



NEW MEXICO LEGISLATURE

INDIAN AFFAIRS COMMITTEE

2016 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE
411 STATE CAPITOL
SANTA FE, NEW MEXICO 87501
(505) 986-4600
WWW.NMLEGIS.GOV

TABLE OF CONTENTS

INTERIM SUMMARY

WORK PLAN AND MEETING SCHEDULE

AGENDAS AND MINUTES

ENDORSED LEGISLATION

INTERIM SUMMARY

Indian Affairs Committee 2016 Interim Summary

Since its inception in 1989, the Indian Affairs Committee (IAC) has addressed issues that affect Native Americans residing in New Mexico. In fulfillment of its mission, the IAC held five meetings during the 2016 interim. The meetings were held in Mescalero; at the Pueblos of Laguna and Acoma; at the Navajo chapters of Ramah, San Juan and Sheepsprings and in Tse Bonito; at two educational institutions, the University of New Mexico-Gallup and San Juan College in Farmington; and at the Indian Pueblo Cultural Center in Albuquerque. The IAC held its first and last meetings at the State Capitol in Santa Fe.

Members of the IAC heard presentations from executive agencies to learn of their efforts on behalf of New Mexico's Indian tribes, pueblos and nations. The Indian Affairs Department (IAD) provided a summary of the annual State-Tribal Summit and the IAD's priorities. The Energy, Minerals and Natural Resources Department discussed uranium cleanup efforts in and around the Grants mineral belt, and the Department of Environment highlighted its work to mitigate the damage done by the Gold King Mine spill. The chair of the Interstate Stream Commission and the state engineer provided an annual update on Indian water rights settlements. The Public Education Department updated the IAC on school district transportation boundary agreements. Finally, the Gaming Control Board was scheduled to appear, but it did not present before the committee regarding the current status of gaming operations in New Mexico.

A year after hearing a report produced by the Legislative Finance Committee highlighting the impressions of a working group assembled from industry and consumer advocates to consider the operations of the small loan industry in the state, the IAC received two follow-up presentations on that issue.

Finally, the IAC endorsed three pieces of legislation for the 2017 legislative session: a bill allowing Native American veterans to recoup wrongly paid taxes, a memorial regarding the disproportional sentencing for Native Americans convicted of crimes and a memorial asking a federal agency to transfer ownership of land to another federal agency for the benefit of the Mescalero Apache Tribe.

WORK PLAN AND MEETING SCHEDULE

**2016 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
INDIAN AFFAIRS COMMITTEE**

Members

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. D. Wonda Johnson
Rep. Georgene Louis
Rep. James Roger Madalena

Sen. Richard C. Martinez
Sen. Cliff R. Pirtle
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. William P. Soules

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. Cisco McSorley

Sen. George K. Munoz
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar
Sen. Clemente Sanchez

Work Plan

The New Mexico Legislative Council created the Indian Affairs Committee (IAC) on May 9, 2016. The IAC addresses issues and policies that affect Native Americans in New Mexico. Because the IAC aims to address issues and policies relating principally to New Mexico's Native American population, the IAC strives to conduct its meetings in locations that are accessible to the state's tribal members and their leaders. Moreover, meeting at the various Indian nations, tribes and pueblos in New Mexico facilitates government-to-government cooperation. The IAC meetings are essential to the work of the legislature in addressing the issues affecting this segment of its constituency.

The IAC proposes to explore and discuss the topics in each major issue area affecting Native Americans during the 2016 interim as follows:

A. State-Tribal Relations:

1. receive updates from the Native American liaisons from state executive agencies to assess outreach efforts, challenges and successes;
2. discuss services provided to urban Indians and the defunding of the Albuquerque Indian Center; and

3. receive a report on the language and interpretation of the laws establishing the tribal infrastructure funds;

B. Health:

1. receive a report on the impact of, and response to, the Gold King Mine spill;
2. examine issues regarding the Four Corners Generating Station;
3. receive a report on uranium cleanup projects in the Grants mineral belt;
4. receive a report from the 2015 Dental Therapy Task Force;
5. receive a report on changes to Medicare and Medicaid and discuss the services provided to Native Americans in light of the 1952 contract for services with Bernalillo County; the Indian Health Service, which represents the 19 pueblos in New Mexico; and the University of New Mexico; and
6. receive a report on the Navajo Nation's program for long-acting, reversible contraception;

C. Development in Indian Country:

1. review transportation issues, including railroad crossings and road projects;
2. receive a report on New Mexico's consumer lending industry and state regulation of lending practices, including the impact on Native Americans;
3. discuss natural gas drilling on sacred sites in and around the Navajo Nation, including proposed federal rules on natural gas venting and flaring;
4. discuss Indian gaming issues;
5. receive a report on rights of way on tribal land; and
6. receive a report on issues regarding the Gathering of Nations;

D. Education:

1. review school transportation and boundary issues;
2. review Native American study programs, initiatives and resources at state higher education institutions and tribal colleges;

3. receive an update on charter school education in Indian country;
4. receive an update on school funding, federal and state impact aid and ongoing lawsuits; and
5. receive a report on the spiritual and cultural exploitation of sacred ceremonial dances by non-native entities;

E. Courts and Crime:

1. receive updates from the Southwest Indian Law Clinic and the American Indian Law Center on current programs and issues;
2. discuss tribal courts and issues and the challenges they face;
3. review tribal jurisdiction and cross-deputization in law enforcement;
4. receive a report on the history of and issues surrounding the federal Indian Child Welfare Act of 1978 and how the act intersects with criminal and family law;
5. receive a report on New Mexico Legal Aid's Native American Program; and
6. discuss strategies to address sentencing disparity between state and federal courts and the impact on Native Americans convicted of crimes; and

F. Annual Reports from Executive Agencies:

1. receive a report from the Office of the State Engineer and the Interstate Stream Commission regarding:
 - a. the status of proposed Indian water rights settlements requiring state financing;
 - b. the distribution of funds from the Indian Water Rights Settlement Fund to implement approved settlements; and
 - c. recommendations on the level of funding for the Indian Water Rights Settlement Fund necessary to timely implement Indian water rights;
2. receive a report from the Indian Affairs Department regarding the compiled reports from all state agencies on activities pursuant to the State-Tribal

Collaboration Act, including information on policies, plans, contact individuals, training and programs and services from each agency;

3. receive a report from the Tribal Infrastructure Board regarding the total expenditures from the Tribal Infrastructure Project Fund for the previous fiscal year, the purposes for which expenditures were made, an analysis of the progress of the projects funded and proposals for legislative action in the subsequent legislative session; and
4. consider recommendations for enhanced protection of cultural items and prevention of the theft, wrongful sale or alienation of cultural items and cultural properties.

**Indian Affairs Committee
2016 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
May 25	Room 322, State Capitol, Santa Fe
July 18-20	Ramah; Tse Bonito; Gallup
August 29-31	Pueblo of Acoma; Pueblo of Laguna; Albuquerque
September 27-28	Mescalero
October 17-19	San Juan Chapter; Sheep Springs; Farmington
November 29-30	Pueblo of San Ildefonso; State Capitol, Santa Fe

AGENDAS AND MINUTES

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**May 25, 2016
Room 322, State Capitol
Santa Fe**

Wednesday, May 25

- 10:00 a.m. **Call to Order**
 —Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (1) **Update on School Transportation and Boundary Issues**
 —Paul Aguilar, Deputy Secretary, Public Education Department (PED)
 —Latifah Phillips, Assistant Secretary for Indian Education, PED
- 11:15 a.m. (2) **Discussion of Focus Areas, Work Plan and Meeting Schedule**
 —Peter Kovnat, Staff Attorney, Legislative Council Service
- 12:30 p.m. **Adjourn**

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

**May 25, 2016
Santa Fe**

The first meeting of the Indian Affairs Committee for the 2016 interim was called to order at 10:12 a.m. by Representative Sharon Clahchischilliage, co-chair, on Wednesday, May 25, 2016, in Room 322 at the State Capitol in Santa Fe.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Rep. D. Wonda Johnson
Rep. Georgene Louis
Rep. James Roger Madalena
Sen. Cliff R. Pirtle
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. William P. Soules

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Sen. Richard C. Martinez
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Sen. Clemente Sanchez

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Patricia Roybal Caballero

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

All handouts and other written testimony are in the meeting file.

Wednesday, May 25

Welcome and Introductions

Representative Clahchischilliage welcomed the committee and members of the audience and asked committee members and guests to introduce themselves.

Update on School Transportation and Boundary Issues

Public Education Department (PED) Deputy Secretary of Finance and Operations Paul Aguilar and PED Assistant Secretary for Indian Education Latifah Phillips presented an update on school transportation and boundary issues concerning the students crossing the New Mexico-Arizona border. On January 5, 2016, the PED provided guidance to four school district superintendents, the Arizona Department of Education and a member of the Arizona legislature on the topic of interstate school district boundary matters at a meeting in Gallup, the presenters said. The superintendents were provided with a written document outlining key components that should be considered as they draft an interstate school district agreement for their school boards' consideration.

On February 9, 2016, the board of the Window Rock Unified School District (Arizona) passed an interstate school district intergovernmental agreement (IGA) and sent the IGA to the Gallup-McKinley County School District (GMCSD) (New Mexico) for review and consideration. The GMCSD is performing a legal review of the IGA before taking further steps.

On May 5, 2016, superintendents and staff from the Central Consolidated School District (New Mexico) and the Red Mesa Unified School District (Arizona) met and drafted an inter-district IGA for their school boards' review and consideration. They created an addendum to ensure that the agreement addresses the matter of tuition. Currently, in the addendum, tuition is set at \$3,426.74 for Arizona students and \$4,227.48 for New Mexico students. Across all of the districts, there are an estimated 425 students coming into New Mexico from Arizona and an estimated 600 students leaving New Mexico to attend school in Arizona.

Several outstanding questions still need discussion and resolution. The main issues raised by several school districts are:

- (1) the exchange of tuition in the IGA; and
- (2) New Mexico's supplemental funding provision, which New Mexico resident school districts can apply for and use, to pass state support funding to the educating school district across the state line in Arizona.

Also needing discussion and resolution is the Arizona "Certificate of Convenience" provision to determine if it would be appropriate to use in helping to resolve boundary issues. Arizona school districts need clarity and consistency with regard to the definition of state support funding. Questions that still need clarification include whether the funding:

- (1) is base-level funding;
- (2) is weighted-level funding; and
- (3) includes other state support funding; for example, Arizona's additional assistance.

The school districts requested guidance regarding reporting and implications for other funding sources. The school districts do not want to jeopardize federal funding allocations or disrupt its flow to the districts and will need to know if receiving or sending school districts are to include the non-state resident students in their reporting and application process. These other funds include impact aid, title funds and other federal funding support.

The school districts requested guidance on data sharing and data requirements among the school districts and across states; in particular, how states' student information systems will be able to disaggregate data on students crossing state lines to provide necessary tracking and accountability. The school districts also requested guidance on whether there will be a cap set on the number of students who can participate in cross-state school district IGAs.

Priscilla Manuelito, GMCSO board secretary, informed the committee that the GMCSO superintendent is on board for the IGA and that after review by the board's legal counsel, the board will vote on the IGA.

Jeff Bond, GMCSO transportation director, stands in favor of the agreement. Mr. Bond informed the committee about the Pigeon Springs area on the New Mexico-Arizona border with homes located in New Mexico and a school located only a half-mile away in Arizona. The school district is currently unable to provide funding for the transportation of Arizona students. Mr. Bond reminded the committee that the tuition fee does not apply to transportation.

In response to a question, Mr. Bond confirmed that the transportation budget is separate from the PED budget and that the PED transportation budget only provides support for students in the school district. Mr. Aguilar added that Arizona students are counted for assessment and accountability, but they cannot be counted for transportation funding.

In response to a question, Mr. Bond confirmed that there are school bus routes where a student is picked up in New Mexico and attends a school in New Mexico, but must travel across and back over the state line en route to school. Mr. Bond also confirmed that if a student's home is on the Arizona side of the border, the bus cannot stop in front of the home to pick up the student; however, if the student walks across the street to the New Mexico side of the border, the bus can pick up the student from that point, but the student is not counted for transportation funding purposes. There is currently no funding granted to pick up a student who lives in Arizona, even if the student is actually picked up in New Mexico.

Discussion of Focus Areas, Work Plan and Meeting Schedule

Mr. Kovnat presented a summary of the proposed work plan and meeting schedule for the 2016 interim. He discussed issues of ongoing concern to New Mexico's Native American

community and the importance of the committee's outreach efforts during the interim. Mr. Kovnat stood for questions on the details of the work plan and the proposed schedule.

Committee members discussed the work plan and recommended adding a presentation regarding the 1952 agreement between the state's pueblos and the University of New Mexico (UNM) Hospital, as well as adding a discussion regarding the UNM Board of Regents, revenue pitfalls and services provided by UNM.

Committee members discussed the proposed interim meeting schedule and adjusted the order of meeting locations for logistical purposes. The committee decided to move one meeting from Standing Rock to Gallup. Upon a motion, then seconded, and without opposition, the work plan and meeting schedule and locations were approved by the committee.

Adjournment

There being no further business, the committee adjourned at 12:48 p.m.

Revised: July 8, 2016

**TENTATIVE AGENDA
for 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**

Monday, July 18 — Ramah Navajo Chapter House, Mountain View

- 10:00 a.m. **Call to Order**
 —Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (1) [Welcome and Status Update](#)
 —David Jose, President, Ramah Navajo Chapter (Invited)
- 11:15 a.m. (2) [An Update on New Mexico's Native American Charter Schools](#)
 —Kara Bobroff, Executive Director, Native American Community
 Academy (NACA)
 —Anpao Duta Flying Earth, Head of School, NACA
- 12:45 p.m. **Lunch**
- 1:30 p.m. (3) [Tribal Courts and Tribal Jurisdiction](#)
 —Daniel Moquin, Staff Attorney, Ramah Judicial District
- 2:30 p.m. (4) [Navajo Peacemaking Project](#)
 —Ruby F. Hosteen, Traditional Program Specialist, Ramah Judicial
 District Navajo Peacemaking Project
- 3:30 p.m. **Public Comment**
- 4:00 p.m. **Recess**

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

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (5) **Welcome and Status Update**
—Russell Begaye, President, Navajo Nation
—Arlando S. Teller, Acting Deputy Director, Navajo Division of Transportation
- 11:30 a.m. (6) **Spiritual and Cultural Exploitation of Sacred Ceremonial Dances**
—Shawn Price, Co-Founder, Sacred Preservation
—Shirley Pino, Co-Founder, Sacred Preservation
- 12:30 p.m. **Lunch**
- 1:15 p.m. (7) **The New Mexico Small Loan Industry and the Impact of Newly Proposed Federal Consumer Protection Rules**
—Sunny Liu, Fiscal Analyst, Legislative Finance Committee
- 2:15 p.m. (8) **Dental Therapists**
—Barbara Posler, Legislative Chair, New Mexico Dental Hygienists' Association
—Barbara K. Webber, Executive Director, Health Action New Mexico
- 3:15 p.m. (9) **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
- 4:15 p.m. **Public Comment**
- 4:45 p.m. **Recess**

Wednesday, July 20 — University of New Mexico (UNM)-Gallup, Room 200

- 9:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 9:15 a.m. (10) **Welcome and Status Update**
—Jackie McKinney, Mayor, Gallup
—Christopher Dyer, Ph.D., Executive Director, UNM-Gallup

- 10:15 a.m. (11) [**Discussion of the Proposed Land Division of Fort Wingate**](#)
—Edmund E. Yazzie, Council Delegate, Navajo Nation Council
—Val R. Panteah, Sr., Governor, Pueblo of Zuni
—Daniel C. Hicks, Director of Strategic Plans, White Sands Missile Range
 (Invited)
—Karis N. Begaye, Legal Counsel, Navajo Nation Office of the President
 and Vice President
- 12:00 noon (12) [**Safety Concerns at the Intersection of Sundance Road Near Fire Rock
Casino**](#)
—Representative D. Wonda Johnson
- 12:30 p.m. **Public Comment**
- 1:00 p.m. **Adjourn**

**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 Clahchischillia 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 Szczepanec, 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'éééíł dóó hózhógo k'é nahodleeł"; 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.

Revised: August 23, 2016

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**August 29, 2016
Sky City Casino Hotel and Conference Center
Pueblo of Acoma**

**August 30, 2016
Route 66 Casino Hotel
Pueblo of Laguna**

**August 31, 2016
Indian Pueblo Cultural Center
Albuquerque**

Monday, August 29 — Sky City Casino Hotel and Conference Center, Pueblo of Acoma

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee (IAC)
- 10:15 a.m. (1) **Welcome and Status Update**
—Kurt Riley, Governor, Pueblo of Acoma
- 11:15 a.m. (2) **House Joint Memorial 1 (2016): Update on Protecting Cultural Properties**
—Ann Berkley Rodgers, Attorney, Chestnut Law Offices, P.A.
—Jeff Pappas, Ph.D., State Historic Preservation Officer, Cultural Affairs Department
—Representative, Attorney General's Office (Invited)
- 12:30 p.m. **Lunch**
- 1:30 p.m. (3) **Indian Affairs Department (IAD): Updates on the Tribal Infrastructure Fund and the State-Tribal Collaboration Act**
—Kelly Zunie, Secretary, IAD
- 3:30 p.m. **Public Comment**
- 4:00 p.m. **Recess**

Tuesday, August 30 — Route 66 Casino Hotel, Pueblo of Laguna

- 10:00 a.m. **Reconvene**
—Senator John Pinto, Co-Chair, IAC
- 10:15 a.m. (4) **Welcome and Status Update**
—Virgil A. Siow, Governor, Pueblo of Laguna
- 11:15 a.m. (5) **School Funding, Impact Aid and Ongoing Public Education Lawsuits**
—Sharon Ball, Researcher/Drafter, Legislative Council Service
- 12:30 p.m. **Lunch**
- 1:30 p.m. (6) **Uranium Cleanup Efforts**
—Butch Tongate, Acting Secretary, Department of Environment (NMED)
—Kurt Vollbrecht, Program Manager, Mining Environmental Compliance,
 Ground Water Quality Bureau, NMED
—Representative, Energy, Minerals and Natural Resources Department
- 3:30 p.m. **Public Comment**
- 4:00 p.m. **Recess**

Wednesday, August 31 — Chaco Rooms 1 and 2, Indian Pueblo Cultural Center, Albuquerque

- 10:00 a.m. **Reconvene**
—Senator John Pinto, Co-Chair, IAC
- 10:15 a.m. (7) **Welcome and Status Update**
—Ron Shutiva, Chair, Board of Directors, Indian Pueblo Cultural Center
- 11:15 a.m. (8) **Update on Health Services Provided to Native Americans in Light of the 1952 Contract Between the University of New Mexico Health Sciences Center, Indian Health Service and Bernalillo County**
—Kurt Riley, Governor, Pueblo of Acoma
—Pablo H. Padilla, Jr., General Legal Counsel, Office of the Governor,
 Pueblo of Isleta
—Rodney McNease, Executive Director, Behavioral Health Finances,
 University of New Mexico Hospitals
- 12:45 p.m. **Lunch**

- 1:30 p.m. (9) [Albuquerque Indian Center: Update and Funding Challenges](#)
—Mary Garcia, Executive Director, Albuquerque Indian Center
- 2:30 p.m. (10) [Update on the Gathering of Nations PowWow](#)
—Derek Mathews, Founder/Producer/Director, Gathering of Nations, Ltd.
—Melonie Mathews, Director/Program Coordinator, Gathering of Nations,
Ltd., and Miss Indian World Pageant
- 3:30 p.m. **Public Comment**
- 4:00 p.m. **Adjourn**

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

**August 29-31, 2016
Pueblo of Acoma, Pueblo of Laguna, Albuquerque**

The third meeting of the Indian Affairs Committee (IAC) for the 2016 interim was called to order at 10:22 a.m. by Representative Sharon Clahchischilliage, co-chair, on Monday, August 29, 2016, at the Sky City Casino Hotel and Conference Center in the Pueblo of Acoma.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Rep. D. Wonda Johnson (8/30, 8/31)
Rep. Georgene Louis
Rep. James Roger Madalena
Sen. Richard C. Martinez (8/30)
Sen. Cliff R. Pirtle (8/31)
Sen. Nancy Rodriguez
Sen. John C. Ryan (8/30, 8/31)
Sen. Benny Shendo, Jr. (8/29)
Rep. James E. Smith
Sen. William P. Soules

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell

Advisory Members

Rep. Eliseo Lee Alcon (8/29, 8/30)
Sen. Carlos R. Cisneros
Rep. Patricia A. Lundstrom (8/30, 8/31)
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Sen. Clemente Sanchez

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Sen. George K. Munoz
Rep. Nick L. Salazar

Guest Legislator

Sen. Linda M. Lopez

(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

All handouts and other written testimony are in the meeting file.

Monday, August 29 — Sky City Casino Hotel and Conference Center, Pueblo of Acoma**Welcome and Status Update**

Kurt Riley, governor, Pueblo of Acoma, welcomed the committee in Keres. Representative Clahchischilliage welcomed the committee and members of the audience and asked committee members to introduce themselves.

Governor Riley thanked the committee for coming to the Pueblo of Acoma and said it is important for lawmakers to visit pueblo communities to better understand and appreciate issues unique to pueblos, like language loss, tribal adoptions and protection of cultural sites. Governor Riley read prepared remarks addressing issues facing the pueblo (see handout).

Governor Riley described the Pueblo of Acoma form of government as traditional, where tribal leaders are appointed by religious leaders. Tribal leaders work with the state and federal governments on issues of mutual concern.

The Pueblo of Acoma is facing a housing shortage, which results in difficulties attracting and keeping educated and skilled people in the pueblo. Many of the youth have left due to limited job opportunities. The pueblo is in dire need of health workers and first responders.

Gaming provides the pueblo's only major source of revenue. Gaming funds are used for funding tribal programs, water systems, tribal courts, emergency services, maintaining roads, language preservation, cultural and natural resource protection and leveraging matching funds. The pueblo has paid an average of \$1.75 million per year in gaming revenue-share payments and \$5 million per year in special fuels tax for diesel sales. The travel centers sell over one million gallons of diesel fuel each month.

In regard to cultural patrimony, Governor Riley stated that cultural items that have been stolen, illegally removed and sold carry significance and meaning that cannot be completely captured in the English language. The pueblo, with the help of the New Mexico congressional delegation, was able to prevent the auction of an Acoma shield in France and now hopes to secure its return.

Governor Riley requested that policymakers do not fix the state's budget shortfall at the expense of poor and low-income families by raising the gas tax or reintroducing the gross receipts tax on food. Governor Riley stated that the pueblo is aware that the Human Services Department (HSD) plans on reducing Medicaid provider rates, and he said such reductions will

decrease access to care for Medicaid patients and reduce the availability of health care providers. He believes that the HSD has not presented adequate information to the public and tribes to justify the rate of reductions and that the HSD has not sought meaningful input from stakeholders.

Regarding roads, Governor Riley stated that the Pueblo of Acoma's land base has over 523 miles of federal, state, county, forest and Bureau of Indian Affairs (BIA) roads. The funding for road maintenance is not enough to perform all necessary maintenance and repair activities, which is critical because the Pueblo of Acoma hosted 100,000 visitors in 2015. The pueblo also needs the state Department of Transportation to provide planning funds to realign NM 124 to connect to NM 117.

As for capital outlay and the tribal infrastructure fund (TIF), Governor Riley said that the pueblo has demonstrated its managerial capacity and technical expertise to complete projects. The Pueblo of Acoma used state money to leverage federal dollars in phase 3 of the waterless composting toilet construction project that was completed six months ahead of schedule. Governor Riley urged lawmakers to consider increasing TIF funding or create a formula or process that allows for reverted or unspent TIF funds to be reallocated to other tribes.

In response to a question from the committee, Governor Riley explained his belief that much of the cultural appropriation issue can be addressed through education and that he does not want to shut down the antiquity industry.

Approval of Minutes

Upon a motion by Representative Smith, seconded by Senator Rodriguez, and without opposition, the committee voted to approve the minutes from the committee's July 18-20, 2016 meeting.

House Joint Memorial 1 (2016): Update on Protecting Cultural Properties

Ann Berkley Rodgers, general counsel to the Pueblo of Acoma, said that she has met with an array of people to discuss ideas and precedents and how customary law has a long-standing prohibition on the sale of traditional sacred cultural items, beginning with tribal laws that have been in effect for centuries. As do tribal laws, New Mexico laws prohibit the sale or exportation of cultural items.

Ms. Rodgers referred to the federal Safeguard Tribal Objects of Patrimony (STOP) Act of 2016, sponsored by U.S. Senator Martin Heinrich and U.S. Representative Ben Ray Lujan, which prohibits the exportation of Native American cultural objects, increases the penalties for current violations and includes a safe-harbor provision for those individuals who repatriate cultural objects.

Ms. Rodgers discussed the federal Protection of the Right of Tribes to stop the Export of Cultural and Traditional (PROTECT) Patrimony Resolution, introduced by U.S. Representative Steve Pearce and U.S. Senator Tom Udall, which:

- condemns the theft, illegal possession, sale, transfer and export of tribal cultural items; and
- calls on federal agencies and New Mexico's attorney general to consult with tribes in addressing the issue.

Ken Stalter, senior counsel, Office of the Attorney General (OAG), said the OAG has been reviewing international, federal and tribal law and that the OAG intends to meet with stakeholders following that review to discuss options. Mr. Stalter added that the meeting should take place before the next meeting of the IAC in October.

Jeff Pappas, Ph.D., state historic preservation officer, Cultural Affairs Department, said that efforts to address cultural appropriation are still in their early stages.

Panel members said that current international treaties only address protecting artifacts from other countries entering the United States and not those leaving. For the Acoma shield, the United States government had to go through a United Nations Educational, Scientific and Cultural Organization (UNESCO) treaty agreement, where international permission was sought to issue a warrant that was then executed by France.

Mr. Stalter said that the burden of proof to show how an item came into one's possession can vary depending on the venue of the claim. He added that evidentiary concerns and burdens of proof have been discussed with the Indian Affairs Department (IAD).

IAD: Updates on the TIF and the State-Tribal Collaboration Act

Kelly Zunie, secretary, IAD, highlighted improvements in communication and collaboration with the state's tribes.

Efforts to improve communications include an upgrade to the IAD website, increasing the number of face-to-face trainings and workshops and focusing on the department's newsletter. The IAD has also created a memorandum of understanding that allows New Mexico's Indian tribes, pueblos and nations to request that state and federal aviation organizations refrain from doing low-level flyovers on certain days.

The department initiated an open house with the Office of the State Medical Investigator and tribal representatives to discuss techniques to handle deceased bodies in a way that is acceptable to both. As part of its technology improvements, the IAD created Project Portal, which helps the IAD track tribal infrastructure and capital outlay projects (see handouts).

Secretary Zunie said that following the 2016 state-tribal summit, a work group was formed and all summit presenters attended. The work group developed next steps and deliverables for each topic discussed at the summit and aims to accomplish the work group's tasks and report its progress at next year's summit.

Secretary Zunie also discussed the 2016 transition portfolios for each tribe, prepared by the IAD, which include:

- an overview of each TIF/capital outlay project;
- a copy of the infrastructure capital improvement plan (ICIP);
- an explanation of what capital outlay is and the capital outlay request form;
- a list of tribal liaisons;
- information on the Rio Grande Trail Commission; and
- state agency updates from the state-tribal summit.

David Mann, general counsel, IAD, detailed the TIF work group, which is looking at the TIF guidelines. The TIF work group is composed of one tribally designated representative from each Indian tribe, nation and pueblo. The work group was originally limited in scope to a discussion of the TIF guidelines but was subsequently expanded to include a discussion of the TIF application. Most of the pueblos and the Navajo Nation have been regularly sending representatives who actively participate in the consultation. Representatives from the Department of Finance and Administration also regularly attend work group meetings. The following proposed changes are still in the discussion stage and have not been brought before the Tribal Infrastructure Board. Proposed material changes represent the consensus of participating tribal representatives and include:

- the elimination of "plan", "design" and "construct" project categories and an emphasis on tribes articulating a need and a method of addressing that need. This is expected to provide greater autonomy for tribes and better follows the Tribal Infrastructure Act;
- that the ICIP listing is a threshold requirement for project consideration;
- a 15% cap on total available TIF money per project proposal, with the caveat that the Tribal Infrastructure Board can vote to change that percentage depending on fund availability each fiscal year;
- that all projects, unless specifically applied for as "planning" projects, have a 36-month completion deadline; and
- simplifying the scoring metric to weigh projects based on critical need, readiness, capacity and leveraging other funds, respectively. Under this new metric, a greater emphasis on fiscal responsibility will be instilled and the process will be more objective.

Next for the work group is to provide a detailed update to tribal leadership and project staff, submit a draft proposal of the guidelines for review and present the draft proposal at the October 2016 board meeting.

In response to a question, Secretary Zunie informed the committee that no information has been obtained on capital outlay vetoes beyond what was included in the veto letter. Secretary Zunie recommended that legislators with vetoed requests keep trying to get their requests approved and that she may be able to find some more information.

On a motion made by Representative Smith and seconded by Senator Soules, and without objection, the committee requested that LCS staff produce a document with information on vetoed capital outlay requests in Indian country for the last three years.

In response to a recommendation for the IAD to allow tribes to bring more representatives to TIF work groups, Secretary Zunie said that tribes should have state liaisons in the way the state has tribal liaisons. Secretary Zunie then told the committee that the best way to ensure full funding for projects is for that project to be in the ICIP, ideally as a top-10 priority project.

Responding to a question, Secretary Zunie said State Board of Finance rules prohibit the Tribal Infrastructure Board to move money from a stalled project to an active one because money is authorized per specific project.

Secretary Zunie said projects designated to individual Navajo chapters move more slowly than other projects because the funding must go through the Navajo Nation executive branch. This is because it is a government-to-government transaction, and a change with the Navajo Nation's process is required for the department to distribute money directly to the chapter houses.

Recess

The committee recessed at 3:50 p.m.

Tuesday, August 30 — Route 66 Casino Hotel, Pueblo of Laguna

Senator Pinto reconvened the meeting at 10:16 a.m., and committee members, staff and the audience introduced themselves. Representative Clahchischilliage chaired the remainder of the meeting.

Welcome and Status Update

David Martinez, first lieutenant governor, Pueblo of Laguna, said that the Pueblo of Laguna is composed of six individual villages governed by a 21-member council and has one-half million acres of land in trust. The Pueblo of Laguna oversees the Laguna Rainbow Corporation, Laguna Development Corporation, Laguna Housing and Development Management Enterprise and the recently formed Laguna Healthcare Corporation.

Lieutenant Governor Martinez said a primary goal of the pueblo is to provide economic opportunity benefits for pueblo members and to contribute to the county and state economies. Lieutenant Governor Martinez encouraged members to think of the Pueblo of Laguna when looking for partners in enterprise. Lieutenant Governor Martinez said the Pueblo of Laguna has access to both human and financial resources to invest, and the pueblo is looking to provide jobs to both tribal and non-tribal people living in the surrounding area. In addition, the pueblo recently purchased a casino in Louisiana.

Lieutenant Governor Martinez said that the pueblo has entertained numerous economic development opportunities, and he highlighted proposed rail lines running through the area that may appeal to manufacturers. Lieutenant Governor Martinez said that the Pueblo of Laguna seeks to use its status as a federally recognized tribe to help acquire funding and access opportunities.

The committee asked that staff contact the IAD to arrange meetings between members of the economic development community and area tribes.

A committee member expressed concern about a speed trap that Pueblo of Laguna police have set up on Interstate 40. Constituents often contact legislators and complain that they have to spend an additional \$70.00 every time they drive to Albuquerque.

School Funding, Impact Aid and Ongoing Public Education Lawsuits

Sharon Ball, researcher/drafter, LCS, discussed the *Zuni* lawsuit and impact aid. Ms. Ball said that Article 12, Section 1 of the Constitution of New Mexico provides that a "uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained".

In 1950, the federal Impact Aid Program was established to provide direct compensation to local school districts in lieu of property taxes, which are not levied on federal lands, including property owned by the U.S. Forest Service, the Bureau of Land Management, the national laboratories, Indian reservations and military installations.

There are four different kinds of impact aid: basic payments or "noncategorical funding"; Indian set-asides; special education add-ons; and construction funds. New Mexico qualifies for federal impact aid funding for all four categories, but the Public Education Department (PED) takes credit for only 75% of the basic payment portion. Because the state relies on the tax wealth of the whole state rather than the property tax wealth of school districts, New Mexico is one of the few states that qualifies as a federal "equalized expenditures state". Nearly 95% of all operational funding for New Mexico's public schools comes from the state's General Fund.

In the 1998 *Zuni* impact aid lawsuit, the plaintiff school districts raised the question of whether the capital funding system, based on local property wealth, violated the constitutional promise of a "uniform system ... sufficient for all". The plaintiffs sued the United States

Department of Education, with the PED as an intervener on the side of the Department of Education.

The plaintiff school districts contended that the state should account for outliers by district rather than by number of students, and the language in the federal rules is not definite. The state contends that it should account for outliers by numbers of students rather than by district because outliers are distinctly possible in a state with districts ranging in size from nearly 90,000 students to fewer than 50 students. The Tenth Circuit Court of Appeals upheld the finding in the state's favor.

New Mexico has, on average, taken credit for about \$50 million a year in federal impact aid basic program/noncategorical funding for the past 10 years. If the state were not able to take credit for these noncategorical impact aid funds, the legislature would have to appropriate additional General Fund dollars to hold non-impact-aid districts harmless.

In response to a question, Ms. Ball said that over the last 30 years, state courts have held that "uniform" does not mean that every child is provided for equally, but that every child will be funded to a point that is similar to every other child.

Uranium Cleanup Efforts

David R. Ohori, senior reclamation specialist, Mining and Minerals Division (MMD), Energy, Minerals and Natural Resources Department, gave the committee an overview and history of the Grants Mining District (GMD). From the 1950s to the 1980s, the GMD was a major uranium-producing region. Over 336 million pounds of uranium were produced from the mines, constituting 38% of the total uranium production in the country. Uranium mill sites are exempt under the New Mexico Mining Act.

Mr. Ohori reviewed the Tronox, Inc., bankruptcy settlement for the former Kerr-McGee Corporation mines, which went into effect in January 2015. Anadarko Petroleum Corporation paid \$5.15 billion for nationwide cleanups. In U.S. Environmental Protection Agency (EPA) Region 9 on the Navajo Nation, approximately \$900 million has been designated for cleanup on mines affecting the Navajo Nation. Collaborating entities for the Tronox settlement include the Navajo Nation's Abandoned Mine Lands Reclamation Office, the EPA, the Department of Health, the BIA, the Indian Health Service (IHS), EPA Regions 6 and 9, the Department of Environment (NMED) and the MMD.

Under the Tronox settlement, the NMED and MMD are collaboratively working on 12 uranium mines in the Ambrosia Lake Subdistrict and conducting ground water investigations in the Ambrosia Lake/San Mateo watershed. The NMED and EPA are lead agencies on the ground water investigations.

The Spencer Mine reclamation projects are being conducted by the U.S. Bureau of Land Management and the MMD. EPA Region 6 five-year plan objectives are as follows:

- assess water supply sources for contamination;
- assessment and cleanup of legacy uranium mines;
- review the assessment and cleanup and perform long-term management of former uranium milling sites;
- assessment and cleanup of contaminated structures and properties; and
- communicate and coordinate with communities.

The EPA Region 9 five-year plan objectives are as follows:

- remediate homes;
- increase water infrastructure in mining areas;
- focus on 43 priority mines located near homes;
- cleanup of the Northeast Church Rock Mine;
- cleanup of the Tuba City dump;
- treat ground water at mill sites;
- conduct health studies; and
- expand interagency outreach.

Mr. Otori said that cleanup efforts near the Pueblo of Laguna include mines with MMD permits. Mines with MMD permits include the Rio Algom Old Stope Leach Mine, which overlaps with the Tronox settlement and is under EPA Region 6 removal actions; the St. Anthony Mine, which had an interim reclamation plan approved with \$26 million in financial assurance; and the J.J. Mine, which has been reclaimed and had an inspection performed this year.

Mr. Otori said guidance is being provided for uranium mine cleanup if the site meets the MMD definition of an "existing mine" or if the mine produced marketable minerals for a total of at least two years between 1970 and 1993.

Under a joint guidance agreement, the preferred methodology for cleanup has been to physically remove uranium waste from the site to a monitored disposal facility. An alternative methodology for cleanup is an on-site incised disposal repository with a protective cover system. Implementation includes a work plan to characterize contamination at the site, establish site-specific radiation levels, provide a characterization summary report, develop and implement a closeout/reclamation plan and perform site management with a verification of goals (see handout).

No uranium exploration has been conducted or permitted in over three years. An operator has proposed to restart operations and is currently on standby status for the Mount Taylor Mine in Cibola County under an existing permit. A permit for a new mining operation near the Mount Taylor Mine is currently under review.

Kurt Vollbrecht, program manager, Mining Environmental Compliance Section, Ground Water Quality Bureau, NMED, said that the bureau's mission is to preserve, protect and improve

New Mexico's ground water quality for present and future generations. New Mexico's Water Quality Act and Water Quality Control Commission have established regulations for ground water discharge permits and ground water and surface water abatement. The ground water discharge permits require plans for operational, monitoring, contingency and closure actions. The ground water and surface water abatement regulations require an abatement plan.

Alternative abatement standards are used in lieu of the normal standards when there are questions about water quality. Treatment of water at any particular mine could occur without ever reaching a safe-for-consumption level. The alternate standard does not make water consumable and exists to contain water to a certain area.

The panel said that mining in New Mexico has a long history. Uranium mining in particular has been conducted on Indian, public, state and private land for decades. The New Mexico Mining Act addresses only a portion of the mining activity that has occurred.

There are believed to be approximately 260 legacy mines in New Mexico. Of those, 137 have not undergone any kind of reclamation effort. In addition, the state has no authority over mines on tribal land.

In response to a question, the panel confirmed that legacy mines that do not fall under the Tronox settlement will have to be addressed and funded by other programs. Abandoned mines are currently addressed by the Abandoned Mine Lands Program, which has funding primarily for reclamation of coal mines.

The committee recessed at 3:43 p.m.

Wednesday, August 31 — Chaco Rooms 1 & 2, Indian Pueblo Cultural Center (IPCC), Albuquerque

Welcome and Status Update

Michael Canfield, president and chief executive officer, IPCC, and Representative Madalena welcomed the committee. Representative Madalena is on the IPCC board as one of two representatives from the state's southern pueblos. The northern pueblos also have two representatives on the board. The fifth and final IPCC board member comes from the Albuquerque business community.

The governing structure of the Albuquerque Indian School can be found in the handouts section of the IAC web page.

The IPCC holds child and adult summer camps, a teaching garden, a pueblo book club and volunteer training. The IPCC goals involve community outreach and involvement, fiscal stewardship and continual improvement.

Mr. Canfield discussed property development projects by Indian Pueblo Marketing, Incorporated (IPMI), a for-profit branch of a larger organization. It includes the only Starbucks location in the county licensed to a Native American-owned company. The IPMI is in discussions with potential tenants for two additional buildings for retail development.

The IPCC and IPMI marketing department has a polished and professional online presence. The websites for the IPCC, Pueblo Harvest Café and Shumakolowa Native Arts have all been redesigned to attract and retain potential customers. Nearly 400 artists have work featured on the shumakolowa.com website, which has seen a 40% increase in traffic over the last year. Social media efforts have increased, and a total of 877,514 people follow the Facebook page.

Update on Health Services Provided to Native Americans in Light of the 1952 Contract Between the University of New Mexico Health Sciences Center, IHS and Bernalillo County

Governor Riley stated that the governor of the Pueblo of Isleta approached the All Pueblo Council of Governors (APCG) with an initiative to have the governors review the relationship with University of New Mexico Hospital (UNMH) in light of the Bernalillo County mill levy being up for renewal. The APCG Health Committee was established and was charged with familiarizing itself with the 1952 UNMH, Bernalillo County and IHS contract. Pablo Padilla, general counsel, Pueblo of Isleta, was tasked with looking at the contract to ensure that the best interest of the pueblos was being considered.

Mr. Padilla said that in the 1940s, based on trends in the country and Bernalillo County demographics, two new hospitals were needed — one hospital to improve medical access and treatment for the 10,000 Native American people in the community and another to serve the non-native community.

Instead of replacing the old Indian hospital, a decision was made to keep that one and build a new hospital next to it to accommodate the general population. A deal was brokered to provide \$1.8 million, land and infrastructure for a new hospital (see handout). A 1978 lease agreement and four supplemental agreements have been made.

One of the members of the UNMH board of directors is to be a pueblo Indian, to be selected by the All Indian Pueblo Council. Subsequently, the hospital board went from five to nine members. Initially, a second pueblo board member was not added. Now, at the urging of the APCG, a second pueblo board member has been added.

Mr. Padilla explained the particulars of the contract and the health care being provided to enrolled members of the pueblos and other tribal members (see handout).

Rodney McNease, executive director of behavioral health finances, UNMH, told the committee that the 1952 contract is binding unless all parties agree to change the terms, and no changes may be made without approval from the IHS.

According to Mr. McNease, current issues with this agreement and UNMH are the lease, Bernalillo County, the mill levy, a replacement hospital, access, communication, transparency and behavioral health.

Mr. McNease told the committee that in today's medical world, standards of care are different than when the contract was signed, and it is important to ensure that clauses in the contract relate to today's medical practices.

Currently, UNMH is pursuing a replacement facility for adult services with 300 adult medical surgical beds, emergency services, a medical office building, behavioral health services and a trauma center, all of which will require five years to complete. The project will require a total of \$500 million to \$600 million.

Mr. McNease discussed access issues at UNMH and reported that the issues mirror those of other hospital outpatient clinics. The current work at UNMH is focused on expanding capacity and leveraging resources, which involves reorganization of outpatient clinics to improve assessment and evaluation services for better coordination of services and for primary care expansion.

In February 2016, the Centers for Medicare and Medicaid Services (CMS) published guidance to allow for increased federal matching contributions to state Medicaid plans for certain Native American patients. The IHS and tribal facilities may enter into care coordination agreements with non-IHS/tribal providers to furnish certain services for their Medicaid patients that would be eligible for 100% matching funds from the federal government. According to Mr. McNease, New Mexico is interested in pursuing this payment method and is working with the CMS to develop plans for a pilot program.

Regarding the pueblo preference in the contract, Mr. Padilla expressed concern over a potential legal barrier. When these agreements were made, the federal Indian Civil Rights Act of 1968 and Civil Rights Act of 1960 were not law. However, Mr. McNease said that the hospital interprets the equal treatment mandated by the acts to mean that equal, though not superior, treatment shall be provided to Native American patients. Mr. Padilla, in his legal opinion, sees the contract as predating the Civil Rights Acts of 1960 and that the 100-bed provision and pueblo preference does not interfere with the care provided to other patients.

Mr. Padilla said that it is his belief that UNMH is not in compliance with the 100-bed provision and the priority and first-use clauses. Mr. McNease said that UNMH's interpretation of the equal-care clause in the 1952 agreement is an antidiscriminatory obligation of hospital managers in regard to Indian patients. Prior to the contract, discrimination was widespread and rampant; the clause was included to prevent discrimination.

Mr. McNease explained to the committee that Native Americans are exempt from copayments if they have UNM Care or other insurance. Mr. Padilla informed the committee that,

in light of the change of management at UNMH, he does not see any interruption of services with the transfer of governance.

Albuquerque Indian Center (AIC): Update and Funding Challenges

Mary Garcia, executive director, AIC, thanked the committee for the opportunity to make a presentation. Ms. Garcia said the AIC is a place where native people are meant to feel accepted, obtain services and keep native culture alive. The population served at the AIC is 92% Native American.

Ms. Garcia listed the major challenges facing the AIC, including the inability to secure funding to provide services to urban Indians in Albuquerque. In the past few years, the AIC has lost several of its primary funding sources and has had to stop providing certain critical services that it offered in the past.

Ms. Garcia told the committee that services currently offered by the AIC include providing mailboxes; copy services; faxing and mailing services; local and long-distance telephone service; counseling support, including intake screening; domestic violence counseling for both the batterer and victim; and Alcoholics Anonymous meetings.

On a motion made by Senator Rodriguez, seconded by Representative Johnson, and without opposition, the committee requested that a letter be drafted to Secretary Zunie stressing the committee's concern for the lack of funding for the AIC and a request for an explanation of why AIC funding requests have been denied.

Update on the Gathering of Nations PowWow (GON)

Derek Mathews, founder, GON, explained the cancellation of the GON's contract with UNM that resulted in the GON moving its event to Expo New Mexico facilities. Mr. Mathews said that when the Pit was renovated in 2010, the GON event was moved to the UNM football field. Following the event at the football field, UNM tried to stop the event from returning to the Pit. According to Mr. Mathews, a new five-year agreement plan was made at that time, and Mr. Mathews sent it to UNM but was told that he missed a deadline. UNM has refused to acknowledge receiving the plan. With the help of the mayor's office, a new five-year agreement was made with UNM and the Pit.

Five years passed, and a new five-year contract was needed, but Mr. Mathews wanted to move the event away from UNM because of the way the GON has been treated. Mr. Mathews said that the GON received invitations from all over the country, but it wants to stay in Albuquerque. Mr. Mathews said that passion for Albuquerque is the sole reason the event was moved to the Expo New Mexico facilities rather than out of state.

Regarding the GON's impact on the local economy, Mr. Mathews said that a feasibility study performed by the Albuquerque Hispano Chamber of Commerce reported that the GON provides a boost to the state of around \$25 million over the two-day event. Mr. Mathews added

that the study is about a decade old, and it is likely that the event provides a larger economic boost now. The feasibility study monitored only out-of-state money flowing into Albuquerque and did not include a study on in-state money being spent in Albuquerque. The study also did not include an analysis on the meetings and events before and after the GON event.

Public Comment

Marion Goodluck, American Indian Women's Center, informed the committee that in 2015, 1,052 domestic violence reports were filed with the Albuquerque Police Department by Native Americans, which constitutes a decrease of about 100 over a span of a year. The center has a board of eight educated Native American women. A proposal has been presented that resulted in her hiring staff to study Native American domestic violence cases. The American Indian Women's Center has applied for 501(c)(3) status.

Ms. Goodluck stated that she used to work for the AIC and that it has become less and less effective over the last 21 years since Ms. Garcia became director. She said that the AIC used to be a successful center but has lost many programs. She said that AIC staff members do not know how to write proposals or balance budgets. Ms. Goodluck also brought Ms. Garcia's salary into question.

Sam Gardipe that said he has been an Albuquerque community member for most of his life. Upon returning to Albuquerque, he noticed a lot of homeless Native American people. He noted that Indian centers in other cities have superior systems to the AIC.

Jan Gutierrez Albaguarpia, Pueblo of Santa Clara, stated that she used to work for the AIC when it was under different leadership. At one point, she was on the AIC board but was removed along with several other board members, allegedly for challenging Ms. Garcia. She said she is currently under a lifetime ban from the AIC and requested an in-depth investigation of the AIC.

Adjournment

There being no further business, the committee adjourned at 4:09 p.m.

Revised: October 14, 2016

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**October 17, 2016
San Juan Chapter House
Indian Service Route 362, Waterflow, NM 87421**

**October 18, 2016
Sheep Springs Chapter House
Old Highway, Sheep Springs, NM 87364**

**October 19, 2016
Henderson Fine Arts Center
San Juan College
Farmington**

Monday, October 17 — San Juan Chapter House

- 10:00 a.m. **Call to Order**
 —Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (1) **[Welcome and Status Update](#)**
 —Rick Nez, President, San Juan Chapter
- 11:15 a.m. (2) **[DNA People's Legal Services](#)**
 —TBD
- 12:15 p.m. **Lunch**
- 1:15 p.m. (3) **[The Environmental Impact of the Gold King Mine Spill and the
Current State of Clean-Up Efforts](#)**
 —TBD
- 3:30 p.m. **Public Comment**
- 4:00 p.m. **Recess**

Tuesday, October 18 — Sheep Springs Chapter House

- 10:00 a.m. **Reconvene**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (4) [Welcome and Status Update](#)
—Ernest Smith, President, Sheep Springs Chapter
- 11:15 a.m. (5) [Report on Local Foodshed and Food Policy](#)
—Sharon Sandman, Diné Food Sovereignty Alliance
—Sonlatsa Jim-Martin, COPE Project
- 12:15 p.m. **Lunch**
- 1:15 p.m. (6) [Sentencing Disparity Between State and Federal Court and Its Impact on Native Americans Convicted of Crimes](#)
—Peter Kovnat, Staff Attorney, Legislative Council Service
- 2:15 p.m. **Public Comment**
- 2:45 p.m. **Tour of the Sheep Springs Senior Center**
- 4:00 p.m. **Recess**

Wednesday, October 19 — San Juan College

- 10:00 a.m. **Reconvene**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (7) [Welcome and Status Update](#)
—Toni Pendergrass, President, San Juan College
- 11:15 a.m. (8) [Update on the San Juan Generating Station](#)
—Cathy Newby, Director, Tribal Government Affairs, Public Service
 Company of New Mexico (PNM)
—Carlos Lucero, Manager, State and Federal Government Affairs, PNM
- 12:15 p.m. **Public Comment**
- 12:45 p.m. **Adjourn**

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

**October 17, 2016
San Juan Chapter House
Waterflow**

**October 18, 2016
Sheep Springs Chapter House
Sheep Springs**

**October 19, 2016
Henderson Fine Arts Center, San Juan College
Farmington**

The fourth meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on October 17, 2016 at 10:54 a.m. at the San Juan Chapter House in Waterflow.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Rep. D. Wonda Johnson (10/18, 10/19)
Rep. James Roger Madalena
Sen. Richard C. Martinez (10/18, 10/19)
Sen. Cliff R. Pirtle (10/17, 10/18)
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr.(10/19)
Rep. James E. Smith

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Rep. Patricia A. Lundstrom (10/18, 10/19)
Sen. Cisco McSorley
Rep. Debbie A. Rodella (10/18, 10/19)

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. Georgene Louis
Sen. William P. Soules

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

Guest Legislator

Rep. Idalia Lechuga-Tena (10/18, 10/19)

(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

All handouts and other written testimony are in the meeting file.

Monday, October 17 — San Juan Chapter House**Call to Order**

Senator Pinto called the meeting to order at 10:54 a.m. and an invocation was given by Rick Nez, president of the San Juan Chapter. Committee members, staff and the audience introduced themselves.

Welcome and Status Update

President Nez welcomed the committee to the San Juan Chapter. He described the area as a community of many farmers and some ranchers and said that they are fortunate to have the San Juan River. He emphasized the importance of farming to the culture and for teaching youth how to work hard. He also remembered with the committee the tragic news of Ashlynne Mike and stressed that an AMBER Alert system is still needed.

President Nez said that a proposed bridge to cross the San Juan River is hoped to be started and completed in the next few years. The bridge is needed for public safety and school bus routes. For example, the bridge is imperative for fire trucks needing to get to the other side of the river, and there have been instances in which the fire trucks have arrived too late to put out a fire because no convenient route to cross the river exists. A member suggested that the committee could help the San Juan Chapter get the money needed for the bridge.

As to implementing an AMBER Alert system, the committee discussed what it would take to make that happen. It was noted that big obstacles to activating an AMBER Alert when Ashlynne Mike went missing were jurisdictional issues and a lack of communication between the Federal Bureau of Investigation and the Navajo Nation. The jurisdictional issues continue to hamper the implementation of a an AMBER Alert system on the Navajo Nation as coordination is needed among four states in addition to the federal government. Although the Navajo Nation

Council passed a law requiring implementation of a system within 60 days, it was vetoed by Navajo Nation President Russell Begaye. Additional efforts have been stalled by a lack of funding for equipment and the training of law enforcement personnel. Committee members suggested that capital outlay funds for infrastructure or sharing the costs with Arizona and Utah could be solutions. It was also suggested by members that New Mexico's congressional delegation should be asked to assist, in addition to encouraging the Navajo Nation Council to act on the issue. President Nez added that the Navajo Nation's memorandum of understanding (MOU) with the New Mexico State Police needs to be revisited as well.

DNA People's Legal Service

Loretta Danzuka, manager of DNA People's Legal Services, Inc. (DNA), said that DNA is a nonprofit entity that provides legal services to indigent people in the Four Corners area of New Mexico, southern Utah and in Arizona's Apache and Coconino counties. Its mission is to provide legal assistance to the community to help stamp out poverty, foster individuals' dignity and independence and protect tribal sovereignty. Operating with funds from 60 different grants, DNA provides its clients with legal services in the areas of domestic relations and domestic violence, consumer (debt collection, car purchases, car repossessions, garnishments and consumer fraud), benefits (Supplemental Nutrition Assistance Program (SNAP), Medicaid, Medicare and general assistance), tax controversies and probate. She stated that through the "Medical Legal Partnership", one of the first legal organization partnerships with a hospital in the United States, DNA has an MOU with the Indian Health Service and clients will be referred to DNA when a doctor discovers a legal issue, such as domestic violence, through an examination. Ms. Danzuka said that DNA does not have a defined service area and that it tries to help everyone who comes for assistance; however, the caseloads are very high, and there are not enough attorneys to address the legal concerns associated with the endemic poverty of the area.

In response to a question about caseloads, Ms. Danzuka noted that DNA's attorneys have to carry 45 to 50 cases each, but that they cannot go over 60 cases and still provide competent representation. Asked about the status of the Navajo Nation forfeiture laws, Ms. Danzuka stated that she has not heard of any forfeiture cases from the Navajo Nation; however, testimony is being given to the Human Rights Commission regarding the conflicting laws on the Navajo Nation and in New Mexico. She said that the state violates civil rights by not setting usury caps; the Navajo Nation has an 18% cap, but to fight for the rights of the poor people on the Navajo Nation, the Navajo Nation has to fight with the state.

Asked about problems the Navajo Nation has with New Mexico's law enforcement, Ms. Danzuka stated that the biggest issues involve self-help repossession and the serving and enforcing of protection orders by the county. She stated that New Mexico does not touch custody cases with Native Americans even if they live off a reservation, and if an individual lives on a reservation, the state will not process divorce petitions or resolve child custody disputes. In these cases, the state claims that the Navajo Nation has jurisdiction even though the people meet the residency requirements of both the state and the Navajo Nation. As to process of service, she said that neither the state nor a county will serve protective orders on the Navajo Nation, and the

Navajo Nation will not serve protective orders off the reservation even though reciprocity exists. She said that because of the jurisdictional misunderstanding, there are serious issues with due process and a failure by the state of getting needed assistance to children and seniors.

The Environmental Impact of the Gold King Mine Spill and the Current State of Clean-Up Efforts

Dennis McQuillan, chief scientist, Department of Environment (NMED), gave an overview of the natural geological contamination from iron and other metals in natural acid rock drainage that predates mining and the discharge of waste into the Animas River from mining, milling and smelting operations during the twentieth century. He noted that a late-1950s survey of the Durango smelter/mill effluent and surrounding river environment found significantly high, "off-the-charts" by today's standards, levels of radioactivity in the river mud and uptake into the food web. As to the August 5, 2015 Gold King Mine (GKM) spill, Mr. McQuillan described how the federal Environmental Protection Agency (EPA) committed, in the opinion of the NMED, gross negligence in its digging into the collapsed mine tunnel, which triggered the blowout of the impounded water, the level of which the EPA had underestimated. Mr. McQuillan noted that although the initial plume has passed down river, concerns remain about the resuspension of toxic particles during storm events and the buildup of heavy metals in reservoirs, such as Lake Powell.

Mr. McQuillan stated that the NMED has done extensive testing of public drinking water systems and private domestic wells and that no customers have received drinking water exceeding the drinking water standards for the GKM metals nor has any evidence been found that private domestic wells have been impacted by the plume. The NMED and New Mexico State University (NMSU) are testing crops and cropland soil for heavy metals and river monitoring is ongoing. Mr. McQuillan also said that efforts are being made to better understand the ground water flow and aquifer-river interactions and that evidence suggests that surface water contaminants entered the ground water in Aztec, although it is unclear when or how the contaminants got there. As to fish, livestock and wildlife protection, there has been no evidence of unusual impacts on livestock or wildlife, but more funding is needed to investigate algae nutrient processing and metals uptake into the food web. The NMED continues to sample soil, sediment and crop tissue for heavy metals, because metals stored in sediment can be resuspended during high flow; contaminated sediment can release metals into surface water; and metals may sequester into ground water. He also noted that some tested sediment contains metals exceeding residential risk levels; for instance, Animas River sediment near Durango, Colorado, tested in February 2016, contained 3,100 milligrams/kilograms (mg/kg) of lead, and the EPA standard is 400 mg/kg.

To keep the public informed of potential exposure risks, the NMED created the Animas and San Juan Watersheds New Mexico Exposure and Risk Dashboard, which can be found at: https://www.env.nm.gov/wp-content/uploads/2016/07/160708_Animas-San-Juan-Risk-Dashboard.pdf. In 2015, the NMED created a Citizens' Advisory Committee for stakeholders to provide input. Mr. McQuillan said that Governor Susana Martinez has a long-term monitoring

plan to obtain good data on the impacts of the spill, but funding for the monitoring is inadequate. Governor Martinez submitted a \$6 million federal Clean Water Act grant application to the EPA to fund long-term monitoring, but the EPA only approved \$465,000, and state resources are limited.

Mr. McQuillan summarized how the responses of the EPA and the State of Colorado continue to be grossly inadequate, are biased and play down the seriousness of the contamination resulting from the spill, including providing misleading data, misrepresentations and unsubstantiated assertions that metal levels have returned to pre-event levels. He stated that the EPA is not holding itself accountable at the same high standards it poses on industry and that an independent watershed-scale monitoring program is needed. Mr. McQuillan briefly reviewed the litigation that has been initiated by New Mexico and the Navajo Nation, and he expressed disappointment that the U.S. Department of Justice has failed to pursue criminal prosecution of any EPA employee. As to the Superfund site process, Mr. McQuillan said that the EPA must fully fund states and tribes to perform independent monitoring and that New Mexico and other stakeholders downstream must be treated as such and allowed to participate in the process. Lastly, he reviewed how New Mexico has the capacity through the New Mexico Office of Natural Resources Trustee to return natural resources and the services they provide to the condition they would have been in if the release of contamination has not occurred, and he provided the Terrero Mine and El Molino Mill tailings cleanups as successful examples.

In response to a question about lead contamination and the impact on children in particular, Mr. McQuillan said that the issue is interesting in light of what happened in Flint, Michigan, where people were prosecuted for their role in the contamination. He noted that the EPA's GKM spill monitoring plan includes monitoring of humans and urine testing for heavy metals, but lead is found in blood, not urine, and it is up to individual parents to get their children tested. He stated that the difference here from Flint is that in Flint, the lead was in the public drinking water; because the exposure pathways are different in New Mexico, the lead uptake in humans will be slower. In rural areas, outreach about the testing programs is being done by the San Juan Soil and Water Conservation District and the Citizens' Advisory Committee. George Baloo, retired engineer, and President Nez, representing the community, are on the Citizens' Advisory Committee. Its next meeting will have a presentation about how individuals can file claims with the EPA.

Asked what the benefit to New Mexico is of declaration of the spill area as a Superfund site, Mr. McQuillan said that the EPA listed it on September 7, 2016, but the declaration does not go further south than Durango; lead was not included in the hazard ranking package; and technical assistance grants have not been made available to New Mexico and Utah, where the waste has migrated. He said that the New Mexico Attorney General's Office and the Governor's Office are fully on board with the NMED's assessment of the situation, and the NMED is working to update the long-term monitoring program and the lead testing program with the Department of Health. Asked if lead ever leaves the body, Mr. McQuillan explained that the risk is greatest to children because they absorb lead faster and can suffer irreparable harm and be

disabled for the rest of their lives. Michaelene Kyrala, director, strategic initiatives and policy, NMED, added that the lawsuit filed by New Mexico requests funding for further testing.

In response to a question from a member, Mr. McQuillan clarified that prior to mining lots of rivers ran red because of natural acid drainage, but that mining has accelerated it. He said that the concern is that radioactive metals do not biodegrade and the question is where do they all go. He said that it may be technically infeasible to clean up the GKM spill and the biggest failure of the EPA has been not figuring out where the contaminants have gone. Mr. McQuillan said he is fearful that the window of opportunity to remove the contaminated sediments may have closed as so much has been distributed down the watershed and nobody knows where it is now. He stated that this is why New Mexico has launched its own investigation in Colorado as no cleanup is happening except source control at the mine site. He said a letter is being drafted to the U.S. Congress requesting that the EPA be relieved of its monitoring responsibilities and asking the United States Geological Survey (USGS) to take over the monitoring and the U.S. Army Corps of Engineers (ACOE) to take over responsibility for the Superfund site. He said that to get good science, the state needs the USGS and ACOE to step in.

Asked what the possibility is of a similar spill happening again in New Mexico, Mr. McQuillan noted that while there are a number of gold mines in the south, the same situation as that which occurred at the GKM does not exist. Uranium mines in Gallup and Grants are below the level of ground water, but the tailings piles below Pecos will have to be managed over a long period of time. A member noted that the federal government has cleaned up uranium on federal lands and inquired as to what the state has done on state lands. Mr. McQuillan said that there has been no significant uranium clean-up action by the state, as the state does not have that type of funding.

Public Comment

Gloria Emerson expressed the belief that if the spill had occurred on the Rio Grande near Santa Fe and Albuquerque, there would have been a greater response. She said many Navajos have died from the danger of uranium and there has been little response. She stated that more money needs to be put into testing and the testing should be done by independent scientists who love and care about the Navajo people.

The committee recessed at 3:13 p.m.

Tuesday, October 18 — Sheep Springs Chapter House

Senator Pinto reconvened the meeting at 10:31 a.m. Louise Charley, vice president, Sheep Springs Chapter, gave an invocation. The committee members, staff and audience introduced themselves. Senator Pinto asked Representative Smith to chair the remainder of the meeting.

Welcome and Status Update

Amber Crotty, Navajo Nation Council delegate, updated the committee on the community's needs, including E-911, power line expansion and establishing an AMBER Alert system. She thanked the committee for the legislative appropriations to build the four-lane highway and noted that the next phase needs to focus on safety. She said that there is resiliency in the community and that it wants children to remain in Sheep Springs and be committed to who they are. She said that there is a troubling level of violence in schools and that the community is partnering, with the assistance of federal and state funds, with public safety officers to address the concerns. Because the community is between Gallup and Farmington, it is pulling resources from all sources. She noted that with \$70,000 from the state, the community was able to refurbish the senior center and install a new stove.

Ernest Smith, president, Sheep Springs Chapter, welcomed the committee and described the renovations that had taken place at the senior center and the ongoing demolition of the warehouse. He said that there are many arts and crafts in the community, including sand painting, jewelry and rug weaving, in addition to cattle, sheep and horse ranching. He described some of the activities in the community for the youth and elderly, including volleyball tournaments, a cancer walk and community get-togethers and dinners.

Patricia Begay, chapter manager, Sheep Springs Chapter, updated the committee on the community's five major projects. First, a multipurpose building is being planned to house administrative functions, as well as a gym, computer center and small wellness center. She indicated that the project was shovel ready, but that \$3.5 million is needed to complete the project. Second, she requested reauthorization of an \$80,000 appropriation for the demolition of the warehouse and purchase of a new metal building for the warehouse. Third, she described how a \$65,000 appropriation had been used for bathroom additions that addressed the issue of families living without water and bathroom facilities. Fourth, she noted that \$240,000 was appropriated and expended for the planning and design of the multipurpose building. Lastly, she noted that \$70,000 in tribal infrastructure funds (TIF) were used to complete the renovation of the senior center.

Ms. Crotty advised the committee that the area has a high rate of cancer and that nutrition is being looked at as a solution. Noting that Sheep Springs is in a food desert, she said that the community is looking to restore both the foodshed and the watershed. Through partnering with the state and other chapters, the community is improving the quality of life in the region. She added that an economic opportunity exists to use the chapter's kitchen to create value-added products from local agriculture.

In response to a question, Ms. Begay explained that the chapter had received \$3.5 million for the planning and design of the multipurpose building through TIF and that the chapter had contributed \$20,000 toward the effort. She noted that the chapter is looking to TIF, the Navajo Nation Tribal Infrastructure Fund and chapter funds to complete the project.

Asked about the high rate of cancer in the area, Ms. Crotty said that people in the area mostly suffer from breast, colon and kidney cancers. She said that chapter officials are trying to understand the correlation between the natural watershed, the uranium mining that had taken place 45 miles upwind and the rate of cancer. She also noted that the introduction of processed foods and nutritional deficiencies are contributing factors. There is an effort to bring fresh, local, traditionally based foods back to the community and access the traditional knowledge of food and farming to address health concerns. A member raised a concern that due to the state's budget situation, funds had been taken out of the Tobacco Settlement Program Fund that were to be used for cancer research.

Ms. Crotty mentioned that the Head Start facility had burnt down a couple of months ago and that the community is working to add a Head Start component to the multipurpose building so that it will serve intergenerational needs.

Report on Local Foodshed and Food Policy

Sharon Sandman of the Small Backyard Garden Alliance and Diné Food Sovereignty Alliance, Sonlatsa Jim-Martin, REACH policy analyst at Community Outreach Patient Empowerment (COPE), and Ms. Crotty presented to the committee about the local foodshed and food policy.

Ms. Sandman said that she is helping elders with concerns about health at the senior center and that backyard gardening is a way to get the elders to be active. She said the Small Backyard Garden Alliance started as one family garden, but with funding from NMSU's Cooperative Extension Service and the council of governments, it has grown to 21 gardens. The next step will be to reach out to schools, students, senior centers and convenience stores to see who is interested in buying produce from producers. There has been big interest from the schools, and Twin Lakes Elementary will be one of the first schools to have a garden through the support from NMSU, the council of governments and COPE. Efforts have also been made to establish farmers' markets, of which there are two in Sheep Springs and one in Naschitti.

Ms. Jim-Martin told the committee that COPE is a nonprofit out of Gallup, which was established six years ago. COPE serves the Navajo Nation and works with public health and community health organizations in rural communities. COPE, in coordination with the Navajo Nation and the Harvard Food Law and Policy Clinic, developed a toolkit that provides an overview of food laws and policies that impact the food environment in the Navajo Nation and recommends programs, policies and strategies to be implemented federally and in all three states that encompass the Navajo Nation. She noted that this report was the first time that the Harvard Food Law and Policy Clinic had partnered with a tribal nation and noted the uniqueness of the recommendations given the maze of jurisdictional issues and federal programs in the states. The report may be found here:

<http://www.chlpi.org/wp-content/uploads/2013/12/Navajo-Food-Policy-Toolkit-May-2015.pdf>.

Ms. Jim-Martin said that the report is broken into areas that consider: Diné food traditions and the importance of tribal engagement; the role of the federal and state governments; food production; food processing, distribution and waste; access to healthy food; food assistance programs; and school food and nutrition education. She said that some strategies are to address issues with: water; land use; agricultural infrastructures; food processing; healthy food aggregation; food waste; access to healthy foods; the Healthy Corner Store Initiative; and improvements to food assistance programs.

A committee member asked if efforts were being duplicated by the Navajo Nation through its creation of a seed bank and if partnerships had been established with NMSU and others. Ms. Crotty explained that the Navajo Nation's interest in seeds goes beyond them just being a product; there are cultural and geographic elements involved and concerns about giving authority to the United States Department of Agriculture to modify seeds.

A discussion ensued regarding the taxation of junk food or a wellness tax. A member commented that SNAP purchases cannot be taxed, but junk food can, and the member averred that it is important to show people how to grow their own food and that perhaps schools are the natural place for this to happen, as many schools have a lot of land. Another member noted that there has been resistance to taxing junk food because of merchants' inability to know what should and should not be taxed. It was suggested that money should be appropriated to develop a computer program that would help small grocers to tell whether or not food is taxed. A member also noted that resolutions are needed from the Navajo Nation regarding its position on raising taxes on tobacco and alcohol. Asked how the Navajo Nation distributes the proceeds of its wellness tax, Ms. Crotty answered that taxes were removed on food generally and then imposed on a lengthy list of high-salt, high-sugar and high-fat foods; the tax is collected into a separate account with a fund management plan and can only be used for wellness activities.

Asked about any duplication of wellness efforts and programs, Ms. Crotty noted that the Navajo Nation is: restructuring its Department of Health; comparing its programs to state and federal programs; and creating more accountability.

Representative Clahchischilliage chaired the remainder of the day's meeting.

Sentencing Disparity Between State and Federal Court and Its Impact on Native Americans Convicted of Crimes

Representative Rodella advised the committee that the disparities in federal and state criminal sentencing are not just an issue for Native Americans, but for all people of color. She said that she proposed a resolution to the National Hispanic Caucus of State Legislators and that the National Caucus of Native American State Legislators is also considering the resolution. She said that federal sentencing often results in longer sentences than those that would be imposed in state court for the same crimes because of mandatory minimum sentences and that New Mexico's congressional delegation should look into the issue.

Mr. Kovnat informed the committee that the topic is one of disproportionate criminal sentences for Native Americans convicted of crimes based on jurisdiction and the differences in the state and federal sentencing structures. He noted that the sentencing disparities exist for the person who committed the crime, and not for the crime itself. Referring to a flowchart handout, he said that criminal jurisdiction is very complicated and is dependent on a maze of different statutes.

Historically, he said that criminal prosecution of Native Americans was vested in the federal court because it was believed that the state courts were less sensitive to treaty rights and would not give a fair trial to a Native American defendant. Today, however, the states handle more criminal prosecutions and because criminal prosecution takes up less of the federal budget, it is easier for the federal government to justify the budget expenditures required for imposing mandatory minimum sentences. The result is that crimes committed across the street from one another, in different jurisdictions, have the potential for vastly different sentences. Often, in New Mexico, it is not obvious which jurisdiction applies given who the defendant is, who the alleged victim is, where the crime occurred and what the crime is. For example, non-Native Americans who commit a crime on tribal land would fall under state law.

Mr. Kovnat explained that the federal sentencing guidelines require much longer minimum sentences and that they may not be proportional to the crime. In contrast to federal court, in New Mexico, judges have a lot more flexibility in sentencing, and Section 31-20-3 NMSA 1978 allows suspension of the entirety of the sentence. "Stacking" of sentences in federal court is also an issue with mandatory minimums, as the sentences must be consecutive and cannot be concurrent, and federal good-conduct time credit policies ensure that a defendant serves, at minimum, 87.5% of the defendant's time.

As to implications for New Mexico's Native American communities, Mr. Kovnat said that because there are no federal prisons in New Mexico and the federal sentences are longer, it is much harder for people getting out of prison to reassimilate into their communities, and because sex offenders under federal law are usually forbidden by the courts to be around children, released prisoners from multigenerational families who were convicted of sex offenses can never go home.

The committee discussed what could be done to change the federal law regarding sentencing. It was suggested that the committee should work with New Mexico's congressional delegation to change the laws to give more discretion to federal judges and get rid of mandatory minimums. A member cautioned that it is important to know the tribes' position on the issue and what changes, if any, to the criminal jurisdictional requirements they would support. A member noted that there is uniformity through all 50 states with federal laws, but that because of jurisdictional issues, especially for crimes committed on tribal lands, that sometimes cases are dismissed.

Motion

Upon a motion, seconded and without opposition, the committee voted to draft a joint memorial requesting that New Mexico's congressional delegation address the issue of federal criminal sentencing.

Approval of Minutes

Upon a motion, seconded and without opposition, the committee voted to approve the minutes from the committee's August 29-31, 2016 meeting.

Tour of Senior Center and Garden

The committee toured the senior center and community garden.

Wednesday, October 19 — San Juan College, Farmington

The committee was reconvened by Senator Pinto at 10:13 a.m., and Representative Clahchischilliage gave an invocation. The committee, staff and audience introduced themselves.

Welcome and Status Update

Dr. Toni Pendergrass, president, San Juan College, welcomed the committee and, referring to her handout, presented an update on San Juan College's programs. She said that San Juan College received reaffirmation of its academic quality program accreditation from the Higher Learning Commission through 2022 and 100% of its programs are approved to be offered online. In 2014 and 2015, San Juan College received the Government Finance Officers Association Excellence in Financial Reporting Award; in 2012, San Juan College won a New Mexico Association of Commerce and Industry Vision, Investment, Vitality and Action Award; and the School of Energy received the 2016 Grand Prize of Show from the Associated General Contractors of New Mexico. She noted that San Juan College is the on-shore trainer of choice for BP America and won the design build program grand prize.

Additionally, San Juan College has been ranked: first in the nation out of 1,108 community colleges for issuing credentials earned in less than one year to Native American students; eleventh in the nation for granting one- to two-year credentials to Native American students; and second in the nation for granting associate degrees to Native American graduates. The majority of the students in the disciplines of drafting in the School of Trades and Technology, office administration in the School of Business and engineering in the School of Science, Math and Engineering are Native Americans.

Dr. Pendergrass stated that San Juan College is focusing on the four strategic directions of: student success and completion; community partnerships and economic development; institutional effectiveness; and valuing people. Through these directions, San Juan College is working to help students surpass their educational goals, build a strong workforce, ensure that students get jobs and promote a culture of shared values at the college.

Next, Roger Fragua, president, Cota Holdings LLC, and Butch Blazer, former deputy undersecretary of natural resources and environment of the United States Department of Agriculture, presented on San Juan College's tribal energy management (TEM) degree program, the first of its kind in the nation. Although roughly 20% of the United States' energy resources are located on or near tribal lands, they noted that leadership of tribal members in the energy sector is limited, few Native Americans own or manage energy-related businesses and many Native Americans do not have access to utilities. The TEM program aims to foster tribal member leadership in the development of the energy industry and to develop the human capital needed to advance the goals and innovations of the tribe. Through educational programs that sustain a traditional, natural-resource-based culture and in partnership with tribal organizations and industry, TEM is a comprehensive program that provides a technical, tribal energy business and management/leadership education. Students will gain both academic and real-world experience through the program. Topics covered will include: federal Indian policy; Indian energy development; tribal governance, sovereignty and regulations; tribal business, finance and human resources; and doing business in tribal communities.

Asked about the funding formula for new programs, Dr. Pendergrass said that for research and public service projects, most colleges and universities will receive funding after a couple of years based on the number of students who complete the program. Until that time, San Juan College looks to leverage funding from community and industry partners and grants.

In response to a member's question, Mr. Fragua stated that there were a couple of different ways a student could participate in the TEM program. There is a two-year path for a tribal energy associate degree, and professionals or others interested could complete the program in a semester and receive a certificate. Discussions are occurring as to how to do the program sustainably, and a seminar rate versus a degree program enrollment rate is in the works. Dr. Pendergrass added that the program needs at least five graduates over three years to ensure that the program becomes part of the funding formula. Asked what credits from the program would transfer to a bachelor of arts degree, Dr. Pendergrass said that San Juan College is working on the issue with partner institutions, such as Bismarck State College, and that New Mexico Highlands University accepts energy credits for its Oil and Gas Management Program.

Asked how San Juan College was handling budget cuts from the recent special session, Dr. Pendergrass stated that the college had cut \$2.3 million out of its budget before the special session and that cutting another \$1.25 million is challenging. The college is looking at every program, the viability of education opportunities at other campuses and reductions in staffing.

In response to a member's questions, Mr. Fragua said that some efforts have been made to install broadband infrastructure in the area, especially federal entities on Indian land such as the Bureau of Indian Affairs and Indian Health Service, but there is more to do and there needs to be a way to pay for it.

In regard to money to the Navajo Nation from the uranium mine clean-up settlements, a member asked if San Juan College is training students in this work. Dr. Pendergrass said that San Juan College representatives had met with the president of the Navajo Nation to discuss training needs and San Juan College agreed to provide any training needed relating to hazardous materials, occupational safety, Head Start and criminal justice. A member commented that employees are being brought from out of state to do the uranium clean-up work and there is a need to train and employ locals to do the work.

Update on the San Juan Generating Station

Carlos Lucero, manager, state and federal government affairs, Public Service Company of New Mexico (PNM), and Tom Fallgren, plant manager, San Juan Generating Station, PNM, referring to their handout, addressed the committee on the Public Regulation Commission's rate review final order and updates on the San Juan Generating Station and PNM's tribal workforce training efforts.

As to the rate review case, Mr. Lucero stated that PNM was disappointed in the decision and that the rate increase, although not significantly less than what PNM requested, only represents one-fifth of the recovery cost of investments at the Palo Verde Nuclear Generating Station in Arizona.

As to the San Juan Generating Station, Mr. Fallgren stated that PNM's stated goal is to balance environmental benefits with affordability and reliability while minimizing the economic impact to the state. He said that the new coal agreement will provide \$340 million in savings to customers over the next six years, although two of the units will shutter by the end of 2017 in accordance with the federal regulations. Currently, there are nine different owners of the generating station, and PNM owns 50%. He said that the generating station is already in full compliance with the federal environmental regulations, but the shuttering of the two units will result in less coal megawatts on PNM's system. He stressed the need to find the right energy mix balance and noted that as the percentage of coal decreases in the energy mix, it is likely that the percentage of nuclear power will increase.

Next, Mr. Lucero informed the committee that PNM works with 14 different tribes in its operations and that 26% of PNM's total electric transmission lines cross tribal lands. Since 2011, PNM has offered summer internships at the Albuquerque Electric Service Center and the San Juan Generating Station. Eighteen Native American students have completed paid internships, and it was noted that the program helps keep the students focused to continue their degrees. In 2013, PNM committed \$1 million over five years to train Navajo tribal members in the PNM-Navajo Nation Workforce Training Program, with funds being given directly to partnering schools for scholarships.

In response to a question about renewable energy, Mr. Lucero stated that PNM has met the goal of 15% renewables by 2015 and that it is on target to meet the goal of 20% renewables by 2020. He noted that customers are benefiting because PNM has met the renewable portfolio

standard and kept costs low. In regard to geothermal energy, Mr. Lucero indicated that PNM has a 10-megawatt plant south of Lordsburg, but that it is a small part of PNM's portfolio. It was suggested that more exploration needs to be done for hot pockets.

Asked if PNM would discontinue its scholarship program because of the rate case, Mr. Lucero replied that PNM is committed to keeping the scholarships going, but the rate case makes it more difficult to operate.

Several members expressed concern about the area losing high-paying jobs, and especially Native Americans losing jobs, from the closing of the two units at the San Juan Generating Station.

Adjournment

There being no further business before the committee, the fourth meeting of the IAC for the 2016 interim adjourned at 12:35 p.m.

Revised: November 17, 2016

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**November 29-30, 2016
Inn of the Mountain Gods, Mescalero
December 1-2, 2016
Room 307, State Capitol, Santa Fe**

**Tuesday, November 29 — Inn of the Mountain Gods, 287 Carrizo Canyon Road,
Mescalero, NM 88340**

- 10:00 a.m. **Call to Order**
 —Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (1) **Welcome and Status Update**
 —Danny Breuninger, President, Mescalero Apache Tribe
- 11:15 a.m. (2) **Update from New Mexico Legal Aid's Native American Program**
 —Rosalie Chavez, Director, Native American Program, New Mexico Legal
 Aid
- 12:15 p.m. **Lunch**
- 1:15 p.m. (3) **Federal Workforce Innovation and Opportunity Act Program**
 —Angelita Buurma, Program Director, Federal Workforce Innovation and
 Opportunity Act (WIOA) Program
 —Kayton Blaylock, Intake MIS Specialist, WIOA Program
- 2:15 p.m. (4) **Update from the United States Forest Service**
 —Erika Luna, New Mexico Liaison, United States Forest Service
- 3:15 p.m. **Public Comment**
- 4:00 p.m. **Recess**

**Wednesday, November 30 — Inn of the Mountain Gods, 287 Carrizo Canyon Road,
Mescalero, NM 88340**

- 10:00 a.m. **Tour of the Mescalero Apache Reservation**
- 11:30 a.m. **Recess**

Thursday, December 1 — Room 307, State Capitol, Santa Fe

- 10:00 a.m. **Reconvene**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (5) **Gaming Control Board**
—Paulette Becker, Acting State Gaming Representative, Member, Gaming Control Board
- 11:15 a.m. (6) **New Mexico Association of Indian Gaming Commissioners**
—Myron Salvador, Chair, New Mexico Association of Indian Gaming Commissioners
- 12:15 p.m. **Lunch**
- 1:45 p.m. (7) **Update on the Indian Water Rights Settlement**
—Tom Blaine P.E., State Engineer
—Deborah Dixon P.E., Director, Interstate Stream Commission
- 3:45 p.m. **Public Comment**
- 4:30 p.m. **Recess**

Friday, December 2 — Room 307, State Capitol, Santa Fe

- 10:00 a.m. **Reconvene**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (8) **Small Loan Report Update**
—Julia Downs, Analyst, Legislative Finance Committee
- 11:15 a.m. (9) **Santa Fe Indian School**
—Roy Herrera, Superintendent, Santa Fe Indian School
- 11:45 a.m. (10) **Update on School Transportation Boundary Agreements**
—Paul Aguilar, Deputy Secretary of Finance and Operations, Public Education Department (PED)
—Latifah Phillips, Assistant Secretary for Indian Education, PED
- 12:30 p.m. (11) **Endorsement of Legislation**
—Peter Kovnat, Staff Attorney, Legislative Council Service
- 1:00 p.m. **Adjourn**

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

**November 29-30, 2016
Inn of the Mountain Gods, Mescalero
December 1-2, 2016
Room 307, State Capitol, Santa Fe**

The fifth meeting of the Indian Affairs Committee (IAC) was called to order by Representative James E. Smith, appointed co-chair, on November 29, 2016 at 10:54 a.m. at the Inn of the Mountain Gods in Mescalero.

Present

Rep. Sharon Clahchischilliage, Co-Chair (12/1, 12/2)
Sen. John Pinto, Co-Chair (12/1, 12/2)
Rep. James Roger Madalena (12/1, 12/2)
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle (11/29, 11/30, 12/2)
Sen. Nancy Rodriguez
Rep. James E. Smith
Sen. William P. Soules

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. D. Wonda Johnson
Rep. Georgene Louis
Sen. Benny Shendo, Jr.

Advisory Members

Rep. Eliseo Lee Alcon (11/29, 11/30, 12/1)
Sen. Carlos R. Cisneros
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Nick L. Salazar (12/1)

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

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

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

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

All handouts and other written testimony are in the meeting file.

Tuesday, November 29 — Inn of the Mountain Gods**Call to Order**

Representative Smith called the meeting to order. Committee members, staff and audience members introduced themselves.

Welcome and Status Update

Mescalero Apache Tribe President Danny Breuninger welcomed the committee and introduced Duane Duffy, chief of staff. The Mescalero Apache reservation is just under half a million acres, with approximately 5,000 enrolled members, not all of whom reside on the reservation. The tribe currently has around 300 homes and is in process of restructuring its housing program, which is scheduled to break ground on new homes in the near future.

President Breuninger updated the committee on the status of the resort formerly known as Sierra Blanca, now called Ski Apache. The resort has three new lifts, which cost \$15 million, including a \$4 million zip line that is among the top five longest in the world. The resort also has a snow machine to assist in production of snow.

One of the goals for the tribe in 2017 is to push federal legislation for the United States Forest Service (USFS) to transfer land to the U.S. Department of the Interior's Bureau of Indian Affairs, to be placed in a trust for the tribe, and thus return homelands to the Mescalero Apache people.

The tribe is known for its land management skills. Maintaining the ski basin is important for the tribe economically. The tribe also thrives at maintaining forest health and preventing forest fires. President Breuninger hopes operation of a sawmill will restart in 2017. The tribe has a contract for beef production with Labatt Food Service, which returns some of the beef to Wendell's Steak and Seafood Restaurant in the resort.

President Breuninger extended personal gratitude to Senator Pirtle and Representative Cook for their hard work on behalf of the tribe and for recently expended funds used to purchase a new solid waste disposal truck.

In response to a question from the committee, President Breuninger said that buyers from Mexico have expressed interest in utility poles created by the tribe's sawmill. The president wants to ensure that a market for the tribe's products exists to maximize employment while

building a sustainable operation. The tribe is considering entering the market to create and sell pellets.

The committee and the president discussed recent struggles in the milling industry. They focused on commercial products, encouraging the use of wood products in home construction and maximizing efficiency by operating the mill 24 hours a day.

In response to a question from the committee, President Breuninger told the committee that New Mexico's congressional delegation has not yet pushed for the federal land transfer. Since this kind of legislation was introduced and then died the last time he was in office, President Breuninger said he would like to ensure that municipal, county and state governments will support the legislation in 2017. President Breuninger assured the committee that this legislation is not a "land takeover"; the land will not be taken out of the tax base because it is already under USFS management. The committee recommended that a memorial be passed to encourage the land swap. Committee members further commented that in addition to the Mescalero Apache Tribe, the entirety of Lincoln County and the Village of Ruidoso benefit greatly from the investments in the Ski Apache resort.

President Breuninger said approximately 50% of the forest has been restored through the tribe's forest restoration program. The USFS recognizes the value of Mescalero's forest management model and that it is a proven fact that quality thinning and management reduce both the risk and destructive capacity of forest fires.

In response to a question, President Breuninger confirmed that certain portions of the facility serve alcohol, which is allowed after passage of Senate Bill 193 in 2016.

Update from New Mexico Legal Aid's (NMLA's) Native American Program

Rosalie Chavez, director, Native American Program (NAP), Federal Workforce Innovation and Opportunity Act (WIOA) Program, said she has been the manager of NAP for the last 20 years.

Formerly known as Indian Pueblo Legal Services, NAP is part of a statewide legal aid program that provides civil legal assistance to low-income persons to deal with matters that affect their basic needs, such as housing, safety and economic stability. NAP is primarily funded by the federal Legal Services Corporation (LSC), which has a specific line item in the federal budget for providing legal assistance on issues unique to Indian people. NMLA receives funding from the state through a variety of sources and, among other services, provides legal assistance to domestic violence victims in obtaining protection orders and ancillary legal assistance on such matters as divorce, custody and child support. To provide civil and criminal legal assistance in tribal court, NAP receives funding from the Native American Rights Fund, a nonprofit Native American rights organization. NMLA continues to face uncertainty about future LSC funding and has experienced a 6.2% cut in state funding.

NMLA assisted in drafting a grant supporting efforts by the Taos Pueblo Tribal Court to improve its court processes involving children to create better outcomes for those children. The current processes are being evaluated to identify gaps and deficiencies, and focus groups are looking to recommend changes in the Children's Code and to improve policies and protocols for services.

In 2015, NMLA launched a tribal law help line, which is designed to provide telephone access to legal assistance for rural Indians who have a legal issue relating to tribal law or tribal courts. The help line is accessible to all Indians in the state and is operated out of an office in Gallup.

In response to a question, Ms. Chavez explained that most tribal judicial systems do not have public defender programs. To her knowledge, only the Pueblo of Laguna has a public defender program, while the Pueblos of Acoma and Isleta may provide public defenders on a limited basis. Most of the pueblos do not provide public defenders, and there is no legal mechanism to require them to do so. Occasionally, NMLA has provided legal assistance in federal court cases involving Native Americans, but NMLA's primary service is to assist Native Americans in their own tribal courts. The committee discussed sentencing disparities and a related joint memorial.

Federal WIOA Program

Angelita Buurma, program director, WIOA Program, gave a history of the WIOA, which is funded using a formula based on census data.

Training services offered by the Mescalero Apache Tribe's WIOA Program include work experience, classroom training, supporting services and general educational development (GED) preparation. Some of the specific services offered include temporary work assignment, remedial education or vocational training and assistance to overcome employment barriers.

Ms. Buurma highlighted some of the successes achieved by the Mescalero WIOA Program and participants. Success stories include permanent employment, completion of occupational training and passing GED tests.

Ms. Buurma said that the WIOA Supplemental Youth Services Program eligibility age has increased from 21 to 24 years old and that participants must be in a low-income category to qualify. The WIOA changed the definition of "low income" to include any youth living in a high-poverty area.

Ms. Buurma said that participants must reside on the Mescalero Apache reservation. The budget is \$70,000 for the adult program and \$55,000 for the youth program. The starting salary for eight full-time-placement participants is the federal minimum wage of \$7.25 per hour. Ms. Buurma said that participants are often individuals who are trying to reenter the workforce. A

formal needs assessment has never been done, but Ms. Buurma believes that it is desperately needed.

Mr. Duffy informed the committee of a drug-screening protocol for the program and for tribal employment. All applicants for tribal jobs or programs are subject to pre-employment drug screening through the tribal human resources office. While the rate of positive drug tests is low, around 2% of individuals who test positive will be refused employment and advised to seek help. If a current employee returns a positive test for drugs, the employee is subject to a 30-day suspension and is required to participate in a rehabilitation program that will present the employee with a certificate of completion. The certificate must be presented to the tribal human resources office upon returning to the work post.

Update from the USFS

Sandy Watts, Southwestern region deputy regional forester, USFS, greeted the committee and introduced her colleagues: Erika Luna, New Mexico liaison, Yolynda Begay, regional tribal relations manager, and Travis Moseley, forest supervisor for the Lincoln National Forest. The USFS recognizes the significance of lands held by Native Americans and their status as a sovereign people. New Mexico is in Region 3, or the Southwestern Region, which is home to 55 federally recognized tribes. The USFS actively consults with tribes to protect their rights in the region.

The USFS is committed to supporting existing partnerships and fostering new relations that would help achieve restoration goals and protect sacred sites. The USFS is working with the Pueblo of Taos regarding the Carson National Forest, with the Mescalero Apache Tribe regarding the Lincoln Nation Forest and with the Pueblo of Jemez regarding the Santa Fe National Forest. Protecting ecosystems and landscapes is complex and robust work that requires partnerships with state agencies and tribes.

Mr. Moseley said that the USFS has a deep commitment to tribal relations. He said that land management requires an all-hands-on-deck approach that requires understanding of tribal interests and aboriginal use of lands for cultural or traditional purposes. These interests are vital to engaging in appropriate approaches to project planning.

In response to a question from the committee, Mr. Moseley explained that cross-commissioning relationships do exist in some jurisdictions. These agreements limit the authority of USFS officers and require a great deal of coordination with the Department of Game and Fish. Currently, only Sandoval and Bernalillo counties have cross-commissioning agreements in place. Mr. Moseley said he is concerned by the reported harassment of individuals, and he also discussed a recent event near Albuquerque, where a dog was caught in a bear trap. Mr. Moseley was unsure if that event occurred on national forest land, which does allow trapping under certain circumstances.

The committee recessed at 3:40 p.m.

Tuesday, November 30 — Inn of the Mountain Gods

The committee toured the Mescalero Apache reservation, including facilities that house such enterprises as broadband wireless, fire rescue, a fish hatchery, forest products and an elder care center.

Wednesday, December 1 — Room 307, State Capitol

Senator Pinto reconvened the meeting at 10:20 a.m.

Gaming Control Board (GCB)

In lieu of presenting, the GCB sent a letter to the committee declining the invitation to appear before the committee on December 1, 2016. Committee members discussed their disappointment with the letter and the inadequate report that accompanied it. The committee also discussed the importance of having good-quality information to craft good-quality legislation and the need for clarity and openness.

New Mexico Association of Indian Gaming Commissioners

Myron Salvador, chair, New Mexico Association of Indian Gaming Commissioners, provided background information on himself and the association. The association has existed for over 20 years and is composed of representatives from the state's gaming tribes. The association focuses on compliance, training and licensing. Indian gaming is highly regulated and regularly inspected by the National Indian Gaming Commission to ensure that federal, state and tribal laws are followed. The GCB performs audits and ensures appropriate money distribution.

Mr. Salvador said that the absence of the GCB at the meeting is typical of the board and shows that the GCB is not serious about helping the tribes. The 2015 Tribal-State Class III Gaming Compact mandates a government-to-government relationship. To date, the GCB has not yet attended any meetings of the New Mexico Association of Indian Gaming Commissioners.

Mr. Salvador said that the GCB requests documentation from the association and from tribal casinos, and to help them comply and file the requested paperwork, the board was supposed to establish an online portal. To date, only certain casinos have access to the portal, and the GCB has not logged into the portal to review the paperwork.

The committee discussed its appreciation of the association's attempts to work with the GCB and instructed the association to request to give a presentation to the Legislative Finance Committee (LFC) and the House Appropriations and Finance Committee.

Update on the Indian Water Rights Settlement

Deborah Dixon, P.E., director, Interstate Stream Commission, updated the committee on the status of three different proposed Indian water rights settlements: the Navajo Nation water rights settlement in the San Juan River adjudication, the embedded adjudication with the Pueblos

of Nambe, Pojoaque, Tesuque and San Ildefonso and the Abeyta adjudication in relation to the Pueblo of Taos water rights settlement.

The Navajo Nation water rights settlement was an agreement from 2005 to resolve claims by the Navajo Nation over water in the San Juan River. The settlement provides water development projects for the benefit of the Navajo Nation and non-Navajo communities in exchange for a release of the Navajo Nation's claims to water that potentially could displace existing non-Indian water users in the basin. In 2009, President Barack Obama signed legislation authorizing the Navajo Nation water rights settlement.

In 2013, two partial final judgments and decrees adjudicating the water rights of the Navajo Nation were entered. Four parties filed appeals and a related order in the New Mexico Court of Appeals. Answer briefs were filed in March 2015. Three New Mexico legislators also filed an amicus brief in one of the appeals. The appeals are now fully briefed and awaiting a decision from the court.

The Navajo-Gallup Water Supply Project was federally funded to the tune of \$870 million for planning, design and construction. The total estimated cost for the settlement has since increased to approximately \$1.255 billion. The state's share did not increase. The settlement legislation requires a \$50 million contribution by the state for construction costs. Based on New Mexico's total contribution toward the project and conservative estimates of anticipated cost-share credit, the state is within approximately \$3.73 million of meeting its cost-share obligation. Appropriations have been submitted and must be confirmed when construction is completed. Once expended, a finalization of a cost-share credit request can be submitted to the United States Bureau of Reclamation for approval.

In response to a question from the committee, Amy Haas, general counsel for the Interstate Stream Commission, informed the committee that the state is technically in default on payments and that cautionary agreements are expressly contingent on the availability of appropriations. A lack of appropriations or delays will cost the state more. Ms. Haas reminded the committee that each agreement is unique.

In response to a question from the committee, Greg Ridgley, general counsel, Office of the State Engineer, updated the committee with the status of the lawsuit filed by legislators and other lawsuits. The case has been fully briefed in appeals court, and the parties are awaiting notice as to whether full arguments will be heard by the court. New Mexico has 12 pending general water rights adjudication suits in the state.

In response to a question, Ms. Dixon and the committee discussed theoretical payment scenarios and repercussions of not making a payment or full payment. Repercussions could include being in violation of a contractual agreement or could cause a halt in construction due to lack of appropriations for the project.

The committee thanked Representative Madalena, who is retiring from the legislature, for his service and recessed at 2:00 p.m.

Wednesday, December 2 — Room 307, State Capitol

Representative Clahchischilliage reconvened the meeting at 10:08 a.m.

Endorsement of Legislation

On a motion made by Senator Cisneros and seconded by Senator Rodriguez, the committee endorsed a joint memorial requesting that members of the United States Congress enact legislation promptly to address the disparity in criminal sentences and time served in prison for individuals convicted in federal courts versus state courts and the resulting impact on Native Americans and people of color.

On a motion made by Senator Martinez and seconded by Senator Cisneros, the committee endorsed a bill removing the time limit for filing an application for a settlement claim from the Native American Veterans' Income Tax Settlement Fund.

On a motion made by Senator Martinez and seconded by Senator Pirtle, the committee endorsed a memorial requesting that the USFS transfer the real property upon which Ski Apache sits to the Bureau of Indian Affairs, to be held in trust by the Mescalero Apache Tribe.

Small Loan Report Update

Julia Downs, analyst, LFC, presented a progress report on the small lending industry in the state. Previously, FastBucks was ordered to pay \$32 million in restitution to consumers for taking advantage of a loophole in New Mexico's small loan laws. Also, a significant proposed guideline by the federal Consumer Financial Protection Bureau is a rule regarding a borrower's ability to pay. Under the proposed rule, lenders must make a reasonable determination that sufficient income remains for the payment of a high-cost loan by assessing the borrower's finances before lending. Assessment includes verifying a borrower's income, major financial obligations and borrowing history. The study, conducted by the LFC, notes that the guidelines are too vague. Making a "reasonable determination" that sufficient income remains to cover loan costs may be unenforceable. The rule could also prove to be cumbersome and would not apply to some lenders. The ability-to-repay guidelines under the proposed rule require consumers to fit within a certain model that may prevent their ability to choose borrowers.

In response to a question from the committee, Ms. Downs said that there is not currently a rate limit on short- or long-term loans. Approximately 14 states have a 36% all-in annual percentage rate cap, but rules on those caps vary greatly by state.

Santa Fe Indian School

Roy Herrera, superintendent, Santa Fe Indian School, gave the committee background on Santa Fe Indian School. The school is owned by the 19 pueblos in the state. Last year, the

school graduated 105 students, with 100% of seniors graduating. Scholarships awarded to students from Santa Fe Indian School totaled over \$5 million.

Superintendent Herrera provided the committee with a map of the property and discussed a project the school is working on to add turning lanes for entering the school property. For this project, the school will request \$900,000 for planning, design and construction for the new entrance. He also credited the legislature with being a part of the school's success. Capital outlay has been used to provide a positive environment and partnerships that have led, and continue to lead, to high-quality education.

The committee discussed the project to which Superintendent Herrera referred. The project was endorsed and put into the capital outlay bill during the 2016 session; however, the governor line-item vetoed that project. The committee requested that a letter be drafted and sent on behalf of the committee to the Department of Finance and Administration, the Office of the Governor, the House Appropriations and Finance Committee and the Senate Finance Committee to make those entities aware that the IAC has vetted this project. A motion to draft the letter was made by Senator Cisneros and seconded by Senator Martinez. It passed without objection.

On a motion made by Senator Cisneros and seconded by Senator Martinez, the IAC approved the minutes of the October 17-19, 2016 meeting.

Update on School Transportation Boundary Agreements

Paul Aguilar, deputy secretary, Public Education Department (PED), and Latifah Phillips, assistant secretary for Indian education, PED, told the committee that some impact aid funding could be in jeopardy by some cross-border agreements with Arizona. They discussed the possibility of having districts where students live claim the funding, in lieu of having the district risk losing impact aid money, which has been under consideration but has yet to be finalized.

The Gallup-McKinley County School District (GMCSD) agreement discussed during the first IAC meeting of the 2016 interim has been signed by the Window Rock Unified School District and is awaiting signatures by the GMCSD.

Impact aid applications are due in January, and districts will have until June to adjust their requests. If the GMCSD's general counsel allows the cross-border agreement, the school districts would apply for aid for the following school year.

One of things that the PED has been discussing over the last year is the availability of supplemental funding in the general appropriation act for those districts to help pay tuition for students attending school in other states. In the current revenue climate, this supplemental funding might not be considered, and the committee was asked to keep supplemental funding in mind while addressing budget issues this coming session. The committee discussed the impression that the LFC and Senate Finance Committee do not consider supplemental requests and the lack of money in reserves to fund supplemental requests.

On a motion made by Senator Cisneros and seconded by Senator Martinez, the IAC adjourned at 11:44 a.m.

- 10 -

ENDORSED LEGISLATION

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE MILITARY AND VETERANS' AFFAIRS COMMITTEE AND
THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO THE NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT
FUND; REMOVING THE TIME LIMIT FOR FILING AN APPLICATION FOR A
SETTLEMENT CLAIM; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-2H-3 NMSA 1978 (being Laws 2008,
Chapter 89, Section 3, as amended) is amended to read:

"7-2H-3. NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT
FUND--CREATED--PURPOSE--APPROPRIATIONS.--

A. The "Native American veterans' income tax
settlement fund" is created as a nonreverting fund in the state
treasury and shall be administered by the taxation and revenue
department. The fund shall consist of money that is
appropriated or donated or that otherwise accrues to the fund.

B. The taxation and revenue department shall

1 establish procedures and adopt rules as required to administer
2 the fund and to make settlement payments from the fund as
3 approved by the secretary of taxation and revenue.

4 C. Money in the fund is appropriated to the
5 taxation and revenue department to make settlement payments to
6 Native American veterans who were domiciled within the
7 boundaries of their tribal lands or their spouse's tribal lands
8 during the period of their active military duty and had state
9 personal income taxes withheld from their military income, or
10 to their heirs pursuant to applicable law. Settlement payments
11 shall include the amount of state personal income taxes
12 withheld from eligible Native American veterans that have not
13 been previously refunded to the veterans and interest on the
14 amount withheld from the date of withholding computed on a
15 daily basis at the rate specified for individuals pursuant to
16 Section 6621 of the Internal Revenue Code of 1986. No
17 settlement payments shall be made for any taxable year for
18 which a refund claim may be timely filed with the taxation and
19 revenue department [~~or for which an application for settlement~~
20 ~~is received after December 31, 2012~~]. Money shall be disbursed
21 from the fund only on warrant of the secretary of finance and
22 administration upon vouchers signed by the secretary of
23 taxation and revenue or the secretary's authorized
24 representative. Any unexpended or unencumbered balance
25 remaining in the fund at the end of a fiscal year shall not

.205051.2

1 revert to the general fund.

2 D. Beginning in fiscal year 2010 and in subsequent
3 fiscal years, not more than five percent of the fund is
4 appropriated from the fund to the taxation and revenue
5 department for expenditure in the fiscal year in which it is
6 appropriated to administer the fund. Any unexpended or
7 unencumbered balance remaining at the end of any fiscal year
8 shall revert to the Native American veterans' income tax
9 settlement fund.

10 E. Beginning in fiscal year 2010 and in subsequent
11 fiscal years, not more than five percent of the fund is
12 appropriated from the fund to the veterans' services department
13 for expenditure in the fiscal year in which it is appropriated
14 to assist in outreach and public relations and in determining
15 eligibility for settlement payments. Any unexpended or
16 unencumbered balance remaining at the end of any fiscal year
17 shall revert to the Native American veterans' income tax
18 settlement fund."

19 **SECTION 2. APPROPRIATION.**--Four hundred thousand dollars
20 (\$400,000) is appropriated from the general fund to the Native
21 American veterans' income tax settlement fund for expenditure
22 in fiscal year 2018 and subsequent fiscal years to refund to
23 Native American veterans any state personal income taxes that
24 were withheld from military income while they were domiciled
25 within the boundaries of their tribal lands or their spouse's

.205051.2

1 tribal lands during the period of their active military duty.
2 Any unexpended or unencumbered balance remaining at the end of
3 a fiscal year shall not revert to the general fund.

4 - 4 -
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE JOINT MEMORIAL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

A JOINT MEMORIAL

RESPECTFULLY REQUESTING THAT MEMBERS OF THE UNITED STATES
CONGRESS ENACT LEGISLATION PROMPTLY TO ADDRESS THE DISPARITY IN
CRIMINAL SENTENCES AND TIME SERVED IN PRISON FOR INDIVIDUALS
CONVICTED IN FEDERAL COURTS VERSUS STATE COURTS AND THE
RESULTING IMPACT ON NATIVE AMERICANS AND PEOPLE OF COLOR.

WHEREAS, the New Mexico legislature has always been
committed to the fair treatment of all people and also to the
notion that criminal sentences should be proportional to the
crime committed; in other words, the sentence should fit the
crime; and

WHEREAS, the duration of federal court sentences and state
court sentences based on the same criminal conduct can vary
greatly; and

WHEREAS, federal court sentences are often longer than

.205109.1

1 state court sentences for a number of reasons, including
2 mandatory minimum sentences for many crimes adjudicated in
3 federal courts; and

4 WHEREAS, for certain crimes, federal law requires
5 mandatory minimum prison terms to be served consecutively,
6 called "stacking", not concurrently with each other and with
7 any other punishment the person receives for the underlying
8 offense, which results in lengthy sentences; and

9 WHEREAS, in many states, courts have the ability to run
10 sentences concurrently or consecutively, depending on the
11 crime, prior infractions and aggravating or mitigating
12 circumstances; and

13 WHEREAS, earned meritorious deductions in prison time,
14 also known as "good time", in many cases will reduce a person's
15 jail time more in a state prison than in a federal prison; and

16 WHEREAS, state judges often impose either a deferred
17 sentence or a conditional discharge, which means the person
18 convicted spends little or even no time in jail, provided that
19 the defendant successfully completes all of the terms of
20 probation; and

21 WHEREAS, although the federal criminal justice system does
22 offer pretrial diversion for certain offenders, it is
23 underutilized, and it is unavailable for certain crimes
24 involving controlled substances; and

25 WHEREAS, criminal jurisdiction, which controls the court

1 in which a case will be heard, for crimes committed on Native
2 American reservation or trust land depends on where the crime
3 occurred, who the perpetrator was and who the victim was; and

4 WHEREAS, often, if a crime occurs on reservation or trust
5 land and either the perpetrator or the victim is Native
6 American, the case will go to federal court; and

7 WHEREAS, for crimes on reservation or trust land, if both
8 the perpetrator and the victim are non-Native American, the
9 case will be heard in state court; and

10 WHEREAS, this idiosyncrasy in jurisdictional jurisprudence
11 leads to a situation in which Native Americans accused of a
12 crime are more likely to go to federal court than non-Native
13 Americans accused of the same crime; and

14 WHEREAS, for those individuals from states in which there
15 are no federal prisons, like New Mexico, the travel to visit a
16 federal prisoner is an additional hardship for the family, the
17 friends and the prisoner;

18 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
19 STATE OF NEW MEXICO that it respectfully request members of the
20 United States congress to enact legislation promptly to address
21 the disparity in criminal sentences and time served in prison
22 for individuals convicted in federal courts versus state courts
23 and the resulting impact on Native Americans and people of
24 color; and

25 BE IT FURTHER RESOLVED that copies of this memorial be

1 transmitted to the president of the United States, members of
2 congress and the commissioners of the United States sentencing
3 commission.

4 - 4 -
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

underscored material = new
[bracketed material] = delete

SENATE JOINT MEMORIAL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

A JOINT MEMORIAL

REQUESTING THE UNITED STATES CONGRESS TO TRANSFER EIGHT HUNDRED
SIXTY ACRES FROM THE LINCOLN NATIONAL FOREST TO THE UNITED
STATES DEPARTMENT OF THE INTERIOR FOR THE USE AND BENEFIT OF
THE MESCALERO APACHE TRIBE.

WHEREAS, Sierra Blanca is one of the four sacred mountains
of the Mescalero Apache Tribe and is central to the creation
beliefs of the Mescalero Apache people; and

WHEREAS, the eight hundred sixty acres contain many plants
and biological materials sacred to the Mescalero Apache people;
and

WHEREAS, the Mescalero Apache Tribe has operated Ski
Apache on eight hundred sixty acres of United States forest
service land located on Sierra Blanca pursuant to a special use
permit; and

1 WHEREAS, the Mescalero Apache Tribe, since 2011, has
2 invested more than twenty million dollars (\$20,000,000) in
3 infrastructure on the land that it currently occupies pursuant
4 to the special use permit; and

5 WHEREAS, the Mescalero Apache Tribe has been
6 internationally recognized for its long-standing sustainable
7 forest management practices; and

8 WHEREAS, the tribe wishes to employ its sustainable forest
9 management practices on the eight hundred sixty acres currently
10 subject to the special use permit; and

11 WHEREAS, Ski Apache employs three hundred fifty people
12 during the ski season and contributes millions of dollars to
13 the local economy; and

14 WHEREAS, the transfer of the eight hundred sixty acres of
15 Ski Apache land from the United States forest service to the
16 United States department of the interior will not negatively
17 affect the real property tax base of either Lincoln county or
18 Otero county; and

19 WHEREAS, this transfer of land from the United States
20 forest service to the United States department of the interior
21 would not create any additional water rights or change any
22 water consumption on Ski Apache land; and

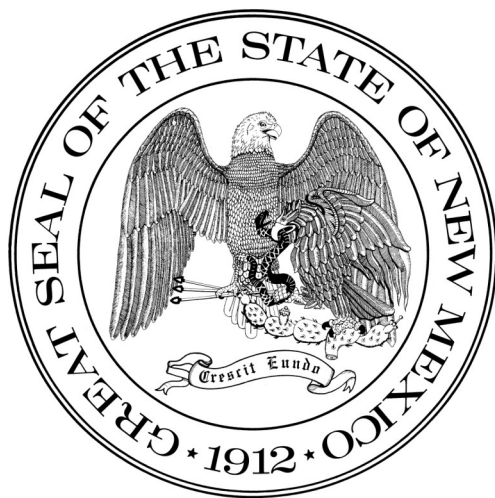
23 WHEREAS, this transfer of land from the United States
24 forest service to the United States department of the interior
25 would benefit the economies of Lincoln county, Otero county and

1 New Mexico;

2 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
3 STATE OF NEW MEXICO that the United States congress be
4 requested to transfer eight hundred sixty acres currently used
5 by the Mescalero Apache Tribe pursuant to a special use permit
6 to the United States department of the interior for the benefit
7 of the Mescalero Apache Tribe; and

8 BE IT FURTHER RESOLVED that copies of this memorial be
9 transmitted to members of New Mexico's congressional
10 delegation, the United States secretary of agriculture, the
11 United States secretary of the interior, the chief of the
12 United States forest service, the assistant secretary-Indian
13 affairs of the United States department of the interior and the
14 president of the Mescalero Apache Tribe.

15 - 3 -
16
17
18
19
20
21
22
23
24
25



LEGISLATIVE COUNCIL SERVICE
SANTA FE, NEW MEXICO