

# 22<sup>ND</sup> NAVAJO NATION COUNCIL



*Speaker's 2012 Spring Session Speech*  
*Speaker Johnny Naize*  
*April 16, 2012*

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*Y*á'át'ééh my fellow colleagues of the 22nd Navajo Nation Council, President Ben Shelly, Vice President Rex Lee Jim, Chief Justice Herb Yazzie, chapter officials, federal, state, and county leadership, staff, and guests in the gallery. Welcome to the hooghan—Navajo Nation Council Chambers—of our great Navajo Nation. I am grateful for your presence on this beautiful day of the new spring.

Honorable Delegates, a year ago this month, we the 22nd Navajo Nation Council, brought fourth nearly four months of laborious work that would eventually pass as the Navajo Nation Title II Amendments of 2011. These amendments are a landmark our people can be proud of, as it was their voice through referendum that gave us the opportunity to take a careful look at their government. Over the past year, it is my belief that we acted in consistence with the call for a more accountable, efficient, and transparent government. We have listened to those who have much to say, we have deliberated on tough decisions, and we have made prudent decisions for the betterment of our nation.

Honorable Council Delegates, I applaud your ability to remain inclusive of our people while simultaneously preserving the integrity of our work by setting a tone of respect and responsibility. Our people since time immemorial have treated governance as both inclusive and sacred; our behavior in government has a direct effect on the health and stability of our nation. I can commend you for this with a clear conscience because you are demonstrating a healthy and stable government to our people.

## **Navajo-Hopi Little Colorado River Water Rights Settlement**

*J* have no doubt that in our people's minds at this very moment rests great concern over the future of our water rights. While the Council's decision on this matter will not be made during this 2012 Spring Navajo Nation Council Session, I want to assure the Navajo people that

this issue weighs heavily on our hearts and minds. I want to remind our people that they will have an opportunity to offer written public comment on this issue and on all related proposed legislation during the "5-day bill hold period."

Moreover, pursuant to the directive of this Council made on March 23, 2012 during a special session, the Navajo Nation Council and the Navajo Nation Water Rights Commission will hold hearings to capture our people's concerns prior to any decision on our nation's water rights. Legislation is currently being sponsored by Council Delegate Jonathan Hale to appoint council delegates to work alongside the nation's water rights commission to hold hearings in order to ascertain the knowledge and direction necessary to secure a strong future for our people. And as always, we welcome the people's civic participation at Council and standing committee meetings.

On April 5, 2012, thirteen Council Delegates responded to a meeting called with Senator Jon Kyl and Senator John McCain in Tuba City to discuss Senator Kyl's proposed Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012 (S. 2109), but not without first informing Navajo people there was a better approach than a closed-door meeting. And it was this Council who arranged the platform for a public address immediately following the meeting to convey what occurred and, more importantly, to provide an opportunity for citizens to voice their concerns. Thank you to Council Delegate Joshua Lavar Butler for assisting my staff in arranging the public address.

I want to acknowledge and extend my appreciation to the people who have taken the time and energy to confront this issue through responsible protest. Where would our nation be without the strength, resilience, and passion behind our people's cause? What would the state of our nation be without citizens who are concerned about our future? As I mingled with the people on the morning of April 5, I observed a very young boy who said, "I want to watch the parade, daddy." It is encouraging to me that our young people witness and participate in meaningful civic action; this is the type of spirit and community leadership that has carried our nation forward since time immemorial.

Furthermore, in response to public inquiries following a recent media report that the Navajo Nation hired a lobbying firm to advance Senator Kyl's water rights settlement legislation, I have asked Navajo Nation Attorney General Harrison Tsosie to provide Council with a complete listing of all professional lobbying firms retained by the Navajo Nation Department of Justice. As Navajo lawmakers, it is imperative that we know the business of our nation, particularly as it relates to the seriousness of our nation's water rights.

### Protecting Dook'o'osliid (San Francisco Peaks)

It is my belief that we cannot talk about our people's health and welfare without first talking about our origins and the ways in which we have maintained our relationships with those around us, including Tsisnaajini (Mount Blanca), Tsoodzil (Mount Taylor), Dook'o'osliid (San Francisco Peaks), and Dibé Nitsaa (Mount Hesperus). It is essential for us, as leaders, to heed the knowledge handed down to us from previous leaders to ensure that Navajo thought and practice endure. This is necessary for our civilization to carry forward not only as a model for Navajo generations to come, but for all humanity.

To this end, you have spoken honorable members of the 22nd Navajo Nation Council. Through resolution NABIS-58-11, you authorized the Navajo Nation Human Rights Commission (NNHRC) "to do all things necessary to protect and advocate for the human rights of the Navajo people as they pertain to the San Francisco Peaks, sacred site for the Navajo people." You also gave the directive on February 9, 2012 that we, the Navajo Nation Council, advocate the Nation's opposition to artificial snow making on Dook'o'osliid to President Barack Obama's administration.

In order to reinforce the Navajo Nation Council's efforts, the NNHRC has elevated the Nation's opposition to the desecration of Dook'o'osliid to the United Nations (UN). NNHRC and I, on behalf of the Navajo Nation Council, are supporting a conference and consultation with UN Special Rapporteur James Anaya. The title of the conference is "The Significance of the Declaration on the Rights of Indigenous Peoples" and takes place on April 26-27, 2012 in Tucson, Arizona. Professor Anaya's visit will mark an official visit of the United Nations to the United States and it will provide an examination of issues faced by indigenous people, including the Navajo Nation.

In addition to the UN discussions, I have taken it upon myself to sit down with leadership and representatives from the Hualapai Tribe, the Havasupai Tribe, and the Hopi Tribe in order to discuss the possible resurrection of an inter-tribal coalition that proved to be successful in the past. I also traveled to Washington, D.C. to discuss in detail the position of the U.S. Department of Agriculture and to identify areas they are willing to assist with in reaching a resolution.

Combined with information gathered by my staff at a recent meeting with the owner and general manager of the Arizona Snowbowl Ski Resort, it has become clear to me that a Naa'bik'iyati' Task Force on Sacred Sites is necessary. As such, I have chosen to sponsor legislation 0167-12 to create such a task force to bring together, when appropriate, the various stakeholders on this issue. The task force would also be responsible for coordinating a realistic and lasting solution on this issue. Honorable Delegates, let us show our neighbors, the U.S.

government, and the world that the leadership within the Navajo Nation can bring this matter to a responsible end.

### **Fort Wingate Military Depot**

**I**t is my belief that the restored and revised Fort Wingate MOU Task Force, as of November 18, 2011, has made considerable progress since I last reported to you during the 2012 Winter Session. I commend Council Delegates Edmund Yazzie, Leonard Tsosie, Mel R. Begay, and Charles Damon for their leadership and contributions to finding on-going solutions to this matter. This group has held a variety of Navajo Nation officials accountable for their performance, including: political appointees, attorneys, and industry and subject matter experts from the Navajo executive and legislative branches. Such due diligence by you, Honorable Delegates, has better equipped and aligned the nation with the proper information and sound strategy to responsibly begin to address this matter with the Zuni Tribe and U.S. Government.

On March 8, 2012, New Mexico Congressman Steve Pearce submitted bill, H.R. 4187, Titled, "Return of Certain Lands At Fort Wingate to the Original Inhabitants Act." The bill was referred to the House Committee on Natural Resources and then referred to the Subcommittee on Indian and Alaska Native Affairs on March 19, 2012. That is where the bill remains and has not been scheduled for a hearing. The bill will have to move through both houses before making its way to the President for signature. The bill is still in its early stages of the legislative process.

Congressman Pearce's bill will return 3 parcels (Parcel 1, 15 and 17) totaling approximately 6,000 acres within the Fort Wingate Military Depot to the Secretary of the Interior. Of the 25 parcels located on the Fort Wingate Military Depot, 3 have been cleared by the New Mexico Environment Department to be transferred to the Secretary of Interior to be held in trust for the Navajo Nation and Zuni Tribe. Parcel 1 will be transferred to the Zuni Tribe and Parcels 15 and 17 will go the Navajo Nation.

On March 15, 2012, in Zuni, New Mexico, the Fort Wingate MOU Task Force successfully clarified with Zuni tribal leadership, including Zuni Governor Arlen Quetawki, Sr., how the Navajo Nation will arrive at any Fort Wingate inter-tribal agreement in terms of who the decision makers are and of our internal process. It was made evident that the Zuni Tribe has been misled as to how and who is responsible for negotiations on behalf of our Navajo people. Moreover, the task force made it clear the Navajo Nation does not support Zuni's "50/50" proposal and that further negotiations were necessary before any agreement could be reached.

While this clarifying and passionate dialogue caused an abrupt end to discussion, I was encouraged by the maturity in leadership exhibited by both Navajo and Zuni officials. With this

in mind, I am confident that an inter-tribal resolution to this matter is within reach, provided that Congress removes its involvement so that negotiations can resume; particularly, as it relates to Congressman Steve Pearce's legislation (HR 4187) which would impose a Fort Wingate Military Depot land settlement without the consent of either tribal nation.

To this end, Council Delegate Edmund Yazzie and I recently traveled to Washington, D.C. to advocate against Congressman Pearce's legislation so that the Zuni Tribe and the Navajo Nation can negotiate in good-faith going forward. Honorable Delegates, as a result of our discussions with Congressional offices in the House and Senate, I am confident that we have laid the necessary political framework for the Zuni Tribe and the Navajo Nation to resume meaningful and responsible negotiations. Moving forward the Navajo Nation will schedule another meeting with the Zuni Tribe in the coming weeks to resume negotiations.

#### **Four Corners Power Plant**

**I** have been attending the Arizona Corporation Commission meetings concerning Arizona Public Service's (APS) interest in buying out Southern California Edison's interests in units four and five at the Four Corners Power Plant. The situation resulted from the Environmental Protection Agency's (EPA) intentions to issue additional regulations that would make it unfeasible for APS to continue operating units one, two, and three. The additional regulations will also require substantial investments to continue operating units four and five. The EPA's deadlines for retrofitting the Four Corners Power Plant to meet these new regulations will create an extremely tight schedule for compliance. The Navajo Nation stands to lose \$12 to \$15 million annually due to the shutdown of units one, two, and three.

In order to ensure that our nation remains on top of issues related to energy resources, I am sponsoring legislation 0168-12 to create the Naa'bi'iyati' Committee Energy Task Force. The legislation will also establish an advisory committee of industry professionals to advise the task force. It is important we increase our energy portfolio to replace lost revenues and to expand energy operations. Along with the development of coal, gas, and oil resources, we must explore the opportunities available in renewable energy technology, which include wind, solar, and energy conservation. I believe this energy task force and advisory committee will involve the appropriate individuals to develop an evidence-based and viable energy policy.

#### **Utah Navajo Trust Fund**

**I** continue to support the official position of the Navajo Nation Council, which is to request from Congress that the Navajo Nation be designated as the 'Trustee' for the Utah Navajo Trust Fund. As Trustee, these funds would continue to be invested on behalf of the trust fund and an administrator would be sought to administer the funds according to federal mandates.

I am also working with Council Delegate Jonathan Nez and Vice President Rex Lee Jim to bring the Navajo Nation's position to the United States Senate Committee on Indian Affairs regarding Senate Bill 1327. This bill attempts to grant trusteeship to the Utah Dineh Corporation in opposition to our Nation's position.

Council Delegate Nez and I presented this position to the Oljato Chapter to fully explain the need to work together on joint legislation, which could end the moratorium on Utah Navajo Trust Fund expenditures. An end to the moratorium will help to fund vital projects in the Utah portion of the Navajo Nation.

I have designated Anthony Peterman, Legislative Staff Assistant, to continue to advocate for this position. He is also tasked with monitoring and serving the needs of the Navajo Utah residents by attending the Navajo Utah Commission meetings and other Utah meetings as they arise.

#### **New Mexico Gaming Affairs**

The honorable members of the Naa'bik'iyati' Gaming Task Force continue to push forward strategically on the nation's efforts to renew its New Mexico Gaming Compact. Without such a compact, the Navajo Nation Gaming Enterprise cannot carry forward its charge to deliver the best possible economic return to the nation. While much of their ongoing inter-governmental negotiation is politically sensitive and confidential in nature, I am happy to report that the gaming task force continues to work tirelessly alongside the Office of the President, the Navajo Department of Justice, and the Navajo Nation Gaming Enterprise so that we are positioned to increase our chances of success.

#### **Arizona Gaming Affairs**

In Arizona, we know through verifiable evidence that racetracks are shifting strategies to achieve a referendum for the next state wide election with the hope of expanding gaming operation rights to racetrack facilities. Currently, Arizona gaming tribes maintain tribal gaming exclusivity rights as approved by Arizona voters in 2002. While the racetracks' efforts are mounting, I am confident we will prevail with the strategies of the Arizona Indian Gaming Association (AIGA) and the involvement of the Navajo Nation. Much like the nation's efforts in New Mexico, the Naa'bik'iyati' Gaming Task Force strategies, as it relates to its membership and obligations to the AIGA, cannot be shared because of confidentiality.

#### **Arizona Medicaid Program Tribal Exemption**

Last year, the State of Arizona submitted an application to continue its Arizona Health Care Cost Containment System (AHCCCS) program for the low income. The application contained a few

modifications that would cut payments to optional services. Though the State of Arizona requested for a tribal exemption, the Centers for Medicare and Medicaid (CMS) expressed concerns around two vague issues relating to civil rights and intake procedures. In regards to these issues, I sent letters to CMS and the U.S. Department of Health requesting clarification regarding Arizona's tribal exemption request, which would allow for optional programs to continue providing services at IHS and 638-tribally operated facilities.

Pursuant to tribal requests, CMS worked with AHCCCS to develop a suitable tribal exemption that will allow for a restoration of enrollment and services. On April 6, CMS announced that it approved AHCCCS's request to exempt enrolled tribal members who receive services from IHS and 638 entities from cuts.

### **New Mexico Plan to Modernize Medicaid Program**

**I**n February, the New Mexico Human Services Department released a concept paper entitled, "Centennial Care: Ensuring care for New Mexicans for the next 100 years and beyond." The Medicaid programs anticipate an overall enrollment increase of 175,000 New Mexicans, of which 35,000 are Native American, by January 2014. The concept paper describes four principals by which the state will cut costs while attempting to increase the quality of service for enrollees. In order to implement the strategy, the state plans to submit a single 1115 Demonstration Waiver to combined seven different demonstration waivers and reduce the number of Managed Care Organizations (MCO). The new structure will be evaluated in five years to measure if budget neutrality is achieved.

The State of New Mexico held a tribal consultation meeting on March 20 at the Indian Pueblo Cultural Center regarding two complex health related issues: modernization of its Medicaid System and the creation of an Insurance Exchange program. The state must comply with the Affordable Care Act (ACA) by January 1, 2014. The Navajo Nation Division of Health held a stakeholders meeting on March 13 with health care providers serving the Navajo Nation. Stakeholders included Indian Health Service administrators, 638 tribal administrators, medical physicians, and billing clerks. The mission among state and tribal administrators is to streamline for a comprehensive plan; however, the appropriate provisions in the comprehensive plan is under debate.

Tribes have until April 30 to submit written comments regarding the concept paper. My staff has reviewed and edited a working draft written by the Navajo Department of Health that will be presented to the Navajo Nation Council once the Navajo Nation Department of Justice has completed a legal review.

### **Affordable Care Act and the Indian Health Care Improvement Act**

This past March, the United States Supreme Court heard legal arguments over a three day period about the constitutionality of the Affordable Care Act (ACA), which also contains the reauthorization of the Indian Health Care Improvement Act (IHCIA). If provisions of the ACA are determined to be unconstitutional, then IHCIA is at risk for becoming invalid. The general provision in question is ACA's federal mandate for American citizens to enroll into an insurance coverage and for states to create an Insurance Exchange program.

For over ten years, tribal advocates have worked to reauthorize IHCIA which allows for the modernization of the Indian health care system. The Navajo Nation identified in the IHCIA to be the subject matter of a feasibility study that could change the Medicaid payment relationship with the CMS and enhance the government to government relationship. The feasibility study would research Navajo's potential to create and manage a state-like Medicaid program which could cut costs and increase payments for local IHS and 638 facilities.

The primary constitutional matter in question about the individual mandate requiring every American to pay for health insurance does not directly affect the Navajo people because individuals enrolled in a federally recognized tribe are exempt from paying penalties. However, states are preparing to implement the law by revamping their health care systems in a comprehensive manner, much like New Mexico. During the revamping, some states are considering how to better implement the Indian Health Care system. The constitutionality of the individual mandate was argued for two hours by Donald Verrilli who represented the Obama administration in support of the law, Paul D. Clement who represented the 26 states opposes to the law and Michael A. Carvin who represented the National Federation of Independent Business who initially opposed the law. After the trial, experts question Verrilli's performance and its impact on defending the law.

On the final day of oral arguments, attorneys argued whether the individual mandate and its associated consumer protections may be severed from the rest of the law. This argument directly impacts the Navajo Nation and Indian Country at large. Deputy Solicitor General Edwin S. Kneedler represented the Obama administration and Clement continued to represent the opposition. H. Bartow Farr III, as appointed by the court, argued that if the individual mandate is ruled unconstitutional, the rest of the law should still stand.

Despite the decision of the Supreme Court regarding the constitutionality of the individual mandate, the Navajo Nation and tribal advocates are waiting to learn about the Supreme Court's decision regarding the severability of other provisions. We're hoping the Supreme Court will allow the main provisions in question to be severed from other less controversial

provisions, such as the IHCIA. If the Supreme Court finds that other provisions are not severable, then tribal advocates will need to continue their long battle to reauthorize the IHCIA.

The United States Supreme Court's final decision will be available in June 2012.

### **Housing**

As you know Honorable Delegates, standards of living on our homeland range from hooghans with dirt floors to U.S. Housing and Urban Development (HUD) standards of "safe, descent, and affordable housing." In either situation, I have made it a priority to do what I can to facilitate opportunities for our Navajo people to find a healthy home to raise their families.

I have responded to requests locally and Navajo Nation wide to assist in resolving ongoing issues that have plagued projects and opportunities for far too long.

On March 5, Council Delegate Begaye and I met with the NHA Board of Commissioners and the South Shiprock Housing Board. At this meeting, both members agreed to cooperate and re-construct unfinished units. These units have been idle for five years and were vandalized, electrical wiring removed, and some were destroyed by fire. NHA agreed to refund this housing construction in their Fiscal Year 2013 Indian Housing Plan (IHP). IHP was considered by the Resources and Development Committee and moves for final approval by Council. I thank Council Delegate Begaye for his constant effort to redevelop his community housing project.

### **Legislative District Assistants**

As I mentioned in my previous report, it is a top priority of mine to ensure the community voice is heard. As part of this initiative to improve how we hear the communities, in my last report I recommended that legislative district assistants are made available so that representation at the community level was meeting the expectations of the community.

During the 2012 Winter Regular Session, Navajo Nation Council passed legislation, signed by the President, creating 24 legislative district assistants within the Legislative Branch. Since the creation of new legislative positions, Navajo Nation Council Delegates have hired 19 legislative district assistants. Most of the legislative district assistants have undergone orientation and received a copy of the legislative management plan. In order to successful assist council delegates, it is essential for the legislative district assistants to understand how the legislative branch functions and to be familiar with administrative rules and procedures. Freeing the council delegates from administrative burdens will allow for council delegates to better focus on the Nation's policy issues.

Legislative district assistants help their respective council delegate process paperwork, maintain schedules, and provide coverage for conflicting meetings. The legislative district assistants are not meant to replace council delegates but to help council delegates enhance their performance that will benefit their represented communities.

I encourage all communities to familiarize themselves with their council delegate's assistant and to also learn what projects they are pursuing for your community on behalf of your council delegate. I'm confident that you will be pleasantly surprised and satisfied with the scope of work the legislative district assistants are engaging. The purpose of the legislative district assistants has always been oriented toward the improvement of representation, advocacy, and participation. As we move forward, we will continue to assess the efficiency of Navajo government and continue to make changes so that government is more responsive to the needs of the people.

### **Veteran Issues**

The health and well-being of those who defended the freedom of the United States and honorably represented the Navajo Nation are at the top of my list of concerns. Recently, I met with David Nez, Director of the Navajo Department of Veteran Affairs, as part of my commitment to the veteran demonstrators who marched to the Council Chamber March 28, 2012 seeking answers to personnel issues, and as part of my on-going concern for the overall health and welfare of our Navajo veterans. It is my opinion that the personnel concerns of the demonstrators will work itself out within the confines of Navajo Nation personnel policy, laws, and processes in due time.

That said, ensuring Veterans access to quality health care, policies and procedures servicing Navajo military members and veterans must be improved. Much like the Medicaid issue, veteran health care must be revamped. When veterans return home, a supportive network must be in place in order to help veterans adjust from combative situations to a normal livelihood. Job training should be available to help veterans qualify and be competitive for local job market. Health care should also be available to help veterans deal with post-traumatic stress. We must strive to keep our service men and women healthy because they dedicate their lives to protecting us.

### **Former Bennett Freeze Area**

As a continuation of my platform, I have asked my staff to take a close and careful look at the Former Bennett Freeze Area (FBFA) in order to identify how my office can augment the efforts and resources the Navajo-Hopi Land Commission. Our research has revealed that the Navajo-Hopi Land Commission, its office and oversight, as well as the Navajo Nation Land

Department are on the verge of off-setting decades of inactivity in the FBFA. Such initiatives include the General Leasing Act of 2012 that, if approved by the Navajo Nation and the Bureau of Indian Affairs (BIA), would relieve chronic congestion in procuring home-site leases by expanding the authority of the Navajo Nation to approve leases.

Further, as we get underway with Fiscal Year 2013 planning, what will emerge is additional funding for the Navajo Nation Land Department to carry-out new responsibilities as contained in the General Leasing Act of 2012 to expedite unprecedented opportunity. Honorable Delegates, it pleases me to learn that a proposal is forthcoming and at a first glance it appears to be a measure I can support. Going forward, my staff will continue to monitor such activities to further strengthen laws that are in the best interest of families in the FBFA.

With respect to the Office of Navajo-Hopi Indian Relocation (ONHIR) my staff is taking a closer look at how the Relocation Act of 1974 can be amended to align federal rehabilitation funds to cover the FBFA. Currently, this is not the case.