

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

**July 9-11, 2007
Crystal Chapter, New Mexico
Churchrock Chapter, New Mexico
Red Rock State Park, New Mexico
Manuelito Chapter, New Mexico**

The second meeting of the Indian Affairs Committee (IAC) for the 2007 interim was called to order by Senator John Pinto, co-chair, at 10:10 a.m. in the chapter house of the Crystal Chapter of the Navajo Nation.

Present

Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Ray Begaye
Sen. Dianna J. Duran (7/9)
Rep. Justine Fox-Young (7/10)
Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom
Rep. John Pena
Sen. Lidio G. Rainaldi (7/10, 7/11)
Sen. John C. Ryan (7/10, 7/11)
Rep. Gloria C. Vaughn

Advisory Members

Rep. Ernest H. Chavez
Sen. Richard C. Martinez
Rep. Nick L. Salazar
Sen. David Ulibarri

Absent

Rep. James Roger Madalena, Co-Chair
Rep. Manuel G. Herrera
Sen. Nancy Rodriguez
Rep. W. C. "Dub" Williams

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

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

Staff

Chase Van Gorder
Jennie Lusk
Larry Matlock

Guests

The guest list is in the meeting file.

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

Monday, July 9 — Crystal Chapter, Navajo Nation

Crystal Chapter, Navajo Nation — Status Update

Perry Wilson, chapter president, introduced himself and the chapter's staff to the committee. The Crystal Chapter, with 21,000 members, is the sixth-largest chapter of the Navajo Nation and the largest chapter in New Mexico. The chapter straddles two state and three county lines. The chapter was dedicated in 1963 at the site of a trading post built in 1890 but that closed in 1990. Now the chapter operates a senior citizen center and a Head Start Program. The chapter has more Navajo code talkers than any other chapter. The chapter is relying on farming less these days than it once did. The chapter's legislative priorities include completion of a multipurpose and Head Start center, a road grader, power line construction and water line extensions. The chapter also would like to improve Navajo Route 321. Virginia Benally, chapter secretary/treasurer, noted the need to repair or replace the chapter's trash bin. Roy Lewis, chapter vice president, also noted the need to improve Navajo Route 321. Questions from committee members included whether the chapter has made its funding requests and prioritized its needs. Senator Pinto asked whether the chapter needs a paved road to the lake, but was answered that the Mexican Springs highway takes priority for the chapter. Representative Lundstrom suggested a survey and maintenance schedule for cattle guards. John Brown, Jr., said he was among those who devised the code used by Navajo code talkers and expressed support for New Mexican veterans.

Representative Lundstrom was asked to act as co-chair for the remainder of the meeting.

Minutes

Upon a motion by Representative Vaughn, seconded by Senator Pinto, the committee approved without objection the minutes from the June 2007 meeting of the IAC.

State Highway 491 — Status Update

A panel to discuss the status of the U.S. Highway 491 Project (Highway 491) included Tom Platero, director of the Navajo Nation Department of Transportation; Judy Willetto from the Navajo Nation Division of Natural Resources; Patricio Guerrerortiz, deputy secretary for programs and infrastructure, New Mexico Department of Transportation (DOT); Hugh Perry, assistant general counsel, DOT; and Steve Harris, chief engineer, DOT. Mr. Perry said the agreement between the state and the Navajo Nation is "95%" complete for Highway 491. An easement for the DOT from the Navajo Nation is now at the Bureau of Indian Affairs (BIA) for review and approval. Concerns were raised that funds could be diverted if the project is not implemented in the near future, despite the fact that the project has a \$125 million appropriation in Governor Richardson's Investment Partnership (GRIP) Program. Despite possible funding shortfalls due to the increase in construction costs, the DOT is committed to the Highway 491 Project. If the state and the Navajo Nation can agree to the terms and conditions of the highway easement, construction may begin as soon as spring 2008 and be completed in three years. The northern portion from Sheep Springs to Shiprock will be the first to be constructed, as the design

process is much further along. The southern section is more complicated, in part due to right-of-way issues. Mr. Platero agreed that the state and the Navajo Nation are close to agreement on the terms and conditions of the easement agreement and commented on the need for this project. Ms. Willetto commented that the legislative approval process is complete for the northern portion; all work has been completed except for the terms and conditions for the easement. Mr. Guerrerortiz noted that the design work for the project is virtually complete. Mr. Harris said the recovery of cultural assets is more complicated in the southern portion; the cultural asset recovery for this project will be the largest archaeological recovery in New Mexico history.

Questions centered on the construction, including use of the existing road bed and safety features on the road bed such as "rumble strips" on the side and a six-foot shoulder to accommodate pedestrians who use the road. Senator Lovejoy said that the Navajo Nation Council should be clear on how far the project is going, as costs go up for every year of delay. She asked for the department to provide the committee with information on how much the Navajo Nation has contributed to the project as well as the amount of federal allocations. Mr. Harris noted that costs for the road have gone up 25% over the past two years — half of the cost increase due to a cost upsurge after Hurricane Katrina — and the state has already invested \$17.5 million. Representative Begaye noted that people's lives are being lost on the road between Gallup and Shiprock and opined that the delay on the road construction project can be seen as punishment to the Navajo people; nothing has moved since the original appropriation of \$125 million in GRIP I. He said he has asked the BIA, Navajo Nation, DOT and Shiprock to streamline the project as quickly as possible, and still the project did not make the deadline for applications. The talking stages have continued way too long. Mr. Guerrerortiz said there is legitimate concern that delays could cost money so that the project cannot be completed as designed; there is a finite volume of money. Other committee members asked about ownership of the project. The DOT projected a cost of \$220 million for the project. Agreements as they currently stand have the state owning the project, but without title to the property. Because the land on which the road is being built is reservation land, the state must obtain an easement onto the property. In the long term, the state will need to figure out how to maintain the improved highway.

Upon a motion by Senator Lovejoy, seconded by Senator Pinto, the committee voted without objection to request the state and the Navajo Nation to give an update on the status of this project at the committee's August 13 meeting at the Alamo Chapter of the Navajo Nation and provide a copy of the final terms and conditions of the road agreement.

Navajo-Gallup Water Pipeline — Status Update

Lance Allgood, executive director, City of Gallup Joint Utilities District, reviewed recent congressional hearings on the Gallup-Navajo Water Pipeline Project in which Representative Lundstrom played a significant role. The pipeline will cost \$800 million, but the federal government will fund three-fourths of the money. Portions of the pipeline will pass through Window Rock and Fort Defiance in Arizona and some of the water will go to the Jicarilla Apache reservation. Representative Lundstrom talked about the congressional hearings and her role in the 15-year planning process that led to recent agreements between the state and the

Navajo Nation. At the hearing, the Department of the Interior opposed the project, saying it was too expensive and the department had too little input. However, project proponents had minutes from meetings over the past 16 years in which the Department of Interior participated. It appears that the congressional leadership will pressure the Department of Interior to move along with the project. Both of the state's senators did a "great" job, she said, and suggested downloading their testimony. Navajo Nation President Joe Shirley and several council delegates attended the hearing in Washington. The governor will meet with Gallup officials and state legislators to figure out how to fund Gallup's one-fourth local match. Representative Lundstrom suggested assistance from the Water Trust Fund to help fund the project and for the governor to put more money into the Indian Water Rights Fund. Three big Indian water rights settlements are now in progress, and Representative Lundstrom stated that the state needs to expedite this settlement now and put more money into the Indian Water Rights Fund. By July 17, Gallup has to convince United States senators that it has a way to fund its piece of the project.

John Leeper, Navajo Nation Department of Water Resources, commented on the lack of project support by the Department of Interior and Arizona. Mr. Leeper updated the committee on a number of technical aspects of the project. Phase I of the project began a year ago with drilling at Twin Lakes. The project is funded and rights of way have been acquired, but Gallup needs approval from the New Mexico Finance Authority to spend money for phase 2, which goes from Gallup west to Manuelito. Design on phase 2 is 90% complete. The last phase will connect Twin Lakes' well to be distributed either east or west. The Navajo Nation is 100 yards from the Gallup city limits. The city needs to get a "boardman connection" — a bypass road near the golf course. Now, for the first time, Gallup has city water. It has been looking for alternative water resources. By the year 2045, demand will be too high for the current project. Myron Armijo, the tribal liaison with the Office of the State Engineer, said he fully supports the Navajo water settlement. In 2005, he was on a tour of Window Rock with Bill Hume of the Governor's Office, during which they were told that the project could start soon.

Comments from the committee included questions about the state legislation, overall direct costs and cost-sharing by the involved parties, involvement of the Indian Health Service, pressure to make higher standards and use of Gallup's 40-year-old pipeline, and distribution of water to surrounding Native American communities. Representative Pena and Senator Rainaldi questioned the numbers reported for the operating budget. Mr. Armijo said that the chapters that surround Gallup will have water and that the capacity for those chapters is included in the figures for the trunk line. The chapters are part of the estimated demand and are included in the Navajo Tribal Utility Authority (NTUA) connections. Discussion moved on to the Cutter lateral, which is to be built by the year 2022, and to the cost of the water to Navajo users. For Navajo people there is no capital repayment. NTUA will set rates and allocate costs, although NTUA has one of the highest costs of water in New Mexico at present.

Upon a motion by Senator Ryan, seconded by Senator Rainaldi, the committee voted without opposition to sponsor a joint resolution in the next legislative session in support of the Navajo-Gallup Water Pipeline Project. Upon a motion by Senator Ryan, seconded by Senator Rainaldi, the committee voted without opposition to write a letter to the House Natural

Resources Committee and to the Senate Energy Committee expressing its support of the Navajo-Gallup Water Pipeline Project. Upon a motion by Senator Ryan, seconded by Senator Pinto, the committee voted without opposition to write a letter to the Water Trust Board, urging it to prioritize funding for the Navajo-Gallup Water Pipeline Project.

Navajo Nation Division of Social Services — Funding Request

Members of the Navajo Nation's Division of Social Services came to the committee with a request for funds, since the present allocation from the New Mexico Children, Youth and Families Department (CYFD) will not be increased despite the fact that there is an increase in the caseload for social services. Cora Phillips, executive director, Division of Social Services, Navajo Nation; Don Benally, regional director, Eastern Agency, Division of Social Services, Navajo Nation; Nancy Evans, regional director, Shiprock Agency, Division of Social Services, Navajo Nation; and Lucinda Morris, regional director, Fort Defiance Agency, Division of Social Services, Navajo Nation, addressed the committee on this topic. Representatives of the Navajo Nation are asking for increased funding from the state of Arizona as well. The eastern Navajo region, including Crownpoint, is the biggest region in need and extends services to seven counties. The services include protective services for children and adults. Of greatest concern is the Alamo Navajo community, because it is so remote, followed by Tohajiilee. Data from 2006 show that there are 400 cases in Alamo for persons over the age of five or six years old but less than 18 years old. There are 100 cases at the Fort Defiance Agency and 300 cases at the Shiprock Agency. The request is for a total of approximately \$500,000 in addition to the present level of funding to cover salaries, benefits and costs for vehicles for areas to be served. Ms. Morris observed that New Mexico needs to carry its full share of the financial cost of these programs for New Mexicans; notification has been received that federal funds will be cut by \$4.6 million in the coming fiscal year. The low level of funding and undesirable working conditions have resulted in large turnover in staff. The State of New Mexico hires people away from the Navajo agencies with better salaries and overtime pay.

Representative Salazar advised the social services representatives to take their case to other pertinent committees so that they could be included in the budget more easily. Senator Adair asked about funding from Arizona for the Fort Defiance Agency and suggested the representatives take these facts to such committees, noting that per capita aid from Arizona is higher than that from New Mexico. Senator Lovejoy suggested asking for general fund resources from the Navajo Nation. Representative Begaye asked about whether CYFD includes Native Americans in its head count for applying to the federal government for funding. The representatives answered that the CYFD does cost accounting and reimburses the Navajo Social Services Division up to its budget limit.

Fort Wingate — Status Update

James Bearzi, bureau chief of the Hazardous Waste Bureau, Water and Waste Management Division, Department of Environment, gave the committee a brief history of Fort Wingate and the cleanup of the property following its decommissioning. The U.S. Army "withdrew" the fort in the late nineteenth century and used it to store materials from munitions testing, propellants and explosives. There were 100 years or more of unregulated management of the fort, with contaminants threatening the water supply of Gallup. Mr. Bearzi described the various types of hazardous materials that may be found on the site. It has not been possible even to check the site in some places because of unexploded ordnance. There are two large landfills with asbestos in them. The state brought the tribes and the Army to the table and went through the permit line by line, reaching agreement for a cleanup timetable. The final permit was issued on December 1, 2005, and the tribes have gotten many concessions through the process that would not otherwise have been possible. There was tribal consultation in the process for the first time in the country. With this agreement, the tribes and the Army can issue a plan for the community, and Mr. Bearzi reviewed the closure requirements and permit conditions. The role of the Department of Environment is not to approve the cleanup; that role is left to the agreement between the Army and the tribes. For every part of the work plan, the Army must certify that it has consulted with the tribes, and if the tribes do not agree with an element, then they have to explain why. There are civil penalties available up to \$10,000 and criminal penalties up to a second degree felony. The cleanup decisions made today affect the tribes forever. He said he is proud and grateful. The tribes came up with the priorities for cleanup rather than having cleanup imposed by the state. Still, the agreement can be enforced by the state.

Edward Wemytewa, the Fort Wingate coordinator from the Pueblo of Zuni, discussed the "unqualified success" of the cleanup at the fort. All of the fort will be transferred to tribes when cleanup is complete. Mr. Wemytewa described the negotiation that has gone on over the past few years between the Pueblo of Zuni and the Navajo Nation regarding the ultimate disposition of the Fort Wingate property. The negotiations appear to have been put on hold pending the outcome of last year's elections. Charles Damon, Navajo Nation Council delegate, had been on the team dealing with this issue but indicated that the Navajo memorandum of understanding team has not yet been reappointed. Councilman Damon indicated that the pueblo and the nation are in disagreement over which portions of the Fort Wingate property should be turned over to which tribal entity. Derrith Watchman-Moore, tribal liaison with the Department of Environment, questioned the prioritization of certain parcels within the cleanup site. Senator Pinto noted that SJM 40 passed 20 years ago and little has been done. Mr. Wemytewa and Councilman Damon commented on the areas of disagreement between the two tribal entities.

Following the presentation regarding the status of Fort Wingate, Representative Begaye recessed the meeting at 4:26 p.m.

Tuesday, July 10 — Churchrock Chapter, Navajo Nation; Red Rock State Park

The second meeting of the IAC for the 2007 interim was called back into session by Senator Pinto on Tuesday, July 10, 2007, at 10:16 a.m. at the chapter house of the Churchrock Chapter. Senator Pinto asked Representative Pena to act as co-chair for the morning's meeting. Following introductions by committee members, staff and members of the audience, Cal Curley read a statement on behalf of Congressman Tom Udall. Representative Udall indicated that the federal Radiation Exposure Compensation Act (RECA) is inadequate to compensate all of those who were victims of illnesses contracted through uranium mining. Any resumption of uranium mining must meet the highest standards of public health and environmental safety. He worked to eliminate an unnecessary \$30 million subsidy for the uranium industry that would have encouraged in situ uranium mining in an area near the drinking water of the eastern Navajo Nation, compromising the health and safe water access of thousands. He said "we must remain vigilant to ensure that environmental and public health are not compromised as uranium mining occurs".

Churchrock Chapter, Navajo Nation — Status Update

Robinson Kelly, vice president of the chapter, and Alice Largo, community services coordinator, discussed the chapter's opposition to the proposed resumption of uranium mining and mentioned the importance of a recent Southwest Research and Information Center report on the health effects of past uranium mining practices. Mr. Kelly went on to say that the community makes its living, despite tailing ponds and problems with unremediated mines. Larry King, a chapter member, said a former uranium milling site is near his home and a lot of waste is still in the area. He indicated that surveys in the area have shown heightened levels of radiation along the highway where uranium ore had been trucked to the mill. There have been no remediation efforts along the highway, and winds in the areas spread contamination. The chapter strongly opposes new uranium mining methods and the state should examine new projects in light of the contaminants left behind. He said the state facilitated the project and should therefore be responsible for the cleanup. Teddy Nez, who worked for Kerr McGee and United Nuclear, said he got cancer from living near uranium mines. His home is located just downstream from a former uranium mine and is the site of recent cleanup efforts by the federal Environmental Protection Agency (EPA). Mr. Nez reviewed the need for comprehensive health studies of the effects of uranium contamination and the need for long-term protection. He described the recent EPA cleanup activities and urged that the job be completed. There should be no new uranium mining activities until the contamination from past uranium mining and milling have been fully addressed. Scotty Begaye, Jr., a Churchrock resident and former United Nuclear employee, also spoke against any kind of mining. When he worked on a cleanup site, he was told to bury potentially radioactive items rather than removing them. The cleanup was only on the surface and was therefore very superficial. He added that the old Churchrock mine site has trash pits that were just barely covered up, not remediated. He cautioned that uranium has been spilled along the highways as part of the "cleanup" and may still endanger the lives of pedestrians along the highway. Mr. Kelly described how members of the chapter use the sheep that graze on lands contaminated by uranium waste and reiterated the chapter's opposition to new uranium mining activity.

Tour of Uranium Mining Sites

The committee spent the rest of the morning touring two mine cleanup sites and was accompanied by Bill Brancard, director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department, and Bill Olson, bureau chief of the Ground Water Quality Bureau of the Water and Waste Management Division of the Department of Environment. Mr. Brancard and Mr. Olson gave a brief history of the demand for uranium, beginning in the post-war era for weapons production and continuing through the 1980s, when the demand for uranium collapsed. For the past 25 years there has been no new uranium mining in New Mexico. All mills in New Mexico are now closed, and the federal Uranium Mill Tailings Radiation Control Act (UMTRA) requires reclamation for uranium mills as it does for nuclear materials. There are some Superfund sites and some quasi-Superfund sites; many sites have not yet been dealt with at all. Committee members visited the proposed site of an in situ uranium mining site located across the highway from a former mill site and adjacent to the home of Mr. King and his family. Members also visited the site of a recent EPA cleanup and a Superfund site on lands that include the home and family lands of Mr. Nez. The cleanup effort included the removal of topsoil around several dwellings while the actual mining and milling stream located upstream in a wash was left unremediated.

The second meeting of the IAC for the 2007 interim was reconvened by Representative Begaye, acting co-chair, at 12:45 p.m. in the auditorium at the Red Rock State Park.

Legacy of Uranium Mining and Milling — Status Update

Mr. Brancard and Mr. Olson were joined by Juan Velasquez, vice president of environmental and regulatory affairs for Strathmore Minerals Corporation, and by Stephen B. Etsitty, executive director of the Navajo Nation Environmental Protection Agency, for further discussion of the legacy of uranium mining.

Mr. Brancard indicated that his agency can deal principally with abandoned uranium and coal mines. He reviewed the history of uranium mining in New Mexico, including the location of uranium milling and mining sites, the decline of uranium mining in the 1980s and 1990s and the renewed interest in uranium mining due to a tenfold increase in uranium prices. Mr. Brancard noted that one problem in this area of inquiry is that there is not a comprehensive set of laws requiring reclamation of mine sites, although UMTRA does address the remediation of tailings at milling sites (nine of which are in New Mexico). He noted that all of the milling sites have been decommissioned. If the work is being done on behalf of the federal government, as in the case of production of uranium for nuclear weapons, the federal government pays for the cleanup. Otherwise, when the uranium is being used for private purposes, such as to fuel nuclear power plants, the company must pay for any cleanup. The EPA may participate in cleanup activities through the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), although not necessarily only at Superfund sites. He also noted that in the context of the coal mining industry, companies are required pursuant to the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) to pay \$.35 per ton for the cleanup of coal mine sites. Pursuant to the Mining Act, mines that had two years of production after 1970 were required to submit and implement a remediation plan. Therefore, a number of the later

uranium mines are subject to the Mining Act. Finally, Mr. Brancard explained that the Mining and Minerals Division has commenced a study to identify uranium mining sites in New Mexico and to determine which sites need to be cleaned up and the extent and type of the required cleanup.

Mr. Olson explained that the state has concurrent authority under the New Mexico Mining Act and the Water Quality Act to regulate mining. At the mill sites, the Department of Environment has a role regardless of any other jurisdictional issues. The problems of the mill cleanup originate from the lack of any regulatory requirements for remediation when the mines were first dug in response to the demand for uranium in the 1950s post-war build-up. Mining waste was discharged into arroyos and drained into water. The New Mexico Water Quality Act, passed in 1974, regulates pollution. The Water Quality Control Commission created by that act adopted specific regulations for water pollution focused on reclamation activities in uranium mines in 1995. In 1992, the EPA changed its regional governance and assigned the Navajo Nation to Region 9 for administration, while the rest of New Mexico remained in Region 6. The effect in checkerboard areas of New Mexico is that a determination has to be made for each site as to what region the EPA is responsible for cleanup. The EPA has a broader scope of power than does the state, which is limited to water quality issues. Sources of contamination from uranium mines are from dewatering, waste rock piles, windblown sediment and transportation of ore. At the mills themselves, tailing ponds and windblown tailings are the primary source of contamination. Under the EPA, there are two sites remaining in New Mexico for formal Superfund cleanup — the Homestake mill in Milan and the Northeast Churchrock mill. Under state law, there are four projects with contaminated ground water. Both having a "responsible party" for the cleanup and the land ownership status (i.e., whether the land is part of the Navajo Nation or not) remain as obstacles to cleanup. There is also a need to establish the background level of naturally occurring radiation in order to be able to establish sound cleanup standards. Finally, the truth of the matter is that remediation of sites contaminated by uranium mining and milling activities is difficult and costly.

Mr. Etsitty said the Navajo Nation has several offices dealing with uranium mining and milling, although they are aligned with the Department of Environment and the EPA. The Navajo Nation believes it has been excluded from much of the decision-making process. The legacy for the Navajo Nation is that it has had plenty of activity for purposes of national defense and did much for the federal government during the Cold War in stockpiling nuclear weapons. However, the Navajo Nation is left with a sad legacy after state and federal decision-making — incomplete cleanup of critical sites. The nation has been involved in 1,300 mines from Flagstaff to Lake Powell and those mines have an impact on the United States' defense and nuclear programs. For much of the past 15 years, though, the Navajo Nation Abandoned Mine Program has been at work, closing off mine entrances and remediating some areas of tailings. Now some of the sites are threatened by erosion. Of the 1,300 locations, only a small percentage have been completely cleaned up. This is because at least 10,000 acres are contaminated by uranium, on some sites machinery is unable to reach the polluted area and ground water continues to pollute other areas. The Navajo Nation is working to be able to deal with the problem of contamination from uranium mining, including establishing standards for cleanup.

Mr. Velasquez admitted that there are problems. The Mining Act of 1993 has an abandoned mine provision for cleanup, but no funding. The act could be modified so that money could be earmarked for cleanup in the future — similar to uranium mills where \$.10 per pound of uranium goes for cleanup. Mr. Velasquez called for a collaborative effort between the industry and governmental entities to deal with contamination issues.

Committee members asked whether the sites would ever be cleaned up. Some suggested prohibiting the opening of any new mines until the old sites are cleaned up. Senator Ulibarri said he supports uranium mining, as New Mexico may be able to mine 500 million tons of material worth \$135 per pound. The industry can bring jobs. The old industry is different from current energy providers; there is new technology. He noted that most of France's industry is powered by nuclear power. Discussion ensued on who is responsible for changing the standards to protect New Mexicans. Senator Ryan suggested that the Navajo Nation and New Mexico look for new money for cleanup; perhaps companies would be happy to pay in order to come back. Representative Pena said he would like to see a state version of the federal Superfund provisions, i.e., funding a mechanism for cleanup of abandoned sites. Senator Martinez said he had introduced legislation for a \$2 million appropriation and it was vetoed. Representative Salazar asked whether the Navajo Nation holds all the mineral rights in checkerboard areas. On reservation lands, the Navajo Nation owns both the surface and the mineral rights. In the checkerboard area off the reservation, much of the land is subject to private mineral rights. In such areas, the BIA can overrule the Navajo Nation because Navajo title goes only to the surface rights, whereas mining permits are for the land beneath the surface. The EPA could overrule the Navajo Nation without its consent. However, in this case, all of the lands near Churchrock are trust lands, not owned by allottees and the Navajo Nation has not been involved. Representative Salazar asked whether the New Mexico Mining Act requires cleanup of a mine, and he was told that new mines are required to submit a reclamation plan and a bond to cover state costs if the mine owners walk away. The department said it has managed to hold some companies responsible under the New Mexico Mining Act.

Representative Lundstrom said she sees two issues: cleanup and new permitting. She is not comfortable with the cleanup efforts that have been implemented in the Churchrock area. She requested a matrix showing the responsibilities of the state, federal government and tribal responsibilities for chemicals, ground water and soil. She asked the committee members to work together to set up an infrastructure that is important to the community, perhaps by looking to the New Mexico Mining Act for places to require local input, incentives for nearby counties and funding under the New Mexico Community Assistance Act. She wants to know what the process is for creating a state version of the Superfund Act (CERCLA). A joint session with the interim Radioactive and Hazardous Materials Committee was denied by the Legislative Council. However, the committee's bills regarding waste cleanup will be presented to that committee for endorsement, too. Representative Lundstrom moved, Senator Martinez seconded and the committee voted without objection to request the Legislative Council to grant per diem for members of the IAC to attend a meeting of the Radioactive and Hazardous Materials Committee for discussion of uranium mining. Representative Vaughn asked Mr. Velasquez about instituting a moratorium on permitting for new uranium mines while cleanup gets underway, and he

responded that industry will find a way to mine, whether in New Mexico or elsewhere. Senator Lovejoy expressed her willingness to work with the industry, but said she is upset by the exploitation of people for many years as they attempt to live with mining in people's backyards. She observed that uranium mining puts ground water at risk. While she is not necessarily in favor of shutting out the uranium industry, the technology is unproven and mining should be done where people do not reside, not in their backyards. Senator Pinto said he has represented this district for the past 31 years and sees that there is little information still on the health effects of mining. Representative Begaye suggested getting copies of agreements between Arizona and the Navajo Nation to study as potential models. Representative Lundstrom moved, Representative Vaughn seconded and the committee approved without objection that the committee request closer coordination between the New Mexico governmental agencies and the EPA.

State Regulation of Present and Future Uranium Mining — Update

Mr. Olson and Mr. Brancard discussed the future of mining in New Mexico and the ways in which state laws and regulations may affect mining activities, including exploration, conventional mines, in situ leaching (ISL) mining and milling or processing sites. They explained that the New Mexico Mining Act applies to conventional exploration and processing. For exploration, proponents must obtain a permit from the Mining and Minerals Division. The division consults with other state agencies, such as the Department of Game and Fish, the Office of the State Engineer, the Economic Development Department and the Cultural Affairs Department. There is not, however, a requirement for a public hearing. Mining requires interagency cooperation for ground water discharge permits as opposed to permits for operating a mine. They described the permitting process and then said there are no pending mining permits to issue, only the two existing permits, both of which are currently inactive. Conventional underground mining requires a permit from the Mining and Minerals Division to ensure proper mine closure and a ground water discharge permit from the Department of Environment. Where the federal Nuclear Regulatory Commission (NRC) has jurisdiction, such as for ISL operations, the proponents are exempt from the New Mexico Mining Act. Mr. Brancard described the current level of uranium mining activity in the state. There have been a number of inquiries but no applications for ISL operations. Mr. Olson reviewed the impact of the Water Quality Act on uranium mining operations. When an application is filed for a discharge permit, there is public notice, technical review and a public hearing if required by the secretary. The public participation process is lengthy, as governments consider both sacred sites and background water quality. Remediation is required, but questions remain whether remediation requirements might be for the easiest or the most strict standards, whether an aquifer can be remediated to preexisting conditions and how much money it takes to remediate adequately. Any discharges from mining operations are supposed to meet federal Safe Drinking Water Act standards. In other states, mining companies have agreed to one standard and returned to the state to request (and receive) a lower standard for remediation. There are presently no new uranium mining permit applications in New Mexico, but the Mount Taylor mine has applied for a renewal and the Rio Alto mill has applied for renewal to cover closure activities. If the Mount Taylor mine is to be reopened, the mine will need to be dewatered and discharged effluent will be required to meet state standards. The secretary will determine the

extent of public participation to be required in the event such an application is filed. There have been discussions regarding applications for ISL operations but no applications have been filed. Protection of underground aquifers is a primary concern and there is a question as to the background levels of radiation in existing aquifers.

Senator Adair queried which ISL technology is experimental or proven. The panelists said it is proven to produce uranium but the effects on ground water aquifers are unclear. There is concern about how to establish background levels of radiation and whether ISL operations can maintain those levels. Senator Ulibarri asked how sacred sites are defined and how the existence of such sites could be established. Senator Rainaldi expressed his disappointment in how the Northeast Churchrock site has been handled and said that both citizens and legislators must be better educated on this topic.

Public Comment

Comments were taken from members of the audience and are summarized as follows.

Jim Store from the Office of the President/Vice President, Navajo Nation, gave a brief review of the history of uranium mining on the reservation. He distributed a statement prepared by President Shirley regarding the proposed resumption of uranium mining. Mr. Store stated that the Navajo Nation has banned uranium mining on its land, that the nation is united on this issue and the Navajo Nation is unwilling to negotiate on this issue.

George Arthur, the San Juan Chapter delegate to the Navajo Nation Council, expressed concern about the legacy of uranium mining, noting that the Navajo Nation still lives with what happened in 1949 and the years thereafter. There are children with disabilities and, even though federal agencies were aware of the effects of the mining and Congress passed RECA, funds have not been made available and affected people have been left uncompensated.

Milton Yazzie from Black Falls, Arizona, indicated that open pit mines in his area had been "reclaimed" five years ago, but the ground water is still contaminated. They have been working with EPA Region 9, but still need to haul bottled water for domestic use. He decried the pollution of water and land and the loss of three family members over the past year due to cancer from uranium and arsenic from so many open pit mines.

Candace Head-Dylla, a resident of Milan, said she lives right below the mines and the Homestake mill and has been talking about the uranium industry's legacy for 30 years to no effect. She asked the committee members to consider the sacrifices made by the community and whether people will ever be compensated adequately. The tradeoff for the community was to get free water for 10 years, but now the community pays for the water it used to get for free. Her community continues to have to deal with the legacy of uranium mining. Legislators should not make New Mexico a wholly contaminated state.

Benjamin House, a member of the Eastern Navajo Allottees Association, said the community is faced with a staggering unemployment rate of more than 50% and the need for

jobs for young people. The communities should work together and not be pulled apart by this issue.

Mr. Nez thanked the committee for setting wheels in motion and requested: 1) that it change reclamation requirements; 2) that it incorporate chapters into requirements for tribal consultations; and 3) that there be better coordination with the federal government and EPA; for example, streamlining the process for determining whether land falls under Region 6 or Region 9 in the EPA administration.

Tom Manningson, who works in the Eastern Navajo Agency, said the water quality and health impacts should be studied. People are sick and suffering.

Norman Brown talked about uranium as having not only an economic impact from use of the land, but also an impact on spiritual and cultural values of the Navajo people and on water, the holy mother. He suggested requiring an independent review of the situation. A return to uranium mining would be devastating for the Navajo people, and actions by McKinley County supporting the resumption of uranium mining is disrespectful of the Navajo people.

Chris Shuey from the Southwest Research and Information Center said problems need to be addressed on dozens of sites. The New Mexico Community Assistance Act should fund what has been done in Churchrock at other communities, too. The legislature should tell the federal government to pay for the damage to this land done by federal policy between 1940 and 1960. Instead of accepting corporate irresponsibility, the state should put in place a moratorium on uranium mining until the legacy problems are solved. Given the legacy of its activities in the past, why should people believe in the promises of the uranium industry today?

Paul Robinson, who lives in Senator Dede Feldman's district, assured the committee that there is plenty of uranium to mine. However, New Mexico's northwest region should be used as a solar and wind resource. HRI is the only corporation to file an application for mining thus far, and it will be three to five years at the earliest before it can succeed and open a mine. In the meantime, other resources should be developed. New Mexico should not be exploited as a colony for its natural resources.

Andrew Leo Lopez from Tohajiilee said this area depended on regulators to protect residents from the adverse impacts of the uranium mines, and that did not work. Uranium mining should be banned. There has been no examination of technology for uranium mining, particularly on mining's effect on the water supply. He later commented that it is difficult to estimate and forecast the medical costs and pain and suffering resulting from uranium mining, even if one can reasonably estimate reclamation costs.

Lemna Morgan recommended that the legislature fund a bill for health that addresses the concerns of all the sick people in the northwest area and undertake a comprehensive health study. As a resident of New Mexico and the Navajo Nation, she said she believes adequate

compensation should be made and that better research be done. She said that it is not only uranium that affects people, but everything that has to do with radium.

Ernest Becenti, Jr., McKinley County commissioner, acknowledged that uranium mining is a big, sensitive issue. Driving motor vehicles can be dangerous, as can be eating ice cream. People should look at this issue from an economic point of view. The board of commissioners passed a resolution supporting economic development of all kinds, including coal mining and natural gas as well as uranium mining. McKinley County is a poor county with high unemployment; uranium mining can bring needed jobs and revenue.

Committee Recommendations

Senator Lovejoy recommended the following actions: 1) legislation be drafted requiring public notice and hearings prior to the issuance of permits for exploratory drilling; 2) regulating the distance from water wells, livestock ponds and residences for mining activity; 3) funding for regulatory agencies should not be tied to the number of permits issued and industry should not be paying for studies that appear to be neutral; 4) combine regulatory agencies so that a single agency is charged with oversight of uranium activities; the current bureaucracy is a trail of confusion; and 5) there is a need for a moratorium on uranium mining activities.

Representative Lundstrom moved that the committee draft a letter to Secretary Shendo asking the Indian Affairs Department to develop a strategy for the cleanup of Churchrock involving the New Mexico Department of Environment, Energy, Minerals and Natural Resources Department, chapter officials and Congressman Udall so that the cleanup can move to the next phase. The committee should direct Secretary Shendo to be the committee's liaison on uranium. Representative Pena seconded the motion and it passed without objection. Representative Lundstrom also moved that the committee draft a comprehensive health study bill, starting with Churchrock as a model for other chapters and including an appropriations request. The motion was seconded by Senator Pinto and passed without objection. Representative Lundstrom moved that the committee write a letter to Secretary Ron Curry requesting that the Department of Environment assess the sites each year as to the degree of cleanup progress made or required. The motion was seconded by Representative Vaughn and passed without objection. Finally, Representative Lundstrom moved that the committee create a subcommittee to examine how industry can help the community and return to the committee with a report. Members of the committee would include Representatives Vaughn, Pena, Begaye and Lundstrom and Senator Ulibarri.

Senator Lovejoy requested that staff draft a memorial calling for a five-year moratorium on uranium mining to be presented at the November meeting. Representative Lundstrom requested that staff write to Secretary Shendo requesting that he be available and that he also assign Indian Affairs Department staff to be present at every meeting of the IAC.

Public Comment

Following its discussion of recommendations, the committee returned to public comment in order to hear from remaining members of the public still in attendance.

Floyd Stevens presented a resolution from the Native American Church of Navajoland strongly opposing uranium mining in and around Mount Taylor and requesting formal tribal consultation.

Robert Tohe from the Environmental Justice Program of the Sierra Club talked about working with the U.S. Forest Service in a Ninth Circuit Court of Appeals case on the designation of land as sacred. In Arizona, a pending lawsuit argues that the Religious Restoration Freedom Act applies when mining desecrates a sacred site. Tribes in New Mexico are now looking at that case for potential protection of Mount Taylor.

Mitchell Capitan, representing ENDAUM, said he has heard about contamination in Crownpoint. He worked for Mobil Oil in 1980 and it was unable to restore the aquifer to its original condition. Water is a huge concern, especially in a period of drought.

Mr. Yazzie said that in 1970-71, when mining was being developed, a bulldozer backed over a hogan with his grandmother in it and killed her.

Mr. King expressed concern, especially to Senator Ulibarri, that HRI's new mine proposal makes false promises and that the people are being left out of the discussion. The environmental impact statement has no reclamation plan. His family is slated to be relocated but they are determined to stay.

Ms. Morgan said people here respect the sacred sites and are not leaving. When the people practice their religion, they are doing their duties. Other areas should be explored for economic development, not just uranium mining.

Ms. Adeky from Ramah Navajo said she has been working with the Eastern Navajo Nation for the past two years and heard about all the problems. There is a good deal of oral history on the issue. It is time to talk about the future for the children's sake.

Following the completion of public comment regarding the resumption of uranium mining, Representative Begaye recessed the meeting at 5:55 p.m.

Wednesday, July 11 — Manuelito Chapter, Navajo Nation

The second meeting of the IAC for the 2007 interim was called back into session by Senator Pinto on Wednesday, July 11, 2007, at 9:28 a.m. at the chapter house of the Manuelito Chapter.

Manuelito Chapter, Navajo Nation — Status Update

Milton Davidson, president of the Manuelito Chapter, spoke to the committee about the chapter's priorities, including building a casino, wastewater disposal and powerline construction. The roof at the chapter house has been renovated, but additional funds are needed for further renovation. Community Services Coordinator Pauline McCabe gave a PowerPoint presentation

on the current activities of the chapter. The chapter is working toward being certified by the Navajo Nation pursuant to the Local Governance Act. To this end, the chapter is working to put into place the five management system policies and hopes to adopt a land use plan by the fourth quarter of the current year. Recently, the chapter has completed a number of capital outlay projects, including paving the chapter house parking lot, repairing the chapter house roof, completing 44 bathroom additions and working on a powerline extension. She said that education is important to the community. The Manuelito Chapter participates thoroughly in planning and she pointed out that students have been envisioning changes, have made murals of their visions and have requested a skate park, a game room and a playground as well as a veterans' building.

Representative Lundstrom asked about the memorandum of understanding among the Jicarilla Apache Nation, Gallup and the chapter regarding the extension of water lines. Representative Begaye asked about BIA-mandated land appraisal processes.

Implementation of Amendments to the Indian Education Act

Representative Begaye and Senator Lovejoy briefed the committee on developments in Indian education from the most recent legislative session, noting that some 60% of New Mexico schools with high Native American populations did not make "adequate yearly progress" (AYP). When the three-tiered licensure plan was adopted raising salaries for teachers according to their academic training, Native American students still continued to fail. Legislators looked for ways to subsidize Native American students and passed the Indian Education Act (IEA) as a way to recruit more teachers and include the language and cultural pieces that are so important for New Mexicans and so overlooked in federal law. Now, with changes to the IEA, higher education is also involved in improvements for Indian education. Representative Begaye said his goal is to get \$10 million for Indian education and enhance the collaboration between schools and tribal members.

Superintendent of Education Tommy Lewis from the Navajo Nation addressed the committee, congratulating legislators on having passed and improved the IEA. The Navajo Nation has adopted the Navajo Sovereignty in Education Act, which looks to establish a department of education like the state's Public Education Department (PED) to regulate student assessment and get control of education for native students. The Navajo Nation has 258 schools with 100,000 students in grades kindergarten through 12. He said laws should be clear that, at least at the school level, language and cultural education are essential. Language and culture emphasis have been seen to help schools attain AYP in southern Utah. The Navajo Nation needs data from the PED so that it can better track students here. The Navajo Nation received a grant to implement language and culture programs, but it got behind in spending the grant, so the money was returned. Superintendent Lewis said it is important for appropriations to be made to PED or to the specific chapters but not to the Navajo Nation for educational programming. The Navajo Nation Board of Education made a formal request to be part of the selection process for the new superintendent of the Gallup-McKinley County School District. Helen Creamer said that the Navajo Nation wants to be involved in the new search for the district superintendent. The search committee and process have been tight. The search has been only internal, she said,

and she expressed disappointment in the process thus far. Upon a motion by Representative Begaye, seconded by Senator Lovejoy and passed without objection, staff was requested to write letters to the Central Consolidated School District and the Gallup-McKinley County School District requesting them to include Navajo Nation members in the selection process for new superintendents. Senator Lovejoy requested that the Navajo Nation Education Department and chapter house representative in the school section get a response to the requests.

Senator Lovejoy asked many questions of the Navajo Nation superintendent. She noted that the state is at the point of strengthening the IEA, but asked what the Navajo Nation is doing to help students meet AYP. She requested a list of the Navajo Nation's educational goals. She said that if the Navajo Nation is still failing, and data and tracking are not there, maybe the design is just not right. The superintendent said that things are improving, but often not as quickly as a legislator would prefer. Discussion followed on state appropriation reversions that result from money getting bogged down in the Navajo Nation bureaucracy. Representative Begaye suggested channeling money a different way, perhaps through the Office of Management and Budget or through grants to the PED. An alternative exists in channeling funds to the PED, which then funnels the money to chapters through a memorandum of understanding.

Dr. Catherine Cross Maple, deputy secretary of public education, and Assistant Secretary for Indian Education Nancy Martine-Alonzo, presented to the committee on changes to the IEA. Sarah Adeky, the Navajo Nation representative to the Indian Education Advisory Council (IEAC), also spoke and gave the committee the regards from the chair of the council, Dr. Larry Emerson. Dr. Cross Maple explained that she is in charge of all the divisions regarding learning and accountability programs, including the rural literacy initiative. That initiative required the PED to select a single nonprofit that was able to match the legislative appropriation. Ms. Martine-Alonzo reported that IEA implementation is a year ahead of schedule and noted that it is invaluable to have tribal educators and the IEAC. She also noted that rules are being promulgated to specify that urban Indian concerns must be taken into account in the educational process. Because of changes in the IEA, the PED is now required to consult with the IEAC before making changes; the council has grown from seven members in 2003 to 14 members, and as of 2007 includes 16 members.

The PED now operates a northwest office, expanding the work of the office and the local area to ensure that native language is part of the educational plan for each school. The PED makes a statewide annual education report — one for each local school district reporting on 11 indicators for tribal students — including achievement, dropout rates, graduation rates and indigenous research. For the first two years, the Indian Education Division of the PED had a problem spending the funds appropriated, but that is no longer a problem. As of July 11, the day of the meeting, all of the money budgeted for fiscal year 2008 had been sent out.

Norman Ration and Keith Franklin spoke to the committee on the importance of including urban Indian students, especially as one-half of the Native American students in New Mexico live in urban areas not contained within a single reservation or pueblo. In Albuquerque, there are 5,500 Native American students — 50% of them Navajo, 27% pueblo and 23% from

another 350 tribes. Native American students have high dropout rates and low grade point averages. The issue is not one of sovereignty, but of learning how to partner with tribes. The government-to-government relationship between the state through the PED and the various tribal governments is important. However, the inclusion of representatives of urban Indian populations on the IEAC will help ensure that all Native American children have a culturally appropriate education. Mr. Franklin was appointed by Dr. Cross Maple as a representative to the IEAC. These two presenters requested a true count of the number of Native American children and requested home school liaisons to become involved with native students by visiting them and encouraging them to attend school. Some 66% of Native American graduates of New Mexico schools still require remedial coursework in college. Some 83% of graduates from Navajo Pines had to have remedial education.

Committee members questioned the presenters and among their concerns were those surrounding the Higher Education Department's awareness of the statutory requirement for the department to work with the PED on Indian education. Upon a motion by Representative Begaye, seconded by Senator Lovejoy, the committee voted without objection to ask the new secretary of higher education to appear before the committee in November.

Adjournment

There being no further business before the committee, the second meeting of the IAC for the 2007 interim adjourned at 1:25 p.m.