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Navajo-Hopi Land Commission of the Navajo Nation Council
Written Testimony Before the
House Interior Appropriations Subcommittee
Thursday, April 25, 2013

Requests:

- **Create Incentives for Private Sector Investment.** Support incentives to encourage private sector investment in the Former Bennett Freeze Area, as well as areas impacted by the Federal relocation of Navajo families, including requesting a Congressional Research Service or other appropriate study on how to encourage such investments.
- **Streamline Regulation and Support Tribal Sovereignty.** Support efforts to affirm tribal sovereignty and to cut costs by allowing tribal regulations to supersede appropriate Federal regulations.
- **\$20 Million to Immediately Fund Critical Needs.** Increase funding for housing and other improvements in the Former Bennett Freeze Area of the Navajo Nation, with \$10 million out of the BIA Trust Natural Resources Account (Natural Resources Subactivity) and \$10 million out of the BIA Housing Improvement Funds, Department of Interior.
- **\$18 Million for the Office of Navajo and Hopi Indian Relocation to Accelerate Completion of the Relocation Process.** At the current rate of 16 houses a year, with an estimated 200 Navajo families still waiting to receive benefits, it may be another 20 years before every eligible Navajo head of household receives the relocation benefits they were promised by Congress in 1974. The Subcommittee should double funding to the Office of Navajo and Hopi Indian Relocation to \$18 million for ten years to accelerate completion of the relocation program.
- **Encourage Interior to Expand Efforts to Rehabilitate the Former Bennett Freeze and to Facilitate Other Technical Adjustments Needed to Humanize the Relocation Process.**
- **Provide Sufficient Construction Funding to the Indian Health Service to Build the Bodaway-Gap IHS Facility.**

Introduction. Thank you for this opportunity to provide testimony on what is one of the most vexing matters in modern Federal Indian policy and a true tragedy for the Navajo Nation. I am the Chairman of the Navajo-Hopi Land Commission, which is the authorized entity of the Navajo Nation Council entrusted with addressing the ongoing harsh effects of both the Federal relocation of nearly 15,000 Navajos off of their ancestral lands pursuant to the Navajo Hopi Settlement Act, as well as the desperate need for rehabilitation and reconstruction in the former Bennett Freeze area (FBFA), where another 12,000 Navajos lived under a strict construction freeze for effectively 50 years.

Virtually every day, my constituents approach me to describe the hardships that they have suffered because of the relocation law and the construction freeze, including lots of young people whose families relocated and who now are homeless and landless. The impact of the Navajo Hopi Settlement Act and the Bennett Freeze will be with the Navajo Nation for many generations.

However, I want to talk about the amazing resilience of these Navajo families and give you one example that I experienced while campaigning for office. I was way out in a very remote section of the reservation passing out flyers when I came across a disabled Navajo woman living in a deteriorated shack. Her home was literally falling in on her and her children. There was wind blowing through the house through open cracks, which would also let in mice and other animals. As remote as her house is, the school bus still came every day to take her kids to schools. She was doing her best to give her kids a better opportunity, but still her situation was very depressing and she did not feel a lot of hope. My campaign team decided to build her a house to get her and her family out of this very unhealthy situation. They went out and raised money to buy materials. They poured concrete to build a foundation and constructed a very small home, about 16' x 20'. As much as I am proud of my campaign team, the truly incredible part of this story is the change that this small house created in this Navajo woman. Suddenly, she saw that life could get better for both her and her kids. This spirit of hope moved her to attempt things she had not attempted before. She was literally able to organize and build an addition to her house that is bigger than the house itself. Of course, under the Bennett Freeze, this would have been illegal. The long shadow of the Bennett Freeze, even though it is now lifted, had been with her for years. But now she understood that she could take control of her life, that she was not alone in her efforts, and that the future could be brighter and more hopeful for herself and for her whole family. There is hope for these Navajo families, but we must plant seeds that they can water and that will flower in the fullness of time.

Background on the Bennett Freeze. In 1934, the U.S. Government clarified the western boundary of the Navajo Nation identifying an area of land as for the Navajo and “such other Indians as may already be located thereon.” This language created ambiguity over ownership of the land, which was nearly entirely inhabited by Navajos. In litigation between the tribes, the Hopi sought extensive rights over the whole area. As a result, in 1966, Commissioner of Indian Affairs Robert Bennett ordered a “freeze” on development in a 1.5 million acre area in the extreme western portion of the Navajo Reservation, now called the Bennett Freeze Area. In the Bennett Freeze, you could not build homes, construct additions or make significant repairs. No Federal, Tribal or State programs could assist your community through the building of infrastructure essential to the health and well-being of any community. As a result, the Bennett Freeze was locked into the poverty of 1966, when the freeze was imposed. As a result of this construction freeze, the Bennett Freeze Navajos have become the “poorest of the poor.” While in theory development was possible with the permission of both tribes, in reality the area was principally occupied by Navajo families and permission was rarely granted for Navajo projects. Thankfully, the two tribes reached agreement on a settlement of their disputes and in the 111th Congress, the Congress passed legislation striking from the U.S. Code the language which had authorized the Bennett Freeze. The agreement provided that most of the area belonged to the Navajo Nation. For the thousands of Navajo families who live there this means that the freeze served no real purpose other than to bring them misery and hardship.

Redeveloping the Former Bennett Freeze Area. The Administration has previously noted that “[t]he Bennett Freeze was a product of a long-standing land dispute between the Navajo and Hopi reservation boundaries... more than 12,000 Navajo people living in the area were subjected to a 41-year freeze on development.... During the freeze era, the Navajo people were prohibited from building new homes, schools, health facilities,

constructing (electricity, water, roads, etc.) and community and economic development projects.” However, the President’s FY 2014 budget provides only a little more than \$1 million from the Natural Resources Subactivity (TPA) account to address the need to rehabilitate this area. For the Former Bennett Freeze Area to recover there must be a sustained reconstruction program implemented over a decade or more. This would be consistent with the findings of the Interior Appropriations Subcommittee of the Senate Appropriations Committee in a field hearing held in Tuba City, Arizona on July 9, 1993.¹ Going back four decades to the “War on Poverty” and the “Great Society Program,” and continuing through numerous Federal initiatives addressing poverty and economic hardship in general, as well as programs directed at Indians in particular, this area has been effectively ineligible for aid. The results have been devastating with most homes lacking electricity and running water, with access to limited infrastructure, few schools and, therefore, no economic development.

Although the Navajo Nation believes that the Federal government bears great responsibility for these harms to the Navajo people, we also know that full redevelopment and recovery ultimately lies in our own hands. Therefore, in addition to seeking funds for key redevelopment programs, we also ask this Subcommittee to support a number of other initiatives to provide for truly transformational changes that can be generated through private sector partnerships.

Create Incentives for Private Sector Investment. With Federal resources tightening, the Navajo Nation asks that this Subcommittee support new incentives that would encourage private sector investment in the Former Bennett Freeze Area, as well as in the areas impacted by the Federal relocation of Navajo families. While legislation to advance such incentives may not strictly fall within this Subcommittee’s jurisdiction, as efforts are made to advance and pass such legislation this Subcommittee may well be asked to be of assistance. We also ask that the Subcommittee request a Congressional Research Service or other appropriate study on ways to encourage private sector investment in these areas.

Streamline Regulation and Support Tribal Sovereignty. The Navajo Hopi Land Commission is actively engaged in discussions with key members of Congress regarding expanding the HEARTH Act, which allows Tribes to lease their lands without having to seek the approval of the Secretary of the Interior, to other areas of regulation, such as environmental, historic preservation, and housing. These proposals represent a direct enhancement of tribal sovereignty within tribal lands and would cut costs by allowing tribal regulations to supersede appropriate Federal regulations, rather than duplicate them. Again, we would ask that the Subcommittee support the advancement of such legislation, even if in its origin it does not fall within the Subcommittee’s jurisdiction.

Fund Critical Needs. There are many needs in the former Bennett Freeze area, but the most critical is the need for housing and related improvements. The Navajo Nation asks that this Subcommittee support an increase in funding for housing and related improvements in the former Bennett Freeze Area of the Navajo Nation of \$20 million in

¹ Notably, as a result of this hearing the Navajo Nation received \$1.5 million in congressionally directed funds that was used to build 90 homes. The Nation may be the most effective entity to fund to do housing for relocatees and families in the FBFA.

FY 2014, with \$10 million out of the BIA Trust Natural Resources Account (Natural Resources Subactivity) and \$10 million out of the BIA Housing Improvement Funds. Notably, the Navajo Hopi Land Commission will be expanding its own housing construction and repair services based on revenues from the lands that it manages for the benefit of the relocatees. This program may prove more efficient and be the appropriate vehicle for funding an effort in the former Bennett Freeze area.

\$18 Million for the Office of Navajo and Hopi Indian Relocation to Accelerate Completion of Relocation Process. Through hard won experience, literally over decades, ONHIR is delivering a quality product to many Navajo relocatees. The Subcommittee should increase funding to the Office of Navajo and Hopi Indian Relocation to \$18 million to accelerate completion of the relocation program within ten years.

Encourage Bureau of Indian Affairs to Expand Efforts to Rehabilitate the Former Bennett Freeze and to Facilitate Other Technical Adjustments Needed to Humanize the Relocation Process. We would ask that the Subcommittee include report language that would encourage Interior to establish a taskforce to undertake a review of Interior programs that would benefit the FBFA and assist the Navajo Nation in accessing them. We would also ask that the Subcommittee support a renewed dialogue between and among the Navajo Nation, the Hopi Tribe, Interior Department and the Justice Department over possible amendments to the Accommodation Agreement that most Navajo families still living on Hopi lands signed to allow families to relinquish those agreements and seek relocation benefits. Finally, we would ask that the Subcommittee in report language encourage the BIA to expedite its determinations regarding lease payments due from the Navajo Nation to the Hopi Tribe (see 25 USC 640d-15(a)). The BIA delays for years in making these determinations resulting in huge interest payment obligations on the part of the Navajo Nation.

Congress should also authorize the ONHIR to oversee reconstruction activities within the FBFA, with the Navajo Nation having the option of assuming control of those activities that affect Navajo people and lands, as well as the option of assuming control of the trust fund proposed above.

Bodaway Gap Health Care Facility. This facility is high on the list for new construction and is a priority facility for the Navajo Nation. It would be located in the former Bennett Freeze area and provide a tremendous health and economic boost to the region. We urge enough funding in FY 2014 to allow the IHS to begin construction of this facility.

Conclusion. Although the Navajo-Hopi Land Dispute and the Bennett Freeze are painful issues, I thank the Subcommittee for this opportunity to provide testimony on a path forward to assure that the many Navajo families who have suffered as a result of these Federal actions can hope for a better life.