

**S. 1690, TO AMEND THE ACT OF MARCH
1, 1933, TO TRANSFER CERTAIN AUTHORITY
AND RESOURCES TO THE UTAH DINEH
CORPORATION, AND FOR OTHER PURPOSES**

HEARING

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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DECEMBER 9, 2009
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WEDNESDAY, DECEMBER 9, 2009

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:15 a.m. in room 628, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Good morning. We will call the Committee to order this morning.

This Committee was intending to have a business meeting today. We are postponing the two items on the business meeting until next week in order to resolve a couple of issues.

I want to just say this morning quickly that the announcement yesterday by the Attorney General and the Secretary of the Interior on the settlement of the *Cobell* case I think is good news. It has been a long and tortured trail for that case, beginning 13 years ago. It has been in the court system and been the subject of many trial days and negotiations.

I want to compliment the work of Secretary Salazar and the Attorney General, and all of the others that have worked to try to reach a settlement.

My hope is that the settlement in the *Cobell* case would allow us to move beyond that case, and begin to address other issues. As you know, there are issues that I feel very strongly about, for example, promises and trust responsibilities for health care, housing, education, law enforcement and more, that I think have not been met. And my hope is that, again, the settlement of this case will unlock opportunities to do other things that this Country has a responsibility and an obligation to do for the First Americans.

The Committee is going to hold a hearing this morning on S. 1690, a bill to amend the Act of March 1, 1933, to transfer certain authority and resources to the Utah Dineh Corporation. Senator Bennett introduced that bill on September 21, 2009. The bill would designate a new trustee to oversee the Utah Navajo Trust Fund. This fund consists of oil and gas revenues generated from Navajo

Nation land in Utah. Revenue from the fund is used to support the health, welfare and education of Navajo Indians living in San Juan County, Utah.

Current law names the State of Utah as the trustee for the fund. In recent years, the State has sought to limit its role as a trustee. S. 1690 would remove the State of Utah as a trustee and designate the Utah Dineh Corporation as the new trustee.

The Utah Dineh Corporation is a State-chartered non-profit corporation organized for the specific purpose of fulfilling the 1933 Act.

Today, we are going to hear from Senator Bennett, the sponsor of the legislation, and from representatives of the Navajo Nation. I want to mention that although the Administration is not a witness at today's hearing, we will seek their formal views on the bill before moving forward.

And I will encourage other interested parties to submit any written comments they might wish to submit to the Committee. The hearing record, as usual, will remain open for two weeks from today.

With that, I welcome the witnesses. I know that they have traveled some distance to be with us. We will hear from the Honorable Kenneth Maryboy, Navajo Nation Council Delegate, and the Honorable Ben Shelly, Vice President, Navajo Nation from Window Rock, Arizona. We will hear them first, and then we will call Senator Bennett to hear from him.

So let me thank both of you for traveling to be with us. You may, Mr. Shelly, introduce the person who is accompanying you.

Let me hear first from the Honorable Kenneth Maryboy.
Mr. Maryboy?

**STATEMENT OF HON. KENNETH MARYBOY, NAVAJO NATION
COUNCIL DELEGATE; COMMISSIONER, SAN JUAN COUNTY**

Mr. MARYBOY. Good morning. [Greeting in native tongue.]

This morning, Chairman Dorgan, and the esteemed Members of the Committee. My name is Kenneth Maryboy, member of the Navajo Nation Council, San Juan County Commissioner. And I have traveled here from San Juan County, Utah, which is one of the seven Utah chapters of the Navajo Nation. I am one of only two of the Utah Navajo Nation council of 88 members, legislators.

I am also a member of the Board on the Utah Dineh Corporation.

On behalf of the San Juan County resident who is Utah Navajos, I implore you not to authorize the Navajo Nation to become the trustee of the royalty that are intend to be held in a trust for the benefits of the Utah Navajos.

The President of the Navajo Nation, Joe Shirley, is not here to testify before the Committee today because the Navajo Nation Council has placed him and the most of his cabinet on administrative leave. Pending the outcome of the criminal investigation into the Navajo contract, this is the latest chapters in embarrassment history of how Navajo government leaders betrayed the trust of the Navajo people.

I believe the Navajo Nation government in Window Rock, Arizona does not have the best interests of Utah Navajos at heart when it tried to convince you to give them the control of the trust

fund that belongs to the tribal members whom the Navajo Nation government was otherwise forgotten.

I have prepared a written testimony that has been submitted for the record. I would like to briefly outline why and other members of the Utah Dineh Corporation and the San Juan County Commission believe that the Navajo Nation should not be entrusted with this responsibility.

I know the Navajo Nation has a history of being poor trustee. The Navajo road funds is the trust fund composed of the fuel excise tax by the Navajo Nation government. It is supposed to help the local chapters build local projects. Unfortunately, the money has stayed in the Navajo Nation at the capital at Window Rock, Arizona.

Furthermore, elaborate that the Navajo Nation submitted the stimulus package, how the Navajo Nation in that package no where did we find the Utah Chapters and the Utah projects.

Unfortunately, the history is too long for me to quote the short time I have with you this morning. I have provided details for you in my written testimony today. I will simply read some of the season's local headlines coming to Window Rock, news nobody in the Navajo Nation likes, but we all have to live with.

October 26th, President Joe Shirley put on administrative leave. November 12th, slush fund totaling over \$35 million. November 13th, special prosecutor appointed. December 3rd, tribal discretionary fund to be audit for the first time ever in history.

We know the Navajo Nation has history of negligence to the Utah Navajos. San Juan County, Utah has had to step up to the plate to provide essential government service for the Utah Navajo because Window Rock does not.

Quickly glimpse to the map of the Navajo Nation government office located, and it will show you Window Rock, overlooking the Navajo portion of the Navajo reservation. There are Navajo Nation law enforcement, justice, health, education, welfare office. North of the Arizona borders, which is why San Juan County is providing law enforcement for our protection, emergency medical service, senior services, road maintenance and telecommunication and water services to the seven Utah Navajo chapters.

I implore you not to abandon the Utah Navajos the way Window Rock has. I beg you not to contribute to the next embarrassing headlines that could likely read, Congress allows Navajo Nation loss, Utah Navajo trust fund. Please support S. 1690 to transfer administrative to the trust fund of the Utah Navajo Corporation.

I am happy to answer any questions. And furthermore, Mr. Chair, I have my Board members from the Utah Dineh Corporation, which has paid their way out of their own expense to be here to this very important meeting here today.

Thank you.

[The prepared statement of Mr. Maryboy follows:]

PREPARED STATEMENT OF HON. KENNETH MARYBOY, NAVAJO NATION COUNCIL
DELEGATE; COMMISSIONER, SAN JUAN COUNTY

Introduction

My name is Kenneth Maryboy and I am one of only two Navajo Nation Council Delegates representing Utah Navajos within in the Navajo Nation's 88 member leg-

islature. I am also a San Juan County Commissioner and a member of the Board of Directors of the Utah Dineh Corporation, a nonprofit organization created to be a trustee of the Utah Navajo Trust Fund for Navajo Indians residing in San Juan County. I submit this testimony to you on behalf of the San Juan County Commission to bring to this Committee's attention the inappropriateness of the Navajo Nation government to be a trustee of the Utah Navajo Trust Fund, given the Navajo Nation's pattern of malfeasance and neglect.

San Juan County believes that the Navajo Nation government, which is located in Window Rock, Arizona, and provides few if any government services to Utah Navajos, does not have the best interest of Utah Navajos at heart when it asserts a vague argument of tribal sovereignty to wrestle away control of the Utah Navajo Trust Fund from Utah Navajos.

The Navajo Nation's heretofore disinterest in its own members who reside within the Utah strip of the Navajo Nation is the very reason why San Juan County has stepped up to the plate to deliver essential government services to Utah Navajos who live within the 1,550,000 acres of the Navajo reservation that constitute the southern region of our 7,821 square mile county. San Juan County has provided law enforcement, fire protection, emergency medical services, senior services, road maintenance, telecommunication and water services to the seven Utah Navajo chapters because the tribe in Window Rock does not. The prospect of being able to control millions of dollars generated in Utah, for the benefit of Utah Navajos, seems to have awakened Window Rock's otherwise dormant interest in its tribal members who live north of the Arizona border.

The Special Trustee for American Indians, Ross Swimmer, testified last year to the House Resources Committee that the Department of Interior would defer to the Navajo Nation in this matter to honor the government to government relationship. Mr. Swimmer notably said that a trustee for the Utah Navajo Trust could be a nonprofit organization composed of Navajos, with a third party to handle the trusts' corpus. Utah Navajos have heeded the Special Trustee's suggestion by forming the Utah Dineh Corporation, whose Board of Directors represent each of the seven Utah Navajo Chapters and have voting interests proportional to their chapter's Navajo population, in relation to San Juan County's total Navajo population.

San Juan County believes the Utah Dineh Corporation is best situated to benefit Utah Navajos as the new trustee of the Utah Navajo Trust Fund because it is a not for profit organization who cannot hide behind the shield of tribal sovereignty. The Navajo Nation should not be allowed the privilege of administering the fiduciary trust of the Utah Navajo Trust Fund because:

1. The Navajo Nation has a history of withholding funds for the benefit of the Navajo people;
2. The Navajo Nation has a history of neglecting Utah Navajos; and
3. The Navajo Nation has a history of malfeasance.

The Navajo Nation Has Already Failed To Be a Competent Trustee for Utah Navajos

The Navajo Nation Road Fund reveals how the Nation fails as a trustee. Since 2003, the Navajo Nation has collected fuel taxes pursuant to memorandums of agreement (MOA) with Arizona, New Mexico, and Utah. These monies are to be held in trust to improve the transportation infrastructure of Navajo Chapters, but no such monies have been distributed to the Chapters since 2006.

The State of Utah entered into an MOA with the Navajo Nation in October 2000 and agreed to reduce the amount of gasoline taxes Utah collects on the reservation by the amount of taxes the Nation collects. For example, instead of collecting 24 and a half cents per gallon, Utah agreed to collect only 6 and a half cents per gallon so that the Navajo Nation could impose an 18 cent per gallon tax without passing a higher cost to consumers.

In 2003, the Navajo Nation created the Navajo Nation Road Fund that is based upon the anticipated revenue projection for fuel taxes for a given year as determined by the Comptroller of the Navajo Nation. Since 2003, the Navajo Nation has budgeted \$47,401,256.05 in Navajo Nation Road Fund projects, of which, only \$19,614,356.12 have actually been spent. Of that \$19,614,356.12, the Navajo Nation has kept \$8,527,225.64, or nearly half, in the Navajo Nation capitol Window Rock rather than distributing those funds to local chapters who apply for the money.

In the six years the Navajo Nation has been the trustee of the Road Funds, the Navajo Nation has granted only two awards for a total of \$396,358.76 for projects within Utah, despite multiple requests from Utah Navajo chapters for infrastructure needs that cost millions. The August 26, 1999 resolution that the MOA between Utah the Navajo Nation is premised upon states that the Navajo Nation will annu-

ally communicate to the Governor of Utah about the Nation's plans to address the infrastructure deficit within the Utah section of the reservation. The Navajo Nation has never collected, much less communicated, the road infrastructure needs of Utah Navajos to the Governor of Utah.

The Navajo Nation Deprives Utah Navajos of Services It Provides Elsewhere

A look at the Navajo Nation government services reveals how Window Rock overlooks the Utah portion of the Navajo reservation.

No Navajo Nation Public Safety and Justice Services offices are in Utah:

- Navajo Division of Public Safety Locations: 30 in Arizona, 13 in New Mexico
- Emergency Medical Services: 9 in Arizona, 4 in New Mexico
- Fire and Rescue Services: 6 in Arizona
- Criminal Investigation Section: 5 in Arizona, 2 in New Mexico
- Corrections: 4 in Arizona, 3 in New Mexico
- Victim Assistance: 2 in Arizona, 2 in New Mexico
- Police Districts: 4 in Arizona, 2 in New Mexico
- Judicial Branch District Locations: 5 in Arizona, 5 in New Mexico
- Office of Chief Prosecutors: 3 in Arizona, 4 in New Mexico

No Navajo Nation Health, Education and Welfare offices are in Utah:

- Division of Health: 22 in Arizona, 11 in New Mexico
- Navajo Area Agency on Aging: 4 in Arizona, 2 in New Mexico
- Behavioral Health Services: 4 in Arizona, 2 in New Mexico
- Communicable Disease Program: 5 in Arizona, 2 in New Mexico
- Food Distribution Program: 5 in Arizona, 3 in New Mexico
- WIC Program: 4 in Arizona, 2 in New Mexico
- Division of Dine Education: 17 in Arizona, 8 in New Mexico
- Office of Dine Youth: 4 in Arizona, 2 in New Mexico,
- Dept. of Head Start: 4 in Arizona, 2 in New Mexico
- Office of Special Education/Rehabilitation: 5 in Arizona, 2 in New Mexico
- Office of Scholarship/Financial Assistance: 4 in Arizona, 2 in New Mexico
- Division of Social Services: 12 in Arizona, 9 in New Mexico
- Regional Offices: 5 in Arizona, 3 in New Mexico
- Sub Offices: 7 in Arizona, 6 in New Mexico

Only two Navajo Nation Resources and Infrastructure offices are in Utah:

- Navajo Division of Transportation Locations: 3 in Arizona, 2 in New Mexico
- Division of Natural Resources Locations: 13 in Arizona, 9 in New Mexico, 1 in Utah
- Archaeology: 2 in Arizona, 1 in New Mexico
- Land Dept.: 3 in Arizona, 2 in New Mexico, 1 in Utah
- Water Resources Dept.: 8 in Arizona, 6 in New Mexico

Three Navajo Nation Human and Economic Development offices are in Utah:

- Navajo Division of Economic Development: 4 in Arizona, 2 in New Mexico, 1 in Utah
- Division of Human Resources: 11 in Arizona, 6 in New Mexico, 1 in Utah
- Navajo Veterans Affairs: 4 in Arizona, 2 in New Mexico
- Dept. of Workforce Development: 7 in Arizona, 4 in New Mexico, 1 in Utah

The Navajo Nation Has a History of Failing to Operate With the Transparency, Integrity and Stability That Utah Navajos Need and Deserve in any Future Trustee

The President of the Navajo Nation, Mr. Joe Shirley, cannot testify before this Committee because the Council has placed him and most of his cabinet on administrative leave pending the outcome of a criminal investigation into Navajo contracts. Unfortunately, his administration is not the first where a Navajo leader has been removed from office. The following list of headlines, bylines, and summaries from the press detail Window Rock's sad history of neglect, malfeasance, and incompetence in just the past twenty years:

President Joe Shirley Put On Administrative Leave

Navajo Times
October 26th, 2009

The Navajo Nation Council put President Joe Shirley Jr. on administrative leave during the investigations and possible prosecution of ethical, civil and criminal charges pending from alleged wrongdoing by the president and key members of his staff relative to the Nation's contracts with the private companies, OnSat and BCDS.

Others also under investigation are the president's chief of staff, and the directors of the divisions of Economic Development, Community Development and Public Safety. Also included in the investigation are former Shiprock Chapter President Duane "Chili" Yazzie, and Ernest Franklin, former employee with the Division of Community Development.

The Navajo Nation entered into a \$1.9 million contract with the Utah-based OnSat Network Communications in 2001. OnSat agreed to provide satellite Internet services to all 110 chapters on the Nation, but service was disrupted after the tribe stopped making payments, claiming the company overbilled for services.

The Navajo Nation owns 51 percent of Biochemical Decontamination Systems, or BCDS, a corporation created to seek federal contracts for the sale of metal fabrication products. The Nation in 2006 approved using the Navajo Dam Escrow Fund to back a \$2.2 million loan to finance an expansion of the plant. But by 2008, the company was defunct and \$4.7 million in debt.

Navajo Chairman and Son Convicted of Bribe-Taking

Washington Post
October 18, 1990

Suspended Navajo Chairman Peter MacDonald Sr. has been convicted of 41 counts of bribery and other crimes for taking money and favors from business people operating on the reservation. His son and codefendant, Peter "Rocky" MacDonald Jr., was convicted of 23 similar counts.

In 1989, the Navajo Tribal Council placed Peter MacDonald on paid leave from his Navajo Chairmanship position because of bribery and corruption charges relating to the real estate deal in 1986. Two realtors gave the Navajo Chairman \$25,000 to pay down on his \$70,000 bank loan, and a 1 year old BMW 735I automobile, from the profit they made on the land sale to the tribe.

Peter MacDonald's removal led to five months of internecine war on the Navajo Nation and on July 20, 1989 he and his supporters tried to overthrow the Navajo Nation government.

In February 1993, Peter MacDonald, was sentenced to 14 years in prison for trying to overthrow the tribal government and inciting a fatal riot in Window Rock, Arizona, which caused two deaths, and for fraud, racketeering and conspiracy convictions.

Navajo President Forced to Resign

High Country News
March 2, 1998

Facing up to 50 criminal charges, Navajo President Albert Hale resigned from office Feb. 19. By resigning, Hale avoided prosecution for misusing tribal money.

Special prosecutor for the tribe, Fred Chris Smith, and Hale's attorney, Henry S. Howe, presented a stipulated agreement to the tribe's ethics committee, which accepted Hale's resignation. The agreement states that President Hale accepted gifts from corporations doing business with the tribe, including Xerox and Conoco.

The agreement also states that Hale and Thomas Atcity, tribal vice president, accepted gifts at the Democratic National Convention in Chicago from Navajo political appointees and some employees of the tribe. In addition, it is stipulated that Hale used a credit card and tribal vehicles for personal use.

Headlines from just this past month detail exactly the kind of government that hopes to administer the Utah Navajo Trust Fund. The Navajo Nation has no capacity to manage its own funds, both oversight ability and the willingness to enact such are lacking.

Tribal Discretionary Funds to be Audited for First Time Ever

Navajo Times
December 3, 2009

Tribal auditors to audit discretionary funds of the executive offices and legislative branch, as well as the Office of the First Lady. The audit will focus on up to \$10 million a year in tribal revenues and are subject to few rules and almost no oversight. It will be the first audit of discretionary funds for either branch, although annual audits of legislative branch funds were mandated in 2007.

Shiprock Fair Saga Remains Unexplained

Farmington Daily Times
November 25, 2009

The Shiprock Navajo Fair Board is not a tax-exempt organization and hasn't been paying its taxes. The fair is held in a dirt field that has no parking, bathrooms, or trash cans. A conservative estimate gives the Shiprock Fair \$650,000 in annual gross receipts. No one is sure how much money the fair actually makes, so there's no way of knowing if money is being siphoned off. The fair board continues to refuse all requests to examine their records.

Special Prosecutor Appointed

Gallup Independent
November 13, 2009

The Navajo Nation Attorney General to appoint a special prosecutor to investigate allegations of legal violations by tribal officials, including President Joe Shirley Jr., and employees arising from the tribe's contractual history with OnSat and BCDS.

Slush Funds Total Over \$35 Million

Navajo Times
November 12, 2009

More than \$35 million has been poured into the discretionary funds of the Navajo Nation Council, speaker's office and president's office from 2005 to 2009, according to financial records from the Navajo Nation's Office of Management and Budget.

The Navajo Times has repeatedly asked President Joe Shirley Jr. and Speaker Lawrence Morgan for information about their discretionary funds. Morgan pointed out that he could not share documents because it would violate the privacy rights of those individuals receiving financial assistance. Shirley's Chief of Staff Patrick Sandoval said that the executive office has no policies and procedures.

For their efforts, the Arizona Press Club awarded the Navajo Nation President, Speaker, and Council as co-recipients of the Brick Wall/Arpaio First Amendment Disservice Award. An award given annually to the public servant and/or government agency whose egregious efforts to thwart the public's right to know must be brought to light.

San Juan County implores this Committee not to contribute to the next headline—

Congress Allows Window Rock to Loot Utah Navajo Trust Fund

Conclusion

Congress established the Trust Fund in 1933 to benefit Utah Navajos. Congress must not now abandon Utah Navajos by ignoring the history of neglect, unaccountability and malfeasance that the Navajo Nation continues to demonstrate.

In his June 19, 2008 testimony to this committee Ross Swimmer stated that the Office of Special Trustee lacks the capacity to administer the Utah Navajo Trust Fund. He also stated that the Navajo Nation *or a nonprofit organization made up of Navajo citizens* is more appropriate to take on the Trust Fund.

The Navajo Nation itself shows that it too lacks the capacity to administer the Utah Navajo Trust Fund. San Juan County supports S. 1690 to transfer administration of the Trust Fund to the Utah Dineh Corporation. Any other conclusion would in itself be malfeasance.

The CHAIRMAN. Mr. Maryboy, thank you for your trip to Washington, D.C. to provide this testimony. We appreciate it.

Mr. Ben Shelly, the Honorable Ben Shelly, you may proceed.

STATEMENT OF HON. BEN SHELLY, VICE PRESIDENT, NAVAJO NATION

Mr. SHELLY. Thank you very much.

Good morning, Chairman Dorgan and Members of the Committee. I am Ben Shelly, the Vice President of the Navajo Nation.

We strongly disagree with S. 1690. The Navajo Nation wants to be the trustee of the Utah Navajo Trust Fund. We want to work with Congress, this Committee and the Utah delegation to make the Navajo Nation a strong, accountable, and transparent trustee.

With me is Mr. John Billie, the President of the Aneth Chapter and the Chairman of the Navajo Utah Commission. Mr. Billie is here to inform the Committee that the Aneth Chapter does not S. 1690 and is available to answer any questions.

The Navajo Nation is adamantly opposed to S. 1690. Chairman, again, we adamantly oppose S. 1690.

This bill would give the Federal trust responsibility for royalties from Navajo Nation mineral leases to a non-profit corporation. This corporation did not exist when this bill was introduced.

This bill will give control over approximately \$30 million in trust fund to a corporation with zero experience, with absolutely no outside capital. Every year, an additional \$6 million to \$8 million is added to the trust fund. In the event of any breach of trust by the corporation, the beneficiaries would have no remedy against the corporation.

This bill is bad for the following reasons. Number one, Mr. Chairman, there is no accountability and transparency in the use of trust fund money. Number two, it fails to provide for benefits for future Navajo children. Three, it wrongly expands the original purpose of the trust and would lead to misuse and misappropriation of the trust fund. Four, it violates the common laws of trusts by appointing beneficiaries as trustees and is a conflict of interest. Five, lastly, this bill was introduced by Senator Bennett without even a single phone call, meeting or simple email by the Senator or his staff to the Navajo Nation government. There was no consultations.

Chairman, Senator, there was no consultation.

Frankly, Senator, this bill is a recipe for disaster.

On the other hand, the Navajo Nation is the best trustee for the following reasons. One, we would be an accountable, responsible and transparent trustee. Two, as agents for the trust fund, we have never breached our fiduciary responsibility in the past 30 years. Three, we have successful records of managing, investing and increasing the value of many trust accounts, including multi-million dollar accounts. Four, we have a well-established budget and auditing process for trust funds. Five, lastly, unlike the corporation, the Navajo Nation has sufficient outside funds to be accountable to our Navajo people.

Senator, Chairman Dorgan, again, I am grateful, very grateful for this opportunity to provide testimony in regard to S. 1690. With your permission, I would like to turn over my remaining time to Mr. John Billie. Should you have any additional question, I have provided written testimony with further details of the Navajo Nation position in this matter.

Thank you.

[The prepared statement of Mr. Shelly follows:]

PREPARED STATEMENT OF HON. BEN SHELLY, VICE PRESIDENT, NAVAJO NATION

Good Morning Chairman Dorgan, Honorable Members of the Committee on Indian Affairs. I am Ben Shelly, Vice President of the Navajo Nation. I am here to provide testimony in regard to the future of the Utah Navajo Trust Fund (UNTF) and S. 1690 introduced by the Honorable Senator Robert Bennett.

As the Committee knows, the State of Utah has declared its desire to withdraw as trustee of the UNTF. The State of Utah passed legislation in 2008 that effectively ends most disbursements from the UNTF, ends the trust fund administration, and moves the trust assets to a new fund pending selection of a new trustee. The Utah legislation specifically calls on Congress to appoint a new trustee for the UNTF. In the meantime, Navajo Nation will no longer have a role in the planning of expenditures from the UNTF, as is mandated under the 1933 Act. Consistent with federal policy toward Indian tribes, the Navajo Nation is requesting that Congress designate the Navajo Nation as the new trustee of the UNTF.

Please be aware that the Navajo Nation has many elected officials at various levels of government, all of whom have individual agendas that may or may not coincide with the broader goals and policies of the Navajo Nation. However, the Navajo Nation has its own law that governs who may speak on behalf of the Navajo Nation and our People. Pursuant to the Navajo Nation Intergovernmental Relations Committee legislation the Navajo Nation seeks to be the trustee of the Navajo Nation Utah Trust Fund. See attached letter from Speaker Morgan to Senator Bennett. The Navajo Nation Executive Branch Office of the President and Vice-President supports the Navajo Nation as the Trustee of Utah Trust Fund. See attached letter from President Shirley to Senator Bennett. Pursuant to Navajo Nation law, only my testimony today can provide the official Navajo Nation position and policy in this matter.

History of Utah Navajo Lands and UNTF

The Utah portion of the Navajo Nation has a complex history of additions, withdrawals, restorations and exchanges. The United States added the lands in the Utah Territory that lay south of the San Juan and Colorado rivers by Executive Order on May 17, 1884. Navajo People have a historic tie to this area and have continuously occupied this land since long before the captivity of Navajos in 1864. On November 19, 1892, four years before Utah was awarded statehood, then President Benjamin Harrison, by executive order, took back those lands in the Utah portion of the Navajo Nation which lay west of the 110° parallel (what is called "the Paiute Strip"), and placed those lands back in the public domain. Navajo lands in the Utah Territory which lay east of the 110° parallel remained part of the Navajo Nation. On May 15, 1905, by executive order, President Theodore Roosevelt added the Aneth area in Utah to the Navajo Nation. In 1908, the Department of the Interior made an administrative withdrawal of the Paiute Strip from the federal public domain, designating those lands again for exclusive use by the Navajo. In 1922, the Department of the Interior again took the Paiute Strip away from the Navajo, and put the lands back into the public domain. The Paiute Strip was again withdrawn from the public domain in 1929.

The federal legislation that created the UNTF was the result of negotiation and agreement between the Navajo Nation, the State of Utah, and the United States Government. In 1930 and 1931, the Navajo Tribal Council asked the Commissioner of Indian Affairs to negotiate on its behalf to permanently restore the Paiute Strip to the Navajo Nation, based on the previous set asides of this area by the Federal Government and on historic Navajo occupation. On July 7 and 8, 1932, at its annual meeting in Fort Wingate, the Navajo Nation Council gave its support to proposed federal legislation which would restore the Paiute Strip to the Navajo Nation and to add lands to the Aneth area of the Nation, between Montezuma Creek and the Colorado border (what is referred to as the Aneth Extension).

After Utah citizens voiced opposition to the proposed addition of the Aneth Extension and the Paiute Strip to the Navajo Nation, the Commissioner of Indian Affairs negotiated on behalf of the Navajo Nation with a Utah committee made up of San Juan County representatives to satisfy their concerns. In order to gain the Utah committees' support for the 1933 Act, the Commissioner of Indian Affairs made several concessions to the Utah committee. These concessions included prohibitions on further Native American homesteads or allotments in San Juan County, fencing of Native allotments outside the new Navajo Nation boundaries, fencing of the Aneth Extension's northern boundary, and agreement that state game laws would apply to Navajos hunting outside the Nation's boundaries. The proposed legislation also included an unusual provision that in the event oil and gas was discovered in the

Aneth Extension and the Paiute Strip, instead of all net oil and gas royalties going to the Federal Government to administer on behalf of Navajo citizens, 37½ percent of those royalties would instead go to the State of Utah to be administered for “the tuition of Indian children in white schools and/or in the building of roads across [the newly added lands], or for the benefit of the Indians residing therein.” A final concession to Utah in the proposed legislation provided that Utah could exchange any state school trust lands inside the Aneth Extension and the Paiute Strip for equivalent federal lands, and that any fees or commissions for the exchange would be waived. The Federal Government enacted the legislation Congress in 1933, as Pub. L. No. 403, 47 Stat. 1418 (1933) (“1933 Act”).

In 1958, by Act of Congress, the Navajo Nation was further expanded within San Juan County. Under the 1958 Act, the Navajo Nation and the United States government exchanged Navajo Nation lands at Glen Canyon Dam and Page, Arizona for federal lands northwest of and adjacent to the Aneth Extension, including the McCracken Mesa area. In 1949 and 1998, with the Navajo Nation as party to the negotiations, state school trust lands within the Navajo Nation were made Navajo Trust Lands in exchange for other federal lands given to Utah. Currently, negotiations are under way to exchange school trust lands in the Aneth Extension with other federal lands under authority of the 1933 Act.

In 1968, Congress amended the 1933 Act, redefined the purposes of the UNTF, and expanded its class of beneficiaries to include all Navajos in San Juan County. The amended legislation provided that trust monies can be used “for the health, education and general welfare of the Navajo’s residing in San Juan County.” The 1968 Amendments also provided that trust funds could be used for projects off the Navajo Nation provided that the “benefits” were proportional to the expenditures from the trust. This vague term “proportional” provided one of the main vehicles for mismanagement of the trust monies.

The Navajo Nation Has Sovereignty over Its Lands, Resources and Citizens

The Navajo Nation is a sovereign Native Nation located in the southwestern United States with territory in the States of New Mexico, Arizona and Utah. Numerous Executive Orders, Acts of Congress and Treaties have guaranteed the rights of our Nation to the surface use, and the subsurface mineral resources, of much of our traditional lands. For over forty years, the Navajo Nation has enjoyed a government-to-government relationship with the United States, respectful of the Nation’s sovereignty and self-determination in its own affairs, and free of the policies of paternalism which have blemished the past. It remains critical to the sovereignty and self-determination of the Navajo Nation that the United States respect our government-to-government relationship in deciding matters that uniquely concern and affect Navajo lands, resources and citizens. It is also crucial to the integrity of our Nation and its political institutions that passage of any federal legislation directly affecting our interests is done with the consent of the Navajo Nation government.

The Utah Navajo Trust Fund is capitalized completely by royalties from Navajo Nation mineral leases on Navajo Nation lands in Utah which were added to the Navajo reservation in 1933. Since the 1970s, the Navajo Nation has been the fiscal agent for all UNTF royalties, distributing money every year to the State of Utah out of the Nation’s general funds, for investment in the UNTF. The beneficiaries of the UNTF are those Navajo citizens residing in San Juan County, Utah. Only members of the Navajo Nation are eligible beneficiaries of the UNTF. The future of the UNTF is clearly a Navajo Nation issue and Congress should respect our sovereignty in this matter.

The Navajo Nation Was Never Consulted and Is Adamantly Opposed to S. 1690

In spite of the Navajo Nation’s considerable interest in the future of the Utah Navajo Trust Fund, including who will be designated as the new trustee, S. 1690 was introduced by the Honorable Senator Bennett without even a single consultation by the Senator or his staff with the Navajo Nation government.

The Navajo Nation is adamantly opposed to S. 1690. S. 1690 would give the federal trust responsibility for royalties from Navajo Nation mineral leases to a non-profit corporation, the Utah Dineh Corporation, which was not even in existence when the bill was introduced. S. 1690 would give control over approximately thirty (30) million dollars in trust funds and assets, as well as an additional 6 to 8 million dollars a year of royalties from Navajo mineral leases, to a corporation with zero experience as a trustee, and absolutely no outside capital. In the event of any breach of trust by the Utah Dineh Corporation, the beneficiaries would have no remedy against the corporation. S. 1690 fails to ensure any accountability or transparency in the use of trust fund monies and fails to ensure that the trust will exist

into perpetuity for the benefit of future generations of Navajo beneficiaries. S. 1690 broadly expands the original purposes of the trust and would lead to misuse and misappropriation of trust funds. S. 1690 would violate the common law of trusts by designating a handful of beneficiaries as the trustee and causing countless conflicts of interest. S. 1690 is a recipe for disaster.

On the other hand, the Navajo Nation would be an accountable, responsible and transparent trustee of the Utah Navajo Trust Fund. In the over 30 years as fiscal agent for the royalties for the UNTF, the Navajo Nation has never breached its fiduciary responsibilities to the trust fund. The Navajo Nation also has a successful record of managing, investing, and increasing the value of multiple Navajo Nation trust accounts, including many multi-million dollar accounts. The Navajo Nation has a well established budgeting and auditing process for the appropriation of funds. Importantly, unlike the Utah Dineh Corporation, the Navajo Nation has sufficient outside assets to be accountable to the beneficiaries.

With the Navajo Nation as trustee, the Office of the Utah Navajo Commission, centrally located in Montezuma Creek in Aneth, Utah, would be the trust administrator. The Office of the Utah Navajo Commission already administers and leverages money from the Utah Navajo Revitalization Fund, the UNTF, Navajo Nation funds, and federal funds for projects in Navajo Country in San Juan County, Utah. Having the Office of the Utah Navajo Commission as trust administrator would thus create economies of scale, and would greatly reduce administrative costs for the Utah Navajo Trust Fund.

The Navajo Nation is very concerned that there is a rush to designate a non-profit corporation as the new trustee of the UNTF especially where there is no transparency or accountability. The trust must be grown and managed successfully not only to pay for needed expenditures in the short term, but for the benefit of future generations of Navajos in San Juan County as well. The trust also should be managed to ensure its survival in perpetuity. The Navajo Nation is committed to ensuring that the UNTF continues to grow and benefit current and future generations of Utah Navajos and the Navajo Nation should be made the new trustee.

Conclusion

Designating the Navajo Nation as trustee of the UNTF is the only position consistent with the policy established by the United States Congress to recognize the sovereignty of the Navajo Nation and the right of the Navajo Nation to self-determination in matters which concern the Nation's lands, resources and citizens. S. 1690 was introduced without a single consultation with the Navajo Nation government and would give the important federal trust responsibility over the Nation's resources and citizens to some non-profit corporation. S. 1690 is an affront to the Navajo Nation's sovereignty and right to self determination and this Committee should oppose it.

I have appreciated this opportunity to provide testimony to the Senate Committee on Indian Affairs. The Navajo Nation looks forward to working with Congress, this Committee and the Utah delegation in a government-to-government relationship as reasonable legislation is introduced to secure the future of the Utah Navajo Trust Fund. Thank you.

STATEMENT OF HON. JOHN BILLIE, PRESIDENT, ANETH CHAPTER, NAVAJO NATION; CHAIRMAN, NAVAJO UTAH COMMISSION

Mr. BILLIE. Good morning, Chairman. My name is John Billie. I am the President of the Aneth Chapter and the Chairman of the Navajo Utah Commission. And the Chapter opposes S. 1690 for the following reasons.

There was no consultation on this bill. Second, there was no adequate public hearing on this bill. Third, a resolution was presented to community to support this bill and corporation, but that resolution failed.

We, as Aneth Chapter, support the Navajo Nation as trustee with adequate representation of the Aneth Chapter in the decision-making furthermore.

Thank you for your time.

[The prepared statement of Mr. Billie follows:]

PREPARED STATEMENT OF HON. JOHN BILLIE, PRESIDENT, ANETH CHAPTER, NAVAJO NATION; CHAIRMAN, NAVAJO UTAH COMMISSION

Chairman Dorgan and Honorable Members of the Committee on Indian Affairs, My name is John Billie, I had the opportunity and honor of participating in the U.S. Senate Committee on Indian Affairs' Congressional hearing on S. 1690 on December 09, 2009. The Honorable Senator Robert Bennett is the sponsor of S. 1690. As a leader of the Navajo people of Utah, I currently hold the positions of Aneth Chapter President and Chairman of the Navajo Utah Commission. I sincerely thank the Committee for my participation. In the short amount of time allotted for testimony, I was unable to expand on my remarks or offer clarification on some of the statements I thought were misleading. I am respectfully submitting additional written comments relative to the issues discussed. I also would like to apologize for an inappropriate remark made by one of the presenters. This is explained further in the first capsule. Expanded comments on the other issues follows as well.

Kenneth Maryboy Introduction

As an elected leader of the Navajo people, I took an oath to uphold the laws of the Navajo Nation and represent the people to the best of my ability. It is due to this oath that I took offense at some of Council Delegate Kenneth Maryboy's remarks including utilization of a Navajo phrase spoken in the Navajo language at the beginning of his introduction. Mr. Maryboy used a Navajo phrase generally meaning he was addressing the enemy and going into battle. Many Navajo people listening to the hearing's webcast were offended. This is a phrase utilized by Navajo medicine people in ceremonies preparing warriors going off to war against a real enemy. Many found this disturbing and inappropriate because it was basically a threat to individuals who were not the enemy. Mr. Maryboy was elected to his dual capacity as Navajo Nation Council Delegate and San Juan County Commissioner by the Navajo people of Utah. Mr. Maryboy owes an apology to the Navajo people, members of the Senate Indian Affairs Committee, San Juan Commission, and people of Utah.

Special Interest Group

The special interest creating the Utah Dineh Corporation include former tribal leaders, a non-Indian CPA, and Zions Bank. Mark Maryboy, one of the former leaders worked exclusively with CPA Phil Lyman to develop the Corporation with ultimate intent to install the two individuals as CEO and CFO. The plan was outlined in an unsuccessful request for funding from the state's Utah Navajo Revitalization Fund. Zions Bank of Utah revealed its interest with a contribution of \$10,000 in this application. Phil Lyman also owns an investment firm and has created strong ties with Zions Bank. Mr. Lyman basically created the Corporation single-handedly. Mr. Lyman also conducted a media campaign with misinformation and made-up quotes of support. The Navajo people found Mr. Lyman's cavalier attitude about tribal sovereignty equally disturbing. The board for the Dineh Corporation was hand-picked supporters—there was no process in selecting the board.

Navajo Nation Consultation

The Navajo people do not agree with Sen. Bennett's definition of consultation. Sen. Bennett introduced S. 1690 on September 21, 2009. The Senator did provide a courtesy listening session with Navajo officials on October 2009. Sen. Bennett simply indicated he was moving forward with his legislation after a brief visit. The Navajo Nation considers the federal policy on Indian consultation to be a more meaningful concept that involves recognition of a government to government relationship, respect, and interactive dialogue. Sen. Bennett certainly didn't provide this in drafting an ill-advised legislation.

Navajo Nation Services to Utah

During his many years in Congress, Sen. Bennett has never visited the Navajo Nation including the Utah portion of the reservation. It is simply not true for Sen. Bennett to claim Navajo Nation disinterest or lack of service in the Utah section of the Navajo Nation. With all due respect, Sen. Bennett is listening only to a small fraction of Navajos and relying on misinformation instead of deeper exploration of the issues in order to craft proper and responsible legislation. The 62.5 percent collected by the Navajo Nation from the Utah oil royalties goes into the tribal treasury. These funds supplement revenues from other tribal sources to create a general fund budget. This budget provides basic services to all chapters including Utah chapters. The Navajo Nation is further providing a share of federal health care dollars to the Utah Navajo Health System through a Public Law 638 contract. The Navajo Nation also created a Utah district court in 2007 to serve the Utah portion of the Navajo

Nation. The Navajo Nation established and is still operating a Regional Business Development Office in Utah to assist Utah chapters with economic endeavors. The Navajo Nation developed the Utah Navajo Commission in 1992 to specifically address and represent the interest of Utah Navajos. This tribal sub-unit has provided a much-needed voice and advocacy for Utah Navajos. It has leveraged significant non-tribal funding for the benefit of Utah Navajos. No other region on the Navajo Nation has a Commission of this nature and mandate.

Supporting Chapter Resolutions

Sen. Bennett's assertion that there is overwhelming support for designating the Utah Dineh Corporation as trustee is not true. Two of the seven Utah chapters including Aneth Chapter and Dennehotso Chapter are opposing the Utah Dineh Corporation. A supporting resolution from a Navajo chapter requires only 25 votes—no where near the chapter's total membership. A significant number of the Navajo people do not read or write. This is the population that attend chapter meetings regularly. It is easy to manipulate the vote with fear-mongering. This was the tactics utilized by a small group of vocal supporters creating the Utah Dineh Corporation. The Navajo people were told the Navajo Nation would steal their money and that tribal leaders have the ability to disregard existing laws including federal rules and regulations. The U.S. Congress knows this is not true. This is the tactic found in Kenneth Maryboy's oral and written testimony. Mr. Maryboy is trying to mislead the Senate Indian Affairs Committee with selective, sensationalized headlines.

Navajo Nation Collaboration with Utah Chapters

The Navajo Nation established the Navajo Utah Commission in 1992 to represent the Utah chapters collectively in regards to issues and interest impacting the Navajo people of Utah. All seven chapters have an elected representative on the commission. The Navajo Nation has worked with the Navajo Utah Commission since the state of Utah announced its decision to resign as trustee of the Utah Navajo Trust Fund. The commission passed resolution no. NUCMAY-445-08 in May 2008 supporting the position of the Navajo Nation regarding designation of a new trustee. Kenneth Maryboy's claim that only two Navajo Nation Council delegates represent the Utah Navajos is erroneous. Most Utah chapters straddle the Utah-Arizona state line. The Council delegates do not discriminate against certain sections of their chapter jurisdiction. In fact, two other chapters (Oljato and Navajo Mountain) currently have Council delegates from Arizona despite a larger Utah Navajo population. Representation is the choice of the people.

Support for Alternate Federal Legislation

The Navajo Nation enacted resolution no. IGRMY-107-08 on May 19, 2008 establishing the Navajo Nation's official position on designation of a new trustee for the Utah Navajo Trust Fund. Moving forward, the Navajo Nation enacted resolution no. IGRF-24-09 on February 10, 2009 proposing federal legislation for selection of a new trustee. The Navajo Nation made every attempt to work with the Utah Congressional delegation to no avail. Sen. Bennett's introduction and advocacy for S. 1690 includes absolutely no consultation with the Navajo Nation. The Senator's attitude has been that "we created legislation that doesn't need your participation" despite the fact that there's a government to government relationship in existence and that the issue involves lands, resources, and citizens on Navajo Nation trust lands. The Navajo Nation has now focused efforts on working with the Congressional delegations from Arizona and New Mexico to introduce alternate federal legislation in naming the Navajo Nation as trustee for the Utah Navajo Trust Fund.

Utah Resignation as Trustee

Sen. Bennett is correct in stating that the state of Utah's relationship with the Utah Navajo Trust Fund beneficiary has not been harmonious. There has been four major lawsuits with the fourth case *Pelt v. Utah* currently in settlement mediation. The cases have involved mismanagement, misappropriations, and lack of accountability regarding expenditures of trust fund revenues. It is unfortunate to say Navajo individuals are involved in the Pelt V. Utah litigation. This is why the right trustee is absolutely critical. Fiduciary responsibilities makes it imperative to make the right choice for the Utah Navajo Trust Fund. The next trustee must have proper credentials, capacity, internal assets, and legal mechanism to fulfill trust responsibilities. It is essential to manage the Utah Navajo Trust Fund in perpetuity for future generations.

Utah Dineh Corporation Capacity

As the Senate Indian Affairs Committee was informed, the Utah Dineh Corporation was not even incorporated when S. 1690 was introduced by Sen. Bennett. The

incorporation documents and by-laws have not been made available to the Utah Navajo Trust Fund beneficiary. There was no process for the so-called public hearing. Meetings termed as public hearings lack transcripts. The Navajo Nation was never invited to participate. Despite clear self-interest, personal gain, conflict of interest, and lack of proper credentials, a select group of individuals organizing the Utah Dineh Corporation are already appointing themselves as CEO, CFO, and who knows what. The selection of a non-profit as trustee will mean enormous administrative burden on the trust fund, resources that should be more appropriately spent on the beneficiary. Sen. Bennett's assertion that the Navajo Nation is requesting a fee to serve as trustee of the Utah Navajo Trust Fund is not entirely correct. It is true there will be a need to spend some trust fund monies for administrative purposes. However, what the Navajo Nation will utilize for management will not be as extensive as the Utah Dineh Corporation. This non-profit is a totally new experience with no capital or assets of its own. The Navajo Nation has funded the Navajo Utah Commission since 1992. This amount will be matched with trust fund appropriations to staff and administer the trust fund in appropriate manner. It does not make sense to designate an inexperienced, un-capitalized, and secretive non-profit to serve as trustee. The Utah Navajos deserve full protection and the highest level of fiduciary responsibility for care of limited and valuable resources.

The CHAIRMAN. Thank you very much.

As I indicated earlier, Senator Bennett is here and will be providing his perspective on the legislation.

Senator Bennett authored the legislation and had requested a hearing. I was happy to do that. It appears to me that we have significant differences of opinion here at the witness table, so let me ask a few questions.

Mr. Maryboy, my understanding is that the State of Utah decided that they didn't want to be managing these trust funds. At some moment, they made that decision and took some action by State legislation to accomplish that. Is that correct?

Mr. MARYBOY. Yes, sir.

The CHAIRMAN. And so with the State deciding that they don't wish to manage these funds, then the question is, who should manage the funds and how do you develop a consensus for deciding who should manage the funds. How would you have proceeded to do that were you able to do it by fiat?

Mr. MARYBOY. Well, Mr. Chairman, it is very simple, that the turmoil that the San Juan County, Utah has been faced with many years, and there's several of mismanagement here and there. So we took it upon ourselves that this would be the best solutions for the Utah Navajos.

And mind you, Mr. Chairman, we do have seven supporting resolutions, and this consists of 10,500 residents in San Juan County, Utah. And to also say that Mr. Billie here represents Aneth Chapter and his Chapter passed a resolution. So he is representing less than a handful out of that 10,500 representatives.

The CHAIRMAN. You indicated that six of the seven chapters have expressed some level of support for this?

Mr. MARYBOY. Yes, they did.

The CHAIRMAN. Have you provided the Committee with whatever documents exist for that?

Mr. MARYBOY. I think the document is out there. Yes, sir.

The CHAIRMAN. Mr. Shelly, what about that? Mr. Maryboy suggests that there is fairly substantial support and that you represent a much smaller segment of the population in terms of opposition.

Mr. SHELLY. That would be a question, for me, Mr. Chairman, is that the Navajo Nation wants to be a trustee to the Navajo Utah Trust Fund and we have proven that before. From the community, I believe Mr. Billie probably would answer that. If you don't mind, I would like to give him that question that you are asking.

The CHAIRMAN. All right.

Mr. BILLIE. Mr. Chair, we know that the seven chapters passed a resolution not going to the Navajo Nation, but the bill has been introduced and therefore it was brought back to some of the community members. And as they find out that a small special interest group is spearheading this whole thing and there was no consultation on this bill representing from our community.

The CHAIRMAN. Mr. Maryboy, what is the governance of the Utah Dineh Corporation? How is it constructed, to the best of your knowledge? I will ask the question of Senator Bennett as well.

Mr. MARYBOY. Mr. Chairman, this particular government is put together as any simple government non-profit corporation. But in there, we are stand for audit from the United States OMB. The Nation, whomever, is we are open for that.

And furthermore, the Vice President alluded to the common law. I believe that in some of the testimony that our Attorney General of the Navajo Nation did highlighted that, the Navajo Nation common law was never been focus by the Navajo Nation itself, along with the legislative and the executive branch.

The CHAIRMAN. What measures would the Utah Dineh Corporation have in place to prevent mismanagement or misuse of trust funds?

Mr. MARYBOY. Mr. Chairman, we stand to be corrected by any oversight as the auditors, the attorneys. In the bylaw, it does state that.

The CHAIRMAN. My guess is both of you would agree with the proposition that what you really want, no matter what the organization is that provides this management, you want to make sure these funds are managed appropriately; that you are not cheated out of income or assets that belong to the Navajo Nations. Right?

I say that on the morning following the announcement about the *Cobell* case. The most important issue here, in my judgment, is not so much which specific organization does this, but that finally, at last, at long, long last, we no longer have mismanagement of Indian funds by anybody, the Interior Department or the Federal Government, or a State that has responsibilities, that doesn't manage it properly.

So, you know, the debate is not about proper management. We all support that and expect that, I assume.

Let me ask, what is the enrolled membership of the Navajos in Utah? Can someone tell me?

Mr. SHELLY. Ten thousand people is what I hear from Mr. Billie.

The CHAIRMAN. Okay. If the Navajo Nation does not support the bill, as Mr. Shelly, you indicated. Mr. Maryboy says that the bulk of the Utah Navajos do. But, if the Navajo Nation would not support the bill introduced by Senator Bennett, are there alternative proposals that you see Congress should act on that would avoid loss of trust funds?

Mr. SHELLY. Support from I would say—can you repeat that question again?

The CHAIRMAN. Yes. If in fact the Navajo Nation decides not to support this, a proposal by Senator Bennett to have this non-profit, Utah Dineh Corporation, managing the funds, if you do not support that, then what are the alternatives that you do support in order to avoid any loss of trust fund benefits?

Mr. Maryboy?

Mr. MARYBOY. Mr. Chair, I am here representing the Utah Navajos. And I think our position is very simple when you pose that question. I think the Utah Navajo is ready to be the trustee of this funding as the Dineh Corporation and it is very simple. The Utah Navajos have been neglected for many, many years and that is one of the concerns of the Utah Navajos. And I believe that we are ready and we are consistent with every chapter all the way from Aneth to Navajo Mountain that we are ready to do this.

The CHAIRMAN. Senator Udall, do you wish to inquire?

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Chairman Dorgan, and thank you for this hearing.

Mr. Billie, you use the term, and I think, and just correct me if I am describing this incorrectly, but I think you said that the chapters did vote on it. And then when they learned that there was, I think, a small special interest group heading up the whole thing, there has been a reaction against that.

Is that correct? Did I hear you say that?

Mr. BILLIE. Yes, Senator, that is correct.

Senator UDALL. And so could you tell us who the small special interest group heading up the whole thing on the otherwise, I guess you are talking about, that you are opposed to? Who is that? Who is behind that?

Mr. BILLIE. Senator, I believe that it is the Dineh Corporation that has been established. They are the small special interest group, with the interests of subcontracting their own CEO to themselves, and those are the special interest group, the committee themselves also.

And the proper protocol on this is that the Navajo Nation has to establish this corporation by law from the Navajo Nation, and that is how it is done properly, protocol.

Senator UDALL. So what interests are the group, the Utah Dineh Corporation? What interest are they representing? Who is behind the incorporation of that?

Mr. BILLIE. Do you want names?

Senator UDALL. Yes. Well, or interests. I mean, it is oil and gas? What are the special interests?

Mr. BILLIE. Well, special interests by meaning is the Dineh Corporation, some of the Board Members and the future CEO, and also so-called the CEO from former UNDC members, which used to be part of the trustee before the Navajo Utah Trust became established in 1997, I think it was.

So those are the people that are spearheading this non-profit corporation without any consultation to the community, and that is why there was a big reaction regarding this bill.

Senator UDALL. And the reaction was a result of learning who was behind the corporation?

Mr. BILLIE. Yes.

Senator UDALL. And it sounds like you are saying that there are seven chapters in the Utah area. Is that correct?

Mr. BILLIE. Yes.

Senator UDALL. Within the part of the Navajo Nation, local form of government, but also within the State of Utah. And what I heard Council Delegate Maryboy say is that the seven had voted to support this effort. I heard him say that, and you are saying that they are having second thoughts now.

Mr. BILLIE. Yes, they are having second thoughts because of this Utah Dineh Corporation that is being established, which was never given back to the community how it is going to be established and how it will be run. It was never consulted to the community. That is why there has been a big reaction to that, including the bill.

Senator UDALL. Now, Vice President Shelly, has there been an attempt by the Navajo Nation, working with these local chapters, to work this whole thing out and to try to come up with a solution that the Navajo Nation wants? Has there been an attempt? Has there been a committee appointed by the Council? Has there been any action on that part? Is the President or have you appointed people to go out and try to work this issue out?

Mr. SHELLY. Thank you, Senator. Yes. We, the Navajo Nation responded to the community concern. They have expressed their interest and tried to manage their own. This particular fund, in the past there were a lot of the people out there in the Utah portion, the Utah Navajo people were denied, and there is places where they were very concerned about some of this money never really came down to them.

So they are the one that is voicing out. And there is a commissioner already in place, and for the past so many years, they have been ignored. And these are the people that are coming up and opposing S. 1690, and these are the people at the local level, the grassroots level that are saying that.

We still didn't get the money that supposed to be used for us. It never came down to us. And that is what they are saying.

Senator UDALL. Vice President Shelly, is there a piece of Federal legislation that you are supporting that would resolve this issue?

Mr. SHELLY. Not this legislation, no.

Senator UDALL. Not S. 1690, no.

Mr. SHELLY. No, we are not supporting it.

Senator UDALL. But is the Navajo Nation supporting another piece of legislation? Is there something that you think would resolve this issue?

Mr. SHELLY. What it is, we want the Chapter, the Utah people to determine how they want to manage this particular fund. We want to be the trustee to manage for them, and let them tell us how they want to manage this and how they want to set themselves up on this particular trust fund.

Senator UDALL. Yes.

Thank you very much, Chairman Dorgan.

The CHAIRMAN. Senator Udall, thank you very much.

I am going to thank the witnesses for being with us, and if we have additional written questions, we will submit written questions to you.

We will ask the Administration, as well, for its formal views before moving forward.

Yes, Mr. Maryboy, you wanted to make another comment?

Mr. MARYBOY. Mr. Chairman, yes, the question for Senator Udall. The Board are elected by the chapters. We have representatives from TeecNosPos and Mexican Water, Red Mesa, all the way down to Navajo Mountain, Blue Mountain Dineh. And the 1690 had been a public hearing at the Chapters. That is how they have appointed these individuals. Our Chair is from Navajo Mountain, Willie Gray Eyes, and I have my Vice Chair here with me, and of course, the Secretary Treasurer from Blue Mountain Dineh.

And nowhere at the public hearings and other hearings that we have held, the Navajo Nation came to be part of the hearings. And as you know, that the Navajo Nation does not support this because the 88 of the Council and furthermore the Navajo Utah Commission, there is only two true Utah Navajos. The rest is Arizona.

The CHAIRMAN. You said the Navajo Nation does not support this. What does that mean? Doesn't support what?

Mr. MARYBOY. The Navajo Nation does not support S. 1690. That is what I am alluding to, that the record shows that.

The CHAIRMAN. How many members are on the Board?

Mr. MARYBOY. On the Utah Dineh Corporation?

The CHAIRMAN. Yes.

Mr. MARYBOY. There is two representative from Aneth, one from Blue Mountain, and one from TeecNosPos, one from Red Mesa, one from Mexican Water, which I represent, two from Ojato, and one from Navajo Mountain.

The CHAIRMAN. Are all the members of the Board enrolled members?

Mr. MARYBOY. Yes, they are.

The CHAIRMAN. All right.

Yes, sir?

Mr. BILLIE. Again, Chair, what Mr. Maryboy is talking about is this Dineh Corporation. The Aneth Chapter did not endorse this Dineh Corporation and that is why that resolution has come to the table of the Aneth Chapter community, and that resolution failed, not to support the Dineh Corporation.

The CHAIRMAN. All right.

Mr. Shelly?

Mr. SHELLY. Mr. Chairman, Senator Udall, the beneficiary is controlling this trust fund. I believe that is a conflict of interest. And this is the biggest problem for the Navajo Nation. And this is what I said in my statement.

The CHAIRMAN. All right.

Next, we are going to hear from Senator Bennett. We thank the witnesses very much for being with us. Thank you so much.

Senator Bennett, would you come up and take your place at the witness table? And we appreciate very much your being here today and your willingness to testify on the legislation.

While Senator Bennett is coming up, we are having a hearing on two pieces of legislation today. This bill and the second is a hearing on the subject of oversight on the Interior Department backlogs on the use of tribal lands; that is, the applications for taking land into trust and so on. And we will have three witnesses there.

Senator Bennett, welcome. You have had the opportunity to hear your fellow Utahans testify and we are anxious to hear your testimony as well.

**STATEMENT OF HON. ROBERT F. BENNETT,
U.S. SENATOR FROM UTAH**

Senator BENNETT. Thank you, Mr. Chairman, and I have a formal introduction which I would ask to be included in the record.

The CHAIRMAN. Without objection.

Senator BENNETT. Let me give you a little bit of background with respect to this and do my best to try to clear up some ambiguity that may still be hanging over it.

There is a sense of urgency with respect to resolving this issue. It is a Utah issue and it requires, I believe, a Utah-based solution. And as it became clear that this issue was going to arise last year, Mr. Ross Swimmer, who is the former Special Trustee for American Indians, recommended that there were two options for resolving the issue. One would be the Navajo Nation would take over; or the other would be the setting up of a non-profit with a Board of Navajo citizens.

And as has been indicated here, the people directly affected in Utah overwhelmingly chose to go the route of the non-profit. It is true that there is one group out of this, and you have heard from them, that says no, but the vast majority of the Navajos in Utah have said they prefer the second recommendation from Mr. Swimmer and they have set it up. They have established a non-profit. They have established the Board of Directors with oversight and transparency and worked with lawyers to make sure that it is done properly.

Now, here is the background of how we got here. This goes all the way back to 1933. Congress added approximately 52,000 acres of land north of the San Juan River to the Navajo Nation. It was not part of the Navajo Nation prior to 1933, but it was added to compensate for reservation land that would be withdrawn by the creation of Lake Powell.

So, the State of Utah at that time insisted that the future oil and gas revenue that would come off of this land be reserved for Utah Navajos. It was, after all, Utah Navajos who were losing their land, and they wanted to be sure that the oil and gas revenue that would come off this land would be dedicated to the Utah Navajos. And this was done with the State as the trustee. So, it was set up that the oil and gas revenue would be handled by the State solely for the benefit of the Utah Navajos.

Now, by coincidence, all of this came up for review some 35 years later, in 1968, and there was an amendment to the 1933 Act to expand the class of beneficiaries to include all Navajos residing in San Juan County, Utah. The author of that amendment was the Senator from Utah, Wallace F. Bennett, with whom I was quite in-

timately acquainted. So that is a strong reason for me to stay interested in this issue.

Now, I have heard from the Navajo Nation. They came to see me. The idea that there has been no consultation and no conversation is not entirely accurate. And they say, we guarantee you that if we get control of all of these funds, we will see to it that they still flow to the Utah Navajos. We will just take a small administrative fee for handling them.

And you have heard the testimony, causing the Utah Navajos to say we are not entirely satisfied with that. We are not sure that that is what is going to happen; that if all of this money now goes to the Navajo Nation, which has responsibilities far beyond Utah, the temptation to take some of this money away from the Utah Navajos and use it for other imperatives of the Navajo Nation, we are afraid will be overwhelming.

And indeed, that was one of the reasons why, given the two choices that were outlined by the Special Trustee, Mr. Swimmer, they thought it makes more sense for us to establish the non-profit corporation that will be in charge of this; that will see to it that all of the money that comes from these oil and gas revenues will be available to the Utah Navajos.

Now, as I understand it, there are seven different groups involved in the Utah Navajos that have examined this. All seven voted for it. The reconsideration that you heard about is coming in one of the seven, but the other six remain firmly solid in their support for this legislation and this particular approach.

So that is the history of it. There is some urgency because the State has said we can no longer perform this function, and we will withdraw from this function at the end of this year, that is December 31st. I have a letter from the State supporting going forward in the manner that this bill would go forward. I believe if we show any kind of progress here in the Congress, the State will say, well, we will continue to manage this for a few more months while it gets resolved in the Congress.

But the problem if, if it does not get resolved, there will be students who are planning on going to college on the basis of funds that have historically been made available from this source of revenue that will not be able to go to college. There will be health care that has historically been funded from this that will not be made available.

The whole thing will come to a halt if we don't get this resolved, and it is for that purpose that I have introduced the legislation.

That is the background and history of it, and I will be happy to respond to any questions you might have.

[The prepared statement of Senator Bennett follows:]

PREPARED STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR FROM UTAH

Good Morning Mr. Chairman, Senator Barrasso, and members of the Committee. I appreciate you taking the time to hold a hearing on this important issue in my home state.

In 1933, Congress added approximately 52,000 acres of land north of the San Juan River to the Navajo Reservation in Utah to compensate for land that had been taken to accommodate what would become Lake Powell. This area is known as the Aneth Extension. It was believed that this land held a high potential for oil and gas production. In anticipation of this development, and as part of an agreement be-

tween the Federal Government and the state of Utah, the 1933 legislation created a permanent trust specifically for the benefit of Utah Navajos, funded by a portion of any royalties from oil and gas development in the Aneth extension. The act mandated that 37.5 percent of the royalties from this 52,000 acre area be used for the education of Navajo children, the construction and maintenance of reservation roads, and other benefits of the Navajos living in the Aneth Extension. The remainder of the royalties would be sent to the Navajo Nation. The legislation designated the State of Utah as the trustee responsible for managing this fund, named the Utah Navajo Trust Fund.

The State of Utah only consented to removing the Aneth lands from the public domain and adding them to the Navajo Reservation when an agreement was reached to dedicate a portion of the revenue generated from the harvesting of oil and gas resources to the areas in Utah where the resource was produced. The State insisted on this arrangement to ensure that the Navajos living on the Utah portion of the Navajo Reservation received some direct benefit from the development in their back yards, and did not have to solely rely on the historically inadequate appropriations from the Nation's general funds. Congress recognized this distinction in the 1933 Act and did so again in 1968 when my father, Senator Wallace F. Bennett, amended the law to broaden the class of beneficiaries to include all Navajos residing in San Juan County. My father's amendment also expanded the purposes of the fund to include the health, education and general welfare of the beneficiaries.

The Utah Navajos and the State of Utah have often clashed over the management of the trust fund and several lawsuits have resulted from this discord. As a result of this sometimes acrimonious relationship, the Utah State legislature allowed the law that created the mechanism for distributing the Utah Navajo Trust Fund benefits to sunset. In 2007, Governor Huntsman notified the Utah Congressional Delegation that the state desired to be relieved of its trustee responsibilities. December 31, 2009 is the last day that Utah will have a legal mechanism in place to distribute funds to the various programs established for the benefit of San Juan County Navajos. The cessation of those distributions will shut down the housing and scholarship programs that provide the bulk of assistance to the Navajos of San Juan County resulting in even greater hardship in one of the poorest regions in Utah.

The Navajos residing in San Juan County are my constituents. At the beginning of this year I received resolutions from six of the seven Utah Navajo Chapters (the seventh chapter has fewer than fifty members residing in Utah) endorsing the idea of designating a new trustee as long as that trustee is not the Navajo Nation. The response to my question of why they did not want the Navajo Nation to serve as trustee was that they believe the Navajo Nation will use the Utah Navajo Trust Fund for purposes other than what the 1933 Act and 1968 amendments require.

These Chapter resolutions also endorsed the idea of allowing the San Juan Navajos to manage their own resources. Because I represent their interests as Utahns in the United States Senate and share their desire to grant them the ability to determine their own future, I agreed to work with them in resolving this problem.

S. 1690 respects the precedent established by the Congress in 1933 and reaffirmed in 1968 that the Utah Navajos are unique in this one respect from the rest of the Navajo Nation. I believe Congress' recognition that the Utah Navajos residing in San Juan County are entitled to receive a direct share of the revenue from resources developed within the Aneth Extension is evidence that this is a Utah issue and therefore, a Utah based trustee should be the solution.

On June 19, 2008, Mr. Ross Swimmer, Special Trustee for American Indians, testified before the House Committee on Natural Resources in an oversight hearing for the Utah Navajo Trust Fund. He noted in his testimony that his office did not have the capacity to administer this fund in the manner required by the 1933 Act. He concludes by stating it would be appropriate for either the Navajo Nation or a non-profit organization made up of Navajo citizens to serve as the trustee.

This second option identified by Mr. Swimmer opens the door for a unique solution to this problem that will allow the Utah Navajos an opportunity they have never been able to fully experience—that experience known as self determination.

To this end, the Utah Navajos have used the non-profit organization option recommended by the Special Trustee for American Indians as their model in creating the Utah Dineh Corporation. This corporation has a board of directors comprised of members from each Utah Chapter. The Utah Dineh Corporation is a Utah Nonprofit Corporation organized for the specific purpose of fulfilling the mandate of the 1933 and 1968 Acts. The Corporation will contract with a private investment firm for money management and establish processes whereby the money collected and investment earned will be used to further the intent of the trust fund.

The intent of S. 1690 is to designate a new trustee in the manner recommend by Mr. Swimmer and, in doing so, allow the Utah Navajos to manage their own assets.

For far too long the Utah Navajos have been poorly served by a paternalistic system that is often abused. While no system of trust responsibility is exempt from the potential of mismanagement, I trust that the San Juan County Navajos are capable of acting in the collective good for today's and future generations of their people. I believe the Congress should do the right thing by fully enabling self determination for them. S. 1690 would accomplish that goal. Thank you allowing me to testify and holding today's hearing on this important legislation.

The CHAIRMAN. Senator Bennett, thank you very much.

Let me ask you about the issue of consultation. I think you referred to it at the start of your testimony.

Senator BENNETT. Yes.

The CHAIRMAN. Some have said that this was a surprise to them. There had been no consultation. You indicated you had had meetings with the Navajo. So would you amplify on that?

Senator BENNETT. Well, a group of them came to see me in my office after the introduction of the bill to discuss it. And we talked it through, and they outlined their reasons for wanting the other alternative. That is, that all of the money should go to the Navajo Nation. And that was the meeting in which they promised me if you allow it all to come to us, we assure you that after we have taken our administrative fee, it will all flow back to the Utah Navajos. The Utah Navajos, to be very blunt about it, put very little stock in those assurances.

The CHAIRMAN. The Board of Directors of the non-profit, as I asked earlier, they are all enrolled members of the Navajo Nation?

Senator BENNETT. Yes, as Mr. Maryboy indicated, they are chosen by the various groups, but there is a mechanism for, I suppose in Federal terms we might call it an Inspector General or something of that kind, to see to it that the money is properly handled and there is proper accounting and transparency here.

The comment that was made that it is the beneficiaries that are administering it, it is indeed the representatives of the beneficiaries that are administering it. But their concern is that if it goes to the Navajo Nation, the people who are administering it have little or no interest in those people who have historically been the beneficiaries and that they will lose the money. I can't put it any more bluntly than that.

The CHAIRMAN. Now, you have described also what you consider the urgency of getting this resolved, because the State is withdrawing. Is that correct?

Senator BENNETT. Yes. That is correct.

The CHAIRMAN. Tell me where the assets are when the State withdraws at this point at the end of December?

Senator BENNETT. Well, I have a list of the assets that I will be happy to supply the Committee as to where they are and what might happen to them.

The CHAIRMAN. If you would do that for the record, I would appreciate that.

Senator BENNETT. Surely. We will do that.

The CHAIRMAN. Senator Udall?

Senator UDALL. Thank you, Senator Dorgan.

And thank you, Senator Bennett for coming forward and being available to answer questions on this.

From your description of the history, it sounds like the State of Utah has been involved in this since 1933.

Senator BENNETT. That is correct.

Senator UDALL. And so why are they withdrawing at this point in time? Clearly the way it was set up and then the way, is it your father that amended it in 1968?

Senator BENNETT. No. There have been clashes.

Senator UDALL. Whoever amended it, through this entire period of time, you are talking 75 years, you have seen the State of Utah be involved in this. And I assume that it takes some level of understanding of this whole industry and how to do this. Why at this point is Utah just kind of walking away from it?

Senator BENNETT. Well, I wish I could say that the relationship had been harmonious through the entire period of time, but it is not. There have been some clashes between the Utah Navajos, saying to the State, we would prefer it to go here and go there. And the State legislature in this last session just said, look, instead of continuing to deal with this, why don't we just back out and let it happen?

So it was an action on the part of the State legislature to say we want to simplify our lives, not have anything to do with this anymore and walk away from it.

Senator UDALL. But would you consider, from a financial perspective, a pretty sophisticated thing to manage, the assets that we are talking about here? Utah probably has over time developed some expertise in this area.

Senator BENNETT. I will not claim to have examined every aspect of the non-profit corporation, but I have looked into it to the extent of feeling comfortable with the governance that has been set up. And feel that it would be a responsible agency for handling these funds.

Senator UDALL. And you feel that the managers that the State of Utah had and the expertise that they brought to it, this non-profit, this Dineh Corporation would have the same kind of talent and expertise and everything in order to manage these funds, to make sure that the beneficiaries get a fair deal.

Senator BENNETT. They would contract with professional money managers, as the State has done. Yes, I think it would be handled properly.

Senator UDALL. Now, does the State taken an administrative fee?

Senator BENNETT. No.

Senator UDALL. They have never taken an administrative fee?

Senator BENNETT. Not that I know of.

Senator UDALL. So this would be a new development where you have the Navajo Nation taking an administrative fee.

Senator BENNETT. Correct. And the question of what constitutes a small fee is at the moment an unresolved number, and one of the circumstances that is here. I would refer you to the New Mexico State Legislature. I understand that they have taken a position in support of S. 1690 for some reason that I do not understand.

And I have been told that Senator Bingaman is in support of this legislation, but I better leave it at that for you to find out the full details because I didn't come with all of that directly ready to respond.

But because this does involved Navajos in all of the States—New Mexico, Arizona and Utah—I think there is some background in New Mexico that you might find useful.

Senator UDALL. Senator Bennett, did the Governor also endorse Utah getting out of this? Did he express any reservations in terms of the long-term history here?

Senator BENNETT. The Governor did endorse this, and the Governor urged the members of the corporation to meet with my staff, which they have at considerable length.

Senator UDALL. Thank you very much, Senator Bennett, for being here today and trying to clarify these issues.

Thank you, Chairman Dorgan.

The CHAIRMAN. Senator Franken?

**STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Mr. Chairman, thank you for convening this important hearing. While today's hearing focuses on the challenges of one tribe in the West, the issues we are facing and discussing today are much larger and impact tribes in my home State of Minnesota and tribes across the Country.

Appropriate management of tribal assets is vitally important to the long-term economic well being and self-sufficiency of all tribes. It is troubling to see persistent problems and disputes in the management of tribal funds and lands, and this hearing is just one step. I look forward to a continuing dialogue with tribal governments and thank you, Senator Bennett, for being here. I am sorry I missed the testimony. I was at another hearing.

I guess my one question for you, Senator, is in that the Utah legislature has passed legislation to remove itself from the role of trustee, what will happen if Congress doesn't act to designate a new trustee for the Utah Navajo trust fund?

Senator BENNETT. My understanding that under the present circumstance, the funds will be lost to the Utah Navajos. The money that is being spent—oh, I am sorry. I stand corrected.

The State will still be the trustee, but by virtue of the action of the State legislature, there will be no mechanism for the distribution of the funds. So the effect is the same, as I was about to say, that the funds will be lost to the Utah Navajos at that point.

Senator FRANKEN. Okay. So it is obvious that Congress has to act and we will do so in the best interest of the Utah Navajo.

Senator BENNETT. Yes, as I said at the beginning, this is a Utah problem that I think can be solved within Utah. But as the testimony indicated and as the history has indicated, there has been a fairly long history of, shall we say, tension between the Utah Navajos and the Navajo Nation, and it is not unusual here that the Utah Navajos would say we are in favor of this legislation, and the Navajo Nation would say we are not.

Senator FRANKEN. I understand that from the written testimony, and I thank all the witnesses, and thank you, Senator.

The CHAIRMAN. Senator Franken, thank you very much.

Senator Bennett, we appreciate your testimony, and you had visited with me previously asking for a hearing. I think it is useful to have all of this information on the record. And we will, as I indi-

cated, also seek the comments from the Administration on your legislation, and we will continue to consult with you as we proceed as well.

Senator BENNETT. Thank you very much, and I want to thank you for the prompt way you responded to my request. It is a courtesy that I thoroughly appreciate on the part of you personally and the Committee as a whole.

The CHAIRMAN. Senator Bennett, thank you very much.
[Whereupon, the Committee proceeded to other business.]

A P P E N D I X



SAN JUAN COUNTY COMMISSION

Bruce B. Adams - Chairman
Kenneth Maryboy - Vice-Chairman
Lynn H. Stevens - Commissioner
Rick M. Bailey - Administrator

Sent Via Electronic Mail

December 21, 2009

Rebuttal to December 9, 2009 Hearing of in the Senate Committee on Indian Affairs

Dear Chairman Dorgan, Vice Chairman Barrasso and Honorable Members of the Committee:

On behalf of our Navajo constituents, we write to alert you to fundamental changes made to the Navajo Nation Government that will deprive Utah Navajos of any representation in the Navajo Nation Council and render the assertions Navajo Vice President Ben Shelly made to you to be pure fiction.

On December 15, 2009, two Navajo Nation initiatives passed that will have a deep impact on Utah Navajos. The first initiative reduces the Navajo Nation Council from an 88 to 24 member legislature. Under the current 88 member Council, only 2 members represent all seven Utah Navajo Chapters. These 2 representatives will be absorbed into other existing chapters in Arizona or New Mexico, thereby depriving Utah Navajos of local representation in Window Rock.

According to the council reduction initiative, the Council has 60 days to devise and approve a 24-member council reapportionment plan detailing representation. If a plan is not approved by then, the Navajo Nation President will draft a plan. This is the same President who could not testify before you because he was on a forced leave of absence since October 26 due to an ongoing criminal investigation into multiple tribal contracts whose failures have cost the Navajo people millions of dollars.

The second initiative passed gives the Navajo president line item budget authority. If you designate the Navajo Nation as the trustee of the Utah Navajo Trust Fund, then the line item veto initiative will allow President Shirley, and all future Navajo executives, to rob Utah Navajos of the benefit of their trust income. The Nation's president would have the power to reassign funds from the Utah Navajo Trust to whatever he or she wants. One person in Arizona would effectively have a legislative fiat to do whatever they like with an income generated on land belonging to Utah Navajos that Congress has determined since 1933 should be for the exclusive benefit of Utah Navajos.

The Navajo Nation already gets 100% of the royalties from 77 oil and gas wells throughout the Utah section of the reservation. The Utah Navajo people only get 37.5% royalty on 14 wells in the Aneth extension. These 14 wells already provide the Navajo Nation with a 62.5% royalty, but it is obvious the tribal government wants more. If you capitulate to the Navajo Nation's effort to wrangle control of the Utah Navajo Trust Fund, you will effectively be giving the Nation 100% of the royalty from resources that Congress determined long ago should benefit Utah Navajos.

The danger and inequity of this situation are obvious. If the Navajo Nation is allowed to control this trust fund, these precious and limited resources of the Utah Navajo people will be held hostage by an opaque system that lacks accountability to, or representation by, Utah Navajos. The current instability of the Navajo Nation is the just the starter ingredient for this recipe for disaster.

We urge you to please support S.1690. The federal laws that govern non-profit organizations are more than adequate to ensure the transparency and accountability in the administration of the Utah Navajo Trust. The current instability of the Navajo Nation government, and its lack of representation of Utah Navajos, threaten to deprive Utah Navajos of the only means of funding that has always been, and should remain, their own.

Very truly,

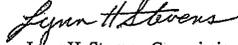
THE SAN JUAN COUNTY COMMISSION



Bruce B. Adams, Chairman

Not available for signature

Kenneth Maryboy, Commissioner



Lynn H. Stevens, Commissioner



DR. JOE SHIRLEY, JR.
President

BEN SHELLY
Vice President

October 7, 2009

The Honorable Bob Bennett
United States Senate
431 Dirksen Senate Office Building
Washington DC 20510-4403
Phone: (202) 224-5444

Dear Senator Bennett:

Yá'át'ééh! I recently learned of your legislation introduced into the United States Senate which would designate the "Utah Diné Corporation" as the new trustee of the Utah Navajo Trust Fund. I wish that you and your staff had consulted with the Navajo Nation prior to introducing this legislation, and had obtained the consent of the Navajo Nation for proposed legislation that directly impacts Navajo Nation lands, resources and citizens. Unfortunately, your legislation runs counter to our position.

The 1933 Act that created the Utah Navajo Trust Fund was based on an agreement among three parties: the Navajo Nation, the U.S. Department of the Interior, and the State of Utah. The 1933 Act and the 1968 amendments were passed with the consent and support of those parties. Your proposed amendments to the 1933 Act, however, are not supported by the Navajo Nation or the Office of Special Trustee at the Department of the Interior that, instead, "supports the Nation's desire to manage its own account." (Please see June 19, 2008, testimony of Ross O. Swimmer, Special Trustee for American Indians, before the House Committee on Resources; see also my June 19, 2008 testimony before the House Committee on Resources.)

According to testimony from representatives of the Utah Governor's Office at the June 19, 2008, hearing, the State of Utah does not officially support the selection of any trustee over another. Given that none of the parties to the original agreement have consented to your proposed legislation, it is unclear why your legislation would designate the Utah Diné Corporation as the new trustee of the UNTF.

As background, the UNTF is capitalized with royalties from oil and gas leases on Navajo Nation lands in Utah and held in beneficial title by the Navajo Nation. Under the 1933 Act, as amended, 62½ percent of those royalties are to be used for the benefit of all Navajo Nation citizens, including those Navajo citizens residing in Utah. 37½ percent of the royalties are to be used solely for the benefit of Navajo citizens residing within San Juan County in the State of Utah. The Navajo Nation is the fiscal agent for 100 percent of the royalties from its own oil and gas leases, including for those royalties that are directed to the UNTF.

Because these are all royalties from Navajo Nation tribal leases, they may be used only for the benefit of recognized members of the Navajo Nation. Indeed, it is precisely the political status as a Navajo citizen that entitles a beneficiary to assistance from the UNTF.

It is the Navajo Nation's desire that it intends to be the new trustee of the Utah Navajo Trust Fund, consistent with our right over our land, resources and citizens. This is the Navajo Nation's official position as adopted by Resolutions IGRMY-107-08 and IGRF-24-09 of the Navajo Nation Council's Intergovernmental Relations Committee (See attached).

As to the characterization made in your Sept. 22, 2009, press release, "Bennett Introduces Bill to Relieve State from Navajo Trust Fund Responsibilities," to the extent that elected officials of the Navajo Nation purport to form the Utah Dineh Corporation in their official capacities and on behalf of Navajo citizens, they are acting *ultra vires* and in violation of Navajo Nation law.

Contrary to unsubstantiated reports, the Navajo Nation does not have a history of distributing or siphoning off Navajo Nation or federal funds in violation of federal law. As the fiscal agent of the royalties that capitalize the UNTF, the Navajo Nation has never re-directed the 37½ percent of oil and gas royalties intended for the UNTF to its general fund or any other fund. On the contrary, the Nation is committed to keeping the 37½ percent of the royalties from its Utah oil and gas leases for the sole benefit of its citizens in San Juan County, Utah, and has proposed federal legislation to accomplish that. Nonetheless, the Nation has both the legal right and the obligation to ensure that Navajo funds and Navajo citizens are protected.

It is my understanding that the Utah Dineh Corporation has no independent capital or resources and no history of trust fund management. The legislation you introduced is an invitation to further mismanagement and misappropriation of UNTF monies and would leave Navajo citizens with no legal remedy in the event of a breach of trust. Accordingly, the Navajo Nation cannot support Utah Dineh Corporation being designated as the new trustee of the UNTF.

Senator, I am available for further dialogue with you or your staff, and it is my hope that you will withdraw this legislation in order to support legislation designating the Navajo Nation as the new trustee of the UNTF. You may contact me directly at 928-871-7915, or through my representative, Sharon Clahchischillage, Executive Director, Navajo Nation Washington Office, at 202-682-7390.

Sincerely,


Dr. Joe Shirley, Jr., President
THE NAVAJO NATION

Attachment

TESTIMONY OF
ROSS O. SWIMMER
SPECIAL TRUSTEE FOR AMERICAN INDIANS
U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
OVERSIGHT HEARING
ON
THE UTAH NAVAJO TRUST FUND
JUNE 19, 2008

Good morning Mr. Chairman, Ranking Member, and members of the Committee. It is a pleasure to be here today to discuss the Navajo Nation Trust Fund. We understand that the Navajo Nation would like to take over and administer its fund. The Department supports the Nation's desire to manage its own account.

Background

In 1933, Congress established the Utah Navajo Trust Fund (UNTF) through legislation (47 Stat.1418), which designated Utah as the trustee. The corpus of the UNTF comes from 37.5 percent of net royalties derived from exploitation of oil and gas deposits under the Navajo Reservation's Aneth Extension. According to the statute, the 37.5 percent net royalties were to be paid to the State of Utah, which was to be used for the health, education and general welfare of the Indians residing in the Aneth Extension. In 1968, Congress expanded the beneficiary class to include all Navajo Indians living in San Juan County, Utah (Pub.L. 90-306, 82 Stat. 121).

In approximately 1959, oil and gas wells in the Aneth Extension began producing in paying quantities, and the United States Department of the Interior, through oil and gas mining leases on the Navajo tribal land, began collecting oil and gas royalties. The leases are between the Navajo Nation and the producer, and are subject to approval by the Secretary of the Interior.¹ The State of Utah is not a party to the tribal leases.

Currently, payments from lessees are sent directly to the Navajo Nation. The Mineral Management Service (MMS) receives the Report of Sales and Royalty Remittance (Form MMS-2014) from the royalty payor and prepares a monthly summary of the reported royalties for 21 Aneth leases. MMS sends the monthly summary to the Navajo Regional Office of the Bureau of Indian Affairs, the Utah Navajo Trust Fund, and the Navajo Nation.

The Navajo Nation collects the Aneth lease royalties directly and remits 37.5 percent to the UNTNF account administered by the State of Utah. The State, upon receipt of each check, deposits it into the Trust Fund and invests the unused royalty funds according to rules set forth in Utah's statutes.

¹ See, e.g., 25 U.S.C. § 396a (provision in 1938 Indian Mineral Leasing Act allowing tribe to lease unallotted Indian land for mining purposes, subject to Secretary of Interior approval); 25 C.F.R. Pt. 211 (Leasing of Tribal Lands for Mineral Development).

In recent years, Utah's administration of the UNTF has been criticized by some in the Navajo Nation, and there is currently litigation pending between beneficiaries of the trust and the State of Utah over the management of the trust. It is our understanding the State of Utah now wishes to sunset its administration of the UNTF, and the Utah legislature has introduced legislation to that end. If the State of Utah will no longer act as the trustee of the UNTF, the question arises who should administer this fund. Some have suggested that the Department of the Interior – specifically the Office of the Special Trustee for American Indians (OST) – might be the most appropriate entity to assume this function, and we have been invited to testify before this Committee to express our views on this suggestion. We believe it is more appropriate for the Navajo Nation to administer its fund.

A Successor Trustee for the UNTF

In the view of the Department, we would not be the appropriate entity to take over the trust functions currently being performed by the State of Utah, for a number of reasons. OST is constrained by statute and regulation as to what monies it can receive into its system and how those monies can be invested (25 USC §161 et seq.). The Special Trustee is not permitted to take money for investment that is not held as Indian or Tribal Trust money, and all current OST trust monies are invested in public debt securities.

We have no capacity to expend those funds to carry out the intent of the 1933 Act. These Utah Navajo trust funds are designated for a particular purpose; the health, education and general welfare of all Navajo Indians living in San Juan County, Utah and for Indians residing in the Aneth Extension. Interior is not aware of how decisions have been made to satisfy the intent of the trust.

We believe it is more appropriate for the Navajo Nation or a nonprofit organization made up of Navajo citizens to contract with a private investment firm for money management and then create a process whereby the money collected and investment earned could be used to further the intent of the 1933 Act. Additionally, the Department is aware of the Navajo Nation's position expressing its desire to manage the trust and disburse the funds to the Utah Navajo beneficiaries consistent with the current disbursement and percentages. The BIA, consistent with our government-to-government relationship with the Navajo Nation, acknowledges and respects the position of the Navajo Nation as it pertains to the Utah Navajo Trust Fund.

Finally, we suggest that no action be taken to relieve the State of Utah from its burden as trustee until the current litigation is resolved. The damages phase for failure to account and invest funds properly is still underway. Otherwise, the U.S. should ask to be indemnified by Utah for action the court might take.

This concludes my statement. I would be happy to answer any questions the Committee may have.

The Legislative Branch
The Navajo Nation



Lawrence T. Morgan
Speaker of the Navajo Nation Council

September 24, 2009

The Honorable Bob Bennett
United States Senate
431 Dirksen Building
Washington, DC 20510-4403

Dear Senator Bennett:

As you know, the Utah Navajo Trust Fund is a private trust fund of the State of Utah. The majority of the money funding this account comes from oil royalties from the Aneth Extension of the Navajo Indian Reservation. These royalties are paid to the State for the health, education, and general welfare of the Navajo Indians residing in San Juan County, Utah.

Prior to June 30, 2008, the Trust Fund had oversight authority by the state of Utah. During the 2008 General Session of the Utah Legislature, House Bill 352 was passed which recognized the repeal of the Utah Navajo Trust Fund. The bill moved responsibility to fulfill the liabilities and obligations of the repealed Utah Navajo Trust Fund to the Department of Administrative Services and provided for a transition process until Congress designates a new recipient of Utah Navajo royalties.

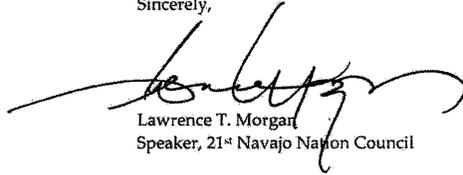
To this end, the Navajo Nation delivers to you the official positions of the 21st Navajo Nation Council and that of the Navajo Utah Commission. In short, the Navajo Nation requests the U.S. Congress designate the Navajo Nation as the new trustee of the Utah Navajo Trust Fund.

Moreover, we understand that you have recently introduced legislation that assigns the new trustee responsibility to an entity other than the Navajo Nation. We implore you to reconsider your proposal as this goes against the official position of the Navajo Nation and the standing trust responsibility between the U.S. Government and the Navajo Nation.

Given that these are Navajo Nation resources within Navajo Nation land and the sale of the resources produce royalties which appropriately should be made available to Navajo Nation members, it would be consistent with the centuries old federal trust responsibility and the historical commitment of the United States to foster and develop self determination of all Indian peoples, and appropriately in this particular instance, the Diné people feel it is imperative that Congress designate the Navajo Nation the recipients and administrators of this trust fund. The thought that royalties received from the sale of resources of the Navajo Nation people should be administered in a manner that excludes the representation of the Navajo people through their government is quite frankly unacceptable.

Should you have any questions, please do not hesitate to contact me . Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lawrence T. Morgan', with a long horizontal flourish extending to the right.

Lawrence T. Morgan
Speaker, 21st Navajo Nation Council

attachments: IGR Resolution IGRF-24-09
NUCMAY445-08
NUCAUG-455-08

RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL

21ST NAVAJO NATION COUNCIL - THIRD YEAR, 2009

AN ACTION

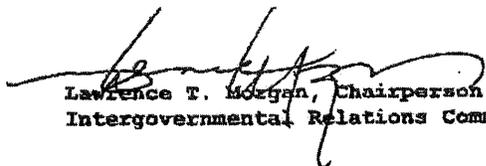
RELATING TO INTERGOVERNMENTAL RELATIONS; APPROVING AND RECOMMENDING DRAFT FEDERAL LEGISLATION TO PERMANENTLY REPEAL THE ACT OF MARCH 1, 1933 (47 STAT. 1418), ENTITLED "AN ACT TO PERMANENTLY SET ASIDE CERTAIN LANDS IN UTAH AS AN ADDITION TO THE NAVAJO INDIAN RESERVATION, AND FOR OTHER PURPOSES," AND TO PERMANENTLY REPEAL THE ACT OF MAY 17, 1968 (PUBLIC LAW 90-306), WHICH AMENDED SAID 1933 ACT, AND TO DESIGNATE THE NAVAJO NATION AS THE NEW TRUSTEE OF THE UTAH NAVAJO TRUST FUND, AND TO PERMIT THE EXCHANGE OF UTAH SCHOOL TRUST LANDS LOCATED WITHIN THE BOUNDARIES OF THE NAVAJO NATION RESERVATION IN THE STATE OF UTAH FOR UNRESERVED AND NONMINERAL PUBLIC LANDS LOCATED IN THE STATE OF UTAH

BE IT ENACTED:

1. The Navajo Nation hereby approves and recommends the draft federal legislation, attached as Exhibit A, "To permanently repeal the Act of March 1, 1933 (47 Stat. 1418), entitled "An Act to permanently set aside certain lands in Utah as an addition to the Navajo Indian Reservation, and for other purposes," and to permanently repeal the Act of May 17, 1968 (Public Law 90-306), which amended said 1933 Act, and to designate the Navajo Nation as the new trustee of the Utah Navajo Trust Fund, and to permit the exchange of Utah school trust lands located within the boundaries of the Navajo Nation Reservation in the State of Utah for unreserved and nonmineral public lands located in the State of Utah.
2. The Navajo Nation hereby authorized the submission of the federal legislation to Congressman Jim Matheson, D-Utah, for sponsorship and authorizes the President of the Navajo Nation, the Speaker of the Navajo Nation Council, and their designees to advocate for the adoption of the draft federal legislation, as set forth in Exhibit A.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 5 in favor, 1 opposed, this 10th day of February, 2009.


Lawrence T. Morgan, Chairperson
Intergovernmental Relations Committee

Motion: Young Jeff Tom
Second: Thomas Walker, Jr.

AN ACT

To permanently repeal the Act of March 1, 1933 (47 Stat. 1418), entitled "An Act to permanently set aside certain lands in Utah as an addition to the Navajo Indian Reservation, and for other purposes," and to permanently repeal the Act of May 17, 1968 (Public Law 90-306), which amended said 1933 Act, and to designate the Navajo Nation as the new trustee of the Utah Navajo Trust Fund, and to permit the exchange of Utah school trust lands located within the boundaries of the Navajo Nation Reservation in the State of Utah for unreserved and nonmineral public lands located in the State of Utah.

I. Section One.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Act of March 1, 1933 (47 Stat. 1418) and amendments to said 1933 Act by the Act of May 17, 1968 (Public Law 90-306) are both hereby repealed in their entirety; provided, nothing in this Act shall relieve the State of Utah of any responsibility for any breach of its fiduciary duties as the former trustee of the Utah Navajo Trust Fund or for any damages or other relief awarded in the past, present, or future as a result of any such breach.

II. Section Two.

That thirty seven and one half percent (37 ½ %) of all oil and gas royalties generated from Navajo Nation oil and gas leases on lands added to the Navajo Nation under the Act of March 1, 1933 (47 Stat. 1418), previously paid to, held, and administered by the State of Utah, shall be invested, managed, and administered by the Navajo Nation in trust for the benefit of registered members of the Navajo Nation who reside in San Juan County, Utah, according to the following provisos:

a. Beneficiaries

- (1) The 37 ½ % of royalties from all Navajo Nation oil and gas leases on Reservation lands acquired under the Act of March 1, 1933 (47 Stat. 1418) shall be placed in a "Utah Navajo Trust Fund" (hereinafter "trust fund"), said trust fund to be invested, managed, and administered for the health, education, and general welfare of registered members of the federally recognized Indian tribe, the Navajo Nation, who reside in San Juan County, Utah (hereinafter "beneficiaries"). The sixty two and one half percent (62 ½ %) of all royalties generated by oil and gas production from leases on Reservation lands acquired under the 1933 Act shall continue to go to the Navajo Nation.
- (2) In consultation with Navajo Environmental Protection Agency, a reasonable portion of the annual trust fund budget shall be set aside during the Navajo Nation annual budget process to pay for mitigating the environmental impacts and other

negative impacts associated with the development and production processes of those oil and gas resources located on Reservation lands acquired under the Act of March 1, 1933 (47 Stat. 1418). Special funds shall be set aside during the Navajo Nation annual budget process to assist with infrastructure development in those areas of Navajo Indian Country most impacted by gas and oil development on Reservation lands acquired under the 1933 Act (47 Stat. 1418)

- (3) Navajos living outside of Navajo Indian Country in San Juan County, Utah, shall remain eligible for educational assistance from the trust fund. All existing and future health facilities funded by the trust fund and any other facilities funded by the trust fund which are located outside of Navajo Indian Country shall continue to be operated for the benefit of all Navajos. Capital outlay funding and housing assistance shall not be provided from the trust fund for projects locating outside of Navajo Indian Country or outside the State of Utah.

b. Trustee

The Navajo Nation Controller shall be the trustee of the trust fund and shall invest, manage, and administer the trust fund in accordance with the highest standards of fiduciary duty. The trustee shall adhere to the "Prudent Investor Rule" and shall comply with all applicable Navajo Nation and federal law and the general principles of the federal and state common law of trusts.

c. Investment Manager

- (1) In consultation with the Investment Committee of the Navajo Nation and the Navajo Nation Controller, the Budget and Finance Committee of the Navajo Nation Council shall approve selection of a private investment manager for the trust fund in accordance with applicable Navajo Nation and federal law. Through regular oversight, the trustee shall insure that the investment manager invests and manages the trust in accordance with the highest standards of fiduciary duty including the Prudent Investor Rule and other applicable Navajo Nation and federal law and the general principles of the common law of trusts.

- (2) In accordance with industry standards, the investment manager shall regularly provide a portfolio of any investments of the trust fund to the trustee and trust administrator, and to any beneficiary on request.

d. Trust Administrator

- (1) The trust fund shall be administered by the Office of the Navajo Utah Commission which shall be the trust administrator, and which shall be centrally located in Montezuma Creek on the Navajo Nation Reservation in San Juan County, Utah. All proceeds from the sale of administrative offices currently owned by the trust fund shall be utilized for the construction of offices for the trust administrator in Montezuma Creek.
 - (2) The trust administrator will administer the trust fund in accordance with rules, regulations and standards to be recommended by the Office of the Trust Administrator, with review by the Navajo Nation Department of Justice, the Navajo Nation Office of the Controller, and the Office of Legislative Counsel and which shall require approval by the Budget and Finance Committee of the Navajo Nation Council upon the recommendation of the Navajo Utah Commission.
 - (3) Local control of the budgeting of all trust funds shall be maintained through a seven member Trust Fund Board (hereinafter "board") consisting of one representative appointed by each of the seven Navajo Nation Chapters who have members who are beneficiaries (hereinafter "Utah Chapters"). The board shall recommend to the Navajo Nation Council an annual budget developed by the trust administrator in accordance with the requirements of this Act and the governing rules, regulations, and standards of the trust administrator.
 - (4) Reasonable administrative costs shall be budgeted for and paid out of the annual trust fund budget. There shall annually be an independent certified audit of the trust fund accounting and administration which shall be reviewed and monitored by the Navajo Nation Office of Auditor General. In addition to a copy of each annual audit, the investment manager portfolio and all other trust fund records shall be kept in the offices of the trust administrator in Montezuma Creek and shall be made available to the beneficiaries at no cost upon request. Records of trust fund administration shall be made available to the public in accordance with the Navajo Nation Privacy Act, 2 N.N.C. § 81 *et seq.*
- e. Principal, Income and Duration of Trust Fund

Recognizing the importance of maintaining the trust fund for present and future generations of beneficiaries:

- (1) The trust fund shall be invested, managed and administered to provide adequate principal for the trust fund to exist in perpetuity, and to provide income to pay for

health, education, housing and infrastructure development, and other permissible benefits under this Act for present and future generations of beneficiaries.

- (2) Any funds identified as belonging to the former Utah Navajo Trust Fund and held by the State of Utah shall be promptly paid over to the trustee by the State of Utah along with any interest or income derived from said funds. Any assets on state lands which are owned in whole or in part by the trust fund shall be disposed of based on negotiations between the State of Utah, trustee, and the Bureau of Indian Affairs, result of said negotiations which shall provide either for fair market value purchase of the assets by the State of Utah, or for acquisition of the state lands in question by the Navajo Nation.
- (3) In consultation with the beneficiaries, trust administrator, and investment manager, trustee shall authorize an initial principal amount to be held in trust ("principal"), and shall adopt rules and standards for making additional contributions to principal, and for authorizing future expenditures of principal and trust income.
- (4) Said rules and standards may provide for hypothecation or pledging of future trust income for projects of direct benefit to the beneficiaries; provided, any rules and standards allowing for the invasion of principal shall ensure repayment or restoration of principal, and shall ensure that a portion of all profits derived from activities funded by principal are applied to repayment or enrichment of principal.

III. Section Three.

That, pursuant to 1 N.N.C. § 554 (B) of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, for any claim arising from the investment, management or administration of the trust fund, is subject to the waiver of Navajo Nation sovereign immunity in Navajo Nation courts and shall be subject under this Act to the full jurisdiction of Navajo Nation courts for any such claim, subject to applicable Navajo Nation and federal law.

IV. Section Four

That, in consultation with the Navajo Nation and the Bureau of Indian Affairs, the State of Utah may relinquish such tracts of school trust lands located in the State of Utah on the Navajo Nation Reservation as it sees fit and shall have the right to select other unreserved and nonmineral public lands contiguously or noncontiguously located within the State of Utah, equal in area and approximately of the same value to that relinquished, said lieu selections to be made in the same manner as provided for in the Enabling Act of July 16, 1894 (28 Stat. L. 107), except as to the payment of fees or commissions which are hereby waived.

The Legislative Branch
The Navajo Nation

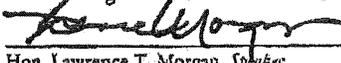


Lawrence T. Morgan
Speaker of the Navajo Nation Council

February 3, 2009

MEMORANDUM

TO : Hon. Members
Intergovernmental Relations Committee

FROM : 
Hon. Lawrence T. Morgan, Speaker
21st Navajo Nation Council

SUBJECT : ASSIGNMENT OF LEGISLATION

Pursuant to 2 N.N.C. § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Intergovernmental Relations Committee of the Navajo Nation Council:

Legislation No. 0057-09

An Action

Relating to Intergovernmental Relations: Approving and Recommending Draft Federal Legislation to Permanently Repeal the Act of March 1, 1933 (47 Stat. 1418), Entitled "An Act to Permanently Set Aside Certain Lands in Utah as an Addition to the Navajo Indian Reservation, and For Other Purposes," and to Permanently Designate the Navajo Nation as the New Trustee of the Utah Navajo Trust Fund, and to Permit the Exchange of Utah School Trust lands Located Within the Boundaries of the Navajo Nation Reservation in the State of Utah for Unreserved and Nonmineral Public Lands Located in the State of Utah.

As the Committee assigned to consider the legislation, Legislation No. 0057-09 must be placed on the Intergovernmental Relations Committee agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0057-09

cc: Hon. Joe Shirley, Jr., *President*
The Navajo Nation
Louis Deneosovic, *Attorney General*
Mark Grant, *Controller*
Hon. Francis Redhouse, *Council Delegate (Sponsor)*
File

*The Legislative Branch
The Navajo Nation*



*Lawrence T. Morgan
Speaker of the Navajo Nation Council*

**RESOLUTION OF THE
NAVAJO UTAH COMMISSION
OF THE NAVAJO NATION COUNCIL**

NUCMAY-445-08

**APPROVING AND RECOMMENDING THE 2008 POSITION STATEMENT OF
NAVAJO NATION ON FUTURE OF UTAH NAVAJO TRUST FUND**

Whereas:

1. The Navajo Utah Commission was established by the Intergovernmental Relations Committee of the Navajo Nation Council by Resolution No. IGRJN-134-92 to develop and maintain efficient governmental services to the Navajo People residing on the "Utah Strip" of the Navajo Nation; and
2. In 1933 the United States Congress passed an Act of March 1, 1933 ("1933 Act") Pub. L. No. 403, 47 Stat. 1418 (1933), which restored the Paiute Strip and added land between Montezuma Creek and the Colorado border to the Aneth area of the Utah portion of the Navajo Reservation; and
3. The 1933 Act provided that the State of Utah would receive 37 ½ % of oil and gas royalties derived from Navajo Tribal Leases on newly added land to be administered by the State of Utah on behalf of Navajos domiciled on the newly added lands of the Navajo Reservation, thereby establishing the Utah Navajo Trust Fund and designating Utah as trustee of the Utah Navajo Trust Fund; and
4. In 1968, Congress amended the 1933 Act, and redefined the purposes of the trust and the class of beneficiaries to provide "for the health, education and general welfare of the Navajo Indians residing in San Juan County;" and
5. The State of Utah wishes to resign from its role as federally appointed trustee of the Utah Navajo Trust Fund, but cannot do so until a new trustee is designated by federal legislation; and
6. The Navajo Nation is an independent sovereign nation with the right to self-determination, autonomy and self-government in matters relating to its internal and local affairs, as well as a right to the ways and means for financing its autonomous functions; and

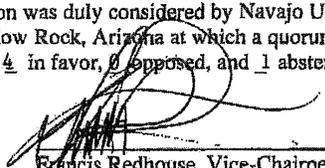
7. Designation of a new trustee should be the result of government to government negotiations between representatives of the Navajo Nation, the federal government and the State of Utah; and
8. In order to ensure the best possible outcome for the beneficiaries of the Utah Navajo Trust Fund and to strengthen and ensure the economic, political and social rights of the Navajo Nation, the Navajo Nation must establish a consistent policy and position for negotiations on the future of the Utah Navajo Trust Fund and designation of a new trustee.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Utah Commission hereby approves the *2008 Position Statement of the Navajo Nation on the Future of the Utah Navajo Trust Fund*, attached hereto as Exhibit A, and hereby recommends to the Navajo Nation Intergovernmental Relations Committee that the *2008 Position Statement of the Navajo Nation on the Future of the Utah Navajo Trust Fund* be adopted as the official policy and position of the Navajo Nation in negotiations for the future of the Utah Navajo Trust Fund and designation of a new trustee.

CERTIFICATION

We, hereby certify that the foregoing resolution was duly considered by Navajo Utah Commission at a duly called meeting in Window Rock, Arizona at which a quorum was present and the same was passed by a vote of 4 in favor, 0 opposed, and 1 abstention, this 14th day of May, 2008.


Francis Redhouse, Vice-Chairperson
NAVAJO UTAH COMMISSION

MOTION: Lena Manheimer
SECOND: Russell Gould

2008 Position Statement of the Navajo Nation on the Future of the Utah Navajo Trust Fund

History of Utah Navajo Trust Fund.

Executive Order of May 17, 1884, "withheld from sale and settlement and set apart as a reservation for Indian purposes" land in the Utah Territory that lay south of the San Juan and Colorado rivers. This land has been historically and continuously occupied by Navajo people since long before the captivity of Navajos in 1864. Four years before Utah was awarded statehood, Executive Order of November 19, 1892, put Navajo lands in the Utah Territory west of the 110° parallel ("the Paiute Strip") back in the public domain. Lands in the Utah Territory east of the 110° parallel remained part of the Navajo Reservation. Executive Order of May 15, 1905, added the Aneth area in Utah to the Navajo Reservation. In 1908, the Department of the Interior withdrew the Paiute Strip from the public domain for use of the Navajo. In 1922, the Department of the Interior again put the Paiute Strip back into the public domain.

In 1930 and 1931, the Navajo Nation Council asked the Commissioner of Indian Affairs to negotiate on behalf of Navajo Nation to permanently restore the Paiute Strip to the Navajo Reservation, based on the previous set aside in the Executive Order of 1884 and historic Navajo occupation of the area. On July 7 and 8, 1932, at its annual meeting in Fort Wingate, the Navajo Tribal Council gave its support to proposed federal legislation which would restore the Paiute Strip and add land between Montezuma Creek and the Colorado border to the Aneth area of the Reservation. This legislation was passed by the United States Congress in 1933, as Pub. L. No. 403, 47 Stat. 1418 (1933) (hereafter "1933 Act").

The 1933 Act was the result of an agreement between three parties: the Navajo Nation, the State of Utah, and the United States Government. After Utah citizens voiced opposition to the proposed addition to the Navajo Reservation, the Commissioner of Indian Affairs negotiated on behalf of the Navajo Nation with a Utah committee made up of San Juan County representatives. Several concessions were made to the Utah committee in order to gain its support for the 1933 Act, including prohibitions on further Indian homesteads or Indian allotments in San Juan County, fencing of Indian allotments outside the new reservation boundaries, fencing of the Aneth extension's northern boundary, and agreement that state game laws would apply to off reservation hunting by Navajos.

The 1933 Act provided that "should oil or gas be produced in paying quantities," the State of Utah would receive 37 ½ % of net oil and gas royalties derived from Navajo Tribal Leases on the newly added Navajo Trust Lands. In return, the State of Utah would act as trustee of the funds, and expend the funds "in the tuition of Indian children in white schools and/or in the building of roads across [the newly added lands], or for the benefit of the Indians residing therein." The 1933 Act also provided that Utah could exchange state school trust lands inside the new Reservation

boundaries for equivalent federal lands and that any fees or commissions for the exchange would be waived.

In 1968, Congress amended the 1933 Act, redefining the purposes of the trust and expanding the class of beneficiaries. The amended legislation provided that the trust be used "for the health, education and general welfare of the Navajo Indians residing in San Juan County." The 1968 Amendments also provided that trust funds be used for projects and facilities in San Juan County that were not of exclusive benefit to the designated beneficiaries provided that the benefits to the beneficiaries were in proportion to the amount of trust funds used for the projects and facilities.

Over the course of the last 75 years, through legislation, executive acts and other governmental conduct, the State of Utah accepted its federally appointed role as trustee of the Utah Navajo Trust Fund (UNTF). During Utah's tenure as trustee, funds from UNTF have been used to create and/or acquire significant fixed assets on state lands. These assets include two medical buildings, a government services building, two housing subdivisions, and a fairgrounds.

Substantial evidence exists that Utah failed to properly administer Utah Navajo Trust Funds over many decades, and Utah has yet to make a full and complete accounting of its administration and use of trust funds, as required by law. Utah, as UNTF trustee, has been the defendant in several lawsuits. In 1991, serious allegations of mismanagement and misappropriation of trust funds by Utah and other entities using trust monies were made in a 1991 report by the State of Utah, Legislative Auditor General. In Pelt v. Utah, the State of Utah is the defendant in a class action law suit brought on behalf of UNTF beneficiaries over these issues.

In 2007, the State of Utah announced that it wished to resign as trustee of UNTF. On March 17, 2008, bills HCR4 and HB352 ("Sunset Act") were signed into law. This legislation purports to cause the resignation of Utah from its role as federally appointed trustee of UNTF effective June 30, 2008. The Sunset Act provides that from March 17 until May 5, 2008, the UNTF administrator can only commit to new projects capped at \$100,000, and only to projects that will be completed by January 1, 2010. From May 5 until June 30, the UNTF administrator cannot commit any monies to new projects. After July 1, 2008, all assets of the trust after liabilities are paid will be placed in a New Fund created by the Utah Division of Finance. The New Fund will be managed according to the Utah State Money Management Act. No disbursements will be made from this fund except to pay for maintenance of the fixed assets of the expired UNTF and to continue any educational scholarships awarded through June 30, 2010. The Sunset Act also provides that the State of Utah shall purchase the fixed assets of the Navajo Trust Fund, existing as of May 5, 2008, consistent with the trust obligations of the state in "arms length" transactions and providing "fair market compensation" to the trust. Based on provisions in the Sunset Act and Utah Code 63-55-104 and 63-55-263, the UNTF Administrator probably can continue to function until January 1, 2010. It is expected that the UNTF will maintain a small staff to administer existing UNTF projects until they are completed.

The Fiscal Year 2008 budget for UNTF is \$3,879,300.00. Administrative costs are approximately 14.5% of the entire budget at \$551,800.00. \$650,000.00 is earmarked for chapter projects. Nearly \$595,000.00 is budgeted for higher education, primarily scholarships. The remainder of the 2008 budget goes to a variety of specific projects, as well as providing matching grants for housing construction.

The Navajo Nation is an Independent Sovereign Nation.

The Navajo Nation is an independent sovereign nation. The Navajo Nation has the right to self-determination, to freely determine its own political status and to freely pursue its economic, social and cultural development. In exercising its right to self-determination, the Navajo Nation has the right to autonomy and self-government in matters relating to its internal and local affairs, as well as a right to the ways and means for financing its autonomous functions.

In 1933, when the Navajo Utah Trust Fund was created, the Navajo Nation tribal government was only 10 years old. Today, the Navajo Nation is the largest and most sophisticated American Indian government. The Navajo Nation has developed a substantial body of both statutory and decisional law to complement the fundamental laws of the Dine'. The Navajo Nation has a well-developed annual comprehensive budgeting process for appropriation of all Navajo Nation funds which should be followed in utilization of all Navajo Nation generated funds, including the proceeds from the Utah Navajo Trust Fund.

1. New Federal Legislation Affecting the Utah Navajo Trust Fund Should Be the Result of Government to Government Negotiations Between Navajo Nation, United States Government, and State of Utah and Should Require Consent of Navajo Nation.

Federal legislation amending or repealing the 1933 Act and designating a new trustee for the Utah Navajo Trust Fund should be the result of good faith government to government negotiations between the Navajo Nation, the State of Utah, and the United States Government. Consistent with the Navajo Nation's status as an independent sovereign nation, any federal legislation that affects royalties generated by Navajo Nation Trust Lands must be made with the consent of the Navajo Nation.

2. Navajo Utah Commission Should Be the Authorized Navajo Nation Representative in Negotiations for New Federal Legislation and Selection of a New Trustee.

The Navajo Utah Commission (NUC) is the appropriate representative for the Navajo Nation in negotiations over the future of the Utah Navajo Trust Fund. The Intergovernmental Relations Committee should amend the NUC plan of operation to authorize NUC to represent the Nation in negotiations with the State of Utah and the federal government over the future of the UNTF. NUC

shall negotiate in good faith on behalf of the Navajo Nation consistent with this Position Statement. The Office of the Attorney General, Office of the President, Office of Legislative Counsel, and Office of the Controller shall serve as official advisors to the NUC and shall provide appropriate technical assistance, support, advice and counsel during negotiations.

3. Beneficiaries Should Remain "Navajos in San Juan County" Subject to Certain Conditions.

The beneficiaries of the Utah Navajo Trust Fund should remain Navajos in San Juan County, through the Navajo Nation annual budget process. Provided; that special consideration should be made in the annual budget process to use Utah Navajo Trust Fund proceeds for the benefit of Navajos residing within the Aneth Extension for mitigation of environmental impacts and other negative impacts associated with the development and production processes of oil and gas resources located within the Aneth Extension, and for development of needed infrastructure. Navajos living outside of Navajo Indian Country shall be eligible for educational assistance from Utah Navajo Trust Fund proceeds. Capital outlay funding and housing assistance shall not be provided from Utah Navajo Trust Fund proceeds for projects locating outside of Navajo Indian Country. Provided; that all existing and future health facilities funded by Utah Navajo Trust Fund proceeds and any other facilities funded by Utah Navajo Trust Fund proceeds located outside of Navajo Indian Country shall continue to be operated for the benefit of all Navajos.

4. Consultation of Beneficiaries.

Negotiations to designate a new trustee shall be in close consultation with the existing beneficiaries through the chapters, keeping the best interests of the beneficiaries in mind at all times.

5. New Federal Legislation for Allocation of Royalties Shall Maintain the Status Quo.

The beneficiaries of the Utah Navajo Trust shall continue to receive the benefit of 37 ½% of all royalties generated by oil and gas production from leases on Reservation lands added in 1933. 62 ½% of all royalties generated by oil and gas production from leases on Reservation lands added in 1933 shall continue to go to the Navajo Nation.

6. Disposition of Trust Assets on State Lands.

Negotiations must address UNTF assets on state lands and provide either for fair market value purchase of the assets by Utah, or for acquisition of the state lands in question by Navajo Nation. The Sunset Act provides that the State of Utah Division of Facilities Construction and Management can purchase UNTF assets on state land. Because acquisition of state lands by Navajo Nation could implicate a land exchange involving the federal government, all three governments should be involved in negotiations to dispose of these assets and/or convey,

exchange, or purchase lands. In addition, negotiations currently under way to exchange Utah School Trust Lands in the Aneth extension with BLM lands outside the reservation, pursuant to section 2 of the 1933 Act, should be coordinated with the disposition of UNTF assets.

7. Navajo Nation Would Be Best Trustee.

As a sophisticated tribal government, the Navajo Nation has the resources and expertise to administer the UNTF on behalf of Utah Navajo beneficiaries. The UNTF is generated by royalties from leases entered into by the Navajo Nation on Navajo Nation Trust Lands. Trusteeship of these funds by the Navajo Nation on behalf of the Utah beneficiaries would be consistent with principles of sovereignty and self-determination. The Navajo Nation, through management of its own trust funds, has proved its fiduciary capabilities. The Controller of the Navajo Nation is the general fiduciary of Navajo Nation funds, and trust funds should be invested consistent with the recommendations of the Investment Committee. A Trust Fund Administrator should be centrally located in San Juan County and trust fund administration should provide for local decision making in how funds are spent.

8. State of Utah Navajo Trust Fund Administrator Should Remain in Existence Until It Winds Up Its Affairs.

The UNTF Administrator has the legal authority under Utah law to continue to administer existing projects until January 1, 2010. The UNTF Administrator should continue to administer existing projects and programs to prevent any gaps in existing services until an interim administrator is designated or a new trustee has been selected.

9. Where Aneth Chapter Suffers Environmental Harms Disproportionate to Its Receipt of Trust Funds, Special Monies Should Be Allocated to Aneth Chapter to Mitigate Environmental Impacts and Develop Needed Infrastructure.

On the Aneth Extension, oil and gas development and production processes that generate royalties for the UNTF cause environmental and other negative impacts. The new terms of the trust should ensure that separate monies are specifically allocated to Aneth Chapter to mitigate the environmental impacts of oil and gas extraction on the Aneth Extension. Additionally, infrastructure needs at Aneth Chapter have not been adequately funded in the past. Future trust administration should provide sufficient funds to develop needed infrastructure at Aneth Chapter.

10. Trust Fund Monies Should Not Be Used in Off-Reservation Projects "Proportional" to the Benefit Received.

Under the 1968 amendments, UNTF monies were allowed to be used in off reservation projects if they were allegedly "proportional" to benefits enjoyed by beneficiaries. This provision has been one of the causes of mismanagement and waste of trust funds. Except for educational

endowments, no trust funds shall be used outside Navajo Indian Country without at least 50% matching funds provided by other participating entities.

11. Funds from the Sale of Utah Navajo Trust Fund Administrative Offices Should be Designated Specifically For New Trust Fund Administration Facilities.

One of the goals of the Navajo Nation is to provide for centralized administration of Navajo Nation service providers in the Utah portion of the Navajo Reservation through a Regional Navajo Nation Office centrally located in Montezuma Creek. At present, Navajo Nation services are scattered and not as efficient as they could be in a centralized space.

The State of Utah generally limits its services to the county seat in Monticello. A Regional Navajo Nation Office should be a shared facility for the new UNTF Trust Administrator, Navajo Nation service providers, and state programs. Along with Navajo Nation and state funds, UNTF should provide matching funds from sale of the current UNTF administrative offices to help fund the construction of a Regional Office Facility. A Regional Office Facility would improve coordination of projects involving the UNTF Trust Administrator, Navajo Nation service providers, and state entities.

12. Full Accounting by State of Utah.

The State of Utah should provide a full and complete historical accounting of the Utah Navajo Trust Fund before a new trustee is designated. A full and complete historical accounting will specify *how* all UNTF funds were used by both state and non-governmental entities and not merely what entities received UNTF funds and in what amounts.

13. Settlement of Existing Law Suits.

The State of Utah should use its best good faith efforts to settle the litigation in *Pelt v. Utah* before a new trustee is designated.

*The Legislative Branch
The Navajo Nation*



*Lawrence T. Morgan
Speaker of the Navajo Nation Council*

**RESOLUTION OF THE
NAVAJO UTAH COMMISSION
OF THE NAVAJO NATION COUNCIL**

NUCAUG-455-08

**SUPPORTING THE UTAH NAVAJO CHAPTERS DECISION FOR THE FUTURE OF THE UTAH
NAVAJO TRUST FUND AND A NEW TRUSTEE**

WHEREAS:

1. The Navajo Utah Commission was established by the Intergovernmental Relations Committee of the Navajo Nation Council by Resolution No. IGRJN-134-92 to develop and maintain efficient governmental services to the Navajo People residing on the Utah portion of the Navajo Nation; and
2. Utah Navajo Trust was created by federal statute in 1933. Under the Act, Federally owned land within San Juan County known as the "Aneth Extension" was given to the Navajo Tribe. Also under Act, the State of Utah was assigned the responsibility to manage 37.5% of the oil and gas royalties collected by the Department of Interior on the Utah portion of the Navajo Nation for the benefit of the Utah Navajos (47 Stat. 1418); and
3. In 1968, Congress amended the 1933 Act to redefine beneficiaries as "Navajos residing in San Juan County" and to expand the purpose of the fund "for the health, education and general welfare of the Navajos living in San Juan County" (82 Stat. 121); and
4. The State of Utah has given notice that effective June 30, 2008, it will no longer act in the capacity of Trustee for the Utah Navajo Trust Fund; and

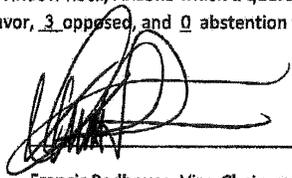
5. The State of Utah has created the "Utah Navajo Royalty Holding Fund", which effective July 1, 2008, will extinguish the Utah Navajo Trust Fund, but continue to make expenditures to maintain existing assets in the Fund, continue certain housing and educational projects approved before May 5, 2008. However, no new projects will be authorized; and
6. The Congress of the United States of America will have to, by law, determine who will act in the future as the Trustee of this fund; and
7. The State of Utah has determined that the State will not recommend a future Trustee to The United States Congress for appointment or selection ; and
8. The Navajo Nation has been active in attempting to be named the new Trustee of the Utah Navajo Trust Fund reasoning that since it receives 62.5% of the oil and gas royalty money produced on the Utah Navajo Reservation, that they should receive and manage the remaining 37.5%; and
9. The Majority of the Utah Navajo Chapters are coming to understand the benefit from the remaining 62.5% of the royalties collected by the Navajo Nation which would become a necessary component to the development of a secure and strong future for the welfare, education and health of beneficiaries residing on the Navajo Reservation within San Juan County, Utah; and
10. The Majority of the Utah Navajo Chapters are in strong and unified support of keeping the 37.5% royalties uniquely noted, as is, for the specific use and benefit of beneficiaries residing on the Navajo Reservation within San Juan County Utah; and
11. The Utah Navajo Chapters have been meeting and discussing the future of the current Utah Navajo Trust Fund and available future options, since the passage of Legislation of the Utah Sunset Act by the State of Utah; and
12. The Utah Navajo Chapters have discussed various potential options available for exploration and development and finds it is within the best interest of all Utah Navajo Trust Fund Beneficiaries to select a private-not-for-profit organization with the appointment of a board of trustees.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Utah Commission recommends Utah Navajo Health System to be the new Trustee for the Utah Navajo Trust Fund; and
2. The 37.5% Utah Oil and Gas royalties remain for the benefit of the eligible Utah Navajo beneficiaries and;
3. The 62.5% Utah Oil and Gas Royalties which the Navajo Nation collects be restored toward the benefit of the eligible Utah Navajo beneficiaries and;
4. All Local Chapter registered Utah Navajos who reside within the boundaries of San Juan County, Utah, be eligible for the health, welfare and educational benefit programs funded by the Trust Fund.
5. That the New Trustee be required to work closely and directly with all the Utah Navajo Chapters to improve the health, welfare and education of all eligible Utah Navajo beneficiaries.

CERTIFICATION

We, hereby certify that the foregoing resolution was duly considered by Navajo Utah Commission at a duly called meeting in Window Rock, Arizona which a quorum was present and the same was passed by a vote of 4 in favor, 3 opposed, and 0 abstention this 13th day of August 2008.



Francis Redhouse, Vice-Chairperson

NAVAJO UTAH COMMISSION

MOTION: Kenneth Maryboy

SECOND: Lena Manheimer

SPONSOR: Davis Filfred



THE NAVAJO NATION

Ojato Chapter Administration
P.O. Box 360455 Monument Valley, Utah 84536

Herman Daniels, Jr., President
James Adakai, Vice-President
Shirlee Bedonie, Secretary/Treasurer

Herman Daniels, Sr., Council Delegate
Merrill Smith, Grazing Member
Vacant, Coordinator

December 18, 2009

Honorable Ranking Member, Senator John Barrasso
Committee on Indian Affairs, United States Senate
838 Hart Office Building Washington, DC 20510

Dear Sir,

I am writing this letter to enlighten the honorable committee members on Indian Affairs of United States Senate regarding the significance in the future management of the Utah Navajo trust fund.

I am pleased and grateful for the opportunity to express the profound thoughts, values, and sincerity of Utah Navajos in Ojato Chapter, Utah, with regards to the current trust fund issue. It is the position of Ojato Chapter to continue supporting the newly established Utah Dineh Corporation to serve as trustee of the Utah Navajo Trust fund.

The Ojato people has passed several resolutions to support and advocate for the trust fund to be managed locally in San Juan County, Utah, by Utah Navajos with direct oversight, control and involvement in its decision-making process. The Utah Dineh Corporation is the most appropriate and best equipped entity to carry out the interest of Ojato Chapter and Utah Navajos for the benefit of our future generation in the areas of health care, education and general welfare.

Therefore, I am earnestly requesting the passage of Senate Bill 1690 because it truly reflects the wishes of Utah Navajos to address their long-term needs and goals. With no doubts and regrets, the Utah Navajos will be best served when this Senate Bill is passed.

If there are questions, please call Ojato chapter .

Sincerely,


James Adakai, Vice President
OLJATO CHAPTER



State of New Mexico
House of Representatives
Santa Fe

RAY BEGAYE
D-San Juan County
District 4

P.O. Box 4080
Shiprock, NM 87420

VICE CHAIRMAN:
Agriculture & Water Resources

COMMITTEES:
Appropriations and Finance
Rules & Order of Business

INTERIM COMMITTEES:
Indian Affairs
Legislative Health & Human Services
Legislative Education Study Committee
Water & Natural Resources
Tobacco Settlement
Legislative Finance (designee)

December 15, 2009

Honorable Tom Udall
UNITED STATES CONGRESS
Washington, DC

SUBJECT: SENATE BILL 1690 - UTAH NAVAJO SETTLEMENT SUPPORT

As a member of the Indian Affairs Congressional Committee, you will have direct influence on Senate Bill 1690 passage as introduced by the Honorable Senator Bennett of Utah. This bill will offer the Utah Navajo direct funding to be administrated by the formulation of a Utah Dineh Corporation (UDC). I support the intent of the request; however, I would request a 'trigger or safety net' within the bill to empower the citizens of Utah Navajo to select another trust holders should UDC failed to adequately follow protocols on dispensing and utilization of the fund in accordance to the law.

It was a good education for me on the history of Utah Navajo Trust Fund by email exchanges with Mark Maryboy of Maryboy Management Group. As you are aware, the people voted to reduce the Navajo Nation council by 24 memberships and allow the President to have a line-item veto power. Majority of the Navajo people are troubled over the fiscal irresponsibility of the government and they want change. There is still uncertainty how long the shaping of the Nation government internal system would take. The inclusion of the Utah Navajo Trust Fund under the Navajo Nation government immediate care is not prudent at this time. The Trust Fund must be under the care of the Utah Navajos themselves, and the caretaker of the fund so chosen by the Utah Navajo citizens is the 501 (c) 3 nonprofit Utah Dineh Corporations. I trust that this corporation will be transparent in their operation on the multi-million dollars exchange for service to the people it is intended to serve. It is a huge endeavor and if done correctly, Utah Navajos has much to gain. Good luck.

Sincerely,

Ray Begaye
State Representative for District 4

UTAH DINEH CORPORATION

*Chairman – Willie Grayeyes
Vicechair – Janet Slowman-Chee
Sec/Treas – Evangeline Gray*

333 South Main Street, Suite 2
Blanding, UT 84511

December 17, 2009

Regarding: S.1690 – Response and Rebuttal

Dear Chairman Dorgan, Vice Chairman Barrasso, and Honorable Members of the Senate Committee on Indian Affairs.

I am pleased to write in my capacity as the Chairman of the Board of Directors of **Utah Dineh Corporation**. Thank you for the important work you are doing in relation to Senate Bill 1690 sponsored by the Honorable Senator Robert F. Bennett.

Senate Bill 1690 provides a basic common sense solution to an historically complicated matter. The land on which the Navajos of San Juan County Utah reside holds a wealth of natural resources, but those resources have been largely unavailable to the people. As beneficiaries, the Navajos in San Juan County have been subject to the fiduciary decisions of the trustees. While we believe the trustees have been earnest in their duties, the time has come to give control to the owners of this asset.

At the committee hearing held on December 9 in Washington, Navajo Nation Vice President Ben Shelly made several arguments against the Bill and reasons why the Navajo Nation would be the best “trustee” for the beneficiaries in San Juan County Utah. Outlined below is our response to those arguments:

Vice President Ben Shelly's five point argument against S.1690, underlined below, is unsound and untrue, as evidenced by law and fact:

1. It provides no accountability or transparency in use of trust fund money

“That the Utah Dineh Corporation shall submit to the Secretary of the Interior annual reports describing the accounts and operations of the Corporation concerning the funds received under this section.” S. 1690 Section 1(a)(1)(B)

S. 1690 clearly provides for an annual accounting of the trust fund. Furthermore, as tax exempt organization under the section 501 of the Internal Revenue Code, the Utah Dineh Corporation must complete a Federal Tax Return, Form 990, which is open to public inspection and available over the internet through Guidestar.com.

Not only does S. 1690 call for yearly accountability, but the very nature of the Utah Dineh Corporation as a non-profit entity means that its tax returns will be transparent to the public. Is the Navajo Nation willing to make it's accounting public?

2. It fails to provide for the benefit for the future of Navajo children

“That 37.5 percent of those royalties shall be paid to the Utah Dineh Corporation to promote the educational, health, economic, social, and cultural well-being of all Navajo Indians residing in San Juan County, Utah.” S. 1690 Section 1(a)(1)(B).

S. 1690 provides for the the future benefit of Navajo children. In fact the original 1933 Act called for the State of Utah to provide for the tuition of Indian children in white schools. Subsequent amendments to the Act built upon that original provision to include other benefits.

3. It expands the original purpose of the trust and would lead to misappropriation

“The State of Utah shall transfer to the Utah Dineh Corporation all funds, assets, and real property held by the State in trust for the San Juan Navajo Indians pursuant to the Act of March 1, 1933 for use by the Corporation *in accordance with the Act of March 1, 1933 (as amended by subsection (a))*; and all contracts and obligations entered into by the State, acting in the capacity of the State as trustee, on behalf of the San Juan Navajo Indians, *in accordance with the Act of March 1, 1933* that are outstanding on the day before the date of enactment of this Act.” S. 1690 Section 1(b)(1)(A) & (B).

S. 1690 does not expand the original purpose of the trust, it merely transfers authority and resources from the State of Utah to the Utah Dineh Corporation in accordance with the Act of March 1, 1933 as amended. Navajo Nation Vice President Ben Shelly’s claim that S. 1690 would lead to misappropriation remains unsubstantiated as his testimony provided no evidence to support this claim.

4. It violates common laws of trusts by appointing the beneficiary as trustee which is a conflict of interest

“Nothing in the amendments made by subsection (a) alters any legal right or remedy that accrued before the date of enactment of this Act.” S. 1690 Section 1(c)(1).

S. 1690 does nothing to violate the common law of trusts. The Navajo Nation seems to misunderstand the common law of trusts. Since the 1933 Act was enacted for the benefit of Utah Navajos, then only Utah Navajo are the beneficiaries of the trust. Therefore under the common law of trusts, only Utah Navajos have the legal authority to determine for themselves who their trustee will be. Under the common law of trusts, the Navajo Nation, not a beneficiary of the 1933 Act, has no say in who administers the trust.

Under the common law of trusts, a trustee can be a corporation. If the trustee is a corporation, there is no conflict of interest. Beneficiaries of the trust may make up the directors of the corporation because the bylaws of the corporation rule its purpose and conduct to ensure the interests of all beneficiaries are protected. Furthermore, trustees have a duty of loyalty, which means that they must act in good faith to do things relating to the trust.

5. Senator Bennett introduced S.1690 without consulting the Navajo Nation

Vice President Shelly’s accusation that Senator Bennett introduced S. 1690 without consulting the Navajo Nation is patently untrue. The Navajo Nation has been intimately involved with negotiating the new trustee and had taken the official position last year of leaving the decision up to the Utah Chapters. A brief review of Vice-President’s attachment to his own testimony bears this out.

The Navajo Utah Commission (NUC) is a committee of the Navajo Nation Council. Vice President Shelly attached the following NUC resolution to his testimony as Exhibit A: “NUC Resolution: NUCMAY-445-08 - the Resolution of the Navajo Utah Commission of the Navajo Nation Council Approving and Recommending the 2008 Position Statement of the Navajo Nation on Future of Utah Navajo Trust Fund.”

In this resolution, the NUC recommends that its position be the official policy and position of the Navajo Nation in negotiations for the future of the Utah Navajo Trust Fund and designation of a new trustee. Specifically, this Position Statement recommends:

“[n]egotiations to designate a new trustee shall be in close consultation with the existing beneficiaries through the chapters, keeping the best interest of the beneficiaries in mind at all times.”

Paragraph 4 Consultation of Beneficiaries, page 4.

That is exactly what Senator Bennett and his staff have done. Throughout 2009, representatives of Senator Bennett have visited each of the seven Utah chapters to consult with them about the content of a bill that became S.1690. Senator Bennett's outreach was consistent with the consultation process determined by the Navajo Nation. On May 14, 2008, the official position of the Navajo Nation was that the designation of a new trustee would belong to the Utah Navajo chapters.

The Navajo Nation has been actively engaged in consultation over the designation of a new trustee of the Utah Navajo Trust Fund. The official position of the Navajo Nation was to delegate that decision to the beneficiaries themselves. Therefore, Senator Bennett consulted with the parties whom the Navajo Nation itself determined should be consulted.

Vice President Ben Shelly's five point argument, underlined below, for Congress to designate the Navajo Nation to be the trustee of the Utah Navajo Trust Fund, ignores the Navajo Nation's history of mismanagement and trying to enrich itself with resource assets that belong to Utah Navajo Trust Fund beneficiaries:

1. The Navajo Nation would be an accountable, responsible and transparent trustee

The Navajo Nation admits in Resolution NUCMAY-445-08 that it wants to use the Utah Navajo Trust Fund as a resource to fund a bricks and mortar project to build Navajo Nation administrative facilities:

"One of the goals of the Navajo Nation is to provide for centralized administration of Navajo Nation service providers in the Utah portion of the Navajo Reservation through a Regional Navajo Nation Office centrally located in Montezuma Creek...[Utah Navajo Trust Fund] should provide matching funds from sale of current UNTF administrative offices to help fund the construction of a Regional Office Facility."

The purpose of the trust fund is not to bankroll capital improvement projects. The purpose of the trust fund is to provide *services* to promote the educational, health, economic, social, and cultural well-being of Utah Navajos. The Navajo Nation's goal to use trust fund resources to build a Navajo Nation Regional Office Facility indicates that the Navajo Nation does not distinguish between programmatic funds and project funds, which indicates the Nation would not be a responsible trustee of these assets.

2. As agents for the trust fund, Navajo has never breached their fiduciary responsibility in the past 30 years

This is simply not true. The Navajo Nation has tried to cheat Utah Navajos and the State of Utah out of congressionally mandated royalties on numerous occasions:

The Tenth Circuit Court case, Utah v. Babbitt, 53 F.3d 1145, arises from a situation in 1987, when the Navajo Nation entered an "operating agreement" with Chuska Energy Co. to produce oil and gas on previously unleased portions of the Aneth Extension in Utah. Under the agreement, Chuska paid the Navajo Nation 20 percent of the gross proceeds received from the sale of production on the land. The Navajo Nation called this lease an "operating agreement" to avoid having to pay Utah Navajo their fair share of royalties.

In November 1990, Utah demanded payment of 37 1/2 percent of the royalties from the production of oil and gas on that particular land. When the case got to federal district court summary judgment was granted in favor of Utah.

The Navajo Nation appealed, arguing essentially that an "operating agreement" was not a lease and therefore the 1933 Act should not apply. The Tenth Circuit Court of Appeals disagreed and said that Congress intended the Navajos residing on the added lands to benefit from leasehold development on that particular land it didn't matter what the Navajo Nation called a lease the 1933 Act still applied.

3. The Navajo Nation has successful records of managing investing and increasing the value of many trust trust accounts

This bald assertion is not supported by Vice President's written or spoken testimony. It is contradicted by a well documented history of Navajo Nation mismanagement, the latest chapter of which is the only reason Vice President Shelly testified before the Committee instead of President Joe Shirley, who is on administrative leave pending the outcome of a criminal investigation into his administration's mismanagement of several contracts that have resulted in substantial losses of the Navajo people's resources:

*The Navajo Nation Council
Office of the Speaker
July 21, 2008
Press Release*

The Council also questioned the president's management of the a failed business venture BCDS, the Biochemical Decontamination Systems based in Shiprock, N.M., and the Council was very concerned about a \$2.2 million write-off that the Navajo Nation had to absorb financially.

In 2006, \$2.2 million from the Navajo Dam Escrow Fund was used to finance the expansion of BCDS, a commitment that the 20th Navajo Nation Council's Budget & Finance Committee approved — chaired by current Navajo Nation Vice President Ben Shelly. Almost immediately after the approval, President Shirley signed a pledge agreement with JP Morgan Chase Bank, which authorized the collateralization of the loan that resulted in a loan agreement being signed by JP Morgan Chase and BCDS the exact same day — the fast-tracked process was also brought into question by the Council.

Problems with BCDS arose after questions from an audit resulted in BDCS's former chief executive officer Hak Ghun disappearing after mismanaging money, which left the Navajo Nation in an awkward position to absorb costs associated with Ghun's financial mismanagement.

4. The Navajo Nation has a well established budget and auditing process for trust funds

This claim is not supported by Vice President Shelly's written or spoken testimony. That is because the facts do not lend themselves to such an assertion. The Navajo Nation has a documented history of failure to budget and audit funds - a history whose latest chapter cost the Navajo Nation \$17.6 million in lost revenue in 2008 when the Nation failed to collect \$5.6 million in federal grant money and failed to earn \$12 million in indirect costs revenues from the federal government:

*The Navajo Nation Council
Office of the Speaker
July 21, 2008
Press Release*

Lorenzo C. Bates, Upper Fruitland, explained that the Navajo Nation will end up absorbing the cost of this mess. Bates said that the Intergovernmental Relations Committee took a position and he felt that the division directors that are involved are avoiding the Council.

"We have uncollectible grants that should have been used to provide services for the Nation, what are the division directors doing to solve this problem," Bates asked President Shirley. "We have no funds, during this cycle, going into the grant fund. It's a concern and more of a concern that these are federal dollars. We ask that you address these concerns to your division directors, I am asking you to deal with it — how are you doing to deal with this?"

In response to questions concerning the loss of funds, President Shirley admitted wrong-doing in this case, he responded "we admit that we did lose funding, even though we were careful in how we approached this economic venture. We suffered a loss as a result, I want you to know that we are still working on it and I feel that we have not

suffered the loss just yet. We are investigating and hoping to retrieve those funds, I am hopeful that we will be able to — because we are”

5. The Navajo Nation has sufficient outside funds to be accountable to the Navajo people.

Vice President Shelly’s claim that the Navajo Nation has sufficient outside funds to be accountable to the Navajo people further underlines the fact that the Navajo Nation has no understanding of the common law of trusts.

The Act of March 1, 1933 provided that if oil or gas were produced in paying quantities within the lands added to the Navajo Reservation, 37 1/2 per centum of the net royalties accruing therefrom derived from tribal leases would be paid to the State of Utah, thus creating the trust corpus. No “sufficient outside funds” are needed.

In the final assessment, Utah Dineh Corporation is both able and willing to take on this responsibility. Just as a parent knows what is best for their children, the Utah Navajos have a greater incentive for effective management of this asset than does any other group. Utah Dineh Corporation has been formed by direction of the Navajo Utah Chapters. Its board is appointed by the chapters. It is well established with the very best legal and professional advisors.

According to our bylaws and in compliance with IRS rules for 501(c)3 organizations, Utah Dineh Corporation will be subject to an annual financial audit. From our beginning, we have had extensive involvement from a Certified Public Accountant. One of our greatest strengths is our access to competent accounting advice in the formation of this organization. Utah Dineh Corporation has been designed so as to avoid any of the financial conflicts that have plagued the Trust Fund in the past. Our accounting records will always be open to the public including the Navajo Nation. If the Navajo Nation or any government entity desires to be included on our list of recipients of financial reports we are happy to oblige.

While yet unfunded, the board of Utah Dineh Corporation is actively identifying needs and opportunities within our communities. Our intention is to retain all that was positive and effective with the prior Utah Navajo Trust Fund, including their offices and their experienced, competent staff. We have identified areas upon which Utah Dineh Corporation could expand and improve.

At its core, management of the income and assets of the current fund is quite basic. We intend to keep our operations simple and clean. Our accounting systems and operations are designed so as to provide complete transparency and control. At the same time we envision this asset being a catalyst that will drive the economic engine of the Navajo People in Utah and within the Navajo Nation.

In terms of our local economy, there is much to be accomplished. We are ready to go to work. We respectfully request the committee to place their confidence in us to represent the Utah Navajos.

Warmest Regards,



Willie Grayeyes
Chairman, Utah Dineh Corporation
williegrayeyes@yahoo.com

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
HON. ROBERT F. BENNETT

Question 1a. If the legislation passed, what implications would it have on tribal sovereignty?

Answer. The 1933 law did not establish a tribal interest in the 37.5 percent royalty derived from oil and gas production within the Aneth Extension. In *Pelt v. State of Utah*, 104 F.3d 1534 (10th Cir. 1996), the Court of Appeals addressed the issue of whether the Navajo Tribe had standing to request intervener status in a suit brought against the State of Utah by the beneficiaries of these royalty funds. The court used the following rationale in upholding the District Courts rejection of the Navajo tribe’s motion:

“Contrary to the Tribe’s claims, we do not believe that the Navajo Nation has any ownership in the 37.5 percent of the royalties generated by the Aneth Extension. We note that prior to the addition of these lands to the Navajo Reservation, these lands were public lands. See *Babbitt*, 53 F.3d at 1147; 47 Stat. 1418. Contemporaneous with adding these lands to the reservation, Congress chose to reserve a portion of any oil and gas revenues. Congress then transferred the ownership interest in these proceeds to the State of Utah to hold as trustee for

the benefit of the Aneth Extension Navajos. Therefore, since the Tribe never possessed an ownership interest in these proceeds, (citation omitted) the Tribe could not have a federal common-law claim based on its ownership interest.” (104 F.3d 1534 *1544.)

The 1933 act required that these funds be spent for the benefit of the Navajos residing within the Aneth Extension and provided no role for the Navajo Nation in fulfilling the intent of the legislation. S. 1690 does not alter the relationship established in 1933 therefore passage of this legislation would have no effect on tribal sovereignty.

Question 1b. Would this legislation set precedent for decisions regarding other tribes and their constituencies, those who may have issues regarding the distribution of benefits?

Answer. I do not believe S. 1690 will create a new precedent for constituencies within Native American Tribes to question the distribution of resources within their Tribe. In fact, if there is a precedent that leads to this type of discussion, I believe it was set in 1933 with the addition of the Aneth extension to the Navajo Reservation. Again, I refer to the Court of Appeals in *Pelt v. State of Utah*. “During the committee proceedings in 1930 considering the predecessor of the bill that was finally passed in 1933, there was a discussion of the unique heritage of the Navajos who resided on the Aneth Extension and the divergence of their interests with the Tribe as a whole. Moreover, the 1933 Congress and Utah’s governor were cognizant of the Aneth residents’ separation from the Tribe and wished to provide for these individuals.” (104 F.3d 1534, *1540)

Furthermore, in justifying Congress’ 1933 recognition of the historically poor relationship between the Utah Navajos and the Navajo Tribe, the State of Utah was chastised by the court in *Sakezzie v. Utah* for relying too much on the Navajo Tribal government in identifying the needs of the Navajos residing in the Aneth Extension. “That the determination of the needs and desires of the beneficiaries should not be dependent upon the views of officers or members of the Navajo Indian Tribe as a whole. . . . It is necessary to bear in mind that the tribe as a whole is not the designated beneficiary of this fund and that its interests and views may in some respects be in conflict with the more pertinent interests and views of the beneficiaries.” (198 F. Supp. 218 D. Utah 1961)

Question 2. To what extent was the Navajo Nation consulted about the content of S. 1690 prior to introduction?

Answer. The State of Utah notified me in 2008 of its desire to be replaced as the trustee of the 37.5 percent Aneth royalty. The governor did not recommend a new trustee but made it clear that his major concern was ensuring the trust fund be maintained in Utah for the benefit of the Utah Navajos. In January of 2009, leaders of the Utah Navajos requested my assistance in addressing this problem. The Utah Navajos asked that I address this issue in a manner that accomplished two goals—first; the Navajo Nation not be designated as trustee and, second, provide the Utah Navajos the ability to manage their own affairs in regards to the 37.5 percent royalty. Based on the history noted above it is easy to see why the Utah Navajos feel this way about this matter.

My office received a copy of a resolution of the Intergovernmental Relations Committee (IGR) of the Navajo Nation Council outlining the Navajo Nation’s position on this matter in February of 2009. The resolution also included proposed legislation drafted by IGR. Both the position and proposed legislation were/are incompatible with the commitment I have made to protect the interests of my San Juan County, Utah Navajo constituents. Knowing at the outset that our goals were incompatible, I chose to work closely with my constituents in Utah in drafting the specifics of what became S. 1690.

For the reason noted above, I did not have a formal consultation with the Navajo Nation regarding this matter until after introduction. However, prior to introduction there was ample opportunity for the Navajo Nation to learn about the model I chose to follow in addressing this issue. Contrary to the claims of a small handful of Utah Navajos opposed to S. 1690 because they prefer a return to the 1933 language wherein this small group would be the sole beneficiaries of the 37.5 percent, this proposal was not developed in a vacuum. The two Utah Navajos who are elected members of the Navajo Nation Council were aware of what we were doing and on this past August 26th my staff met with the presidents of the various Utah Chapters to outline the options available for addressing this issue. All of the Chapter officials present at this meeting urged me to follow the option (nonprofit corporation) contained in S. 1690.

Question 3. What was the impetus of the 1968 amendment to the original 1933 Act that created the Utah Navajo trust Fund?

Answer. The report accompanying S. 391 (the 1968 amendment) identifies three problems in the 1933 Act that needed further clarification as a result of litigation over the State of Utah's implementation of the provisions of the statute. The problems centered on the tightly prescribed uses of the funds—"tuition of Indian children in white schools and/or the building or maintenance of roads across the lands described in section 1 (Aneth Extension)" and the requirement that beneficiaries reside on land within the Aneth Extension. (47 Stat. 1418) The facts that only a few Navajos actually lived on the Aneth Extension lands and that most families who used these lands lived elsewhere, moving back and forth as necessary, made identification of beneficiaries extremely difficult. The 1968 amendment provided the flexibility necessary to meet the intent of the 1933 Act—ensuring that the Utah Navajos received some benefit from the development of resources on their lands.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
HON. BEN SHELLY

Question 1. If the legislation is passed, what implications would it have on tribal sovereignty? Would this legislation set precedent for decisions regarding other tribes and their constituencies, those who may have issues regarding the distribution of benefits?

Answer. This legislation was introduced without consultation with the Navajo Nation. It is a unilateral action by the Federal Government which is contrary to long standing federal policy concerning self-determination by Tribes.

This legislation does not necessarily set precedent as it relates to the distribution of benefits and the class of beneficiaries this is because the Navajo Nation was consulted initially and gave its consent to the previous distribution of royalties and has approved maintaining the status quo as it relates to the class of beneficiaries. However if the Federal Government were to unilaterally alter the distribution of benefits to tribal members then this would violate tribal sovereignty.

This legislation does set precedent as it relates to the assignment of the Trust responsibility from the State/Federal Government to a non-profit entity. Please remember that these royalties are from Navajo Nation gas and oil leases from Navajo Nation Land for the benefit of Navajo members. Furthermore, the Navajo Nation is already the fiscal agent for these royalties.

Any unilateral action by the Federal Government without any consultation and consent from the tribe is an abrogation of tribal sovereignty. The Federal Trust responsibility should not be transferred to another entity without the consent of the Navajo Nation.

Question 2. To what extent was the Navajo Nation consulted about the content of S. 1690 prior to introduction?

Answer. The Navajo Nation was not consulted about S. 1690 prior to its introduction. The Navajo Nation contacted Senator Bennett's office after discovering that S. 1690 was introduced. The Navajo Nation immediately requested to meet with the Senator's office. Senator Bennett's office initial response was no because this was a State of Utah matter and not a Navajo Nation issue. Senator Bennett's office, after the Navajo Nation's request, changed its position and agreed to meet in Shiprock. The Navajo Nation further requested a meeting with Senator Bennett in Washington, D.C. and Senator Bennett agreed to the meeting. The Navajo Nation was not consulted about S. 1690 prior to its introduction. Senator Bennett only met with Navajo Nation officials after Navajo requested a meeting with the Senator to discuss S. 1690. This practice is inconsistent with the previous practice of the Federal Government as it relates to consulting with the Navajo Nation.

Question 3. If made trustee, would the Navajo Nation charge a fee for administration of the Utah Navajo Trust Fund? What would this fee consist of? To your knowledge, does the State of Utah currently take a fee for the administration of the Utah Navajo Trust Fund?

Answer. Please be aware the Navajo Nation is recommending that the Navajo Nation Office of the Controller administer the Trust. The Controller manages several accounts for the Navajo Nation and will effectively administer this trust at a minimal amount due to the fact that the Navajo Nation has the infrastructure readily available to incorporate the Navajo Utah Trust Fund. It is anticipated that the Navajo Nation will not differ, substantially, in its administration costs than that of the State of Utah and maybe substantially lower based upon the Nation's infrastructure.

It is our understanding that the State of Utah utilizes trust fund monies to hire staff and office space in Utah to administer the trust. The State of Utah has anywhere between four and six support staff. Under the Navajo proposal, the Office of

the Navajo Utah Commission will also hire support staff and have office space to administer the trust fund.

