

LEGISLATIVE HEARING on SB 1327

Before the United States Senate Committee on Indian Affairs

Thursday, October 20 2011

2:15PM

Senate Dirksen office Bldg 628

Honorable Chairman Akaka, Vice Chair Barrasso, Members of the Committee, Senator Hatch,

My name is Kenneth Maryboy. I am a Navajo Nation Delegate, and a County Commissioner for San Juan County, Utah:

This is truly an honor to be able to address you in this morning in regard to Senate Bill 1372. This committee is important to the Dine'. We are grateful for your insight and for your willingness to listen to the people. We are especially grateful for the opportunity to shed light on some of the questions surrounding Utah Dine' Corporation, the beneficiaries of the "Utah Navajo Trust Fund," the current state of the trust fund, and the various factions who have an interest in the outcome of this process.

In 1933, the United States Congress signed into law the Act which created the Utah Navajo Trust Fund.

That Act added a section of federal land, known as the Aneth extension, to the existing Navajo Reservation.

In regard to the 1933 final Act, the United States District Court explained:

In order to compensate the State for the resulting loss of tax revenues and increased need for governmental services, the Act provided, inter alia, that 37 ½ % of net royalties from oil and gas production within the Extension were to be paid to the State of Utah: "provided that the 37 ½ percentum of said royalties shall be expended by the State of Utah in the tuition of Indian children in white schools and/or in the building of maintenance of roads across the lands described in section 1 hereof, or for the benefit of the Indians residing therein." 47 Stat. 1418 (1933).

This was an agreement with the State of Utah for the benefit of the "Indians" living on the Aneth Extension.

The 1968 amendment expanded the beneficiaries to include Navajos living in San Juan County, Utah.

The Navajo Nation was not overlooked in the 1933 Act or in the 1968 amendment; they were given 62 1/2% of the royalties from those "Trust Fund" wells. Of the many other wells located on the Utah portion of the Navajo Reservation, the Tribe receives 100% of the royalties. In addition, an agreement was made that the royalties paid to Utah would be based on a fixed price of \$45 per barrel. This means that when oil is selling for \$90, that the Trust Fund receives an equivalent royalty of only 18 3/4% and the Tribe receives 81 1/4%.

It is not my purpose today argue whether these past agreements are fair or equitable. They are the law, and we are bound by the law. The State of Utah has asked Congress to relieve them of their duty as the trustee over the Trust Fund. Normally, in such a case, if the beneficiaries are of legal age they would be required to select a new trustee.

It is true that we are citizens of the Navajo Nation. We are proud to be citizens. We are also Citizens of the State of Utah. We are also Citizens of San Juan County, Utah. It is our citizenship in San Juan County along with our Race, which qualifies us as beneficiaries of the Utah Navajo Trust Fund.

There is some disagreement among Utah Navajos about who should be a beneficiary, or who should be the Trustee. Fortunately we have political sub-units which help to determine the "mind" of the people. Our Chapter governments have had their say in the formation of the Utah Dine' Corporation. They have had their say in the appointment of board members. And they will have their say in the reorganization of the board once the Corporation is charged with the responsibilities of Trustee.

We cannot expect a consensus on such a matter any more than Congress would expect a consensus on the matters on which they vote. But we do have the ability to hear all concerns and to put the matter to a vote. We have resolutions from all but the Aneth Chapter in favor of appointing Utah Dine' Corporation as trustee. There is more of a division on this matter in Aneth because they were named as beneficiaries in the 1933 act, and many there believe that the 1968 amendment was a mistake. I acknowledge their concern. I share their frustration. But the 1968 amendment was made for a wise purpose. Over time as the population has shifted from one place to another; as generation has come and gone, to isolate the beneficiaries to a small geographic area like the Aneth extension would cause many more problems than it would ever solve.

Utah Dine' Corporation

In July 2010, this same issue was heard by the Natural Resources Committee. At the time Mr. Ross O Swimmer suggested two possible options for the beneficiaries; to allow the Navajo Nation to step in as Trustee, or have the Utah Navajos form a private non-profit organization to manage the trust. This was the genesis of the Utah Dine' Corporation. Other existing non-profits were also considered, but it was determined that if this was going to be done right, the new beneficiary should be a new entity with no prior history. A fresh new company has been formed. It is fully at the mercy of the Utah Chapters. Until it is named as the trustee, it will remain a dormant shell. The board that is in place was put there by the chapters. Or, in the case of the Aneth Chapter, by a volunteer until an appointment became necessary.

Currently Utah Dine' does not even have a checking account. It never has had a checking account. There is not possibility of mismanagement, because it has not been activated other than as a shell corporation formed in the State of Utah. It has articles of incorporation, and bylaws. Its current board members serve with not promise of compensation. Travel expenses are born by the individual board members, or by a sponsor.

I am confident that Utah Dine' Corporation can take full advantage of the current management of the Utah Navajo Trust Fund Holding Account. We also have the promise of support from the State of Utah, including the people who were involved with the previous administration of the fund. We have the support of several key people with the Navajo Nation and hope that once this matter is decided in favor of Utah Dine' Corporation that we will have the full support and cooperation of the Navajo Nation as well.

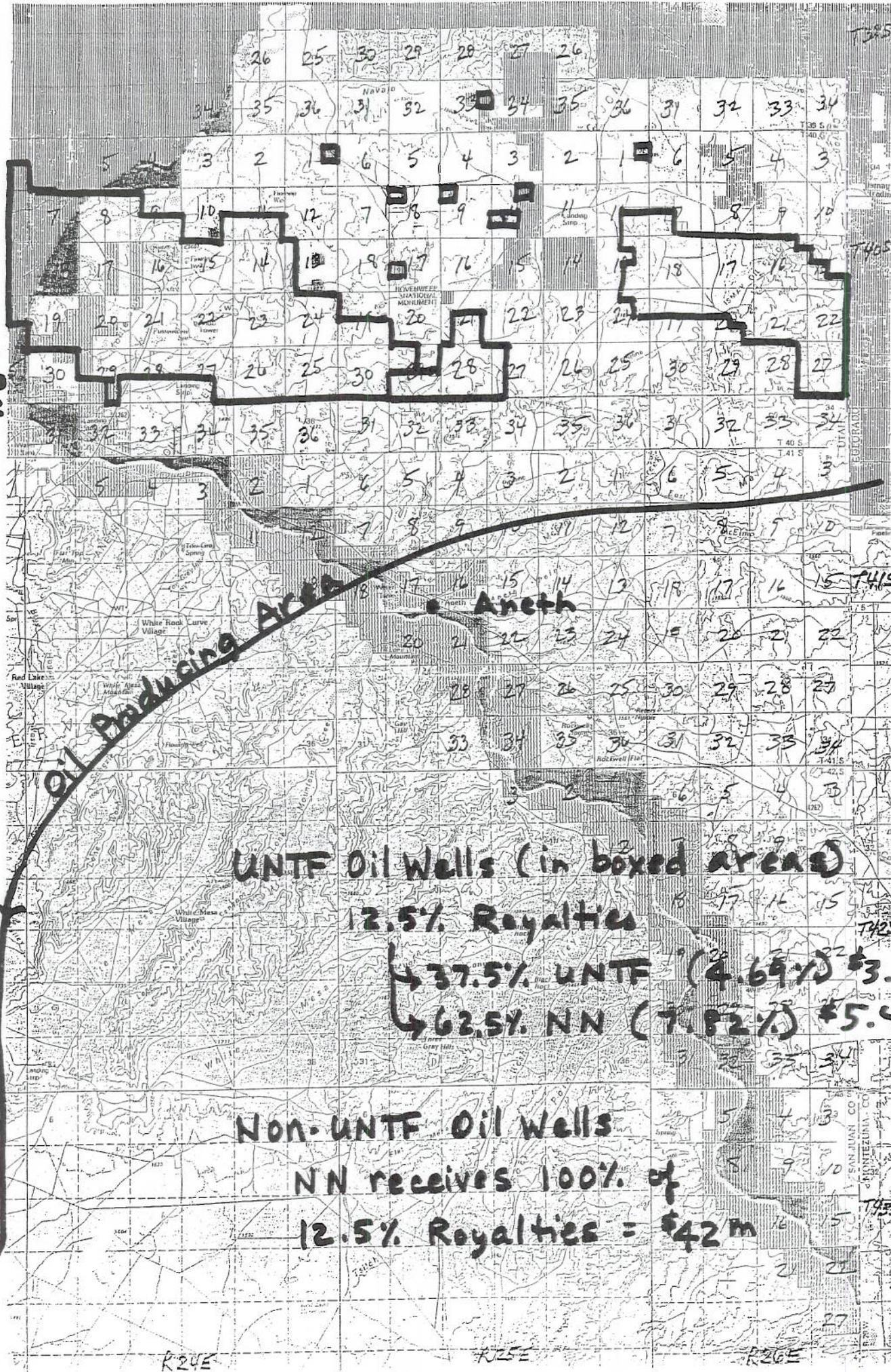
Naturally a transition from the current Trust Fund Holding Account to a new trustee will not happen in an instant. We anticipate an orderly transition.

In the future, we expect that the Trust Fund will provide opportunities for matching funds from Utah's Community Impact Board; from federal program grants such as education, housing, etc; from State and Federal highway funds; from the Navajo Nation for programs that they would like to see offered to members of the tribe in Utah.

With the "Holding Account" simply accumulating money, the people are suffering from lack of services. There is much good that needs to be done, but for the past three years, there has not been an entity authorized by Congress to act. This cannot continue. The people have spoken as a majority. Utah Dine' Corporation is well structured and still in its original wrapper waiting to be used. All we lack is the nod from this committee.

The Navajo Nation, if they were the trustee would have a distinct advantage of sovereign immunity. It would be nice to lay aside any concerns about potential future law suits. While this is of great benefit to the trustee, it is not of benefit to the beneficiaries who should have legal recourse to ensure accountability of the trustee. Utah Dine' Corporation is not immune from full accountability. Charging them with the fiduciary role of trustee is the correct course for this committee.

Thank you.



Mont
Creek

Oil Producing Area

Aneth

← Mex.
Water

UNTF Oil Wells (in boxed areas)

12.5% Royalties

↳ 37.5% UNTF (4.69%) \$3.3m

↳ 62.5% NN (7.82%) \$5.4m

Non-UNTF Oil Wells

NN receives 100% of

12.5% Royalties = \$42m

Red
Mesa

R24E

R25E

R26E