



STATE OF THE NAVAJO NATION

PRESIDENT JOE SHIRLEY, JR.

PRESENTED TO THE

21ST NAVAJO NATION COUNCIL

OCTOBER 15, 2007

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

I'm pleased to report that on September 13, 2007, the United States Court of Appeals for the Federal Circuit ruled in favor of the Navajo Nation in our case against the U.S. government for its breach of statutory and fiduciary duty to the Navajo Nation. The Court held that the Navajo treaties of 1849 and 1868, together with various statutes and regulations, form a comprehensive scheme of federal oversight, control, and regulation that gives rise to both general and specific trust duties in the government's administration of Navajo coal leases. The court also found that the Department of Interior blatantly violated its most fundamental duties to the Navajo Nation in its dishonest collusion with Peabody.

The case is not yet over. In 2003, the United States Supreme Court overturned an earlier ruling in the case in favor of the Nation. That decision was based on the federal government's duties under only one statute, and not the entire network of treaties, statutes and regulations that is the basis for the current decision. Nonetheless, we can expect the government to try to overturn the recent decision in the Supreme Court, too. But the September 13 opinion is much stronger than the previous one. It has the benefit of additional factual support, including the undisputed affidavit of former Secretary of the Interior Stewart Udall, whose office drafted the original Peabody leases. Unfortunately but unavoidably, we expect the Supreme Court effort to be expensive, and, if we win there as I believe we will, the proceedings to determine damages in the trial court will require not



only dedicated legal services but also expert economic testimony. At some point, we, as Navajo leaders, may be called upon to determine the most appropriate settlement strategy consistent with core Navajo values.

To protect our Nation's interest, I request the continued support of the Council for this and other vital litigation. The request for supplemental appropriations submitted by the Navajo Nation Department of Justice is crucial to the continued success and progress of the Navajo Nation – in our economic, territorial, and sovereign capacities.

All of us owe a large debt of gratitude to Attorney General Louis Denetsosie, Deputy Attorney General Harrison Tsosie, and other attorneys working with our Navajo Nation Department of Justice, and our outside counsel Mr. Paul Frye. I thank each of you for your hard work in this historic case, and for your perseverance in protecting our Nation's interests. Even with the 2003 defeat in the U.S. Supreme Court, these attorneys refused to yield, re-examined the law, and persuaded the U.S. Court of Appeals of the compelling nature of this case.

In our continued pursuit of fairness and justice, it was nearly one year ago that this Council authorized the Attorney General to file suit against the United States for breach of its fiduciary duties to the Navajo Nation relating to mismanagement of the Nation's tribal trust assets. These assets include tribal trust funds, oil and gas, coal, uranium, sand and gravel, and timber. The Nation filed suit against the federal government in the United States Court of Federal Claims seeking substantial monetary damages from the United States for its mismanagement of Navajo Nation tribal trust assets.

We are now at a point in the process where we have a duty and responsibility to provide documents and data to be used as admissible evidence. To ensure compliance with specific timelines and various court orders in this matter, on October 9, 2007, I issued an Executive Order directing that certain Navajo Nation Executive Branch employees locate, identify, and inventory documents and data relevant to Navajo Nation tribal trust assets. I have also directed the Attorney General to establish written policies and procedures to provide guidance on the types of documents and data needed. This was done to ensure that all timelines for submission of information is met. This is a very important case and we'll need everybody's assistance and cooperation.

In approximately 45 days, the federal Head Start Bureau will conduct a program review to determine whether our Head Start Program has corrected its outstanding findings of over one year ago. On May 2, 2006, the Navajo Nation received a Notice of Summary Suspension announcing that the Administration for Children and Families was suspending federal financial assistance to the Navajo Nation Head Start and Early Head Start Programs. The suspension was based upon a perceived risk to the health and safety of children enrolled in, and staff working in, such programs.



In response to this notice, and under my direction, we instituted accelerated efforts involving all necessary Nation departments and programs to ensure and protect the immediate and future health and safety of children enrolled in the Nation's Head Start and Early Head Start Programs.

This effort included the development of a Corrective Action Plan to address the summary suspension concerns. More importantly, it was to ensure that the programs operate only with staff who have provided the required declarations and who have undergone the required and appropriate background checks and assessments. I also issued an Executive Order directing the implementation of Policies and Procedures for Background Checks and Employee Assessments. These policies and procedures serve as the official process for conducting background checks of all current and future employees and volunteers of the program.

As a result of these efforts, I am pleased to report that as of July 13, 2007, 756 federal and tribal background checks have cleared. We have 132 centers fully operating and 51 home-based centers providing services to more than 2,400 children currently enrolled in the program.

The central administration recently completed a Fiscal Year 2007 budget modification to pay for 10 modular classrooms and playground equipment. The program also recently completed and submitted its fiscal year 2008 refunding application in the amount of \$34 million as well as \$757,000 for our Early Head Start Program.

Because of the sudden departure of the former interim director, I appointed Mr. Lamont Yazzie to serve as the Acting Director. Mr. Yazzie is responsible for ensuring continued operations and grant compliance until such time a new director is hired in coordination with the Parent Policy Council.

In the short time that Mr. Yazzie has been in office, he's worked to ensure that the 2005-2006 bonus payments required under the Collective Bargaining Agreement are made to the Head Start union members. Those payments are scheduled to go out this next pay period. He has also secured the services of required licensed mental health care professionals for each agency, and has obtained approval from the Head Start Policy Council for all but one governing policy. I commend Mr. Yazzie for his leadership and the entire Head Start Program staff for their hard work and commitment, and for preparing for the upcoming program review. I am confident that the Navajo Head Start Program has addressed all concerns of the Administration for Children and Families.

Another very important issue that my administration is working on is to identify ways to improve governmental effectiveness by streamlining financial processes within the Division of Finance. The Office of the Controller, under the direction of Mr. Mark Grant, is in the process of transferring certain financial functions to various programs for purchases under \$100,000. The review and approval of purchases for less than \$100,000 has created an administrative burden on the Office of the Controller and has resulted in unnecessary delays for payments of goods and services.



The Office of the Controller will implement guidelines to ensure program compliance with grant requirements and to ensure compliance with the Navajo Business Opportunity Act. I commend the efforts of Mr. Grant for working to improve governmental services and efficiency.

Members of the Council, with the end of the 40-year-old Bennett Freeze Area, it behooves us all as leaders to prioritize the rehabilitation of the entire 1.5 million acre area. Few of our people have suffered as much or for so long, or have been as powerless to do anything to improve the quality of their lives, as residents of the former Bennett Freeze Area. Every problem we can find across the Navajo Nation could be multiplied ten-fold in the Bennett Freeze, and we as leaders have a solemn duty to do all we can to rectify that. Our local communities in the area need help to repair homes, construct new ones for qualifying residents, develop infrastructure systems, and to develop local businesses and community facilities.

For this reason, I am pleased to report that we received an initial \$1 million from the Bureau of Indian Affairs for planning rehabilitation purposes. It is critically important for us to have a complete understanding of the current needs and the number of people affected. This allocation will be used to assess the social, economic, educational, and community development needs of the area. Once the information is obtained, it will be used to support tribal and federal funding requests.

To help facilitate the decision-making process, I have appointed several individuals to serve on the Executive Branch Rehabilitation Task Force. These individuals are responsible for working closely with our local community members, the Navajo-Hopi Land Commission and my office to devise the Nation's rehabilitation strategy. I believe that through partnerships and collaboration, we can achieve desired results. I have called upon the Navajo Tribal Utility Authority, the Navajo Housing Authority, the Bureau of Indian Affairs, the Indian Health Service, the Office of Navajo and Hopi Indian Relocation, and the Division of Community Development to begin this collaborative effort to rebuild the region.

I also encourage the task force to work closely with the local chapters within the affected area. Many already have community land use plans. I recommend that our local leaders use those plans, modify them where needed with the help of community members, in order to advocate for community development priorities. The task force will be responsible for incorporating the information into the overall plan. By working together to coordinate our efforts, we will be one step closer toward eliminating the misery and hardship our people have endured for four decades.

Ladies and gentlemen of the Council, with your approval of the Fiscal Year 2008 Comprehensive Budget we are on course to continue government operations and, most importantly, continue critical services to the Navajo people. I recognize that a tremendous amount of time and effort went into developing the budget and I



commend the Office of Management and Budget for the long hours spent inputting data to ensure budget accuracy for all our Divisions and programs, including our chapter governments.

This year all of our governance-certified chapters received a huge payout from the Local Governance Trust Fund. In order for our other chapters to benefit from the trust fund, as well as to ensure an accountable and responsible government at the local level, I encourage you to support the proposed amendments to the Local Governance Act, sponsored by several delegates. These amendments will allow chapters to adopt and operate pursuant to a standardized Five Management System. It's been nearly 10 years since the adoption of the LGA. While the intent is good, many chapters have had difficulty drafting the required local policies and procedures. With this amendment, our chapter officials and coordinators will free up their time to actually learn how to properly implement the policies. With a standardized Five Management System in place, I hope to see more chapters achieve local governance certification.

As more chapters move toward this important goal, the central government has a responsibility to assist, and must also be willing to transfer decision-making authority over local governmental functions to the chapters. One area where local decision-making can actually happen is pursuant to the Navajo Nation Business Site Leasing Regulations. Governance-certified chapters that have an approved certified land-use plan can issue business site leases consistent with the requirements set forth in the regulations. I'd like to see the administration of other local land uses delegated from the Navajo Land Department to governance-certified chapters.

This will take a coordinated effort between the Division of Natural Resources and the Resources Committee of the Navajo Nation Council. For this reason, I've directed the Division of Natural Resources Director, Mr. Arvin Trujillo, to begin the process of working with the governance-certified chapters, and would encourage the division staff and the committee to begin to delineate functions that can best be administered at the local level. Obviously, certain decisions that impact more than one chapter, that can affect the sovereignty of the Nation, and which normally require Resource Committee approval, cannot be delegated to the local chapters. Decisions involving the issuance of home site leases, wood hauling permits, or other local land use activities can be administered by a governance-certified chapter and must be done pursuant to regulations promulgated by the Resources Committee.

With the appointment of the Gaming Enterprise Chief Executive Officer, Mr. Robert Winter, considerable progress has been made regarding our gaming initiative. We are at a point now, members of the Council, where financing is necessary to implement our gaming development plans. The Office of the Controller, the Department of Justice, and the Gaming Enterprise CEO worked diligently to negotiate a \$100 million line of credit from JP



Morgan Chase. I'm encouraged by Mr. Winter saying that in his experience of developing \$1 billion in gaming financing, that this is the best package he has ever seen.

Ladies and gentlemen of the Council, I appreciate the need to be fully informed about important policy decisions before they are made. However, I am extremely concerned about the delay which is ensuing because of the non-approval of the loan proposal. Right now, interest rates are very favorable to the Nation. But obviously the longer we delay, the more we run the risk that the rates will increase to the detriment of the Nation.

Without the line of credit, it is still possible for the Nation to move forward with gaming development through a management agreement. This type of agreement, however, will require the Nation to pay an outside developer 30-to-40 percent of the gross revenues for up to seven years and will require approval from the National Indian Gaming Commission. Making matters worse is that the approval process for management agreements typically takes 18-to-24 months. I view the millions and millions of dollars that would be paid to an outside developer as an unnecessary expense that takes away from our ability to provide essential services to our people.

I appeal to you, members of the Council, to put the interests of the entire Navajo Nation before the interests of individual chapters in an effort to secure a casino. We need to ensure that gaming development within the Navajo Nation is based upon a solid business decision, is supported by feasibility studies, and is done consistent with the requirements of the Navajo Nation Gaming Ordinance and state compacts. This line of credit proposal should not be used as leverage for development at a specific location.

Members of the Council, the lack of the line of credit alternative puts the Nation at a disadvantage in any development negotiations. The line of credit is, in essence, the bargaining chip the Nation has with potential developers.

I ask that you expedite the referral process, address all outstanding issues without altering the financial covenants, and approve the line of credit so that our Gaming Enterprise can begin the important responsibility of developing casinos within the Navajo Nation. If the bank is not agreeable to any new terms, the entire agreement will be jeopardized.

Members of the Council, I thank you and hope you have a successful Fall Session.