

**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 Shoepner, 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.