

**Testimony of Arvin Trujillo, Executive Director,  
Navajo Nation Division of Natural Resources  
before the Committee on Natural Resources concerning  
H.R. 2523 Helping Expedite and Advance Responsible Tribal Homeownership Act  
October 21, 2009**

Good morning Chairman Rahall, Ranking Member Hastings, and members of the Committee on Natural Resources, thank you for the opportunity to come before you today to testify concerning H.R. 2523, the Helping Expedite and Advance Responsible Tribal Homeownership or HEARTH Act. This legislation is similar to the Navajo Nation Leasing Act of 2000 that gave the Navajo Nation and the Department of Interior the authorization to develop regulations to take the federal government out of the surface leasing process on the Navajoland. As an initial matter, the Navajo Nation supports the passage of H.R. 2353 as a major step towards tribal sovereignty for all the Native Nations. However, based on our experience implementing the Navajo Nation Leasing Act, the Navajo Nation has several recommendations that would help realize the full implementation of both the Navajo Leasing Act and the HEARTH Act.

The Navajo Nation is the first tribal nation to be authorized to sign business and residential leases without prior approval of the Bureau of Indian Affairs, a corresponding Tribal Self-determination contract, or a compact with the Department of the Interior. In July of 2006, President Shirley said, “No longer will the Navajo Nation be required to seek final approval from the Bureau of Indian Affairs to develop its own lands, nor will it be required to wait years for the federal government to conduct appraisals.” While this was a major step forward for tribal sovereignty, the Navajo Nation discovered many roadblocks to implementing the Navajo Leasing Act. First, the implementation of the Act spans three administrations, each with differing views of the rights and responsibilities declared in the purposes of the Act. A

streamlined process for guiding tribes through the federal bureaucracy is essential to the successful implementation of the Act.

Second, the cost of implementation has been fully born by the Navajo Nation. The Congressional Budget Office (CBO) has inexplicably determined that the Navajo Nation, when assuming federal trust functions, would not require money for direct services, data clean up, or revising tribal procedures. The accuracy of the CBO ruling has been called into question by later federal reports, statutes and funding formulas for self-determination contracts performing similar work, and the Office of Special Trustee/Bureau of Indian Affairs budget justifications for current federal Trust, Realty, Records and IT departments budgets. While accounting for approximately one-third of all federal Indian trust land, the Navajo Nation has been chronically underserved since 2000 in relation to other federal tribes. Billions have been transmitted to the Office of Special Trustee during the same period. The “AS-IS” study produced for the Office of Special Trustee estimates “tens of thousands” of Navajo Business-site recorded leases lapsed in 2001. However, no funding formulas for the portion of the task the Navajo Nation assumed were awarded for the inherited historic DOI backlogs of pending transactions or data cleanup conveyed to the Navajo Nation. To properly implement the Navajo Nation Leasing Act, and for other tribes to implement the HEARTH act, the Congress needs to include provisions that allow for proper funding for tribes to assume this responsibility.

Third, the passage of the Navajo Nation Leasing Act assumed that there were existing cadastral surveys required to identify land plots for leases. The Bureau of Land Management (BLM) has not lived up to its responsibility to provide cadastral surveys for the Navajo Nation even though the Navajo Nation has funded fifty percent of the survey team. The existing surveys used by BLM and BIA were conducted in the mid 1900’s, and tied to points such as rocks and

trees. These exiting surveys were insufficient to properly assess and approve loan applications. The Navajo Nation currently only has twenty-five percent (25%) of our land confirmed by an instrument survey for a Public Land Survey system.

To address this problem, in 2004, the Navajo Nation began developing a Land Title Status search capacity for the Navajo Nation. After assessing our needs and existing leasing procedures, a Navajo Nation Land Title Records Office soon emerged as the most feasible course. The Navajo Nation developed the Navajo Land Title Data System (NLTDS) using our own funds. In 2007, the initial design for a title plant for the Navajo Nation was completed. The NLTDS meets the American National Standard Institute (ANSI) and International Standards Organization (ISO) document control requirements. These voluntary standards are approved by federal regulation to meet requirements for: privacy, document control, digital records and tribal trust documents. The Navajo Nation, Division of Natural Resources (DNR) has moved forward with implementation of a Navajo Land Title Data System Plan within the Navajo Land Department to support the “Records of Activities” or document control required by the regulation. The system is designed to expand service to other Divisions and Departments, including local Navajo units of government. The NTLDS is a system that can be used by other tribes to establish and process leases. However, the development of this system requires a significant cost outlay on the part of the Navajo Nation that we have so far born ourselves but is essential to implementing the Navajo Nation Leasing Act. Funding from the federal government is essential to allow the Navajo Nation to complete development of this system. To properly implement both acts, Congress will either have to provide money to tribes to develop their own systems, or encourage the adoption of a system similar to what we have developed.

Finally, while the Navajo Nation Leasing Act has been a major step forward for the

Navajo Nation, we are still faced with a significant hurdle from the Bureau of Indian Affairs. Once the Navajo Nation completes the survey work and compiles the documentation necessary for a lease packet we still have to submit the lease to the Navajo Regional BIA office for conveyance. This process can take from two months to a year. The Navajo Nation Leasing Act has so far only transferred the costs and burdens of compiling and approving the lease information without the benefits of allowing final conveyance. Both the HEARTH Act and Navajo Nation Leasing Acts must involve a real commitment to transfer complete responsibility to the tribes and not just the costs.

Tribal sovereignty is an essential component of the right ability of the Native nations to govern ourselves. Both the Navajo Nation Leasing Act and the HEARTH Act represent a significant step forward in providing greater self-determination to tribes. The Committee and Congressman Heinrich should be commended for moving forward to provide us with greater sovereignty. However, in order to implement the Acts the federal government must provide funding for the costs associated with transferring the responsibility to tribes, and the transfer of responsibility must be complete to allow tribes to convey the leases.

Thank you.