

**Testimony of President Joe Shirley, Jr. President
The Navajo Nation
To the U.S. House of Representatives Committee on Natural Resources
June 18, 2008**

Good Morning Chairman Rahall, Honorable Members of the Committee. My name is Joe Shirley, Jr., President of the Navajo Nation. 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 the Navajo People to the surface use, and the subsurface mineral resources, of much of our traditional lands.

Self-Determination and the Trust Responsibility of the Federal Government

Over the last forty years, the federal government has made a significant shift in its policy toward the Native Nations. The federal government's shift from a policy of paternalism, assimilation and termination, to a policy that respects the sovereignty of Native peoples, and promotes tribal self-determination on matters relating to internal and local affairs. It is essential to the sovereignty and self-determination of the Navajo Nation that our government maintains a government-to-government relationship with the United States in deciding matters that concern and affect Navajo lands, resources and citizens. The Navajo Nation has its own laws that authorize particular parties and individuals to give testimony to Congress on behalf of the Navajo Nation, and to negotiate with the federal government over matters that affect our Nation. As President of the Navajo Nation, I am honored to appear before this Committee on behalf of the Navajo Nation and its citizens, and especially on behalf of the Navajo citizens who are beneficiaries of the Utah Navajo Trust Fund (hereinafter "UNTF"). I thank you for your invitation to provide testimony to the Committee and I am pleased that the Committee plans to consult with the Navajo Nation regarding future federal legislation affecting the UNTF. I also trust that the United States Congress will not pass any legislation that directly affects the lands, resources and citizens of the Navajo Nation without first obtaining our consent.

Utah Portion of the Navajo Nation and the Utah Navajo Trust Fund

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.

It is important for the Committee to understand that 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, 37 ½ % 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, discussed below.

Potential Breach of Fiduciary Duty Concerning the UNTF

There is substantial evidence that the State of Utah has not fulfilled its fiduciary duties under the 1933 Act. In a 1991 report, Legislative Auditor General for the State of Utah raised serious allegations of mismanagement and misappropriation of trust funds by the State of Utah and other entities that were entrusted with UNTF monies. The State of Utah has yet to make a full accounting of the UNTF, and is in ongoing litigation with the beneficiaries concerning these issues. Now, the State of Utah has declared its desire to withdraw as trustee of the UNTF. The State of Utah passed legislation this year that will effectively freeze most disbursements from the UNTF, end the trust fund administration, and move 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.

The Navajo Nation remains concerned over the potential for abuse of trust by a new trustee. For example, recently, the current UNTF Administrator along with members of the Dineh Committee, a now defunct State of Utah advisory committee to the UNTF, used UNTF monies to pay their travel expenses to Washington D.C., where they lobbied Congress on legislation for a preferred new trustee and system for management of the royalty funds. Neither the State of Utah nor the UNTF Board of Trustees authorized these travel and advocacy expenditures. The Governor of the State of Utah has chastised these individuals for engaging in personal political activities using UNTF monies, and for professing that they represent Utah in an official capacity. Although the Governor has promised to repay these monies to the trust fund, the incident highlights the importance of carefully choosing an appropriate new trustee, and drafting fair and legitimate trust terms through a lawful process.

The Navajo Nation is very concerned that there is a rush to designate a new trustee, especially where that trustee may be an alter ego of an entity or individuals who have been involved in mismanagement and misappropriation of trust monies in the past. 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 should be administered in a manner to ensure its survival in perpetuity, and so that trust fund monies shall continue to be available to San Juan County Navajos long after Navajo Nation oil and gas resources in Utah have been depleted. In other words, the trust fund should be managed in a way that ensures long-term viability of the fund and not merely a funding source for short term disbursements.

Selection of a New Trustee

The Navajo Nation believes that, consistent with federal policy, the Navajo Nation should be the new trustee of the UNTF. The UNTF is capitalized by royalties generated from Navajo Nation oil and gas leases on Navajo Nation Trust Lands for the benefit of Navajo Nation citizens. In 1933, when the UNTF was created, the Navajo Nation tribal government was only 10 years old. Today, the Navajo Nation is the largest and most sophisticated Native American government, with a substantial body of statutory and decisional law that complements the fundamental law of our People. The Navajo Nation has a proven record of acting as a trustee. Currently, the Navajo Nation manages, and has successfully increased, its own trust fund monies through the expert guidance of its Investment Committee and outside consultants. 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 UNTF. Importantly to this Committee, 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.

Appropriate Consultation and Development of Legislation Regarding UNTF

Like any government, 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. As I explained above, the Navajo Nation has its own law that governs who may speak on behalf of the Navajo Nation as representatives of our People. Under Navajo Nation law, the Navajo Nation Council is "the governing body of the Navajo Nation." 2 N.N.C. § 102 (A). "All powers not delegated are reserved to the Navajo Nation Council." 2 N.N.C. § 102 (B). The Navajo Nation Intergovernmental Relations Committee (IGRC) has been delegated by the Navajo Nation Council all powers necessary and proper "[t]o ensure the presence and voice of the Navajo Nation." 2 N.N.C. § 822(B); 2 N.N.C. § 824(A). The IGRC has many specific powers in the area of intergovernmental relations, see 2 N.N.C. § 824, and has been specifically delegated the authority to "[t]o assist and coordinate *all* requests for information, appearances and testimony relating to . . . federal legislation impacting the Navajo Nation." 2 N.N.C. § 824(B) (emphasis added). Importantly, the IGRC must coordinate "*all* Navajo appearances and testimony before Congressional committees." *Id.* (emphasis added). It is essential that the Navajo Nation speak with one voice in its government-to-government relationship with the United States. Any requests for official testimony that represents the position of the Navajo Nation government by any federal body by Navajo Nation officials which are not coordinated through the IGRC, or other designee of the IGRC, or the Council are contrary to Navajo Nation law, and an affront to Navajo Nation sovereignty and self-determination in its own political affairs.

The Navajo Nation has an official position and legally delegated representatives who are authorized to provide testimony in regard to the UNTF. On May 19, 2008, the IGRC passed a Resolution "Relating to Intergovernmental Relations; Approving the 2008 Position Statement of

the Navajo Nation on the Future of the UNTF.” IGRMY-107-08 (See Attached). In addition to adopting an official position of the Navajo Nation in regard to key terms for future federal legislation affecting the UNTF, see Exhibit A (attached), the Resolution authorizes only the President of the Navajo Nation, the Speaker of the Navajo Nation, the Navajo Utah Commission, and their designees to advocate with the United States Congress in regard to the future of the UNTF. IGRMY-107-08. These are the only individuals and entities with authority under Navajo Nation law to represent the Navajo Nation and its citizens in any official capacity in this matter. Moreover, that advocacy must be consistent with the official policy and position of the Navajo Nation in regard to the UNTF, as outlined in its position statement.

The official position of the Navajo Nation in this matter are the result of careful research, analysis and compromise between the varied interests of current beneficiaries, and represent what the Nation believes is the fairest outcome for all Navajo beneficiaries involved and the best means to avoid the mismanagement and misappropriation of trust funds that have occurred in the past.

In addition to myself, in my capacity as the President of the Navajo Nation, the Speaker of the Navajo Nation Council, and the Navajo Utah Commission, the only other Navajo Nation entities that are designated to represent the Navajo Nation on this matter are the Navajo Nation Washington Office and the Navajo Utah Commission. The Navajo Nation Washington Office is an agency of the executive branch established by the Navajo Nation Council to function as our federal intergovernmental relations office. Under Navajo Nation law, the Washington Office is an extension of the Navajo Nation government, represents the Nation to the United States Congress and federal agencies, and reports back to the Council through the President’s office. One of the central purposes of the Washington Office is to help ensure Navajo Nation sovereignty by emphasizing and maintaining a government-to-government relationship with the United States. In the matter of the UNTF, the Washington Office has the express delegated authority as my designee to advocate on behalf of the Navajo Nation in regard to the UNTF.

Likewise, the Navajo Utah Commission is an official advocate for the Navajo Nation in this matter under oversight of the Intergovernmental Relations Committee. The Navajo Utah Commission has been delegated this authority because of its considerable expertise in the issues which are central to future management of the trust as well as providing local representation of the Navajo beneficiaries.

Conclusion

Chairman Rahall, Honorable Members of the Committee, on behalf of the Navajo Nation, I wish to express my deep appreciation for this opportunity to provide testimony to the Committee on Natural Resources. The Navajo Nation looks forward to working with the Committee on a government-to-government relationship as we move forward with this important legislation concerning the future of the Utah Navajo Trust Fund.

Thank you.