

**Testimony for Navajo Nation Council Delegate Walter Phelps
before the
House Natural Resources Committee
Subcommittee on Energy and Mineral Resources
Legislative Hearing on
HR 5176**

“To authorize the Secretary of the Interior to retire coal preference right lease applications for which the Secretary has made an affirmative commercial quantities determination, and for other purposes.”

Good afternoon Chairman Lamborn, ranking member Holt and members of the Subcommittee on Energy and Mineral Resources. I am Walter Phelps, Navajo Nation Council Delegate, and Chairman of the Navajo-Hopi Land Commission. I am here to discuss the Navajo Nation’s support for HR 5176. This important legislation brings to a close a four decade-old federal statutory obligation to the Navajo Nation that was authorized in the Navajo Hopi Settlement Act of 1974.

I would like to thank Congressman Ben Ray Lujan and Congresswoman Cynthia Lummis and their staff for introducing this legislation. I would also like to take this opportunity to thank some of the members of the subcommittee who have been strong supporters of the Navajo Nation: Congressmen Bishop, Gosar (our former Representative), Mullin, Grijava, and Hanabusa. The Navajo Nation recognizes and appreciates your tireless efforts working on behalf of the Navajo Nation and all Native Nations.

The Navajo Hopi Settlement Act settled the disputed boundaries between the Navajo Nation and Hopi Tribe. The settlement led to the relocation of Navajo citizens from what is now Hopi land, and the loss of acreage from the Navajo Reservation. In return for the lost acreage, the Navajo Nation was permitted to select comparable acreage on federal lands to be taken into trust for the Navajo Nation. In the 1974 Act,

Congress committed to provide the Navajo unencumbered lands that the Nation would select from federal lands managed by the BLM.

In the early 1980s, the Navajo Nation selected the parcels of federal land. The secretary of the Interior has since taken most of those parcels into trust for the Navajo Nation. Unfortunately, a number of the parcels selected by the Navajo Nation were encumbered by prior mineral rights (PRLAs) held by private entities. These parcels are unable to be taken into trust for the Navajo until the private mineral rights are removed. The status of these parcels of land with valid private mineral rights, and stipulated commercial quantities of coal, remains unresolved.

Further complicating a resolution to this matter is that subsequent to the Settlement Act, the federal government also provided two major areas with protections against development: the Fossil Forest and the Ah-shi-sle-pah Wilderness Study Area on which these PRLAs existed and on which the Navajo had selected parcels to be taken into trust. It is the BLM's goal to protect areas closely surrounding the Park that are replete with historical and archeological assets. Unfortunately, the current law does not provide a mechanism for deselecting any of the parcels and reselecting others. Further, given the limited availability of BLM lands within the mandated 18-mile boundary limitation there is little opportunity to easily fix this issue. Allowing for deselection and reselection, and establishing that the boundary of the reservation lies within the naturally existing boundaries of Navajo trust land would alleviate these issues and allow the Navajo Nation to address the BLMs concerns.

An important mechanism to un-encumber lands is the exchange of existing PRLAs for competitive coal leasing bidding rights, essentially "trading in" the old

PRLAs for credits that can be used to meet future obligations under the federal coal leasing program. However, as potential administrative PRLA exchange discussions moved forward, the Interior Department's solicitor discovered that Interior did not have the authority to pay the resultant state share of credits. This would significantly disadvantage states in the application of any bidding credits.

Representatives Ben Ray Lujan and Cynthia Lummis introduced HR 5176 to provide that statutory authorization to resolve of all of these issues, most importantly the federal obligation to the Navajo Nation, by providing a mechanism to retire these remaining PRLAs. The legislation:

- 1) Authorizes the Secretary to negotiate a value for these minerals currently held by private interests;
- 2) Authorizes the exchange of the mineral rights for a credit in the amount of the negotiated value to the private interest, to be applied in other federal leasing activities, and;
- 3) Authorizes the Secretary to make "state share" payments to any relevant state in which the bidding credits are applied.

It is important to note that while the selection of the lands in question result from the terms of the Navajo-Hopi Land Settlement Act, this is solely a Navajo/Arch/New Mexico issue. The lands selected by the Hopi Tribe for conveyance were solely within the state of Arizona, and the rights therein have already been transferred; it is only the Navajo Nation that has yet to finalize its land selection and transfer. Completion of this exchange does not require that the Hopi agree to the terms contained within the legislation.

Passage of this legislation would bring to a close one element of the long painful experiences that the Navajo people have experienced due to the 1974 Navajo Hopi Land Settlement Act. Further it fulfills a promise made by the federal government to the Navajo Nation 40 years ago.

Thank you.