



EASTERN NAVAJO LAND COMMISSION

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George Tolth, Member

Danny Simpson, Member
Loren Cooke, Member
Leonard Tsosie, Executive Director

July 24, 2023

Hon. Pete Stauber, Chairman
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
1626 Longworth House Office Building
Washington, DC 20515

Re: Statement for Inclusion in Record - H.R. 4374

Dear Chairman Stauber:

Attached is the Resolution of the Eastern Navajo Land Commission in support of H.R. 4374. We request that it be included in the legislative record.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Tsosie", with a horizontal line extending from the end.

Leonard Tsosie
Executive Director
Eastern Navajo Land Commission

RESOLUTION OF THE EASTERN NAVAJO LAND COMMISSION

SUPPORTING THE ENACTMENT OF LEGISLATION H.R. 4374
INTRODUCED BY REPRESENTATIVE CRANE
TO NULLIFY PUBLIC LAND ORDER 7923

WHEREAS:

1. The Eastern Navajo Agency Commission (“ENLC” or “Commission”) is established as a Commission of the Navajo Nation under the Legislative Branch, *see* 2 N.N.C. § 861 *et seq.* (2005), as amended by Navajo Nation Council Legislation No. 0589-07 (April 22, 2008); and

2. Among other authorities and duties under the amended ENLC Plan of Operation, the ENLC is charged with assuming primary responsibility for the direction of the Navajo Nation’s land acquisition and consolidation efforts in the Eastern Navajo Agency, 2 N.N.C. § 863(I), as amended; and

3. Among other land-related initiatives, the Commission has drafted, and the Navajo Nation Council has approved, proposed federal legislation to effect the exchange of certain federal and Navajo Nation lands and to protect archaeological resources in the Eastern Navajo Agency (the so-called “NELI” legislation), and the Commission has considered various proposals designed to protect Chacoan ruins and relics (together, the “Chacoan Resources”) in the Eastern Navajo Agency; and

4. The vast majority of the Chacoan Resources are located in the Eastern Navajo Agency; nonetheless, Secretary of the Interior Haaland issued Public Land Order 7923 with no genuine consultation with the only people affected by that Public Land Order – the Navajo allottees and residents of the Eastern Navajo Agency and the Navajo Nation itself and its constituent Chapters – and did so contrary to the expressed wishes of the Navajo Nation leadership; and

5. The interests of the Navajo Nation and its citizens in the lands adversely affected by Public Land Order 7923 (the “Lands”) include or are supported by the following facts, which show violations of the rights of the Navajo Nation, Navajo allottees, and residents of land administered by either the Bureau of Indian Affairs or the Bureau of Land Management:

A. The Lands are within the adjudicated Navajo aboriginal territory, as determined by the Indian Claims Commission, meaning that the area has been used exclusively by the Navajo Tribe of Indians since time immemorial.

B. The Lands are within the Navajo Land Consolidation Area under the federal Indian Land Consolidation Act, one of only a handful of such federally approved tribal land consolidation areas.

C. The Lands are within Navajo Nation Chapters, recognized by the Navajo Nation and by federal and New Mexico courts as authorized local governing bodies.

D. The Lands are subject to individual and/or family-based aboriginal occupancy rights that are “as sacred as the fee title of the whites” under United States Supreme Court decisions dating back to the great Chief Justice Marshall near the founding of the United States, that predominate even over federal patents issued to others under Supreme Court precedent, and that were recently acknowledged by the Interior Board of Land Appeals. Such rights remain unadjudicated notwithstanding efforts initiated by then-Solicitor Felix Cohen because of the years-long resistance to adjudicating them by the General Land Office, the predecessor of the federal Bureau of Land Management.

E. The Public Land Order adopts a 10-mile buffer zone around any known Chacoan Resource, effectively rendering oil and gas development in the Eastern Navajo Agency uneconomic. The selection of a 10-mile buffer zone is wholly arbitrary. It and serves to accomplish a near total ban on mineral development in the Eastern Navajo Agency, a 10-mile “buffer zone” has no rational relationship with the protection of Chacoan Resources, and the promulgation of the Public Land Order therefore violates the Administrative Procedures Act.

F. Federal environmental law, including the National Environmental Policy Act (“NEPA”), requires the preparation of an Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”) that adequately discusses the impacts, including the impacts on disadvantaged communities, of any proposed federal action. However, no EIS was produced to support the Public Land Order, and the EA that was produced is legally inadequate for, among many other things, failing to address meaningfully the adverse impacts on revenues to allottees and to the Navajo Nation as fractional interest holder of hundreds of the allotments and as present or future owner of land in its own right.

G. The allotment owners litigated against the United States for 13 years to gain recognition that Navajo allottees, and not the United States, are the owners of the allotments underlying the allotted surface, in the so-called *Mescal* class action lawsuit. Public Land Order 7923 effectively nullifies the allottees’ hard-won mineral rights, and one estimate of the damage to the allottees during the 20-year period of the Public Land Order is \$194 million. The Public Land Order (and its supporting EA) fails to meaningfully consider that impact, thus violating NEPA and the United States’ trust duty to the Navajo allottees.

H. The Navajo people of the Eastern Navajo Agency are the people responsible for reconstructing and maintaining Chacoan ruins (as reflected in an exhaustive report of the National Park Service), and the Navajo people have assured that such resources that are scattered throughout the Eastern Navajo Agency and on lands owned or used by the Navajo remain undisturbed. Indeed, it was the Navajo

Nation and its citizens who successfully litigated for decades against federal agencies to successfully oppose federal proposals to allow surface coal mining to the very edges of the Chaco Canyon National Historical Park.

I. The Navajo Nation has a cultural affiliation with the Chacoan civilization, as acknowledged as an outgrowth of litigation brought by the Navajo Nation against the United States to remedy the unlawful theft by the National Park Service of human remains and artifacts from Canyon de Chelly.

J. Federal, New Mexico, and Navajo Nation laws, including NEPA, the National Historic Preservation Act, the Federal Land Policy and Management Act (and their state and tribal counterparts) have proved quite effective and sufficient to protect the Chacoan Resources. The supposed motivation in the Public Land Order to protect such resources is pretextual; and

6. Representative Eli Crane (AZ-02) has introduced H.R. 4374, as shown in the attached federal legislation, to nullify Public Land Order 7923; and

7. The Commission has considered the above and has determined that it should formally support the enactment of Representative Crane's bill and should coordinate the Commission's position with the Speaker of the Navajo Nation Council and the Navajo Nation Office of the President and Vice President, urging them or either of them to take any and all appropriate action, including litigation if appropriate, to restore the *status quo ante* to the Eastern Navajo Agency.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

1. The Eastern Navajo Land Commission supports the enactment of the attached bill introduced or to be introduced by Representative Crane.

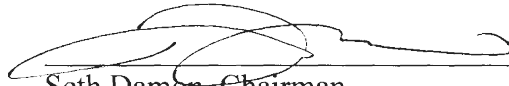
2. The Commission authorizes its Chair and Executive Director to communicate the position of the Commission as expressed by this Resolution to the Office of the Speaker of the Navajo Nation Council and to the Office of the Navajo Nation President and Vice President ("OP/VP"), and to ensure that the position of and any actions to be taken by the Commission are in conformity with the position of the Navajo Nation Council.

3. The Commission respectfully requests the Speaker, the Navajo Nation Council, and the OP/VP to support the nullification of Public Land Order 7923 by any appropriate means and to vigorously oppose any future attempts to impose federal land use controls in the Eastern Navajo Agency that are determined by the Navajo Nation to contravene the best interests of the Navajo Nation and its citizens.

4. The Chair and/or his authorized delegate are authorized to take any and all reasonable steps to effectuate the letter and intent of this Resolution.

CERTIFICATION

I hereby certify that the foregoing Resolution was considered at a duly called meeting of the Eastern Navajo Land Commission at Churchrock, Navajo Nation (New Mexico) at which a quorum was present and that the same was passed by vote of 3 in favor and 0 opposed (the Chair not voting), this 30th day of June, 2023.

A handwritten signature in black ink, appearing to read 'Seth Damon', written over a horizontal line.

Seth Damon, Chairman
Eastern Navajo Land Commission

Motion: George H. Tolth
Second: Loren Cooke