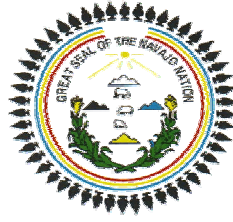


THE NAVAJO NATION

JOE SHIRLEY, JR.
President

FRANK J. DAYISH, JR.
Vice President



SHARON CLAHCHISCHILLIAGE
Executive Director

WASHINGTON OFFICE

**Statement of Joe Shirley, Jr.
President of the Navajo Nation**

On Behalf of

The Navajo Nation

**Concerning Proposed Reorganization of Major Agencies and Functions Related to Indian Trust
Reform Matters in the Department of Interior**

**Before the
Senate Indian Affairs Committee**

March 10, 2004

Room 485 Russell Senate Office Building

Chairman Nighthorse Campbell, Vice-Chairman Inouye and members of the committee, I am honored to present testimony today on behalf of the Navajo people. The issue under consideration, the proposed reorganization of major agencies and functions related to Native American trust reform matters in the Department of Interior, is complex and its results will have a tremendous impact on the Navajo people. We appreciate the opportunity to express our position to the Senate Indian Affairs Committee. The Navajo Nation requests that the following written testimony be submitted in the record:

There are five objectives that must be met before any proposed reorganization:

- 1) Commitment from Congress to fund any proposed reorganization with new dollars, not at the expense of Native American Programs;
 - 2) Commitment to full, complete, and good faith government-to-government consultation with Native American Nations;
 - 3) Establishment of clear trust standards;
 - 4) Identify the “major agencies,” and their “functions,” and confirm whether reorganization or reform is necessary;
 - 5) Be cognizant of the fact that Native American Nations differ dramatically in government structure and land base, in order to avoid a “one size fits all” approach to reorganization.
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COMMIT TO APPROPRIATE NEW DOLLARS

A reasonable inference drawn from the President’s Budget Request for FY2005 is that the Administration is committed to reorganizing the Bureau of Indian Affairs, and funding the Office of the Special Trustee, with Native American Program dollars. Navajo was informed by the Administration that there would not be such reallocated funding. Our inference is drawn from the request to decrease Indian Health Facilities Construction by \$52 million, and BIA Education Construction by \$65 million, while within the same FY2005 request, increase the Office of the Special Trustee’s budget by \$130 million. The Navajo Nation believes that one objective that must be met is Congress’ commitment to appropriate any proposed reorganization only with new dollars and not Indian Program dollars, and we seek this Committee’s support of such commitment.

FULL, COMPLETE, GOOD FAITH CONSULTATION

The foundation of our government-to-government relationship with the United States, specifically the Congress and the Administration, we feel, has not been adhered to. The Navajo Nation appreciates those members of Congress and those departments within the Administration who try their best to meet the obligation of government-to-government consultation. However, the recent reorganization of the BIA and OST indicates that government-to-government consultation is replaced with a process of limited notice, inadequate response time, and the replacement with “presentation” of the reorganization for “consultation” about the reorganization. Full, complete, and good faith consultation with all Native American Nations is essential to any successful reorganization, and Navajo seeks Congress’ commitment to such consultation, and seeks this Committees support in securing such commitment. The task of proposing the reorganization of the major agencies and functions affecting Native American trust is daunting; but it is a task that together we can accomplish.

ESTABLISH CLEAR TRUST STANDARDS

The next question that must be answered before any proposed reorganization goes forward, is **WHAT ARE THE TRUST STANDARDS?** We, along with other Native American Nations continue to argue that the Secretary of Interior has a Trust Responsibility. We also continue to ask for accountability to this Trust Responsibility, but we, including the United States Government continue to sway on the clear definition of this Trust Responsibility. The Cobell litigation is a backdrop for these discussions of reorganization and trust reform and, although we support those individuals in asserting their claims before the courts, we recommend Congress not prematurely propose reorganization and trust reform in reaction to such litigation.

Although the Congress and the Administration may not agree with all Native American Nations, and vice-versa, on the Trust Standards, we, at a minimum, would like Congress' commitment to entertain Trust Standards, and possibly establish clear trust standard, that may be in agreement by the Government and all Native American Nations, prior to any proposed reorganization of major agencies and their functions or trust reform. Without clear trust standards, any reorganization or reform would be based on a system that lacks responsibility or accountability. Thus, any such proposed reorganization or trust reform would still falter, and result in the same lack of responsibility or accountability. Let us work together in any proposed reorganization or trust reform. Who better to provide you with what works and what doesn't work, than the trustee of this relationship.

IDENTIFY MAJOR AGENCIES AND FUNCTIONS

In the past, we have worked with the Government in a way where we, the Navajo Nation reacted to your proposals rather than proactively with your proposals. The Navajo Nation believes that today is truly historic. This Committee is providing us the opportunity to proactively work with any of your proposals, by allowing us to provide suggestions, prior to approaching proposed agency and function reorganization and trust reform. The Navajo Nation requests a list of those major agencies and functions that may be proposed for reorganization. Further, we recommend the Congress provide adequate time for Native American Nations to review the list and functions. The Navajo Nation would be greatly impacted, as we, along with other Native American Nations, work with several agencies within the Department of Interior, i.e., the Bureau of Land Management, Bureau of Reclamation, and Parks and Service, to name a few.

It is also important to know when an agency and its functions are working as intended, thus, not requiring reorganization. Let us, the Congress and Native American Nations, as we work together, know when reorganization is not the answer and hold steadfast in our possible agreements to not reorganize an agency or its functions.

AVOID "ONE SIZE FITS ALL" APPROACH

Finally, the Navajo Nation stresses to this Committee, and the Congress, to avoid a "one size fits all" approach to any proposed reorganization or trust reform. As Vice-Chairman Senator Inouye noted in a statement at the NCAI Legislative Summit two weeks ago, we must be wary of any trust reform. We must take thorough look at all the difference among all Native American Nations. What works for one Native American Nation may not work for another. Let us not go down the road of dividing us by proposing a "one size fits all" approach. Let us work together to identify the differences and address those differences through meaningful consultation, which I commented on earlier in my testimony. We, both Congress and Native American Nations, will then realize our common goal. Trust Responsibility and Accountability.

In summation, I want to reiterate those points of utmost concern to Navajo People and, if addressed appropriately, will ensure a successful reorganization and improved relations among the Native American Nations and the federal government. First, We seek a commitment from Congress to fund any proposed reorganization with new dollars, not at the expense of Native American Programs. Second, we seek a commitment to full, complete, and good faith government-to-government consultation with Native American Nations. Third, together we must establish clear trust standards or our labor will be for naught. Fourth, we must work together to identify those “major agencies,” and their “functions,” subject to reorganization to confirm that reorganization or reform is necessary. Finally, as we begin this journey, let us be mindful that Native American Nations differ dramatically in government structure and land base. A sure road to failure will be to attempt a cheap or quick fix; we must avoid a “one size fits all” approach to reorganization.

Thank you.