

UTAH NAVAJO TRUST FUND

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

Thursday, June 19, 2008

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OVERSIGHT HEARING ON THE UTAH NAVAJO TRUST FUND

**Thursday, June 19, 2008
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.**

The Committee met, pursuant to call, at 10:05 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, [Chairman of the Committee] presiding.

Present: Representatives Rahall, Kildee, Boren, Bishop and Matheson.

STATEMENT OF THE HONORABLE NICK J. RAHALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

The CHAIRMAN. [Presiding.] Committee on Natural Resources will come to order. Before we begin, the Chair would ask unanimous consent that a distinguished colleague of ours, Mr. Jim Matheson, be allowed to sit at the podium and participate as if he were an actual member of this Committee today.

All right. The Committee is meeting today for a hearing on the Utah Navajo Trust Fund, and this hearing is unique. In 1933, Congress placed land into trust for the Navajo Nation but at the same time required that 37 percent of any mineral royalties be paid to the State of Utah to be expanded for certain individual Navajos residing in Utah.

Eventually, minerals were discovered on the land and royalties were received by the trust fund, beginning in the 1950s. To fulfill its obligation, the State of Utah established the Utah Navajo Trust Fund. Over the years, the state has used the money to provide educational assistance, drought relief, road maintenance, and other benefits and services to the individual Navajos.

I am not aware of another instance in which the Federal government has directed a state to receive and expend money for the benefit of individual Indians. Unfortunately, the state no longer wants to administer the trust fund, and that is disconcerting because without that conduit the funds will cease to flow to the Navajos.

I would like to commend Congressman Jim Matheson for bringing this to our attention and for his leadership on this issue and so many other issues. He asked for this hearing in order to focus on the future management of the trust fund. We have already re-

ceived some information about various options, and hope to hear more about those options today.

Most importantly, we look forward to hearing about the views of the individual beneficiaries and the actions this Committee needs to take to ensure that the beneficiaries are informed and consulted with on the future administration of the trust fund. With that, I will recognize, first, the distinguished gentleman from Oklahoma, Mr. Boren, if he has any opening comments, a member of our Committee.

[The prepared statement of Chairman Rahall follows:]

**Statement of The Honorable Nick J. Rahall, II, Chairman,
Committee on Natural Resources**

The Committee will come to order. Today's hearing on the Utah Navajo Trust Fund is unique.

In 1933, Congress placed land into trust for the Navajo Nation but at the same time, required that 37 1/2 percent of any mineral royalties be paid to the State of Utah to be expended for certain individual Navajos residing in Utah. Eventually, minerals were discovered on the land and royalties were received by the trust fund beginning in the 1950's.

To fulfill its obligation, the State of Utah established the Utah Navajo Trust Fund. Over the years, the State has used the money to provide educational assistance, drought relief, road maintenance, and other benefits and services to the individual Navajos.

I am not aware of another instance in which the Federal government has directed a State to receive and expend money for the benefit of individual Indians.

Unfortunately, the State no longer wants to administer the trust fund. And that is disconcerting because without that conduit, the funds will cease to flow to the Navajos.

I would like to commend Congressman Jim Matheson for bringing this matter to my attention.

He asked for this hearing in order to focus on the future management of the trust fund.

We have already received some information about various options and hope to hear more about those options today. Most importantly, we look forward to hearing about the views of the individual beneficiaries and the actions this Committee needs to take to ensure that the beneficiaries are informed and consulted with on the future administration of the trust fund.

I look forward to the testimony.

**STATEMENT OF THE HONORABLE JIM MATHESON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

The CHAIRMAN. Mr. Matheson, you wish to make opening comments?

Mr. MATHESON. If I could, very briefly, Mr. Chairman.

The CHAIRMAN. Sure.

Mr. MATHESON. First of all, I really want to thank you for scheduling this hearing, and I want to thank your staff because, as you mentioned in your opening statement, this is a unique circumstance. It has come to us in a way where there are a lot of questions about what we should do.

As I said, you and your staff have been very helpful in terms of trying to help sort these issues out and try to come up with solutions. I just want to make sure we recognize that the funds that flow out of this trust fund, you know, it is helping people on the ground, Utah Navajos in San Juan County, Utah.

I don't want to lose sight of that, but at the end of the day, this is about helping people, and we want to make sure that we continue to have a structure where those same folks are continuing to

receive that assistance, so I look forward to this hearing to learn about it. As I said, this is an unusual circumstance.

We need to learn about what we can do as options, and I hope at the end of the day we do the right thing to make sure Utah Navajos are still obtaining the benefits that they have been enjoying so long. Thanks for allowing me to be on the Committee, too, by the way, for this hearing. I will yield back.

The CHAIRMAN. Thank you. Our first panel is Mr. Ross O. Swimmer, the Special Trustee for American Indians, United States Department of the Interior, Washington, D.C.

Mr. Swimmer, welcome. We have your prepared testimony, and it will be made a part of the record as if actually read. You may proceed as you desire.

STATEMENT OF ROSS O. SWIMMER, SPECIAL TRUSTEE FOR AMERICAN INDIANS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.

Mr. SWIMMER. Thank you, Mr. Chairman. I appreciate the opportunity to be here, members of the Committee and acting members of the Committee, I guess, at this point. It is an opportunity to discuss in some detail the Utah Navajo Trust Fund, its administration, its origins and what we might suggest could be done with the trust.

As the Chairman mentioned, the Congress established the trust fund through legislation in 1933 when this land was transferred to the Navajo Nation from public domain land. It is in the area of San Juan County and is called the Aneth Extension.

As part of the agreement for the transfer of this land to the Navajo Nation, it was determined that Navajos living in this particular area of Utah should receive some benefit from the land if that opportunity arose, and it was such that in the event that oil and gas were produced in paying quantities at least 37 and a half percent of the royalties from that would be paid into a trust fund that would be administered then by the State of Utah.

As the Chairman mentioned, in 1959 oil and gas wells were developed in the Aneth Extension and they did produce oil and gas revenue in paying quantities, in fact, significantly so, to the extent I believe of several million dollars annually.

Currently, payments from these oil properties are made directly to the Navajo Nation. The only role right now of the Department of the Interior is to do an accounting for the payments from the producers. The producers of the oil and gas actually make the payments to the Navajo Nation.

The Minerals Management Service then provides all of the parties—the state, the Navajo Nation and the Bureau of Indian Affairs—with a report that reflects the royalties from the total production of oil and gas. Currently, the money that is collected by the Navajo Nation from the producers, 37 and a half percent of that is sent to the State of Utah for the Utah Navajo Trust Fund, and the balance is retained by the Navajo Nation in its own account.

This money does not flow through the Office of the Special Trustee or the Bureau of Indian Affairs. In recent years, there has been criticism by the tribe and by some, I believe, in the Aneth Extension.

sion, some of the Navajo Indian folks living there, regarding the administration of the trust by the State of Utah.

That has resulted in a lengthy lawsuit that has been going on now for several years, and it probably will continue for some time.

It is our understanding that the State of Utah, while acknowledging its role as trustee and certainly a lot of the work that it has done over the years, prefers not to continue to be trustee for this trust and would like to see someone else become trustee that would have perhaps a closer tie to the folks, the beneficiaries, of the trust which are the Navajos living in that area and Indians living in the Aneth Extension generally.

In looking at a successor trustee, we understand that there has been some consideration for the Department of the Interior to undertake this role. This is not something that we would prefer doing. Currently, legislation allows the Office of the Special Trustee and the Department of the Interior to accept funds in trust and to administer those funds when they are sent to us from Indian trust lands as Indian trust money.

This money technically is coming from Indian trust lands and is trust money, but it has not been received into the Indian trust. It has been received directly by Navajo Nation and then the 37 and a half percent sent directly to the State of Utah. We don't believe we have authority. We of course could have authority if the Congress so chose.

Currently, the money that goes into the trust fund also is invested by the State of Utah in various instruments that most generally we are not permitted to invest in. The Special Trustee and the Department of the Interior are allowed to invest trust funds from Indian lands only in certain securities, those guaranteed or backed by the Federal government, and this is statutory language.

The State of Utah is currently, as I understand anyway, investing the funds that are not used or disbursed, they invest the funds in the trust in accordance with the prudent investor rule which gives them a lot more latitude, and in many cases would allow a greater return to the trust than we are permitted in the limitations that we have for investing.

So that also would have to be changed, and the statute would have to treat these funds as Indian trust funds, and they would be limited then in the manner in which they could be invested.

The other major issue that we would have with the administration of the trust itself is the language of the act essentially says that these monies are to be used for the health, education and general welfare of the Indians residing in the Aneth Extension, and then later amended to include all Navajo Indians living in San Juan County.

We invest funds. We don't really have programs. We don't have a way in which we could determine what kind of benefits should be bestowed on Indians or on the Navajos within this area. I understand that some of the money now is being spent on educational benefits, perhaps some on healthcare.

I even believe that there are buildings, other fixed assets that exist now that have been a product of this trust. Also, as a result of that, substantial sums are used from the trust fund to take care

of those buildings and other properties that are involved in the trust.

So it is not something that the Special Trustee certainly would be capable of administering, and I am not sure that it really falls within the Bureau of Indian Affairs arena either as a way of managing this property.

The state and the Navajo Nation may have some things that they could work out as far as the disposition of these properties but it would not be a situation where the Department of the Interior believes it should be engaged in the administration of the funds after the investment.

If it is solely the investing of the funds, that is something that we could do, but we would need to have some organization that could then do what the State of Utah is doing now. It is our opinion that it would be more appropriate to have the Navajo Nation manage the trust funds.

They could do this through a third-party money manager, an investment firm, or even internally in accordance with rules and regulations, I am sure, that the Navajo Nation has or that could be developed in a trust agreement. This is an opportunity that has been given to all tribes in the 1994 Indian Trust Reform Act, the opportunity to withdraw funds from the Indian trust and administer those funds.

This would be certainly in line with that, and as the government relationship with the tribe, we would encourage the Navajo Nation, as a sovereign government, to assume the management of these funds, and there are plenty of opportunities in the private sector to support that management.

Then, I think it is also important that the Navajo and Indian folks living in the Aneth Extension have an opportunity to continue to determine how best to spend the funds on their behalf. It is important that they have a voice in this. Just as a suggestion, it could be a nonprofit organization, be created to actually administer the funds on behalf of the Navajo folks in that area, or some other organization within the Navajo Nation itself.

Finally, recognizing that the State of Utah has been sued over its management of the trust, and that is a case yet to be resolved, we would of course encourage that that case be resolved before the State of Utah withdraw from the trust so that whichever successor trustee comes in has a clean slate, so to speak, when they take over that trust.

Mr. Chairman, that concludes my testimony, and again, appreciate the opportunity to be here and will answer questions.

[The prepared statement of Mr. Swimmer follows:]

**Statement of Ross O. Swimmer, Special Trustee for American Indians,
U.S. Department of the Interior**

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.¹ 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.

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.

¹ 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).

The CHAIRMAN. Thank you. Let me turn to Mr. Matheson first.

Mr. MATHESON. Well, thank you, Mr. Chairman. Mr. Swimmer, appreciate your testimony. You know, it seems to me we are scrambling to determine what to do to ensure that Utah Navajos are able to continue drawing benefits from the royalties that are due to them.

This fund, this trust has a long and checkered history, but as I look over that history and that timeline since it was established first in 1933 it seems real clear that at every turn the Federal government and Federal action has ultimately determined how to manage and modify the trust fund, and yet, earlier this year the Utah Legislature enacted legislation to basically dissolve the trust fund, or at least its participation in this, taking away its responsibility for managing the fund.

So the first question I have for you is, is the State of Utah permitted to unilaterally divest itself from the interest in this matter without any Federal action?

Mr. SWIMMER. That is a question that I have asked inside Interior with our own solicitors. I am not sure. I don't have an answer. I would be concerned that the state can unilaterally withdraw from its responsibility under the congressional act that created this trust and certainly not without consent of the beneficiaries and actually the settlor of the trust, which was the Congress.

Mr. MATHESON. Would it be possible to get the solicitor's opinion out of the Department of Interior about that issue if you have talked with them about that?

Mr. SWIMMER. I am certainly happy to request one.

Mr. MATHESON. I think that would be helpful for the Committee record to see that, so if we could make that request, that would be appropriate to do.

Mr. SWIMMER. Sure.

Mr. MATHESON. Second question. Set aside that first question, let us say it is determined the state can abdicate its responsibility without Federal legislation. Do you have any thoughts or proposals about how the funds should be managed between July 1, when the legislation of the State of Utah passed says they are out, and when we ultimately make a decision in Congress about what the next structure should be?

I just don't think it is going to happen by July 1. So do you have a thought about how these funds should be managed until some new entity or new structure is put in place?

Mr. SWIMMER. Managing the funds is the easiest part of it. The disbursement of the funds would be my concern. I think logically the Navajo Nation—it invests now its 62 and a half percent that it retains—it could certainly invest, as I said, through various opportunities, private sector investment firms or whatever, the money that would go into the trust.

The disbursement of the money, though, to ensure that it meets the obligations of the trust, which is the health benefit, education benefits, et cetera, to the Indians in the Aneth Extension and the Navajos living in San Juan County, that is the issue that really has to be addressed here as to who is going to do that.

It seemed to me again that Chairman Shirley would have some ideas about making sure that the Navajo people living in that area

are available on committee or a nonprofit organization where they would give guidance to the Navajo Nation on what the needs are in that area. As you say, trying to create such an organization by July 1 would be extremely difficult.

However, I do believe that even now there are groups, if not formally organized groups, in the Aneth Extension made up of Navajo citizens there that could be brought together fairly quickly to come up with a plan of how this money should be disbursed or spent.

Mr. MATHESON. One more question. As this Committee, as we consider Federal legislation to deal with this issue, do you have any recommendations for how that legislation can be crafted to make sure we protect the integrity of the fund, particularly with regard to transparency and accountability?

Mr. SWIMMER. Well, again, the Navajo Nation I think is certainly a responsible party here and could be held to account for that and act as a trustee on behalf of the folks in that area. That is the real intent of the legislation is that this 37 and a half percent of the money be spent for the welfare of Indian people living in that area.

The Navajo Nation has a long record of, you know, managing projects on the reservation, taking care of folks, and I think they would be certainly the logical choice for, you know, administering this kind of a trust.

Mr. MATHESON. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Boren.

Mr. BOREN. Thank you, Mr. Chairman. I have a quick question. I wanted to point out that our panelist is from the great State of Oklahoma, and a great friend and also has a lovely wife, Margaret, who is a super special lady. I just wanted to pass that along if he runs into Margaret.

Anyway, I have a couple of questions. One deals with liability, you know, and this is something when we have been dealing with other pieces of legislation where the Federal government can be liable. I know you were kind of saying, "Well, we are not necessarily; we don't want this hot potato"—but if we do, what concerns do you have about liability for the Federal government for the Department? Could you share your thoughts on that?

Mr. SWIMMER. Well, I am sure that you know, and the Committee members know, that we are currently involved with over 103 tribal lawsuits which claim that we have not sufficiently or appropriately invested money, and collected money and disbursed money. You can also walk down to the Federal Courthouse where we are right now continuing a hearing on the Cobell matter which should come to an end here pretty soon.

This is ripe for litigation, frankly, with anyone that administers the trust, except I think for the Navajo Nation. I think that is one of the things that we need to come to grips with, frankly, in Indian Country is that tribes, many tribes, not all of them, but many tribes now have the expertise and should be administering their income, particularly from these kinds of resources.

While some of those tribes have taken on that responsibility, there are many more that still leave it to the Federal government, and there is still over \$800 million a year that flows through our trust fund and \$3.5 million that we manage on a regular basis. In spite of all of the lawsuits that are against us, it doesn't seem that

the tribes are really interested in managing this money on their own.

I believe that is something we need to look at, and I think the Navajo is responsible for that.

Mr. BOREN. Can you describe just kind of in laymen's terms a little bit about the prudent investment standard, because it is something that I have, you know, been concerned about because the last thing you want is all of this money that could be used for healthcare, and for housing, for whatever the issue, not just for this particular case.

Could you kind of give us in laymen's terms what a prudent investment standard is and how it would be applied in this instance?

Mr. SWIMMER. Well, in normal trust law there are a whole set of trust duties and one of those, if it is not set out separately in the trust document, you follow those trust duties. In this case, a prudent investor rule simply means that you will invest your beneficiary's funds in a prudent and responsible way.

It doesn't limit the investment, but, for instance, if you wanted to categorize, it is most likely that hedge funds would not be inappropriate investment. On the other hand, if you put everything into U.S. Treasuries, that wouldn't be appropriate either because you have the risk in return. Normally, you would look at a range of options that would be at least reasonably secure, not risk free, but with moderate risk.

You can take a moderate risk as a trustee and increase the return, depending on length of time of the investment, the type of instrument, and that sort of thing. That is really what prudent investment means. That is giving you a range of opportunities to make investments that have moderate risk with a moderate return.

You are not trying to get the highest, you are not trying to of course be the safest, which would result in the lowest return.

Mr. BOREN. Thank you. I have no further questions, and I yield back.

The CHAIRMAN. Gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Thank you very much, Ross. It is good to see you.

Mr. SWIMMER. Good to see you.

Mr. KILDEE. We have been working together in matters in a very good fashion for many years now, and good to see you again. I have just one question. Is one solution or one method more sensitive to sovereignty than another or is that not an issue here, the sovereignty of the tribe? Is one method or one solution of handling this situation more or less sensitive to the sovereignty of the Navajo Nation?

Mr. SWIMMER. I would not see it as more or less related to the sovereignty issue. I like the idea of the Navajo Nation, as a sovereign government, having the responsibility to make the investment and then work with the people on the Extension to ensure that the benefit that they are entitled to is provided to them.

As the Navajo Nation government, they are responsible for seeing that this happens. I don't see that the Federal government, particularly the Department of the Interior, should step into the middle of that and say, "Wait a minute, Navajo Nation. We don't trust you. We don't think you are capable of ensuring that your

people, your folks up there in this area that are entitled to this benefit are going to get it.”

I don't like that. I think that the Navajo Nation is clearly capable and should be responsible for ensuring that the folks there get the benefit that was intended by Congress in 1933, that 37 and a half percent of these royalties be used for the benefit of the people living in that area.

Mr. KILDEE. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Let me just reiterate a point that Mr. Matheson brought up and that is the request made for an expedited solicitor opinion on the right of the State of Utah to unilaterally end its management of the Utah Navajo Trust Fund. If I could just reiterate and emphasize our desire for that report.

Mr. SWIMMER. I will ask for that. That is not something they perhaps would normally do because it is not an Interior matter, but I will certainly ask for an opinion on how they view a state's responsibility given that the act gave them this responsibility and they accepted it in 1933.

The CHAIRMAN. Thank you.

Mr. SWIMMER. Thank you.

The CHAIRMAN. Any further questions?

[No response.]

The CHAIRMAN. Thank you for your time this morning. We appreciate it.

On Panel 2, we have Ms. Tani Pack Downing, Deputy Chief of Staff and General Counsel of the Office of the Governor, State of Utah, Salt Lake City; and The Honorable Joe Shirley, President, Navajo Nation, Window Rock, Arizona. We welcome you both to the Committee this morning. We do have your prepared testimonies and it will be made part of the record as if actually read. You may proceed as you desire.

The CHAIRMAN. Ms. Downing, you want to start?

STATEMENT OF TANI PACK DOWNING, DEPUTY CHIEF OF STAFF AND GENERAL COUNSEL, OFFICE OF THE GOVERNOR, STATE OF UTAH, SALT LAKE CITY, UTAH

Ms. DOWNING. Sure. Thank you. Good morning, Mr. Chair, members of the Committee and staff. My name is Tani Pack Downing. I am Deputy Chief of Staff and General Counsel for Governor Huntsman in Utah.

Governor Huntsman sends his regrets that he was unable to come in person to thank you for holding this hearing in response to the State of Utah's request to be removed as the trustee over a portion of the oil and gas royalties from the Utah area of the Navajo Reservation.

Last year, Governor Huntsman and legislative leadership met to discuss whether the state should petition Congress to designate a new trustee. They took into account the fact that:

1] The State of Utah, to our understanding, is the only state administering a fund like this as management of Indian resources is typically a Federal responsibility.

2] They considered the fact that there has been 40-plus years of nearly continuous litigation with four lawsuits by the Utah Navajos over the state administration of the trust fund, the cost of which

has been born by the Utah citizens as a whole, and to what benefit?

3] During that same 40-plus years, the Utah Navajo have repeatedly requested they be given increased control over expenditures of the fund.

4] Utah Navajos have most recently repeatedly asked the Governor to appoint a Navajo beneficiary as a member of the Board of Trustees, which, in the state's opinion, increases the risk of another lawsuit.

5] The Utah Navajo are valued citizens of the state and the litigious environment surrounding the state's administration of this fund harms the relationship between the state and the Utah Navajo and complicates the parties' ability to meet their needs.

6] We believe there are several Navajo-related entities that are equipped to find a more effective way to administer the fund and determine its best use.

In light of these considerations, the Governor and legislative leadership decided not to reauthorize the legislation governing the Navajo Trust Fund and to allow the legislation to sunset. This decision was discussed with the Utah Navajo on many occasions and I have provided a chronology of contacts with my written testimony.

The decision was also discussed with the Navajo Nation. In place of the Navajo Trust Fund, Congressman Matheson had asked what is going to happen after July 1? The legislation that allowed the state to sunset the trust fund created a holding fund called the Utah Navajo Royalty Holding Fund.

Effective July 1 of this year, the financial and real property assets of the Navajo Trust Fund will be transferred into that holding fund, as well as future royalties, and that will continue until Congress designates a new trustee. Just as an aside, at the Navajo Trust Fund Board's final meeting, which will be next Monday, the board and auditor will adopt a list of assets and liabilities of the Navajo Trust Fund and those will be posted online.

I want to talk a little bit about what the holding fund will do. First, it will be managed through a management team that is led by the executive director of the Utah Department of Administrative Services. The holding fund will continue to make expenditures to complete work on all projects that were obligated by the Navajo Trust Fund prior to May 5 of this year.

The holding fund will continue to pay for educational scholarships for Utah Navajo through 2010. The holding fund will also continue to make expenditures to protect the assets of the fund, such as building maintenance on some of the fixed assets, and also to protect and receive interest on the income of the holding fund. However, no new projects will be authorized through the holding fund.

In conclusion, the State of Utah requests that Congress as soon as possible designate a new entity to succeed the state as trustee over the royalty funds after input from the Navajo. The state has no preference regarding which entity should be the new trustee.

However, the state strongly requests that since 100 percent of the oil and gas royalties come from Navajo Reservation lands located in Utah that at least the 37 and a half percent of those royal-

ties continue to be expended by the new trustee for the benefit of the Utah Navajo.

I would like to thank you for the opportunity to provide input on behalf of the State of Utah, and I can answer any questions.

[The prepared statement of Ms. Downing follows:]

**Statement of Tani Pack Downing, General Counsel and
Deputy Chief of Staff to Governor Jon M. Huntsman, State of Utah**

Mr. Chairman and members of the Committee, my name is Tani Pack Downing and I serve as the General Counsel and Deputy Chief of Staff to Governor Jon M. Huntsman of the State of Utah. I am here today to discuss the decisions made recently by the State concerning what is known as the Utah Navajo Trust Fund.

The State of Utah, through a federal statute passed in 1933 which enlarged the Navajo Reservation, was assigned responsibility to manage a percentage of oil and gas royalties produced on the Utah portion of the Navajo Reservation for the health and welfare of the Navajo residents residing on the newly created part of the reservation. The land was previously federal land located within San Juan County Utah, and as such, 37-1/2% of any oil and gas royalties produced on the land would have been transferred to Utah.

In 1968, Congress amended the 1933 Act to redefine the beneficiary class as "Navajos residing in San Juan County" and to expand the purposes of the fund "for the health, education, and general welfare of the Navajos." Importantly, the 1968 Amendment also defined Utah's accounting responsibility as being limited to "[a]n annual report...to the Secretary of the Interior...for the information of said beneficiaries."

The State of Utah is the only state in the Nation administering a Fund like this, as management of Indian resources is typically a federal responsibility. The current net assets of the Fund are approximately \$25 million.

The Utah Navajo Trust Fund has been the subject of numerous lawsuits over the 75 years since its creation. Each lawsuit has challenged Utah's management of the royalty fund and has requested an accounting. The 1961 case of *Sakezzi v. Utah Indian Affairs Commission* concluded that the 1933 Act created a fiduciary trust with Utah as the trustee. In the 1970s, the case of *Jim v. State of Utah* ordered an accounting. In the 1980s, the court in the case of *Bigman v. State of Utah* again ordered an accounting. The state is currently litigating the case of *Pelt v. State of Utah* which alleges mismanagement of the Fund. This case is currently awaiting a decision from the 10th Circuit Court of Appeals on procedural matters.

Since 1992, the state has managed the Fund through a three-person Board of Trustees which oversees a trust administrator and staff. This management team is advised by a committee of Navajo residents from each of the eight relevant chapters, known as the Dineh Committee. The Board sets the annual operating and capital budgets, and approves expenditures for housing, water, powerline projects, equipment purchases, building construction and maintenance, supplemental education assistance, and the like. Annual expenditures, outside of capital expense, average about \$2 million per year. In addition to this amount, the state made the decision some years ago to invest a portion of the state severance tax from production of oil and gas on the reservation back into the area. Today, the Navajo Revitalization Fund, a more traditional state-government expenditure program, provides about \$2 million per year for various capital improvement programs on the Navajo Nation lands.

Over the years, the Navajo residents of San Juan County have asked the State for more representation in the decisions concerning expenditures from the Fund. In response, the State tried to find a Navajo who met the State requirements to sit on the Board of Trustees. Unfortunately, court mandated fiduciary requirements for management of a trust do not allow beneficiaries of the trust to make such decisions, so it proved impossible to find a Navajo who qualified.

In light of the desire of the Utah Navajo residents to have more of a role in management of the Fund, and in light of the history of nearly continuous litigation, the state determined it was best not to continue in the role as trustee. The state decided to resign as trustee and allow another entity to take over those duties. Because the duty to manage the Fund was given to the state by Congress, only Congress may determine an alternative. This decision was discussed with the Navajo residents of San Juan County on many occasions (see attached list of meetings). In the interim, however, the state has made the decision to wind down active management of the Fund, and to simply protect the Fund and other assets until a successor is determined.

Utah has a general policy of legislative provisions which sunset various state agencies on a periodic basis, unless specifically reauthorized. The Utah Navajo Trust Fund is one of those agencies, and was set to be reviewed in the 2008 General Session of the Legislature. Rather than continue the existing Board of Trustees, the state, through legislation, established the Utah Navajo Royalty Holding Fund and associated management provisions. This Holding Fund will take effect July 1 of this year, and will contain all the financial and real property assets owned by the former Utah Navajo Trust Fund. The Trust Fund will cease to exist as a management entity. (See resolution at <http://le.utah.gov/~2008/bills/hbillenr/hb0352.pdf> and legislation at <http://le.utah.gov/~2008/bills/hbillenr/hcr004.pdf>)

The Holding Fund will continue to make expenditures to protect the assets of the Fund such as building maintenance and efforts to protect the income of the Fund. The management team, now headed by the Executive Director of the Utah Department of Administrative Services, will work to complete all projects approved before May 5, 2008, such as housing projects, and will continue to fund the supplemental education costs for eligible Navajo students in a postsecondary education program. However, no new projects may be authorized. The Holding Fund will continue until Congress appoints a new management entity, and instructs the state concerning disposition of the assets within the Holding Fund.

The State of Utah has no preference for a successor management entity, other than a desire to see that the royalties continue to flow to the benefit of the Navajo residents of San Juan County. The State has also encouraged the Navajo residents to participate in the process of determining a new trustee to manage the funds.

**Timeline of Contacts with
Representatives of Utah Navajos and Navajo Nation
Re: State of Utah Resigning from Navajo Trust Fund
For additional documentation contact Tani Downing at
TDOWNING@UTAH.GOV**

November 1, 2007—Gayle McKeachnie, representative of the Governor's Office, traveled to Aneth and met with the Navajo Utah Commission (NUC) to discuss the State's decision to resign from the Trust Fund. Members of the NUC were present at the meeting, including Kenneth Maryboy, Katherine Benally, and Charles Long, Assistant to the Speaker of the Navajo Nation.

Concurrently with the delivery of the information to the NUC, the State Lt. Governor Gary Herbert spoke with President Shirley of the Navajo Nation by phone about the State's decision to resign from the Trust Fund.

November 5, 2007—The idea of the State's desire to ask Congress to find a new trustee was discussed just after a meeting of the Navajo Revitalization Fund (NRF). The NRF meeting was held at Goulding's Lodge, and members of Oljato Chapter came to ask questions.

November 6, 2007—Navajo Nation Council Speaker issues press release acknowledging that representatives of the Governor's office delivered the "exciting news" in person on November 1, that the State of Utah wishes to remove themselves as the trustee of the Navajo Trust Fund.

November 8, 2007—Navajo Trust Fund Board of Trustees Meeting, Mexican Water Chapter. Trustee, John Reidhead provided information regarding the State's decision to sunset the trust and ask Congress to designate a new trustee.

November 13, 2007—The Governor and Legislative leadership issues a joint press release about allowing the NTF to sunset and asking Congress to create a new disbursement system for the royalties.

November 15-16, 2007—A joint meeting of the Dineh Committee and the Navajo Utah Commission was held in the Salt Lake City area. John Reidhead, Navajo Trust Fund Board member and John Harja, representative of the Governor's office, attended. John Harja answered questions from members of the Dineh Committee, NUC and Chapter (Aneth) presidents and other officials for three hours.

November 16, 2007—Members of the Dineh Committee traveled to Salt Lake City to discuss the issue of the State's decision to resign as trustee. Those involved in the meeting included Gayle McKeachnie, Amanda Smith, and John Harja representing the Governor's office, Patricia Owen and John Cannon representing staff to the Utah Legislature, and a representative from Congressman Matheson's office. Clarence Rockwell and representatives from all the Chapters were present. They had requested the meeting to hear reasons behind the current action, future plans, and to hear the instructions necessary to execute the shut down as well as provide comments.

November 16, 2007—Leonard Lee, Chair of the Dineh Committee, sent a letter to the Governor, Lt. Governor and the Legislature in which he states “The Utah Navajos support the Transition Legislation that is being drafted at this time and requests for additional provisions to be implemented.” The bill that ultimately passed the Legislature included one of the two provisions requested.

November 18, 2007—Oljato Chapter Resolution. Regarding their desire to give input about the transition plan for the Trust Fund and selection of another trustee.

November 20, 2007—Gayle McKeachnie, Amanda Smith and Tani Pack Downing, representing the Governor’s office, traveled to Window Rock. They had conversations there about the State’s decision to resign from the trust with Clarence Rockwell and sat in on break out sessions where representatives of the Chapters voiced concerns about the State’s role in the trust.

November 27, 2007—The Native American Legislative Liaison Committee heard testimony from Tony Dayish, Leonard Lee, and Marie Holiday regarding the sunset of the current structure of the Navajo Trust Fund.

November 30, 2007—John Cannon, legislative staff, by email informed NUC/Clarence Rockwell that Representative David Clark would be the sponsor of the legislation.

December 2, 2007—Representatives of the Oljato Chapter sent a letter to the Governor requesting he provide information on the State’s decision to resign as trustee. The Governor’s General Counsel, Tani Pack Downing, responded to the Oljato representatives in a letter dated December 13, 2007 which outlined other contacts made to the Utah Navajos regarding this issue and encouraging the Utah Navajos to quickly contact the federal Congressional delegation members and work with them to get the federal law changed to reflect the trust management and disbursement mechanism preferred by the Utah Navajo, and to provide input to their state legislative representatives, Representative Brad King and Senator Dmitrich concerning any issues that the Legislature should address during the transition period beginning January 21, 2008.

December 7, 2007—Navajo Trust Fund Board of Trustees meeting by teleconference between Blanding and Salt Lake City. Discussion regarding the sunset of the trust fund and new entity taking over.

December 10, 2007—Utah Dineh Committee Special Meeting, Red Mesa Chapter. Discussion occurred regarding ceasing of the trust fund.

December 13, 2007—Tani Pack Downing, Governor’s Office, sent letter to James Black, James Adakai, Shirlee Bedonie, Herman Daniels, Sr., Oljato Chapter Administration, thanking them for their offer of the Governor to speak at the Oljato Chapter on December 14, but indicating he would be unable to attend on the short notice. Ms. Downing explained the contacts made by the Governor’s office with Utah Navajo up to that date on the issue of the State’s plan to sunset the Navajo Trust Fund and asking Congress to designate a new trustee, the need for the Navajo to play a role in that determination, and recommending the Navajo give input to their Congressional representatives and State Legislators.

December 21, 2007—Representative Clark, sponsor of the legislation to permit Utah to resign as trustee, traveled to Montezuma Creek and met with Navajo Utah Commission members. In attendance were members from various chapters and the Dineh Committee, a representative from President Shirley’s office, Andrew Tso, and the Speaker of the Navajo Legislature. The meeting was chaired by Dennis Filfred, Chairman of NUC. There were at least 5 NUC commission members at the table. The Chairman of the Dineh Committee, Leonard Lee attended the meeting, and at least three other members of the Dineh Committee. Other Chapter officers also attended from Oljato and Aneth. Tony Dayish, representative of the NTF also attended. The State’s decision to resign as trustee was discussed. Minutes were kept and a sign up roll was passed around.

Senator Mike Dmitrich spoke with Kenneth Maryboy and Andrew Tso about their concerns regarding who would administer the trust fund. Mr. Tso indicated he would fax Senator Dmitrich a letter from President Shirley opposing the legislation, but Senator Dmitrich never received such a letter.

January 11, 2008—Tani Pack Downing, Governor’s office, responded to Clarence Rockwell’s request for information on the status of the NTF legislation. She sent Clarence an email giving him the name of the legislative attorney drafting the legislation, her email address and telephone number, and told Clarence to also discuss the legislation with the sponsor of the bill, Representative David Clark or with the legislative representatives for the area, Senator Dmitrich and Representative King.

January 11, 2008—Navajo Trust Fund Board of Trustees Meeting, Teecnospos Chapter. Discussion occurred regarding sunset of the trust fund and new trustee. Leonard Lee reported that the Dineh Committee had attended several meetings on this issue at the Navajo Utah Commission Board meetings and has made presen-

tations at the Oljato and Navajo Mountain Chapters. He said they will continue to work on these issues and the federal legislation. Lynn Stevens reported that a meeting was held in Montezuma Creek on December 21 with Utah Navajos and Representative David Clark. He reported Representative Clark had said he would meet with the BOT individually with their concerns if they wanted. Tony Dayish, Trust Fund Administrator, reported UNTF has been involved in numerous meetings regarding the sunset of the trust fund on Nov. 15, Dec. 10, Dec. 14, Dec. 18, Dec. 21, Jan. 9 and Jan. 10.

January 14, 2008—John Cannon, legislative staff, by email provided to NUC/Clarence Rockwell a copy of the bill, resolution, and a summary of the legislation. Clarence followed up with a telephone call to Patricia Owen, legislative staff, regarding questions he had about the language in the bill or resolution.

January 23, 2008—John Cannon, legislative staff, received an email from Andrew Tso raising concerns about the language in the legislation which led to the resolution being changed to remove a reference to the Paiute Strip.

January 24-25, 2008—The Dineh Committee and the NUC held a meeting in Cortez, Colorado where it was discussed how to respond and put together a new group to manage the trust. Tony Dayish, Administrator of the NTF was in attendance and gave input to the group and listened to their concerns.

January 25, 2008—A representative from the Blue Mountain Dineh contacted the State asking where to get information about the bill and resolution. He was advised that the best place to get information or provide input at this point would be to contact his State legislators, Representative King and Senator Dmitrich whose information can be found at www.utah.gov.

January 29, 2008—The final bill and resolutions were posted on the website for the public. See the following web links for a whole history on the bill and resolution as well as links to the actual language.

HCR 4—Concurrent Resolution Encouraging Congressional Action to Designate a New Recipient Of Royalties From Navajo Reservation Lands in Utah <http://le.utah.gov/~2008/htmdoc/hbillhtm/HCR004.htm>

HB 352—Amendments Related to Monies Derived from Navajo Nation Reservation Lands in Utah <http://le.utah.gov/~2008/htmdoc/hbillhtm/HB0352.htm>

January 30, 2008—During the American Indian Caucus Day legislative staff assisted Clarence Rockwell in the distribution of legislative recommendations and spoke with Tony Dayish regarding comments and possible changes to the legislation. Tony indicated that he had received comments about the legislation, but was reviewing them because many appeared confused about what the legislation did and he wanted to consolidate them. We encouraged him to provide us the information as soon as possible, but we did not receive any further information.

During the session Representative Clark received at least one fax from the NUC.

February 4, 2008—The issue was discussed briefly again at the meeting of the NRF, with Leonard Lee and Katherine Benally present.

February 5, 2008—Tony Dayish was asked to attend a meeting with Kenneth Maryboy, Mark Maryboy, Davis Filfred, Leonard Lee, Earl Lee, Clarence Rockwell, Robert Billie Whitehorse and other officials of the Aneth Chapter. Tony heard their concerns and discussed options for them to consider for a new trustee.

February 8, 2008—Navajo Trust Fund Board of Trustees Meeting, Salt Lake City and Blanding Teleconference. Ed Tapaha reported that the Dineh Committee had been discussing options for a new trustee and making plans for next step.

February 12, 2008—Bill and resolution discussed in the House Government Operations Committee—public notice of the meeting and the agenda was posted on the Legislature's website at <http://le.utah.gov/asp/interim/Commit.asp?Year=2008&Com=HSTGOC>.

February 15, 2008—Utah Dineh Committee Special Meeting, City of Cortez Council Chambers. Reports included review of NRF Legislation that includes the UNTF transition and new trustee proposed legislation.

February 22, 2008—Utah Dineh Committee Meeting, Mexican Water Chapter House. Reports regarding H.B. 352 NRF Legislation Revisions Update and new trustee federal legislation update given and discussion had.

February 22, 2008—Bill and resolution discussed in the Senate Government Operations and Subdivisions Committee—public notice of the meeting and the agenda (See Attachment 17, agenda) was posted on the Legislature's website at <http://le.utah.gov/asp/interim/Commit.asp?Year=2008&Com=SSTGOP>

At least one Navajo attended and testified in the Senate Standing Committee.

February 28, 2008—Navajo Trust Fund Board of Trustees Meeting, Teleconference between Blanding and Salt Lake City. Update given on the status of

H.B. 352 which provided for the transition of the trust fund until a new trustee is determined by Congress.

March 5, 2008—Clarence Rockwell called John Cannon, legislative staff, indicating that in tracking HB 352 he saw that the bill was recalled. John informed him that there was a technical problem that needed to be resolved.

Before the Utah Legislative Session ended, Senator Dmitrich spoke on the telephone twice with Mr. Maryboy and twice with Andrew Tso to his recollection regarding the sunset of the NTF legislation and other related issues.

Throughout this time period, Gayle McKeachnie, Governor's office, spoke on the phone several times with Clarence Rockwell and Kenneth Maryboy and met with Kenneth Maryboy once or twice at the State Capitol. The main topics of conversation were:

- Whether the Governor would come to Monument Valley and meet about what was going to happen?
- Would the state consider a two-year extension before sunset of the trust fund?
- Who could they talk to about what was going to be in the state's legislation to sunset the trust fund and transition to a new trustee?

Mr. McKeachnie referred them to Senator Dmitrich and Representative King, their state legislative representatives, and to legislative staff. In addition, Mr. McKeachnie referred them to Congressman Matheson's office to discuss Congress designating a new trustee.

March 21, 2008—Navajo Trust Fund Board of Trustees meeting minutes, Red Mesa Chapter House, reports that the Governor has signed H.B. 352.

March 28, 2008—Utah Dineh Committee agenda, Montezuma Creek, update given on HB 352 to committee members.

April 25, 2008—Utah Dineh Committee agenda, Aneth Chapter House, report on fixed assets and projects audit as required by HB 352.

Mr. BOREN President Shirley?

**STATEMENT OF THE HONORABLE JOE SHIRLEY, PRESIDENT,
NAVAJO NATION, WINDOW ROCK, ARIZONA**

Mr. SHIRLEY. Chairman Rahall, Congressman Matheson, members of the Committee, good morning. Ya'at'eeh from Navajo land. It is always an honor to be invited to share with you a few thoughts from the heart on behalf of my people. I am Dr. Joe Shirley, Jr., President of Navajo Nation. I wanted to share a few thoughts with you about what is on the table this morning. The written testimony has been submitted to you, gentleman, and Committee members, so you have that.

I am here to reiterate some of what is in there on behalf of the Navajo Nation and which is basically to share with you the Navajo Nation's official position gotten through the Intergovernmental Relations Committee of the Navajo Nation Council, and I am here as President to expand on that and to reinforce that, and that is to have the Navajo Nation be designated as trustee for these trust funds on behalf of the Navajos living in the State of Utah and for which the 37 and a half percent is set aside on an annual basis.

I believe that the Navajo Nation governmental structure is set up in such a way to where we are in a position to administer these funds on behalf of the Utah Navajos. We have been administering our own Navajo Nation funds, some of which has been shared with the Navajos living in the State of Utah. We also get Federal funds and state funds which were administered through the Navajo Nation government.

So I feel like the Navajo Nation government as it is set up is very competent. The governmental structure is in place to administer these trust funds on behalf of all Navajos living in the San

Juan County of the State of Utah. Certainly, we need to do right by all of the Navajo Nation constituents living in Utah.

I believe, again, like I said, the Navajo Nation government, working with the leadership of the San Juan County Navajos, we can make that happen. I do want to see as the government goes toward the designation of a new trustee that the Navajo Nation leadership needs to be at the table full-time.

We need to have a hand in all of this. Like Mr. Swimmer has pointed out, we consider ourselves a sovereign nation. We are a sovereign nation. I believe the U.S. Government has laws, you know, in place to acquiesce in our self-determination. It is that law by which I make the request on behalf of the Navajo Nation to be designated as the trustee for these trust funds.

As far as the prudent investment of these funds so that the funds can grow on behalf of the Utah Navajos, we have, like I said, an Investment Committee in place, working with the Budget and the Finance Committee arm of the Navajo Nation Council. We have our own trust funds that we are administering, making it to grow, and we have been very successful with that.

I don't see us doing any different with these trust funds if it were to be put in our trust. I do like to see, also, the dispute that has arisen over some of the mismanagement and the misappropriation by the State of Utah, I would like to see that gotten behind us before we move forward toward the new designation of a trustee.

Like Mr. Swimmer has alluded, we would like to start with a clean slate, and I agree with that position. Last, I am very interested in what the U.S. Solicitor would have to say about the State of Utah letting go of its trust responsibility for these funds on behalf of the Utah Navajos.

So having said that, Mr. Chairman, members of the Committee, I am here for also to answer questions. Thank you very much.

Mr. BOREN. [Presiding.] Thank you for your testimony.

[The prepared statement of Mr. Shirley follows:]

**Statement of The Honorable Joe Shirley, Jr.,
President, The Navajo Nation**

Good Morning Chairman Rahall, Honorable Members of the Committee. My name is Joe Shirley, Jr., President of the Navajo Nation. 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 the Navajo People to the surface use, and the subsurface mineral resources, of much of our traditional lands.

Self-Determination and the Trust Responsibility of the Federal Government

Over the last forty years, the federal government has made a significant shift in its policy toward the Native Nations. The federal government's shift from a policy of paternalism, assimilation and termination, to a policy that respects the sovereignty of Native peoples, and promotes tribal self-determination on matters relating to internal and local affairs. It is essential to the sovereignty and self-determination of the Navajo Nation that our government maintains a government-to-government relationship with the United States in deciding matters that concern and affect Navajo lands, resources and citizens. The Navajo Nation has its own laws that authorize particular parties and individuals to give testimony to Congress on behalf of the Navajo Nation, and to negotiate with the federal government over matters that affect our Nation. As President of the Navajo Nation, I am honored to appear before this Committee on behalf of the Navajo Nation and its citizens, and especially on behalf of the Navajo citizens who are beneficiaries of the Utah Navajo Trust Fund (hereinafter "UNTF"). I thank you for your invitation to provide testimony to

the Committee and I am pleased that the Committee plans to consult with the Navajo Nation regarding future federal legislation affecting the UNTF. I also trust that the United States Congress will not pass any legislation that directly affects the lands, resources and citizens of the Navajo Nation without first obtaining our consent.

Utah Portion of the Navajo Nation and the Utah Navajo Trust Fund

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.

It is important for the Committee to understand that 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 1/2 % 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 UNTF, 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, discussed below.

Potential Breach of Fiduciary Duty Concerning the UNTF

There is substantial evidence that the State of Utah has not fulfilled its fiduciary duties under the 1933 Act. In a 1991 report, Legislative Auditor General for the State of Utah raised serious allegations of mismanagement and misappropriation of trust funds by the State of Utah and other entities that were entrusted with UNTF monies. The State of Utah has yet to make a full accounting of the UNTF, and is in ongoing litigation with the beneficiaries concerning these issues. Now, the State of Utah has declared its desire to withdraw as trustee of the UNTF. The State of Utah passed legislation this year that will effectively freeze most disbursements from the UNTF, end the trust fund administration, and move 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.

The Navajo Nation remains concerned over the potential for abuse of trust by a new trustee. For example, recently, the current UNTF Administrator along with members of the Dineh Committee, a now defunct State of Utah advisory committee to the UNTF, used UNTF monies to pay their travel expenses to Washington D.C., where they lobbied Congress on legislation for a preferred new trustee and system for management of the royalty funds. Neither the State of Utah nor the UNTF Board of Trustees authorized these travel and advocacy expenditures. The Governor of the State of Utah has chastised these individuals for engaging in personal political activities using UNTF monies, and for professing that they represent Utah in an official capacity. Although the Governor has promised to repay these monies to the trust fund, the incident highlights the importance of carefully choosing an appropriate new trustee, and drafting fair and legitimate trust terms through a lawful process.

The Navajo Nation is very concerned that there is a rush to designate a new trustee, especially where that trustee may be an alter ego of an entity or individuals who have been involved in mismanagement and misappropriation of trust monies in the past. 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 should be administered in a manner to ensure its survival in perpetuity, and so that trust fund monies shall continue to be available to San Juan County Navajos long after Navajo Nation oil and gas resources in Utah have been depleted. In other words, the trust fund should be managed in a way that ensures long-term viability of the fund and not merely a funding source for short term disbursements.

Selection of a New Trustee

The Navajo Nation believes that, consistent with federal policy, the Navajo Nation should be the new trustee of the UNTF. The UNTF is capitalized by royalties generated from Navajo Nation oil and gas leases on Navajo Nation Trust Lands for the benefit of Navajo Nation citizens. In 1933, when the UNTF was created, the Navajo Nation tribal government was only 10 years old. Today, the Navajo Nation is the largest and most sophisticated Native American government, with a substantial body of statutory and decisional law that complements the fundamental law of our People. The Navajo Nation has a proven record of acting as a trustee. Currently, the Navajo Nation manages, and has successfully increased, its own trust fund monies through the expert guidance of its Investment Committee and outside consultants. 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 UNTF. Importantly to this Committee, 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.

Appropriate Consultation and Development of Legislation Regarding UNTF

Like any government, 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. As I explained above,

the Navajo Nation has its own law that governs who may speak on behalf of the Navajo Nation as representatives of our People. Under Navajo Nation law, the Navajo Nation Council is “the governing body of the Navajo Nation.” 2 N.N.C. § 102 (A). “All powers not delegated are reserved to the Navajo Nation Council.” 2 N.N.C. § 102 (B). The Navajo Nation Intergovernmental Relations Committee (IGRC) has been delegated by the Navajo Nation Council all powers necessary and proper “[t]o ensure the presence and voice of the Navajo Nation.” 2 N.N.C. § 822(B); 2 N.N.C. § 824(A). The IGRC has many specific powers in the area of intergovernmental relations, see 2 N.N.C. § 824, and has been specifically delegated the authority to “[t]o assist and coordinate all requests for information, appearances and testimony relating to...federal legislation impacting the Navajo Nation.” 2 N.N.C. § 824(B) (emphasis added). Importantly, the IGRC must coordinate “all Navajo appearances and testimony before Congressional committees.” *Id.* (emphasis added). It is essential that the Navajo Nation speak with one voice in its government-to-government relationship with the United States. Any requests for official testimony that represents the position of the Navajo Nation government by any federal body by Navajo Nation officials which are not coordinated through the IGRC, or other designee of the IGRC, or the Council are contrary to Navajo Nation law, and an affront to Navajo Nation sovereignty and self-determination in its own political affairs.

The Navajo Nation has an official position and legally delegated representatives who are authorized to provide testimony in regard to the UNTF. On May 19, 2008, the IGRC passed a Resolution “Relating to Intergovernmental Relations; Approving the 2008 Position Statement of the Navajo Nation on the Future of the UNTF.” IGRMY-107-08 (See Attached). In addition to adopting an official position of the Navajo Nation in regard to key terms for future federal legislation affecting the UNTF, see Exhibit A (attached), the Resolution authorizes only the President of the Navajo Nation, the Speaker of the Navajo Nation, the Navajo Utah Commission, and their designees to advocate with the United States Congress in regard to the future of the UNTF. IGRMY-107-08. These are the only individuals and entities with authority under Navajo Nation law to represent the Navajo Nation and its citizens in any official capacity in this matter. Moreover, that advocacy must be consistent with the official policy and position of the Navajo Nation in regard to the UNTF, as outlined in its position statement.

The official position of the Navajo Nation in this matter are the result of careful research, analysis and compromise between the varied interests of current beneficiaries, and represent what the Nation believes is the fairest outcome for all Navajo beneficiaries involved and the best means to avoid the mismanagement and misappropriation of trust funds that have occurred in the past.

In addition to myself, in my capacity as the President of the Navajo Nation, the Speaker of the Navajo Nation Council, and the Navajo Utah Commission, the only other Navajo Nation entities that are designated to represent the Navajo Nation on this matter are the Navajo Nation Washington Office and the Navajo Utah Commission. The Navajo Nation Washington Office is an agency of the executive branch established by the Navajo Nation Council to function as our federal intergovernmental relations office. Under Navajo Nation law, the Washington Office is an extension of the Navajo Nation government, represents the Nation to the United States Congress and federal agencies, and reports back to the Council through the President’s office. One of the central purposes of the Washington Office is to help ensure Navajo Nation sovereignty by emphasizing and maintaining a government-to-government relationship with the United States. In the matter of the UNTF, the Washington Office has the express delegated authority as my designee to advocate on behalf of the Navajo Nation in regard to the UNTF.

Likewise, the Navajo Utah Commission is an official advocate for the Navajo Nation in this matter under oversight of the Intergovernmental Relations Committee. The Navajo Utah Commission has been delegated this authority because of its considerable expertise in the issues which are central to future management of the trust as well as providing local representation of the Navajo beneficiaries.

Conclusion

Chairman Rahall, Honorable Members of the Committee, on behalf of the Navajo Nation, I wish to express my deep appreciation for this opportunity to provide testimony to the Committee on Natural Resources. The Navajo Nation looks forward to working with the Committee on a government-to-government relationship as we move forward with this important legislation concerning the future of the Utah Navajo Trust Fund.

Thank you.

**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 1/2 % 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 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 lawsuit 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 Diné. 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. 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.

3. 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.

4. 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 1/2% of all royalties generated by oil and gas production from leases on Reservation lands added in 1933. 62 1/2% 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 the 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.

11. 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.

12. Settlement of Existing Lawsuits.

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.

Mr. BOREN. At this time, I would like to yield to Mr. Matheson once again.

Mr. MATHESON. Thank you. Thank you for your testimony today. Ms. Downing, I want to ask you if you could describe how the trust fund has operated, and if you could describe the accountability measures that were employed by the state during the time the state has been the trustee?

Ms. DOWNING. I am not familiar with the day-to-day operations of the trust fund but I would be happy to provide that information back to the Committee.

Mr. MATHESON. OK. That would be great. Another question. Could you also enumerate the administrative costs associated with managing the fund? It appears the administrative costs have been nearly equal to the expenditures made for scholarships. I don't know if you are familiar with that issue or if you could get back to us with information on that?

Ms. DOWNING. I will.

Mr. MATHESON. Thank you. I am glad you elaborated on the issue of what happens post-June 30 and the holding fund that will be set in place. So that holding fund will be structured such that you can manage the assets, including the buildings and the real estate, after?

Ms. DOWNING. Right. It will be managed as a trust fund.

Mr. MATHESON. OK. Great. Will there be an administrative cost collected on that or do you know how that holding fund is going to address that issue?

Ms. DOWNING. I don't know, but I will find out.

Mr. MATHESON. That would be great. Thank you very much. You said this holding fund will have some structure for decision-making authority. Is it different than where the trust fund was set up now in terms of what will happen with funds or expenditures to main-

tain real estate assets? How are those decisions going to be made by the holding fund?

Ms. DOWNING. Those decisions will be made through a management team set up in the Utah Department of Administrative Services that includes the Director of Finance, which has been on the Board of Trustees for the Navajo Trust Fund, so he is very familiar with the assets.

Mr. MATHESON. OK. That is helpful. President Shirley, first of all, welcome. It is always good to see you. You represent all of Navajo Nation. I have the honor of representing part of the Navajo Nation, which happens to be the Utah Navajos which are central to this discussion today.

You state in your submitted testimony in the context of your desire that the Navajo Nation be the trustee. How do you ensure that the 37 and a half percent goes back to the Utah residents of the Navajo Nation? If we shift this over where the Navajo Nation is the trustee, how do we have certainty that the 37 and a half percent goes back to the Utah Navajo?

Mr. SHIRLEY. For one thing, I think the way the language is crafted, you know, going toward the designation of a new trustee, if the U.S. Government is agreeable to making the Navajo Nation trustee for these funds, I think the language would be crafted to assure that. Then, I think we have been working with these funds all this time, and I don't believe any time we didn't do right by the Navajos living in the State of Utah.

So, you know, I feel very sure, you know, because of our governmental structure, the way it operates, that it is guaranteed.

Mr. MATHESON. With the nation's experience in administering a number of funds, how do you set up your funds or what have you done to ensure accountability within your trust funds? Are you familiar with or could you give us some insight into how you would approach that issue of accountability?

Mr. SHIRLEY. Well, we have our Budget and Finance Committee in place. It is meeting on a regular basis, at the very least two times a month and oftentimes more, to zero in on how the Navajo Nation funds are being expended, how it is being received and how it is being divvied out at the different programs within the governmental structure, as well as the chapters that are out there. In this case, it would be the Utah Navajos.

Then we have, also, our Auditor General in place. If there is any complaints, let us say in this case coming from the Navajos living in the State of Utah, the Auditor General will get out there and do an audit. If there are any misgivings there or if there is any misuse of funds, you know, that is zeroed in on, you know, just immediately.

That is how corrections are made, and sometimes sanctions come into play. You know, before the sanctions were lifted. We have the structure in place, Congressman, to really zero in on accounting for all of the funds that are coming in to Navajo and being expended on behalf of the constituents.

Mr. MATHESON. That is great. And this Budget and Finance Committee, how is that structured? How many people are on it? They get appointed or how does that work?

Mr. SHIRLEY. I believe that it is an eight-member arm of the Navajo Nation Council at the beginning of a new administration. The committee members are appointed by the Speaker of the Navajo Nation Council. They come from all agencies of Navajo land, you know, so we are trying to make sure that everybody from all the corners of Navajo land are represented on that committee.

They have rules and regulations by which they operate and are answerable to the Navajo Nation Council. Of course, the Navajo Nation Council is the governing body of the Navajo Nation, so the committee is answerable to that governing body.

Mr. MATHESON. Just one more question I wanted to ask you. Would you be open to considering other entities that could serve on a board of trustees?

Mr. SHIRLEY. Come by again, Congressman? I am sorry.

Mr. MATHESON. I know you state in your testimony that the Navajo Nation would be the one trustee, but would you consider other entities that could serve on a board of trustees? It is kind of an open-ended question.

Mr. SHIRLEY. Certainly, you had also heard me to say, Congressman, that we would like to be at the table. I think that is one of the discussion points. I do have the Navajo Nation position, you know, that says we would like to be designated as a trustee. How far we want to go with it as far as going outside of that, I am not exactly sure.

I think, like I said, we would like to be at the table as these discussions move forward, you know? Certainly, I would like to hear your ideas about it and some of the ideas that might be constituted to come forward from the Navajos living in the State of Utah.

Mr. MATHESON. Well, I appreciate that. Mr. Chairman, I will yield back, but I do just want to acknowledge again, President Shirley has been a good partner to work with my whole time I have been in Congress and I appreciate him taking the time to come here again today. I yield back.

Mr. SHIRLEY. Thank you, sir.

Mr. BOREN. [Presiding.] I thank the gentleman from Utah and recognize Mr. Kildee from Michigan.

Mr. KILDEE. Thank you very much, Mr. Chairman. Mr. President, Ya'at'eeh.

Mr. SHIRLEY. Ya'at'eeh.

Mr. KILDEE. It is an honor, sir. I had the privilege many years ago of being in Window Rock and being asked to formally address the Tribal Council.

Mr. SHIRLEY. You are always welcome.

Mr. KILDEE. I felt very honored by that. Let me ask you this. I asked the same question of Mr. Swimmer. Is there one method, or process, or solution that is more sensitive to your sovereignty than another?

Mr. SHIRLEY. I would say yes to that, and qualify it by saying that we consider ourselves a sovereign nation, Congressman Kildee, and as such, we are very sensitive to go outside and try to bring other people in to try to mind our affairs. If you could work with us and keep it within the house, so to speak, you know, within the Navajo Nation, that is my position and that is my testimony.

Mr. KILDEE. You know, it is interesting. I asked that, and I came in here late so I didn't get the first part of this, but the trust responsibility of the Federal government came into being to a great extent, maybe primarily, to protect really the various Indian sovereign nations from state interference.

You know what happened to the Eastern Band of Cherokees, right, or the Cherokees who were pushed to Oklahoma and places in between. My bottom line very often, every step I take is to make sure we don't interfere, or diminish, or demean tribal sovereignty. The Navajo Nation has really firmly held onto its sovereignty. A good example for others.

I have helped some Indian nations, tribes, in my state get their sovereignty reaffirmed, not granted. It is a retained sovereignty, not a granted sovereignty. The U.S. Constitution doesn't grant that sovereignty to you; it recognizes that sovereignty, so it is a retained sovereignty.

So I am always very careful that we don't sometimes inadvertently do anything that might diminish that sovereignty. I always look at that as the bottom line on this. I appreciate very much your testimony and look forward to coming back and see you and your Tribal Council again out there as I did several years ago. Thank you, Mr. President.

Mr. SHIRLEY. You are always welcome, Congressman.

Mr. KILDEE. Thank you. Thank you.

Mr. BOREN. Thank you, Mr. Kildee, the great champion of Indian Country. I want to yield to Mr. Bishop if he has any questions for our panel.

Mr. BISHOP. I do, especially for Ms. Downing. Unfortunately, those are personal. I can't actually do them in here. We go way back to the State of Utah when you were working for the Legislature. To be honest, I don't have any additional questions for this panel. I am going to look forward to reading the testimony.

This is an issue that came up when I was still in the Legislature. Well, that is well before I was. It goes back to the 1930s as an issue. We dealt with it when I was in the Utah Legislature. I am looking forward to seeing if we can come up with a final solution that is profitable for everybody right now, so I will be very much interested in looking to what the testimony actually is.

I appreciate that the Congressman, whose area this is, is here and was already asking questions of this panel. Thank you.

Mr. BOREN. Thank you, Mr. Bishop. I have a few questions before we go to the next panel. For Ms. Downing, you mentioned something about the list of assets that you were going to provide at the next meeting, the state meeting. Could you provide the Committee with a copy of the list of those assets?

Ms. DOWNING. I will.

Mr. BOREN. OK. Great.

Ms. DOWNING. Do you want the liabilities as well? Assets and liabilities?

Mr. BOREN. Yes, that would be great. Second question I have got, the Committee has received various options for the future administration of the trust fund. Several options have proposed that the State of Utah or Navajo Nation pay future administrative costs. Is

the State of Utah willing to pay the administrative costs for the future administration of the trust fund?

Ms. DOWNING. I can't speak on behalf of the Governor or the legislative leadership, but I can ask that question and get the information back to you.

Mr. BOREN. Could you provide the Committee with that in writing?

Ms. DOWNING. I will.

Mr. BOREN. Thank you. And then a final question for Ms. Downing is do you have any suggestions or actions that the Committee should take to ensure that the views of the beneficiaries are considered in drafting this Federal legislation?

Ms. DOWNING. I agree with President Shirley that the Navajo Nation should be at the table and that I am convinced that he will include the San Juan County Navajo, the Aneth Extension Navajos, in that discussion.

I think it is important for them to be able, I mean that is one of the things that the Governor and the legislative leadership have looked at is that we feel that the Navajo are better equipped to decide who is a better trustee to manage the funds the way they would like them to be managed and to receive the benefits the way they would like to receive them.

So I think it is important for this Committee and Congress to keep in mind what their interests would be.

Mr. BOREN. Thank you very much for your testimony.

Ms. DOWNING. Thank you.

Mr. BOREN. President Shirley, actually, you know, coming from Oklahoma, we are a state rich in tribal history and also an energy state, and one of the questions I have is about oil and gas. You know, so many of these fields that we have in the United States are maturing and they are actually depleting in their resources.

Can you tell us a little bit about the revenue stream that is coming from these wells, and is this a declining source of revenue? For instance, for Congressman Matheson's constituents, do you see this as a dwindling resource, or are there new wells to be drilled, or what do you know about the field that we are talking about?

Mr. SHIRLEY. Thank you, Chairman. Certainly, they are maturing, they are declining. Right now with the cost of oil, actually, we are doing good getting revenues, you know, from some of the oil reserves that we have still underground. Otherwise, in the long term, they are a dwindling resource and I think that is the reason why it is very important how these trust assets are managed.

They need to be invested and made to grow so that after the depletion, and after the oil and the gas is all gone we would like to believe that there is still going to be funds to help out the Navajos living in the State of Utah in San Juan County. The oil reserves are depleting, yes. Not very much more to go.

Mr. BOREN. Thank you, President Shirley. One more question. Currently, the beneficiaries have the option of suing the trustee in Federal Court for accountings and mismanagement. Mr. Swimmer, we talked a little bit about liability earlier.

If the Navajo Nation is appointed as trustee of the Utah Navajo Trust Fund, is the Navajo Nation willing to waive its sovereign immunity in Federal Court so that the beneficiaries can continue with

the same remedy option? You might want to think about that and not necessarily answer today but what are your thoughts there?

Mr. SHIRLEY. I was just going to say that I need to get back to our experts and our leaders of Navajo to talk about that. You know, waiving sovereign immunity is something we don't want to do. It is a humongous discussion that we take on when we do talk about that, so I need to get back to the leadership to talk just about that.

Mr. BOREN. Well, thank you all very much for your testimony. I think we are going to bring on the third panel.

Mr. SHIRLEY. Thank you.

Ms. DOWNING. Thank you.

Mr. BOREN. OK. I want to thank our third panel for coming. I want to introduce The Honorable Davis—and correct me if I am wrong—Filfred, Council Delegate, Mexican Water Chapter of the Teec Nos Pos in Arizona. Is that correct pronunciation?

Mr. FILFRED. The last name is correct but the representation is Aneth Red Mesa and the Mexican Water, not Teec Nos Pos.

Mr. BOREN. OK. Thank you. And then Mr. Clarence Rockwell, Executive Director, Navajo Utah Commission, Red Mesa Chapter, Utah; and then Mr. Mark—help me with this—is it Maryboy? Former County Commissioner, former Navajo Nation Council Member, Montezuma Creek, Utah. Your testimonies have been received by the Committee and will be placed in the record in its entirety.

I ask that you summarize your statement to us now. With that, I turn to The Honorable Mr. Davis Filfred.

STATEMENT OF THE HONORABLE DAVIS FILFRED, NAVAJO UTAH COMMISSION CHAIR, AND ANETH, RED MESA, & MEXICAN WATER CHAPTERS COUNCIL DELEGATE

Mr. FILFRED. Mr. Co-Chair, members of the Committee, Congressman Matheson, Congressman Bishop and the staff, good morning. Again, my name is Davis Filfred. Currently, I am the Navajo Utah Commission Chair, also Council Delegate from Aneth Red Mesa and Mexican Water. I have with me the Navajo Nation Intergovernmental Relations Resolution; also, the position statement that was put together by the Navajo Utah Commission.

My comments are very brief. The beneficiary are concerned about the Navajo Nation being appointed as the trustee. They are afraid that the Navajo Nation might change the allocation, change the beneficiary or divert trust money elsewhere. It is therefore important that this is consistent with our position statement and that the Federal legislation maintains the status quo.

Federal legislation should ensure that the beneficiary remain the same, that the 37 and a half percent of the royalties continue to go to the beneficiaries, and that the beneficiaries have local decision making and control over disbursement. It is also important to set aside monies in order to grow the trust fund.

My constituents are very concerned that they are suffering higher environmental costs, and we breathe the polluted air and treat the contaminated water and the EPA are not doing anything about it. My constituents want to receive the 100 percent of the royalty in order to deal with these concerns.

While this may not be the right solution, special money should be specially allocated to the Aneth to mitigate environmental impact and to develop the needed infrastructures in the Aneth Chapter. Although it is important to minimize disruption of the service happening under the Utah sunset, we need to make sure that progress is thoughtful and orderly and that the best interests of the beneficiaries are always the priority.

We come here to seek your full support in the position statement that came from the Navajo Utah Commission. I thank you for the opportunity. Further, and the question that you posed earlier to the President of the Navajo Nation, the oil is depleting. We have about a good 10 year life in it. In the Aneth area, there is no more drilling. The drilling that is there is all we have left. Again, thank you.

Mr. BOREN. Thank you, Mr. Filfred.

[The prepared statement of Mr. Filfred follows:]

Statement of The Honorable Davis Filfred, Navajo Nation Council

Good morning Honorable Chairman Rahall, honorable members of the committee. I am Davis Filfred, Navajo Utah Commission Chair, and Aneth, Red Mesa, & Mexican Water Chapters Council Delegate. I have a Navajo Nation Intergovernmental Relations Committee Resolution and Position Statement.

The beneficiaries are concerned about Navajo Nation being appointed as a trustee. They are afraid that Navajo Nation might change the allocation, change the beneficiaries, or divert trust money elsewhere. It is therefore important, and this is consistent with our position statement that federal legislation maintains the status quo. Federal legislation should ensure that beneficiaries remain the same and that 37 1/2 percent of royalties continue to go to the beneficiaries and that beneficiaries have local decision making and control over disbursement. It is also important to set aside monies in order to grow the trust fund.

My constituents are very concerned they are suffering higher environmental costs and we breathe the polluted air and drink the contaminated water and the EPA are not doing anything about it. My constituents want to receive 100% of the royalty in order to deal with these concerns. While this may not be the right solution, special monies should be specifically allocated to Aneth to mitigate environmental impacts and to develop needed infrastructure for Aneth Chapter.

Although it is important to minimize disruption of services happening now under the Utah Sunset Act, we need to make sure that this process is thoughtful and orderly and that the best interest of the beneficiaries are always the priority. Thank you.

Mr. BOREN. Mr. Rockwell recognized.

STATEMENT OF CLARENCE ROCKWELL, EXECUTIVE DIRECTOR, NAVAJO UTAH COMMISSION, RED MESA CHAPTER, MONTEZUMA CREEK, UTAH

Mr. ROCKWELL. Good morning, members, and presiding Chair, Congressman Matheson, Congressman Bishop. My name is Clarence Rockwell, and I am the Executive Director for the Navajo Utah Commission. I am also a resident of the Utah portion of the Navajo Nation. I would like to express my appreciation for this opportunity to appear before the Committee on behalf of my people.

The Navajo Utah Commission was created by the Navajo Nation Council and Intergovernment Relations Committee in 1992. The purpose is to maintain and develop efficient governmental services to the Utah area of our reservation. Our intent here today is to present our position statement. Our IGR resolution I mentioned

delegated certain people to advocate on behalf of our people pertaining to this important matter.

The Navajo Nation President, the Speaker of the Navajo Nation Council and the Navajo Utah Commission was given the authorization to represent the interests of the beneficiaries. The Navajo Utah Commission's position statement does support the selection of the Navajo Nation as the trustee for the trust fund for several reasons.

The main reason is probably the congressional policy to respect sovereignty and the right to self-determination of Indian tribes. Second, we know that the Utah Navajo Trust Fund is capitalized by royalties from Navajo Nation oil and gas leases on Navajo Nation trust lands. The 1933 Act was created by Congress when the Navajo Nation government was only 10 years old.

Presently, the Nation has grown in sophistication and we have a substantial body of statutory and decisional law, as well as customary and fundamental laws. The Navajo Nation has grown its own trust fund and has the expertise, guidance of the Navajo Nation's Investment Committee, and also financial consultants.

As a member of the beneficiary, we always support the point that the funds should be invested wisely, a percentage set aside for growth and used by future generations. They are reverent to resources producing. The royalties are depleting, as mentioned.

As far as the Navajo Nation serving as trustee, the Navajo Nation has a well-developed annual comprehensive budgeting process for appropriation of Navajo Nation funds, and we would like to see the trust fund administered in that manner. Another point is the Navajo Nation is already serving as the fiscal agent for monies that we obtain from Federal sources and State of Utah allocations.

As far as the concern from the Utah chapter areas, there is a concern that local control be maintained, that the seven Utah chapters still receive the royalties as it currently is established. We think this is accomplished by working with chapters directly and the beneficiaries that they serve.

One avenue we would like to look at is establishing a central governmental office or a regional governmental office in the Utah area to serve that benefit. We would also like to give some special consideration for the Aneth Extension area because it has seen environmental impact and there is issues related to that.

We would like to see a separate allocation of monies to mitigate the issues in that region. Finally, the issue with the current litigation in Utah. We would like to possibly have the State of Utah encouraged to address settlement at Cobell v. Utah lawsuit. We recognize there is issues pertaining to Federalism, but we do like to see some sort of settlement be considered.

As far as appropriate consultation, as I mentioned, the Navajo Nation has given us the authority, the Navajo Utah Commission, to help assist in advocating on this important issue. I tried to highlight some of the terms, but we have submitted the actual position statement for you to review. I hope you do that.

So with that, I would like to close, and like to thank the Chair and the honorable members of this Committee in hearing our concerns. Thank you.

Mr. BOREN. Thank you, Mr. Rockwell.

[The prepared statement of Mr. Rockwell follows:]

**Statement of Clarence Rockwell, Executive Director,
Utah Navajo Commission**

Chairman Rahall, Honorable Members of the Committee,

My name is Clarence Rockwell, and I am the Executive Director of the Navajo Utah Commission, and a resident of the Aneth area of the Utah portion of the Navajo Nation in San Juan County, Utah. I am appearing here today in my official capacity, but I am also a beneficiary of the Utah Navajo Trust Fund. I am honored to have this opportunity to appear before the Committee on Natural Resources on behalf of the Navajo Utah Commission, the Navajo Nation and its citizens, and especially on behalf of the Utah Navajos, including myself, who are beneficiaries of the Utah Navajo Trust Fund.

Navajo Utah Commission

The Navajo Utah Commission is an arm of the legislative branch of the Navajo Nation Government and was created by the Navajo Nation Intergovernmental Relations Committee to give a voice to the Utah Chapters in the administration of local Navajo Nation programs. Specifically, the Commission is "to provide policy and administrative guidance to the development, implementation and operation of the Navajo Utah Office of the Navajo Nation," and "to develop and maintain efficient governmental services to the Navajo people residing in the Utah portion of the Navajo Nation." The Navajo Utah Commission is made up of eight Commissioners, either Utah Chapter delegates or other Utah Chapter officials, who have been democratically elected and subsequently appointed to the Navajo Utah Commission by the Utah Chapters. The Navajo Utah Commission has an Executive Director and administrative staff who work out of an office in San Juan County, Utah.

The Navajo Nation seeks to ensure that our government speaks with a single voice in its relations with the United States Congress on this important issue. To that end, on May 19, 2008, the Intergovernmental Relations Committee of the Navajo Nation Council passed a Resolution "Relating to Intergovernmental Relations; Approving the 2008 Position Statement of the Navajo Nation on the Future of the Utah Navajo Trust Fund." IGRMY-107-08. By this resolution, the Navajo Nation adopted an official position of the Navajo Nation in regard to key terms for future federal legislation affecting the Utah Navajo Trust Fund. See Exhibit A (attached). This resolution also delegated specific authority to the Navajo Utah Commission, the Speaker of the Council and the President, to advocate with the federal government and the State of Utah in regard to the future of the Utah Navajo Trust Fund, in accordance with the terms of the official Navajo Nation position statement. The Navajo Utah Commission was integrally involved in formulating the terms of the official Navajo Nation position statement. The Commission firmly believes these terms represent the best and fairest outcome for all Navajo beneficiaries involved and the best means to avoid mismanagement and misappropriation of trust funds, while recognizing Navajo Nation sovereignty over its lands, resources and citizens.

Since the Utah Navajo Trust Fund was reorganized in 1992, the Navajo Utah Commission has had a successful working relationship with the Utah Navajo Trust Fund Administration, the Dineh Committee advisory board and the Board of Trustees. The Navajo Utah Commission has considerable expertise in grant acquisition and project management, and has partnered with the Utah Navajo Trust Fund Administration and its boards, other State of Utah agencies, numerous federal agencies and other Navajo Nation entities in providing community development facilities, housing, and other local services to Utah Navajos. In addition to Navajo Nation funds, the Navajo Utah Commission has independently sought out and secured upwards of \$18 million dollars of matching federal and state funds to be used for projects in conjunction with Navajo Trust Fund disbursements.

Navajo Nation as Trustee

The Navajo Utah Commission supports the Navajo Nation as the new trustee of the Utah Navajo Trust Fund. The Navajo Nation manages and has successfully grown its own trust fund monies through the guidance of its Investment Committee. It is imperative that the Utah Navajo Trust Fund 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 must be administered so as to survive in perpetuity, and trust fund monies must continue to be available to San Juan County Navajos long after Navajo Nation oil and gas resources in Utah have been depleted. There is substantial evidence of mismanagement and misappropriation of trust funds by past entities entrusted with Utah

Navajo Trust Fund monies. The need for accountability by the new trustee is essential; other entities or individuals who have been involved in mismanagement and misappropriation of these and other trust monies in the past must not be involved in future investment and administration of the Utah Navajo Trust Fund.

Additionally, the Utah Navajo Trust Fund is capitalized from royalties paid from Navajo Nation oil and gas leases on Navajo Nation Trust Lands. The Navajo Nation has a well-developed annual comprehensive budgeting process for appropriation of all Navajo Nation funds, which for principles of sovereignty and self-determination should be followed in utilization of proceeds from the Utah Navajo Trust Fund. For years, the Navajo Nation has been the fiscal agent for the pass-through of not only Navajo Nation funds to the Navajo Utah Commission, but also for state and federal grant funds used in conjunction with Utah Navajo Trust Fund monies in local community development projects in Utah. The Navajo Nation has proved its fiduciary capabilities and should be the new trustee.

Local Control and Decision Making

The Navajo Utah Commission is also keenly aware of the importance of local control and decision making in the disbursement of trust fund monies. How this will be best accommodated should be worked out in close consultation with the beneficiaries through the Chapters. 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. The Navajo Nation and Navajo Utah Commission envision a Regional Navajo Nation Office that will be a shared facility for the new Trust Administrator, Navajo Nation service providers, and state programs. A Regional Office facility would improve coordination of projects involving these entities, and provide greater access and participation by local citizens.

Special Considerations for the Aneth Extension

The Navajo Utah Commission and the Navajo Nation believe that special consideration for the Aneth Extension is crucial where oil and gas development and production processes that generate royalties for the trust fund cause environmental and other negative impacts. Under the new terms of the trust, separate monies should be specifically allocated to Aneth Chapter to mitigate the environmental impacts of oil and gas extraction on the Aneth Extension, and to meet its unfunded infrastructure needs.

Utah Concerns

The Navajo Utah Commission and the Navajo Nation are aware of federalism concerns as we move forward in replacing Utah as trustee for the Utah Navajo Trust Fund. However, the Utah Navajo Trust Fund was the result of an agreement between three parties, the Navajo Nation, the federal government, and the State of Utah. Utah must be involved in this process as we move forward in relieving Utah of its fiduciary responsibilities. The Navajo Nation and the Navajo Utah Commission hope that this process will encourage a full accounting of the trust by the State of Utah and lead to a fair and appropriate settlement of unresolved litigation. Incidentally, the Navajo Nation, the State of Utah, and various agencies of the federal government have recently begun negotiations to exchange school trust lands in the Aneth Extension for other federal lands. This exchange is taking place under authority of the 1933 Act that created the Utah Navajo Trust Fund. This highlights the government to government relationships that underlie this federal legislation, and the need for government to government consultations in resolving the new trust terms.

Appropriate Consultation

In closing, the Navajo Utah Commission would like to emphasize that the Navajo Nation has an official position and legally delegated representatives who are authorized to provide testimony to this Committee on behalf of the Nation and its citizens, and to advocate on behalf of the Nation for the terms of new federal legislation in regard to the Utah Navajo Trust Fund. As an official representative of the Navajo Nation appearing before you today, I have highlighted many of the terms that the Navajo Nation believes are critical components of new federal legislation in regard to the Utah Navajo Trust Fund. However, I also encourage The Honorable Chairman and Honorable Members of this Committee to read the official 2008 Position Statement of the Navajo Nation on the Future of the Utah Navajo Trust Fund, attached to this testimony as Exhibit A. The position statement provides an historical backdrop to these issues, as well as fleshing out further details and other terms that the Navajo Nation believes are vital for our governments to move forward with fair and effective legislation.

Chairman Rahall and Honorable Members of the Committee, on behalf of the Navajo Utah Commission, the Navajo Nation and its citizens, and myself as a trust beneficiary, I express my deep appreciation to the Committee for this opportunity to provide testimony today. Through coordination with the Navajo Nation Washington Office, the Navajo Utah Commission looks forward to working with the Committee on Natural Resources in a government to government relationship as we move forward with this important legislation concerning the future of the Utah Navajo Trust Fund.

Thank you.

[NOTE: The 2008 Position Statement of the Navajo Nation on the Future of the Utah Navajo Trust Fund can be found on page 21.]

Mr. BOREN. Mr. Maryboy?

STATEMENT OF MARK MARYBOY, FORMER COUNTY COMMISSIONER, FORMER NAVAJO NATION COUNCIL MEMBER, MONTEZUMA CREEK, UTAH

Mr. MARYBOY. Good morning, Mr. Chairman and members of the Committee. As stated in my testimony, I am Mark Maryboy. I am from Montezuma Creek. I served as the County Commissioner from the State of Utah for 16 years, and I also served on the Navajo Nation Council. During my tenure on the Navajo Nation Council, I also served as the Chairman of the Navajo Nation Budget and Finance Committee and also the Transportation and Community Development Committee.

Today, I am here with a colleague of mine, Mr. Phil Lyman, and also my brother, Kenneth Maryboy, who is now the County Commissioner and the Navajo Nation Council. I retired from the public office as of last year after serving 32 years. Gentlemen, my position is somewhat different from the statement made by President Shirley and also position made by Mr. Rockwell, with all due respect for the gentlemen.

The reason why I made the statement is because the Utah Navajos are somewhat very unique and different from the rest of the Navajos on the Navajo Reservation. The reason why I say that is the Utah Navajos live in a "no man's land" where they sometimes don't get the support that they need from the Navajo Nation and the State of Utah.

For that reason, I believe that the Utah Navajos are the poorest Navajo tribe on the Navajo Reservation. They do have oil and gas. They live in the quaint of the Navajo Nation. They have oil wells. Million and millions of dollars have come out of the Aneth Extension, but today, a lot of those Navajos in Utah still don't have running water, electricity in their homes.

For that reason, I have a proposal, a separate recommendation, from the President. That would be to have a private nonprofit organization be a recipient of the oil royalty that is coming out of the Aneth Extension. That particular organization was called Utah Navajo Development Council.

Due to mismanagement and some of the problems, it is an organization that no longer handles any of the trust fund. Recently, I have been working on that organization with Mr. Lyman, and we have reorganized the organization. We believe that this particular organization would be in a situation to handle the funds and to effectively serve the needs of the Utah Navajos.

It certainly has the backing and the relationship of various funding institutions to provide effective services. That would be my recommendation to you this morning. Thank you very much.

Mr. BOREN. Thank you for your testimony.

[The prepared statement of Mr. Maryboy follows:]

**Statement of Mark Maryboy, Former County Commissioner,
Former Navajo Nation Council Member**

Mr. Chairman and Members of the Committee, it is my pleasure to submit testimony to your committee today and I hope that my testimony will help the committee in making some important decisions related to the Utah Navajo Trust Fund, namely selecting a suitable new trustee.

Introduction

My name is Mark Maryboy, I'm from Montezuma Creek, Utah, I was born and raised in Bluff, Utah and a resident of the area all my life. I graduated from San Juan High School in Blanding, Utah and graduated with a degree from University of Utah.

I was the first Native American elected to a public office as a County Commissioner in the State of Utah, where I served as for 16 years and retired in 2002, I also served as Navajo Nation Council for 16 years and retired in 2007. During my tenure with the Navajo Nation Council, I served as the Chairman of the Budget and Finance Committee and also served as Chairman of Transportation and Community Development Committee.

I'm here with Phil Lyman a friend and colleague and an agent during this presentation; I'm also accompanied by my brother Kenneth Maryboy who is now the San Juan County, Utah County Commissioner and also a member of the Navajo Nation Council.

Congress, in the Utah Navajo Trust Fund Administration and Self-determination act of 2008, emphasized the right of the Utah Navajo to self-determination and self-governance.

Self-determination and self-governance are the central guiding doctrines of the act, and are vital to the success of any program intended to meet the objectives set forth by Congress and by the Supreme Court.

What are the objectives?—Quoting the Supreme Court—“to provide for the health, education, and general welfare of the Navajo Indians residing in San Juan County.”

When the act was created in 1933, Congress mandated the percentage of royalties that would be held in trust and the purposes for which those funds would be expended. At the time there were no known oil or gas resources on the “Aneth Extension” and so there was no trust fund to worry about.

The later discovery of Oil should have been a tremendous stoke of good fortune for Utah Navajos. And, in fact to some extent, it was. However, as is often the case, conflicts arose. Personal agendas got in the way. Programs designed to provide valuable and needed services were poorly run. Mismanagement was a common allegation. What should have been a source of hope for the intended beneficiaries of the fund, namely the Navajos living in San Juan County, became a source of frustration.

Utah Navajo Development Council:

Much of the controversy that surrounds UNDC was not created solely by UNDC. The fiduciary duty that the state had to the beneficiaries was being subrogated, at least in part, to UNDC. The State argues that UNDC was an agent of the beneficiaries. The beneficiaries argue that UNDC was an agent of the state. While money was being poured into programs administered by UNDC, neither the state nor the beneficiaries were taking responsibility for the management of UNDC. Lacking were the internal controls that should have been in place to help the management of UNDC to withstand the onslaught of unqualified and self serving administrators and key employees that began to have free reign. Those close to UNDC could see the collapse coming long before it actually occurred, yet the state could not change the management without the vote of the chapters and the chapters lacked the ability to act quickly and decisively to correct the problem.

The solution now is not to divide the fiduciary roles of the Trustee but to identify a Trustee that can be accountable to all parties concerned. This trustee needs the support of the State, the County, the Tribe, the beneficiaries. It needs to be empowered with control in order for it to be fully accountable. The Trustee organization needs the tools to succeed. It needs financial institutions and money managers that

are willing to advise and oversee investments. It needs the State of Utah with its resources to take a vested interest in its activities; after all the beneficiaries of the trust are Utah citizens. It needs the blessing and support of the Navajo Nation Administration. It needs to allow the beneficiaries to have a voice. The Chapters must recognize the trust as a vital asset and take a vested interest in selecting quality board members who will cooperate and put personal agendas aside for the sake of the greater community.

In the early 1990s, UNDC was stripped of its funding. Since then, it has struggled to maintain a few programs. Currently UNDC is a shadow of what it was in the 70's and 80's. It owns some important real estate in Monument Valley. It runs a Tribal education program which is small but vital to the community of Montezuma Creek. Quite recently the board had contemplated winding down UNDC's affairs and dissolving the corporation once and for all.

It was at this time that Mr. Phil Lyman Contacted me, and expressed his interest in restructuring UNDC with a fresh board of directors and a with proper accounting controls to set the organization back on firm footing.

Mr. Lyman is the owner of a local CPA firm. He has had some involvement with UNDC over the last 12 years or so and wished to see UNDC resume a few of the programs that had fallen by the wayside during that time. He and I both agreed that we only wanted to be involved with UNDC if the entity was completely restructured.

We wanted to be a part of an organization that was designed to succeed, not designed to fail. With my past leadership experience and education, and Mr. Lyman's past CFO experience and education, we determined to move forward. I contacted several of the Utah Navajo Chapters to see if there was an interest in reorganizing UNDC. The sentiments were overwhelmingly in favor of re-creating UNDC to be an organization that could truly "serve" the people.

Several of the Chapters have put forth the name of their candidates for the Board. These candidates are young, educated people who are dedicated to their people. They have learned from the mistakes of the previous generation. They are willing to be involved and want to make a difference.

So now we have a UNDC with roots in the past and a vision for the future. UNDC is the oldest existing Navajo corporation in Utah. Restoring UNDC means more than just restructuring an organization. It means keeping old promises. It means reclaiming lost hope. It sends the message that a new generation can pick up the plow and continue the work of their fathers.

In light of the changes that are currently being made with the Utah Navajo Trust Fund, UNDC seems poised to take on a role much greater than we anticipated. UNDC is not without significant supporters and backing. Key members of the banking community have stood by UNDC through the ups and downs and have expressed confidence in the new organization. They have expressed an interest in and a commitment to working with UNDC in whatever capacity they can to help UNDC succeed. We have contacted several key organizations that have provided funding for past programs. With the changes we are making they are thrilled to re-establish relations with us.

With oil at its current price levels and with the Aneth Oil fields at a high level of production, the Utah Navajo Trust Funds should be growing. The corpus of the trust fund should be conservatively invested. We have relationships with several institutional money managers. All investments decisions will be made with utmost care and prudence.

If this fund is managed properly and with frugality, program spending can be increased, management costs will be reduced, and the corpus of the fund will still grow. Using only the investment income of the fund, we hope to be able to match money from other grants to increase the effect of the trust fund and the programs we oversee.

There are tremendous opportunities for education on the reservation right now. Education has been my greatest interest since graduating from College and returning home. I created many of the programs that UNDC has been involved in over the last thirty years. In my community, we have good schools, but our people need better support. Our families need assistance to integrate into the educational system. It takes work and it takes resources, but most of all it takes an understanding of the people.

The same is true of Healthcare and economic development. To make real progress requires an understanding of the culture of the Navajo People living in San Juan County and of the challenges they face. There is no one more qualified to address these challenges than the people themselves. And no one who understands those challenges better than I do.

Additionally, UNDC is committed to working closely with the Navajo Tribe. We welcome the input of tribal administration.

This debate is not about UNDC. It is truly about the beneficiaries of the trust and what can be done to best serve them. The Utah Navajos are among the poorest people in our country today. We need economic development. We need education. We need health care. But if this is all that the money from the trust provides it will have fallen far short of its real purposes.

Self-determination; Self-governance; these are the real objectives. These are ideals that can actually shape a community, that give hope and self respect, that build trust, that help to develop a sense of pride and ownership. In truth these are ideals that cannot be granted or denied. They exist in each one of us. How we conduct ourselves will determine if we retain those rights.

Thank you for allowing me to be heard today. I trust that this committee will make a good decision. I hope that my remarks have been clear and helpful.

Mr. BOREN. At this time, I would yield for questions to Mr. Matheson.

Mr. MATHESON. Well, thank you, Mr. Chairman. It is pretty clear, you know, this is a panel of folks from the Utah portion of the reservation and you have heard a desire to maintain the funding stream of the 37 and a half percent of the royalties to Utah Navajos. I also have a resolution passed by the San Juan County Commission in Utah for the whole county, not just the Navajos, this is the county government, indicating that same desire.

It is a resolution passed in April of this year. If I could just ask unanimous consent to have that put in the hearing record.

Mr. BOREN. Without objection.

Mr. MATHESON. Thank you. I appreciate that. Again, as a representative of the Utah portion of the Navajo Reservation, I have the interest in ensuring that the flow of royalties goes to the beneficiaries on the Utah portion of the reservation, as was first designated back in 1933 in the Federal legislation.

Mr. Maryboy, I appreciate your testimony. In your testimony you said the trustee would need the blessing and support of the Navajo Nation. Do you believe your proposal would get the blessing of the Navajo Nation?

Mr. MARYBOY. Thank you, Congressman Matheson. The reason why I make that statement, as you heard, I was also the Chairman of the Navajo Nation Budget and Finance. I know that the distribution of funds when given, the Utah Navajos are always the last priority in receiving funds from the Navajo Nation.

The fear is that if the funds should go to the Navajo Nation they will go into a black hole and you will never see it. The Navajo Nation has 88 members of Navajo Nation Council. Really, if you look at it, Utah, the Navajo Nation, only has two representatives from Utah serving on the Navajo Nation Council.

As we speak today, the Navajo Nation is going through some changes. It is proposing to reduce its membership of the Navajo Nation Council from 88 to 24 members. When that happens, I believe that the Utah Navajos will have no seat, no voice within the Navajo Nation government because the Navajo Nation government is a huge government.

That is a real concern from the Utah Navajos as far as receiving goods and services from the Navajo Nation. Thank you.

Mr. MATHESON. Appreciate that. Mr. Filfred, if I could ask you a quick question. What would your suggestion be for who should be the trustee?

Mr. FILFRED. The people of Aneth wanted the 638 in Montezuma Creek, the Utah Navajo health system, to be the trustee. I believe we did pass a resolution to that regards. As far as I am concerned, I think that would be—see, the people want to be their own trustee. They want to manage their own money. Thank you.

Mr. MATHESON. OK. Mr. Chairman, that is all my questions right now.

Mr. BOREN. OK. I remind both of our members here that we have four votes coming up on the Floor. At this time I would yield to Mr. Bishop for questions.

Mr. BISHOP. Let me just ask a couple more. If I could follow up on what Representative Matheson asked Commissioner Maryboy. The Utah Navajo Development Council concept, how far have you actually vetted that with the Navajo Nation? Have you had discussions with them? There goes the vote right now. Have you had discussions with them formally as to this concept or this idea?

Mr. MARYBOY. Thank you, Mr. Bishop. Thank you for that question. For your information, President Shirley has not conducted any public hearing, nor has he made any official visit to the Utah chapters or the Utah governments to discuss this particular issue so I was somewhat surprised to hear his statement.

Furthermore, I believe that the legislative branch has a different position than what he was proposing this morning. Thank you.

Mr. BISHOP. Thank you, Mark. Mr. Rockwell, if I could ask just one other question. We have talked about special considerations for the Aneth Extension. Are we talking in this case about just maintaining the percentage of royalties or are we talking about other elements that you think should be going toward or should be considered by the Aneth Extension or the Utah Navajo portion?

Mr. ROCKWELL. Mr. Bishop, thank you for the question. I think the response might be that, as I indicated, there should be a separate allocation of funds to address those issues from that particular area. I think with the funds we would like to see probably a combination coming some from the 37 and a half percent itself and the rest from the 62 and a half percent going to the Navajo Nation. I think that would be the distribution of costs.

Mr. BISHOP. I thank you. There are other questions, but I think as we proceed with this issue we can address that, especially with the vote coming up there, although I would simply remind the Chairman, they said it properly. If you are going to say it in Utah language, it is "crick," not "creek."

Mr. BOREN. Thank you, Mr. Bishop. I have just a couple of questions, and then we will adjourn, for Mr. Rockwell and Mr. Filfred. As you know, the Navajo Nation does not, and never has had any legal interest in the trust fund. Do you have any suggestions or ideas as to how the Committee can best determine the views of the beneficiaries residing in the Utah chapter?

Because, as was mentioned before, there are only two members from Utah, I guess, on the Council. If the Nation is able to manage this fund, how do you get the input from the people from Utah?

Mr. FILFRED. The people from Utah, like I stated earlier, are afraid that if the Navajo Nation was the trustee, they don't want to jeopardize that. So the Navajo Utah Commission has stated their position, but then a lot of other people are wanting to be the trustee. So I think the money should stay within the Utah portion and the local people should have some control over it.

The closest one that we have is that 638, the UNHS, that I alluded to earlier. Thank you.

Mr. BOREN. Mr. Rockwell?

Mr. ROCKWELL. I would like to go back to the representation part of it first. Our commission consists of seven chapters, and these chapters are located along the border of the Utah and Arizona state line. Each of the communities have an opportunity to elect who they want. Sometimes it is Utah Navajos; sometimes they are Arizona delegates.

I have been with the Commission since 1992 and we have always had unanimous votes on resolutions addressing our issues. There has never been, as far as I can see, any detrimental impact for Utah chapters, although some are, in fact, represented by Utah or Arizona delegates.

As far as the eventual selection of a trustee, I think what we like, what we are emphasizing, is local control but some sort of overall oversight by the Navajo Nation. That is basically what we are implying. We are not saying the Navajo Nation should be directly administering the funds at the local level. I think that choice should be left up to the chapters and the community from the Utah areas. Thank you.

Mr. BOREN. Thank you, Mr. Rockwell. One question for Mr. Maryboy, and in the interest of time, we will move to adjournment. You mentioned that you have spoken to the chapter leaders about your future administration of the trust fund, but what actions have you taken to garner the support of the individual beneficiaries with your proposal?

Mr. MARYBOY. We are currently in the process of selecting new members from the seven chapters to serve on the new nonprofit organization that we are reorganizing at this point in time, so that is what I am doing right now.

Mr. BOREN. OK. Thank you for your answers, for your testimony. I want to say a specific thank you to the Committee staff for allowing me to chair. This is my first time to ever be able to chair a committee. So for panelists, the Committee may have questions we will submit to you in writing. We ask that you respond to them as quickly as possible.

The hearing record will remain open for 10 days for anyone who wishes to submit comments or materials to the Committee. I want to thank all of you for your participation in the hearing, and this Committee is adjourned.

[Whereupon, at 11:24 a.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record by James Black, President, Oljato Chapter, follows:]

**Statement submitted for the record by James Black,
President, Oljato Chapter**

Yaata'eeh, Greetings to everyone, especially to Honorable Chairman Mr. Nick J. Rahall, II and to Honorable Congressional Committee members on Natural Resources for inviting Oljato Chapter and Utah Chapters' leadership to present their testimony at today's historic hearing on Utah Navajo Trust Fund. My name is James Black, I am Oljato Chapter President. I was born and raised in Monument Valley Pass, Utah. It is an honor to come before you to present the following testimony on behalf of Trust Fund beneficiaries of Oljato Chapter, Utah:

1. The Oljato Chapter requests by chapter resolution to U.S. Congress, including Utah Congressional Delegation, The Honorable Congressman Jim Matheson and Senator Orrin Hatch and Senator Robert Bennet to provide equal opportunity for all Utah Navajo Chapters to freely express their input, recommendations, concerns to future discussions of transition plan of Trust Fund responsibility in selecting a new entity since the State of Utah has decided to cease operations of the Trust Fund as of June 30, 2008. Also, the Oljato Chapter respectfully requests that 1933 Congressional Act, as Amended in 1968 [Pub.L. No. 90-306, 82 Stat. 121 1968] which stipulates Utah Navajos living in San Juan County, Utah, particularly those living within Utah chapter boundaries, are entitled to 37 1/2 percent royalties to be perpetually valued and honored for the future of all Utah Navajo beneficiaries.
 - In the upcoming transition phase of designating which entity will be given trust responsibility beyond June 2008, the Oljato Chapter recommends that by all means, when U.S. Congress re-writes the language of 1933 Congressional Act, as amended in 1968, to maintain the egalitarian concept of distributing Trust Fund monies on equal basis to all Utah Chapters as it has been demonstrated this responsibility since inception of 37 1/2 oil and gas royalties by 1933 Congressional authority.
 - All Trust Fund beneficiaries of Utah Chapters including Oljato to be provided a fair, equal, impartial opportunity to participate and play a major role in all aspect of the planning and development phase of the transition process until and beyond the establishment of a new entity. This involvement of Utah Chapters in the preliminary planning of identifying and selecting the preferred entity and the structuring of the new organization is extremely critical. Further, this will allow greater participation in the service delivery process and coordination plan between Utah Chapters and the new responsible entity. Most importantly, to provide a community-based, democratic process in the distribution, sharing, allocation of the Utah Trust fund.
 - The geographic location of new administrative building for the new Trust Fund operations should also be carefully decided among all Utah Chapters with equal voice and without any bias or favoritism be involved in this decision making process.
2. The Oljato Chapter hereby requests by chapter resolution to The Honorable U.S. Congress including Congressman Jim Matheson and Senator Orrin Hatch and Senator Robert Bennet to designate a non-Navajo Tribal government entity to serve as new Trustee for Utah Navajo beneficiaries to ensure continuance of equal share of Trust fund distribution to Utah Navajos without political interruptions.
 - It is the position of Oljato Chapter that the any political branches, departments or subdivision of the Navajo Nation government should not be designated as new Trustee because of past practices of the Legislative branch in diverting funds elsewhere away from what was intended for and has practiced waiving tribal fiscal policies to achieve their political agenda and interests without any sound fiscal plan. Further, the leadership of executive branch is currently unsteady where it's clashing with the legislative branch due to proposed council reduction initiative by the Navajo Nation President's office of executive branch. Although the Oljato Chapter upholds the respect of continuing partnership efforts with the central Navajo government on other levels of essential services and programs, the chapter is in the state of mistrust and doubt for the Navajo Nation government to be given new trust responsibility. Further, by keeping the 37 1/2 percent oil and gas royalties outside of the coffers of Navajo Nation treasury will certainly allow the Utah Navajos to have greater control and oversight of its trust fund; and will provide an opportunity to demonstrate self-determination by Utah Navajo Chapters in the administration and management of the trust fund. Most importantly, the values, interests and beliefs of the beneficiaries will no longer be represented and respected if there is to be any major

political influence and interference with the future distribution of trust fund; and thereby deviating from its original intent under 1933 Congressional Act. It is in Oljato Chapter opinion that a majority of Utah Chapters holds a similar view on this particular issue.

3. The Oljato chapter hereby requests to U.S. Congress the desires of its community members to modify the language of the criteria for the beneficiaries to receive trust fund assistance. The current language states that all Navajos living in San Juan County Utah are eligible to receive assistance regardless of having no ancestral connection to Navajos living in Utah portion of the reservation. Further, current laws require a requesting Utah Navajo to reside in San Juan County Utah two years prior on the date of request in order to qualify for trust fund assistance regardless of having an ancestral relationship to Utah Navajos. For example, a Utah Navajo who has relocated outside the Utah Chapter boundary for over two years to seek employment, education or training would not meet the two-year threshold requirement to receive benefits including Utah trust fund scholarships. The language change will certainly allow accurate distribution of Trust fund monies to most accurate eligible Utah Navajos and to avoid controversy, it will provide assistance to Utah Navajos who have true-direct ancestral ties to the boundaries of Utah Navajo chapters.

There are other issues associated with Utah trust fund but these are the highlights that have been discussed with other Utah chapters and beneficiaries within the past few months. Please keep us informed and involved of any future hearings on this important matter. Your sincere consideration and assistance with the above mentioned issues is greatly appreciated. Thanks for inviting us to share with you the Oljato Chapter's testimony statement on today's hearing as it is one of the most significant moments in the history of Utah trust fund and its beneficiaries.

[A statement submitted for the record by Leo Manheimer, President, Navajo Mountain Chapter, The Navajo Nation, follows:]

**Statement submitted for the record by Leo Manheimer, President,
Navajo Mountain Chapter, The Navajo Nation**

The Honorable Members of the Natural Resources Committee, it is an honor to submit to you a written testimony on behalf of my constituents who reside within the Navajo Mountain Chapter of The Navajo Nation, Navajo Mountain, Utah. These people are beneficiaries of the thirty-seven and a half percent (37 1/2 %) of the Utah Navajo Trust Fund, which are funds generated from oil wells on the Utah portion of The Navajo Nation.

The community of Navajo Mountain is the most isolated area in the State of Utah, geographically isolated from the State of Utah, with the surrounding Lake Powell and the San Juan Rivers, and having no direct roads connecting it to the rest of the State of Utah.

The Utah Navajo Trust Fund has been very beneficial to this community in terms of housing, education, health services, assisting the local community government, and various other social programs funded in part by the Trust Fund. The community of Navajo Mountain and its people are far better off then their counter parts residing in Arizona and New Mexico chapters, in the areas of housing, education, and health services, to name a few, due to the Trust Fund's funding and services.

Recently, there has been a lot of uncertainty and great anticipation as to the future of the Utah Navajo Trust Fund since the State of Utah announced its plans to end its role as the Trustee. Upon notification of this proposed change, the Navajo Mountain Chapter has had the opportunity to discuss, at lengths, the various plans or options as to the future of the Utah Navajo Trust Fund. We have also had several presentations at various meetings by people who have first hand knowledge as to the fund's administration and policies.

The people of Navajo Mountain appreciate the current model or process of administration, in which the funds are administered by a separate entity that does not assess overhead or indirect costs, and not channeled through the Navajo Nation government. We believe this is the only way that the beneficiaries have and will continue to receive the most returns in direct services. Based on how the current unique setup is with the State of Utah, there is great apprehension as to what changes will occur in fund administration and mode of service to the Utah Navajos who depend on the Utah Navajo Trust Fund for basic services such as health, education, and housing.

I want to give you an account of what the people of Navajo Mountain would like to see happen with the Utah Navajo Trust Fund, the administration of it, and who might be the next Trustee.

The people of Navajo Mountain, during its regular chapter meetings, have repeatedly expressed the need for the State and Federal Governments to recognize the rights of Indian Nations to self-govern and the need for this process to be supported, accommodated, and legislated by leaders of this great country, The United States. Further, they believe that The Navajo Nation should also support and share in this concept by allowing local Navajo Nation Chapters, like Navajo Mountain, to have the latitude in deciding how gas and oil royalties should be administered and who the Trustee of such funds should be. The Navajo Mountain Chapter hopes that these same sentiments are shared by the seven (7) Utah Navajo Chapters in San Juan County, Utah.

These discussions, based on this concept, have pointed us in one direction—the need for each Utah Chapter to become Local Governance Act (LGA) certified and becoming direct recipients of the thirty-seven and a half percent (37 1/2%) of Utah Navajo Trust Fund Oil Royalties, recognizing that this can only come about when chapters become LGA certified. If the Utah Chapters concentrate their efforts on becoming LGA certified, Trust Fund money can be administered at the local level and utilized for direct services, eliminating outside influence or administration. This approach of self-governance will ultimately encourage the Utah Chapters to be accountable for the use of Trust Fund money, as indicated in their Five Management Policies and Procedures (FMS), and approved by the Auditor General of The Navajo Nation. The use of Trust Fund money will be monitored as any other organization. Thereafter, the Utah Navajo Trust Fund policies can be incorporated directly into the Chapter's LGA policies and procedures. Most Utah Chapters have been developing and practicing their LGA policies and procedures over the past few years, and they are on the threshold of becoming LGA certified.

The people of Navajo Mountain highly favor this concept although it may not be an immediate solution that can be implemented within each Utah Chapter. In the meantime, the only option that the people of Navajo Mountain would like to see is to have the Utah Navajo Trust Fund be administered by a separate entity that does not assess overhead or indirect costs. This option will provide the people with continued services in the areas of housing, education, health care, and local government.

Thank you for providing us the opportunity to express our position on the Utah Navajo Trust Fund. If you have any questions or wish to respond to this submittal, please contact our Chapter Administration at (928) 672-2915 or email the Community Services Coordinator at fernek2004@yahoo.com.

[A resolution submitted for the record by The Honorable Jim Matheson, follows:]

RESOLUTION PROVIDING THE POSITION OF THE SAN JUAN COUNTY COMMISSION REGARDING THE FUTURE OF THE UTAH NAVAJO TRUST FUND AND TRUSTEE(S)

WHEREAS, 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 the 37-1/2% royalties for oil and gas production on the Utah portion of the Navajo Nation; and

WHEREAS, 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

WHEREAS, the State of Utah has determined that the State will not recommend a future Trustee; and

WHEREAS, the County of San Juan, Utah, also has determined that it will not recommend a future Trustee; and

WHEREAS, “[t]here is created a private-purpose fund entitled the Navajo Trust Fund. The fund consists” partially “of revenues received by the state that represent the 37-1/2% of the net oil royalties from the Aneth Extension of the Navajo Reservation required by P.L. 72-403, 47 Stat. 1418, to be paid to the state.” Section 63-88-102, et seq., Utah Code Annotated (1953, as amended).

WHEREAS, the residents of the Utah portion of the Navajo Nation saw nor realized the benefits for the remaining 62-1/2% of the royalties that were collected by the Navajo Nation; and

WHEREAS, the needs for the residents of the Utah portion of the Navajo Nation continue to require significant amount of funds.

THEREFORE, BE IT RESOLVED, the official position of the County Commission of San Juan County, Utah, concerning the future Trustee of the 37-1/2% of oil and gas production is as follows:

1. They County Commission will not recommend a future Trustee.
2. That neither the 37-1/2% royalties nor the responsibility of the Trustee be given to the Navajo Nation or any of its divisions, departments, or agencies.
3. That the future Trustee(s) not be a beneficiary of the 37- 1/2% royalties.
4. All 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(s) be requested to work closely with the Utah Navajo Chapters and San Juan County, Utah.

APPROVED this __ day of April, 2008, by the San Juan County Commission.

[Signed] Bruce B. Adams, Chairman, San Juan County Commission

THOSE VOTING YES

Commissioner Adams
Commissioner Maryboy
Commissioner Stevens

THOSE VOTING NO

[None]

A motion to approve the resolution was made by Commissioner Lynn Stevens. Commissioner Kenneth Maryboy seconded the motion. None opposed. Commissioner Bruce Adams declared. The motion carried.

