



THE NAVAJO NATION
EASTERN NAVAJO AGENCY COUNCIL

Post Office Box 1442 • Crownpoint, New Mexico 87316
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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

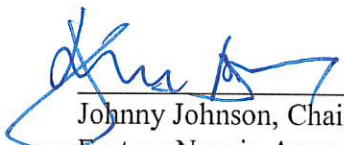
Re: Statement for Inclusion in Record - H.R. 4374

Dear Chairman Stauber:


Attached is the Statement of the Eastern Navajo Agency Council in support of H.R. 4374.
We request that it be included in the legislative record.

Thank you.

Sincerely,



Johnny Johnson, Chair
Eastern Navajo Agency Council



Ervin Chavez, Vice Chair
Eastern Navajo Agency Council



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**STATEMENT OF THE EASTERN NAVAJO AGENCY COUNCIL
ON H. R. 4374**

The Eastern Navajo Agency Council is a Navajo governmental body comprised of all Chapter Officers, Grazing Officials, Land Board members, and Navajo Nation Council delegates in the Eastern Navajo Agency. A Navajo Nation “Chapter” is the recognized local governing entity under the Navajo system of government. *See* 2 N.N.C. § 4001 *et seq.*; *Thriftway Mktg. Corp. v. State*, 111 N.M. 763, 765-76 (Ct. App. 1990). The Eastern Navajo Agency is the approximate 2.7-million acre area in northwest New Mexico under the administrative jurisdiction of the Bureau of Indian Affairs within the Department of the Interior. There are 31 Chapters within the Eastern Navajo Agency. This Statement is provided by the Eastern Navajo Agency Council through its undersigned Chairman and Vice Chairman.

The Eastern Navajo Agency Council unreservedly supports the passage of H. R. 4374, the “Energy Opportunities for All Act” (the “EOAA”). The EOAA would nullify Public Land Order 7923 (“PLO 7923”) issued by Secretary of the Interior Haaland (the “Secretary”). PLO 7923 is a wrong-headed approach to solve a non-existent problem. PLO 7923 operates to the detriment of the Navajo Nation, to which Secretary gave absolutely no deference despite the Navajo Nation’s predominant interests in the Eastern Navajo Agency, or to the Navajo owners of trust allotments in the Eastern Navajo Agency, to whom the Secretary owes a trust duty but whom the Secretary cavalierly disregarded in promulgating PLO 7923 at an estimated cost to them of \$194 million over the next twenty years.

Navajo people comprise 95% of the entire population of the Eastern Navajo Agency. The Navajo government provides most of the governmental services in the area. No other Native nation has any significant population in the area and no other Indian nation provides *any* government services in the area. Almost all of the land in the Eastern Navajo Agency is held in trust for the Navajo Nation, held in trust for individual Navajo allottees, held in fee status by the Navajo Nation, or used by Navajo individuals in the exercise of their family-based unextinguished aboriginal occupancy rights.

PLO 7923 purports to protect Chacoan cultural resources, but in reality is a camouflage for the Department to create a massive no-development zone in an impoverished region with great potential for oil and gas development. There is no need whatsoever for PLO 7923, if it is truly intended to protect Chacoan resources. Those resources have been protected for about 1000 years or more, originally by the local Navajo population and more recently through enforcement of federal, New Mexico, and Navajo laws specifically designed to protect such cultural resources, including the National Historic Preservation Act, the National Environmental

Policy Act, the Antiquities Act of 1906, the Historic Site Act of 1935, the Historic and Archaeological Data Preservation Act of 1974, the Navajo Nation Cultural Resources Protection Act (19 N.N.C. § 1001 *et seq.*), the amended New Mexico Cultural Properties Act of 1969, Executive Order 11593, and BLM's organic act, the Federal Land Policy and Management Act.

At the hearing on H. R. 4374 before the Subcommittee on Energy and Mineral Resources of the House Natural Resources Committee, the person testifying on behalf of the Secretary was Nada Culver, identified as the Bureau of Land Management ("BLM") Principal Deputy Director. This is more than just ironic. Literally for decades, the BLM sought to allow massive *coal strip mining* right to the edges of and all around the Chaco Canyon National Historical Park, reporting that coal strip mining, with its attendant blasting, earth removal, and rail construction and transportation, would have no appreciable impact on Chacoan cultural resources.¹

In general, the BLM, including through its predecessor the General Land Office ("GLO"), has historically ignored or consciously subordinated the rights, needs and interests of the Navajo people in the Eastern Navajo Agency. These actions include, among other things, withholding allotment patents to the Navajo population "for no legitimate reason,"² despite Secretary Ickes statement in 1933 that Navajos were entitled under the allotment laws to "practically all of the vacant public domain in San Juan County and other counties,"³ and, after the GLO stymied the allotment efforts, subverting a years-long effort in the late 1940s, initiated by Solicitor Felix Cohen, to define individual or family-based aboriginal rights of Navajo people. Those rights remain valid, but unadjudicated. *See United States v. Tsosie*, 92 F.3d 1037 (10th Cir. 1996) (affirming District Court's judgment that the United States was required to exhaust Navajo Tribal Court remedies in addressing claim of unextinguished aboriginal occupancy right of Navajo woman residing in Eastern Navajo Agency); *Thermal Energy Co.*, 183 IBLA 126, 135-36 (2013) (summarizing testimony of historian Mark Leutbecker and Larry Rodgers). Such occupancy rights are "as sacred as the fee-simple title of the whites." *E.g.*, *United States v. Santa Fe Pac. R. Co.*, 314 U.S. 339, 345-46 (1941), quoting *Mitchel v. United States*, 34 U.S. (9 Pet.) 711, 746 (1835).

PLO 7923, on its face, prohibits mineral development only on lands administered by the BLM within an arbitrary ten miles of selected Chacoan cultural resources throughout the Eastern Navajo Agency, but it has the practical effect of prohibiting mineral development on all lands in the region, including Navajo Nation and allotted trust lands, as indicated on the attached map prepared by attorneys for the Navajo allotment owners. The Navajo allottees litigated against

¹ *See, e.g.*, Environmental Assessment for Coal Preference Right Leasing (Sept. 1981) (incorporating Draft Environmental Assessment [June 1981] at pp. 3-20 to 3-23) (stating that the proposed coal strip mining "would result in increased scientific knowledge about past cultures in the [coal leasing] area" and stating that adequate mitigation would result from a Programmatic Memorandum of Agreement).

² Bailey, *A History of the Navajos: The Reservation Years* (1986) at 117.

³ Letter from Secretary of the Interior Harold Ickes to New Mexico Governor Arthur Seligman (Aug. 31, 1933) at 3.

the government for over a decade to obtain a declaration that they, and not the federal government, own the minerals underlying the surface of their allotments,⁴ and PLO 7923 essentially takes the value of those minerals away from the Navajo allotment owners.

The entire area affected by PLO 7923 is within the Navajo tribe's recognized aboriginal land base, as determined in the Indian Claims Commission in Docket 229. That means that these lands have been used and occupied *exclusively* by the Navajo people *since time immemorial*. "Exclusively" means precisely that. *See, e.g.*, the recent attached letter to the editor of the *Navajo Times* from retired Department of the Interior Archaeologist David Siegel. In addition, all of the affected lands are within the Secretarially approved Navajo Land Consolidation Area designated in the Navajo Land Consolidation Plan, one of only a handful of approved tribal land consolidation plans approved by the Department of the Interior under the federal Indian Land Consolidation Act. Most of the affected land is also within the boundaries of the Executive Order 709/744 extension to the Navajo Reservation, and the federal lands within that 1.9 million acre area were illegally restored to the public domain and remain, as a legal matter, trust property of the Navajo Nation unlawfully administered by the BLM. *See Navajo Tribe of Indians v. State of New Mexico*, 809 F.2d 1455, 1459 n. 9 (10th Cir. 1983)⁵; Affidavit of Herbert Stacher, attached hereto.

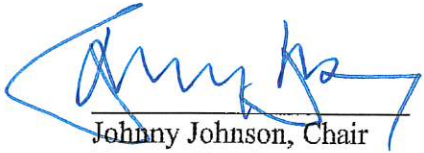
The official position of the Navajo Nation is reflected in Resolution No. NABIAP-11-23 of the Committee of the whole of the Navajo Nation Council, the Naabik'iyati' Committee. That resolution was submitted to Chairman Stauber by the Speaker of the Navajo Nation Council with her letter dated July 12, 2023. "The legitimacy of the Navajo Tribal Council, the freely elected governing body of the Navajos, is beyond question." *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 201 (1985) (footnote omitted). Secretary Haaland gave no deference to the Council's considered position. And as Navajo Nation Buu Nygren testified before the Subcommittee, Secretary Haaland gave no deference to him, even as he attempted a compromise with the Department. This is inexplicable in any rational sense, given the unique, most substantial interests of the Navajo Nation in the area. As President Nygren testified, "Respect for tribal sovereignty must be consistent even when it is not convenient."

The Eastern Navajo Agency Council supports the official position of the Navajo Nation. There should be no "buffer zone"; none is needed, and a ten-mile buffer zone is wholly arbitrary. It represents the Secretary's continued assault on resource development and property rights. The Eastern Navajo Agency Council therefore wholeheartedly supports the enactment of H. R. 4374.

⁴ Order Approving Settlement of All Claims, *Mescal v. United States*, No. Civ. 83-1408-LH/WWD (Jan. 28, 1997).

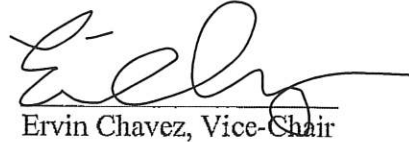
⁵ The Court of Appeals affirmed the dismissal of the Navajo Nation's claim of title based on the failure of the Department of the Interior to grant allotments to all Navajos within the EO 709/744 extension, based on the statute of limitations in the Indian Claims Commission Act. 809 F.2d at 1464. However, such a dismissal does not extinguish the underlying right to the land. *See United States v. Gammache*, 713 F.2d 588, 591-92 & n.9 (10th Cir. 1983).

Respectfully submitted,



Johnny Johnson, Chair
Eastern Navajo Agency Council

July __, 2023



Ervin Chavez, Vice-Chair
Eastern Navajo Agency Council

July 11, 2023

Ancestral claim by Pueblos is unsubstantiated

Editor,
Should thoughtless federal government policy ever be based solely on vague, unsubstantiated beliefs of some people, especially when those beliefs have the direct consequence of harming others?

Under Secretary Deb Haaland, and the National Park Service, the US Department of the Interior has stolen Navajo property rights. The sole basis of this errant policy is that Pueblos in New Mexico hold a vague belief that Chaco is "ancestral" to themselves. They can offer no proof, because there is none. The federal policy is based solely on a vague belief.

Has anyone examined this belief objectively, in a deliberative, systematic manner? Is there any proof that Chaco is "ancestral" to the modern Pueblos, or to any other federally recognized tribes in the US? One could say that there is no proof either way - pro or con - and that would be correct. So why is this one belief being arbitrarily and harshly imposed on the Navajo families who live near Chaco Canyon?

There is no proof that the modern Pueblos descended from Chaco. The Pueblo assertion of Chacoan ancestry is based entirely on a concept, not on empirical fact. In fact, there is a preponderance of evidence that the Chacoans were temporary colonizers from the far south - from the lands we call Mexico today.

The Chacoans came, built their monumental structures and roads, stayed in the region for several generations, but ultimately left. Why they chose Chaco Canyon as the location of their colonial center is something we will probably never know. There are no written records that can explain any of this - only the abandoned buildings and roads of 900 years ago. Certainly, the Chaco colonizers had an influence on the early pueblo inhabitants, but it is just as likely that they were not the ancestors of the modern Pueblos.

What proof do D.O.I. and the NPS offer in calling Chaco "Ancestral Pueblo"? There is no proof - just Pueblo sentiments. Someone's belief is not proof, but when that belief is used to impose harsh policies on others, real harm can be done. I have known so many white people who actually believe they are descendants of this or that royal family in Europe, or some prominent figure in history - Thomas Jefferson, Jesse James, Billy the Kid,

General Patton, whoever.

What proof do they have? They don't have any proof - they just believe it to be true because the story has been repeated through the years by relatives who believed it themselves. Some even hop on the internet to buy phony family "Coats of Arms" to hang on the wall for \$19.95, as if those emblems somehow substantiate the old family tales.

A perfect analogy to Chaco would be the sudden appearance of large buildings across Syria, Lebanon, and Jordan in the 12th century. Because we have written history in several languages, we know who the builders of those buildings were, and where they came from. We know what languages they spoke, how they dressed. We know when they came, what they wanted, and when and why they left.

We call them the Crusaders, and their historic period is known as the religious Crusades. The Crusaders came from Europe. They had a lasting impact on the indigenous Arab people who lived in the Middle East - an impact that is felt to this day. But would anybody call the long-abandoned Crusader castles and fortresses "Ancestral Arab"? Of course not!

To call Chaco "Ancestral Pueblo", without any hope of proof is worse than public misinformation, or an innocuous bureaucratic jump to conclusions. The "Ancestral Pueblo" misnomer can and has become the basis of an inappropriate and arbitrary federal government policy, which harms Navajo families.

The Navajo people have every right to protest this arbitrary government imposition. I hope they will continue to protest the wrongful policy vigorously, and I hope they will prevail in court and in Congress.

David Siegel
Retired Department of the Interior
archeologist
Albuquerque