typically alone without state or federal assistance, but now they are in cooperation with both state and federal entities in cleanup efforts. Mr. Brancard also noted that as part of a five-year plan for uranium legacy cleanup, the MMD is forming a database of all surface cleanup sites. Mr. Brancard also gave a short overview of funding sources, in which he explained the problems he faced in getting initial funds to keep research of sites going. He briefly discussed Senator Bingaman's efforts to amend current mining laws to include uranium issues into cleanup fund appropriations. He also explained funding problems related to delays in appointment of DOI officials. The delays have resulted in programs being tabled instead of moving forward.

In response to a subcommittee inquiry, Mr. Brancard explained that penalties from improper mining practices that had been in a state-created fund were appropriated by the legislature for this purpose and state and federal appropriations for such projects have funded the efforts.

Mr. Brancard also responded by supporting previously made comments to continue to pressure the New Mexico congressional delegation to support and fund uranium mine cleanup efforts. He also stressed the importance of high-ranking state and federal officials being aware of the seriousness and dangers of not reclaiming uranium mines; that way officials can make more informed decisions on which projects to move forward.

On an inquiry from the subcommittee, the audience was asked if there are any congressional staffers present. Representative Ben Ray Lujan had one constituent services representative in the audience. The subcommittee asked that all information heard today please be forwarded to Washington, D.C., so that these concerns can be addressed in a timely manner. The constituent services representative responded that she would pass on all information she heard to the D.C. office.

In his closing remarks, Mr Brancard informed the subcommittee that his organization is being negatively impacted by the state's hiring freeze and that key positions that relate to working on these issues have not yet been filled. He also informed the subcommittee that his staff have taken on a bigger workload and are being stretched thin in addressing these issues. The subcommittee also requested an outline from the NMED on any future MMD project plans.

Navajo Nation Five-Year Plan

Stephen B. Etsitty of the Navajo Nation EPA was the third presenter. Mr. Etsitty thanked the subcommittee for the invitation to speak and gave an overview of the Navajo Nation's Five-Year Plan for surface mine cleanup. The plan is to remain active until 2012. He informed the subcommittee that the federal EPA was in charge of most operations and gave a brief history of how the Navajo Nation EPA raised uranium mine cleanup concerns to the U.S. House Natural Resources Subcommittee in 1993. He briefed members on all problems being faced by his organization and problems related to cost-sharing to attain

more federal and state funding. He asked the subcommittee to request federal agencies to ease some funding restrictions so that the Navajo EPA can continue to qualify for funding under uranium mine cleanup programs.

Mr. Etsitty gave a brief overview of a new project with the federal Centers for Disease Control and Prevention to study consumption of uranium in ground water for Navajo tribal members. He requested continued support from the subcommittee and opened the floor to questions.

The subcommittee asked how these projects affect the underground aquifer. Mr. Etsitty responded that none of these projects are meant to clean up ground water; they are meant for surface and subsurface cleanup activity only.

The subcommittee expressed its frustration with EPA Region 6 and Region 9 not working together to address cleanup in the area. Mr. Etsitty responded that they have recently started to collaborate efforts regarding cleanup, but more work needs to be done to address this issue. The subcommittee expressed its desire for both EPA Regions 9 and 6 and the Navajo EPA to work together and change the focus of cleanup activities to ground water, because it is the same ground water aquifer that is being used and exposed to contamination by everyone.

The subcommittee directed LCS staff to examine the extent of coordination between EPA Region 6 and Region 9 in working on ground water remediation.

Community Concern: Complete Cleanup

The fourth panel of presenters were Chris Shuey of the Southwest Research and Information Center and Mitchell W. Capitan, Art Gebeau and Nadine Padilla of the Multicultural Alliance for a Safe Environment. The panel presented on community concerns for a complete cleanup of uranium legacy sites in Cibola County and McKinley County areas.

The presenting panel requested both the IAC and RHMC to seek an Army Corps of Engineers study on moving the tailings piles from the Homestake Mine, resulting in accelerated remediation at that site. The panel also requested both committees to help expand the RECA for post-1971 uranium workers and provide funding for health studies and requested both subcommittees to use the cleanup opportunities to create green jobs for New Mexicans. The panel then opened the floor to questions from subcommittee members.

The subcommittee inquired where the tailings piles should go if they were to be removed. Is it a good idea to place the tailings piles in an area where there is no contamination and possibly contaminate something else? The panel members responded that they do not know where the piles should be removed, but they are simply suggesting that it would help speed up the remediation process.

Following the presentation regarding community concerns, Senator Lovejoy recessed the meeting at 4:45 p.m.

Tuesday, August 25 — Cibola County Government Center

The first meeting of the Uranium Policy Subcommittee was called back into session by Senator Lovejoy at 9:15 a.m. at the Cibola County Government Center.

Roundtable Discussion

Representative Lundstrom gave an overview of the day's meeting moderated by Carl Moore. She then handed the floor over to Mr. Moore, who then presented the ground rules for the roundtable discussion. He explained that the purpose of today's discussions was to reach a consensus of items to be discussed at the joint meeting of the IAC and RHMC in Albuquerque on September 10, 2009. He also requested participants in this discussion to be clear, open and critical yet civil in conducting themselves in a respectful manner and to work together to address the uranium legacy issues that impact New Mexico. He also noted that a report on this meeting would be prepared for both the subcommittee and the public to review. Mr. Moore explained that today's discussion would be directly related to the handouts given to subcommittee members at the after-meeting dinner of yesterday's subcommittee meeting in Gallup. He asked for a show of hands of people in the audience who attended that dinner meeting and selected three attendees of that meeting to briefly give their personal opinions of what was discussed and the productivity of it.

Mr. Moore selected Frank Cerno of the Pueblo of Laguna, Mark Pelizza of Uranium Resources, Inc., and Senator Lovejoy to make brief comments.

Mr. Cerno stated that he found the meeting interesting, especially the presentation regarding the Grants Uranium Belt. He felt cleanup efforts are more focused on surface sites and not ground water. He recommended that the focus of cleanup be on ground water contamination. Mr. Cerno voiced his concerns about funding problems for cleanup activities. He recommended that the whole region of uranium activity be included in cleanup plans instead of just site-specific areas. He also noted that he would like to see studies on the impact of uranium on the cultures of the surrounding areas where uranium mining has been conducted to get a different point of view on uranium legacy.

Mr. Pelizza expressed his frustration with the problems left by the uranium legacy. He felt that it is a good thing that talks on the issue are happening, but he expressed that a greater need for action should be done in addition to any discussion. He sees the locals of the area feeling the burden of the uncleaned mines and the health problems that the mines have created. Mr. Pelizza wondered why, with 32 of the 520 mine sites the Navajo Nation has identified for cleanup, there is not more interstate cooperation in addressing cleanup for both states. He added that more coalitions should be formed to work on all aspects of the uranium legacy.

Senator Lovejoy expressed her satisfaction with yesterday's meeting. She felt the group was diverse and had an open exchange of ideas. Senator Lovejoy was happy everyone stayed on point for the meeting, but members of the group are still far apart on addressing some points on the legacy issue. She reiterated that more collaboration and more open dialogue need to be done by coming together to resolve these issues instead of just finger pointing. She questioned who should be the one to step up and address this issue, either the federal or state government, or both. Senator Lovejoy commented on the sensitivity of the impact to local cultures and the need to have everyone that is a stakeholder be involved with solving the legacy problems. She noted the problems that keep the parties far apart and expressed her opinion that more education on the issue is needed on all sides. She expressed her displeasure with the lack of assistance and coordination with uranium legacy issues from the Governor's Office and how the whole issue of uranium cleanup is not taken as seriously as it should be. She closed her comments by stating that despite the problems related to the issue, there is hope in addressing the problems and that good progress for the September meetings has been made with yesterday's meeting.

Mr. Moore asked for additional opinions from the audience and then reiterated the obstacles that are being faced for the issue of uranium legacy, referring to the blue handout with which he provided attendees. Mr. Brancard added to Mr. Moore's comments, stating that there is no law that requires any uranium business to clean up past legacy in the time frame prior to 1972 and that there is no one law to give cleanup authority to any one federal agency.

The subcommittee members commented on how the legislature has shortcomings in passing bills regarding uranium legacy issues and how the bills end up dying in a committee or on the floor. They noted that there are problems with gaining legislator support on certain issues and that, without more public support, these efforts will fail to gain passage through a committee. Without some lobbying efforts, this initiative will die.

Secretary of Indian Affairs Alvin Warren made the comment that this issue of uranium legacy is of importance to the governor, his staff and agencies, but there is a greater need for higher engagement and remediation. The subcommittee expressed its feeling that a lack of representation from the Governor's Office says something about the governor's stance on this issue.

Mr. Moore then broke the roundtable group into three separate groups to form ideas of short-term action that the subcommittee can recommend to the joint committees to address uranium legacy issues. Mr. Moore then reviewed the group's lists of short-term ideas and asked the roundtable discussion group as a whole what should be agreed on as a group, and who should be responsible for follow-up.

Final Recommendations

The subcommittee then held final discussions on the recommendations for short-term action to address the uranium legacy issues. General consensus was reached on the

short-term recommendations of the subcommittee. The Uranium Policy Subcommittee recommends that the RHMC:

- Support a joint memorial requesting the New Mexico Institute of Mining and Technology and New Mexico State University-Grants Campus work with the United States Geological Survey and New Mexico Bureau of Geology and Mineral Resources to produce and provide educational materials for public dissemination regarding uranium legacy concerns in New Mexico.
- Vote to send a letter on behalf of both committees to Senator Jeff Bingaman, Senator Tom Udall, Representative Ben Ray Lujan and Representative Harry Teague requesting that they hold joint field hearing style meetings in the Grants Mineral Belt region on the topic of uranium legacy in New Mexico.
- Vote to send a letter on behalf of both committees to New Mexico congressional delegation members requesting that they seek a National Academy of Sciences, Institute of Medicine or similar impartial and capable federal agency study to identify diseases or conditions caused by radiological or heavy metal exposure as a result of past uranium mining and milling activities, including birth defects and kidney failure.
- Vote to send a letter on behalf of both committees to Governor Bill Richardson requesting that he place uranium legacy cleanup on the proclamation for the special session tentatively planned for later this year.
- Vote to send a letter on behalf of both committees to New Mexico congressional delegation members requesting that they work to achieve the eight points outlined in the previous letter sent by the Uranium Mining and Tailings Task Force.
- Respectfully express to the federal agencies collaborating on a New Mexico five-year plan to address uranium legacy cleanup the importance of including: an electronic clearinghouse of relevant uranium legacy data compiled from federal and state agencies and company reports assessable to federal and state agencies; a comprehensive peer-reviewed study to fill in the data gaps related to current uranium legacy contamination of both surface land and surface and ground water on a regional level; community input; and proper funding and commitment in order to duplicate the success of the EPA Region 9 in reaching benchmarks on the Navajo Nation Five-Year Plan.
- Respectfully request that the EPA include a model in which the tailings piles at the Homestake site are completely removed in the optimization study currently underway.

- The subcommittee directed LCS staff to research alternative avenues to pressure the federal government to dedicate the proceeds from the sale of the uranium inventory held by the DOE specifically to fund uranium legacy cleanup activities in New Mexico.
- The subcommittee directed LCS staff to research the efforts taken by other states to address uranium legacy.
- The subcommittee directed LCS staff to work with the Indian Affairs Department to seek formal endorsement and support from the affected tribes of the letters sent by the joint committees.
- The subcommittee directed LCS staff to work with the interim legislative Land Grant Committee to seek formal endorsement and support from the affected acequias and land grants of the letters sent by the joint committees.
- The subcommittee directed LCS staff to draft a report on the subcommittee's recommendations to the joint committees and have the report ready to present on September 10, 2009.
- The subcommittee indicated that members should host a breakfast during the Sixty-Second Annual Meeting of the Council of State Governments-WEST to create awareness of uranium legacy at a national level.
- The subcommittee also stated that all of the state holders that participated at the meeting must work together and continue to engage the legislature to ensure the body as a whole is informed about uranium legacy and the need for action.
- There was heavy debate on the feasibility of holding a decision-makers conference due to lack of funding for the New Mexico Bureau of Geology and Mineral Resources to host the conference for IAC and RHMC members. The out-of-pocket cost for a decision-makers conference is approximately \$75,000. While the subcommittee members agreed that the conference would be beneficial, no consensus among the members could be made on how to recommend funding for the conference.

The subcommittee directed LCS staff to request another subcommittee meeting in December to follow up on what was discussed and on letters sent to congressional delegates and federal agencies. Subcommittee members added that it sounds like a good idea, but it may not be approved by the New Mexico Legislative Council.

Public Comments

The floor was then open to public comments. Senator Lovejoy thanked all that signed up to make a public comment and then went over the ground rules for making public comments.

The first public comment came from Steve Stewart, president of Stewart Brothers Drilling Company based in the Grants/Milan area. Mr. Stewart thanked the subcommittee for its work on addressing problems with the uranium mining legacy. He expressed his concerns about the effects of higher standards for exploratory drilling. He encouraged the subcommittee to continue its efforts on the legacy issue and asked the subcommittee to support uranium mining in local areas. He informed the subcommittee that his company has experienced job losses because of increased regulations and noted that the losses in jobs affect the tax base and revenue raised. He thanked the subcommittee for the opportunity to speak.

Next to make a public comment was Les Gaines, also from Stewart Brothers Drilling. Mr. Gaines thanked the subcommittee for the opportunity to speak. He then expressed his concerns about job losses due to a lack of mining in the local area. He encouraged continued work on legacy issues and subcommittee support for the uranium mining industry.

The next person to make a public comment was Benjamin House of the Eastern Navajo Lake Association-Uranium Resources Division. Mr. House commented on the positive impact of uranium mining on the Navajo Nation. He expressed the need for further support of mining to create jobs. He requested that the subcommittee support the uranium mining industry.

Ron Pynes, a local businessman, was the next to make a public comment. Mr. Pynes commented on the need for continued support for active uranium mining in the local area and throughout New Mexico. He cited the need for uranium mining to curb the outsourcing of uranium from foreign suppliers and advocated the use of domestic uranium mining to fulfill the country's uranium needs.

The final person to make a public comment was James Marquez from Marquez, New Mexico. Mr. Marquez made the comment that the subcommittee should be supportive of continued uranium mining. He cited the need for jobs and industry in the local area and that supporting the industry would bring jobs to the area. He touched on the problems with past remediation efforts and stated that the problems should not be what hinder future mining efforts because mining is much safer now than it was in the past. Mr. Marquez then thanked the subcommittee for allowing him to make a public comment.

After Mr. Marquez made his comments, the subcommittee asked a couple of questions regarding their comments.

Senator Asbill asked Mr. House a question regarding his stance for continued uranium mining on the Navajo Nation. Senator Asbill asked, "What is the status of the Navajo Nation's moratorium on uranium mining?". Mr. House replied, "There is still a ban, but it should be lifted and let us develop the land how we see fit".

Senator Lovejoy made her closing remarks by thanking her colleagues on the subcommittee for the work on uranium legacy issues. She thanked Mr. Moore for facilitating the roundtable discussion, she thanked the audience for their attendance and participation in the roundtable discussions, and she thanked the subcommittee staff for their work on the subcommittee. She reminded everyone that there will be a joint meeting of the IAC and HMC next month on September 10, 2009 in Albuquerque.

Adjournment

There being no further business before the subcommittee, the first meeting of the Uranium Policy Subcommittee was adjourned at 3:35 p.m.

**MINUTES
of the
SECOND MEETING
of the
URANIUM POLICY SUBCOMMITTEE
of the
INDIAN AFFAIRS COMMITTEE
and the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**October 28, 2009
Room 305, State Capitol
Santa Fe**

The second meeting of the Uranium Policy Subcommittee was called to order by Senator Lynda M. Lovejoy on Wednesday, October 28, 2009, at 10:12 a.m. in Room 305 of the State Capitol in Santa Fe.

Present

Sen. Lynda M. Lovejoy, Co-Chair
Rep. Patricia A. Lundstrom, Co-Chair
Rep. John A. Heaton
Sen. David Ulibarri
Rep. Jeannette O. Wallace

Absent

Sen. Vernon D. Asbill

Staff

Damian Lara

Guest List

The guest list is in the meeting file.

Wednesday, October 28 — State Capitol

Senator Lovejoy provided an overview of the purpose for a second subcommittee meeting. The subcommittee needed to finalize its recommendations to the Indian Affairs Committee (IAC) and the Radioactive and Hazardous Materials Committee (RHMC). Open for discussion was the recommendation for the scope of work of the five-year plan currently being drafted by the federal Environmental Protection Agency (EPA) and possibly seeking some type of congressional hearings or hearing-style field meetings.

Bill Brancard, director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, provided a synopsis of the EPA's progress on the five-year plan and the state agencies' input and recommendations provided thus far to the EPA. The subcommittee discussed the relevant needs of the community, the perspectives of the

federal agencies versus the perspectives of the state agencies in addressing the uranium legacy and the significant obstacles to the uranium legacy cleanup.

Upon a motion made by Representative Lundstrom and seconded by Representative Wallace, the subcommittee voted without objection to recommend that a joint letter on behalf of the IAC and the RHMC be sent to the EPA requesting that the scope of work for the five-year plan, currently titled "Health and Environmental Impacts of Uranium Mining and Milling in the Grants Mineral Belt", include:

- assessment and development of strategies to address and clean up the risks to human health from legacy uranium sites (both mining and milling) in the following priority order: 1) contaminated water supply sources; 2) pathways that may pose a threat to human health and the environment; 3) contaminated surface materials and air; and 4) potentially contaminated structures;
- input, participation and cooperation from critical federal agencies such as the federal Department of Energy's Office of Environmental Management and Office of Legacy Management; the Department of the Interior's Office of Surface Mining Reclamation and Enforcement, Bureau of Land Management, Bureau of Indian Affairs, United States Forest Service and United States Geological Survey; the Nuclear Regulatory Commission; the United States Army Corps of Engineers; and other critical state and federal agencies that can assist in the uranium legacy cleanup;
- an ongoing public participation process and assessment of benchmarks and goals; and
- identification of funding and federal statutory authority limitations to fully address and clean up uranium legacy risks to human health and the environment.

Senator Lovejoy allowed the audience to briefly share their recommendations and thoughts for solutions to the uranium legacy. The subcommittee then took up discussion of involvement in the uranium legacy by the New Mexico congressional delegation. The committee tried to balance the need for continued advocacy and awareness of uranium legacy cleanup and the need to remain focused on specific cleanup efforts by federal agencies and funding needs.

The subcommittee highlighted the achievements of its trip to Washington, D.C., and the need to continue to engage the federal government in the uranium legacy. The presentations on federal legislation and regulations governing the uranium legacy cleanup by the federal agencies in Washington, D.C., were extremely informative and invaluable

in the subcommittee's understanding of the federal structure for addressing the uranium legacy cleanup.

Upon a motion made by Representative Lundstrom and seconded by Senator Ulibarri, the subcommittee voted without objection to request that the New Mexico Legislative Council approve a trip to Washington, D.C., by the same members who attended the last trip to meet with federal agencies and members of Congress in order to continue to learn about the federal process as it relates to federal appropriations for and the legislation and regulation of the uranium legacy cleanup.

The subcommittee indicated that the savings from the cancellation of a three-day IAC meeting in Mescalero could be used to cover the costs of a trip to Washington, D.C.

The subcommittee voted unanimously to recommend that if the New Mexico Legislative Council denies the subcommittee a trip to Washington, D.C., the IAC and the RHMC should request that Congress convene committee or subcommittee hearings on the issue of the uranium legacy cleanup.

After the discussion on the probabilities of the New Mexico Legislative Council approving a trip to Washington, D.C., the subcommittee directed staff to seek an attorney general opinion on the legality of the mining industry covering the expenses of an educational trip to Washington, D.C., for the members to learn about the federal process as it relates to federal appropriations for and legislation and regulations governing the uranium legacy cleanup.

Upon a motion made by Representative Lundstrom and seconded by Senator Ulibarri, the subcommittee voted without objection to request that the New Mexico Legislative Council continue the Uranium Policy Subcommittee and reappoint its members.

Subcommittee members indicated that, during the member follow-up and any formal correspondence, language should be used to ensure that the old uranium industry not be confused with the new regulated uranium industry and that the uranium legacy cleanup not be confused with future uranium development. Additionally, subcommittee members indicated that efforts to move forward with the uranium legacy cleanup should not in any manner give the impression that the subcommittee is against future uranium development.

There being no further business before the subcommittee, the second meeting of the Uranium Policy Subcommittee was adjourned at 1:05 p.m.

Indian Affairs Committee
2009 Interim Staff

Jennie Lusk, Staff Attorney
Damian Lara, Staff Attorney
Tamar Stieber, Committee
Staff
Josh Sanchez, Intern