**Written Testimony of Vice President Ben Shelly**

**The Navajo Nation**

**To the U.S. Senate Committee on Indian Affairs**

**December 9, 2009**

Good Morning Chairman Dorgan, Honorable Members of the Committee on Indian Affairs. I am Ben Shelly, Vice President of the Navajo Nation. I am here to provide testimony in regard to the future of the Utah Navajo Trust Fund (UNTF) and Senate Bill 1690 introduced by the Honorable Senator Robert Bennett.

As the Committee knows, the State of Utah has declared its desire to withdraw as trustee of the UNTF. The State of Utah passed legislation in 2008 that effectively ends most disbursements from the UNTF, ends the trust fund administration, and moves 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. Consistent with federal policy toward Indian tribes, the Navajo Nation is requesting that Congress designate the Navajo Nation as the new trustee of the UNTF.

Please be aware that 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. However, the Navajo Nation has its own law that governs who may speak on behalf of the Navajo Nation and our People. Pursuant to the Navajo Nation Intergovernmental Relations Committee legislation the Navajo Nation seeks to be the trustee of the Navajo Nation Utah Trust Fund. See attached letter from Speaker Morgan to Senator Bennett. The Navajo Nation Executive Branch Office of the President and Vice-President supports the Navajo Nation as the Trustee of Utah Trust Fund. See attached letter from President Shirley to Senator Bennett. Pursuant to Navajo Nation law, only my testimony today can provide the official Navajo Nation position and policy in this matter.

**History of Utah Navajo Lands and UNTF**

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.

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 UTNF, 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.

**The Navajo Nation Has Sovereignty over Its Lands, Resources and Citizens**

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 our Nation to the surface use, and the subsurface mineral resources, of much of our traditional lands. For over forty years, the Navajo Nation has enjoyed a government-to-government relationship with the United States, respectful of the Nation’s sovereignty and self-determination in its own affairs, and free of the policies of paternalism which have blemished the past. It remains critical to the sovereignty and self-determination of the Navajo Nation that the United States respect our government-to-government relationship in deciding matters that uniquely concern and affect Navajo lands, resources and citizens. It is also crucial to the integrity of our Nation and its political institutions that passage of any federal legislation directly affecting our interests is done with the consent of the Navajo Nation government.

The Utah Navajo Trust Fund is capitalized completely by royalties from Navajo Nation mineral leases on Navajo Nation lands in Utah which were added to the Navajo reservation in 1933. Since the 1970s, the Navajo Nation has been the fiscal agent for all UNTF royalties, distributing money every year to the State of Utah out of the Nation’s general funds, for investment in the UNTF. The beneficiaries of the UNTF are those Navajo citizens residing in San Juan County, Utah. Only members of the Navajo Nation are eligible beneficiaries of the UNTF. The future of the UNTF is clearly a Navajo Nation issue and Congress should respect our sovereignty in this matter.

**The Navajo Nation Was Never Consulted and Is Adamantly Opposed to Senate Bill 1690**

In spite of the Navajo Nation’s considerable interest in the future of the Utah Navajo Trust Fund, including who will be designated as the new trustee, Senate Bill 1690 was introduced by the Honorable Senator Bennett without even a single consultation by the Senator or his staff with the Navajo Nation government.

The Navajo Nation is adamantly opposed to Senate Bill 1690. Senate Bill 1690 would give the federal trust responsibility for royalties from Navajo Nation mineral leases to a non-profit corporation, the Utah Dineh Corporation, which was not even in existence when the bill was introduced. Senate Bill 1690 would give control over approximately thirty (30) million dollars in trust funds and assets, as well as an additional 6 to 8 million dollars a year of royalties from Navajo mineral leases, to a corporation with zero experience as a trustee, and absolutely no outside capital. In the event of any breach of trust by the Utah Dineh Corporation, the beneficiaries would have no remedy against the corporation. Senate Bill 1690 fails to ensure any accountability or transparency in the use of trust fund monies and fails to ensure that the trust will exist into perpetuity for the benefit of future generations of Navajo beneficiaries. Senate Bill 1690 broadly expands the original purposes of the trust and would lead to misuse and misappropriation of trust funds. Senate Bill 1690 would violate the common law of trusts by designating a handful of beneficiaries as the trustee and causing countless conflicts of interest. Senate Bill 1690 is a recipe for disaster.

On the other hand, the Navajo Nation would be an accountable, responsible and transparent trustee of the Utah Navajo Trust Fund. In the over 30 years as fiscal agent for the royalties for the UNTF, the Navajo Nation has never breached its fiduciary responsibilities to the trust fund. The Navajo Nation also has a successful record of managing, investing, and increasing the value of multiple Navajo Nation trust accounts, including many multi-million dollar accounts. The Navajo Nation has a well established budgeting and auditing process for the appropriation of funds. Importantly, unlike the Utah Dineh Corporation, the Navajo Nation has sufficient outside assets to be accountable to the beneficiaries.

With the Navajo Nation as trustee, the Office of the Utah Navajo Commission, centrally located in Montezuma Creek in Aneth, Utah, would be the trust administrator. The Office of the Utah Navajo Commission already administers and leverages money from the Utah Navajo Revitalization Fund, the UNTF, Navajo Nation funds, and federal funds for projects in Navajo Country in San Juan County, Utah. Having the Office of the Utah Navajo Commission as trust administrator would thus create economies of scale, and would greatly reduce administrative costs for the Utah Navajo Trust Fund.

The Navajo Nation is very concerned that there is a rush to designate a non-profit corporation as the new trustee of the UNTF especially where there is no transparency or accountability. 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 also should be managed to ensure its survival in perpetuity. The Navajo Nation is committed to ensuring that the UNTF continues to grow and benefit current and future generations of Utah Navajos and the Navajo Nation should be made the new trustee.

**Conclusion**

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. Senate Bill 1690 was introduced without a single consultation with the Navajo Nation government and would give the important federal trust responsibility over the Nation’s resources and citizens to some non-profit corporation. Senate Bill 1690 is an affront to the Navajo Nation’s sovereignty and right to self determination and this Committee should oppose it.

I have appreciated this opportunity to provide testimony to the Senate Committee on Indian Affairs. The Navajo Nation looks forward to working with Congress, this Committee and the Utah delegation in a government-to-government relationship as reasonable legislation is introduced to secure the future of the Utah Navajo Trust Fund.    Thank you.