

**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. |