

**Written Testimony of Walter Phelps
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23rd Navajo Nation Council**

Prepared for the

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

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Requests:

- 1. Provide necessary funding to complete relocation in an effective and timely fashion.**
- 2. Provide \$20 million for critical needs in the Former Bennett Freeze Area.**
- 3. Support incentives for private sector investment and the streamlining of regulations.**
- 4. Increase oversight of the relocation and rental payment processes.**
- 5. Expand BIA efforts to mitigate hardship in the relocation and redevelopment processes.**
- 6. Establish a DOI Task Force to assess opportunities to aid redevelopment.**

Introduction. Chairman Calvert, Ranking Member McCollum, and honorable members of the Subcommittee, thank you for this opportunity to provide testimony on behalf of the Navajo-Hopi Land Commission (NHLC) of the 23rd Navajo Nation Council. My name is Walter Phelps, Chairman of the NHLC and a Council Delegate. On behalf of the NHLC, I sincerely thank the Subcommittee for its recent trip to the Navajo Nation to witness the devastating effects of relocation first-hand. The Navajo Nation, perhaps more than any other party involved, desires to bring closure to the relocation process, which has marked a sad chapter in American and Navajo history. We believe, however, that the Federal government has a responsibility to bring this closure about in a conscientious and compassionate manner.

Continuing Consequences of Forced Relocation. The Navajo–Hopi “land dispute” has largely been a creature of federal Indian policy and resulted in the forced relocation of 10,000–15,000 Navajos—the largest forced relocation since the Japanese internment. This forced relocation stripped once self-sufficient families and communities of their homes and livelihoods and had devastating spiritual, psychological, and cultural consequences that continue to this day.

It has been over 40 years (or over two generations) since the Navajo Hopi Land Settlement Act of 1974. Relocation has left the Navajo Nation with a population of relocatees, many of whom have yet to receive the full benefits Congress intended; a population within Hopi-Partitioned Lands that struggles living outside the jurisdiction of the Nation; and a population in the 1.6-million acre Former Bennett Freeze Area (FBFA) that remains severely economically depressed in large part due to the U.S.-imposed, 40-year development freeze.

ONHIR Operations. The Department of Interior’s (DOI) Office of Inspector General (OIG) recently published a report on the Office of Navajo and Hopi Indian Relocation (ONHIR) that identified two causes for the delay in completing relocation: ONHIR’s failure to complete eligibility determinations; and the complicated and lengthy administrative appeals process.

ONHIR routinely denies applications that subsequent court decisions and administrative review have determined should have been granted. ONHIR's routine denials force people into a lengthy and dehumanizing appeals process, with the vigorous cross-examination of Navajo elders adding to the suffering that relocation has imposed upon the Navajo people. Many of these elders do not speak English and are not accustomed to adversarial processes, making ONHIR appeals particularly difficult for them. This appeals process is also costly for the agency, with 75% of ONHIR's funding spent on administrative costs, resulting in a situation in which the agency builds only an estimated 13 houses per year despite its \$7.5–8 million budget. ONHIR has also enacted new policies without consulting the Navajo Nation, such as heightening the burden of proof at eligibility hearings.

ONHIR's routine denials of applications and reliance on the adversarial process have increasingly diverted funds away from building homes for certified applicants. There are currently approximately 110 certified applicants and approximately 120 applicants awaiting an appeals hearing. Meanwhile, many relocatees that have received benefits live in ONHIR-built houses that are literally falling down around them.

Despite ONHIR's failures, the NHLC recognizes that over the years ONHIR has built up expertise that gives it a greater capability than the Bureau of Indian Affairs to work on these issues. Nonetheless, ONHIR requires full funding, and redirection to focus on home building. Additionally, ONHIR requires greater oversight. The agency has not had a Commissioner in 20 years, since the resignation of Commissioner Kunasek in 1994. The NHLC requested appointment of a new Commissioner on October 24, 2013 in Resolution NHLCO-36-13(A). With greater oversight, redirection, and full funding, the agency should be able to accomplish a timely and compassionate conclusion to the relocation era.

The Former Bennett Freeze Area. The 40-year development freeze imposed by Commissioner of Indian Affairs Robert Bennett in 1966 affected a 1.6-million acre area that encompasses nine Navajo Chapter communities in the western portion of the Navajo Nation. For the FBFA to recover and redevelop, there must be a sustained reconstruction program implemented over a decade or more. This would be consistent with the findings of the Senate Interior Appropriations Subcommittee's July 1993 field hearing. The nine Navajo chapters in the FBFA have extended lists of projects they need to adequately serve their communities, including housing and related infrastructure, solid waste transfer station facilities, fire departments, telecommunications infrastructure, assisted living centers for seniors, and community facilities such as cemeteries and recreation parks. Funding for road repair and maintenance is also an enormous challenge. Although the Federal government bears great responsibility to the harm that those in the FBFA continue to suffer, the NHLC recognizes that full redevelopment ultimately lies in our own hands. In addition to seeking funds, we ask this Subcommittee to support private sector partnerships and incentives needed for transformational change.

Requests:

- 1. Provide necessary funding to complete relocation in an effective and timely fashion.**

The President has requested \$8.4 million for ONHIR, but we request that the Subcommittee approve a far higher level in order to complete relocation in the relatively near future in an effective, yet humane, fashion. We do not request a specific amount because various scenarios have been put forth about how to accomplish relocation. All scenarios, such as those identified in the OIG report, require a substantial increase over current funding levels in order to accomplish ONHIR's purposes.

At an estimated \$144,000 per home, it would take at least an additional \$13 million over the President's request in order to clear ONHIR's current backlog of approximately 100 homes. Additionally, we request that funds be explicitly restricted to building homes and attendant infrastructure so that ONHIR may not use budget increases to further inflate its administrative costs.

2. Provide \$20 million for critical needs in the Former Bennett Freeze Area.

Critical needs of the FBFA include housing, safe drinking water, electricity, timely emergency response services, telecommunications infrastructure, and community facilities. We request the Subcommittee allocate \$20 million for housing and related improvements in the FBFA out of the BIA Trust Natural Resources Account (Natural Resources Subactivity). Notably, the NHLC will be expanding its own housing construction and repair services based on revenues from the lands it manages for the benefit of relocatees, and this program may prove to be the appropriate vehicle for funding efforts in the FBFA.

3. Support incentives for private sector investment and the streamlining of regulations.

The NHLC asks the Subcommittee to support new incentives to encourage private sector investment in the FBFA and other relocation-impacted areas. Although legislation to advance 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.

Last Congress, Representative Ann Kirkpatrick introduced legislation (H.R. 5039) to support this kind of assistance to the FBFA. We expect Representative Kirkpatrick to reintroduce a version of this bill shortly, and we request that the Subcommittee support the advancement of such legislation, even if its origin does not fall within the Subcommittee's jurisdiction.

4. Increase oversight of the relocation and rental payment processes.

We ask the Subcommittee to support increased oversight over the relocation process. The Department of Interior's OIG stated that if the Subcommittee provided additional funding, it could review ONHIR's eligibility determination, administrative appeal, and relocation practices. These matters desperately need review. Additionally, we request a GAO study of ways ONHIR could be made more efficient and could be reoriented to focus on home construction. We also request that the Subcommittee in report language encourage the prompt appointment of an ONHIR Commissioner.

We also request report language encouraging DOI to conduct a study and furnish a report regarding lease payments due from the Navajo Nation to the Hopi Tribe (see 25 U.S.C. § 640d-15(a)). The BIA delays for years in making these rental determinations, resulting in huge interest payment obligations on the part of the Navajo Nation.

5. Expand BIA efforts to mitigate hardship in the relocation and redevelopment processes.

We 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 processes.

We also request relief for the Navajo trust obligation and reauthorization of the Navajo Rehabilitation Trust Fund (NRTF) to be used for developing areas impacted by the Bennett Freeze. The NRTF provided resources to the Nation to address “the rehabilitation and improvement of the economic, educational, and social condition of families and Navajo communities that have been affected by” the relocation law. 25 U.S.C. § 640d-30.

Congress should also seriously consider authorizing ONHIR to oversee reconstruction activities within the FBFA, with the Navajo Nation having the option of assuming control of those activities affecting Navajo people and lands and the option of assuming control of the proposed trust fund.

6. Establish a DOI Task Force to assess opportunities to aid redevelopment.

We request the Subcommittee include report language that would establish a DOI taskforce to undertake a review of Interior programs that would benefit the FBFA and assist the Navajo Nation in creating jobs and supporting workforce development with a goal of strengthening the relocation-impacted Navajo chapter communities. Such taskforce should include the BIA, Bureau of Reclamation, U.S. Geological Survey, Fish and Wildlife Service, and Office of Surface Mining and should examine programs such as the Economics and Resource Planning Team and Rural Tribal Water Projects.

Conclusion. The major legal struggles between the Navajo Nation and the Hopi Tribe are largely over, but there remain significant humanitarian issues resulting from Federal relocation policy. The NHLC is committed to working with you to find ways to bring about the end of the relocation era in an efficient, effective, and compassionate manner. Thank you for the opportunity to present this testimony.