

**Testimony of President Joe Shirley, Jr. President
The Navajo Nation
To the U.S. House of Representatives Committee on Natural Resources
July 28, 2010**

Good Morning Chairman Rahall, honorable Members of the Committee. As President of the Navajo Nation, I am honored to appear before this Committee on behalf of the Navajo Nation and its citizens, and particularly on behalf of the Navajo people who reside in Utah and who are beneficiaries of the Utah Navajo Trust Fund (hereinafter "UNTF"), to provide testimony today in regard to House Bill HR 4384.

The Navajo Nation has consistently opposed legislation that diminishes the right of the Navajo Nation Government to assert jurisdiction over our Navajo People, that is imposed upon us without consultation or consent, and that is developed outside of the normal policy process that ensures that all interests are properly considered. Unfortunately, I sit before you today to oppose this legislation for just such reasons.

Government-to-Government Relationship

Over the last forty years, the federal government has shifted from a policy of paternalism, assimilation and termination, to one that respects the sovereignty of Native peoples, and which promotes tribal self-determination on matters relating to internal and local affairs. It is indeed essential to the sovereignty and self-determination of the Navajo Nation that we maintain a government-to-government relationship with the United States in deciding matters that concern and affect Navajo lands, resources and citizens. We are here today to discuss legislation proposed by Congressman Matheson that directly affects the lands, resources and citizens of the Navajo Nation. I am hopeful that based on our long government-to-government relationship, this Committee will not support any legislation directly affecting Navajo lands, resources and citizens that does not have the Navajo Nation's Government's consent and support. The future of the Utah Navajo Trust Fund is mischaracterized as a "Utah" issue. It is first and foremost a Navajo issue.

The Navajo Nation Opposes House Bill HR 4384

The Navajo Nation adamantly opposes House Bill HR 4384 for several reasons.

First, as the Navajo Nation has made clear in testimony and in meetings with Congressman Matheson's staff, the Navajo Nation wishes to be the trustee of the UNTF to protect the Navajo beneficiaries. This trust fund has been plagued by a lack of accounting, mismanagement, and misappropriation. House Bill HR 4384 does not name the Navajo Nation as the new trustee of the UNTF and is an abrogation of the federal trust responsibility.

In regard to the Navajo Nation being named trustee, it is especially important that this Committee understand the following:

- *The Navajo Nation is already a fiduciary of the UNTF monies and will always be a fiduciary of the UNTF monies.* The UNTF is capitalized by royalties generated from Navajo Nation oil and gas leases on Navajo Nation Trust Lands. All royalties from Navajo oil and gas leases go directly to the Navajo Nation. Only after the royalties are in the control and custody of the Controller of the Navajo Nation does the Navajo Nation then distribute those royalties to the UNTF. See Exhibit A. In nearly thirty years, the Nation's Controller and the Navajo Nation have never mismanaged, misappropriated or diverted any UNTF monies. *Any claim that the Navajo Nation should not be named the trustee because it would not honor its fiduciary duties as a trustee is simply preposterous.*
- The Navajo Nation also has a proven record of honoring its fiduciary duties as the trustee of numerous Navajo Nation trust accounts, including the Permanent Trust Fund, the Trust Fund for Handicapped Services, the Trust Fund for Vocational Education, the Trust Fund for Senior Citizen Services, etc. Through its Office of the Controller, the Navajo Nation manages, and has successfully increased, its own trust fund monies through the expert guidance of its Investment Committee and outside investment managers.

Second, the Navajo Nation opposes House Bill HR 4384 because it would waste trust fund resources by duplicating administrative services that the Navajo Nation already provides through its Office of the Navajo Utah Commission and the Navajo Nation Office of the Controller:

- The Office of the Utah Navajo Commission (UNC) should be the Trust Administrator for community projects which utilize UNTF monies. The Office of the UNC regularly administers projects for the Utah beneficiaries, leveraging funding provided by the Navajo Nation, the UNTF, the Utah Navajo Revitalization Fund, and federal agencies. The Utah Navajo Commission is comprised solely of representatives from the seven Utah Chapters who would ensure fairness in the administration of UNTF funded projects for the Utah beneficiaries.
- The Office of the Controller handles numerous funds and accounts, including trust accounts. As previously stated, the Office of the Controller already handles the royalties which capitalize the UNTF.
- It is therefore a waste of trust fund resources *and a further abrogation of the federal trust responsibility* to duplicate administrative services where the Nation can already provide them.

Third, House Bill HR 4384 is deeply flawed in both its substance and in the process used to bring it to consideration today:

- This bill acts in contravention of Navajo Nation Sovereignty and seeks to divide the Navajo People into geographic groups imposed on us by the federal government.

- Although this legislation directly impacts Navajo Nation lands, resources and citizens, the Navajo Nation has been given limited opportunity to comment and consultation has been solely of a cursory manner.
- HR 4384 imposes Utah state law on the “Commission” and “Trust Administrator” in violation of Navajo Nation sovereignty and contrary to existing federal law.
- HR 4384 creates an ill-defined quasi-governmental entity on the Navajo Nation (the “Commission”), to be comprised of Navajo Chapter representatives, who would nonetheless purportedly be beyond the jurisdiction of the Navajo Nation, contrary to Navajo Nation and federal law and violating the Nation’s right to territorial and jurisdictional integrity as guaranteed by the Treaty of 1868.
- By the express terms of the statute the Commission would bear the sole fiduciary liability for the trust fund, in further abrogation of the federal trust responsibility to the Navajo people.
- HR 4384 imposes a requirement on Navajo Nation chapters and Navajo Nation elected officials to carry out elections which are outside their official duties, which are contrary to Navajo Nation law, and which are mandated to be paid for by Navajo Nation general funds (the costs for which only “may” be reimbursed from the trust fund at the discretion of the Commission).
- The Navajo People are one People. We were here before the Federal government created states in the Southwest. Our people are subject to the jurisdiction of the Navajo Nation government and to federal jurisdiction. HR 4384 seeks to divide the People by treating them differently from Navajos who reside in New Mexico or Arizona.
- The process for considering this legislation is flawed. The Aneth Chapter, the largest Chapter of Navajos in the State of Utah, the Chapter where the majority of the resources are that provide revenues for the existing trust fund (and where the environmental impacts occur), and the Chapter where the majority of the beneficiaries reside, have consistently stated the wish that the Navajo Nation serve as trustee and yet they have not been invited here today to express their wish. The Office of Special Trustee, who has also expressed their preference that the Navajo Nation serve as trustee is also absent, as is the Bureau of Indian Affairs.

Democracy and the Rule of Law on the Navajo Nation

On a final note, this Committee may hear testimony today which disparages the Navajo Nation government, Navajo Nation officials or even the Navajo people, or which creates the impression that the Navajo Nation government is in disorder. On the contrary, it is vital that this Committee understand that, while many of our political institutions are young, the concept of

democracy has always been part of the Navajo life-way and is indeed taught to the Navajo people through our creation stories as part of Navajo Fundamental Law. Navajo Fundamental Law functions much like a constitution for the Navajo people and government. Recently, the Navajo people have exercised their democratic voice and, under Navajo Fundamental Law, their ultimate authority over the Navajo Nation government, through the petition process. As a result, there will be substantial changes to some of our political institutions. Through democratic elections to take place this fall, the Navajo Nation Council will be reduced in size from 88 delegates to 24 delegates.

These changes have been challenged in the Navajo Nation courts and ultimately upheld by the Navajo Nation Supreme Court. It is a testimony to the Rule of Law on the Navajo Nation, the integrity of the Navajo people, and the health of our democracy that all the branches of the Navajo Nation government are respecting these judicial decisions and that elections are moving forward. Please be aware, however, that nothing in the upcoming changes to the legislative branch will affect the Office of the Controller, or the Controller's responsibility, authority and capability to manage the UNTF.

Further, our government is much like the federal government. Some individuals who assert to speak for certain groups of constituents seek only to further their own interests. Our government's policy is quite clear: only authorized Navajo officials may speak for the wishes of the Navajo People. All others may speak only for their own interests and must be considered accordingly.

Conclusion

Chairman Rahall, Honorable Members of the Committee, on behalf of the Navajo Nation, I thank you for this opportunity to provide testimony to the Committee on Natural Resources in regard to House Bill HR 4384. We do not support this bill. However, the Navajo Nation looks forward to working with the Committee through our government-to-government relationship and with other members of Congress to introduce legislation naming the Navajo Nation as the new trustee of the Utah Navajo Trust Fund.

Thank you.

