

DIGEST OF A PERFORMANCE AUDIT OF THE UTAH NAVAJO TRUST FUND

This audit of the state-administered Utah Navajo Trust Fund was requested by Representative David Adams. We were asked to investigate allegations of mismanagement and fraud involving Utah Navajo Industries or any of its subsidiaries, Utah Navajo Development Council, and the Utah Division of Indian Affairs.

The Utah Division of Indian Affairs (UDIA) is part of state government; it is the agency of the state which administers the trust fund. Utah Navajo Development Council (UNDC) is a private, non-profit organization that provides services to Navajos in San Juan County; it is partially funded by the trust fund. Utah Navajo Industries (UNI) is a wholly owned for-profit subsidiary of UNDC; it has received loans and grants from the trust fund. The three objectives of UNI have been: to generate earnings that would sustain the trust fund activities after oil revenues declined, to employ Utah Navajos, and to develop Utah Navajo management talents.

The Utah Navajo Trust Fund was created by an act of the U.S. Congress on March 1, 1933. That act transferred public land in San Juan County to the Navajo reservation, but provided that the state would receive 37 1/2 percent of any oil and gas royalties from the land transferred in behalf of Utah Navajos. The 1933 act, as amended, limits how the state may use the Navajo royalty funds it receives. The funds may be used only "for the health, education, and general welfare of the Navajo Indians residing in San Juan County."

The state is in the position of trustee with a fiduciary duty to beneficiaries. As a trustee, the state's conduct may be judged by exacting fiduciary standards including reasonable care, honesty, good faith and loyalty. Since 1959, the state trust fund administrators have received approximately \$61 million and spent approximately \$52 million. Approximately \$9.6 million remains in the fund. While the trust fund has produced many benefits for Utah Navajos, some funds have been wasted or spent inefficiently.

The following summaries describe the most significant findings of the audit.

Trust Fund History. The Navajo Trust Fund has a long and controversial history. Over the past 32 years funds have been used in a variety of ways. Disagreements, even within the Navajo community, about how the trust fund should be used have continued throughout its history; in fact, there have been 30 years of controversy. Court cases have not resolved these disputes. While many expenditures have certainly benefited San Juan County Navajos, others have not. The state needs to take into account the lessons of the past to improve its administration in the future.

Board Governance Has Not Been Effective. Problems with trust fund management result from failures of its governance system. In our opinion, board governance has not been effective for two reasons. First, the three-board system (UDIA, UNDC, and UNI) has diluted oversight responsibility to the point that effective policy direction and accountability have not existed. Second, UNI contracts with and payments to board members raise serious questions about the objectivity of the governance process.

Trust Funds Were Wasted on UNI Businesses. UNI has suffered from bad management, which combined repeatedly poor business decisions with unethical behavior. The result has been the loss of the trust fund's investments in UNI rather than such anticipated benefits to Utah Navajos as economic development, continuing employment, and dividend payments. Besides the poor business decisions that were made, it appears that some misappropriation of funds occurred.

UNDC Should Be Better Managed. UNDC has not been prudently managed. In fact, recent management decisions seem to be at odds with the financial realities facing the organization. Despite concerns about depleting the trust fund, UNDC has increased its requests for funds, with its budget increasing by 49 percent between fiscal years 1991 and 1992. UNDC seems to lack basic financial information needed to control an organization. Despite service reductions and staff layoffs, seemingly unnecessary expenditures continue to be made and some program areas poorly managed. We believe the state needs to reconsider the relationship between UNDC and the trust fund.

Conclusion and Recommendations. The state should demand at least as high a level of accountability for trust fund expenditures as it demands for other state fund expenditures. To do so, we recommend that an overall fund policy be established and followed, that the independence of policy makers be ensured, that involvement in business ventures be limited, and that alternatives ways of delivering services be explored. Whether the newly created Utah Dineh Committee will be able to implement the changes needed is questionable. To fulfill its fiduciary duty, the state should consider providing for a trust administrator, who has knowledge of and experience with the legal obligations of a trust, with final approval authority for all trustee decisions. If the state is unable or unwilling to take the actions needed, it should arrange to be removed as the trustee.