

**TESTIMONY OF
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
OVERSIGHT HEARING
ON
H.R. 4384, TO ESTABLISH THE UTAH NAVAJO TRUST FUND
COMMISSION, AND FOR OTHER PURPOSES.**

July 28, 2010

Good morning Mr. Chairman, Ranking Member, and members of the Committee. Thank you for the opportunity to provide the Department of the Interior's (Department) position on H.R. 4384, a bill that seeks to establish the Utah Navajo Trust Fund Commission, and for other purposes. The Department takes no position on this legislation, but would like more time to review two provisions in the bill.

In 1933, Congress established the Utah Navajo Trust Fund (UNTF) through legislation (47 Stat.1418), which designated Utah as the trustee. The corpus of the UNTF comes from 37.5 percent of net royalties derived from exploitation of oil and gas deposits under the Navajo Reservation's Aneth Extension located in the State of Utah. According to the statute, the 37.5 percent net royalties are to be paid to the State of Utah, which was to be used for the health, education and general welfare of the Navajo Indians residing in the Aneth Extension. In 1968, Congress expanded the beneficiary class to include all Navajo Indians living in San Juan County, Utah (Pub.L. 90-306, 82 Stat. 121).

In approximately 1959, oil and gas wells in the Aneth Extension began producing in paying quantities, and the United States Department of the Interior, through oil and gas mining leases on the Navajo tribal land, began collecting oil and gas royalties. The leases are between the Navajo Nation and the producer, and are subject to approval by the Secretary of the Interior.¹ The State of Utah is not a party to the tribal leases.

Previously, the Navajo Nation would collect the Aneth lease royalties directly and remits 37.5 percent to the UNTF account administered by the State of Utah. The State, upon receipt of each check, deposits it into the Trust Fund and invests the unused royalty funds according to rules set forth in Utah's statutes. In 2008, however, the Utah State Legislature enacted legislation that divested the State of the responsibility of managing the UNTF.

¹ See, e.g., 25 U.S.C. § 396a (provision in 1938 Indian Mineral Leasing Act allowing tribe to lease unallotted Indian land for mining purposes, subject to Secretary of Interior approval); 25 C.F.R. Pt. 211 (Leasing of Tribal Lands for Mineral Development).

H.R. 4384 would establish a Utah Navajo Trust Commission (Commission) to administer the Utah Navajo Trust Fund. The Commission would be made up of 7 members, elected from each of 7 Navajo Chapters located in Utah. Among other duties, the Commission would be responsible for selecting a Trust Administrator for the Utah Navajo Trust Fund; ensuring that amounts in the Trust are invested, managed, and administered for the health, education, and general welfare of the beneficiaries; establishing written investment goals, objectives, and guidelines for the investment of the Trust assets, determining which projects are to be funded; authorizing the expenditure of amounts in the Utah Navajo Trust Fund for approved projects; report to the beneficiaries through each Chapter; limiting the amounts of the Trust Fund spent on the Commission's administrative costs; and establishing policies and procedures for Trust Fund management and accounting.

The legislation would also direct the State of Utah to prepare and audit an accounting of the Trust assets in the UNTF, as established and administered by the State of Utah prior to its divestiture, and to transfer the Trust Assets to the Trust Administrator of the Commission.

The Department does not take a position on this bill but does note two provisions in the bill and would like more time to review these provisions. First, Section 10(f) of the bill, which provides that the Commission, its officers, agents, and employees would not be a department, agency, or instrumentality of the Federal Government and would not be subject to Title 31 of the United States Code. Moreover, the Commission, its officers and employees would not be considered officers, employees, or agents of the Federal Government. Secondly, the Department would also like more time to review Section 19 of the bill which provides that the bill would not create a cause of action against the United States, and that the United States would not be liable for any actions or inactions of the Commission or the Trust Administrator, but that nothing in the bill would affect the liability of the United States for misdeeds by the United States when it had control over Trust assets. Finally, the Department would like more time to review section 12 of the bill, which would require the State of Utah to transfer funds it currently holds in trust to the new Trust Administrator selected under this bill and would require the current beneficiaries of the trust to deposit any damages they may recover from the State of Utah in litigation into the new Trust Fund created by this bill.

Again, the Department takes no position on H.R. 4384 but would like more time to review Section 10(f), 12 and 19 of the bill. This concludes my statement. I would be happy to answer any questions the Committee may have.