

**Written Testimony of Walter Phelps
Chairman, Navajo-Hopi Land Commission
23rd Navajo Nation Council**

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

March 18, 2016

Requests:

1. **Provide necessary funding to complete relocation, address housing concerns of relocatees, and fund legal services for Indian appellants.**
2. **Provide \$20 million for critical needs in the former Bennett Freeze Area.**
3. **Establish the Navajo Tribe Sovereignty Empowerment Demonstration Project.**
4. **Increase oversight of the rental payment processes.**
5. **Require the Office of Navajo and Hopi Indian Relocation collaborate and consult with the Navajo Nation and the U.S. Department of the Interior in creating a feasible close out and transition plan to be submitted by September 31, 2016**

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 Commission, I sincerely thank the subcommittee for its attention to the former Bennett Freeze Area (FBFA) and the Office of Navajo and Hopi Indian Relocation (ONHIR). We appreciate the time you took last year to visit the Navajo Nation to witness the devastating effects of relocation firsthand and appreciate the increased funding in fiscal 2016 to expedite the ONHIR's work and provide further investigation and oversight through evaluation by the U.S. Department of Interior (DOI) Office of Inspector General (OIG). 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 history. We believe the federal government has a responsibility to bring this closure about in a conscientious and compassionate manner and to ensure a smooth and complete transition of ongoing responsibilities before closure.

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 Navajos—the largest forced relocation since the internment of Japanese-Americans. 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 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 FBFA that remains severely economically depressed in large part due to the U.S.-imposed, 40-year development

freeze.

ONHIR Operations. The DOI OIG has published two reports on the ONHIR since 2014 that identified two causes for the delay in completing relocation: ONHIR's failure to complete eligibility determinations, which have recently been completed; 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 non-English speaking Navajo elders adding to the suffering that relocation has imposed upon the Navajo people. This appeals process is also costly for both the agency and for the Navajo Nation, who has fully funded the Navajo-Hopi Legal Services Program (NHLS), legal representation of appellants, since 2011 and subsidized in prior years.

In recent years, ONHIR has failed to consult with the Navajo Nation prior to taking action on areas that often infringes upon the due process rights of the Navajo people. ONHIR's counsel regularly references evidence in his post-hearing memoranda that was not disclosed or admitted into evidence during the administrative appeal hearings for applicants for relocation compensation. As a result, the Administrative Law Judge (ALJ) often denies applicants' appeals based on ONHIR's undisclosed evidence. The ALJ prohibits applicants' counsel (i.e., Navajo Nation attorneys, who provide representation to individual Navajo relocatees) from sending him evidence before the hearing as is allowed pursuant to pre-hearing procedures. Instead NHLS attorneys are required by the ALJ to send evidence through ONHIR. NHLS reports that ONHIR regularly refuses or fails to share that evidence with the ALJ. Furthermore, ONHIR has also enacted new policies, 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 approximately 96 certified applicants and approximately 200 pending administration appeals. Meanwhile, many relocatees that have received benefits live in ONHIR-built houses that are literally falling down around them.

ONHIR requires greater oversight. ONHIR has not had a commissioner in 20 years, since the resignation of Commissioner Kunasek in 1994. The Navajo Nation has requested appointment of a new commissioner through a letter to President Obama, through NHLC Resolution NHLCO-36-13(A), and through past testimony to this subcommittee. This lack of oversight has meant ONHIR has not fully complied with Executive Order 13175 and the president's November 5, 2009 memorandum on tribal consultation. The NHLC was not informed that ONHIR intended to close at the end of fiscal 2018; the NHLC learned this through the 2017 budget testimony provided to this subcommittee one month ago. During meetings with ONHIR, the executive director routinely refuses to provide answers and directs our leaders and employees to submit questions in writing so he can respond. With greater oversight, redirection, and full funding, the agency should be able to accomplish a timely and compassionate conclusion to the relocation era and comprehensive transition.

The Former Bennett Freeze Area. In 1966, Commissioner of Indian Affairs Robert Bennett froze development that lasted 40 years in 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, address relocatee concerns, and provide legal representation to Indian appellants

We applaud this subcommittee for the increased funding realized in fiscal 2016 to expedite the relocation work of OHNIR and request the funding level be continued in 2017. 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.

As outlined in the February 2016 DOI OIG report, the housing built by ONHIR or at its direction, in the communities of Little Silversmith, Middle Well, and East Mills, all evidence damage. Many are in need of repair and many should be replaced all together. As stated on Page 8 of the report, "It is difficult to envision a course of action other than relocating all of the East Mill residents for a second time." These issues must be immediately addressed by OHNIR. It is imperative that by the end of fiscal 2017, all repairs and replacements are completed to allow time for follow-up by ONHIR before its intended closure in 2018. We are not assured that the level of funding contained in the president's budget request will adequately accomplish this necessary task.

The Navajo Nation requests \$450K in legal service funding for it to provide legal representation of Indian appellants. We have continued to do so in the absence of funding from ONHIR. Additionally, for the procedural due process issues stated *supra*, we request report language that prohibits ONHIR from imposing restrictions on the use of the funds by NHLS. This is due to NHLS desire to fund an additional attorney, but, in the past, was required by OHNIR to use the funds for 1 attorney and 1 tribal court advocate. Also, NHLS wants to provide legal assistance to the appellants at all appeal stages.

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

The critical needs of the people living in 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. Navajo Tribal Sovereignty Empowerment Demonstration Project

The NHLC asks the subcommittee to support new incentives to encourage private sector investment in the FBFA and other relocation-impacted areas by permitting the waiver of certain Federal laws (but keep in place their Navajo equivalents) for the limited purposes of renewable energy, housing, public and community facilities and infrastructure development within certain empowerment zones (limited to 150,000 acres). It is hoped that by streamlining the regulatory process, development in these areas will be spurred because federal, tribal and private dollars can be stretched further to spur increased development.. An example of the language that could be use to advance these goals can be found in Section 4 of HR 3911.

4. Increase oversight of the rental payment processes.

We 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. *See* HR 3911, § 3.

5. Mandate ONHIR collaborate and consult with the Navajo Nation and DOI in creating a close out and transition plan to be submitted by September 31, 2016

The Navajo Nation is in no way assured ONHIR can accomplish all close out and transition activities by its stated closure date of September 31, 2018, only 28 months from now. We request the subcommittee include report language that would require ONHIR complete a comprehensive assessment of ongoing duties, and necessary closing and transition activities within three months time. Then, in consultation with the Navajo Nation and DOI, develop a transition plan with feasible timelines and costs associated with ongoing duties, to be due to Congress by end of fiscal 2016. This is to ensure ONHIR does not close prematurely and that the costs of ongoing duties are funded appropriately following ONHIR's closure.

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.