

**Written Testimony of Walter Phelps
Chairman, Navajo-Hopi Land Commission
22nd Navajo Nation Council**

Prepared for the

**United States House of Representatives Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
April 7, 2014**

Requests:

- 1. Provide \$21.5 million for relocation.**
- 2. Provide \$20 million for critical needs in the former Bennett Freeze area.**
- 3. Create incentives for private sector investment and streamline regulation to support tribal sovereignty.**
- 4. Increase oversight of relocation and rental payment processes.**
- 5. Encourage humanization of the relocation and reconstruction process.**
- 6. Establishment of DOI Task Force**

Introduction. Chairman Calvert, and honorable members of the Subcommittee, thank you for this opportunity to provide testimony on behalf of the Navajo Hopi Land Commission of the Navajo Nation Council. My name is Walter Phelps, Chairman of the Navajo-Hopi Land Commission and a member the 22nd Navajo Nation Council. The Navajo-Hopi Land Commission is entrusted with addressing the ongoing effects of two interrelated policies: first, the relocation by the Federal government of nearly 15,000 Navajo people off their ancestral lands pursuant to the Navajo Hopi Settlement Act; second, the reality of another 12,000 Navajos living in the former Bennett Freeze area (FBFA), where a strict 41-year construction freeze left a desperate need for rehabilitation and reconstruction.

Continuing Harsh Effects of Navajo Relocation. The harsh effects of Navajo relocation continue to impact many Navajo families. The Office of Navajo and Hopi Indian Relocation (ONHIR) is relocating 10-12 households per year with approximately 100 certified applicants awaiting the homes they were promised. Perhaps 10 or so of these families are in the contract stage and can expect a home in the next year or so; the rest will have to wait for future years. Further, ONHIR has increasingly diverted funds away from building homes for certified applicants, instead spending its money on fighting applications for certification in a lengthy and costly appeals process. Meanwhile approximately 137 applicants await hearings and another 219 wait to have their applications processed. ONHIR has also enacted new policies without consultation with the Navajo Nation, discouraged applicants from seeking relocation benefits, and heightened the burden of proof at eligibility hearings.

ONHIR has conducted these operations without proper oversight and has not had a Commissioner since the resignation of Commissioner Kunasek in 1994. The Navajo-Hopi Land Commission passed Resolution NHLCO-36-13 (A) on October 24, 2013 requesting President Obama appoint a new Commissioner to restore the integrity of ONHIR and once again focus on

ONHIR's mission on accounting for the "adverse social, economic, cultural, and other impacts of relocation." Public Law 93-531 § 13(c)(2).

Redevelopment Required in the Former Bennett Freeze Area. In 1966 Commissioner of Indian Affairs Robert Bennett ordered a development "freeze" in a 1.5 million acre area, called the former Bennett Freeze area directly affecting nine (9) Navajo Chapter communities in the western portion of the Navajo Nation.

The Administration has 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." Additionally, no Federal, Tribal, or State program could assist communities in the Bennett Freeze area by building essential infrastructure. 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 Bennett Freeze area became locked into the poverty of 1966, making the Bennett Freeze Navajos the "poorest of the poor." The results have been devastating with most homes lacking electricity and running water and having limited access to infrastructure, schools, and, therefore, to economic development.

Thankfully, the two tribes reached agreement, and the 111th Congress passed legislation eliminating language authorizing 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.

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. **Currently, the nine (9) Navajo chapters have extended lists of projects they need to adequately serve the constituents within their areas. In addition to housing and related infrastructure some examples of these pending projects include: the need for solid waste transfer station facilities, fire department facilities, telecommunication facilities, Assisted Living centers for senior citizens, the need for improved community facilities such as cemetery's and recreation parks. Finding resources for proper maintenance and repair of roads within each community is also a huge challenge.** 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. In addition to seeking funds for key redevelopment programs, we also ask this Subcommittee to support a number of initiatives designed to provide transformational changes through private sector partnerships and incentives.

Requests:

- 1. Provide \$21.5 million for relocation.**

In addition to the President's request of approximately \$8.5 million, we ask the Subcommittee to allocate an additional \$13 million. At \$129,000 per home plus approximately \$15,000 per house its present 90-family backlog. However this money should be explicitly restricted for building homes and attendant infrastructure.

2. Provide \$20 million for critical needs in the FBFA

Some of the most critical needs within the FBFA are the need for housing, safe drinking water, community facilities, electricity, quicker access for 911 emergency response services and adequate telecommunication services in general and other related improvements. The Navajo Nation asks the Subcommittee to support an increase in funding for housing and related improvements in the FBFA of \$20 million in FY 2015, 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 may be the appropriate vehicle for funding efforts in the former Bennett Freeze area.

3. Create incentives for private sector investment and streamline regulations to support tribal sovereignty

The Navajo Nation asks that this Subcommittee support new incentives to encourage private sector investment in the FBFA as well as in areas that have been impacted by the Federal relocation of Navajo families. Although 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.

Additionally, 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.

4. Increase oversight of relocation and rental payment processes.

We ask that the Subcommittee support increased oversight over the relocation process. At a rate of 10-12 houses per year, with approximately 100 families certified and perhaps another 100 or more likely to become certified, it could be another 20 years before every eligible Navajo receives the homes promised. In addition to increased funding, discussed below, we request a GAO study of ways that ONHIR could be made more efficient and could be reoriented to focus on home construction rather than denying eligibility through a costly appeals process.

Additionally, we request that the Subcommittee in report language encourage the Department of Interior to conduct a study and furnish a report 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.

5. Encourage humanization of the relocation and reconstruction process.

We also ask that the Subcommittee direct the BIA to expand efforts to rehabilitate the former Bennett Freeze and to facilitate other technical amendments needed to humanize the relocation and reconstruction processes.

6. DOI Task Force

We would ask that the Subcommittee include report language that would establish a DOI taskforce to undertake a review of Interior programs inclusive of the BIA, BOR, USGS, USFWS, OSM, using programs such as Economics and Resource Planning department and Rural Tribal Water Projects that would benefit the FBFA and assist the Navajo Nation in creating jobs, support workforce development with a goal to strengthen the impacted Navajo chapter communities. Congress must also make serious consideration on steps that would effectively authorize 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 proposed trust fund.

We also request relief of the Navajo trust fund obligation and reauthorization of the Navajo Rehabilitation Trust Fund to be used for developing areas impacted by the Bennett Freeze.

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