

**CONCURRENT RESOLUTION SUPPORTING THE TRANSFER
OF ADMINISTRATION OF THE UTAH NAVAJO TRUST
FUND TO THE DINÉH COMMITTEE**

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor expresses the Legislature's and the Governor's ~~H→~~ **[intent to] support for the** ~~←H~~ transfer ~~H→~~ **of** ~~←H~~ all ~~H→~~ **[Utah Navajo Trust Fund] oil and gas royalties** ~~←H~~ administrative and fiduciary obligations to the Utah Diné Corporation under specified conditions.

Highlighted Provisions:

This resolution:

▶ expresses the Legislature's and the Governor's ~~H→~~ **[intent to transfer all Utah Navajo Trust Fund] support for the transfer of all oil and gas royalties** ~~←H~~ administrative and fiduciary obligations to the Utah Diné Corporation subject to federal action;

▶ declares that any transfer pursuant to federal action of Utah Navajo Trust Fund administrative and fiduciary obligations to the Utah Diné Corporation must also indemnify and hold harmless the state of Utah from any and all legal and equitable claims arising from future Utah Navajo Trust Fund administration by the Utah Diné Corporation and for litigation costs related to any claims;

▶ declares that transfer of Utah Navajo Trust Fund administrative and fiduciary obligations to the Utah Diné Corporation should require that the value of fixed and monetary Utah Navajo Trust Fund assets remain at least at current levels so that

H.C.R. 11



28 funds will be available to promote future generations of Utah Navajo Trust Fund beneficiaries'
29 health, education, and general welfare; and

30 ▶ declares that, if the foregoing objectives are ensured, the transfer of Utah Navajo
31 Trust Fund administrative and fiduciary obligations to the Utah Dinéh Corporation
32 should occur by federal action.

33 **Special Clauses:**

34 None



36 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

37 WHEREAS, in 1933, Congress enacted 47 Stat. 1418, which expanded the boundaries
38 of the Navajo Reservation north of the San Juan River, in San Juan County, Utah, referred to as
39 the "Aneth Extension," and directed that 37.5% of all royalties from oil and gas extracted from
40 certain portions of the Aneth Extension "shall be expended by the State of Utah in the Tuition
41 of Indian children in white schools and/or in the building or maintenance of roads across the
42 [Aneth Extension], or for the benefit of the Indians residing therein";

43 WHEREAS, in 1968, Congress enacted Public Law 90-306, 82 Stat. 121, which
44 expanded the beneficiary class to include all Navajo residing in San Juan County, Utah, (Utah
45 Dinéh), and which redefined the purposes of the Utah Navajo Trust Fund (UNTF) to include
46 the beneficiaries' "health, education and general welfare";

47 WHEREAS, the 1933 act and the 1968 expansion of the beneficiary (Federal Acts)
48 class effectively created a common law discretionary trust whereby the United States is the
49 settlor, Utah is the trustee, and all Utah Dinéh residing in San Juan County, Utah are
50 beneficiaries;

51 WHEREAS, pursuant to the Federal Acts, Utah ~~H~~→ **[must] is directed to** ←~~H~~ administer
51a the ~~H~~→ **[UNTF] oil and gas royalties** ←~~H~~ for the
52 health, education, and general welfare of the Navajo Indians residing in San Juan County;

53 WHEREAS, oil and gas were first extracted in paying quantities from the Aneth
54 Extension during or about the late 1950s;

55 WHEREAS, in 2008, the Legislature of the state of Utah enacted H.B. 352,
56 Amendments Related to Monies Derived from Navajo Nation Reservation Lands in Utah,
57 which in part declared, "It is the purpose of this chapter to provide for a transitional process
58 until congressional action designates a new recipient of the Utah Navajo royalties";

59 WHEREAS, H.C.R. 4, Concurrent Resolution Encouraging Congressional Action to
 60 Designate a New Recipient of Royalties from Navajo Reservation Lands in Utah, also passed
 61 by the Utah Legislature in 2008, noted that "the state first received monies from the 37.5% of
 62 the oil and gas royalties in 1959 and litigation related to those royalties began almost
 63 immediately" and that "the litigious environment surrounding the state's administration of the
 64 oil and gas royalties harms the relationship between the state and the San Juan Navajos and
 65 complicates all parties' ability to meet the needs of the San Juan Navajos";

66 WHEREAS, H.B. 352 incrementally reduced expenditures under the trust duties;

67 WHEREAS, H.B. 352 resulted in the establishment of what became known as the
 68 Navajo Royalty Holding Fund (NRHF) no later than July 1, 2008, into which all ~~H→ [UNTF]~~ **oil**
 68a **and gas royalties** ~~←H~~
 69 monetary assets and future royalty payments would be placed;

70 WHEREAS, Utah law, established by H.B. 352, was amended in 2012 by S.B. 155,
 71 Transition for Repealed Navajo Trust Fund Act, to allow expenditures from the NRHF for the
 72 education of certain beneficiaries up to January 1, 2014;

73 WHEREAS, on June 30, 2010, net assets then being held by the state of Utah in the
 74 NRHF totaled \$51,352,590;

75 WHEREAS, this includes a \$33,000,000 court settlement, the final installment of
 76 which is to be paid by the state of Utah in 2013;

77 WHEREAS, litigation is now pending in United States District Court seeking to force
 78 the state of Utah to resume active administration of the ~~H→ [UNTF]~~ **oil and gas royalties** ~~←H~~ for
 78a the health, education, and
 79 general welfare of the beneficiaries;

80 WHEREAS, the health, education, and general welfare of the beneficiaries would be
 81 improved by continuing projects previously funded, wholly or partially, with ~~H→ [UNTF]~~ **oil and**
 81a **gas** ~~←H~~ funds,

82 including housing, water development, range improvement, delivery of education, healthcare,
 83 and other social services;

84 ~~H→ [WHEREAS, although funded in part with NRHF expenditures, the subsequent cutoff of~~
 85 ~~funding has left nonmonetary assets, including partially built houses, exposed to the extreme~~
 86 ~~elements of southeastern Utah;]~~ ~~←H~~

87 WHEREAS, beneficiaries seeking secondary education are currently unsure whether
 88 college financial aid will continue to be available through the NRHF;

89 WHEREAS, in certain carefully selected instances, and in partnership with other

90 governmental and private financial institutions, the beneficiaries would benefit from the
 91 expenditure of ~~H~~→ [UNTF] oil and gas royalty ←~~H~~ money for economic development in
 91a San Juan County;

92 WHEREAS, the ~~H~~→ [UNTF] oil and gas royalties ←~~H~~ should be actively administered
 92a in these areas of need for the
 93 health, education, and general welfare of the beneficiaries;

94 WHEREAS, the Federal Acts provide no mechanism for the state of Utah to resign as
 95 ~~H~~→ [UNTF]←~~H~~ trustee ~~H~~→ of the oil and gas royalties ←~~H~~ ;

96 WHEREAS, legislation to amend the Federal Acts to name a successor trustee was
 97 introduced in the 111th and 112th Congress, but did not become law;

98 WHEREAS, no legislation to amend the Federal Acts to name a successor trustee has
 99 been introduced in the 113th Congress;

100 WHEREAS, the Legislature of the state of Utah and the Governor stated in H.C.R. 4
 101 that the "removal of the state as a go-between provides an opportunity for Navajos";

102 WHEREAS, the Utah Diné Corporation (UDC) is a nonprofit organization formed
 103 under the Utah Revised Nonprofit Corporation Act;

104 WHEREAS, the UDC is organized exclusively for charitable, religious, educational,
 105 and scientific purposes, including the making of distributions to organizations that qualify as
 106 exempt organizations under IRC Section 501(c) of the Internal Revenue Code;

107 WHEREAS, UDC's proposed amended bylaws ensure transparency and accountability
 108 at every level of corporate administration and prohibits real and apparent conflicts of interest,
 109 including nepotism, at every level of corporate administration;

110 WHEREAS, the UDC's proposed amended bylaws position the Utah Diné to play
 111 important roles in ~~H~~→ [UNTF] oil and gas royalties ←~~H~~ administration and oversight, require
 111a that the overall value of the
 112 ~~H~~→ [UNTF] oil and gas royalties' assets ←~~H~~ , currently estimated at approximately \$55,000,000,
 112a be maintained and, if consistent with
 113 applicable law and ~~H~~→ [UNTF] oil and gas royalties ←~~H~~ purposes, grown;

114 WHEREAS, the UDC's proposed amended bylaws require that any ~~H~~→ [UNTF] oil and
 114a gas ←~~H~~ assets made
 115 available for economic development be limited in amount, comprise only a minor portion of
 116 any single funding package, be partnered with loans from other chartered financial institutions,
 117 be offered only as loans at current market rates for any amount over \$300, and occur only after
 118 it is expressly determined that the expenditure will actually promote the beneficiaries' health,
 119 education, or general welfare;

120 WHEREAS, the UDC's proposed amended bylaws provide that if all Utah Navajo Trust

121 Fund administrative and fiduciary obligations are transferred to the Utah Dinéh Corporation, a
 122 Request For Proposal addressed to large, chartered financial institutions will be issued
 123 immediately, and every three years thereafter, for performing fund management, investing, and
 124 auditing services;

125 WHEREAS, the members of each Utah chapter of the Navajo Nation have previously
 126 resolved to support the UDC's effort to become the ~~H→ [UNTF] ←H~~ trustee ~~H→~~ of the oil and
 126a gas royalties ←H ;

127 WHEREAS, this support will again be ensured by means deemed reasonable and
 128 reliable prior to any transfer of ~~H→ [UNTF] oil and gas royalties ←H~~ administration to the UDC;

129 WHEREAS, the San Juan County Board of Commissioners unanimously supports
 130 transfer of administrative and fiduciary obligations for the ~~H→ [UNTF] oil and gas royalties ←H~~
 130a to the UDC;

131 WHEREAS, the UDC Board of Directors will include representatives elected from each
 132 Utah chapter of the Navajo Nation and from one chapter organized to represent Utah Dinéh
 133 that currently does not reside within Navajo Reservation boundaries;

134 WHEREAS, the UDC intends to administer the ~~H→ [UNTF] oil and gas royalties ←H~~
 134a pursuant to all applicable laws
 135 and regulations, including the common law of Indian trusts that imposes strict and exacting
 136 fiduciary obligations upon any trustee administering the property of Native Americans; and

137 WHEREAS, any transfer of ~~H→ [UNTF] oil and gas royalties ←H~~ administrative and
 137a fiduciary obligations to the UDC

138 must ensure that the state of Utah is indemnified and held harmless for any liability, damages,
 139 or litigation costs resulting from ~~H→ [UNTF] oil and gas royalties ←H~~ administration:

140 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the
 141 Governor concurring therein, expresses its ~~H→ [intent to] support for the ←H~~ transfer all
 141a ~~H→ [Utah Navajo Trust Fund] oil and gas royalties ←H~~
 142 administrative and fiduciary obligations to the Utah Dinéh Corporation conditioned on removal
 143 of the state as trustee, by an act of Congress ~~H→~~ or a federal court order that can then be used to
 143a encourage congressional action and that indemnifies and holds harmless the state of Utah from
 143b any and all legal and equitable claims ←H .

144 BE IT FURTHER RESOLVED that the Legislature and the Governor declare that any
 145 transfer of ~~H→ [Utah Navajo Trust Fund] oil and gas royalties ←H~~ administrative and fiduciary
 145a obligations to the Utah Dinéh
 146 Corporation by Congressional act ~~H→~~ or federal court order ←H must also indemnify and

146a hold harmless the state of Utah
147 from any and all legal and equitable claims arising from future ~~H→ [Utah Navajo Trust Fund]~~ oil
147a and gas royalties ←H
148 administration by the Utah Dinéh Corporation and for litigation costs related to any claims.
149 BE IT FURTHER RESOLVED that the Legislature and the Governor declare that any
150 transfer of Utah Navajo Trust Fund administrative and fiduciary obligations to the Utah Dinéh
151 Corporation should require that the value of fixed and monetary Utah Navajo Trust Fund assets

152 remain at least at current levels so that funds will be available to promote future generations of
 153 Utah Navajo Trust Fund beneficiaries' health, education, and general welfare ~~H→~~ **and that the**
 153a **Utah Dineh Corporation should operate under bylaws that have the protections described in**
 153b **this resolution** ~~←H~~ .

154 BE IT FURTHER RESOLVED that the Legislature and the Governor declare that, if
 155 the foregoing objectives are ensured, the Legislature and the Governor support action by
 156 Congress ~~H→~~ **or a federal court order** ~~←H~~ to transfer the ~~H→~~ [~~Utah Navajo Trust Fund's~~] **oil**
 156a **and gas royalties** ~~←H~~ administrative and fiduciary obligations to
 157 the Utah Diné Corporation.

158 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Navajo Utah
 159 Commission, the President of the Navajo Nation, the Speaker of the Navajo Nation Council,
 160 the elected secretary of each Utah Diné chapter, the San Juan County Board of
 161 Commissioners, the current administrator of the Navajo Royalty Holding Fund, the secretary of
 162 the United States Department of the Interior, the United States Attorney General, and the
 163 members of Utah's congressional delegation.

Legislative Review Note
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Office of Legislative Research and General Counsel