

**Testimony to the Senate Committee on Indian Affairs  
at the December 9, 2009 hearing on S.1690  
to amend the Act of March 1, 1933,  
to transfer certain authority and resources to the Utah Dineh Corporation  
Submitted by Kenneth Maryboy, San Juan County (Utah) Commission**

**Introduction**

My name is Kenneth Maryboy and I am one of only two Navajo Nation Council Delegates representing Utah Navajos within in the Navajo Nation's 88 member legislature. I am also a San Juan County Commissioner and a member of the Board of Directors of the Utah Dineh Corporation, a nonprofit organization created to be a trustee of the Utah Navajo Trust Fund for Navajo Indians residing in San Juan County. I submit this testimony to you on behalf of the San Juan County Commission to bring to this Committee's attention the inappropriateness of the Navajo Nation government to be a trustee of the Utah Navajo Trust Fund, given the Navajo Nation's pattern of malfeasance and neglect.

San Juan County believes that the Navajo Nation government, which is located in Window Rock, Arizona, and provides few if any government services to Utah Navajos, does not have the best interest of Utah Navajos at heart when it asserts a vague argument of tribal sovereignty to wrestle away control of the Utah Navajo Trust Fund from Utah Navajos.

The Navajo Nation's heretofore disinterest in its own members who reside within the Utah strip of the Navajo Nation is the very reason why San Juan County has stepped up to the plate to deliver essential government services to Utah Navajos who live within the 1,550,000 acres of the Navajo reservation that constitute the southern region of our 7,821 square mile county. San Juan County has provided law enforcement, fire protection, emergency medical services, senior services, road maintenance, telecommunication and water services to the seven Utah Navajo chapters because the tribe in Window Rock does not. The prospect of being able to control millions of dollars generated in Utah, for the benefit of Utah Navajos, seems to have awakened Window Rock's otherwise dormant interest in its tribal members who live north of the Arizona border.

The Special Trustee for American Indians, Ross Swimmer, testified last year to the House Resources Committee that the Department of Interior would defer to the Navajo Nation in this matter to honor the government to government relationship. Mr. Swimmer notably said that a trustee for the Utah Navajo Trust could be a non-profit organization composed of Navajos, with a third party to handle the trusts' corpus. Utah Navajos have heeded the Special Trustee's suggestion by forming the Utah Dineh Corporation, whose Board of Directors represent each of the seven Utah Navajo Chapters and have

voting interests proportional to their chapter's Navajo population, in relation to San Juan County's total Navajo population.

San Juan County believes the Utah Dineh Corporation is best situated to benefit Utah Navajos as the new trustee of the Utah Navajo Trust Fund because it is a not for profit organization who cannot hide behind the shield of tribal sovereignty. The Navajo Nation should not be allowed the privilege of administering the fiduciary trust of the Utah Navajo Trust Fund because:

1. The Navajo Nation has a history of withholding funds for the benefit of the Navajo people;
2. The Navajo Nation has a history of neglecting Utah Navajos; and
3. The Navajo Nation has a history of malfeasance.

### **The Navajo Nation has already failed to be a competent trustee for Utah Navajos**

The Navajo Nation Road Fund reveals how the Nation fails as a trustee. Since 2003, the Navajo Nation has collected fuel taxes pursuant to memorandums of agreement (MOA) with Arizona, New Mexico, and Utah. These monies are to be held in trust to improve the transportation infrastructure of Navajo Chapters, but no such monies have been distributed to the Chapters since 2006.

The State of Utah entered into an MOA with the Navajo Nation in October 2000 and agreed to reduce the amount of gasoline taxes Utah collects on the reservation by the amount of taxes the Nation collects. For example, instead of collecting 24 and a half cents per gallon, Utah agreed to collect only 6 and a half cents per gallon so that the Navajo Nation could impose an 18 cent per gallon tax without passing a higher cost to consumers.

In 2003, the Navajo Nation created the Navajo Nation Road Fund that is based upon the anticipated revenue projection for fuel taxes for a given year as determined by the Comptroller of the Navajo Nation. Since 2003, the Navajo Nation has budgeted \$47,401,256.05 in Navajo Nation Road Fund projects, of which, only \$19,614,356.12 have actually been spent. Of that \$19,614,356.12, the Navajo Nation has kept \$8,527,225.64, or nearly half, in the Navajo Nation capitol Window Rock rather than distributing those funds to local chapters who apply for the money.

In the six years the Navajo Nation has been the trustee of the Road Funds, the Navajo Nation has granted only two awards for a total of \$396,358.76 for projects within Utah, despite multiple requests from Utah Navajo chapters for infrastructure needs that cost millions. The August 26, 1999 resolution that the MOA between Utah the Navajo Nation is premised upon states that the Navajo Nation will annually communicate to the Governor of Utah about the Nation's plans to address the infrastructure deficit within the Utah section of the reservation. The Navajo Nation has never collected, much less communicated, the road infrastructure needs of Utah Navajos to the Governor of Utah.

## **The Navajo Nation deprives Utah Navajos of services it provides elsewhere.**

A look at the Navajo Nation government services reveals how Window Rock overlooks the Utah portion of the Navajo reservation.

No Navajo Nation Public Safety and Justice Services offices are in Utah:

- Navajo Division of Public Safety Locations: 30 in Arizona, 13 in New Mexico
- Emergency Medical Services: 9 in Arizona, 4 in New Mexico
- Fire and Rescue Services: 6 in Arizona
- Criminal Investigation Section: 5 in Arizona, 2 in New Mexico
- Corrections: 4 in Arizona, 3 in New Mexico
- Victim Assistance: 2 in Arizona, 2 in New Mexico
- Police Districts: 4 in Arizona, 2 in New Mexico
- Judicial Branch District Locations: 5 in Arizona, 5 in New Mexico
- Office of Chief Prosecutors: 3 in Arizona, 4 in New Mexico

No Navajo Nation Health, Education and Welfare offices are in Utah:

- Division of Health: 22 in Arizona, 11 in New Mexico
- Navajo Area Agency on Aging: 4 in Arizona, 2 in New Mexico
- Behavioral Health Services: 4 in Arizona, 2 in New Mexico
- Communicable Disease Program: 5 in Arizona, 2 in New Mexico
- Food Distribution Program: 5 in Arizona, 3 in New Mexico
- WIC Program: 4 in Arizona, 2 in New Mexico
- Division of Dine Education: 17 in Arizona, 8 in New Mexico
- Office of Dine Youth: 4 in Arizona, 2 in New Mexico,
- Dept. of Head Start: 4 in Arizona, 2 in New Mexico
- Office of Special Education/Rehabilitation: 5 in Arizona, 2 in New Mexico
- Office of Scholarship/Financial Assistance: 4 in Arizona, 2 in New Mexico
- Division of Social Services: 12 in Arizona, 9 in New Mexico
- Regional Offices: 5 in Arizona, 3 in New Mexico
- Sub Offices: 7 in Arizona, 6 in New Mexico

Only two Navajo Nation Resources and Infrastructure offices are in Utah:

- Navajo Division of Transportation Locations: 3 in Arizona, 2 in New Mexico
- Division of Natural Resources Locations: 13 in Arizona, 9 in New Mexico, 1 in Utah
- Archaeology: 2 in Arizona, 1 in New Mexico
- Land Dept.: 3 in Arizona, 2 in New Mexico, 1 in Utah
- Water Resources Dept.: 8 in Arizona, 6 in New Mexico

Three Navajo Nation Human and Economic Development offices are in Utah:

- Navajo Division of Economic Development: 4 in Arizona, 2 in New Mexico, 1 in Utah
- Division of Human Resources: 11 in Arizona, 6 in New Mexico, 1 in Utah
- Navajo Veterans Affairs: 4 in Arizona, 2 in New Mexico
- Dept. of Workforce Development: 7 in Arizona, 4 in New Mexico, 1 in Utah

**The Navajo Nation has a history of failing to operate with the transparency, integrity and stability that Utah Navajos need and deserve in any future trustee**

The President of the Navajo Nation, Mr. Joe Shirley, cannot testify before this Committee because the Council has placed him and most of his cabinet on administrative leave pending the outcome of a criminal investigation into Navajo contracts. Unfortunately, his administration is not the first where a Navajo leader has been removed from office. The following list of headlines, bylines, and summaries from the press detail Window Rock's sad history of neglect, malfeasance, and incompetence in just the past twenty years:

**President Joe Shirley Put On Administrative Leave**

*Navajo Times*

*October 26th, 2009*

The Navajo Nation Council put President Joe Shirley Jr. on administrative leave during the investigations and possible prosecution of ethical, civil and criminal charges pending from alleged wrongdoing by the president and key members of his staff relative to the Nation's contracts with the private companies, OnSat and BCDS.

Others also under investigation are the president's chief of staff, and the directors of the divisions of Economic Development, Community Development and Public Safety. Also included in the investigation are former Shiprock Chapter President Duane "Chili" Yazzie, and Ernest Franklin, former employee with the Division of Community Development.

The Navajo Nation entered into a \$1.9 million contract with the Utah-based OnSat Network Communications in 2001. OnSat agreed to provide satellite Internet services to all 110 chapters on the Nation, but service was disrupted after the tribe stopped making payments, claiming the company overbilled for services.

The Navajo Nation owns 51 percent of Biochemical Decontamination Systems, or BCDS, a corporation created to seek federal contracts for the sale of metal fabrication products. The Nation in 2006 approved using the Navajo Dam Escrow Fund to back a \$2.2 million loan to finance an expansion of the plant. But by 2008, the company was defunct and \$4.7 million in debt.

## **Navajo Chairman and Son Convicted of Bribe-Taking**

*Washington Post*  
October 18, 1990

Suspended Navajo Chairman Peter MacDonald Sr. has been convicted of 41 counts of bribery and other crimes for taking money and favors from business people operating on the reservation. His son and codefendant, Peter "Rocky" MacDonald Jr., was convicted of 23 similar counts.

In 1989, the Navajo Tribal Council placed Peter MacDonald on paid leave from his Navajo Chairmanship position because of bribery and corruption charges relating to the real estate deal in 1986. Two realtors gave the Navajo Chairman \$25,000 to pay down on his \$70,000 bank loan, and a 1 year old BMW 735i automobile, from the profit they made on the land sale to the tribe.

Peter MacDonald's removal led to five months of internecine war on the Navajo Nation and on July 20, 1989 he and his supporters tried to overthrow the Navajo Nation government.

In February 1993, Peter MacDonald, was sentenced to 14 years in prison for trying to overthrow the tribal government and inciting a fatal riot in Window Rock, Arizona, which caused two deaths, and for fraud, racketeering and conspiracy convictions.

## **Navajo President Forced to Resign**

*High Country News*  
March 2, 1998

Facing up to 50 criminal charges, Navajo President Albert Hale resigned from office Feb. 19. By resigning, Hale avoided prosecution for misusing tribal money.

Special prosecutor for the tribe, Fred Chris Smith, and Hale's attorney, Henry S. Howe, presented a stipulated agreement to the tribe's ethics committee, which accepted Hale's resignation. The agreement states that President Hale accepted gifts from corporations doing business with the tribe, including Xerox and Conoco.

The agreement also states that Hale and Thomas Atcitty, tribal vice president, accepted gifts at the Democratic National Convention in Chicago from Navajo political appointees and some employees of the tribe. In addition, it is stipulated that Hale used a credit card and tribal vehicles for personal use.

Headlines from just this past month detail exactly the kind of government that hopes to administer the Utah Navajo Trust Fund. The Navajo Nation has no capacity to manage its own funds, both oversight ability and the willingness to enact such are lacking.

### **Tribal Discretionary Funds to be Audited for First Time Ever**

*Navajo Times*

*December 3, 2009*

Tribal auditors to audit discretionary funds of the executive offices and legislative branch, as well as the Office of the First Lady. The audit will focus on up to \$10 million a year in tribal revenues and are subject to few rules and almost no oversight. It will be the first audit of discretionary funds for either branch, although annual audits of legislative branch funds were mandated in 2007.

### **Shiprock Fair Saga Remains Unexplained**

*Farmington Daily Times*

*November 25, 2009*

The Shiprock Navajo Fair Board is not a tax-exempt organization and hasn't been paying its taxes. The fair is held in a dirt field that has no parking, bathrooms, or trash cans. A conservative estimate gives the Shiprock Fair \$650,000 in annual gross receipts. No one is sure how much money the fair actually makes, so there's no way of knowing if money is being siphoned off. The fair board continues to refuse all requests to examine their records.

### **Special Prosecutor Appointed**

*Gallup Independent*

*November 13, 2009*

The Navajo Nation Attorney General to appoint a special prosecutor to investigate allegations of legal violations by tribal officials, including President Joe Shirley Jr., and employees arising from the tribe's contractual history with OnSat and BCDS.

### **Slush Funds Total Over \$35 Million**

*Navajo Times*

*November 12, 2009*

More than \$35 million has been poured into the discretionary funds of the Navajo Nation Council, speaker's office and president's office from 2005 to 2009, according to financial records from the Navajo Nation's Office of Management and Budget.

The Navajo Times has repeatedly asked President Joe Shirley Jr. and Speaker Lawrence Morgan for information about their discretionary funds. Morgan pointed out that he could not share documents because it would violate the privacy rights of those individuals receiving financial assistance. Shirley's Chief of Staff Patrick Sandoval said that the executive office has no policies and procedures.

For their efforts, the Arizona Press Club awarded the Navajo Nation President, Speaker, and Council as co-recipients of the Brick Wall/Arpaio First Amendment Disservice Award. An award given annually to the public servant and/or government agency whose egregious efforts to thwart the public's right to know must be brought to light.

San Juan County implores this committee not to contribute to the next headline -

### **Congress Allows Window Rock to Loot Utah Navajo Trust Fund**

#### **Conclusion**

Congress established the Trust Fund in 1933 to benefit Utah Navajos. Congress must not now abandon Utah Navajos by ignoring the history of neglect, unaccountability and malfeasance that the Navajo Nation continues to demonstrate.

In his June 19, 2008 testimony to this committee Ross Swimmer stated that the Office of Special Trustee lacks the capacity to administer the Utah Navajo Trust Fund. He also stated that the Navajo Nation *or a nonprofit organization made up of Navajo citizens* is more appropriate to take on the Trust Fund.

The Navajo Nation itself shows that it too lacks the capacity to administer the Utah Navajo Trust Fund. San Juan County supports S. 1690 to transfer administration of the Trust Fund to the Utah Dineh Corporation. Any other conclusion would in itself be malfeasance.