

1 **CONCURRENT RESOLUTION SUPPORTING THE TRANSFER**
2 **OF ADMINISTRATION OF THE UTAH NAVAJO OIL AND GAS**
3 **ROYALTIES TO THE UTAH DINÉH CORPORATION**

4 2013 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Michael E. Noel**

7 Senate Sponsor: David P. Hinkins

8
9 **LONG TITLE**

10 **General Description:**

11 This concurrent resolution of the Legislature and the Governor expresses the
12 Legislature's and the Governor's support for the transfer of all oil and gas royalties
13 administrative and fiduciary obligations to the Utah Dinéh Corporation under specified
14 conditions.

15 **Highlighted Provisions:**

16 This resolution:

17 ▶ expresses the Legislature's and the Governor's support for the transfer of all oil and
18 gas royalties administrative and fiduciary obligations to the Utah Dinéh Corporation
19 subject to federal action;

20 ▶ declares that any transfer pursuant to federal action of oil and gas royalties
21 administrative and fiduciary obligations to the Utah Dinéh Corporation must also
22 indemnify and hold harmless the state of Utah from any and all legal and equitable
23 claims arising from future oil and gas royalties administration by the Utah Dinéh
24 Corporation and for litigation costs related to any claims;

25 ▶ declares that transfer of oil and gas royalties administrative and fiduciary
26 obligations to the Utah Dinéh Corporation should require that the value of fixed and
27 monetary oil and gas royalties assets remain at least at current levels so that funds
28 will be available to promote future generations of oil and gas royalties beneficiaries'
29 health, education, and general welfare; and

30 ▶ declares that, if the foregoing objectives are ensured, the transfer of oil and gas
31 royalties 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 is directed to administer the oil and gas
52 royalties for the health, education, and general welfare of the Navajo Indians residing in San
53 Juan County;

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

56 WHEREAS, in 2008, the Legislature of the state of Utah enacted H.B. 352,
57 Amendments Related to Monies Derived from Navajo Nation Reservation Lands in Utah,

58 which in part declared, "It is the purpose of this chapter to provide for a transitional process
59 until congressional action designates a new recipient of the Utah Navajo royalties";

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

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

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

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

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

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

78 WHEREAS, litigation is now pending in United States District Court seeking to force
79 the state of Utah to resume active administration of the oil and gas royalties for the health,
80 education, and general welfare of the beneficiaries;

81 WHEREAS, the health, education, and general welfare of the beneficiaries would be
82 improved by continuing projects previously funded, wholly or partially, with oil and gas
83 royalties funds, including housing, water development, range improvement, delivery of
84 education, healthcare, and other social services;

85 WHEREAS, beneficiaries seeking secondary education are currently unsure whether

86 college financial aid will continue to be available through the NRHF;

87 WHEREAS, in certain carefully selected instances, and in partnership with other
88 governmental and private financial institutions, the beneficiaries would benefit from the
89 expenditure of oil and gas royalty money for economic development in San Juan County;

90 WHEREAS, the oil and gas royalties should be actively administered in these areas of
91 need for the health, education, and general welfare of the beneficiaries;

92 WHEREAS, the Federal Acts provide no mechanism for the state of Utah to resign as
93 trustee of the oil and gas royalties;

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

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

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

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

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

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

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

112 WHEREAS, the UDC's proposed amended bylaws require that any oil and gas royalties'
113 assets made available for economic development be limited in amount, comprise only a minor

114 portion of any single funding package, be partnered with loans from other chartered financial
115 institutions, be offered only as loans at current market rates for any amount over \$300, and
116 occur only after it is expressly determined that the expenditure will actually promote the
117 beneficiaries' health, education, or general welfare;

118 WHEREAS, the UDC's proposed amended bylaws provide that if all oil and gas
119 royalties administrative and fiduciary obligations are transferred to the Utah Diné
120 Corporation, a Request For Proposals addressed to large, chartered financial institutions will be
121 issued immediately, and every three years thereafter, for performing fund management,
122 investing, and auditing services;

123 WHEREAS, the members of each Utah chapter of the Navajo Nation have previously
124 resolved to support the UDC's effort to become the trustee of the oil and gas royalties;

125 WHEREAS, this support will again be ensured by means deemed reasonable and
126 reliable prior to any transfer of oil and gas royalties administration to the UDC;

127 WHEREAS, the San Juan County Board of Commissioners unanimously supports
128 transfer of administrative and fiduciary obligations for the oil and gas royalties to the UDC;

129 WHEREAS, the UDC Board of Directors will include representatives elected from each
130 Utah chapter of the Navajo Nation and from one chapter organized to represent Utah Diné
131 that currently do not reside within Navajo Reservation boundaries;

132 WHEREAS, the UDC intends to administer the oil and gas royalties pursuant to all
133 applicable laws and regulations, including the common law of Indian trusts that imposes strict
134 and exacting fiduciary obligations upon any trustee administering the property of Native
135 Americans; and

136 WHEREAS, any transfer of oil and gas royalties administrative and fiduciary
137 obligations to the UDC must ensure that the state of Utah is indemnified and held harmless for
138 any liability, damages, or litigation costs resulting from oil and gas royalties administration;

139 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the
140 Governor concurring therein, expresses its support for the transfer of all oil and gas royalties
141 administrative and fiduciary obligations to the Utah Diné Corporation conditioned on removal

142 of the state as trustee, by an act of Congress or a federal court order that can then be used to
143 encourage congressional action and that indemnifies and holds harmless the state of Utah from
144 any and all legal and equitable claims.

145 BE IT FURTHER RESOLVED that the Legislature and the Governor declare that any
146 transfer of the oil and gas royalties administrative and fiduciary obligations to the Utah Diné
147 Corporation by Congressional act or federal court order must also indemnify and hold harmless
148 the state of Utah from any and all legal and equitable claims arising from future oil and gas
149 royalties administration by the Utah Diné Corporation and for litigation costs related to any
150 claims.

151 BE IT FURTHER RESOLVED that the Legislature and the Governor declare that any
152 transfer of oil and gas royalties administrative and fiduciary obligations to the Utah Diné
153 Corporation should require that the value of fixed and monetary oil and gas royalties assets
154 remain at least at current levels so that funds will be available to promote future generations of
155 oil and gas royalties beneficiaries' health, education, and general welfare and that the Utah
156 Diné Corporation should operate under bylaws that have the protections described in this
157 resolution.

158 BE IT FURTHER RESOLVED that the Legislature and the Governor declare that, if
159 the foregoing objectives are ensured, the Legislature and the Governor support action by
160 Congress or federal court order to transfer the oil and gas royalties administrative and fiduciary
161 obligations to the Utah Diné Corporation.

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