



# STATE OF THE NAVAJO NATION ADDRESS

PRESIDENT JOE SHIRLEY, JR.

PRESENTED TO THE

21<sup>ST</sup> NAVAJO NATION COUNCIL

APRIL 20, 2009

Speaker Morgan, Mr. Chief Justice, Navajo Nation Council Delegates, Vice President Shelly, relatives and guests, *Ya'at'eeh!* It is an honor to present the State of the Navajo Nation address and to share with you our accomplishments for the second quarter of the year, our challenges and our vision for the future of the Navajo Nation.

To begin, I'd like to recognize and thank the Citizens Energy Corporation for its generous energy assistance grant to the Navajo Nation in the amount of \$479,000. This is the second year of funding to help Navajo families in need who have suffered financially from the high cost of heating their homes. The Division of Social Services continues to administer the grant which provides payments directly to propane vendors, wood and coal vendors, Navajo Tribal Utility Authority and other utility companies on behalf of eligible individuals and institutions. I am extremely grateful to Citizens Energy and to its chairman, Joseph P. Kennedy II, and hope to continue to receive additional grants in the future on behalf of our people who benefit from this worthwhile generosity.

As everyone knows, President Obama recently signed into law the American Recovery and Reinvestment Act of 2009. In response to this once-in-a-lifetime economic development and job creation opportunity, our administration, in coordination with various agencies and tribal enterprises, has been working to apply for competitive and block grant funding awards for housing, roads, water-related infrastructure projects, school construction and work force



development programs. To ensure compliance with strict timelines and to meet our high expectations, I have appointed Mr. Arvin Trujillo, Executive Director of the Division of Natural Resources, to coordinate the overall effort for the Navajo Nation. As the point of contact, Mr. Trujillo is responsible for establishing the necessary organizational structures to meet our objectives. This includes re-assigning staff from various Executive Branch Divisions and departments, working closely with the Navajo Nation Washington Office to obtain all essential information about funding opportunities in an expedited manner, and to oversee the development, implementation and monitoring of all Navajo Nation proposals that seek funding through the Stimulus Act.

I have no doubt that Mr. Trujillo, his staff, and our Washington Office will work diligently to assist our programs and tribal enterprises to take full advantage of the opportunities presented for the benefit of our Nation and our people.

Members of the Council, on February 27 this body overwhelmingly approved the right-of-way application and assignment to the Diné Power Authority for the Desert Rock Energy Project – the last of four Navajo permits needed for the project to proceed. I want to commend you for your unwavering support and foresight. Despite volumes of press coverage that tend to emphasize the negative aspects of a project this size, you took the time to hold a work session to hear the arguments of the project's opponents. The Desert Rock Energy Project was envisioned as a way to make use of our abundant resources of coal, and to bring economic prosperity to our people. Simply stated, it is the most important economic, environmental, and energy project the Navajo Nation has ever undertaken.

Desert Rock will bring hundreds of Navajos home to work on the project, and keep hundreds more from leaving to seek employment elsewhere. When completed, the jobs and business Desert Rock creates throughout its 50-year life will stimulate our Navajo economy like nothing else can. That, in turn, will allow Navajos to remain in their homeland rather than seek economic opportunities beyond their own borders.



No one disputes the value of developing renewable energy on the Navajo Nation or around the world. We encourage it. But every knowledgeable source agrees that renewables are merely a fraction of the energy equation. With the cost of solar power at 30 cents per kilowatt, wind power at 15 cents per kilowatt, and coal power at three cents per kilowatt, it is unlikely that developing countries will discontinue using coal to produce electricity. In the United States, coal produces nearly half – 48 percent – of all electricity produced, and more in other countries. Even the Natural Resources Defense Council, a powerful environmental organization which sponsors television ads against coal, acknowledged this month that coal *will* remain a major fuel for American electricity production for decades to come. By comparison, last November India reported it will import 100 million tons of coal by 2012 to meet its domestic demand. That is half of all the coal that's ever been mined from Black Mesa since mining began 40 years ago.

Fortunately, President Barack Obama has stated his support for research and development of technology to capture and sequester carbon emissions from plants like Desert Rock, and for the Navajo Nation to become a global leader in energy production, all that's needed is federal support. We support that effort, and those similar to the federal government of Australia which last week announced it would provide \$100 million for research in that country.

For the countries of the world to end the impact carbon emissions contribute to climate change, the burning of *all* oil, gas and coal would have to end immediately. However, no one realistically believes that's likely because it would result in a global economic shutdown unlike anything we've ever seen. The increase in emissions from China's coal use alone has already surpassed that of the United States, and is expected to exceed that of all industrialized countries *combined* over the next 25 years.

Meanwhile, it has been reported that within the next five years, India and China plan to build 800 coal-fired power plants to meet their rising demands and to power their growing economies. It is unlikely that these proposed power plants will be designed to protect the environment like Desert Rock. I submit to you that should Desert Rock's opponents be successful, all that will be accomplished is that India and China will build 800-plus-one power plants, and that Navajo



economic dependence and poverty will continue into the future because of it.

Recently, we learned that New Mexico Environment Department Secretary Ron Curry requested a meeting with the U.S. Fish & Wildlife Service to discuss concerns regarding the Biological Assessment for Desert Rock. For years, the Navajo Nation, DPA and Desert Rock Energy Company has worked closely with the U.S. Fish & Wildlife Service concerning the project. The Biological Assessment and the Endangered Species Act consultation between the Bureau of Indian Affairs and the Fish & Wildlife Service is nearly complete. After two years and much work, we understand that the Fish & Wildlife Service plans to issue its Biological Opinion in June. I am very concerned, as you should be, that New Mexico's 11<sup>th</sup> hour meeting request is an attempt to delay the project and upset the ongoing federal consultation process. We are aware of no new scientific information on this subject that has been provided to the agency. I am also concerned that neither Secretary Curry nor any New Mexico official has made any attempt to contact the Navajo Nation to discuss these matters.

Members of the Council, the Navajo Nation has expressed its concerns to Governor Richardson and his staff, including Secretary Curry, that the State of New Mexico has consistently failed to engage the Navajo Nation in meaningful consultation on these and other issues regarding Desert Rock. For this reason, I have asked the Fish & Wildlife Service, as a federal agency with trust obligations, to involve the Nation and its representatives in meetings such as the one proposed by New Mexico. Desert Rock will be the cleanest pulverized coal-fired power plant in the United States – up to 10 times cleaner than nearby plants for key pollutants. It will set a new baseline for future coal-fired power generation. From the beginning, we have worked closely with the Navajo Nation EPA, U.S. EPA Region 9, and the U.S. Fish & Wildlife Service to ensure this, to address air emission issues from the project, and to preserve the quality of our natural environment. As President, it is my sincere hope that the Navajo Nation – through Desert Rock – will set a precedent for other coal plants that inevitably will be built in the U.S. and certainly around the world.



Economic development and job creation is a top priority and the cornerstone of our administration. For this reason, I am very pleased to report that within only four months of opening, the Fire Rock Casino has already expanded with more than 200 new slot machines. This means an increase in revenues by 20-to-25 percent. It also means more jobs, including slot supervisors, auditors, and front line employees. I understand that our slots have the highest usage rate per machine per hour, making our casino *the* most successful in the State of New Mexico. We are moving forward with development plans and feasibility studies for casinos at the Pinta Road site at *Nabata Dziil*, the Twin Arrows site at the Leupp Chapter, and near Farmington at the Upper Fruitland Chapter. Preliminary work is also being done at a possible *Tobajiilee* site and Class II feasibility studies are being conducted in Chinle and *Tse Daa K'aan*. The success of our Gaming Enterprise to accelerate new developments will be dependent, in large part, on the coordinated efforts of the Gaming Projects Core Team that is made up of Navajo Nation employees from the Division of Natural Resources, the Navajo EPA, and NTUA. This team of tribal experts was instrumental in assisting the Enterprise to “fast track” the construction of the Fire Rock Casino. The team performs critical pre-construction analysis on the infrastructure needs and land suitability, including archeological, biological, and environmental assessments on all potential development sites. I thank the team for its assistance and commitment to this important process.

Ladies and gentlemen of the Council, as I reported over the last two quarters, the Navajo Nation is highly vulnerable to a funding shortfall this fiscal year because of the unpredictability in oil prices. Over the past few months, the price of oil per barrel has decreased significantly. This has had a direct impact on the Nation and raises serious concerns about the affect this will have on our ability to continue governmental operations at current levels. To help offset the impending shortfall, I've implemented restrictions on all expenditures within the Office of the President and Vice President, all requests for off-reservation travel by Executive Branch personnel are being highly scrutinized, and, as of March 24, I've implemented an Executive Branch Selective Hiring Freeze. We are also exploring the use of the Permanent Fund income as a way to address budget shortfalls consistent with the requirement of a five-year plan and under certain conditions.



The proposal is in draft form, and it is my hope that we can present the plan to the Council for consideration in the near future.

On April 6, the U.S. Supreme Court issued an unfavorable opinion to the Navajo Nation in our lawsuit against the U.S. Government for its breach of the fiduciary responsibilities to the Navajo Nation. Despite this ruling, the uncontested findings of fact remain that the Navajo Nation was misled by the fraudulent acts of the Secretary of the Interior. He indeed breached his fiduciary duty to the Navajo Nation when he secretly met with parties having interests adverse to the Nation. Through his actions, the Interior Secretary violated his common law fiduciary responsibilities. This heartbreaking decision denies critical resources in the amount of \$600 million to the Navajo Nation. As President, I cannot let this injustice stand. For this reason, I have appealed to President Obama to evaluate the facts and circumstances of this case where the U.S. Department of Interior secretly sided with those who opposed Native American interests, reducing tribal royalties below even the minimum that the Government is statutorily required to obtain for federal coal, and knowingly misled Navajo leaders in the process. It is unbecoming of a superpower like the United States to treat the Nation's First People, our *Diné*, in this way. The decision of the U.S. Supreme Court should be corrected administratively and the wrong done to our people should be undone.

It is clear, members of the Council, that we, as leaders, must take decisive steps to protect our Nation's interests. Whether President Obama responds favorably to our request to right this wrong or not, I believe now is the time to begin the process of getting the Secretary of Interior completely out of the business of managing our land and resources. We were able to do this with our business site leases, and we should take the next steps to do the same for all of our natural resources. Within the next few weeks, I plan to establish a task force that would work closely with the Resources Committee during the exploratory phase.

However, in another important case, just last Friday the 10th Circuit Court of Appeals issued a decision favorable to the Navajo Nation in Hydro Resources, Inc., versus the U.S. Environmental Protection Agency. In February 2007, the EPA determined that "Section 8" land of the



checkerboard area in the Eastern Agency constitutes “Indian Country,” and subjects HRI’s proposed uranium mine to EPA regulation under the Safe Drinking Water Act. The appeals court agreed with the EPA’s determination and denied HRI’s challenge of the EPA. To no one’s surprise here, the court found that the land is within the boundaries of the Church Rock Chapter and is part of the Navajo Nation. It also noted that Congress instructed the EPA to prescribe an underground injection control program for all lands in the United States, including Native American lands, in order “to prevent underground injection which endangers drinking water sources.” It said that EPA has primary enforcement responsibility for lands that fall within the federal definition of “Indian lands” until a tribe has secured “Treatment as a State” status and primacy over its lands, which the Navajo Nation has.

I am grateful to the 10th Circuit Court of Appeals for its decision. This ruling represents one more piece of protection in our resistance to renewed uranium mining on Navajoland in the spirit of our Natural Resources Protection Act.

For nearly 30 years, the Navajo Nation has worked to establish its rights to the water of the San Juan River. It has been a slow, laborious and painstaking process. But through negotiation and by avoiding a protracted legal battle, four years ago this month this Council approved the San Juan River Water Rights Settlement Agreement, which was quickly agreed to by the State of New Mexico. Last month both houses of Congress included this historic settlement in the Omnibus Public Lands Management Act of 2009 which President Obama signed into law on March 30. This settlement secures important water rights for the Navajo people and for the Navajo Indian Irrigation Project. But the work that will enable 80,000 of our people in the Eastern Navajo Agency to have water in their homes is not over. To get there, we will need a federal appropriation of \$870 million.

This historic achievement would not have been possible without the support of this Council and the Resources Committee, past and current members of Navajo Nation Water Rights Commission, and the hard work and dedication of many people. These include Dr. John Leeper, Jason John, Robert Kirk, and Michael Benson of the Navajo Nation Department of Water



Resources, the Navajo Nation Department of Justice and Ms. Bidtah Becker of the Water Rights Unit.

Ladies and gentlemen of the Council, I am also especially appreciative of our longtime water rights attorney, Mr. Stanley Pollack, who is acknowledged throughout the country as the leading authority on Native American water rights. It is through Mr. Pollack's unparalleled thought, words, knowledge, long hours of work and legal arguments that we were finally able to enter into the Settlement Agreement. He has consistently demonstrated his commitment and outstanding advocacy on behalf of the Navajo Nation, and I am extremely proud and pleased with his service and tireless effort on behalf of the Navajo people.

I want to take this opportunity to present a small token of our appreciation to Mr. Pollack for his efforts by presenting him with this plaque which reads: In Appreciation, this plaque is given to Stanley M. Pollack, Assistant Attorney General, Navajo Nation Department of Justice, Water Rights Unit, In Recognition and deepest appreciation of your efforts and perseverance, for prevailing in the authorization of the San Juan River Water Settlement with the State of New Mexico, through the passage of the Omnibus Public Lands Management Act of 2009, which was signed into law by President Barack Obama on March 30, 2009, and after 23 years of seeking justice and protecting the interests of the Navajo people as they pursue their true, deserved, legitimate, and inviolable rights to the waters embracing Navajoland, and for causing the courts, the U. S. Congress, and the U. S. Senate to see the justice and righteousness of these rights, which will at last ensure the development of a permanent homeland for the Navajo people for generations to come. The Navajo people and the Navajo Nation, who hold their water rights dear with the sanctity of their sovereignty, sincerely thank you for your selfless dedication, commitment, sacrifice, and belief in the Navajo People. Presented on April 20, 2009, Dr. Joe Shirley, Jr., President, The Navajo Nation.

Ladies and gentlemen of the Council, I thank you and hope that you have a successful and productive Spring Session.