



*DR. JOE SHIRLEY, JR.*  
President

*BEN SHELLY*  
Vice President

October 7, 2009

The Honorable Bob Bennett  
United States Senate  
431 Dirksen Senate Office Building  
Washington DC 20510-4403  
Phone: (202) 224-5444

Dear Senator Bennett:

*Yá'át'ééh!* I recently learned of your legislation introduced into the United States Senate which would designate the "Utah Dineh Corporation" as the new trustee of the Utah Navajo Trust Fund. I wish that you and your staff had consulted with the Navajo Nation prior to introducing this legislation, and had obtained the consent of the Navajo Nation for proposed legislation that directly impacts Navajo Nation lands, resources and citizens. Unfortunately, your legislation runs counter to our position.

The 1933 Act that created the Utah Navajo Trust Fund was based on an agreement among three parties: the Navajo Nation, the U.S. Department of the Interior, and the State of Utah. The 1933 Act and the 1968 amendments were passed with the consent and support of those parties. Your proposed amendments to the 1933 Act, however, are not supported by the Navajo Nation or the Office of Special Trustee at the Department of the Interior that, instead, "supports the Nation's desire to manage its own account." (Please see June 19, 2008, testimony of Ross O. Swimmer, Special Trustee for American Indians, before the House Committee on Resources; see also my June 19, 2008 testimony before the House Committee on Resources.)

According to testimony from representatives of the Utah Governor's Office at the June 19, 2008, hearing, the State of Utah does not officially support the selection of any trustee over another. Given that none of the parties to the original agreement have consented to your proposed legislation, it is unclear why your legislation would designate the Utah Dineh Corporation as the new trustee of the UNTF.

As background, the UNTF is capitalized with royalties from oil and gas leases on Navajo Nation lands in Utah and held in beneficial title by the Navajo Nation. Under the 1933 Act, as amended, 62½ percent of those royalties are to be used for the benefit of all Navajo Nation citizens, including those Navajo citizens residing in Utah. 37½ percent of the royalties are to be used solely for the benefit of Navajo citizens residing within San Juan County in the State of Utah. The Navajo Nation is the fiscal agent for 100 percent of the royalties from its own oil and gas leases, including for those royalties that are directed to the UNTF.

Because these are all royalties from Navajo Nation tribal leases, they may be used only for the benefit of recognized members of the Navajo Nation. Indeed, it is precisely the political status as a Navajo citizen that entitles a beneficiary to assistance from the UNTF.

It is the Navajo Nation's desire that it intends to be the new trustee of the Utah Navajo Trust Fund, consistent with our right over our land, resources and citizens. This is the Navajo Nation's official position as adopted by Resolutions IGRMY-107-08 and IGRF-24-09 of the Navajo Nation Council's Intergovernmental Relations Committee (See attached).

As to the characterization made in your Sept. 22, 2009, press release, "Bennett Introduces Bill to Relieve State from Navajo Trust Fund Responsibilities," to the extent that elected officials of the Navajo Nation purport to form the Utah Dineh Corporation in their official capacities and on behalf of Navajo citizens, they are acting *ultra vires* and in violation of Navajo Nation law.

Contrary to unsubstantiated reports, the Navajo Nation does not have a history of distributing or siphoning off Navajo Nation or federal funds in violation of federal law. As the fiscal agent of the royalties that capitalize the UNTF, the Navajo Nation has never re-directed the 37½ percent of oil and gas royalties intended for the UNTF to its general fund or any other fund. On the contrary, the Nation is committed to keeping the 37½ percent of the royalties from its Utah oil and gas leases for the sole benefit of its citizens in San Juan County, Utah, and has proposed federal legislation to accomplish that. Nonetheless, the Nation has both the legal right and the obligation to ensure that Navajo funds and Navajo citizens are protected.

It is my understanding that the Utah Dineh Corporation has no independent capital or resources and no history of trust fund management. The legislation you introduced is an invitation to further mismanagement and misappropriation of UNTF monies and would leave Navajo citizens with no legal remedy in the event of a breach of trust. Accordingly, the Navajo Nation cannot support Utah Dineh Corporation being designated as the new trustee of the UNTF.

Senator, I am available for further dialogue with you or your staff, and it is my hope that you will withdraw this legislation in order to support legislation designating the Navajo Nation as the new trustee of the UNTF. You may contact me directly at 928-871-7915, or through my representative, Sharon Clahchischilliage, Executive Director, Navajo Nation Washington Office, at 202-682-7390.

Sincerely,

  
Dr. Joe Shirley, Jr., President  
**THE NAVAJO NATION**

**TESTIMONY OF  
ROSS O. SWIMMER  
SPECIAL TRUSTEE FOR AMERICAN INDIANS  
U.S. DEPARTMENT OF THE INTERIOR  
BEFORE THE  
COMMITTEE ON RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES  
OVERSIGHT HEARING  
ON  
THE UTAH NAVAJO TRUST FUND  
JUNE 19, 2008**

Good morning Mr. Chairman, Ranking Member, and members of the Committee. It is a pleasure to be here today to discuss the Navajo Nation Trust Fund. We understand that the Navajo Nation would like to take over and administer its fund. The Department supports the Nation's desire to manage its own account.

**Background**

In 1933, Congress established the Utah Navajo Trust Fund (UNTF) through legislation (47 Stat.1418), which designated Utah as the trustee. The corpus of the UNTF comes from 37.5 percent of net royalties derived from exploitation of oil and gas deposits under the Navajo Reservation's Aneth Extension. According to the statute, the 37.5 percent net royalties were to be paid to the State of Utah, which was to be used for the health, education and general welfare of the Indians residing in the Aneth Extension. In 1968, Congress expanded the beneficiary class to include all Navajo Indians living in San Juan County, Utah (Pub.L. 90-306, 82 Stat. 121).

In approximately 1959, oil and gas wells in the Aneth Extension began producing in paying quantities, and the United States Department of the Interior, through oil and gas mining leases on the Navajo tribal land, began collecting oil and gas royalties. The leases are between the Navajo Nation and the producer, and are subject to approval by the Secretary of the Interior.<sup>1</sup> The State of Utah is not a party to the tribal leases.

Currently, payments from lessees are sent directly to the Navajo Nation. The Mineral Management Service (MMS) receives the Report of Sales and Royalty Remittance (Form MMS-2014) from the royalty payor and prepares a monthly summary of the reported royalties for 21 Aneth leases. MMS sends the monthly summary to the Navajo Regional Office of the Bureau of Indian Affairs, the Utah Navajo Trust Fund, and the Navajo Nation.

The Navajo Nation collects the Aneth lease royalties directly and remits 37.5 percent to the UNTF account administered by the State of Utah. The State, upon receipt of each check, deposits it into the Trust Fund and invests the unused royalty funds according to rules set forth in Utah's statutes.

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<sup>1</sup> See, e.g., 25 U.S.C. § 396a (provision in 1938 Indian Mineral Leasing Act allowing tribe to lease unallotted Indian land for mining purposes, subject to Secretary of Interior approval); 25 C.F.R. Pt. 211 (Leasing of Tribal Lands for Mineral Development).

In recent years, Utah's administration of the UNTF has been criticized by some in the Navajo Nation, and there is currently litigation pending between beneficiaries of the trust and the State of Utah over the management of the trust. It is our understanding the State of Utah now wishes to sunset its administration of the UNTF, and the Utah legislature has introduced legislation to that end. If the State of Utah will no longer act as the trustee of the UNTF, the question arises who should administer this fund. Some have suggested that the Department of the Interior – specifically the Office of the Special Trustee for American Indians (OST) – might be the most appropriate entity to assume this function, and we have been invited to testify before this Committee to express our views on this suggestion. We believe it is more appropriate for the Navajo Nation to administer its fund.

### **A Successor Trustee for the UNTF**

In the view of the Department, we would not be the appropriate entity to take over the trust functions currently being performed by the State of Utah, for a number of reasons. OST is constrained by statute and regulation as to what monies it can receive into its system and how those monies can be invested (25 USC §161 et seq.). The Special Trustee is not permitted to take money for investment that is not held as Indian or Tribal Trust money, and all current OST trust monies are invested in public debt securities.

We have no capacity to expend those funds to carry out the intent of the 1933 Act. These Utah Navajo trust funds are designated for a particular purpose: the health, education and general welfare of all Navajo Indians living in San Juan County, Utah and for Indians residing in the Aneth Extension. Interior is not aware of how decisions have been made to satisfy the intent of the trust.

We believe it is more appropriate for the Navajo Nation or a nonprofit organization made up of Navajo citizens to contract with a private investment firm for money management and then create a process whereby the money collected and investment earned could be used to further the intent of the 1933 Act. Additionally, the Department is aware of the Navajo Nation's position expressing its desire to manage the trust and disburse the funds to the Utah Navajo beneficiaries consistent with the current disbursement and percentages. The BIA, consistent with our government-to-government relationship with the Navajo Nation, acknowledges and respects the position of the Navajo Nation as it pertains to the Utah Navajo Trust Fund.

Finally, we suggest that no action be taken to relieve the State of Utah from its burden as trustee until the current litigation is resolved. The damages phase for failure to account and invest funds properly is still underway. Otherwise, the U.S. should ask to be indemnified by Utah for action the court might take.

This concludes my statement. I would be happy to answer any questions the Committee may have.



September 24, 2009

The Honorable Bob Bennett  
United States Senate  
431 Dirksen Building  
Washington, DC 20510-4403

Dear Senator Bennett:

As you know, the Utah Navajo Trust Fund is a private trust fund of the State of Utah. The majority of the money funding this account comes from oil royalties from the Aneth Extension of the Navajo Indian Reservation. These royalties are paid to the State for the health, education, and general welfare of the Navajo Indians residing in San Juan County, Utah.

Prior to June 30, 2008, the Trust Fund had oversight authority by the state of Utah. During the 2008 General Session of the Utah Legislature, House Bill 352 was passed which recognized the repeal of the Utah Navajo Trust Fund. The bill moved responsibility to fulfill the liabilities and obligations of the repealed Utah Navajo Trust Fund to the Department of Administrative Services and provided for a transition process until Congress designates a new recipient of Utah Navajo royalties.

To this end, the Navajo Nation delivers to you the official positions of the 21<sup>st</sup> Navajo Nation Council and that of the Navajo Utah Commission. In short, the Navajo Nation requests the U.S. Congress designate the Navajo Nation as the new trustee of the Utah Navajo Trust Fund.

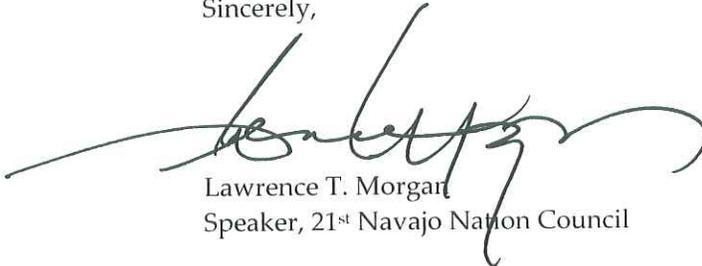
Moreover, we understand that you have recently introduced legislation that assigns the new trustee responsibility to an entity other than the Navajo Nation. We implore you to reconsider your proposal as this goes against the official position of the Navajo Nation and the standing trust responsibility between the U.S. Government and the Navajo Nation.

Given that these are Navajo Nation resources within Navajo Nation land and the sale of the resources produce royalties which appropriately should be made available to Navajo Nation members, it would be consistent with the centuries old federal trust responsibility and the historical commitment of the United States to foster and develop self determination of all Indian peoples, and appropriately in this particular instance, the Diné people feel it is imperative that Congress designate the Navajo Nation the recipients and administrators of this trust fund. The thought that royalties received from the sale of resources of the Navajo Nation people should be administered in a manner that excludes the representation of the Navajo people through their government is quite frankly unacceptable.

Senator Bennett  
September 24, 2009  
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Should you have any questions, please do not hesitate to contact me at (928) 871-7160. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lawrence T. Morgan', with a long horizontal flourish extending to the left and a vertical flourish extending downwards to the right.

Lawrence T. Morgan  
Speaker, 21<sup>st</sup> Navajo Nation Council

attachments: IGR Resolution IGRF-24-09  
NUCMAY445-08  
NUCAUG-455-08

cc: Inter-Governmental Relations Committee, Navajo Nation Council  
President Joe Shirley, Navajo Nation  
Navajo Utah Commission  
Senator Byron Dorgan  
Senator Orrin Hatch  
Senator Jeff Bingaman  
Senator Pete Domenici  
Senator John McCain  
Senator Jon Kyl

**IGR Resolution:**

**IGRF-24-09**

RESOLUTION OF THE  
INTERGOVERNMENTAL RELATIONS COMMITTEE  
OF THE NAVAJO NATION COUNCIL

21<sup>ST</sup> NAVAJO NATION COUNCIL - THIRD YEAR, 2009

AN ACTION

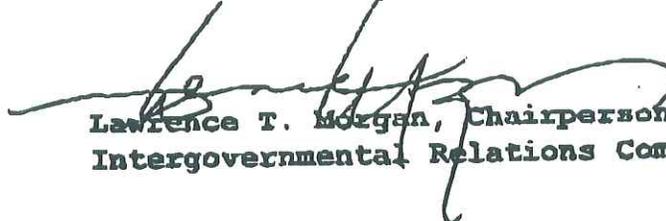
RELATING TO INTERGOVERNMENTAL RELATIONS; APPROVING AND  
RECOMMENDING DRAFT FEDERAL LEGISLATION TO PERMANENTLY  
REPEAL THE ACT OF MARCH 1, 1933 (47 STAT. 1418), ENTITLED  
"AN ACT TO PERMANENTLY SET ASIDE CERTAIN LANDS IN UTAH AS  
AN ADDITION TO THE NAVAJO INDIAN RESERVATION, AND FOR OTHER  
PURPOSES," AND TO PERMANENTLY REPEAL THE ACT OF MAY 17,  
1968 (PUBLIC LAW 90-306), WHICH AMENDED SAID 1933 ACT, AND  
TO DESIGNATE THE NAVAJO NATION AS THE NEW TRUSTEE OF THE  
UTAH NAVAJO TRUST FUND, AND TO PERMIT THE EXCHANGE OF UTAH  
SCHOOL TRUST LANDS LOCATED WITHIN THE BOUNDARIES OF THE  
NAVAJO NATION RESERVATION IN THE STATE OF UTAH FOR  
UNRESERVED AND NONMINERAL PUBLIC LANDS LOCATED IN THE STATE  
OF UTAH

BE IT ENACTED:

1. The Navajo Nation hereby approves and recommends the draft federal legislation, attached as Exhibit A, "To permanently repeal the Act of March 1, 1933 (47 Stat. 1418), entitled "An Act to permanently set aside certain lands in Utah as an addition to the Navajo Indian Reservation, and for other purposes," and to permanently repeal the Act of May 17, 1968 (Public Law 90-306), which amended said 1933 Act, and to designate the Navajo Nation as the new trustee of the Utah Navajo Trust Fund, and to permit the exchange of Utah school trust lands located within the boundaries of the Navajo Nation Reservation in the State of Utah for unreserved and nonmineral public lands located in the State of Utah.
  
2. The Navajo Nation hereby authorized the submission of the federal legislation to Congressman Jim Matheson, D-Utah, for sponsorship and authorizes the President of the Navajo Nation, the Speaker of the Navajo Nation Council, and their designees to advocate for the adoption of the draft federal legislation, as set forth in Exhibit A.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 5 in favor, 1 opposed, this 10<sup>th</sup> day of February, 2009.



Lawrence T. Morgan, Chairperson  
Intergovernmental Relations Committee

Motion: Young Jeff Tom  
Second: Thomas Walker, Jr.

## AN ACT

To permanently repeal the Act of March 1, 1933 (47 Stat. 1418), entitled "An Act to permanently set aside certain lands in Utah as an addition to the Navajo Indian Reservation, and for other purposes," and to permanently repeal the Act of May 17, 1968 (Public Law 90-306), which amended said 1933 Act, and to designate the Navajo Nation as the new trustee of the Utah Navajo Trust Fund, and to permit the exchange of Utah school trust lands located within the boundaries of the Navajo Nation Reservation in the State of Utah for unreserved and nonmineral public lands located in the State of Utah.

### I. Section One.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Act of March 1, 1933 (47 Stat. 1418) and amendments to said 1933 Act by the Act of May 17, 1968 (Public Law 90-306) are both hereby repealed in their entirety; provided, nothing in this Act shall relieve the State of Utah of any responsibility for any breach of its fiduciary duties as the former trustee of the Utah Navajo Trust Fund or for any damages or other relief awarded in the past, present, or future as a result of any such breach.*

### II. Section Two.

That thirty seven and one half percent (37 ½ %) of all oil and gas royalties generated from Navajo Nation oil and gas leases on lands added to the Navajo Nation under the Act of March 1, 1933 (47 Stat. 1418), previously paid to, held, and administered by the State of Utah, shall be invested, managed, and administered by the Navajo Nation in trust for the benefit of registered members of the Navajo Nation who reside in San Juan County, Utah, according to the following provisos:

#### a. Beneficiaries

- (1) The 37 ½ % of royalties from all Navajo Nation oil and gas leases on Reservation lands acquired under the Act of March 1, 1933 (47 Stat. 1418) shall be placed in a "Utah Navajo Trust Fund" (hereinafter "trust fund"), said trust fund to be invested, managed, and administered for the health, education, and general welfare of registered members of the federally recognized Indian tribe, the Navajo Nation, who reside in San Juan County, Utah (hereinafter "beneficiaries"). The sixty two and one half percent (62 ½ %) of all royalties generated by oil and gas production from leases on Reservation lands acquired under the 1933 Act shall continue to go to the Navajo Nation.
- (2) In consultation with Navajo Environmental Protection Agency, a reasonable portion of the annual trust fund budget shall be set aside during the Navajo Nation annual budget process to pay for mitigating the environmental impacts and other

negative impacts associated with the development and production processes of those oil and gas resources located on Reservation lands acquired under the Act of March 1, 1933 (47 Stat. 1418). Special funds shall be set aside during the Navajo Nation annual budget process to assist with infrastructure development in those areas of Navajo Indian Country most impacted by gas and oil development on Reservation lands acquired under the 1933 Act (47 Stat. 1418)

- (3) Navajos living outside of Navajo Indian Country in San Juan County, Utah, shall remain eligible for educational assistance from the trust fund. All existing and future health facilities funded by the trust fund and any other facilities funded by the trust fund which are located outside of Navajo Indian Country shall continue to be operated for the benefit of all Navajos. Capital outlay funding and housing assistance shall not be provided from the trust fund for projects locating outside of Navajo Indian Country or outside the State of Utah.

b. Trustee

The Navajo Nation Controller shall be the trustee of the trust fund and shall invest, manage, and administer the trust fund in accordance with the highest standards of fiduciary duty. The trustee shall adhere to the "Prudent Investor Rule" and shall comply with all applicable Navajo Nation and federal law and the general principles of the federal and state common law of trusts.

c. Investment Manager

- (1) In consultation with the Investment Committee of the Navajo Nation and the Navajo Nation Controller, the Budget and Finance Committee of the Navajo Nation Council shall approve selection of a private investment manager for the trust fund in accordance with applicable Navajo Nation and federal law. Through regular oversight, the trustee shall insure that the investment manager invests and manages the trust in accordance with the highest standards of fiduciary duty including the Prudent Investor Rule and other applicable Navajo Nation and federal law and the general principles of the common law of trusts.

- (2) In accordance with industry standards, the investment manager shall regularly provide a portfolio of any investments of the trust fund to the trustee and trust administrator, and to any beneficiary on request.

d. Trust Administrator

- (1) The trust fund shall be administered by the Office of the Navajo Utah Commission which shall be the trust administrator, and which shall be centrally located in Montezuma Creek on the Navajo Nation Reservation in San Juan County, Utah. All proceeds from the sale of administrative offices currently owned by the trust fund shall be utilized for the construction of offices for the trust administrator in Montezuma Creek.
- (2) The trust administrator will administer the trust fund in accordance with rules, regulations and standards to be recommended by the Office of the Trust Administrator, with review by the Navajo Nation Department of Justice, the Navajo Nation Office of the Controller, and the Office of Legislative Counsel and which shall require approval by the Budget and Finance Committee of the Navajo Nation Council upon the recommendation of the Navajo Utah Commission.
- (3) Local control of the budgeting of all trust funds shall be maintained through a seven member Trust Fund Board (hereinafter "board") consisting of one representative appointed by each of the seven Navajo Nation Chapters who have members who are beneficiaries (hereinafter "Utah Chapters"). The board shall recommend to the Navajo Nation Council an annual budget developed by the trust administrator in accordance with the requirements of this Act and the governing rules, regulations, and standards of the trust administrator.
- (4) Reasonable administrative costs shall be budgeted for and paid out of the annual trust fund budget. There shall annually be an independent certified audit of the trust fund accounting and administration which shall be reviewed and monitored by the Navajo Nation Office of Auditor General. In addition to a copy of each annual audit, the investment manager portfolio and all other trust fund records shall be kept in the offices of the trust administrator in Montezuma Creek and shall be made available to the beneficiaries at no cost upon request. Records of trust fund administration shall be made available to the public in accordance with the Navajo Nation Privacy Act, 2 N.N.C. § 81 *et seq.*

e. **Principal, Income and Duration of Trust Fund**

Recognizing the importance of maintaining the trust fund for present and future generations of beneficiaries:

- (1) The trust fund shall be invested, managed and administered to provide adequate principal for the trust fund to exist in perpetuity, and to provide income to pay for

health, education, housing and infrastructure development, and other permissible benefits under this Act for present and future generations of beneficiaries.

- (2) Any funds identified as belonging to the former Utah Navajo Trust Fund and held by the State of Utah shall be promptly paid over to the trustee by the State of Utah along with any interest or income derived from said funds. Any assets on state lands which are owned in whole or in part by the trust fund shall be disposed of based on negotiations between the State of Utah, trustee, and the Bureau of Indian Affairs, result of said negotiations which shall provide either for fair market value purchase of the assets by the State of Utah, or for acquisition of the state lands in question by the Navajo Nation.
- (3) In consultation with the beneficiaries, trust administrator, and investment manager, trustee shall authorize an initial principal amount to be held in trust ("principal"), and shall adopt rules and standards for making additional contributions to principal, and for authorizing future expenditures of principal and trust income.
- (4) Said rules and standards may provide for hypothecation or pledging of future trust income for projects of direct benefit to the beneficiaries; provided, any rules and standards allowing for the invasion of principal shall ensure repayment or restoration of principal, and shall ensure that a portion of all profits derived from activities funded by principal are applied to repayment or enrichment of principal.

### III. Section Three.

That, pursuant to 1 N.N.C. § 554 (B) of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, for any claim arising from the investment, management or administration of the trust fund, is subject to the waiver of Navajo Nation sovereign immunity in Navajo Nation courts and shall be subject under this Act to the full jurisdiction of Navajo Nation courts for any such claim, subject to applicable Navajo Nation and federal law.

### IV. Section Four

That, in consultation with the Navajo Nation and the Bureau of Indian Affairs, the State of Utah may relinquish such tracts of school trust lands located in the State of Utah on the Navajo Nation Reservation as it sees fit and shall have the right to select other unreserved and nonmineral public lands contiguously or noncontiguously located within the State of Utah, equal in area and approximately of the same value to that relinquished, said lieu selections to be made in the same manner as provided for in the Enabling Act of July 16, 1894 (28 Stat. L. 107), except as to the payment of fees or commissions which are hereby waived.



February 3, 2009

MEMORANDUM

TO : Hon. Members  
Intergovernmental Relations Committee

FROM :   
Hon. Lawrence T. Morgan, Speaker  
21<sup>st</sup> Navajo Nation Council

SUBJECT : ASSIGNMENT OF LEGISLATION

Pursuant to 2 N.N.C. § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Intergovernmental Relations Committee of the Navajo Nation Council:

Legislation No. 0057-09

An Action

Relating to Intergovernmental Relations; Approving and Recommending Draft Federal Legislation to Permanently Repeal the Act of March 1, 1933 (47 Stat. 1418), Entitled "An Act to Permanently Set Aside Certain Lands in Utah as an Addition to the Navajo Indian Reservation, and For Other Purposes," and to Permanently Designate the Navajo Nation as the New Trustee of the Utah Navajo Trust Fund, and to Permit the Exchange of Utah School Trust lands Located Within the Boundaries of the Navajo Nation Reservation in the State of Utah for Unreserved and Nonmineral Public Lands Located in the State of Utah.

As the Committee assigned to consider the legislation, Legislation No. 0057-09 must be placed on the Intergovernmental Relations Committee agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0057-09

cc: Hon. Joe Shirley, Jr., President  
The Navajo Nation  
Louis Denetosie, Attorney General  
Mark Grant, Controller  
Hon. Francis Redhouse, Council Delegate (Sponsor)  
File

**NUC Resolution:**

**NUCMAY-445-08**



**RESOLUTION OF THE  
NAVAJO UTAH COMMISSION  
OF THE NAVAJO NATION COUNCIL**

**NUCMAY-445-08**

**APPROVING AND RECOMMENDING THE 2008 POSITION STATEMENT OF  
NAVAJO NATION ON FUTURE OF UTAH NAVAJO TRUST FUND**

**Whereas:**

1. The Navajo Utah Commission was established by the Intergovernmental Relations Committee of the Navajo Nation Council by Resolution No. IGRJN-134-92 to develop and maintain efficient governmental services to the Navajo People residing on the "Utah Strip" of the Navajo Nation; and
2. In 1933 the United States Congress passed an Act of March 1, 1933 ("1933 Act") Pub. L. No. 403, 47 Stat. 1418 (1933), which restored the Paiute Strip and added land between Montezuma Creek and the Colorado border to the Aneth area of the Utah portion of the Navajo Reservation; and
3. The 1933 Act provided that the State of Utah would receive 37 ½ % of oil and gas royalties derived from Navajo Tribal Leases on newly added land to be administered by the State of Utah on behalf of Navajos domiciled on the newly added lands of the Navajo Reservation, thereby establishing the Utah Navajo Trust Fund and designating Utah as trustee of the Utah Navajo Trust Fund; and
4. In 1968, Congress amended the 1933 Act, and redefined the purposes of the trust and the class of beneficiaries to provide "for the health, education and general welfare of the Navajo Indians residing in San Juan County;" and
5. The State of Utah wishes to resign from its role as federally appointed trustee of the Utah Navajo Trust Fund, but cannot do so until a new trustee is designated by federal legislation; and
6. The Navajo Nation is an independent sovereign nation with the right to self-determination, autonomy and self-government in matters relating to its internal and local affairs, as well as a right to the ways and means for financing its autonomous functions; and

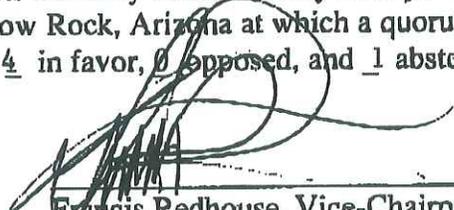
7. Designation of a new trustee should be the result of government to government negotiations between representatives of the Navajo Nation, the federal government and the State of Utah; and
8. In order to ensure the best possible outcome for the beneficiaries of the Utah Navajo Trust Fund and to strengthen and ensure the economic, political and social rights of the Navajo Nation, the Navajo Nation must establish a consistent policy and position for negotiations on the future of the Utah Navajo Trust Fund and designation of a new trustee.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Utah Commission hereby approves the *2008 Position Statement of the Navajo Nation on the Future of the Utah Navajo Trust Fund*, attached hereto as Exhibit A, and hereby recommends to the Navajo Nation Intergovernmental Relations Committee that the *2008 Position Statement of the Navajo Nation on the Future of the Utah Navajo Trust Fund* be adopted as the official policy and position of the Navajo Nation in negotiations for the future of the Utah Navajo Trust Fund and designation of a new trustee.

**CERTIFICATION**

We, hereby certify that the foregoing resolution was duly considered by Navajo Utah Commission at a duly called meeting in Window Rock, Arizona at which a quorum was present and the same was passed by a vote of 4 in favor, 0 opposed, and 1 abstention, this 14<sup>th</sup> day of May, 2008.

  
Francis Redhouse, Vice-Chairperson  
NAVAJO UTAH COMMISSION

MOTION: Lena Manheimer  
SECOND: Russell Gould

## **2008 Position Statement of the Navajo Nation on the Future of the Utah Navajo Trust Fund**

### **History of Utah Navajo Trust Fund.**

Executive Order of May 17, 1884, “withheld from sale and settlement and set apart as a reservation for Indian purposes” land in the Utah Territory that lay south of the San Juan and Colorado rivers. This land has been historically and continuously occupied by Navajo people since long before the captivity of Navajos in 1864. Four years before Utah was awarded statehood, Executive Order of November 19, 1892, put Navajo lands in the Utah Territory west of the 110° parallel (“the Paiute Strip”) back in the public domain. Lands in the Utah Territory east of the 110° parallel remained part of the Navajo Reservation. Executive Order of May 15, 1905, added the Aneth area in Utah to the Navajo Reservation. In 1908, the Department of the Interior withdrew the Paiute Strip from the public domain for use of the Navajo. In 1922, the Department of the Interior again put the Paiute Strip back into the public domain.

In 1930 and 1931, the Navajo Nation Council asked the Commissioner of Indian Affairs to negotiate on behalf of Navajo Nation to permanently restore the Paiute Strip to the Navajo Reservation, based on the previous set aside in the Executive Order of 1884 and historic Navajo occupation of the area. On July 7 and 8, 1932, at its annual meeting in Fort Wingate, the Navajo Tribal Council gave its support to proposed federal legislation which would restore the Paiute Strip and add land between Montezuma Creek and the Colorado border to the Aneth area of the Reservation. This legislation was passed by the United States Congress in 1933, as Pub. L. No. 403, 47 Stat. 1418 (1933) (hereafter “1933 Act”).

The 1933 Act was the result of an agreement between three parties: the Navajo Nation, the State of Utah, and the United States Government. After Utah citizens voiced opposition to the proposed addition to the Navajo Reservation, the Commissioner of Indian Affairs negotiated on behalf of the Navajo Nation with a Utah committee made up of San Juan County representatives. Several concessions were made to the Utah committee in order to gain its support for the 1933 Act, including prohibitions on further Indian homesteads or Indian allotments in San Juan County, fencing of Indian allotments outside the new reservation boundaries, fencing of the Aneth extension’s northern boundary, and agreement that state game laws would apply to off reservation hunting by Navajos.

The 1933 Act provided that “should oil or gas be produced in paying quantities,” the State of Utah would receive 37 ½ % of net oil and gas royalties derived from Navajo Tribal Leases on the newly added Navajo Trust Lands. In return, the State of Utah would act as trustee of the funds, and expend the funds “in 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.” The 1933 Act also provided that Utah could exchange state school trust lands inside the new Reservation

boundaries for equivalent federal lands and that any fees or commissions for the exchange would be waived.

In 1968, Congress amended the 1933 Act, redefining the purposes of the trust and expanding the class of beneficiaries. The amended legislation provided that the trust be used "for the health, education and general welfare of the Navajo Indians residing in San Juan County." The 1968 Amendments also provided that trust funds be used for projects and facilities in San Juan County that were not of exclusive benefit to the designated beneficiaries provided that the benefits to the beneficiaries were in proportion to the amount of trust funds used for the projects and facilities.

Over the course of the last 75 years, through legislation, executive acts and other governmental conduct, the State of Utah accepted its federally appointed role as trustee of the Utah Navajo Trust Fund (UNTF). During Utah's tenure as trustee, funds from UNTF have been used to create and/or acquire significant fixed assets on state lands. These assets include two medical buildings, a government services building, two housing subdivisions, and a fairgrounds.

Substantial evidence exists that Utah failed to properly administer Utah Navajo Trust Funds over many decades, and Utah has yet to make a full and complete accounting of its administration and use of trust funds, as required by law. Utah, as UNTF trustee, has been the defendant in several lawsuits. In 1991, serious allegations of mismanagement and misappropriation of trust funds by Utah and other entities using trust monies were made in a 1991 report by the State of Utah, Legislative Auditor General. In Pelt v. Utah, the State of Utah is the defendant in a class action law suit brought on behalf of UNTF beneficiaries over these issues.

In 2007, the State of Utah announced that it wished to resign as trustee of UNTF. On March 17, 2008, bills HCR4 and HB352 ("Sunset Act") were signed into law. This legislation purports to cause the resignation of Utah from its role as federally appointed trustee of UNTF effective June 30, 2008. The Sunset Act provides that from March 17 until May 5, 2008, the UNTF administrator can only commit to new projects capped at \$100,000, and only to projects that will be completed by January 1, 2010. From May 5 until June 30, the UNTF administrator cannot commit any monies to new projects. After July 1, 2008, all assets of the trust after liabilities are paid will be placed in a New Fund created by the Utah Division of Finance. The New Fund will be managed according to the Utah State Money Management Act. No disbursements will be made from this fund except to pay for maintenance of the fixed assets of the expired UNTF and to continue any educational scholarships awarded through June 30, 2010. The Sunset Act also provides that the State of Utah shall purchase the fixed assets of the Navajo Trust Fund, existing as of May 5, 2008, consistent with the trust obligations of the state in "arms length" transactions and providing "fair market compensation" to the trust. Based on provisions in the Sunset Act and Utah Code 63-55-104 and 63-55-263, the UNTF Administrator probably can continue to function until January 1, 2010. It is expected that the UNTF will maintain a small staff to administer existing UNTF projects until they are completed.

The Fiscal Year 2008 budget for UNTF is \$3,879,300.00. Administrative costs are approximately 14.5% of the entire budget at \$551,800.00. \$650,000.00 is earmarked for chapter projects. Nearly \$595,000.00 is budgeted for higher education, primarily scholarships. The remainder of the 2008 budget goes to a variety of specific projects, as well as providing matching grants for housing construction.

### **The Navajo Nation is an Independent Sovereign Nation.**

The Navajo Nation is an independent sovereign nation. The Navajo Nation has the right to self-determination, to freely determine its own political status and to freely pursue its economic, social and cultural development. In exercising its right to self-determination, the Navajo Nation has the right to autonomy and self-government in matters relating to its internal and local affairs, as well as a right to the ways and means for financing its autonomous functions.

In 1933, when the Navajo Utah Trust Fund was created, the Navajo Nation tribal government was only 10 years old. Today, the Navajo Nation is the largest and most sophisticated American Indian government. The Navajo Nation has developed a substantial body of both statutory and decisional law to complement the fundamental laws of the Dine'. 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 Utah Navajo Trust Fund.

### **1. New Federal Legislation Affecting the Utah Navajo Trust Fund Should Be the Result of Government to Government Negotiations Between Navajo Nation, United States Government, and State of Utah and Should Require Consent of Navajo Nation.**

Federal legislation amending or repealing the 1933 Act and designating a new trustee for the Utah Navajo Trust Fund should be the result of good faith government to government negotiations between the Navajo Nation, the State of Utah, and the United States Government. Consistent with the Navajo Nation's status as an independent sovereign nation, any federal legislation that affects royalties generated by Navajo Nation Trust Lands must be made with the consent of the Navajo Nation.

### **2. Navajo Utah Commission Should Be the Authorized Navajo Nation Representative in Negotiations for New Federal Legislation and Selection of a New Trustee.**

The Navajo Utah Commission (NUC) is the appropriate representative for the Navajo Nation in negotiations over the future of the Utah Navajo Trust Fund. The Intergovernmental Relations Committee should amend the NUC plan of operation to authorize NUC to represent the Nation in negotiations with the State of Utah and the federal government over the future of the UNTF. NUC

shall negotiate in good faith on behalf of the Navajo Nation consistent with this Position Statement. The Office of the Attorney General, Office of the President, Office of Legislative Counsel, and Office of the Controller shall serve as official advisors to the NUC and shall provide appropriate technical assistance, support, advice and counsel during negotiations.

### **3. Beneficiaries Should Remain "Navajos in San Juan County" Subject to Certain Conditions.**

The beneficiaries of the Utah Navajo Trust Fund should remain Navajos in San Juan County, through the Navajo Nation annual budget process. Provided; that special consideration should be made in the annual budget process to use Utah Navajo Trust Fund proceeds for the benefit of Navajos residing within the Aneth Extension for mitigation of environmental impacts and other negative impacts associated with the development and production processes of oil and gas resources located within the Aneth Extension, and for development of needed infrastructure. Navajos living outside of Navajo Indian Country shall be eligible for educational assistance from Utah Navajo Trust Fund proceeds. Capital outlay funding and housing assistance shall not be provided from Utah Navajo Trust Fund proceeds for projects locating outside of Navajo Indian Country. Provided; that all existing and future health facilities funded by Utah Navajo Trust Fund proceeds and any other facilities funded by Utah Navajo Trust Fund proceeds located outside of Navajo Indian Country shall continue to be operated for the benefit of all Navajos.

### **4. Consultation of Beneficiaries.**

Negotiations to designate a new trustee shall be in close consultation with the existing beneficiaries through the chapters, keeping the best interests of the beneficiaries in mind at all times.

### **5. New Federal Legislation for Allocation of Royalties Shall Maintain the Status Quo.**

The beneficiaries of the Utah Navajo Trust shall continue to receive the benefit of 37 ½% of all royalties generated by oil and gas production from leases on Reservation lands added in 1933. 62 ½% of all royalties generated by oil and gas production from leases on Reservation lands added in 1933 shall continue to go to the Navajo Nation.

### **6. Disposition of Trust Assets on State Lands.**

Negotiations must address UNTF assets on state lands and provide either for fair market value purchase of the assets by Utah, or for acquisition of the state lands in question by Navajo Nation. The Sunset Act provides that the State of Utah Division of Facilities Construction and Management can purchase UNTF assets on state land. Because acquisition of state lands by Navajo Nation could implicate a land exchange involving the federal government, all three governments should be involved in negotiations to dispose of these assets and/or convey,

exchange, or purchase lands. In addition, negotiations currently under way to exchange Utah School Trust Lands in the Aneth extension with BLM lands outside the reservation, pursuant to section 2 of the 1933 Act, should be coordinated with the disposition of UNTF assets.

#### **7. Navajo Nation Would Be Best Trustee.**

As a sophisticated tribal government, the Navajo Nation has the resources and expertise to administer the UNTF on behalf of Utah Navajo beneficiaries. The UNTF is generated by royalties from leases entered into by the Navajo Nation on Navajo Nation Trust Lands. Trusteeship of these funds by the Navajo Nation on behalf of the Utah beneficiaries would be consistent with principles of sovereignty and self-determination. The Navajo Nation, through management of its own trust funds, has proved its fiduciary capabilities. The Controller of the Navajo Nation is the general fiduciary of Navajo Nation funds, and trust funds should be invested consistent with the recommendations of the Investment Committee. A Trust Fund Administrator should be centrally located in San Juan County and trust fund administration should provide for local decision making in how funds are spent.

#### **8. State of Utah Navajo Trust Fund Administrator Should Remain in Existence Until It Winds Up Its Affairs.**

The UNTF Administrator has the legal authority under Utah law to continue to administer existing projects until January 1, 2010. The UNTF Administrator should continue to administer existing projects and programs to prevent any gaps in existing services until an interim administrator is designated or a new trustee has been selected.

#### **9. Where Aneth Chapter Suffers Environmental Harms Disproportionate to Its Receipt of Trust Funds, Special Monies Should Be Allocated to Aneth Chapter to Mitigate Environmental Impacts and Develop Needed Infrastructure.**

On the Aneth Extension, oil and gas development and production processes that generate royalties for the UNTF cause environmental and other negative impacts. The new terms of the trust should ensure that separate monies are specifically allocated to Aneth Chapter to mitigate the environmental impacts of oil and gas extraction on the Aneth Extension. Additionally, infrastructure needs at Aneth Chapter have not been adequately funded in the past. Future trust administration should provide sufficient funds to develop needed infrastructure at Aneth Chapter.

#### **10. Trust Fund Monies Should Not Be Used in Off-Reservation Projects "Proportional" to the Benefit Received.**

Under the 1968 amendments, UNTF monies were allowed to be used in off reservation projects if they were allegedly "proportional" to benefits enjoyed by beneficiaries. This provision has been one of the causes of mismanagement and waste of trust funds. Except for educational

endowments, no trust funds shall be used outside Navajo Indian Country without at least 50% matching funds provided by other participating entities.

**11. Funds from the Sale of Utah Navajo Trust Fund Administrative Offices Should be Designated Specifically For New Trust Fund Administration Facilities.**

One of the goals of the Navajo Nation is to provide for centralized administration of Navajo Nation service providers in the Utah portion of the Navajo Reservation through a Regional Navajo Nation Office centrally located in Montezuma Creek. At present, Navajo Nation services are scattered and not as efficient as they could be in a centralized space.

The State of Utah generally limits its services to the county seat in Monticello. A Regional Navajo Nation Office should be a shared facility for the new UNTF Trust Administrator, Navajo Nation service providers, and state programs. Along with Navajo Nation and state funds, UNTF should provide matching funds from sale of the current UNTF administrative offices to help fund the construction of a Regional Office Facility. A Regional Office Facility would improve coordination of projects involving the UNTF Trust Administrator, Navajo Nation service providers, and state entities.

**12. Full Accounting by State of Utah.**

The State of Utah should provide a full and complete historical accounting of the Utah Navajo Trust Fund before a new trustee is designated. A full and complete historical accounting will specify *how* all UNTF funds were used by both state and non-governmental entities and not merely what entities received UNTF funds and in what amounts.

**13. Settlement of Existing Law Suits.**

The State of Utah should use its best good faith efforts to settle the litigation in Pelt v. Utah before a new trustee is designated.

**NUC Resolution:**

**NUCAUG-455-08**



**RESOLUTION OF THE  
NAVAJO UTAH COMMISSION  
OF THE NAVAJO NATION COUNCIL**

**NUCAUG-455-08**

**SUPPORTING THE UTAH NAVAJO CHAPTERS DECISION FOR THE FUTURE OF THE UTAH  
NAVAJO TRUST FUND AND A NEW TRUSTEE**

**WHEREAS:**

1. The Navajo Utah Commission was established by the intergovernmental Relations Committee of the Navajo Nation Council by Resolution No. IGRJN-134-92 to develop and maintain efficient governmental services to the Navajo People residing on the Utah portion of the Navajo Nation; and
2. Utah Navajo Trust was created by federal statute in 1933. Under the Act, Federally owned land within San Juan County known as the "Aneth Extension" was given to the Navajo Tribe. Also under Act, the State of Utah was assigned the responsibility to manage 37.5% of the oil and gas royalties collected by the Department of Interior on the Utah portion of the Navajo Nation for the benefit of the Utah Navajos (47 Stat. 1418); and
3. In 1968, Congress amended the 1933 Act to redefine beneficiaries as "Navajos residing in San Juan County" and to expand the purpose of the fund "for the health, education and general welfare of the Navajos living in San Juan County" (82 Stat. 121); and
4. The State of Utah has given notice that effective June 30, 2008, it will no longer act in the capacity of Trustee for the Utah Navajo Trust Fund; and

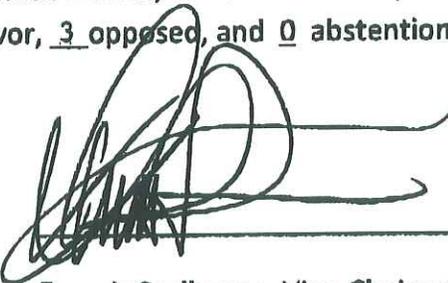
5. The State of Utah has created the "Utah Navajo Royalty Holding Fund", which effective July 1, 2008, will extinguish the Utah Navajo Trust Fund, but continue to make expenditures to maintain existing assets in the Fund, continue certain housing and educational projects approved before May 5, 2008. However, no new projects will be authorized; and
6. The Congress of the United States of America will have to, by law, determine who will act in the future as the Trustee of this fund; and
7. The State of Utah has determined that the State will not recommend a future Trustee to The United States Congress for appointment or selection ; and
8. The Navajo Nation has been active in attempting to be named the new Trustee of the Utah Navajo Trust Fund reasoning that since it receives 62.5% of the oil and gas royalty money produced on the Utah Navajo Reservation, that they should receive and manage the remaining 37.5%; and
9. The Majority of the Utah Navajo Chapters are coming to understand the benefit from the remaining 62.5% of the royalties collected by the Navajo Nation which would become a necessary component to the development of a secure and strong future for the welfare, education and health of beneficiaries residing on the Navajo Reservation within San Juan County, Utah; and
10. The Majority of the Utah Navajo Chapters are in strong and unified support of keeping the 37.5% royalties uniquely noted, as is, for the specific use and benefit of beneficiaries residing on the Navajo Reservation within San Juan County Utah; and
11. The Utah Navajo Chapters have been meeting and discussing the future of the current Utah Navajo Trust Fund and available future options, since the passage of Legislation of the Utah Sunset Act by the State of Utah; and
12. The Utah Navajo Chapters have discussed various potential options available for exploration and development and finds it is within the best interest of all Utah Navajo Trust Fund Beneficiaries to select a private-not-for-profit organization with the appointment of a board of trustees.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Utah Commission recommends Utah Navajo Health System to be the new Trustee for the Utah Navajo Trust Fund; and
2. The 37.5% Utah Oil and Gas royalties remain for the benefit of the eligible Utah Navajo beneficiaries and;
3. The 62.5% Utah Oil and Gas Royalties which the Navajo Nation collects be restored toward the benefit of the eligible Utah Navajo beneficiaries and;
4. All Local Chapter registered Utah Navajos who reside within the boundaries of San Juan County, Utah, be eligible for the health, welfare and educational benefit programs funded by the Trust Fund.
5. That the New Trustee be required to work closely and directly with all the Utah Navajo Chapters to improve the health, welfare and education of all eligible Utah Navajo beneficiaries.

**CERTIFICATION**

We, hereby certify that the foregoing resolution was duly considered by Navajo Utah Commission at a duly called meeting in Window Rock, Arizona which a quorum was present and the same was passed by a vote of 4 in favor, 3 opposed, and 0 abstention this 13<sup>th</sup> day of August 2008.



Francis Redhouse, Vice-Chairperson

NAVAJO UTAH COMMISSION

MOTION: Kenneth Maryboy

SECOND: Lena Manheimer

SPONSOR: Davis Filfred