

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

**July 18, 2016  
Ramah Navajo Chapter House  
Mountain View**

**July 19, 2016  
Navajo Division of Transportation-Tse Bonito Office  
Mentmore**

**July 20, 2016  
University of New Mexico-Gallup  
Gallup**

The second meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on July 18, 2016 at 10:16 a.m. at the Ramah Navajo Chapter House in Mountain View.

**Present**

Rep. Sharon Clahchischilliage, Co-Chair  
Sen. John Pinto, Co-Chair  
Sen. Ted Barela (7/18)  
Rep. D. Wonda Johnson  
Rep. Georgene Louis (7/19)  
Rep. James Roger Madalena  
Sen. Nancy Rodriguez  
Rep. James E. Smith  
Sen. William P. Soules

**Absent**

Rep. Zachary J. Cook  
Rep. Yvette Herrell  
Sen. Richard C. Martinez  
Sen. Cliff R. Pirtle  
Sen. John C. Ryan  
Sen. Benny Shendo, Jr.

**Advisory Members**

Rep. Eliseo Lee Alcon  
Sen. Carlos R. Cisneros  
Rep. Patricia A. Lundstrom (7/19, 7/20)  
Sen. Cisco McSorley  
Rep. Debbie A. Rodella

Sen. Stuart Ingle  
Sen. Daniel A. Ivey-Soto  
Sen. George K. Munoz  
Rep. Patricia Roybal Caballero  
Rep. Nick L. Salazar  
Sen. Clemente Sanchez

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

**Staff**

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)  
Shawna Casebier, Staff Attorney, LCS  
Diego Jimenez, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Monday, July 18 — Ramah Navajo Chapter House****Welcome and Status Update**

David Jose, president, Ramah Navajo Chapter, gave an opening invocation. Senator Pinto asked the committee members and the audience to introduce themselves. He then asked that Representative Clahchischilliage chair the remainder of the meeting.

President Jose gave a brief history of the Ramah Chapter, its lands and the workings of the Ramah Navajo School Board. President Jose updated the committee on the settlement of a lawsuit against the United States secretary of the interior for lack of contract support costs. He also highlighted the need for infrastructure and for commercial and industrial enterprises to address a 50% unemployment rate and foster economic development. President Jose concluded with a request for funding.

Gilbert Maria, community development director, Ramah Navajo Chapter 638 Program (the federal Indian Self-Determination and Education Assistance Act (Public Law 93-638)), reviewed the progress of projects funded through capital outlay and the tribal infrastructure funds (TIF). Mr. Maria presented a chart showing the project funding amount, status and future actions. The projects reviewed included the Mountain View Estates water line design and construction, deep well design for the detention center and Section 21 government facilities site, design of a waste disposal transfer station site and rehabilitation work for the Ramah Navajo Police Department.

President Jose noted that the projects made through an intergovernmental agreement with the Navajo Nation must be processed through the Navajo Nation Council, which necessarily adds time to the progress of the projects. President Jose expressed the desire for the Ramah Navajo Chapter to be certified or to establish an alternative form of government so that funding of appropriations may be made directly to the Ramah Navajo Chapter.

Responding to a question about the chapter's response to the 50% unemployment rate, President Jose said that the chapter is using all of the resources it has to create jobs. Local youth are receiving education in vocational schools and working on and off of the reservation. The

Ramah Navajo unemployment rate is stable at this time, while the overall Navajo Nation unemployment rate is higher, at 70%. President Jose reported that workforce development programs are being "unitized" in Navajo Nation agencies to identify candidates for employment and that the chapter is working to establish a workforce development program locally.

A committee member inquired as to how the chapter intends to use the money from the settlement of the lawsuit against the secretary of the interior. President Jose stated that a committees' committee has been established and that discussions are taking place as to how to distribute the money to various programs and about investment opportunities. He suggested that the money will be used to invest in real estate, to support economic development programs and to fund scholarships, and some of the money will be put back into the contract programs from which the lawsuit arose. President Jose expressed an interest in using the funds to leverage and match state funding; however, the chapter first needs to be certified to be able to enter its own contracts.

Noting that the biggest employer for the chapter is the Ramah Navajo School Board, a committee member inquired as to the Ramah Navajo School Board's relationship with the chapter. President Jose said that the chapter and the Ramah Navajo School Board work together, but because the Ramah Navajo School Board is incorporated, its work is somewhat independent of the chapter. He pointed out that the Ramah Navajo School Board reports to the chapter, but the president and vice president are elected through the Navajo Nation, and the Ramah Navajo School Board is contracted through the Indian Health Service (IHS). President Jose said it would be preferable for the chapter to be contracted with the IHS instead of the Ramah Navajo School Board so that the chapter could receive money for administration and be able to hire staff that directly reports to the chapter.

Relating to the proposed land division of Fort Wingate, a member asked whether the chapter will receive any lands from the closure of the fort. President Jose explained that, at this time, while the discussions have only been about a 50/50 division of the land between the Navajo Nation and the Pueblo of Zuni, the chapter passed a resolution requesting apportionment of one-third of the land to the Ramah Navajo and that this resolution was sent to U.S. Representative Steve Pearce.

### **Update on New Mexico's Native American Charter Schools**

Kara Bobroff, executive director, Native American Community Academy (NACA)/NACA Inspired Schools Network (NISN), Kristin Szczepaniec, knowledge manager/indigenous education specialist, NISN, and J'Shon Lee, director of strategic initiatives, NISN, presented the committee with updates and future actions for New Mexico's Native American charter schools.

Ms. Bobroff said that the NACA is a collaborative effort with the federal Every Student Succeeds Act (ESSA), the New Mexico school system and national schools. Guided by a holistic, wellness-based philosophy, the NACA's education program includes performing arts;

native language classes, including the Navajo, Lakota, Isleta, Laguna and Zuni languages; and advanced placement and dual-credit classes, Ms. Bobroff said. She said that the NACA focuses on ways to serve communities, and it highlights governmental and economic development. Ms. Bobroff stated that the NACA is a B-rated charter school with a matriculation rate of 80%, and this fall, the NACA will be opening kindergarten and first grade classes in Albuquerque.

Ms. Szczepaniec shared with the committee some of the current activities of the school, many of which focus on model sharing. Through the NISN, officially launching this fall, best practices are being identified for how to set up a school and how to support Native American identity and social and emotional wellness. Planning documents are also being designed for a curriculum and for lessons that are integrated in Native American communities and responsive to students' needs. Ms. Szczepaniec said that beginning in February 2016, teachers, students, family members, community partners and administrators were surveyed to assess whether the NACA is achieving its mission and whether students are feeling that they are being heard. She said that the purpose of the survey was to help quantify and qualify culturally responsive teaching to help schools prioritize and to figure out the best practices to share. The survey results show that 80% of students, family and staff think that the NACA's focus on identity development is strong and that the survey respondents have a good understanding of the mission of the school.

Ms. Szczepaniec then summarized for the committee the NISN's fellowship program to assist others in launching new schools. Stressing that the schools need to come from the community and be tailored to the specific needs of the community, Ms. Szczepaniec shared that the NISN has fellows from other states who come to New Mexico for professional development and to learn best practices for implementing NACA-style learning in their own communities, whether through a charter school program or the public school system.

Ms. Lee addressed the committee on engagement with indigenous communities. She stated that the NISN supports "community-led design schools" whereby the community creates the mission and vision for the school, and she emphasized that the community, families and students must be consulted in order to infuse in schools the great knowledge and core values of indigenous people. She summarized that there are several established and new schools in New Mexico that are part of the NISN, including the NACA, which is going into its eleventh year; a new NACA elementary school, to open in fall 2016; the tribally run Kha'p'o Community School in the Pueblo of Santa Clara; the Dzil Dit L'ooi School of Empowerment, Action and Perseverance in Navajo, New Mexico; Six Directions Indigenous School in Gallup; and Dream Diñe Charter School in Shiprock. She also noted that there is a NISN school in the Pueblo of Acoma focused on early learning to adulthood that is transitioning from being run by the Bureau of Indian Education (BIE) to grant status, in addition to new schools in the pueblos of Santo Domingo and Cochiti and a growing interest in indigenous education in Las Cruces.

Ms. Lee explained that changes have taken place to the ESSA that require tribes to be consulted in guiding and assessing education outcomes. She emphasized that tribes under the ESSA must be engaged at the state and district level, but significant stakeholder engagement is

not quite happening and work needs to be done in fleshing out best practices for tribal engagement, including consolidating and updating pre-existing tribal consultation documents to include culturally responsive training and an awareness of tribal values.

With several members expressing their support for the NACA and the NISN, the committee then engaged in a discussion of numerous issues related to the school and network.

In response to questions regarding the legal framework of the NACA, Ms. Bobroff explained that the NACA is a district collaborative charter with the Albuquerque Public School District (APS) in which the district is the authorizer, although some funding is provided directly to the school. She stated that there are three other NACA-like state-chartered schools where the funding is given directly to the school, and there are other schools, such as those in the pueblos of Acoma and Santa Clara, that are grant schools, which are tribally run with the BIE overseeing the school and funding the school through the school itself and the tribe. Ms. Bobroff asserted that because APS has a varied school structure, it is easy for APS to support charter schools, which are included in its capital master plan. She suggested that there is a need for business and financial management training for state-chartered schools and that different tribes have varied levels of infrastructure to support the schools.

Ms. Bobroff mentioned that the Central Consolidated School District is in conversations with the NACA about how to collaborate, and the Gallup-McKinley County School District is starting to have conversations regarding transportation funding. In Grants, although there is no charter school, the Pueblo of Acoma is working through its advisory council to run the school. Ms. Bobroff noted that there is not yet a template of how to work with the school districts. Asked whether the NACA was recruiting school districts to get involved, Ms. Bobroff replied that efforts have been made through a fellowship program and outreach to the community and the governor, but she noted that some tribes are not in a place to transition away from the BIE or to have a charter school at this time.

In response to a question regarding the transition of a school from BIE status to grant status, Ms. Bobroff explained that when a school is a BIE school, the BIE provides funding and runs the school as if it were a district. She noted that there are efforts to transition schools away from the BIE to the tribe running the school. In this scenario, the BIE funds a school but is not responsible for its workings. The tribe controls the school under its own governance structure and creates its own education priorities, while still conducting assessments as required by the BIE.

A member asked if the Public Education Department (PED) has reached out to the panelists for assistance in achieving the community consultation requirements of the ESSA. Ms. Bobroff replied that conversations have taken place with the PED's Indian Education Division about how the consultations will take place, but there has yet to be any follow-up, and preliminary conversations have occurred with Learning Alliance New Mexico on how to engage the community. A member remarked that the Legislative Education Study Committee is very

concerned that the PED believes it is already doing what is required of it under the ESSA by planning community meetings. However, these meetings are only meeting the minimum requirements and do not seem like real engagement. Ms. Bobroff proposed that the PED may need a technical skills advisory group that has experience with tribes to assist in the consultations.

In response to a question from a committee member regarding the rate of NACA students dropping out of school, Ms. Bobroff said there are 42 feeder schools for students going into the sixth grade and that most of those students have two- to four-year gaps in math and reading education. There is also an influx of students in the ninth grade, with many being reclassified as unable to progress to the next grade level and 60% to 70% having gaps in learning. In response to these facts, Ms. Bobroff said that efforts are being made to help students acquire research and writing skills, and to provide preparatory support, after-school support and enrichment programs, to help students find their passion. As a result, Ms. Bobroff said that NACA's dropout rate is 2% and its graduation rate for girls has closed the gap with non-Native American students, while the graduation rate for boys is 60% to 62%. She noted that the graduation rate is highest among students who are not transitioning in and out of school.

When asked by a committee member about the provision of special class schedules to allow students to go home to their pueblos for feast days, Ms. Bobroff replied that the school respects and provides support for students to participate in cultural events, including the possibility of attending Saturday classes or engaging in community service activities to make up for missed instruction. In response to a follow-up question relating to any correlation between community connection and academic success, Ms. Szczepaniec explained that it is hard to gauge a student's "level of connection" to the community, as students have various levels of identity; however, they are working on data that correlate identity, connectivity and achievement.

Concerned about the budgetary impacts on the schools, a member asked what happens if the small school funding differential is lost. Ms. Bobroff explained that such a scenario would not have an impact on the NACA, but it may have an impact on other charter schools if they are not exempt under a rural school exception. Ms. Bobroff said that the NACA has participated in a school district-wide audit that revealed some concerns about staffing issues, which were addressed; but overall, the audit was positive in nine out of 10 indicators.

Ms. Bobroff outlined four goals for the NACA going forward: 1) strengthening college preparation of students and working with alumni to support those students in their first two years of college; 2) supporting teachers in their professional development; 3) understanding and strengthening the impact of elementary school on students transitioning to middle school and high school; and 4) collecting and analyzing data to understand the impact of cultural identity on academic achievement.

In response to a question about the ethnic makeup of students and staff, Ms. Bobroff said that 98% of the students are Native American, representing 62 different tribes and 18 different

ethnicities. As to staff members, she noted that they are roughly representative of the student body diversity, with 66% of overall staff members and a majority of teachers enrolled in a tribe, with roughly one-third proficient in their native language, one-third engaged in learning their native language and one-third wanting to learn.

### **Approval of Minutes**

On a motion by Representative Smith, seconded by Senator Rodriguez, and without opposition, the committee voted to approve the minutes from the committee's May 25, 2016 meeting.

### **Tribal Courts and Tribal Jurisdiction**

Daniel Moquin, staff attorney, Ramah Judicial District, Navajo Nation, and the Honorable Leonard R. Livingston, permanent district court judge, Navajo Nation, provided the committee with an overview of the judicial branch of the Navajo Nation and the jurisdiction of the Navajo Nation.

Mr. Moquin said that under the Diné bi beenahaz'áanii, or the Fundamental Laws of the Navajo, enacted by resolution in 2002, the judicial branch is part of a four-branch government, which includes the executive, legislative, judicial and national security branches. Mr. Moquin said that the executive branch is presided over by the president and the legislative branch is the Navajo Nation Council, consisting of 24 delegates who serve several chapters each. There are 110 chapters, of which Ramah is one; but Ramah is unique in that it has a nation-to-nation relationship with the federal government and receives funding directly through Public Law 638.

Mr. Moquin said that because all tribal lands and resources are held in trust by the federal government for the benefit of the people, the Navajo government belongs to the people to a greater extent than in the larger American society. Being part of an indigenous American government whose heritage is protected by the federal government, the Navajo judiciary embraces its duty to serve as a guardian of tribal sovereignty and emphasizes the bases for sovereignty and tribal jurisdiction in its opinions. Mr. Moquin stated that Navajo Nation jurisdiction was established through the Treaty of 1868 and the federal Indian Civil Rights Act of 1968 (ICRA), although the ICRA limits jurisdiction to some extent.

Mr. Moquin described the Diné bi beenahaz'áanii as consisting of all of the laws of the Navajo people, including their customs, values, usages and statutory laws. He stated that the Diné bi beenahaz'áanii and the Navajo Nation Bill of Rights require the Navajo Nation courts to safeguard the rights of individuals. The Navajo Nation court system is the largest native court system in the world, handling more than 90,000 cases a year, and the Navajo Nation has its own bar association with admission criteria to practice in the Navajo Nation.

Moving on to legal considerations of choice of law and the complicated issue of jurisdiction, Mr. Moquin said that the first preference of the courts is to apply Navajo Nation

statutory laws and regulations; federal laws are utilized as may be applicable. The laws of the state in which the matter arose may be utilized when other sources of law are silent.

As to Navajo civil jurisdiction, Mr. Moquin stated that it extends to all persons, Indian or non-Indian, who reside in Navajo country, but Navajo criminal jurisdiction applies only to Indians in Navajo country and may be exercised outside of the Navajo Nation when an offense involves the victimization of a Navajo by another Navajo. He explained that the case of *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), deprived the Indian tribes of jurisdiction over non-Indian criminal defendants, but the federal Violence Against Women Reauthorization Act of 2013 (VAWA) provides for limited jurisdiction over non-Indian defendants in domestic violence cases if the tribe meets certain due process standards and allows for unprecedented federal court oversight. The Navajo Nation has not opted in to the VAWA jurisdiction, in part because the Navajo Nation is concerned about financial costs of compliance and sovereignty. Mr. Moquin also noted that tribal courts are held to different standards than state courts, requiring that all attorneys be law school graduates, and federal due process standards may not be met by the Navajo Nation court because, for example, based on the standards of federal Tribal Law and Order Act of 2010, in the Navajo court system, a public defender is usually appointed after a plea is entered, although many Navajo enter pleas prior to obtaining counsel. Criminal prosecutions of non-Indians are therefore undertaken by the federal government.

Mr. Moquin then explained that the Navajo courts' civil jurisdiction of non-Indians was limited by the case of *Montana v. United States*, 450 U.S. 544 (1981), but the case allowed jurisdiction to be exercised when it was necessary to protect tribal self-government or to control internal relations or when the case arose from a consensual relationship, such as a contract. As a recent update, Mr. Moquin detailed the case of *Dollar General Corporation v. Mississippi Band of Choctaw Indians*, in which it was alleged that a Native American boy was sexually molested by his supervisor while working at a Dollar General store on the Mississippi Band of Choctaw Indians reservation. In July 2016, the U.S. Supreme Court deadlocked 4-4, upholding the ruling of the Fifth Circuit Court of Appeals, which allowed the tribe to exercise jurisdiction over the non-Native American defendant.

Wrapping up his presentation, Mr. Moquin discussed the needs of the Ramah Judicial District to better serve the community, including a new court facility, a new detention facility and funds to complete the move of the corrections and police departments into one building. Mr. Moquin also requested that the committee support efforts for cross-commissioning of officers between jurisdictions and legislative action to address the issue of liability that arises from such agreements.

Asked to clarify the status of the Ramah Chapter, Mr. Moquin explained that Ramah is a chapter of the Navajo Nation, but unlike other chapters, it has a direct relationship with the federal government. For example, he noted the Title IV-E Foster Care Program, for which Ramah created its own program and received a federal grant to establish. This program, he



explained, helps keep troubled children who should not be incarcerated out of the system by providing active probation monitoring and foster care.

Responding to a question about whose responsibility it is to house the tribal court in Ramah, Mr. Moquin answered that the ultimate responsibility is with the federal government. Pursuant to Public Law 638, the Bureau of Indian Affairs (BIA) is to fund the tribal court system; however, the tribes are now allowed to contract on their own for services, but only approximately 20% of these services are funded through the federal government.

A committee member asked whether there were any sentencing disparities between the Navajo Nation and federal courts and expressed concern about the disparities at the federal level in sentencing people of color. Mr. Moquin responded that, in general, federal penalties are higher than in tribal or state court, but he qualified his response by explaining that the problem of federal jurisdiction is not necessarily the severity of sentencing, but rather the limited number of resources in the U.S. Attorney's Office to prosecute cases. Further, the goals of the two systems are different — in tribal courts, it is important to restore harmony and relationships with a preference for rehabilitation over detention. Responding to an inquiry regarding detention facilities on the Navajo Nation, Mr. Moquin reported that one was paid for with a Navajo Nation sales tax increase and another with stimulus funds in Arizona, but there have been difficulties with securing funding for corrections officers.

Addressing the issue of cross-commissioning, a committee member noted that there are jurisdictional issues with reporting and dispatching public safety personnel in the checkerboard area. The committee was urged not to lose track of the fact that Navajo Nation citizens are citizens of the United States and residents of New Mexico and that there are questions as to why Navajo Nation citizens are being put last in terms of dispatching law enforcement.

### **Navajo Peacemaking Program**

Ruby F. Hosteen, traditional program specialist, Ramah Judicial District Navajo Peacemaking Program, and Darlene Desiderio, traditional program specialist, Crownpoint Peacemaking Program, apprised the committee of the workings and successes of the judicial branch of the Navajo Peacemaking Program. They explained to the committee that the sole goal of peacemaking is "anáhóót'i' hasht'éeéííł dóó hózhógo k'é nahodlee'l"; in other words, if any chaos, destruction or disharmony exists, peacemaking works to create peace and harmony through relationship. The peacemaking process encourages and empowers Navajo people to resolve their own problems, stressing individual respect, responsibility and accountability, and it utilizes the traditional Diné teaching concepts of K'é and Hózhó.

Navajo judges have been using the concept and beliefs of peacemaking in their rulings since the inception of the Navajo court system in 1959. The Navajo Peacemaking Program was officially established within the tribal courts in 1982, and the Peacemaking Division was established through legislation in 2001. Today, the program is composed of 12 districts serving

all 110 Navajo chapters. Each district has traditional program specialists and peacemakers who are certified through the local chapters, and there are 13 peacemakers in Ramah.

The program provides a non-adversarial forum for the resolution of disputes, promotes counseling services and, when requested, makes sentencing recommendations. The program is a forum to provide research, education and training to the Navajo community on the Fundamental Laws of the Diné. Through the Navajo Peacemaking Program, Navajo youth are learning about their culture, language and traditions. After a peacemaking session, the participants sign an agreement memorializing the resolution, the breach of which could lead to prosecution through a more formal process.

The Navajo Peacemaking Program obtains referrals from the court system and has had success in collaborating with schools on the Navajo reservation to resolve disputes among peers and remedy issues with school truancy. From 2009 through 2013, the Navajo Peacemaking Program used grant funds to establish a Peacemaking Youth Education and Apprentice Program to provide preventive and intervention services to at-risk and court-involved youth. The apprentice program focused on teaching leadership, communication and conflict resolution skills to students, and after completion of the program, the students served as peacemakers in their schools.

Asked if individuals are convicted before coming to the Navajo Peacemaking Program, Ms. Hosteen explained that peacemaking tries to resolve the dispute before it gets into the court system. She said that many cases involve children, and the Navajo Peacemaking Program works to preserve home life and keep the family unit intact. The program is working to get more funding to continue its work with youth.

Ms. Hosteen said that recidivism is rare, and it is not often that a person comes back to the program after an agreement is achieved. Ms. Desiderio added that the Navajo Peacemaking Program works closely with the court and receives some cases from the district court for criminal charges. She explained that if the defendant pleads not guilty, the court will allow the families involved to work things out on their own; any agreement that is derived from the peacemaking session is not just for the defendant, but it is for all involved to help ensure that the dispute will not arise again. She summarized that all who are involved — the victim, the alleged perpetrator, families and the communities — contribute to the success of the peacemaking agreement.

A committee member inquired into the educational requirements for being a peacemaker and whether or not peacemakers are paid. Ms. Hosteen responded that an \$80.00 fee is paid to the peacemaker when the session is concluded, and if the prevention or intervention services are provided pursuant to a grant, the peacemaker is paid an hourly wage, plus meals and mileage. As to education, nothing formal is required, only a willingness to learn, to help the community and to be a part of the program. The Navajo Peacemaking Program is currently recruiting new peacemakers who will be chosen by resolution through the chapters.

## **Recess**

The committee recessed at 3:43 p.m.

## **Tuesday, July 19 — Navajo Division of Transportation-Tse Bonito Office**

### **Reconvene**

Senator Pinto reconvened the meeting at 10:21 a.m. Arlando S. Teller, acting deputy director, Navajo Division of Transportation (NDOT), gave an opening invocation. Senator Pinto asked the committee members, staff and audience to introduce themselves. He then asked that Representative Clahchischilliage chair the remainder of the meeting.

### **Welcome and Status Updates**

Mr. Teller welcomed the committee to the Senator John Pinto Conference Center at the NDOT and provided the committee with an update on NDOT projects and priorities. The NDOT works with a vast transportation network that includes roads in three states, school bus routes and five primary airports. The NDOT is working with McKinley and San Juan counties to address school bus route issues, and, Mr. Teller noted, this partnership framework is one that other tribes are watching as a model. The NDOT also works closely with the BIA, although the agency is not under BIA control, and the tribe receives funding directly from the federal government. The tribe's relationship with the BIA is also a model for other tribes to emulate.

Next, Navajo Nation President Russell Begaye welcomed and thanked the committee for meeting at the NDOT office. He cited the concerns, strategies and plans of the Navajo Nation for transportation infrastructure development.

As to roads, President Begaye described several areas of concern regarding lighting and accidents, and he noted that jurisdictional issues often affect the NDOT's ability to address concerns. He also expressed an interest from the tribe to take advantage of four-lane highways to increase truck traffic through the Navajo Nation and increase revenue. Similarly, he discussed an interest in increasing rail traffic through the Navajo Nation and described preliminary discussions that are taking place to install rail infrastructure and a railyard in the north.

President Begaye said that airport activity is growing in the Navajo Nation and is critical to increasing economic activity in the Shiprock area in the form of business from foreign countries in, for example, the arts and crafts industries and helium mining. He said that airports will provide a necessary means of transportation for people working with the cleanup of former industrial sites, such as mines and mills. He added that ensuring that large jets can land at the airports is a priority for the NDOT.

Addressing ongoing concerns regarding bus routes, President Begaye explained that many young children are walking more than a quarter of a mile on muddy roads to reach the school bus. He stressed that jurisdictional issues complicate efforts to solve this problem.

President Begaye also noted that there is a need for continued environmental monitoring of activities, such as hydraulic fracturing (fracking) on Bureau of Land Management land and the crossing of tanker trucks through the Navajo Nation.

President Begaye concluded by expressing appreciation for the money the Navajo Nation receives through capital outlay and TIF, and he noted that the Navajo Nation is working to make the process of accessing grant money more streamlined so that the money can be made available more quickly to finish projects.

A committee member said that the Navajo Nation is in need of \$800,000 to \$1 million for paving roads in Sheep Springs, and it also needs money to expand water utilities in Shiprock and in McKinley County.

Mr. Teller said that master plans have been completed for the Shiprock and Crownpoint airports, and he expressed a concern that the dimensions of the runways as published by the Federal Aviation Administration are incorrect. He stated that, at this time, there is no discussion of a crosswind runway at Shiprock. In response to concerns about protecting sensitive areas from flight traffic and noise, Mr. Teller replied that there is a fine line between economic development and trying to keep peace with all people. Restrictions are in the master plan, and discussions are being held about potentially restricted areas, such as Canyon de Chelly, Monument Valley, Chaco Canyon and Shiprock.

Acknowledging that many school buses have to travel on dirt roads, which creates a long round trip for children to get to and from school, a member expressed appreciation for the attention that the Navajo Nation is giving to the school bus issue. Another member, stating that fracking and other energy development is important to the economy, cautioned that it is important to understand the activities related to energy development companies and to continue discussions about the environmental impacts.

Asked about funding for road infrastructure, the committee was informed that road projects were initially funded pursuant to a 38-year-long plan through the BIA, but three years ago, a direct funding agreement was reached that allows the Navajo Nation to work through the federal government to receive highway funds. In this process, unspent funds do not revert to the federal government, but they are, instead, put into a pot for future projects. In regard to improvements on New Mexico Highway 118, discussions are taking place with the county, the chapters, the IHS and programs within the Navajo Nation and the NDOT. At this time, a feasibility study has been completed, and the question now is what to address first. On the high-cost side, the Navajo Nation could build out all that is needed; on the low-cost side, there is a possibility to address the concerns related to traffic and speed that have been raised by the state, county sheriffs and other stakeholders. Mr. Teller added that there is also a list of 20 bridges that raise serious concern. He also commented that TIF ought to be more proportionately shared among the tribes, noting that the Navajo Nation receives funding for one project per year, although it has many times the population of other tribes.

Concerned about the Gold King Mine spill cleanup and infrastructure for enacting an AMBER Alert system for the Shiprock area, President Begaye and Mr. Teller were asked what needs to be done and how the state can help. In regard to the Gold King Mine, President Begaye responded that the Navajo Nation is working with the state on a lawsuit and that the Navajo Nation will be filing its own suit, too. Relaying that the U.S. Environmental Protection Agency (EPA) has said it will hold itself responsible and wants farmers to be compensated, President Begaye noted that the Navajo Nation has yet to be compensated. The Navajo Nation has, however, put a five-year plan in place to address the spill, which includes holding the EPA accountable for the things the Navajo Nation needs and has been promised, such as on-site laboratories to test soil and water. President Begaye expressed concern that the baseline levels for toxins in the soil and water have been set much higher for the Navajo Nation than they were set for the similar situation in Flint, Michigan, indicating a disparity of how the Navajo are treated. He added that the mine owners stated publicly that they had warned the EPA that a major spill could happen and that there was a need to remediate, but the EPA failed to address these warnings. As a result of the spill, people are not buying farmed goods because they fear contamination, and President Begaye fears the spill will continue to hurt the region for the next two to three growing seasons. He asserted that it will take time to recover from the stigma associated with the contamination.

As to the AMBER Alert system, President Begaye reported that the first AMBER Alert has been issued and an app is available to be downloaded. There has been a joint announcement with Cellular One, the largest cellular provider on the Navajo Nation, and \$1 million has been spent to put the system in place. An agreement has been reached with the state and the state police, and the Navajo Nation has been given the authority to call its own AMBER Alert in conjunction with the state as long as state's criteria are being met.

Bringing attention to the Navajo Nation's large coal mine operations and the impact of federal regulations on the future of coal mining, President Begaye was asked what the Navajo Nation's plan is in regard to coal. President Begaye responded that the Navajo Nation intends to continue operating its mine and that it has a long-term agreement with Arizona Public Service Company on the New Mexico side. He stated that there are efforts to pay off BHP Billiton to completely buy the mine and put in a new American Coal Company manager. Another issue President Begaye raised was that Arizona Public Service Company has been retrofitting its generators, which led to many stoppages last year for which it paid penalties. He stated that he has been assured that the retrofitting is under way, and he noted that Navajo veterans got first preference on the work. At the moment, there are three owners of the power plant, and the Navajo Nation is in the process of acquiring an ownership interest so that, as owners, the Navajo Nation can vote on operation changes and keep the operation in place. President Begaye said that the Navajo Nation is looking to acquire access to power lines so that, when the Navajo Nation builds alternative generating plants, it can hook up to the transmission lines and sell power to large cities in California and Arizona.

Asked about funding from the U.S. highway system and use of the system as a way to transport produce and other goods north, Mr. Teller informed the committee that the Navajo Nation is making efforts on the Arizona side to address the transport of produce from Sonora, Mexico, into Arizona. He stated that there is some limited funding with the federal Department of Transportation and federal highway system and that the Navajo Nation is looking at public-private partnerships for funding, as well.

Several members expressed concern about, and an eagerness to help with, the school bus transportation issues. Citing jurisdictional issues that continue to be an obstacle, Mr. Teller informed the committee that the Navajo Nation is working on a streamlined appropriation review process that requires some projects to be approved through the Navajo Nation Council, while others can be approved directly by the president.

In concluding the discussion, President Begaye suggested that a percentage of the gaming revenue that goes to the state be used for tribal services. He related that it has been proposed that the Navajo Nation take over administration of Medicaid for its members, but it was told that New Mexico social and behavioral services would essentially collapse if the Navajo Nation took over because a large percentage of New Mexico's services are used by the Navajo.

### **Spiritual and Cultural Appropriation of Sacred Ceremonial Dances**

Shawn Price, co-founder, Sacred Preservation, provided the committee with testimony and video footage of non-Native American individuals from the Order of the Arrow, a Boy Scouts of America (BSA) organization, performing sacred dances of the Navajo, Zuni and other tribes. Explaining that the performance of the dances amounts to cultural and spiritual appropriation, Mr. Price implored the committee to take action and set a precedent for the protection of this spiritual and cultural heritage.

Asked what he hopes to achieve by raising his concerns, Mr. Price responded that he is hoping to educate the committee on the issue and that he is seeking a statute, referendum or other mechanism to create some level of protection for sacred dances. He asserted that the exploitation of native dances should be unlawful and that he has tried to contact the groups performing the dances, but no real response has been received. He suggested that the groups know that they are doing something wrong, but they continue to perform the dances because there is no legal basis to stop them. Mr. Price stressed that the dances are at the core of native people's spiritual and cultural identity and that a precedent needs to be set.

Several members of the committee shared support for the committee's consideration of endorsing a memorial or bill to address this issue.

A committee member noted that the performances of the dances amount to cultural theft. Mr. Price agreed and added that native people have lost a lot of their cultural and spiritual heritage, and what is left is a watered-down version of the culture of the past.

Mr. Price reminded the committee that there was a time when the performance of these dances by native people themselves was illegal because the gathering together of native people was perceived as a direct threat to the United States. He asserted that the non-native people doing the dances do not know the stories and significance associated with the dances, and they often mix the dances together. The performance of the dances is only a gimmick to them, and it would be considered racist if they were imitating any other group. Mr. Price also disclosed that the BSA is making money off of the performances and that its members have traveled abroad to perform. He noted that in response to this problem, the Indian Pueblo Cultural Center in Albuquerque has made changes to its policies regarding the filming of sacred dances, and he suggested that it should be stated in vacation guides that the dances are sacred and protected due to their cultural and spiritual importance.

A member expressed concern that this is not an issue to be dealt with by the committee but, rather, that the sovereign nations need to act to address this issue. In response, Mr. Price pointed out that there is no one remedy to this problem, and he stressed that he does not speak on behalf of any particular Indian nation or pueblo, but, rather, he is part of a grassroots movement to address a problem that affects all tribes across the board. He stated that he is seeking a referendum from the Navajo Nation and the All Pueblo Council of Governors and that native people will need to be consulted to define what is a sacred dance and what should be protected. In response to a later question regarding engagement with the tribes' spiritual leadership, Mr. Price said that he is also intending to speak with the spiritual and tribal leadership of the tribes. A member suggested that research should be done about addressing this issue from the perspective of religious protections.

Noting that laws are in place to protect cultural patrimony, members questioned whether the dances would fall under that definition, and a suggestion was made that the attorney general and the Cultural Affairs Department meet with tribal leaders to make recommendations to enhance protection of cultural items. Mr. Price concluded with a request that New Mexico be a leader on this issue.

On a motion by Senator Rodriguez, seconded by Senator Soules, the committee voted without opposition to write a letter to the attorney general to take the issue under consideration and get an opinion on the legal options going forward.

### **The New Mexico Small Loan Industry and the Impact of Newly Proposed Federal Consumer Protection Rules**

Sunny Liu, fiscal analyst, Legislative Finance Committee (LFC), provided 2016 updates to the House Memorial 131 (2015) directive to create a task force to examine the consumer lending industry and the report that was presented to the IAC in November 2015, the new Consumer Financial Protection Bureau (CFPB) rules, data from the industry in New Mexico and considerations going forward.

First, referring to consumer and industry group comments to the 2015 LFC report, Mr. Liu stated that the New Mexico Fair Lending Coalition believes that the 2015 report contains misleading facts and fails to evaluate the effects of strict interest rate caps and other loopholes in other states. A representative from OneMain Holdings, Inc., commented that the report does not clearly define different types of loan products, for example, payday versus installment loans; does not clearly define "all in rate cap"; and should have reevaluated the legal standing of the 2014 U.S. Supreme Court case on "unconscionable" interest rates over 15%. A representative from the Consumer Installment Loan Association of New Mexico commented that the report should provide more detail on the relationship between total interest paid and the annual percentage rate (APR); examine the effect the APR has on repayability; promote a 175% APR, rather than a 36% APR cap; and evaluate payday loan alternative programs. A representative from MJS Consulting commented that the report should consider separate regulation of tax refund anticipation loans and prohibiting rollovers, refinancing and late fees after 31 days on some loan products. Mr. Liu noted that the LFC is looking into many of these issues.

Turning to lending in Native American communities, Mr. Liu apprised the committee that many tribes are offering financial service products to increase access to credit for Native American borrowers on and off the reservation, to create an alternative to gaming operations for revenue generation and to decrease tribal dependence on federal government funding. Mr. Liu stated that in 2014, according to the Native American Financial Services Association, 30 tribes were participating in online lending.

Mr. Liu discussed two case studies of how tribes are participating in the lending industry. First, the Habematolel Pomo of Upper Lake Tribe works within a tribal council regulatory framework in which an independent regulatory commission is charged with oversight and enforcement of licensed tribal lenders. Tribal lenders offer unsecured installment loans, for which the tribe's rigorous underwriting process rejected 98.3% of applicants in 2015. Mr. Liu noted that the typical borrower was 45 years old with a median income of \$45,000, the median loan amount was \$700 on a 10-month payment schedule with no early payment penalties and borrowers generally repaid their loans in less than four months and took out an average of 1.6 loans over two years.

In comparison, the Chippewa Cree Tribe of Montana in 2011 created a joint venture, Plain Green Loans, with Think Finance, a financial technology company. Although the tribe owned 51% of Plain Green Loans, it had only a nominal role in managing operations. Referring to this situation as "rent-a-tribe", Mr. Liu detailed that Plain Green Loans offered short-term online loans in amounts between \$250 and \$1,000 for first-time borrowers and up to \$3,000 for returning customers, with interest rates of up to 379%. In 2015, the U.S. District Court of Vermont filed a complaint against Plain Green Loans for so-called "predatory" loan practices and using tribal immunity to avoid liability. The Chippewa Cree Tribe ended its relationship with Plain Green Loans during the proceedings. In 2015, Pennsylvania's attorney general filed a lawsuit against Think Finance, alleging it had violated the state's racketeering, consumer protection and lending laws.



For future consideration, Mr. Liu summarized that online tribal lenders and off-reservation "rent-a-tribe" lenders have increased. In 2013, tribally owned websites loaned approximately \$4 billion; from 2006 to 2013, online payday lending revenue increased from \$1.4 billion to \$4.1 billion; and about one-third of the payday lending market is online. Mr. Liu cautioned that new federal rulings may affect tribal lending regulations, and a case is pending in the Ninth Circuit Court of Appeals to determine whether the federal Consumer Financial Protection Act of 2010 requires tribes to be treated as co-regulators or not.

Moving on to the CFPB, Mr. Liu said that new rules are being proposed for short- and longer-term loans with either a lien or other security interest that highlights the ability to repay. Mr. Liu explained that the CFPB is proposing to exclude from the new rules loans to finance the purchase of a car or other consumer good in which the good secures the loan; home mortgages and other loans secured by real property; credit cards; student loans; non-recourse pawn loans; overdraft services; and lines of credit. As to payment practices, the new rules include a prohibition on more than two consecutive attempts to withdraw payment from an account with insufficient funds and require lenders to provide and update comprehensive information on most covered loans in a registered information system. The new rule will be effective 15 months after the final rule is published in the Federal Register, which, Mr. Liu indicated, may not be printed in the next two years.

A representative from the New Mexico Fair Lending Coalition commented that the CFPB has the right intent in requiring lenders to assess the ability to pay; that objective measures should be used to project a borrower's living expenses rather than relying on default and re-borrowing rates; that a 60-day, rather than 30-day, cooling-off period should be ensured; and that the CFPB does not have the authority to cap interest rates at 36%. A representative of Community Financial Services Association of America commented that the rule changes will cut off access to credit for millions of Americans, that CFPB data show that less than 1.5% of complaints nationwide are related to payday loans and that the benefits from the extended use of loan products have not been considered. A representative from the American Financial Services Association commented that, altogether, the intent of the rule changes is to eliminate the payday and title lending industry. The rules will affect traditional installment lenders because about 90% of products would fall under the CFPB's definition of "loan" and ancillary products will be affected because the 36% APR cap includes add-on products such as credit insurance.

Mr. Liu concluded by saying that there is a demand for short-term small loans in New Mexico and that there is a need for safe, affordable loan products that are scaleable. He noted that there will be an increase in tribal online lending, and the debate continues about the spheres of tribal and federal regulation. While the CFPB rule implementation may take a few years, there is an intention to target the payday and title lending industry for the new rules.

A member of the committee inquired about how defaults on tribal loans are collected. Mr. Liu stated that while no data are available, there is anecdotal evidence of debt collection, and these practices are addressed in the CFPB ruling.

Asked for clarification on payday reform in Colorado, Mr. Liu stated that Colorado has required minimum loan terms to be six months and, as a result, has seen marginal decreases in borrowing rates and re-borrowing rates, while providing more of a balance between lender and borrower needs. Asked what the alternative to payday loans is, Mr. Liu replied that there is a Federal Deposit Insurance Corporation pilot program; however, it has been found not to be very scaleable and the profitability is low. He noted that the National Credit Union Administration payday alternative is to borrow through credit unions, which do not have to use ability-to-repay requirements, but the loans have caps on interest rates and amounts and have other terms.

A member asked about the definition of the term "rent-a-tribe". Mr. Liu explained that there is a difference between tribes having control of lending operations and tribes having some ownership but no control. The term "rent-a-tribe" refers to an organization using tribal sovereignty to sidestep state or federal regulation. As to the differentiation between legitimate tribal lenders and "rent-a-tribe" lenders, the data are dated and limited. Mr. Liu went on to state that some tribes use revenue to help their own members with, for example, consolidation of debt, while other tribes lend to non-tribal members to generate revenue for the tribe. Whether tribes in New Mexico are using online lending is not clear at this time.

Asked why non-recourse pawn loans and overdraft services are excluded from the rule changes, Mr. Liu responded that studies done in states with APR caps found that consumers resorted to other types of loans when payday loans exited the market. The services were found to be used for emergency purposes and not day-to-day expenses and, thus, were not perceived to be as dangerous as payday loans. He stated that there has not been enough study on overdraft services.

Representative Smith made a motion, seconded by Representative Madalena, for the LFC to continue its work and to report its recommendations to the IAC in November with the consumer lending industry task force that will be created. There was no opposition to the motion.

### **Dental Therapists**

Colin Baillio, director of policy and communications, Health Action New Mexico, Catherine Sovereign, registered dental hygienist and president of the New Mexico Dental Hygienists' Association, Barbara Posler, legislative chair and registered dental hygienist, New Mexico Dental Hygienists' Association, and Dr. Joe Valles, New Mexico Dental Therapy Task Force member and president-elect, New Mexico Dental Association, discussed proposed legislation to institute a dental therapy program in New Mexico.

Mr. Baillio said that in New Mexico, 32 out of 33 counties are federally recognized dental health care shortage areas, 53% of New Mexicans have dental disease and 83% of Native Americans ages six to 11 have tooth decay, which is significantly higher than other ethnic groups. An LFC report found that New Mexico does not have enough dentists to meet demand and that a high correlation exists between tooth health, overall health and health outcomes. As a

result, many people are opting to go to other states or Mexico for dental services, which takes money out of the New Mexico economy.

Mr. Baillio stated that some states have instituted pilot projects for using dental therapists, and for over 90 years, dental therapists have been used with success in 50 countries. Using dental therapists increases access to dental services while reducing travel time for services and costs. In the 2015 legislative session, Senate Memorial 136 passed, appointing a task force to prepare legislation implementing dental therapy in the state, and other resolutions have been passed by the Ten Southern Pueblo Governor's Council and the Eight Northern Indian Pueblos Council in support of a dental therapists program. However, legislation introduced in the 2016 legislative session, House Bill 191 and Senate Bill 217, did not receive messages from the governor.

Mr. Baillio said that there is twice the prevalence of untreated dental disease on tribal lands than in the general population, and there is a big link between oral disease and systemic disease. Severe periodontal disease affects glycemic control, which contributes to diabetic complications and negatively affects cardiovascular disease.

Mr. Baillio said that establishing a dental therapist program will lower costs to the state in Medicaid, health insurance and emergency room expenses in the long term. Referring to the handout, "Report from the New Mexico Dental Association Concerning the Senate Memorial 136 Taskforce", Dr. Valles added that it is clear to the New Mexico Dental Association that the dental needs of New Mexico go far beyond approving dental therapists, but the legislation represents a compromise that the legislature will need to vet for financial responsibility implications.

Asked if the same bills introduced last legislative session will be reintroduced this session, the panelists indicated that they would because those bills represent the compromise that was reached among the stakeholders.

Noting that New Mexico could be a leader in the field, and citing increases to Texas' economy by becoming a leader in health care, a member of the committee suggested that the committee endorse the dental therapy bill when it is ready. Dr. Valles added that the bill allows for the terms of a dental therapist program to be revisited in five years so that best practices can be incorporated, and Mr. Baillio commented that there are not a lot of training institutions in the United States for dental therapy, which could make New Mexico a training ground for practitioners in other states.

A member of the committee remarked that New Mexico needs to produce more dentists because many dentists are retiring or not taking on new patients, and the proposed legislation does not solve this problem. The member commented that a dental school in New Mexico would be valuable; however, such a proposal is probably not viable now because of the budget situation. In response, Dr. Valles asserted that there is actually an abundance of dentists in New Mexico,

but the distribution of practitioners is not balanced throughout the state. A member commented that, although the data on the efficacy of Native Alaskan dental therapists are encouraging, Native Americans should be encouraged to become full-fledged dentists and not get stuck in the middle ground of dental therapy.

Asked about the costs associated with implementation of the dental therapist program, Mr. Baillio mentioned that a fiscal impact report for House Bill 191 was completed, and Dr. Valles noted that there may have to be changes to Medicaid reimbursement to implement the program.

### **Economic Effects of the Loss of Coal Industry Jobs on Northwest New Mexico**

David Andrew Hinkle, economic development program manager, Northwest New Mexico Council of Governments, Arvin Trujillo, government relations manager, Arizona Public Service Company, and Leslie Kedelty, planning intern, Northwest New Mexico Council of Governments, presented on the economic impacts and considerations for loss of the coal industry in northwest New Mexico.

Mr. Trujillo discussed the Partnerships for Opportunity and Workforce and Economic Revitalization (POWER) Initiative, which puts economic development resources into communities negatively affected by the loss of coal industry jobs. He said there are partnerships in San Juan, McKinley and Cibola counties, and six Navajo chapters have come together to develop economic initiatives. Focus groups of stakeholders, including the Navajo Nation, are meeting to discuss possibilities to develop their economic base as reductions in extractive energy are occurring.

As to the Four Corners Generating Station, Mr. Trujillo told the committee that Arizona Public Service Company and the other owners are investing \$1 billion in upgrades. The lease agreement will be in place until 2041, and the wholesale agreement will be in place until 2031. The plant brings \$225 million to the region in economic activity — about \$100 million in salary and benefits, \$60 million to \$65 million to the Navajo Nation, \$60 million to \$65 million for contract work and the remainder in taxes and regulatory fees to the state and federal government. He stated that at this time, the community is not in position to transition to something new if the plant shuts down, and he compared the situation to mining communities in West Virginia that were dependent on coal mining for generations and now are at a loss for how to move forward without the coal industry.

Mr. Hinkle stated that people are working together to see what can be done for the region and emphasized that they are doing what they should be doing to diversify the economy, but the efforts are not fully funded. He said that he hopes to bring an appropriation bill to the upcoming legislative session for consideration. With more funding, Mr. Hinkle stated, it would be possible to bring site locators to northwest New Mexico to get to know the area for future projects and to bring the best economic developers to provide seminars on business retention and expansion programs, and there could be more support for entrepreneurs and start-ups.

Noting the large economic impact of coal mining, a committee member emphasized that a major domino effect occurs when the coal mining industry shuts down and that there is an economic effect multiplier when one job is lost. Other than coal, there is not a lot of industry in the region, and the member wondered what the impact will be on the Navajo Nation and the pueblos of Acoma, Laguna and Zuni. Another member asked what conversations have taken place with the pueblos of Acoma and Zuni to coordinate economic development initiatives. Mr. Hinkle said that every Indian nation, tribe and pueblo bordering the coal-producing region has been contacted, and some, such as the pueblos of Laguna and Acoma, are further along in discussions. He emphasized that it is critical to work with the Indian nations, tribes and pueblos, and the time to respond to the coal crisis is not when coal mining stops, but now, when there is still an employed population that can help fund the transition.

Mr. Trujillo added that at the Four Corners and Navajo mines, 40% to 48% of current employees are ready for retirement, and the fourth generation of workers is ready to begin working. He emphasized that the future of a lot of young people, and especially Navajos, will be affected; of approximately 800 employees, 80% are Navajo, and 80% of them live in New Mexico.

Comparing the current situation to the former uranium industry in the region, a member stated that what is happening now is no surprise and asked why preparations to deal with the decline of the coal industry had not been started earlier. Mr. Trujillo asserted that there is an aspect of denial happening. The plants have existed through many generations, and people believe the plants will never close. He suggested that in northwest New Mexico, the workforce has always been commodity-driven, and since the coal industry always seemed to exist, people developed the mindset that they will always have a job. Mr. Trujillo said that it takes time to get denial out of the system, and people are now better informed of what the impact will be when the coal industry no longer exists.

### **Recess**

The committee recessed at 4:21 p.m.

### **Wednesday, July 20 — University of New Mexico (UNM)-Gallup**

### **Reconvene**

Representative Clahchischilliage reconvened the meeting at 9:12 a.m.

### **Welcome and Status Update**

Jackie McKinney, mayor, City of Gallup, welcomed the committee to Gallup. He described Gallup as a Native American city with the largest population of Native Americans in the state and stated that Gallup is fortunate to be influenced by the culture and spirituality of Native Americans. He also stated that Gallup has been recognized as a "Purple Heart City" and that it has been named "America's Most Patriotic Small Town". Mayor McKinney stated that he

enjoys representing the diverse community and that he will make himself available to lend support on any issues that affect the state and county.

Christopher Dyer, chief executive officer, UNM-Gallup, addressed the committee on updates to the university, including successes and new projects.

Mr. Dyer said that enrollment is stabilizing and is up 2% to 10% for the fall. He mentioned that Middle College High School, a feeder school to UNM-Gallup, will be moving to the campus permanently. He also stated that Agenda-Global is building student housing on campus and has purchased property to run a residential care facility on campus, where students will train to become employees.

Briefly highlighting the federal TRiO programs, which are federal outreach and student services programs designed to identify and provide services for individuals from disadvantaged backgrounds, Mr. Dyer stated that UNM-Gallup is beating the standards by two to three times, but the challenge becomes how to provide the services without expanding resources.

As to the Sun Path Grant program, which aims to expand capacity and create systematic improvements in the delivery of health care career pathways, Mr. Dyer stated that most institutions are under 100% of target, but San Juan College and UNM-Gallup are both surpassing the target by almost 50%.

Regarding efficiency, an audit found that UNM-Gallup's Zuni campus is not functioning at capacity and is in need of a proper business plan. Work is being done to collaborate with the Zuni Tribal Council to better serve the pueblo. The campus property has been transferred to the Pueblo of Zuni.

Collaborations with the Navajo Nation continue, and a housing project is in the works.

For adult learners, Mr. Dyer mentioned that through the Great Opportunities for Adult Learners program, which will start in January, students will be able to get an associate degree in two years by attending school one night a week. Running for four to eight weeks, each class will provide the adult students with the same outcomes and formulas as the traditional associate degree path, but without electives.

As to workforce development, Mr. Dyer noted that there are 100 students doing home health care work in the community and that the university is working with the Greater Gallup Economic Development Corporation and the local Associated General Contractors group on workforce development. Grants are also being utilized from the POWER Initiative, the W.K. Kellogg Foundation and Walmart to build upon what is already being done with strategic planning.

For the emergency medical services training program, enrollment is full, and UNM-Gallup is coordinating with two senior centers to include reflexology training programs.

Mr. Dyer concluded by saying that to assist students who have experienced a dislocation from their home and education for varying reasons, the Second Chance Coming Home debt-forgiveness campaign will begin in January to help students to return home through debt-forgiveness and debt-restructuring programs.

Mr. Dyer was asked if credits acquired at UNM-Gallup are able to be transferred to UNM's main campus in Albuquerque. Mr. Dyer said that there is a statewide initiative for "medi-curriculum" that is being pushed by the secretary of higher education and the governor, but some certificate programs may not transfer. He stated that collaborations with other colleges, such as Diné College and Navajo Technical University, are being solidified, and investigations are being made into why certain credits do not transfer. Mr. Dyer concluded by saying that core courses should be transferrable, whereas specialties may not.

### **Discussion of the Proposed Land Division of Fort Wingate**

Val R. Panteah, Sr., governor, Pueblo of Zuni, Edmund E. Yazzie, council delegate, Navajo Nation Council, and Richard O. Martinez, deputy director, Future Forces Division, White Sands Missile Range, addressed the committee regarding the proposed land division of Fort Wingate.

Mr. Yazzie said that a resolution was passed in April 2016 by the Navajo Nation Council to protect the traditional Navajo burial sites at Fort Wingate. He stated that a U.S. Army study in 2014 found that 187 hogans, 107 sweat houses, 203 livestock corrals, 329 Anasazi sites and six shrines exist at Fort Wingate. Additionally, numerous elders who could not continue "The Long Walk" were shot and buried at Fort Wingate. As such, the Navajo are keenly interested in protecting the burial sites and have requested that Congress mark the site as an historic landmark. Regardless, Mr. Yazzie stated, federal legislation moves forward to divide the property between the Navajo Nation and the Pueblo of Zuni. He noted that in 1942, the U.S. Army took the land from the Navajo, who were promised that once the U.S. Army was finished using the land, it would be returned to the Navajo people.

Governor Panteah said that over the past 20 years, the Pueblo of Zuni has worked to get federal legislation passed to provide for the return of ancestral lands to the pueblo. Via negotiations that were challenging for both tribes, an agreement was reached in July 2013, but the Navajo Nation subsequently opposed bills that would have transferred the Fort Wingate lands in accordance with the agreement, insisting on a gaming prohibition on transferred lands. Governor Panteah stated that while the Zuni Tribal Council was reluctant to agree to the prohibition, it is now part of the Fort Wingate land transfer bill passed by the U.S. House of Representatives as part of the National Defense Authorization Act. He also noted that the land transfer bill contains a significant carve-out of lands that were to be transferred to the tribes but that will now remain under U.S. Army ownership and control. The bill also contains a new

provision providing that existing utility rights of way held by Tri-State Generation and Transmission Association and the City of Gallup be recognized and preserved into perpetuity. He stated that while the Navajo Nation has opposed the perpetual rights of way, the Pueblo of Zuni recognizes Tri-State's and Gallup's desire to avoid significant adverse impacts to their property interests from the transfer of the Fort Wingate land. Governor Panteah warned that the longer the Pueblo Zuni and the Navajo Nation fight over the transfer of the land, the more likely it is that both tribes will fail to acquire the land.

Mr. Martinez briefly noted that the U.S. Department of Defense (DOD) has an enduring mission of test firing over White Sands. He stated that the mission has been ongoing for a long time and will continue into future. While he understands the cultural and religious philosophies of the tribes that are being brought to bear on the issue, the DOD has land carved out and will continue to have access to the land to continue its mission. He noted that the DOD land is not part of the land transfer discussions.

Regarding turning Fort Wingate into an historic landmark, Mr. Yazzie said that this was the intent of the Navajo Nation based on the need to protect human rights. In such a scenario, the federal government would retain ownership of the land to protect the people who are buried there.

In response to a question about the gaming prohibition on the transferred land, Governor Panteah stated that this was one of the major concessions of the Pueblo of Zuni to move the bill through Congress. Governor Panteah added that the Pueblo of Zuni is looking to the lands for economic development as there are currently few opportunities on Zuni lands. There is a major push from the pueblo to get the bill passed and to have the land distributed between the tribes so that economic planning and building can begin.

A committee member inquired as to how the issue of rights of way got brought into the discussion. Governor Panteah explained that the issue was brought up by the Navajo, who wanted an opportunity to renegotiate the rights of way. He stated that Navajo Nation Speaker LoRenzo Bates asked the Pueblo of Zuni to oppose the bill and insist on renegotiation of the rights of way, but if that were to delay the bill or cause it to die, the Pueblo of Zuni was unwilling to take that position. Asked how the Navajo Nation wanted the utility easements renegotiated, Mr. Yazzie emphasized that the Navajo Nation's main intent is to make the land an historic site, even if it includes utilities on it.

A committee member expressed concern that U.S. Army test sites are often set in culturally sensitive areas and among people who have little political power. The member urged a better commitment from the U.S. Army to protect cultural sites.

### **Safety Concerns at the Intersection of Sundance Road Near Fire Rock Navajo Casino**

Representative Johnson, Johnnie Henry, Jr., president, Churchrock Chapter, and Michelle Dotson, executive director of compliance, Navajo Nation Gaming Enterprise, addressed the



committee regarding safety concerns at the intersection of Sundance Road near Fire Rock Navajo Casino and discussed solutions.

Representative Johnson advised the committee that she has been working with various stakeholders, including McKinley County, the City of Gallup and the NDOT, on safety concerns related to Route 118, the I-40 frontage road, which is also historic Route 66. Improvements to the safety conditions of the road are a top priority because the road is used by several different communities and is an important thoroughfare for recreational uses, businesses and chapter houses. Representative Johnson told the committee that the stakeholders are regrouping as a collaborative effort and moving forward on an agreement to do a road safety audit.

President Henry said that since the opening of Fire Rock Navajo Casino, there have been many concerns about the safety of Sundance Road and Route 118. In particular, he noted, there are safety issues, especially where people cross the road to get to the casino and where there is heavy traffic due to events such as the rodeo. The issue was brought before the state and the NDOT, and a study was completed in 2014.

Ms. Dotson said there are myriad users and uses for the rural roadway, including residential, industrial, educational, recreational and hospitality/entertainment. She said that the roadway provides connectivity to commerce, education, medical treatment and employment opportunities for the Pinedale, Mariano Lake, Smith Lake and Crownpoint chapters. Noting that studies do not support improvements for the rural roadway, there have been two deaths on the route, and a person involved in a motorcycle accident had to have a leg amputated. She said that there is support for immediate remedial measures, such as striping, rumble strips, street lighting and sidewalks, to help improve the situation. She also advised the committee that there is a need for a study that factors in the existence of higher traffic at the beginning of the month. Addressing a concern that the Navajo Nation is unwilling to approve rights of way to do the work that is needed, Ms. Dotson assured the committee that Navajo Nation Gaming Enterprise is committed to getting any necessary approvals.

Recognizing the need to improve safety on the road, a committee member offered support for the project and suggested that something be put in writing that states that the Navajo Nation will contribute to expenditures even though the road is a state road. The member noted that casinos statewide provide a lot of revenue to the owners and the state coffers, and it is important to get the support of the casino and the Navajo Nation.

Regarding next steps, Ms. Dotson said that remedial measures should be done immediately, and once a cost estimate is done, the Navajo Nation will come forward with funding; however, Ms. Dotson noted that because the road is a state road, the Navajo Nation is looking for matching fund contributions from the state.

Cautioned by a committee member that there will not be immediate money from the state due to the time lines for the disbursement of appropriations dictated by the legislative session,

Ms. Dotson was asked what immediate and less costly fixes can be done now. Ms. Dotson suggested that no action will take place until the state Department of Transportation (NMDOT) provides its cost estimates, but she stated that the NMDOT is committed to putting in lights and striping in the interim. She advised the committee that other sources of funding, such as emergency funding from the NMDOT, the Federal Highway Administration or the NDOT, are also being considered. Representative Johnson added that the cost estimate and scope of work is being compiled and that stakeholders have agreed to share costs and resources to make the necessary improvements. Lastly, President Henry asserted that some matching funds may be available from the chapters, and preparations are being made to ask for funding through the TIF and, possibly, capital outlay.

### **Public Comment**

President Henry told the committee that he expressed his concerns at the Churchrock Chapter about the proposed transfer of land at Fort Wingate. He stressed the need to come to an agreement so that both tribes can move on. He suggested that there should be a multicultural museum on the land and that the land should be turned into an historic site representing the Navajo and Zuni veterans who served so that their children and grandchildren can learn from it.

Travis Keen of Sundance, New Mexico, addressed the committee regarding Fort Wingate. He said his main concern about the Pueblo of Zuni's claims to the land is that they are not supported by evidence, whereas the U.S. Army and Library of Congress have documents supporting the Navajo Nation's claim to the land.

Julie Livingston of Sundance said the United States government burned the homes, fields and crops of the Navajo, and at Fort Wingate, there are more than 100 burial sites. Ms. Livingston implored respect for Diné burial sites, as the Diné would want the same for others.

Priscilla Manuelito, newly elected president of the Gallup-McKinley County School District Board of Education, reported to the committee that the board partners with the city, the county and the Navajo Nation to address busing issues and other concerns. She remarked that UNM-Gallup has been a great partner in providing dual credit for high school students. As a registered voter for the Thoreau Chapter, Ms. Manuelito said that she was glad the committee took up the Fort Wingate issue and urged that sensitivity be observed on the issue of the burial sites.

Nicole Walker addressed the committee in opposition to the Fort Wingate land transfer as proposed, stating that she must support the Navajo people and their voice.

Paul George, commander, Northern Agency Navajo Veterans Organization, said that the Native American Veterans' Income Tax Settlement Fund expired last year, and he would like to see the program continued with an appropriation. He also urged the committee to support funding for the currently defunded court interpreter program for Diné speakers. He advised the

committee that the Administrative Office of the Courts is attempting to certify people who speak Diné as interpreters, but these individuals are not actually trained as interpreters.

**Adjournment**

There being no further business before the committee, the second meeting of the IAC for the 2016 interim adjourned at 12:24 p.m.