



Navajo Nation President Ben Shelly
Testimony Before the House Interior Appropriations Subcommittee
April 25, 2013

I. Introduction

Good morning, members of the Committee. I sit before you today, as I did last year, surrounded by other tribal leaders, asking for federal funds to maintain the basic services that mean the difference between life and death, employment and poverty. Each year we sit here, and each year we walk away with barely enough to survive. This is not what our ancestors believed when they signed the treaty of 1868, and certainly not what we believe is the solemn trust responsibility that exists between the federal government and tribal nations.

My testimony this morning will focus on two major topics. First, tribal funding is a sacred trust responsibility, and a legal and moral obligation that should not be subject to political whims such as sequestration. Any reductions in overall funding must be subject to meaningful tribal consultation before cuts are implemented. The current method of federal program funding forces tribes to attempt to plan for the unknown resulting in an inability to plan for the financial future. Second, tribal reliance on federal funds should not be the norm. Federal funds and the full funding of treaty and trust responsibilities should be supplemental to vibrant self-sustained tribal economies. The complete reliance on federal funds is a function of our lack of economic development, which is largely the fault of the federal government. The regulatory approval and permit requirements to develop a sustainable economy on tribal land are so burdensome that it is completely prohibitive. In summary, the federal government places hurdles on tribal economies that make sustainable economic development impossible, thus forcing us to depend solely on federal funding. The federal government now says that it cannot afford to provide us with the funds that they have forced us into a position to need, and that those funds will be taken away without even the most basic forms of consultation. It is grossly unfair and immoral for the federal government to force tribes into the vice of economic desperation, and to then repeatedly turn the screw. It is my hope that I won't have to be here next year; that the federal government will do what's right and get out of our way so we can develop our own economies.

II. Tribes Should be Held Harmless from Federal Budget Cuts

Several times a year, myself and other tribal leaders sit down with the Bureau of Indian Affairs to map out what our funding priorities are for the upcoming year. While the end result is never as much as our people need, at least we engage in a meaningful consultation that outlines what we think is important. The sequester circumvents this consultation process and undermines the Native American treaties ratified by Congress. The indiscriminate cuts that the sequester, and other budget reductions, force on tribes guts the ability of the federal government to live up to its trust responsibility. We as tribal leaders are not blind to the economic situation of our country, and understand that only together can we face our problems. However, solving our budgetary issues on the backs of the neediest of citizens is both unfair and cruel.

What the Navajo Nation finds hard to comprehend is the capricious nature of some of the proposed cuts contained within President Obama's Budget Request. For example, once again



this year, the President's budget has zeroed out funds distributed to certified states and tribes under the Abandoned Mines and Lands program under the Surface Mining and Reclamation Act. These funds are royalties taken from Navajo coal that are made available to help communities affected by coal and uranium mining. Once certain priority issues have been addressed, a tribe is certified and can use the funds for other clean up and community activities. This action takes away the ability of the Navajo Nation to continue to address these issues for miniscule cost savings to the federal budget.

Also, contained within the federal budget, are cuts to the Housing Improvement Program that provides housing to the most vulnerable populations in Indian Country. Perhaps most troubling is the continued inadequate funding of contract support costs that I will discuss in further detail.

III. The Federal Government should Foster Sustainable Tribal Economies

The federal government should be working to empower us with the foundations that will allow us to thrive, instead of hindering our development and reducing our access to funds. There are three ways that the federal government could aid the Navajo Nation.

First, the federal government could alleviate the burdens of regulation that hinder economic development. The Navajo Nation has long struggled to develop a sustainable economy. Our current unemployment rate is 55%, not including the thousands who have simply given up trying to find employment. Per capita income is approximately \$7,200. The biggest block to economic development is a lack of infrastructure. We desperately need roads, bridges, power transmission lines, and potable water. We also need relief from the burdens of EPA regulations that stifle our ability to develop our economy. Economic development requires a mix of infrastructure, education, and investment incentives. Our population is young, energetic and intelligent, but lack the education and critical job skills. We need educational investments to ensure that they have the skills to obtain the jobs they seek. Further, we need to incentivize private investment on Navajo land through tax credits and offsets that encourage private industry to invest where the government cannot.

Second, infrastructure and economic development go hand in hand with health care facilities construction. Basic health care services are critical in our remote and populated area. Funding for these long-term construction projects presents opportunities for job creation and provides much needed infrastructure. The Navajo Nation has five projects on the existing priority list that exceed, in total, one billion dollars. Funding shortfalls will delay the building of these needed projects. The Navajo Nation has a large hospital facility, Gallup Indian Medical Center, cited by the U.S. Commission on Civil Rights as an "utter disaster," that requires \$600 million to rehabilitate. Other hospitals and clinics such as Winslow-Dilkon, Kayenta, Pueblo Pintado, and Bodaway-Gap need an additional \$500 million for construction. While we applaud the Administration's robust IHS request we do ask that funding for IHS not be allocated in a way that short changes facilities construction. Adding additional monies to repair and maintenance line items is neither sustainable, nor cost effective. New facilities are needed not band aids for irreparable buildings, many of which were built over 50 years ago from materials not able to withstand the test of time.

Third, a sustainable economy requires a highly educated work force. While increasing numbers of Navajos are attending college, delays in scholarship funding can hinder their



progress. The Navajo Nation awards millions of dollars in scholarships annually from a combination of sources to over 3,000 undergraduate and approximately 500 graduate students. A significant portion of this amount comes from the BIA Higher Education Grant Program (Program). The distribution of Program funds has often been delayed in recent years due to the frequent use of continuing resolutions to fund government operations. This leads to delays in scholarship payments and institutional disbursements. Students pursuing higher education may arrive on campus with little or no money, uncertain if they will be able to pay for books, tuition, and housing. To fix this problem, the Program, authorized under the Snyder Act, should be forward funded. Forward funding insulates Program funds from delays in the appropriations process, thereby eliminating the uncertainty and inability to plan that results from delayed funding disbursement.

A number of national Indian education stakeholders have endorsed the idea of forward funding Snyder Act authorized tribal scholarship programs, and it is my understanding that Sen. Tom Udall may introduce a bill soon with authorization language included in it. For the good of Native American students everywhere, seeking only to pursue their higher education goals, we encourage you to support this proposal as well.

Fourth, the lack of fully funded federal contracts under P.L. 93-638 means tribes must dedicate more of their own funds to take on the responsibilities of the federal government. It is my understanding that the administration's budget proposes to consult with tribes on how to best fund contract support. In the recent *Ramah v. Salazar* case the Supreme Court ruled that the federal government must fully fund contract support costs. There is no need to examine what that means exactly. It is clear that full funding must be appropriated and available, and most importantly, not taken from other tribal programs.

Finally, I would like to underscore the importance strong tribal law and order systems to protect citizens and encourage faith in the fairness of our tribal courts. The Navajo Nation advocates strongly for sufficient funding for tribal courts. Having a balanced and well-funded judicial branch ensures that we as tribes can ensure the safety of residents and visitors, as well as attract opportunity and investment. Our tribal courts on the Navajo Nation are considered the benchmark and a shining example of tribal court systems. They cannot continue to operate and implement critical pieces of federal law such as the Tribal Law and Order Act without full support and funding.

V. The Federal Government Needs to Address the Former Bennett Freeze Area

I would like to take this opportunity to address an ongoing sore created by the Federal government on the Navajo Nation. While my colleague Council Delegate Walter Phelps, who serves as the Chair of the Navajo Hopi Land Commission, will go into greater detail on this issue, I want to stress to the committee the importance of this issue to the Navajo Nation. Right now thousands of Navajo's are living lives of unbelievable hardship and poverty because of actions taken by the federal government. The Former Bennett Freeze Area (FBFA) covers over 1.5 million acres; approximately the size of the state of Delaware. The most conservative projections indicate that the population of this area will double in the next ten years. Substantial improvements in housing, economic development, infrastructure, health care, and education will be required to both correct the impact of the Freeze and meet the needs of the returning and expanding population.



In 1966, the federal government issued an administrative order imposing a construction freeze on the Navajo Nation reservation west of the 1882 Reservation until the land dispute between the Navajo and Hopi could be resolved. Under the terms of the Bennett Freeze no construction or development could occur on Navajo Reservation lands in this area without the prior consent of the Hopi Tribe.

In 1992, the federal court awarded the Hopis 64,000 acres out of the 7 million acres of the 1934 Navajo reservation, and lifted the Freeze. The Freeze was re-imposed by the Ninth Circuit Court on appeal. The Freeze continued for the remaining land, inhabited mostly by Navajos, until December 2006 when the tribes dismissed the litigation, lifted the Freeze, and allowed continued Hopi access to religious sites in the 1934 Reservation.

The effect of the Freeze on the Navajo residents of the FBFA has been devastating. It has resulted in substandard housing, virtually no infrastructure, no access public services, one of the highest poverty rates in the country, and forced many Navajos from their ancestral lands. During the time it was in effect, the Freeze all but stopped development and contributed to poor living conditions for many residents who chose to stay in their homes. Many other Navajos were forced to leave their ancestral homes to seek work and a new life outside of the Four Sacred Mountains.

Most FBFA residents live without electricity, plumbing, or clean drinking water; the basic essentials for the quality of life that most Americans take for granted. A third of all FBFA residents are forced to use contaminated wells for access to drinking water. Large-scale water projects, including line extensions, are desperately needed for the area and for its future development.

Many residents have had little or no access to emergency medical treatment, fire service, or nearby retail, commercial, or social services. While the rest of the country experienced opportunities from economic development, during the forty plus years of the Freeze, development in the FBFA stalled or was abandoned.

Those who could not live without such necessary services, especially young people and those with young families, were forced to make the difficult decision to leave their communities for job opportunities and better living conditions elsewhere. Out-migration has exacted a heavy social cost on families and communities.

Of the homes currently in the area 61% are in very poor to poor condition, and 87% do not have electricity! Navajo families in the FBFA need 2,402 homes at a cost of \$160,376 per home. The Navajo Nation is requesting \$25 million per year for 16 years to rectify the harm caused by the federal government, and to once and for all close the chapter on this atrocity.

VI. Conclusion

The federal government has a treaty responsibility to both protect and assist tribes in protecting their land and resources, and to develop a sustainable permanent homeland. While I understand that the federal government needs to address its fiscal situation, tribal programs have been underfunded for decades. It is fundamentally unfair that as federal funding has finally begun to catch up to the need, we are now facing dramatic cuts. We continue to lag behind the greater economic prosperity of the rest of the United States. Instead of cutting funding, the federal government should maintain funding for tribal programs, and take the opportunity to assist tribes in developing their economies.