

**TESTIMONY OF
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
OVERSIGHT HEARING
ON
THE UTAH NAVAJO TRUST FUND
JUNE 19, 2008**

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

Background

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

In approximately 1959, oil and gas wells in the Aneth Extension began producing in paying quantities, and the United States Department of the Interior, through oil and gas mining leases on the Navajo tribal land, began collecting oil and gas royalties. The leases are between the Navajo Nation and the producer, and are subject to approval by the Secretary of the Interior.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 UNTNF 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.

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).

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.