

**Written Testimony of the Honorable Otto Tso
Chairman, Navajo-Hopi Land Commission of the
25th Navajo Nation Council**

Submitted to the

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

February 12, 2020

Requests:

- 1. Ensure the Navajo Nation is Adequately Informed of any Changes to ONHIR.**
- 2. Continue to provide necessary funding to fulfill basic infrastructure promises to Relocation Communities through a Multi-Agency Approach.**
- 3. Forgive the obligation to repay the Navajo Rehabilitation Trust Fund and reauthorize the fund.**
- 4. Provide \$20 million for critical needs in the Former Bennett Freeze Area.**

Introduction. Chairwoman McCollum, Ranking Member Joyce, Members of the Subcommittee, thank you for this opportunity to submit written testimony on behalf of the Navajo Nation Council's Navajo-Hopi Land Commission (NHLC). The NHLC is entrusted with addressing the ongoing effects of the Federal relocation of 16,000 Navajo people off their ancestral lands and the realities of the 12,000 Navajo citizens living in the former Bennett Freeze area.

We thank this Subcommittee for its steadfast commitment to bringing a humane end to the tragedy of Navajo relocation. We remember and appreciate the Subcommittee's 2015 visit to the Navajo Nation to witness firsthand the effects of relocation and the increased funding that the Subcommittee subsequently provided, which has largely brought an end to the home-building responsibility of the Office of Navajo Hopi Indian Relocation (ONHIR). In addition, we thank this Subcommittee for hosting a roundtable in June 2018 to discuss the remaining obligations of ONHIR and your commitment to ensure that United States fulfills its promises to relocatees.

While perhaps more than any other party involved in this long and painful chapter the Navajo Nation would like to see the closure and end to the Relocation era. However, the Navajo Nation cannot support closure without a plan that lives up to the promises that were made to the Nation and most importantly the families who relocated from their ancestral homes with promises that have remained unfulfilled. While we understand the desire to end this failed policy the lack of consultation, communication, and basic planning is deeply worrying to the Nation. We are deeply concerned of the future of ONHIR and the lack of consultation with the Navajo Nation in this process. We appeal to this Subcommittee to ensure that the United States Governments upholds its trust responsibility to the relocatee families and ensure that there is no closure until a fair and equitable plan is developed for closure.

Federal Relocation Efforts are Uncertain. The Navajo Nation has not been informed of the future of ONHIR. Just two year ago the Federal government appeared poised to close down

ONHIR, which was established by Congress to carry out Relocation activities pursuant to the Navajo Hopi Land Settlement Act of 1974. Without any consultation with the Nation, the Administration planned to begin transferring ONHIR's responsibilities to other Federal agencies. In addition, it appeared that the Department of the Interior began planning to close ONHIR. The Nation expressed serious concerns with the lack of transparency, consultation and planning on ONHIR's future without the Navajo Nation—the major stakeholder of ONHIR. The Navajo Nation has continually requested that the United States consult with the Navajo Nation before any actions are taken regarding ONHIR. In addition, the Navajo Nation has requested information regarding audits of ONHIR but has not received any responses.

The Navajo Nation is appreciative that the Subcommittee has remained committed to the commonsense idea that ONHIR cannot close without a plan developed in coordination with the Navajo Nation. We continue to request that the Subcommittee live up to that promises made to relocatees and push for an adequate and proper plan to be developed before any changes are made that have the potential to negatively impact relocated families.

Multi-Generational Trauma. Unfortunately, the relocation not only adversely impacted the relocatees themselves, but has had an adverse ongoing impact on their children and grandchildren resulting from the dislocation off of ancestral lands, separation from sacred landscapes, and housing and employment shortages at the relocation sites, among other stresses. These issues also need to be addressed by the Federal government.

Multi-Agency Effort to Address Infrastructure. We appreciate the time the Subcommittee has given to the issues related to the relocation of citizens of the Navajo Nation. Given the history of forced Navajo relocation via the Long Walk to internment at Bosque Redondo, we are sure that you can appreciate that the federal commitments to minimize the impacts of relocation here and to provide for necessary infrastructure were critical inducements for thousands of Navajos to relocate. Also, unlike the general infrastructure needs for the Navajo Nation and other Indian Nations, the specific infrastructure needs for Navajo relocatees were created by the federal government's own recent commitments for and relocation of Navajo families.

As the Nation has previously noted, during deliberations on the Settlement Act, the Senate Committee on Interior and Insular Affairs set forth guiding principles for the relocation program. Of particular importance were principles 9 and 11:

9. That any such division of the lands of the joint use area *must be undertaken in conjunction with a thorough and generous relocation program to minimize the adverse social, economic, and cultural impacts of relocation on affected tribal members* and to avoid any repetition of the unfortunate results of a number of early, official Indian relocation efforts;

....

11. That because of the Federal Government's repeated failure to resolve the land disputes, *the major costs of resolution should be properly borne by the United States.*¹

¹ See Senate Comm. on Interior and Insular Affairs, Report on Resolution of Navajo-Hopi Land Dispute, S. Rep. No. 93-1177, at 19-20 (1974) (emphasis added).

With these principles in mind, Congress in the Settlement Act ordered the preparation and submission of a relocation report and plan. That plan must, among other things:

(2) take into account the adverse social, economic, cultural, and other impact of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts;

...

(4) assure that housing *and related community facilities and services*, such as water, sewers, roads, schools, and health facilities, for such household shall be available at their relocation sites; and

(5) take effect thirty days after the date of submission to Congress²

Not surprisingly, the relocation plan submitted to Congress specifically highlighted these key federal commitments. Unfortunately, the United States later attempted to ignore these commitments despite the prior statutory and plan mandates and the related inducements to thousands of Navajos. However, out of the recent roundtable has come an important option to revisit an insufficiently used relocation power.

The Navajo and Hopi Indian Relocation Amendments of 1988 authorized ONHIR to call upon any department or agency of the United States to assist in carrying out the relocation plan.³ That Act further provides that, if any agency fails to provide reasonable assistance, ONHIR shall report such failure to the Congress.⁴ In the Commission's 1983 Report and Plan Update, the agency stated that it was still unable to make some plans because of the non-availability of land selections. But, it also stated its intention to "[i]nitiate coordination efforts *to establish joint governmental agency involvement* for future relocation to deal with such areas as employment, roads, utilities, and like areas of need."⁵ We therefore urge this Subcommittee to include language in the appropriations report supporting this multi-agency approach and calling upon ONHIR to use its statutory powers to begin planning with other federal agencies. Such language is important to ensure that the relevant federal commitments are not forgotten and begin before the closure of ONHIR. Many federal agencies can be helpful and should be involved in the development of a transition plan.

There also are potentially many more federal agencies that can and should play a role and be involved in transition planning. We understand that the planning and development of additional infrastructure may take several years. However, we strongly believe that because of the federal promises that induced Navajo families to relocate, to their detriment, priority or dedicated funding is needed to address relocatee needs and funding for ONHIR should remain at current levels to slowly work on infrastructure needs.

² Pub. L. 93-531, §§ 13(c)(2), (4), (5), 88 Stat. 1712, 1718 (1974) (emphasis added).

³ Pub. L. 100-666, § 4(a), 102 Stat. 3929, 3930 (1988) (formerly codified as 25 USC 640d-11(e)(1)).

⁴ *Id.* (formerly codified as 25 USC 640d-11(e)(2)).

⁵ Navajo and Hopi Indian Relocation Comm'n, Report & Plan Update 31-36 (1983) (emphasis added).

Navajo Rehabilitation Trust Fund. We 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 Navajo 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. The legislative history makes clear that the rehabilitation trust fund was designed to ensure that the infrastructure promises made in the Settlement Act were fulfilled. One of the land selections of the Navajo Nation was the Paragon Ranch. It was estimated to sit on hundreds of millions of dollars of coal royalties. When the Trust Fund was added to the law the idea was that the United States would front the fund to begin infrastructure development and the Nation would repay those funds and use the future coal royalties to develop the infrastructure needs of relocates.

However, this never occurred. The resources of Paragon Ranch were never developed. The NRTF was authorized to \$60 million in 1995, only \$16 million of which the Nation accessed. The Navajo Nation respectfully requests that the full amount of allocations be reauthorized, and that past and future appropriations be forgiven, as the costs of addressing the impacts of the Relocation are more properly borne by the Federal government.

The Former Bennett Freeze Area. In 1966, Commissioner of Indian Affairs Robert Bennett imposed a development freeze that lasted for 40 years, devastating a 1.6-million acre area encompassing nine Navajo Chapter communities. Going back to the "War on Poverty" and the "Great Society Program" and continuing through numerous Federal economic and anti-poverty initiatives, as well as programs directed at Indians in particular, this area was ineligible for aid. For the Former Bennett Freeze Area (FBFA) to recover and redevelop, there must be a sustained reconstruction program. Critical needs include housing, safe drinking water, electricity, timely emergency response services, telecommunications infrastructure, and community facilities. We request the Subcommittee allocate \$20 million to the FBFA out of the BIA Trust Natural Resources Account (Natural Resources Subactivity).

Conclusion. Navajo Relocation is one of the greatest tragedies in modern United States history. More than any other party, the Navajo Nation wishes for the swift and efficient completion of ONHIR's responsibilities. We understand that the agency has remained open far longer than intended and spent far more money than was ever contemplated. However, the Navajo people have not received the full benefit of this funding. We are at a critical juncture where the United States can live up to its word to the Navajo families who were relocated by continuing to fund ONHIR at current levels and using forgotten legislative powers to slowly build out promised infrastructure. The Navajo Nation is deeply appreciative of the support and compassion of the Subcommittee and we request that this Subcommittee continue to work closely with the Navajo Nation to assure the fulfillment of the commitments of the United States.