

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

**August 30, 2012
Indian Pueblo Cultural Center, Albuquerque**

**August 31, 2012
San Felipe Hollywood Casino Showroom, Pueblo of San Felipe**

The third meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on Thursday, August 30, 2012, at 9:45 a.m. at the Indian Pueblo Cultural Center in Albuquerque.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair (8/31)
Rep. Ray Begaye
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Sen. Richard C. Martinez
Sen. George K. Munoz (8/30)
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez

Absent

Rep. Patricia A. Lundstrom
Sen. John C. Ryan
Rep. James E. Smith

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Ernest H. Chavez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

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

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

Staff

Damian Lara, Legislative Council Service (LCS)
Peter Kovnat, LCS
Theresa Rogers, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Thursday, August 30

Welcome and Status Update

Committee members, staff and the audience introduced themselves. Charlie Dorame, vice chair, All Indian Pueblo Council (AIPC), offered an invocation.

Mr. Dorame expressed regret that Chandler Sanchez, chair, AIPC, was unable to attend the meeting and welcomed the committee on behalf of the 19 governors and the 19 New Mexico pueblos that comprise the AIPC. Mr. Dorame said that the AIPC will meet to discuss its reaction to attorney Patrick Rogers' email comments and that the AIPC does not tolerate language like that expressed by Mr. Rogers.

Among concerns for the pueblos are the gasoline tax, gaming and free play and water rights. Mr. Dorame noted that without the gasoline tax, the Indian Pueblo Cultural Center would not be able to function. As for gaming and free play, there is some confusion. The current agreement is that a percentage of the gambling revenue will be paid to the state. There is nothing in the agreement about "free" anything. Mr. Dorame said that there should be a discussion between the governor of New Mexico and the governors of the pueblos to come to an agreement on the free play issue. Regarding water rights, Mr. Dorame expressed concern that the legislature failed to approve money for a project near Albuquerque, which will result in a loss of federal funding. He hopes that the situation will be rectified.

In closing, Mr. Dorame made a call for action for some issues discussed at the State Tribal Leaders Summit held in Mescalero in June 2012, and he wants the issues to be added to the agenda of the Pueblo of Laguna IAC meeting to discuss them.

Michael Canfield, president and chief executive officer, Indian Pueblo Cultural Center, Inc., introduced Dwayne Virgint, chief operating officer, Indian Pueblo Cultural Center, Inc., and Indian Pueblos Marketing, Inc., and stated that the cultural center is very important and serves as an anchor enterprise for the North Valley neighborhood in Albuquerque.

Mr. Virgint said that the cultural center relies on the tobacco tax and supports itself with the help of Indian Pueblos Marketing, Inc., the for-profit part of the enterprise. In order to expand, the cultural center is seeking to purchase an adjacent plot of land for \$2 million. The adjacent land is the site of the former Albuquerque Indian School, and the plan is to redevelop it to support a self-sustaining micro-economy with office space, retail and lodging. The development plan will follow green development practices and will maximize the return to the native community.

When asked about the funding for the former Albuquerque Indian School plan, Mr. Virgint

said that bonds will be used to raise money for the first two buildings and the cultural center is trying to raise the rest of the money needed. Currently, the cultural center is renovating a charter school using a traditional bank loan. The entire development is slated to cost between \$200 million and \$300 million. There are strict guidelines for federal buildings, so the center will abide by those rules in order to attract federal government agencies to lease office space at the facility. The time line is set to start by the end of next year. The charter school will start in September or October 2012. The entire enterprise will be owned by the 19 pueblos and leased out.

When asked if there is financing for Native American entrepreneurs, Mr. Canfield said that there are no grant funds available from the cultural center, but it plans to facilitate access to grants for entrepreneurs where available. The planned infrastructure includes not only space to lease, but also assistance to gain access to available money.

In response to a concern that Albuquerque Old Town businesses would feel threatened by the new development, Mr. Canfield said that Old Town businesses do not see the cultural center as competition. In fact, the cultural center and Old Town businesses plan to work together and are going to have shuttle buses between the two. The cultural center is also getting feedback from its neighbors, whom it wants to invite into the process so it can get the right businesses leasing space right from the start.

As far as green space in the development, there is a park just east of the property, and there will be a sculpture garden in the middle. Mr. Canfield explained that the development will be pedestrian- and bike-friendly.

Combating Domestic Violence Against Native Women and Children: Legal and Policy Considerations

Barbara Creel, associate professor of law, University of New Mexico (UNM) School of Law (SOL), discussed the federal Violence Against Women Act (VAWA). She said that the VAWA and people's understanding of violence against women are based on some facts and some myths. Ms. Creel said that native women are subjected to violent victimization more than any other group, even other minorities. The federal Tribal Law and Order Act was passed in 2010 to address the issue, but according to Ms. Creel, it missed the mark. Enhancing tribal jurisdiction did not help because most of the perpetrators were non-native, and tribal courts have no jurisdiction over non-natives for criminal acts. The state, not the federal government (for the most part) or tribal courts, has jurisdiction over crimes perpetrated by non-natives on Native American land.

The United States Senate's attempt at the reauthorization of the VAWA, Senate Bill 1925, had measures to provide tribal court jurisdiction over non-natives where the crime takes place on tribal land. The United States House of Representatives, however, passed a very different bill. Federal full-faith and credit grants deference and respect to tribal court orders, and vice versa. However, the United States Senate and the United States House of Representatives versions of the bills to reauthorize the VAWA are based on misconceptions on the jurisdiction question, so

tribal officers do not think they have arrest power when in fact they do. Ms. Creel said that this misunderstanding can be resolved with training.

Melanie P. Fritzsche, staff attorney, American Indian Law Center, Inc., described the law center as a national Indian-controlled and -operated advocacy organization dedicated to creating native institutions, including tribal courts. Ms. Fritzsche discussed the tribal court training program, which has an in-person and an online training component. One aspect of the training program, the domestic violence virtual courtroom, is an online course where the user, a tribal court judge, can do the training from anywhere.

Ms. Fritzsche said that funding for the training program is from the federal Bureau of Indian Affairs (BIA), but that funding is coming to an end. The training program is available to tribal courts around the state, and according to Ms. Fritzsche, it does help reduce domestic violence. Ms. Fritzsche requested funding from the state to continue offering the training program.

Tassy Parker, Ph.D., R.N., director, Center for Native American Health (CNAH); associate professor, Department of Family and Community Medicine; and assistant dean for academic affairs, UNM Health Sciences Center and School of Medicine, discussed the social aspects of domestic violence against native women and children. Domestic violence is a pattern of assaultive behavior, and many women stay in the situation because they do not have the means to leave. In fact, 25% of women will suffer from adolescent domestic violence in their lifetimes.

Ms. Parker noted that the epidemic of domestic violence is not limited to adults and that adolescent domestic violence is on the rise. Boys that witness domestic violence are twice as likely to perpetrate it later in life. Those same boys are also more likely to engage in stalking. Child abuse and father absence have also been shown to be contributing factors to domestic violence.

In New Mexico, victims of domestic violence as reported by law enforcement were predominantly female (72%) and 19 to 45 years old (68%). Hispanics (52%) and Native Americans (16%) were represented significantly more among victims than their representation in the state population (46% and 9%, respectively). Perhaps even more disturbing than the statistics that illustrate how widespread domestic violence is in New Mexico is the fact that many cases go unreported, so the statistics underrepresent the reality.

Ms. Parker offered policy recommendations and the continuation of promising practices, including the creation of a task force or a clearinghouse that is fully funded to provide guidance to those suffering from all the effects of domestic violence. Ms. Parker also recommended the creation of a brochure describing what appropriate relationships consist of and that is geared toward men. Ms. Parker ended by saying that as a society, people need to be proactive, not reactive, to deal with this problem.

In response to a question, Ms. Fritzsche said that since April 2012, the training program

has been used by 15 people, but the marketing of it has just started. In some circumstances, face-to-face training may be more effective because that type of interaction makes it easier to know what is clear and what is not. A committee member opined that the funding may be better utilized by doing the training program in person and that bringing people together for the training will make it more effective.

Helen Padilla, director, American Indian Law Center, Inc., said the BIA asked the law center to develop this project and the majority of the training project is for in-person training. The trainings take place in Albuquerque and are free to tribal judges and tribal law enforcement relevant to domestic violence. There was \$600,000 from the BIA provided for two years that will run out at the end of this calendar year, and all of that money has been received. However, Ms. Padilla said, the online training version is especially important for rural tribal individuals who cannot travel to an in-person training.

A committee member asked if tribal law enforcement personnel know that they can enforce domestic violence laws against non-natives on tribal lands. Ms. Creel said that there is federal jurisdiction for major crimes on tribal lands and that the VAWA aims to include domestic violence as a designated major crime so that the federal government, not the state, has jurisdiction over domestic violence crimes. To address this issue, Ms. Creel suggested Indian law training for legislators, including an update on what is happening with the VAWA and its reauthorization; the creation of a clearinghouse to allow parties to come together to address this issue; and training for local law enforcement. Ms. Creel said that currently, the questions being asked are the wrong ones. It is not who is native or non-native, it is whether the victim or potential victim is safe.

In response, a committee member said that it is law enforcement, primarily tribal law enforcement, that needs training and needs to be willing to show up in magistrate court, along with the victims, so the cases do not get dismissed.

A committee member mentioned a crime committed near Gallup where the perpetrator crossed into Navajo land and the Navajo police did not cooperate, so nothing happened. Ms. Creel responded that it is state law enforcement's responsibility to enter Native American land to apprehend the non-native offender regardless of where the crime occurs. In this instance near Gallup, the committee member said, both the perpetrator and the victim were Native American, and the local police did not have jurisdiction to go onto native land to arrest a native person, and the Navajo police did not respond. All that can be done is to file a report and give it to the prosecutor.

When asked if there is a specific amount of funding being sought, Ms. Fritzsche asked for \$300,000, which would match a year of the federal funding that will expire this year. Another committee member recommended funding a task force to address domestic violence.

A legislator suggested doing something similar to what the Pueblo of Laguna has done by making traffic offenses civil offenses. Tribal courts have jurisdiction over non-natives for civil

violations on Native American land, so perhaps domestic violence can be made a civil charge so that a non-native can be taken into tribal court and the victim can seek monetary restitution. Ms. Creel responded that it is an interesting idea, but a key difference between the United States House of Representatives and Senate versions of the VAWA is that the Senate version says civil protection orders can be ordered by tribal courts, but the House version does not.

Another committee member suggested that a Navajo cross-commission law enforcement agreement may be another avenue that could work to solve the jurisdictional problems. The committee member asked Mr. Lara to look into what other states do vis-a-vis domestic violence, police jurisdiction and the range of authority for the various courts.

Finally, a committee member expressed deep gratitude for the presenters' work fighting domestic violence, which is something that many people feel uncomfortable discussing and confronting.

Combating Domestic Violence Against Native Women and Children: Service Provider Considerations

Gwendolyn Packard, program specialist, National Indigenous Women's Resource Center, said that domestic violence is not an isolated issue. There is often also animal abuse and child abuse that go hand-in-hand with domestic violence. Native American women suffer from domestic abuse four times more than the general population, and the majority of the domestic violence is perpetrated by non-natives.

Frances Abeyta, tribal prep co-coordinator, Tewa Women United, discussed Tewa Women United, a support group for women concerned with alcoholism, suicide and domestic and sexual violence. Ms. Abeyta provided committee members with an investigation checklist to aid victims, their advocates and law enforcement to handle violent situations. She said that tools like these are useful and should be made available to law enforcement personnel statewide. She was critical that law enforcement personnel do not attend cultural sensitivity training sessions, which do exist.

Tewa Women United is using traditional values of community to combat domestic violence. Ms. Abeyta said that when a person is traumatized, there is a physical effect. This effect may hurt in the effort to investigate or prosecute the crimes because there appears to be a failure of corroboration, but that is trauma-induced memory loss. One way to address this is to provide guardian ad litem for victims of abuse.

Louisa Baca, family advocate co-coordinator, Tewa Women United, said that escaping families need funds to relocate, and homeless shelters do not always work because sometimes there is a male child, and some shelters will not allow males into the shelters.

In response to a question, Ms. Abeyta said that Tewa Women United is not for Tewa-speaking women only, but for Tewa, Tiwa, Towa and any other native women. Also, she said that many of the employees at Tewa Women United are working with the National Congress of

American Indians task force on violence against women.

When a committee member expressed concern about law enforcement not attending the cultural sensitivity training, Ms. Abeyta said that many, not all, law enforcement agencies are unwilling to learn the protocols or procedures that they need to be culturally competent. These domestic violence cases, especially the sexual abuse ones, need to be dealt with immediately, so the training has to take place beforehand. When the crime occurs, it is unclear to law enforcement who is going to take on the responsibility, and so the officers often give up rather than figure it out.

Upon a motion by Representative Rodella, with a second by Representative Powdrell-Culbert, and without objection, Mr. Lara was asked to write a letter from the IAC to the Office of the United States Attorney requesting training or a meeting with the Tewa Women United so that officers are more culturally sensitive to native domestic violence issues.

Available Resources: Southwest Indian Law Clinic (SILC) and the UNMSOL

Kevin Washburn, dean, UNMSOL, discussed what the SILC offers Native American people and presented Ms. Creel and introduced two UNMSOL students, Aubeney Burns and Leah Stephens Block. Dean Washburn explained that UNMSOL asked the Legislative Finance Committee to restore \$37,000 in funding for the SILC, so the total funding request for the SILC is \$203,900.

Dean Washburn said that the SILC is ranked number seven in the nation, and has three charges: to educate the students, to educate the bench and to represent Native Americans. When asked if the SILC takes cases where both litigants are native, Dean Washburn said that the guidelines of the SILC are that no client can make more than 125% of the federal poverty level. Also, the SILC considers if it is a good case for student learning, and when the SILC does not take a case, it can at least point the non-client in the right direction as far as securing legal representation.

Ms. Creel said that the SILC trains judges about the jurisdictional questions raised at this meeting at the New Mexico Judicial Conclave, and now the SILC has some BIA funding to train tribal court personnel specifically.

Ms. Burns introduced herself and mentioned that she was a law enforcement domestic violence officer for eight years and knows how serious a problem domestic violence is. Ms. Block introduced herself and said she was the associate editor of the *Native Law Journal*, and, through the clinic, she is already representing native clients.

The dean thanked the committee for allowing the students to make their presentations, which is a great opportunity that the SILC also can provide due to the close relationship between UNMSOL and the legislature.

The committee congratulated Dean Washburn on his nomination by President Obama to be

assistant secretary for Indian affairs in the Department of the Interior.

Available Resources: CNAH

Ms. Parker discussed the CNAH, its vision and mission. The center aims to provide New Mexico with Native American health work force creation, health equity promotion and healthy communities support and development. The CNAH has created a model for Native American student development in health sciences. The CNAH maintains sustained exposure with its community with workshops that include high school students, college students and families. Currently, there are eight Native American faculty members and 92 Native American students in the UNM School of Medicine, the colleges of nursing and pharmacy, and the Health Sciences Library and Informatics Center.

The CNAH collaborates with the Indian Health Service and has \$175,000 a year for a program to develop the interest and success of Native American students in the health professions. This program is in three schools. The program is effective, and it is expected that funding will be renewed. The CNAH leverages what it does with S.M.A.R.T. (specific, measurable, attainable, realistic and timely) goals, which keeps it evaluating itself and improving. It is notable that no Native American medical students withdrew or were dismissed, and the nursing and pharmacy schools are also popular. There is almost a zero attrition rate. The CNAH is committed to these students' success, and it is working. Now, two physical therapy slots a year have been earmarked for Native American students.

A committee member mentioned the importance of preventative medicine as a focus. In fact, Ms. Parker said that one of the grants that the CNAH just got is a pediatric care grant that focuses on children before they are school age, which will prevent early obesity and stave off diabetes.

Regarding behavioral health collaborative providers, Ms. Parker said that the CNAH supports traditional healing methods, and she said that while the state may be behind the times, Medicare and the United States Department of Veterans Affairs do recognize traditional healing methods.

When asked by the committee if the CNAH is seeking any legislation in the upcoming legislative session, Ms. Parker stated that the CNAH is seeking \$80,000 to hire a new position.

Available Resources: Indigenous Design and Planning Institute

Geraldine Forbes Isatis, dean, UNM School of Architecture and Planning, discussed the Indigenous Design and Planning Institute (IDAPI), the only institute of its kind in the United States, which has a mission to educate people about culturally appropriate design, which values continuity and stewardship. There are currently 33 Native American students at the IDAPI.

Ted Jojola, Ph.D., distinguished professor and regents' professor, UNM, says that this is an important area of study, but it does get the respect it deserves. Dr. Gigolo showed committee members a map of the projects that the IDAPI is doing. That map and an update of the projects

are included in handouts. Dr. Gigolo extended an invitation to the committee to visit the facility to get to know what is happening there.

When asked if chapters seeking money for new chapter houses can get help from the IDAPI, Amanda Manda, program specialist, IDAPI, said that input might work, but it depends on whether or not there is the necessary infrastructure for a design project to move forward, i.e., wastewater and efficient design.

Dr. Gigolo discussed the ongoing financial needs of the IDAPI and said it was able to raise \$1.6 million as an endowment. Dean Forbes explained that the owners of the Frontier Restaurant were very generous, but the IDAPI needs more.

A committee member said there is still money in the Tribal Infrastructure Project Fund, and he suggested that people at the IDAPI ask Secretary of Indian Affairs Arthur P. Allison to tap into the fund. Another recommendation is to seek funds out of the taxes collected by the Navajo Nation. Dr. Gigolo said that this is an ongoing discussion and that he hopes to see funding come from it. In Dr. Gigolo's opinion, the goal is to work with diverse groups to accumulate experience that will benefit both the IDAPI and the groups. The committee member said it may be helpful to work with the local chapters and perhaps tap into local tax revenue. Dr. Gigolo discussed the Local Governance Act initiative to allow chapter houses to develop their own land use plans.

For the ongoing success of the IDAPI, Dr. Gigolo said that the athletic model is the way to go. The IDAPI needs to recruit students with a likelihood of success and follow them through so that they do not fail.

Friday, August 31

The second day of the third meeting of the IAC was called to order by Senator John Pinto, co-chair, on Thursday, August 31, 2012, at 9:20 a.m. at the San Felipe Casino Hollywood Showroom. Committee members, staff and the audience introduced themselves. Anthony Ortiz, governor, Pueblo of San Felipe, offered an invocation.

Welcome and Status Update — Pueblo of San Felipe

Governor Ortiz welcomed the committee and said the pueblo has great needs in many areas, including education, health care and domestic water. The water system is from the 1960s, and there needs to be an upgrade. The Pueblo of San Felipe is working with Sandoval County on upgrades to the water system. Also, there is only one road for ingress and egress to the village, and traffic is a concern for emergency vehicles. Several construction projects for wastewater and for a fire station are under way. The fire station closed, and now the response time for a fire emergency is too long. The Pueblo of San Felipe is working toward providing its community the same things that other communities have.

Dennis Peralta, tribal utilities director, Pueblo of San Felipe, introduced Isaac Perez, tribal

housing director, Pueblo of San Felipe. The Pueblo of San Felipe Housing Authority (TDHE) was created in 2000 with the mission to provide quality housing services by building and renovating homes to fit the traditional and cultural customs of the tribal members of the Pueblo of San Felipe.

With the help of a \$2 million federal American Recovery and Reinvestment Act of 2009 grant and some Title 6 block grants, a subdivision, Black Mesa View (BMV), was created. The tribal council donated 100 acres on the south side of the reservation. By doing so, the pueblo created a community of elders, and it was done in such a way that tribal members got initial help but could then assume the mortgage payments and be on the path to homeownership. The TDHE envisions not only building a subdivision but a sustainable economy. The entire project should be done by 2015. However, based on the ongoing needs of the subdivision, the TDHE also hopes to secure other sources of funding, including capital outlay. Mr. Perez said that all people hoping to get a house in the BMV have to declare their incomes, and there is more than a 60% poverty rate on the pueblo, so that makes getting federal funds easier.

Mr. Peralta discussed desired infrastructure expansion, including a walking path from the BMV to the elementary school, a south end bridge, many roads, a solid waste bin system upgrade, a pump house, a connection for the frontage roads and an upgrade of the sewer and water systems.

Esther Tenorio, health and wellness director, Pueblo of San Felipe, discussed the substance abuse and mental health services that the pueblo offers. The main goals of her program, Ms. Tenorio said, are to increase youth and family participation, improve interagency collaboration and establish financial infrastructure to support sustained delivery of the highest quality community-based services.

When asked if there are easements granted to Public Service Company of New Mexico (PNM) and other utilities on the BMV, Mr. Perez said that there are agreements for rights of way with the BIA, which are required for projects like these. Mr. Perez explained that there is a joint use utility agreement with Qwest and PNM, and that the pueblo did a National Environmental Policy Act clearance of the whole area, so there was already an environmental impact statement, which made the whole process easier.

To get funding for water, the Pueblo of San Felipe is using funds from the federal Environmental Protection Agency and the Indian Affairs Department (IAD). According to Mr. Peralta, the relationship with the Middle Rio Grande Conservancy District could be better. There is a consortium of pueblos to deal with both water and fire issues along the Rio Grande and in the region.

A committee member congratulated the Pueblo of San Felipe on being self-sufficient, particularly with housing, and asked if other pueblos are doing similar things. Mr. Perez said that he has met with folks from 16 other pueblos to explain how the Pueblo of San Felipe did what it did and got the money to do so.

Native American Utility and Telecommunications Tax Exemption

Theresa Becenti-Aguilar, commissioner, District 4, Public Regulation Commission (PRC), thanked the committee and said she wants to work together and for the public to hear what decisions are being made. Commissioner Becenti-Aguilar introduced her staff and Joe Garcia, and thanked him for creating a working group to solve issues regarding the Native American tax exemption.

Commissioner Becenti-Aguilar urged people that live on Indian land to fill out the tax exemption form, as it is their right. Commissioner Becenti-Aguilar said that the PRC is willing to meet at pueblos and have people come and fill out their forms. This allows the PRC to figure out tribal enrollment. Some tribes have been better at outreach, so it may be more effective to have a PRC person to look up tribal affiliation and have the PRC person put the individual on the list of exemptees.

Lisa Ortiz, Native American liaison, Utility Compliance Officer, PRC, discussed the history of Native American tax exemption. As a result of a workshop conducted by the PRC on July 11, 2008, an informal working group convened to develop a consensus approach to creating a Native American tax exemption. The group first met at the State Library in Santa Fe on August 22, 2008 and selected Joe Garcia, consultant and owner, Mistylake Consulting; Roy Stephenson, PRC; and Mark Cessarich, PRC, as co-chairs. Since then, the group has been meeting on a regular basis, and representatives of 19 pueblos and the Navajo Nation have participated in the working group meetings, along with representatives of utility and telecommunications service providers. The working group has established several subcommittees to address specific components of the project.

Mr. Cessarich explained the relevant laws, statutes and rules that guide the policies of the PRC in regard to utility agreements with the tribes and pueblos. He noted that there are threshold questions that determine if the Native American tax exemption applies. It is critical to know who the parties are, what the transaction is for, what taxes or charges apply and where the transaction occurs or the services are performed.

Mr. Stephenson said the working group is all about different groups with different interests working together. The tax exception used to be done through an extremely onerous process, but once the tribes started thinking about and treating it as their issue and the PRC got on board, the various pueblos brought their needs to the table and together they found solutions. Mr. Stephenson said that individuals need to file papers with a number of utility providers, and that is where Ms. Ortiz, as the tribal liaison, comes in.

Mr. Garcia gave an overview of the working group, and he noted that taxation on Indian land is complicated. Under federal law, state and local governments may not impose taxes on a transaction occurring on Indian land where the recipient is a tribal member residing on tribal land. Despite this, some service providers have taxed tribal community members within the boundaries of their land. New Mexico provides an exemption from taxation for those services. The way those exemptions have been provided has been uneven and inconsistent. The working

group strives to overcome that and has made significant progress, but there is still work to be done. Beyond the question of who qualifies as a tribal member, there are questions of what constitutes a utility. For example, it has yet to be established if cell phone service or cable television packages qualify for the exemption.

Donna Venable, billing specialist, Continental Divide Electric Cooperative, Inc., said that after the cooperative started using self-certification for customers, it took the exemption percentage from 80% to 90% of customers. The cooperative currently offers a blanket exception with PNM to allow customers to get on a list that will exempt them from paying the utility tax at all. However, the cooperative has experienced some difficulty getting its reimbursement from the Taxation and Revenue Department (TRD).

As noted by a committee member, the utility company does not feel the loss because it is just a pass-through entity, but the general fund will feel the loss. Either the utility collects from the consumer or gets reimbursed by the TRD, but either way, this triggers concern for legislators because either the money is being taken from their constituents or from the general fund, which is a larger pot of money that the legislature controls.

Regarding the possibility of a state law to exempt all tribal people from taxation, Ms. Venable said the cooperative wants tribal leadership to be involved and to let each tribal member choose how he or she wants to handle the exemption.

A committee member congratulated Mr. Garcia for getting all the tribes together to collaborate on this but expressed concern that it took so long for the exemption to be integrated and used.

In response to a query from a committee member, Mr. Lara explained that a non-native living on tribal land and married to a tribal member qualifies for the exemption even if the utility bill is in the non-native's name.

Expanding Utility Services into Indian Country: Gas and Electric

Thaddeus L. Garcia, tribal government affairs administrator, New Mexico Gas Company, Inc. (NMGasCo), mentioned the tax exemption and the progress that NMGasCo has made. The NMGasCo works with 15 tribes in New Mexico: 10 where customers were determined to be eligible for the New Mexico gross receipts tax exemption, including the Pueblos of Isleta, Acoma, San Felipe, Tesuque, Santa Ana, Santo Domingo, Sandia, San Ildefonso, Cochiti and Ohkay Owingeh; and five tribes on which customers exemptions are pending, including the Pueblos of Santa Clara, Nambe, Pojoaque, Taos and Laguna.

Rebecca Carter, regulatory affairs manager, NMGasCo, said that each tribe needs to be recertified each year, per TRD regulations. Utilities can globally exempt Naive Americans living on tribal land. Out of the 15 tribes with which NMGasCo works, 10 have been universally exempted. The Pueblo of Isleta is the biggest pueblo with which the company works. How it works is that NMGasCo uses mapping data and matches the global positioning system data to the

billing system. Once the tribe agrees that the list is complete, the tribe signs off on it, and then it is put into NMGasCo's system as those that get the tax exemption. The Pueblos of Isleta and Santa Ana are going into their third year of recertification, so that information is almost 100% accurate.

Still, individual customer's forms will still be accepted, so those that are not in the exemption system still have recourse. This has reinforced and enhanced NMGasCo's relationship with the tribes, and because recertification is annual, it is the ongoing contact.

NMGasCo is leveraging various forms of funding to construct new ways to provide services, and the United States Department of Agriculture has been helpful in that process. A joint well agreement is currently under way on the Pueblo of Laguna to install 19 miles of infrastructure to provide 4,000 more people with natural gas.

The Pueblo of San Felipe has not tapped into the natural gas line that runs nearby. The pueblo is planning on connecting to that natural gas main. The project was approved by the San Felipe Tribal Council; work started a few weeks ago and is projected to be completed by March 2016, and the project is totally financed by pueblo funds. The average savings per customer of a residential unit using 600 gallons of propane versus natural gas is \$1,000 a year.

Cathy Newby, tribal relations manager, PNM, spoke about how PNM is handling the tax exemption. Ms. Newby discussed expansion of utility services in Native American communities. PNM and NMGasCo are two of the utility companies that have the most interaction with native communities in the entire nation. Ms. Newby said that input and consultation is critical to the relationship between PNM and the tribes. In fact, the substation at the exit of the Pueblo of Santo Domingo and I-25 has gone from a contentious issue to a collaborative effort. Ms. Newby also mentioned a number of ongoing projects and said that since 2004, PNM has provided \$177,000 in reimbursements to Native American customers.

When asked who serves the Pueblos of Nambe and Pojoaque, Ms. Newby said that cooperatives serve them, but that any agreements as far as rights of way are with the tribal governments, not individual customers. As for the Jemez Valley, Ms. Newby said that San Ysidro is the closest place for natural gas service, but there have been no serious talks with the Pueblo of Zia or the Pueblo of Jemez to look into the possibility of natural gas service.

A committee member said that with transmission lines or gas lines servicing tribal customers or tribal governments, there is usually a fee to use tribal land. There are cases pending on that issue right now regarding rights of way. When the agreements that exist expired, there have been accusations of trespassing. The concern is that this will affect people's access to power. The committee member urged legislators to not rush to do a bill regarding taxation until the working group makes its findings.

Mr. Stephenson said that rights of way used to be negotiated by the federal government rather than the tribes, but many of the right-of-way agreements have expired. The original

agreements are now being renegotiated tribe by tribe, and there is an understanding that the price will now go up.

Tribal Economic Development Bonds for Infrastructure Projects

John Gasparich, interim chief executive officer, New Mexico Finance Authority (NMFA), discussed the projects funded by the NMFA, broken down by the Water Trust Board (including the Navajo-Gallup Water Supply Project, which should affect that whole part of the country), Water and Wastewater Project Grant Fund, Public Project Revolving Fund (PPRF) (which is the NMFA's main fund) and new market tax credits. In total, the projects account for \$166,804,142.

Mr. Gasparich explained that the loans provided are the best loans that the NMFA is able to secure, and any savings can be passed along. The NMFA is competitive, but perhaps not the best in comparison to the rate a larger government or governmental entity can get. Also, he explained, there needs to be legislative approval for projects that come from the PPRF. The loans are secured by a dedicated revenue stream. If the stream is not there, which has happened, it is up to the NMFA and the borrower to work something out. The NMFA might have to take a loss, but that usually does not happen. To insulate itself from defaults, the NMFA will not loan based on a revenue stream one for one. The NMFA considers entities that make 30% more than they will have to repay in order to protect the loan repayment from fluctuations in that revenue stream.

When asked if an entity can use capital outlay funds to repay an NMFA loan, Mr. Gasparich said that the loans are usually based on a pledge of an ongoing revenue stream, so capital outlay is unlikely to be used.

Tribal Infrastructure Funding: Process, Outreach and Training

Autumn Monteau, general counsel, IAD, said the IAD and the Department of Environment community services group conducted tribal infrastructure project workshops around the state and that over 220 tribal administrators, leaders, officials and consultants participated. Tribal communities seeking to obtain consideration for funding completed and submitted 86 tribal project interest forms, including 40 planning projects, four design projects, 23 design and construction projects and 19 construction projects. The top rankings of those projects were presented to the Tribal Infrastructure Fund board, and 28 projects were fully funded, with \$13,207,965.

Graham Knowles, community services manager, Department of Environment, said that the change in the funding stream from the general fund to the severance tax fund and the enhanced planning effort and work with the Department of Environment has brought results. He said that providing potential applicants with an action checklist provides ideas for a more refined and robust application. Mr. Knowles was clear that the action checklist does not provide suggestions, but it does provide ideas that may make it a better long-term sustainable project. Mr. Knowles noted that the return on investment and job creation due to the funding of these projects would be substantial.

A committee member said that the Pueblo of San Ildefonso was given money for a housing project and that the tribal infrastructure project may be a perfect model for the San Ildefonso project.

Another legislator noted that because the Navajo Nation is in the middle of an election cycle, no trainings should occur until after November so it is clear that the appropriate people are making decisions.

There being no further business, the third meeting of the IAC adjourned at 3:30 p.m.