



THE NAVAJO NATION

**Testimony of LoRenzo Bates
Speaker
23rd Navajo Nation Council**

**Before the
U.S. House Natural Resources Committee
Subcommittee on Indian, Insular and Alaska Native Affairs**

**Hearing on
HR 1028 – The Return of Certain Lands At Fort Wingate to The Original Inhabitants Act**

Wednesday, July 15, 2015

Yá'át'ééh Chairman Young, Ranking Member Ruiz, and members of the Committee. My name is LoRenzo Bates. I am the Speaker of the 23rd Navajo Nation Council. Thank you for this opportunity to present testimony on HR 1028, the Return of Certain Lands At Fort Wingate to The Original Inhabitants Act.

Fort Wingate is a land of extraordinary importance and history to the Navajo people. It is where our ancestors were interned before they were forcibly marched across the desert on the Navajo Long Walk in 1864. It is also the place our grandfathers first stopped after joining the Marines on their way to California to be trained as Code Talkers. It is a place of great cultural importance to our people—a place the Navajos call “Shush bi'toh”.

The Navajo Nation appreciates the leadership of Chairman Young and Representatives Pearce and Lujan on this important issue, but at this time the Navajo Nation cannot support this measure. The Navajo Nation Council has opposed any Fort Wingate land division that does not address certain matters that will be discussed later.

The Navajo Nation, like many tribes, has fought to bring historic lands back into tribal control. Land issues are important and complex, and require that we as elected leaders make hard choices. Our land is everything to our people, to our culture and to our way of life.

The Fort Wingate Depot Activity ('FWDA') is located east of Gallup, New Mexico and borders the Navajo Nation. The Navajo people have lived upon, farmed, grazed livestock, and used these lands for our ceremonies since time immemorial. The FWDA was externally created

in 1870 by executive order and further expanded by executive order in 1881 on our ancestral lands only two years after we were allowed to return to our homelands after the Navajo Long Walk – thus preventing many of the families from rebuilding their homes in the area.

The Zuni Pueblo's involvement in the FWDA is not officially acknowledged prior to a 1997 Base Realignment and Closure (BRAC) memorandum. It is important to note, only Navajo People were displaced by the War Department's actions. No Zuni members were displaced from this land at the time of the FWDA creation in 1870. Furthermore the Zuni Pueblo has never shared a border with the lands while Navajo families have continued to live adjacent since our return from the Long Walk.

The FWDA was used by the War Department and the U.S. Department of Defense as both a munitions storage facility and as part of a missile-testing site. It was also used as the induction site for the Navajo Nation Code Talkers to begin their journey in the defense of the United States. However, in 1997, the tribes and the U.S. Department of the Interior entered into an agreement to convince the Base Realignment and Closure ('BRAC') Commission to transfer the land to the Bureau of Land Management ('BLM') for subsequent transfer to tribes through the Bureau of Indian Affairs ('BIA') instead of allowing the land to be placed in the public sphere. The Navajo Nation and the Zuni Pueblo came together to expedite the transfer of the FWDA directly to the tribes as opposed to allowing the traditional Navajo land to be open for bid by any parties. The original memorandum envisioned that the land would be secured to protect the Zuni Pueblo's watershed in the south with the northern portion of the base returning to the Navajo Nation's ownership. Contrary to this original understanding, this is now being turned into another federally-initiated land dispute between the Navajo Nation and another tribe. Navajo Nation does not welcome another dispute after the Navajo-Hopi dispute.

This agreement envisioned that all the land that could be cleaned-up would have been remediated by 2020, allowing both tribes to have a clear picture of the total land available for a fair distribution. As part of the BRAC process, the land must be remediated before it can be transferred to BLM. However, as we later learned, the lands within the Navajo area were potentially too contaminated to be transferred to the Navajo Nation.

There are two limitations on the ability to transfer the land. First, not all the land that is potentially available to be transferred will be remediated to a sufficient level to be transferred. A significant amount of the land will not be able to be remediated to a satisfactory level either due to the level of contamination, or because of a lack of funds available for the cleanup. Based upon federal budget projections, the Navajo Nation is skeptical that funds will be available to cleanup all the land that could possibly be remediated. Further, there is a disagreement within the federal government as to whether the standards used for the cleanup are sufficient. Second, there appears to be some land that the Army may not be willing to transfer regardless of whether the lands can

be remediated. We cannot know for certain that all of the lands as envisioned in this legislation can be transferred as planned. As a result, the Navajo Nation remains concerned about how these traditional Navajo lands will be cleaned and transferred in the future.

The division of the FWDA has been before this subcommittee several times. At a July, 2012 hearing, the Navajo Nation and Zuni Pueblo were at odds over the proposed division as proposed in the legislation before the committee at the time. After that hearing, Congressman Pearce, Congressman Lujan, and Chairman Young brought the Navajo Nation and Zuni Pueblo together to discuss the land claims of the two tribes and our positions regarding a fair division of the lands.

On April 16, 2015, the Navajo Nation Council approved a resolution withholding support for any Fort Wingate land division legislation unless certain issues are addressed. These issues include first, that tribal religious and burial sites be identified, protected and accessible via easements. Second, as discussed above, that the ongoing federal responsibility for remediation be clearly addressed and a funding mechanism identified. Third, a restriction on the development or operation of gaming facilities on the Fort Wingate lands. Fourth, that Congress affirms the Navajo Nation's independent authority to negotiate future rights-of-way on the FWDA lands or new rights-of-way on apportioned parts of the Fort Wingate lands. The Navajo Nation has proven itself capable of negotiating rights of way in good faith on many occasions.

The legislation as drafted could create chaos with regards to tribal gaming, particularly in western states. Currently, tribal gaming is controlled through the Indian Gaming Regulatory Act (IGRA). Section 3 of H.R. 1028 would open up tribal land on restricted fee status land. The Navajo Nation is concerned that the legislation would allow for gaming on lands acquired after IGRA.

Additionally, the Navajo Nation would like to see assurances in the legislation that this will remain the financial and physical responsibility of the federal government. The Navajo Nation is concerned that the federal government will escape ongoing responsibility to clean up the contamination and hazardous materials on the land, soil, air and water.

We are eager to see a resolution to this matter and to begin utilizing the land. We have committed to reach out to the Zuni Pueblo leadership to continue our discussions and reach a conclusion that both the tribes can agree to. Unfortunately, once again our requests to meet the Zuni Pueblo leadership have gone unanswered.

The map described within the legislation also causes concerns the Navajo Nation. The color-coded map is helpful in understanding broadly which tribe would receive what parcel, but a lack of clear legal descriptions and survey data of the parcels and easements in the legislation

could lead to future conflict and litigation. The map also contains mistakes that do not reflect the intention of the parties. A triangle of land attached to Parcel 14 abutting I-40 is shown as being transferred to the Zuni Pueblo, however, during the discussions in Washington, D.C., it was agreed that this triangle would belong to the Navajo Nation. There is also another triangle of land north of Parcel 3 that should be part of Parcel 2 that has been labeled as Zuni land. However, in the initial discussions, it had been agreed that Parcel 2 would be kept intact, undivided, and transferred to the Navajo Nation.

Again, we appreciate both the leadership and attention of Chairman Young and Representatives Pearce and Lujan on this important issue, but the Navajo Nation cannot support this legislation at this time. We look forward to working with you and the Pueblo of Zuni to bring this matter to a speedy and equitable resolution. Thank you. Ahéhee’.