

**Testimony of Tani Pack Downing  
General Counsel and Deputy Chief of Staff  
to Governor Jon M. Huntsman  
State of Utah**

**Before  
Committee on Natural Resources  
U.S. House of Representatives  
June 19, 2008**

Mr. Chairman and members of the Committee, my name is Tani Pack Downing and I serve as the General Counsel and Deputy Chief of Staff to Governor Jon M. Huntsman of the State of Utah. I am here today to discuss the decisions made recently by the State concerning what is known as the Utah Navajo Trust Fund.

The State of Utah, through a federal statute passed in 1933 which enlarged the Navajo Reservation, was assigned responsibility to manage a percentage of oil and gas royalties produced on the Utah portion of the Navajo Reservation for the health and welfare of the Navajo residents residing on the newly created part of the reservation. The land was previously federal land located within San Juan County Utah, and as such, 37-1/2% of any oil and gas royalties produced on the land would have been transferred to Utah.

In 1968, Congress amended the 1933 Act to redefine the beneficiary class as “Navajos residing in San Juan County” and to expand the purposes of the fund “for the health, education, and general welfare of the Navajos.” Importantly, the 1968 Amendment also defined Utah’s accounting responsibility as being limited to “[a]n annual report . . . to the Secretary of the Interior . . . for the information of said beneficiaries.”

The State of Utah is the only state in the Nation administering a Fund like this, as management of Indian resources is typically a federal responsibility. The current net assets of the Fund are approximately \$25 million.

The Utah Navajo Trust Fund has been the subject of numerous lawsuits over the 75 years since its creation. Each lawsuit has challenged Utah’s management of the royalty fund and has requested an accounting. The 1961 case of *Sakezzi v. Utah Indian Affairs Commission* concluded that the 1933 Act created a fiduciary trust with Utah as the trustee. In the 1970s, the case of *Jim v. State of Utah* ordered an accounting. In the 1980s, the court in the case of *Bigman v. State of Utah* again ordered an accounting. The state is currently litigating the case of *Pelt v. State of Utah* which alleges mismanagement of the Fund. This case is currently awaiting a decision from the 10th Circuit Court of Appeals on procedural matters.

Since 1992, the state has managed the Fund through a three-person Board of Trustees which oversees a trust administrator and staff. This management team is advised by a committee of Navajo residents from each of the eight relevant chapters, known as the Dineh Committee. The Board sets the annual operating and capital budgets, and approves expenditures for housing, water, powerline projects, equipment purchases, building construction and maintenance, supplemental education assistance, and

the like. Annual expenditures, outside of capital expense, average about \$2 million per year. In addition to this amount, the state made the decision some years ago to invest a portion of the state severance tax from production of oil and gas on the reservation back into the area. Today, the Navajo Revitalization Fund, a more traditional state-government expenditure program, provides about \$2 million per year for various capital improvement programs on the Navajo Nation lands.

Over the years, the Navajo residents of San Juan County have asked the State for more representation in the decisions concerning expenditures from the Fund. In response, the State tried to find a Navajo who met the State requirements to sit on the Board of Trustees. Unfortunately, court mandated fiduciary requirements for management of a trust do not allow beneficiaries of the trust to make such decisions, so it proved impossible to find a Navajo who qualified.

In light of the desire of the Utah Navajo residents to have more of a role in management of the Fund, and in light of the history of nearly continuous litigation, the state determined it was best not to continue in the role as trustee. The state decided to resign as trustee and allow another entity to take over those duties. Because the duty to manage the Fund was given to the state by Congress, only Congress may determine an alternative. This decision was discussed with the Navajo residents of San Juan County on many occasions (see attached list of meetings). In the interim, however, the state has made the decision to wind down active management of the Fund, and to simply protect the Fund and other assets until a successor is determined.

Utah has a general policy of legislative provisions which sunset various state agencies on a periodic basis, unless specifically reauthorized. The Utah Navajo Trust Fund is one of those agencies, and was set to be reviewed in the 2008 General Session of the Legislature. Rather than continue the existing Board of Trustees, the state, through legislation, established the Utah Navajo Royalty Holding Fund and associated management provisions. This Holding Fund will take effect July 1 of this year, and will contain all the financial and real property assets owned by the former Utah Navajo Trust Fund. The Trust Fund will cease to exist as a management entity. (See resolution at <http://le.utah.gov/~2008/bills/hbillenr/hb0352.pdf> and legislation at <http://le.utah.gov/~2008/bills/hbillenr/hcr004.pdf> )

The Holding Fund will continue to make expenditures to protect the assets of the Fund such as building maintenance and efforts to protect the income of the Fund. The management team, now headed by the Executive Director of the Utah Department of Administrative Services, will work to complete all projects approved before May 5, 2008, such as housing projects, and will continue to fund the supplemental education costs for eligible Navajo students in a postsecondary education program. However, no new projects may be authorized. The Holding Fund will continue until Congress appoints a new management entity, and instructs the state concerning disposition of the assets within the Holding Fund.

The State of Utah has no preference for a successor management entity, other than a desire to see that the royalties continue to flow to the benefit of the Navajo residents of San Juan County. The State has also encouraged the Navajo residents to participate in the process of determining a new trustee to manage the funds.

**Timeline of Contacts with Representatives of Utah Navajos and Navajo Nation**  
**Re: State of Utah Resigning from Navajo Trust Fund**  
**For additional documentation contact Tani Downing at TDOWNING@UTAH.GOV**

**November 1, 2007:** Gayle McKeachnie, representative of the Governor's Office, traveled to Aneth and met with the Navajo Utah Commission (NUC) to discuss the State's decision to resign from the Trust Fund. Members of the NUC were present at the meeting, including Kenneth Maryboy, Katherine Benally, and Charles Long, Assistant to the Speaker of the Navajo Nation.

Concurrently with the delivery of the information to the NUC, the State Lt. Governor Gary Herbert spoke with President Shirley of the Navajo Nation by phone about the State's decision to resign from the Trust Fund.

**November 5, 2007:** The idea of the State's desire to ask Congress to find a new trustee was discussed just after a meeting of the Navajo Revitalization Fund (NRF). The NRF meeting was held at Goulding's Lodge, and members of Oljato Chapter came to ask questions.

**November 6, 2007:** Navajo Nation Council Speaker issues press release acknowledging that representatives of the Governor's office delivered the "exciting news" in person on November 1, that the State of Utah wishes to remove themselves as the trustee of the Navajo Trust Fund.

**November 8, 2007:** Navajo Trust Fund Board of Trustees Meeting, Mexican Water Chapter. Trustee, John Reidhead provided information regarding the State's decision to sunset the trust and ask Congress to designate a new trustee.

**November 13, 2007:** The Governor and Legislative leadership issues a joint press release about allowing the NTF to sunset and asking Congress to create a new disbursement system for the royalties.

**November 15-16, 2007:** A joint meeting of the Dineh Committee and the Navajo Utah Commission was held in the Salt Lake City area. John Reidhead, Navajo Trust Fund Board member and John Harja, representative of the Governor's office, attended. John Harja answered questions from members of the Dineh Committee, NUC and Chapter (Aneth) presidents and other officials for three hours.

**November 16, 2007:** Members of the Dineh Committee traveled to Salt Lake City to discuss the issue of the State's decision to resign as trustee. Those involved in the meeting included Gayle McKeachnie, Amanda Smith, and John Harja representing the Governor's office, Patricia Owen and John Cannon representing staff to the Utah Legislature, and a representative from Congressman Matheson's office. Clarence Rockwell and representatives from all the Chapters were present. They had requested the meeting to hear reasons behind the current action, future plans, and to hear the instructions necessary to execute the shut down as well as provide comments.

**November 16, 2007:** Leonard Lee, Chair of the Dineh Committee, sent a letter to the Governor, Lt. Governor and the Legislature in which he states "The Utah Navajos support the Transition Legislation

that is being drafted at this time and requests for additional provisions to be implemented.”. The bill that ultimately passed the Legislature included one of the two provisions requested.

**November 18, 2007:** Oljato Chapter Resolution. Regarding their desire to give input about the transition plan from the Trust Fund and a selection of another trustee.

**November 20, 2007:** Gayle McKeachnie, Amanda Smith and Tani Pack Downing, representing the Governor’s office, traveled to Window Rock. They had conversations there about the State’s decision to resign from the trust with Clarence Rockwell and sat in on break out sessions where representatives of the Chapters voiced concerns about the State’s role in the trust.

**November 27, 2007:** The Native American Legislative Liaison Committee heard testimony from Tony Dayish, Leonard Lee, and Marie Holiday regarding the sunset of the current structure of the Navajo Trust Fund.

**November 30, 2007:** John Cannon, legislative staff, by email informed NUC/Clarence Rockwell that Representative David Clark would be the sponsor of the legislation.

**December 2, 2007:** Representatives of the Oljato Chapter sent a letter to the Governor requesting he provide information on the State’s decision to resign as trustee. The Governor’s General Counsel, Tani Pack Downing, responded to the Oljato representatives in a letter dated December 13, 2007 which outlined other contacts made to the Utah Navajos regarding this issue and encouraging the Utah Navajos to quickly contact the federal Congressional delegation members and work with them to get the federal law changed to reflect the trust management and disbursement mechanism preferred by the Utah Navajo, and to provide input to their state legislative representatives, Representative Brad King and Senator Dmitrich concerning any issues that the legislature should address during the transition period beginning January 21, 2008.

**December 7, 2007:** Navajo Trust Fund Board of Trustees meeting by teleconference between Blanding and Salt Lake City. Discussion regarding the sunset of the trust fund and new entity taking over.

**December 10, 2007:** Utah Dineh Committee Special Meeting, Red Mesa Chapter. Discussion occurred regarding ceasing of the trust fund.

**December 13, 2007:** Tani Pack Downing, Governor’s Office, sent letter to James Black, James Adakai, Shirlee Bedonie, Herman Daniels, Sr., Oljato Chapter Administration, thanking them for their offer of the Governor to speak at the Oljato Chapter on December 14, but indicating he would be unable to attend on the short notice. Ms. Downing explained the contacts made by the Governor’s office with Utah Navajo up to that date on the issue of the State’s plan to sunset the Navajo Trust Fund and asking Congress to designate a new trustee, the need for the Navajo to play a role in that determination, and recommending the Navajo give input to their Congressional representatives and State Legislators.

**December 21, 2007** Representative Clark, sponsor of the legislation to permit Utah to resign as trustee, traveled to Montezuma Creek and met with Navajo Utah Commission members. In attendance were

members from various chapters and the Dineh Committee, a representative from President Shirley's office, Andrew Tso, and the Speaker of the Navajo Legislature. The meeting was chaired by Dennis Filfred, Chairman of NUC. There were at least 5 NUC commission members at the table. The Chairman of the Dineh Committee, Leonard Lee attended the meeting, and at least three other members of the Dineh Committee. Other Chapter officers also attended from Oljato and Aneth. Tony Dayish, representative of the NTF also attended. The State's decision to resign as trustee was discussed. Minutes were kept and a sign up roll was passed around.

Senator Mike Dmitrich spoke with Kenneth Maryboy and Andrew Tso about their concerns regarding who would administer the trust fund. Mr. Tso indicated he would fax Senator Dmitrich a letter from President Shirley opposing the legislation, but Senator Dmitrich never received such a letter.

**January 11, 2008:** Tani Pack Downing, Governor's office, responded to Clarence Rockwell's request for information on the status of the NTF legislation. She sent Clarence an email giving him the name of the legislative attorney drafting the legislation, her email address and telephone number, and told Clarence to also discuss the legislation with the sponsor of the bill, Representative David Clark or with the legislative representatives for the area, Senator Dmitrich and Representative King.

**January 11, 2008:** Navajo Trust Fund Board of Trustees Meeting, Teecospos Chapter. Discussion occurred regarding sunset of the trust fund and new trustee. Leonard Lee reported that the Dineh Committee had attended several meetings on this issue at the Navajo Utah Commission Board meetings and has made presentations at the Oljato and Navajo Mountain Chapters. He said they will continue to work on these issues and the federal legislation. Lynn Stevens reported that a meeting was held in Montezuma Creek on December 21 with Utah Navajos and Representative David Clark. He reported Representative Clark had said he would meet with the BOT individually with their concerns if they wanted. Tony Dayish, Trust Fund Administrator, reported UNTF has been involved in numerous meetings regarding the sunset of the trust fund on Nov. 15, Dec. 10, Dec. 14, Dec. 18, Dec. 21, Jan. 9 and Jan. 10.

**January 14, 2008:** John Cannon, legislative staff, by email provided to NUC/Clarence Rockwell a copy of the bill, resolution, and a summary of the legislation. Clarence followed up with a telephone call to Patricia Owen, legislative staff, regarding questions he had about the language in the bill or resolution.

**January 23, 2008:** John Cannon, legislative staff, received an email from Andrew Tso raising concerns about the language in the legislation which led to the resolution being changed to remove a reference to the Paiute Strip.

**January 24-25, 2008:** The Dineh Committee and the NUC held a meeting in Cortez, Colorado where it was discussed how to respond and put together a new group to manage the trust. Tony Dayish, Administrator of the NTF was in attendance and gave input to the group and listened to their concerns.

**January 25, 2008:** A representative from the Blue Mountain Dineh contacted the State asking where to get information about the bill and resolution. He was advised that the best place to get information or provide input at this point would be to contact his State legislators, Representative King and Senator Dmitrich whose information can be found at [www.utah.gov](http://www.utah.gov).

**January 29, 2008** – The final bill and resolutions were posted on the website for the public. See the following web links for a whole history on the bill and resolution as well as links to the actual language.

**HCR 4 – Concurrent Resolution Encouraging Congressional Action to Designate a New Recipient Of Royalties From Navajo Reservation Lands in Utah**

<http://le.utah.gov/~2008/htmdoc/hbillhtm/HCR004.htm>

**HB 352 – Amendments Related to Monies Derived from Navajo Nation Reservation Lands in Utah** <http://le.utah.gov/~2008/htmdoc/hbillhtm/HB0352.htm>

**January 30, 2008:** During the American Indian Caucus Day legislative staff assisted Clarence Rockwell in the distribution of legislative recommendations and spoke with Tony Dayish regarding comments and possible changes to the legislation. Tony indicated that he had received comments about the legislation, but was reviewing them because many appeared confused about what the legislation did and he wanted to consolidate them. We encouraged him to provide us the information as soon as possible, but we did not receive any further information.

During the session Representative Clark received at least one fax from the NUC.

**February 4, 2008,** The issue was discussed briefly again at the meeting of the NRF, with Leonard Lee and Katherine Benally present.

**February 5, 2008,** Tony Dayish was asked to attend a meeting with Kenneth Maryboy, Mark Maryboy, Davis Filfred, Leonard Lee, Earl Lee, Clarence Rockwell, Robert Billie Whitehorse and other officials of the Aneth Chapter. Tony heard their concerns and discussed options for them to consider for a new trustee.

**February 8, 2008:** Navajo Trust Fund Board of Trustees Meeting, Salt Lake City and Blanding Teleconference. Ed Tapaha reported that the Dineh Committee had been discussing options for a new trustee and making plans for next step.

**February 12, 2008** - Bill and resolution discussed in the House Government Operations Committee – public notice of the meeting and the agenda was posted on the Legislature's website at <http://le.utah.gov/asp/interim/Commit.asp?Year=2008&Com=HSTGOC>.

**February 15, 2008:** Utah Dineh Committee Special Meeting, City of Cortez Council Chambers. Reports included review of NRF Legislation that includes the UNTF transition and new trustee proposed legislation.

**February 22, 2008:** Utah Dineh Committee Meeting, Mexican Water Chapter House. Reports regarding H.B. 352 NRF Legislation Revisions Update and new trustee federal legislation update given and discussion had.

**February 22, 2008** - Bill and resolution discussed in the Senate Government Operations and Subdivisions Committee – public notice of the meeting and the agenda (See Attachment 17, agenda) was posted on the Legislature’s website at

<http://le.utah.gov/asp/interim/Commit.asp/Year=2008&Com=SSTGOP>

At least one Navajo attended and testified in the Senate Standing Committee.

**February 28, 2008:** Navajo Trust Fund Board of Trustees Special Meeting, Teleconference between Blanding and Salt Lake City. Update given on the status of H.B. 352 which provided for the transition of the trust fund until a new trustee is determined by Congress.

**March 5, 2008:** Clarence Rockwell called John Cannon, legislative staff, indicating that in tracking HB 352 he saw that the bill was recalled. John informed him that there was a technical problem that needed to be resolved.

Before the Utah Legislative Session ended, Senator Dmitrich spoke on the telephone twice with Mr. Maryboy and twice with Andrew Tso to his recollection regarding the sunset of the NTF legislation and other related issues.

Throughout this time period, Gayle McKeachnie, Governor’s office, spoke on the phone several times with Clarence Rockwell and Kenneth Maryboy and met with Kenneth Maryboy once or twice at the State Capitol. The main topics of conversation were:

- Whether the Governor would come to Monument Valley and meet about what was going to happen?
- Would the state consider a two-year extension before sunset of the trust fund?
- Who could they talk to about what was going to be in the state’s legislation to sunset the trust fund and transition to a new trustee?

Mr. McKeachnie referred them to Senator Dmitrich and Representative King, their state legislative representatives, and to legislative staff. In addition, Mr. McKeachnie referred them to Congressman Matheson’s office to discuss Congress designating a new trustee.

**March 21, 2008:** Navajo Trust Fund Board of Trustees meeting minutes, Red Mesa Chapter House, reports that the Governor has signed H.B. 352.

**March 28, 2008:** Utah Dineh Committee agenda, Montezuma Creek, update given on HB 352 to committee members.

**April 25, 2008:** Utah Dineh Committee agenda, Aneth Chapter House, report on fixed assets and projects audit as required by HB 352.