

**Testimony for Navajo Nation Council Speaker Johnny Naize
before the
House Natural Resources Committee
Subcommittee on Indian and Alaska Native Affairs
Oversight Hearing
"Indian lands: exploring resolutions to disputes concerning Indian tribes, state and local
governments, and private landowners over land use and development"**

Good afternoon Chairman Young, ranking member Lujan and members of the committee. Thank you for the opportunity to discuss the issue of land exchanges, transfers, and disputes in Indian country. I am Johnny Naize, Speaker of the Navajo Nation Council as well as the Chairman of the Navajo Nation Fort Wingate Task Force.

The Navajo Nation like many tribes is seeking ways to bring more of their aboriginal land back into tribal control; as such the issues surrounding land have become increasingly important. We are here today due to an intertribal dispute where two tribal sovereigns are negotiating the division of an important parcel of land made available through the Base Realignment and Closure ("BRAC") process. It is the fundamental nature of this disagreement that sets us apart from other disputes in land exchanges. We are two sovereigns who are attempting to reach a mutually beneficial agreement on how best to divide up an undetermined amount of land. Barring any pressing deadline that would jeopardize our ability to acquire the potential lands, federal interference in our dispute would be premature at best and at worst a violation of the federal government's policy of respecting and promoting tribal sovereignty.

The Fort Wingate Military District ("FWMD") is located just east of Gallup New Mexico and borders both the Navajo Nation and the Zuni Pueblo. Created in 1870 by executive order and further expanded by executive order in 1881, the land has been claimed by both tribes as ancestral lands with ceremonial significance and as a place of former home sites. In 1928, the

War Department felt that at least a significant portion of this land was to be held in trust by the federal government for the Navajo Nation.

The FWMD was used by the War Department and the Department of Defense as both a munitions storage facility and as part of missile testing site. In 1997, the tribes and the Department of Interior entered into a proposal to convince the BRAC Commission through the a transfer to the Bureau of Land Management to transfer the land to the tribes through the Bureau of Indian Affairs (“BIA”) instead of allowing the land to be place in the public sphere. The original memorandum envisioned that the land would be secured to protect the Zuni Pueblo’s watershed, and the tribes would develop land for economic development purposes based on the economic needs of the relevant populations. The original discussions involved a transfer of land to the BIA of 6,000 acres for the benefit of the Zuni Pueblo on the southern part of the FWMD and that the Northern part of area minus 1,300 acres would be transferred to ultimately to the Navajo Nation. This proposal envisioned that all the land that would be possible to be cleaned up would have been remediated by 2020 allowing both tribes to have a clear picture of the total land available for a fair distribution. However as we later learned, the land residing within the Navajo area was potentially too contaminated to be transferred to the Navajo Nation, this initial proposal would have also precluded Zuni access to Interstate 40. As part of the BRAC process, the land, when necessary, must be remediated before it can be transferred to BLM. Since not all acres are interchangeable, and the land contained within the acreages has varying value and levels of contamination an easy percentage distribution or finite split by parcel would invariably fail any fairness test.

Here in lies one of the more significant problems of negotiating how the land should be divided between the tribes. Not all the land that is potentially available to be transferred will be remediated to a sufficient level to be transferred. A significant amount of the land will not be able to be remediated to a satisfactory level either due to the level of contamination or because of a lack of funds available for the cleanup. There appears to be some land that the Army may not be willing to transfer regardless of whether the lands can be remediated. It is therefore impossible to know which parcels will be available by the end of the cleanup process. Transferring any land now as part of hypothetical distribution would inevitably result in one tribe being penalized over the other. Further, based upon federal budget projections, the Navajo Nation is highly skeptical that funds will be available to cleanup all the land that could possibly be remediated. As a result the Nation is wary of entering into any agreement that divides specific parcels now when no other parcels could be available for transfer in the future.

Congressman Pearce in HR 4187 seeks to transfer parcels of the FWMD that were considered clean, or have been remediated, to the Navajo Nation and the Zuni Pueblo. It is important to note that there is a disagreement within the federal government as to whether the standards used for the cleanup are sufficient. Regardless, the Pearce bill would transfer Parcel 1 containing 4,950.50 acres of pristine untouched land that was contained within, but never used by the FWMD, within which the Navajo have significant home site and ceremonial use claims, to the Zuni Pueblo. The bill would also transfer Parcel 15 comprising 247.2 acres, and Parcel 17 containing 659.81 acres to the Navajo Nation.

The Pearce bill assumes erroneously that there is an agreement between the tribes to accept a 50/50 split of the remaining land and the total amount of land that would transfer would reflect this divide—discussed in detail below. However, given that there is no guarantee that any

more land would be remediated, the current land divide would reflect a transfer of 907.01 acres of the available 5857.5 acres to the Navajo Nation. This would reflect a transfer of 15.48% of the land available to transfer to the Navajo Nation with no other land available for transfer in the foreseeable future. It stretches credulity to see how a 15.48/84.52 split could possibly be fair to the Navajo Nation.

The Pearce bill rests upon the mistaken belief that the Navajo Nation and Zuni Tribe have come to an agreement on how the land should be divided. Congressman Pearce has held to this belief regardless of the Navajo Nation explaining to him and his staff our process for coming to a resolution on the land division. In 1997, the Navajo Nation Council created the Navajo Nation Fort Wingate Task Force (“NNFWTF”) to negotiate with the Zuni Pueblo and to develop an fair division of the land. This task force is the sole entity on the Navajo Nation that has the authority to reach any agreement on this issue. All the parties have been repeatedly made aware of this. The Task Force has been in continuous operation since 1997, but depending on the state of the negotiations has not always met. In 2011, in an attempt to jump start the negotiations, Albert Damon the Division Director for the Navajo Nation Division of Economic Development participated in a land use planning exercise to determine precisely what the Zuni Pueblo wanted in terms of the land division. Mr. Damon did not consider himself to be acting as a party capable of binding the Navajo Nation without subsequent approval of any hypothetical plan by the Navajo Nation Council, nor did he assert to have such authority. A map was created reflecting what the Zuni Pueblo wanted, the map was signed by Division Director Damon to be taken back to the Task Force for their reaction. The map had no terms or conditions, merely a colored map reflecting a hypothetical land division between Navajo and Zuni. In no way could a reasonable person realistically consider this map without stated terms, conditions, or expectations a binding

agreement. Particularly when all the parties knew precisely what the Navajo process was, and particularly when the Navajo process is nearly identical to that set up by most tribes: all land issues require approval by the legislative body. To be clear, the Navajo Nation either through the Navajo Nation Council, the NNFWTF, nor President Shelly have not entered into any type of agreement with the Zuni Pueblo for the division of FWMD since the original proposal for the Fort Wingate. Further, President Ben Shelly has never been apart of any negotiations concerning the FWMD and has never supported a 50/50 split.

The Zuni Pueblo repeatedly accuses the Navajo Nation of negotiating in bad faith, or failing to come to the table with a position. For years the Navajo Nation position has remained fundamentally the same. We cannot transfer the land in a fair distribution until we know what land is available for transfer. That means having all the possible land remediated, or determining a distribution that applies to all lands as the come available. The Zuni position has changed repeatedly over the years. First the 6,000 southern acres were necessary to protect their water shed, then other lands were necessary for the protection of sacred sites, then we had to start from scratch because they needed land for economic development, then we needed to start again because they wanted land in the northern portion that they had always said should be Navajo. It is not the Navajo who have been inconsistent.

Congressman Pearce has expressed concerns that the negotiations have been too slow and that the municipality will end up taking the land. While it is true that the negotiations have taken a substantial amount of time, this is not unusual when there are issues of historic land and ceremonial usage by two tribes in a negotiation. Both tribes feel that these lands comprise a significant ancestral land claim. However, when the BRAC Commission agreed to transfer the land to the BIA, BIA had until 2020 to transfer the land to the tribes. The tribes have eight (8)

years to come to an agreement on how to divide the land. There is no urgency here. On the contrary, given that there is a significant question as to how much land could be available for transfer, as discussed above, the remaining time could only help to provide some semblance of certainty over the amount of land available for transfer.

However, slow the negotiations might have been, and there have been both formal negotiations between the parties and behind the scenes discussions to help move the process along, since the introduction of HR 4187 those negotiations have ground to a complete halt. In the last meeting of the Navajo Task Force and the Zuni Pueblo, the Zuni position was simply whether the Navajo Nation would accept the terms dictated to them by the Pearce bill. This was not a negotiation. The Navajo Nation is a sovereign entity with a right and a responsibility to protect the interests of its people and land. The Navajo Nation will not have the terms of a negotiation dictated to us by the federal government or another tribe. That is what HR 4187 does. It dictates the terms of a negotiation that are now being used by the Zuni Pueblo to try and force the Navajo Nation into an agreement that does not reflect any reasonable conception of fairness. HR 4187 is not a 50/50 bill. HR 4187 is a 15/85 bill, with the potential for more land in the future that would possible equate to a 50/50 distribution. That is not acceptable. Nor is it acceptable for a negotiation to be based solely on whether the Navajo Nation will accept terms of another tribe as dictated by an outside party.

As for what terms the Navajo Nation would accept, that is a subject for the negotiation table. The purpose of a negotiation is for the parties to reach a mutually beneficial solution based on their needs and objectives. It would be unreasonable for the Navajo Nation to spell out here what our acceptable terms are. Such a determination would be different from the terms of HR 4187, which are now the Zuni terms. By stating our terms publicly we would be creating

exactly the stalemate Congressman Pearce says he wants to avoid. All terms and conditions are negotiable, and the Navajo Nation is open to a broad range of land distributions, however preset dictated terms are a non-starter. However, melodramatic assertion to the contrary, the Navajo Nation remains open now as it always has to a real discussion of how the tribes will divide up the available land.

This brings me to the final point of my testimony: Tribal sovereignty. The introduction of HR 4187 has fundamentally changed the nature of this dispute from a disagreement over how best to divide the land to an issue of tribal sovereignty. If tribal sovereignty means anything, surely it means that where two tribes sit in opposition, barring a truly urgent deadline, those tribes should be allowed to work out their differences between themselves without outside interference. Tribal sovereignty at its very core is the ability of a tribe to decide for itself. Here we have two tribes at odds, but working towards a mutually beneficial agreement within the 2020 deadline. The introduction of HR 4187, which would dictate the terms of that agreement, is now being used to one tribe's advantage over the other. A federally imposed solution to a tribal land dispute would be considered, by any reasonable person, an affront to the very notion of tribal sovereignty. As proof that a federally imposed solution to land disputes is almost never satisfactory and results in massive pain and expense for all the parties one need only look to the Navajo-Hopi Land Settlement Act of 1974.

The Navajo Nation wants very much to bring this negotiation to a conclusion. Extended negotiations are invariably expensive for all involved and as the drag on the potential for bad blood to taint the discussion is always a possibility. This is in neither tribe's interest. The Navajo People have resided on and used these lands for our ceremonies since time immemorial. Both tribes have ancestral claims to the land, both tribes have needs, and both tribes have

objectives they need to fulfill. Both sides have negotiation teams in place willing to go to work. The Navajo Nation is even willing to have an independent facilitator or mediator come in to help us work through our differences. We are dedicated to coming to terms with the Zuni Pueblo. However, we cannot accept a situation where our negotiation is shutdown in favor of a federally imposed solution. Our land dispute is a tribal government-to-government issue that can and will be worked out. The federal government can help us by providing mediation or similar services that will allow us to negotiate a mutually beneficial division of the FWMD. HR 4187 is a federal imposition on tribal sovereignty and fundamentally changes the nature of the negotiation and the issues at stake. HR 4187 is poised to set dangerous precedent on tribal land negotiations.

Fort Windgate Army Depot
Land Parcels



Church Rock

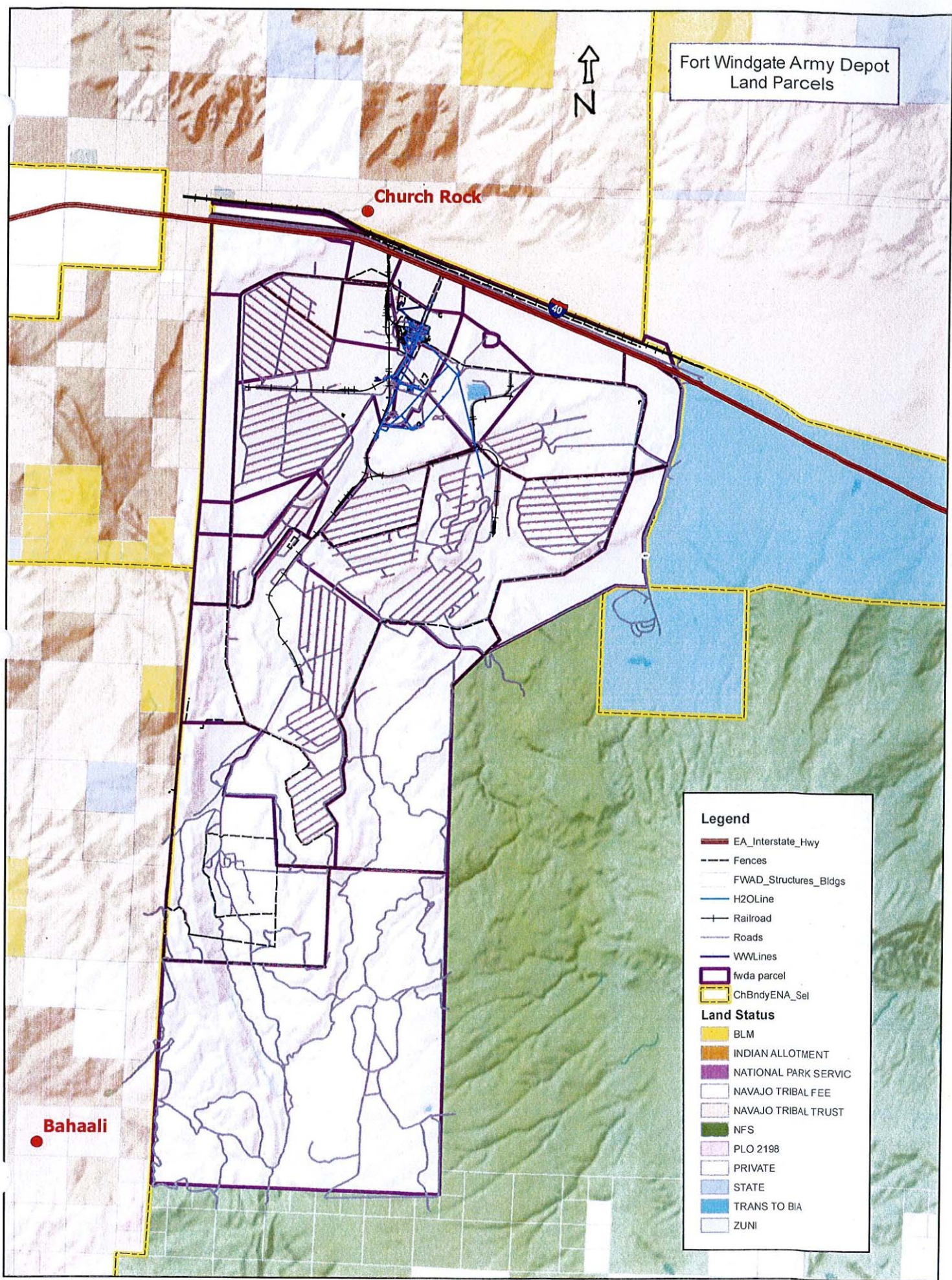
Bahaali

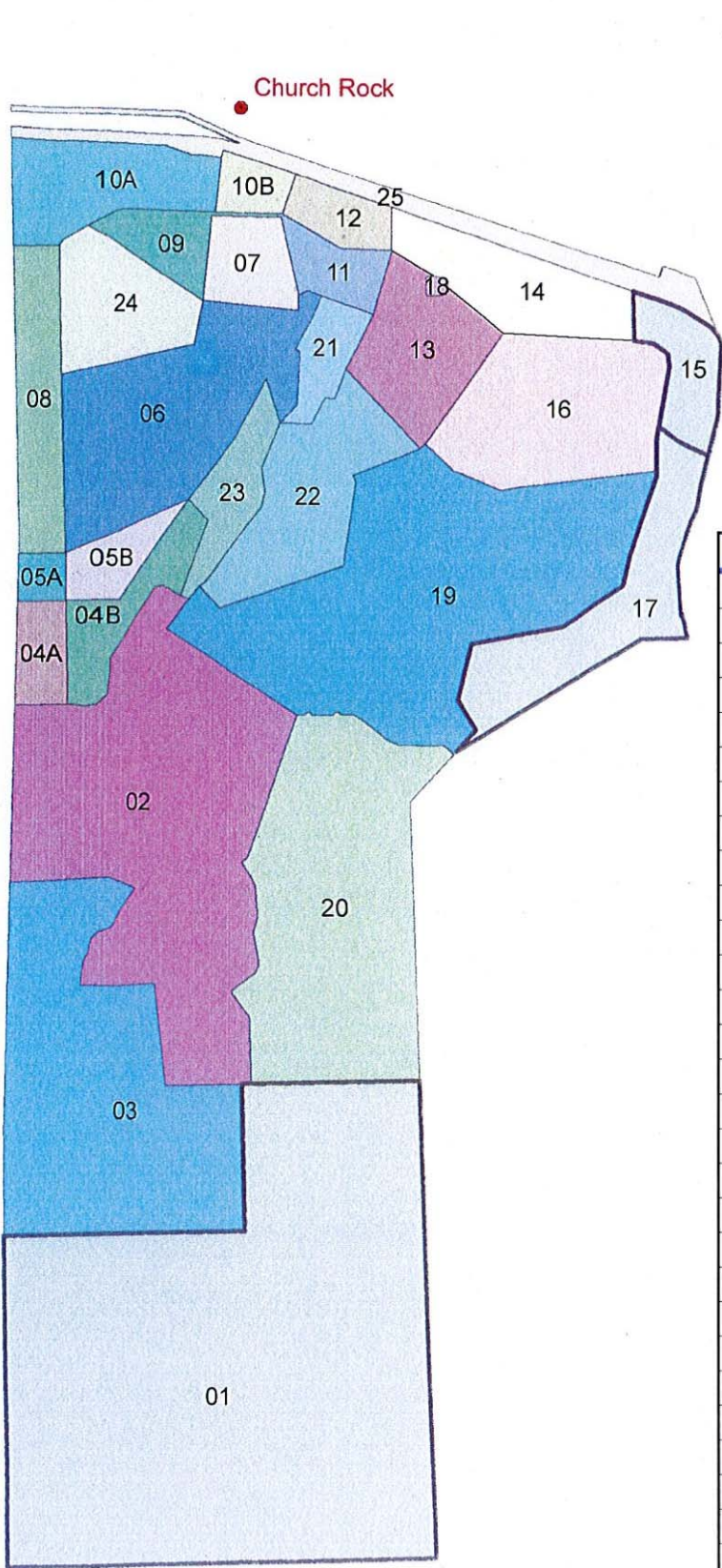
Legend

- EA_Interstate_Hwy
- Fences
- FWAD_Structures_Bldgs
- H2OLine
- Railroad
- Roads
- WWLines
- fwda parcel
- ChBndyENA_Sel

Land Status

- BLM
- INDIAN ALLOTMENT
- NATIONAL PARK SERVIC
- NAVAJO TRIBAL FEE
- NAVAJO TRIBAL TRUST
- NFS
- PLO 2198
- PRIVATE
- STATE
- TRANS TO BIA
- ZUNI





Parcel Number	Acres
1	4,950.50
2	2,379.79
3	1,806.55
4A	160.79
4B	267.58
5A	69.42
5B	160.08
6	1,041.51
7	225.83
8	432.15
9	196.11
10A	482.69
10B	111.86
11	172.13
12	159.67
13	472.05
14	476.97
15	247.2
16	871.59
17	659.81
18	11.63
19	2,188.39
20	1,694.56
21	167.21
22	628.26
23	239.14
24	420.39
25	429.25
Total	21,123.11