

THE NAVAJO NATION



Written Testimony of Carl Slater, Delegate to the 25th Navajo Nation Council
House Natural Resources Subcommittee on Oversight and Investigations
Limiting Access and Damaging Gateway Economies: Examining the National Parks Air Tour
Management Program

December 5, 2023

Yá'át'ééh Chairman Gosar, Ranking Member Stansbury, and Members of the Subcommittee:

My name is Carl Slater. I am a member of the 25th Navajo Nation Council, representing the communities of Tsaile/Wheatfields, Lukachukai, Round Rock, Tséché'izhí, and Rock Point. I am also the Vice Chair of the Budget and Finance Committee.

The Navajo Nation (“**Nation**”) is one of the largest Native American Tribes in the country with a population of over 400,000 members, half of whom reside on the Navajo reservation encompassing over 27,000 square miles and spanning over 11 counties in three states—Arizona, New Mexico, and Utah.

As an elected leader of the Navajo people, I am honored to testify before this subcommittee on the National Parks Air Tour Management Program.

Background

The Navajo Nation is surrounded by several National Parks and National Monuments of unparalleled beauty and historic and cultural significance. Among them are Canyon de Chelly (parts of which are included within the boundaries of the chapter communities I represent in the Navajo Council), the Grand Canyon, Glen Canyon, Bears Ears, and Chaco Canyon. It is no surprise that outsiders want to visit these lands. These places have inspired our people for generations, providing a place of refuge in times of danger, and sources of strength in times of need.

In general, we welcome others to come and experience these special places, but we also insist that visitors treat them with respect. Our people have lived in these lands since time immemorial and the land is filled with sacred sites where we go to connect with our past and remember who we are as a people. Many of us continue to pray to the Holy People who have watched over us since the time of our emergence into this world. These sites are as important to us as churches, temples, and synagogues are to the true believers of other faiths.

It is because of this deep connection to the land that it is important for us to be involved in any plans to open these lands to the wider public, including mere observations from the sky. It has long

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been the position of the Navajo people that we own our land from that which is below the ground to the top of the sky. Though we might phrase its origins differently, we have long held to common law doctrine of *ad coelum*.¹ We did not give up the rights to the sky when we signed the Treaty of 1868. We recognize the need for the federal government to regulate the sky in order to ensure air traffic is orderly and safe, but the Navajo Nation needs to be included in the regulation of Navajo air space, especially of lower flying aircraft that can impact the daily lives of the Navajo people.

It is with this background in mind that I would like to begin my testimony on the National Parks Air Tour Management Program.

Risks of Air Tours

I would like to begin by laying out some of the risks to having air tours over our land. There are three primary areas of concern that any air travel plan (not just air tours) should take into consideration: Impacts on the Community, Impacts on Cultural Sites, and Impacts on the Environment.

Community Impacts

In the many consultations we have had to discuss air tours over Canyon de Chelly, privacy is one of the most common concerns brought up by community members. The vast majority of air tour operators fly out of Las Vegas or Flagstaff. Unlike most commercial flights, these operators tend to fly lower to the ground, meaning it may be possible for passengers to see what Navajo residents are doing in the privacy of their own backyards. Whether it is butchering a sheep, planting a garden, or relaxing during a family gathering, no one likes to think that voyeuristic travelers in the sky may be watching them like they are primitive savages that need to be observed. A flight from Flagstaff or Las Vegas to Canyon de Chelly would fly over thousands of Navajo homes in dozens of communities. The concern is more pronounced for families living near the tour sites. Navajo families continue to live and work on the rim of the Grand Canyon, and many Navajo still descend into the canyon using the traditional trails. Canyon de Chelly poses an even more significant concern for privacy as it is even more heavily populated, with Navajo families living along the rim and on the canyon floor.

The privacy concerns also extend beyond the homes of those living close to the tour sites. Many Navajo enter sites like Rainbow Bridge, the Grand Canyon, and Canyon de Chelly to participate in ceremonies. Less as decade ago, there was an incident that scandalized the Navajo people, when a helicopter tour in Canyon de Chelly spotted an ongoing ceremony and flew in for a closer look, ruining the experience for all involved. This is not a unique experience. There have been dozens of low flying aircraft, many of which we have been able to identify as air tours interrupting our people in some of their most sacred moments. There is a significant concern that if the number of air tours increases, it could interrupt ceremonies or expose something that is meant to be sacred and private to the public eye.

In addition to potential privacy concerns, depending on the frequency of air tours, the noise pollution could also have detrimental impacts on livelihood and health. Navajo ranchers are all too

¹ From the Roman maxim: *Cuius est solum, eius est usque ad coelum et ad inferos* ("He who owns the land, to him belongs everything up to heaven, and everything down to hell").

familiar with the regular military flights over northern Arizona. The noise from these aircraft regularly scares livestock and increases the stress of those on the ground. Earlier this year, a huge military aircraft flew over our visitor center in Monument Valley disturbing residents and visitors alike. This particular aircraft was notable for flying at an altitude that appeared to be dangerously low to those on the ground, but the fact is, these occurrences are not rare. Military aircraft fly over Navajo land in the Four Corners and Monument Valley areas several times a month, disturbing residents and scarring livestock.

A significant increase in the number of low-flying aircraft associated with air tours could dramatically increase noise pollution for communities closest to the tour sites. Without knowing how often flights would be scheduled, it is impossible to know the full potential health impacts, but many studies have shown exposure to regular noise pollution from aircraft can lead to increased stress, cognitive impairment, and cardiovascular disease, among other problems.² Fixed wing planes are better though still problematic, but helicopter tours in particular could significantly impact Navajo families living in the immediate adjacent areas of the tours.

Cultural Impacts

One of the biggest concerns for the Navajo Nation is damage or loss to sacred and culturally significant sites.

Our people maintain a cultural connection with the landscape. In addition to the historical significance of ancient sites, there is also active cultural and spiritual significance. For example, White House Ruins in Canyon de Chelly (*Kinii'na'igai*) has an associated ceremonial history, and some Navajo people still visit it as part of their ceremonial practices. Specific places and natural features (e.g., Spider Rock and Fortress Rock) are physical expressions of the defining stories and events in the history of the Navajo people and retain profound spiritual and sacred significance. Spider Rock, a tall spire in Canyon de Chelly, is considered the home of Spider Woman, a benevolent figure who is recognized in many traditional Native American oral stories as a guide, protector, healer, teacher, disciplinarian, adviser and spiritual leader. The natural setting, surroundings, and views of Spider Rock are vitally important in conveying respect for Spider Woman and her home, in sharing lessons taught by Spider Woman regarding weaving, and in establishing a geographical context for oral histories, as well as healing ceremonies.

Throughout the late 1960s and early 1970s, military flights over the Navajo Nation were particularly problematic due to the regular emissions of sonic booms. From August 11, 1966, to October 6, 1966, there were 26 recorded sonic booms over Canyon de Chelly, including “a shock in Canyon del Muerto [that] caused a large portion of overhanging cliff to fall, which damaged a cliff dwelling below.”³ Despite the damage, military flights continued, and concerns over the impacts of sonic booms lasted about a decade, with National Park Service, Bureau of Land Management, and Navajo officials regularly monitoring ancient and more modern structures (like

² Benz, S., Kuhlmann, J., Jeram, S., Bartels, S., Ohlenforst, B., Schreckenberger, D. (2022). Impact of Aircraft Noise on Health. In: Leylekian, L., Covrig, A., Maximova, A. (eds) Aviation Noise Impact Management. Springer, Cham. https://doi.org/10.1007/978-3-030-91194-2_7

³ Brugge, D., Wilson, R. (1976). Administrative History: Canyon de Chelly National Monument | Arizona. Chapter 10. United States Department of the Interior: National Park Service. https://www.nps.gov/parkhistory/online_books/cach/adhi.htm

the Hubbell Trading Post) for damage. These sites are irreplaceable, and the damage done during this time cannot be undone.

Though the risk posed by air tours may be less than that of active military traffic, the risk is still real. The close physical presence of even small aircraft poses a risk to the preservation of historic, cultural, and sacred sites as it can kick up dust and generate noise vibrations in the area, potentially leading to erosion or other forms of disruption and damage. But the larger concern consistently raised by local Navajo residents during consultations on air tours in Canyon de Chelly relates to plans for dealing with the worst-case scenario.

No one expects a plane crash when they go on tours, but accidents do happen, and they are more likely to occur when aircraft fly low and close to cliffs to allow their passengers to get a good view of a site. If a plane or helicopter were to crash, it could cause significant damage to archeological sites, and defile the sacred sites. The more important a site, the more likely air tours will want to visit, increasing the risk. Given the historical impact of military overflights, there is a heightened sensitivity among community members to any activities involving aircraft. Addressing these risks requires a careful and inclusive approach to air tour management, incorporating the perspectives and concerns of the Navajo people to ensure sustainable and respectful practices in our territories.

Environmental Impacts

In addition to the impacts on Navajo citizens and the potential risks to cultural sites, there is also a potential environmental impact. Aircraft emissions and noise can contribute to pollution, affecting air and water quality, disrupting the natural soundscape, and potentially impacting the region's delicate ecological balance. Commercial aviation accounts for a significant portion of greenhouse gas emissions contributing to climate change, but even the non-CO₂ combustion emissions can impact the climate, and they are known to have a significant impact on local air quality.⁴ We have also already seen significant effects on local wildlife in the area due to noise pollution, including impacts on animals of great significance to the Navajo people.

To begin, there is significant concern for nesting raptors. We have specifically observed impacts on our golden eagles, but the risk pertains to the larger group of birds in the category (i.e., hawks, eagles, falcons, owls). During the spring nesting season, which for golden eagles runs roughly from February to June, the Navajo Nation Department of Fish and Wildlife has documented failed nests due to disruption from aircraft. The concern is low flying aircraft, in particular helicopters, flushing nesting birds from their nests during the egg incubation period of the nesting season. Golden eagles are some of our earliest nesting raptors with some pairs laying eggs in early February. By the end of the month nearly 95% of the population has laid eggs if they are going to nest that year. When a bird is flushed from the nest in late winter or early spring, the eggs become cold quickly and if they are not kept warm, the eggs will die. Depending on air temperatures and other weather factors this can occur in as little as 15 mins. Once flushed most eagles take their time returning to the nest as they tend to soar high above and watch for danger before returning. For some pairs this might be 45 mins to an hour. Our Fish and Wildlife team is careful to minimize flying during our annual eagle nesting surveys until late March or early April, to ensure most eggs have hatched and the weather is warmer. Even then there is a concern that downy chicks will catch

⁴ Federal Aviation Administration (2021). United States: 2021 Aviation Climate Action Plan. https://www.faa.gov/sites/faa.gov/files/2021-11/Aviation_Climate_Action_Plan.pdf

a chill if they are left for too long without a parent to shelter them from the elements, but at least chicks can withstand longer time periods exposed to the elements than eggs can.

Another example is low-flying aircraft disrupting wintering big-game animals (mule deer and elk) while on winter range. Our team often sees this around Canyon de Chelly. The mesa tops around the canyon are some of the Navajo's most extensive big-game wintering grounds. Low-flying aircraft force these animals to flush and run, which burns many calories at a time of year when animals survive on stored body fat and face difficulties finding high-quality forage. Movement can also be restricted during snowfall events, with deep snow making it hard for animals to move. When flushed and pushed by low-flying aircraft, these animals are forced out of preferred wintering areas into more marginal habitats and burn more stored energy to "escape" the aircraft. All of which results in an increased risk of predation, injury, and lower physical fitness to withstand the winter season. In extreme cases, the adverse effects may manifest as reduced reproduction in the following year. A doe or cow in poor physical shape will not ovulate during that successive season if they do not have the stored energy to carry a fawn or calf to term.

A final example of impacts on wildlife is that of the big-horned sheep on Navajo. During the spring lambing season, aircraft flushing and pushing animals around puts big-horn sheep mothers at risk of birthing complications that result in neonate mortality or low survival due to lamb abandonment. There are times when utility companies using aircraft to check lines or do maintenance work are requested to not fly during the lambing season to avoid negative impacts on lambing for big-horn sheep. This is particularly critical right now as some of our sheep populations have had no successful reproduction in recent years due to the impacts of a pneumonia-like disease, *Mycoplasma ovipneumoniae* (Movi), in the herd. Which makes it all the more important to protect any lambs that are born.

Management Plan with Tribal Consent

Despite all of the risks associated with expanding air tourism in and around the Navajo Nation, I want to be clear that we do not oppose air tourism across the board. This is why tribal consultation is so important. The Navajo Nation would happily endorse additional air tours in the surrounding national parks under the condition that a comprehensive management plan is developed in collaboration and with the consent of the affected tribal communities, ensuring that their perspectives, concerns, and cultural considerations are incorporated into those plans.

I am happy to report that National Park Service (“NPS”) has engaged in extensive consultation regarding air tours in Canyon de Chelly. The local NPS office reached out to Navajo leadership in Window Rock, the Navajo Nation Heritage and Historic Preservation Department, the Navajo Nation Department of Fish and Wildlife, and local chapter officials for communities located near the canyon. In general, these consultations have been respectful and inclusive, allowing the voices of the participants to be heard. They listened to our concerns for wildlife and those of the local residents in the canyon and proposed a preferred alternative that more or less aligns with the majority of the concerns raised. While opinions varied on how air tours should be regulated and other substantive matters, for the most part participants were pleased with the conduct of those leading the meetings.

Of course, that does not mean the process cannot be improved. Some participants complained that the process was not very transparent or straightforward. They only found out about consultation

sessions after it was too late for meaningful preparation to research the issues. And it was not always clear to participants how comments from the local community were being incorporated into the final policy. And while consultation on Canyon de Chelly was well run, despite there being room for improvement, there appears to have been less engagement in planning for Rainbow Bridge and the Grand Canyon. We expect that in the future the need for consultation on air tourism may also arise for Glen Canyon, Bears Ears, Grand Staircase-Escalante, and even Chaco Canyon.

To improve the process, it is essential that local communities are involved. Despite the best efforts of the Navajo Nation government to identify significant sites, only the local community is going to know certain sacred spots such as the resting place of *jish*⁵ or the gathering places and timing for local ceremonies that should be avoided during an air tour. But local Navajo officials often find it difficult to participate in consultation, whether it is from a lack of sufficient notice or a lack of technical capabilities. Many local chapter officials do not have regular access to broadband internet, making video calls difficult. Even regular postal services are often sporadic due to the lack of local addressing on the Nation and a reliance on P.O. boxes. Federal agencies need to engage tribal communities in consultation at every level of tribal government.

These concerns apply equally to other tribes, especially smaller tribes without the resources of the Navajo Nation. The Federal Aviation Administration (“FAA”) and NPS have an obligation to meet tribes at their level of capacity and engagement. The pace of the consultation process needs to be set by the tribes themselves, and not be rushed to accommodate the preferred pace of environmental groups or industry. Effective consultation requires federal agencies to engage with tribes on their level, and not assume that local leaders have the resources to engage agencies on a national level or even online.

Federal agencies also need to cast a wide net. While local communities are indispensable to meaningful consultation, all interested communities need to be involved, as some tribal members travel great distances to participate in ceremonies, especially in places like the Grand Canyon, Bears Ears, and Rainbow Bridge. We understand that this may slow the process down, but it is better to have a thorough and honest consultation process than to have a fast one. Tribes should not be rushed just because some federal officials want to push a particular agenda. Failure to work with tribes on their level and at their pace will only lead to misunderstandings, discontent, and opposition to future projects for lack of a good process.

Economic Opportunities for Tribal Members

Even assuming consultation is adequate, an essential aspect of securing the Navajo Nation's support for air tours is the firm belief that tribal members should have the opportunity to benefit economically from such activities. As it currently stands there is almost no economic benefit to the Navajo people from air tourism, despite our bearing the bulk of the costs from the negative externalities and risks described above. When tourists visit the Navajo Nation on the ground, at least there is an opportunity for them to spend money on local accommodations and at other local businesses such as jewelry and food stands. But air tours typically launch out of Las Vegas or Flagstaff, which is where all of the economic benefits accrue.

⁵ *Jish* are sacred implements used in various ceremonies and are considered to be living sources of power. When *jish* are no longer used, their final resting place is sacred and should not be disturbed.

Engaging local Navajo residents in the economic aspects of air tours could also remedy some of the potential risks of air tours as well as enhance the experience for the tourists. Members of the local community will know better than tour companies operating out of more distant cities when it would be inappropriate to schedule tours or what places a tour should avoid altogether. Our people possess an intimate understanding and connection to the cultural significance of these sites and will ensure their tours are managed with the utmost care and respect for the special cultural and historical heritage of these areas.

Tourists would also benefit from the traditional knowledge of Native tour guides. Air tours are a natural platform for storytelling and the sharing of cultural insights that would enrich the visitor experience with authentic local perspectives. By using local guides, tour companies could ensure this cultural enhancement occurs in a way that enhances rather than exploits tribal cultures, allowing indigenous knowledge to be shared in natural way, and not be reduced just to that of another tourist attraction. This would be more likely to occur if tribes were more heavily involved in the planning, execution, and management of air tours, creating avenues for employment, entrepreneurship, and economic growth within the tribal community.

Existing tour companies should be required to hire local guides to gain these advantages. But to enjoy the greatest economic benefit, it would be ideal if more tour companies were established on the Navajo Nation and owned by local Navajo entrepreneurs. For this reason, air tour management plans should include incentives for existing tour operators to mentor Navajo entrepreneurs, and a certain percentage of available flights should be reserved for Navajo-owned businesses to ensure local residents benefit from the existence of tours. These plans should also include a requirement that tour companies operating in Navajo air space pay Navajo taxes for the privilege. Tour companies also need to coordinate their services with on the ground operators, so visitors know where they can get more information about the sites they visit, as these really should be experienced in person.

If done right, the air tourism industry has the potential to spur economic development across the Navajo Nation. Economic opportunities generated by air tours can act as catalysts for community development within the Navajo Nation by improving our airports and related infrastructure. This will not only support the tours directly, but increase transportation options for all tribal members, making it easier for tribal members to access essential services and connect with other communities. These transportation hubs would also naturally lead to the creation of more jobs and a strong support economy for incoming tourism. Several potential hubs already exist, such as Tuba City, Chinle, or Window Rock. They just need the right investment.

Admittedly, tribal governments would need to draft their own aviation tourism plans to take full advantage of the potential opportunities of increased air tours in our lands and surrounding National Parks and Monuments, but tribes cannot do this alone. Existing companies already have control over the market and the government connections both in Congress and the Administration to get the necessary permits to operate in this field. As opportunities arise, tribes will need support from the FAA and NPS to help our communities compete in this industry on an equal footing.

However, recognizing and prioritizing the inclusion of Navajo citizens in the economic opportunities arising from air tours in our traditional homelands, including in the surrounding National Parks and Monuments, is not only a matter of economic fairness but also a strategic approach that aligns with cultural preservation, community development, and sustainable tourism

practices. I urge the federal government in general and this Subcommittee specifically to consider and actively support initiatives that ensure the direct and meaningful involvement of Navajo citizens in this endeavor.

Conclusion

As addressed above, the Navajo people have expressed significant concerns with expanding air tours in National Parks in and near our traditional homelands. To address these concerns, it is crucial for tribal nations, government agencies, and tourism stakeholders to engage in collaborative and culturally sensitive planning. This includes ensuring that the benefits of air tourism are equitably shared with tribal communities and that the negative impacts are mitigated as much as possible. It also involves respecting tribal sovereignty and the rights of indigenous peoples over their ancestral lands and cultures, even if this means air tours will be limited or completely banned in some areas.

The Navajo Nation looks forward to continuing engagement in collaborative discussions and partnerships with relevant stakeholders, including federal agencies, to ensure that the implementation of air tours aligns with the principles outlined above. By adhering to these guidelines, we believe that air tours can be a positive force for economic development while respecting and preserving the cultural and environmental richness of the tribal lands.

Ahéhee' and thank you.