

**Testimony for Navajo Nation Council Speaker Johnny Naize
before the
House Natural Resources Committee
Subcommittee on Indian and Alaska Native Affairs
Legislative Hearing on
HR 3822**

"To provide for the implementation of the property division regarding former Fort Wingate Depot Activity in McKinley County, New Mexico, and for other purposes. *Fort Wingate Land Division Act of 2014.*"

Good afternoon Chairman Young, ranking member Hanabusa and members of the committee. Thank you for the opportunity to testify today. I am Johnny Naize, Speaker of the Navajo Nation Council and the Chairman of the Navajo Nation Fort Wingate Task Force.

We are here today to discuss HR 3822, the Fort Wingate Land Division Act of 2014 ("Act"). The Navajo Nation, like many tribes, has fought to bring historic lands back into tribal control. Land issues are important and complex, and require that we as elected leaders make hard choices. Our land is everything to our people, to our culture and to our way of life. Resolutions to land conflicts are always painful. While, the resolution to this division has taken a substantial amount of time, this duration is not unusual in cases where there are issues of historic land and ceremonial claims to be considered where both tribes feel that these lands comprise significant ancestral land claims. This resolution would not have been possible without Congressman Lujan's leadership. HR 3822 reflects a painful close to this long inter-tribal dispute to divide land made available through the Base Realignment and Closure ("BRAC") process.

Two tribes who sit in opposition must be allowed to work out their differences between themselves and to decide their own best interests. This is tribal sovereignty at its very core. Since the Navajo-Hopi Land Settlement Act of 1974, the Navajo Nation has unfortunately been forced to live through the pain and experience of a federally imposed solution to a tribal land

dispute. We have fought to ensure that a similar occurrence does not happen on the eastern portion of the Navajo Nation.

It is essential that I thank our brother, Congressman Lujan, for his intercession on our behalf on this matter. The Congressman has been a powerful ally and friend of the Navajo people. It takes a tremendous amount of courage to take up the mantle of resolving a tribal land conflict. Congressman Lujan ensured that the Navajo Nation was involved in the discussion process for the division and guaranteed a good faith effort in reaching a fair outcome. This solution may not be ideal; certainly we have many communities on the Navajo Nation who will remain unsatisfied with any division that does not ensure that Navajo receives 100 percent of the land. Their views, like the views of the Navajo People affected by the Navajo-Hopi Relocation should be heard in a forum that allows the community members to place their concerns on the record. However, what we have before us represents good faith effort in reaching a conclusion to this longstanding disagreement.

The Fort Wingate Depot Activity (“FWDA”) is located east of Gallup, New Mexico and borders the Navajo Nation. The Navajo people have lived upon, and used these lands for our ceremonies since time immemorial. 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, stated that this land was to be held in trust by the federal government to be returned to the Navajo Nation after it ceased to be of use to the federal government. Zuni’s involvement in the FWDA is not officially acknowledged prior to the 1997 memorandum, discussed below. It is important to note, only Navajo People were displaced by the War Department’s actions. No Zuni members

were displaced from this land at the time of the FWDA creation in 1870 and the Zuni Pueblo has never shared a border with the lands.

The FWDA was used by the War Department and the U.S. Department of Defense as both a munitions storage facility and as part of a missile testing site. It was also used as the induction site for the Navajo Nation Code Talkers to begin their journey in defense of our nation. However, in 1997, the tribes and the U.S. Department of the Interior entered into an agreement to convince the BRAC Commission to transfer the land to the Bureau of Land Management (“BLM”) for subsequent transfer to the tribes through the Bureau of Indian Affairs (“BIA”) instead of allowing the land to be placed in the public sphere. The Navajo Nation and the Zuni Pueblo came together to expedite the transfer of the FWDA directly to the tribes as opposed to allowing the land to be open for bid by any parties. The original memorandum envisioned that the land would be secured to protect the Zuni Pueblo’s watershed in the south and with the northern portion of the base returning to the Navajo Nation’s ownership.

This agreement envisioned that all the land that could 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. As part of the BRAC process, the land must be remediated before it can be transferred to BLM. However, as we later learned, the land residing within the Navajo area was potentially too contaminated to be transferred to the Navajo Nation.

There are two limitations on the ability to transfer the land. First, 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. 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. Further, there is a disagreement within the federal government as to whether the standards used for the cleanup are sufficient. Second, there appears to be some land that the Army may not be willing to transfer regardless of whether the lands can be remediated. We cannot know for certain that all of the lands as envisioned in this legislation can be transferred as planned. As a result the Nation remains concerned about how the lands will be cleaned and transferred in the future.

The last time the Navajo Nation and the Zuni Pueblo sat before you to discuss legislation that sought to finalize the land division was July 2012. At that hearing, the Navajo Nation was at odds with the Zuni Pueblo over the proposed division contained within the legislation. Since that hearing, Congressman Lujan, Congressman Pearce, and Chairman Young, brought both tribes together to discuss our land claims and listen to our positions concerning the fair division of the lands. It is with great thanks that I sit before you today to acknowledge the actions of the members present today to bring the parties together and listen to their concerns.

The Fort Wingate Taskforce and the Zuni delegation met in Washington, DC on July 8, 2013, to present our mutual ideas on the land division with Congressmen Lujan and Pearce at the urging of Chairman Young. As a framework to this discussion, Congressmen Lujan, Pearce, and Chairman Young outlined three principles to guide the deliberation. First, the land will be divided equitably. Second, the land parcels will not be checker-boarded. Finally, the division will grant each tribe meaningful access to Interstate 40 for economic development purposes.

The land division described in HR 3822 reflects both tribes input in these discussions. The Eastern Navajo Land Commission, a commission established by the Navajo Nation Council to coordinate the resolution of land related issues with federal, state, county and other local authorities and private interests through out the Eastern Navajo Agency voted to support the final

land division through resolution ENLCJY-0-3-13. Similarly, the Fort Wingate Taskforce, of which my colleague Edmund Yazzie is a member, in a memorandum dated February 26, 2014, determined that it is in the best interest of the Navajo Nation for Congress to enact HR 3822. The Navajo Nation Council, which has final approval over such matters, has yet to take action on a resolution in support of this legislation, due to some ambiguities in the legislation, which I will address further.

The legislation before us today is not perfect. It does not reflect both tribes' deeply held beliefs of our rightful claims to the former Fort Wingate lands. In particular, the Navajo Chapters of Church Rock, Bahaali and Iyanbito feel very strongly that the lands north of Parcel One, were taken from their ancestors and should be returned to them as promised by the federal government. In these communities, which Council Delegate Yazzie represents, nothing less than a return of all the land is acceptable. However, as elected leaders we understand that the realities of a land division require a give and take.

The legislation before us does not reflect a negotiated settlement, but is the result of informed conversations with Congressmen Young, Lujan and Pearce. As such the final legislative product is not what either tribe would prefer, but is instead a division based on fair consideration of our mutual claims.

The legislation outlines that the division of the lands will be governed by the attached color-coded map that reflects the discussions between the parties. The Navajo Nation has several concerns regarding the map as attached. First, the division transfers land coded in "green" to be held in trust for the Navajo Nation, unless restricted fee status is request, and similarly land coded in "blue" is to be held in trust for the Zuni Pueblo, unless restricted fee status is requested. However some of the parcels are split between the tribes. To avoid future

conflict and litigation, we urge the legislation to include clear legal descriptions of the land parcels to be transferred to each tribe instead of the color designations. Similarly, clear legal descriptions should be included for those areas held in common by both tribes, as well as for the easements identified in the legislation to ensure cultural and religious access to both tribes.

Second, the Navajo Nation remains concerned about the ongoing responsibility for federal government to clean up the contamination and hazardous materials on the land, soil, air and water. The Navajo Nation requests assurances in the legislation that this will remain the financial and physical responsibility of the federal government.

Third there are two drafting errors on the map as attached to HR 3822. The first is a triangle of land attached to Parcel 14 that abuts Interstate 40. The map shows this triangle as being transferred to the Zuni Pueblo. During the discussions in Washington, this triangle of land was clearly agreed to belong to Navajo. Likewise, there is a triangle of land north of Parcel 3 that should be part of Parcel 2 that has been labeled as Zuni land. The original discussion kept Parcel 2 intact, undivided, and transferred to the Navajo Nation.

Fourth, section 4(c) contains a typographical error that refers to Interstate 25 instead of Interstate 40. This potential for confusion should be rectified before the legislation proceeds.

Finally, the legislation is silent on the issue of gaming. The Navajo Nation was asked to ensure that it had no plans to open a gaming facility on any of the transferred lands. The subsequent discussions were based on an understanding that the ground rules were the same for both tribes. Since this land division is not subject to a land settlement, any land taken into trust would be exempt from gaming under the Indian Gaming Regulatory Act. However, if the land is taken into restricted fee status as allowed by the legislation then the operation of gaming facilities under state law remains a possibility. The Zuni Pueblo has begun discussions with the

State of New Mexico concerning the completion of a gaming compact that would allow the operation of a gaming facility on transferred lands along the Interstate 40 corridor. This is unfair to the assurances that the Navajo Nation was required to provide, and would provide the Zuni Pueblo with an unfair advantage to be allowed to operate a facility on former federal lands that capitalizes on preexisting infrastructure built with federal tax dollars. The Navajo Nation asks that the land be subject to a blanket gaming restriction applicable to both tribes in order to avoid any ambiguity or dispute over the usage of the land.

The Navajo Nation appreciates Congress' efforts to bring this dispute to a conclusion. While neither party has achieved its ideal division, the totality of the bill reflects a good faith effort to fairly divide the lands between our two tribes. This of course does not mean that all of our constituents support the final division. Many in our communities remain opposed to giving up historic claims when our family members can remember their time on the land. It is my sincerest belief that their deeply held convictions should receive a complete airing.

Concerning the bill before us today, while the division itself reflects our discussions and our involvement in the process, the implications of the legislation do not. Any legislation must include a gaming restriction on the transferred land. The Eastern Navajo Land Commission has supported the HR 3822 framework, the Task Force, which I chair, has supported the legislation. However, the legislation that would have provided Navajo Nation Council support for the HR 3822 was pulled back when the implications of the Zuni gaming position was fully understood.

We look forward to working with members of Congress to address these outstanding issues and appreciate the efforts of you and your staff to bring this matter to a close.

Thank you.