

**Testimony of the Honorable Dr. Buu V. Nygren, President of the Navajo Nation
Before the House Natural Resources Subcommittee on Energy and Mineral Resources
Legislative Hearing on H.R. 4374
July 13, 2023**

Yá'át'ééh, Chairman Stauber, Ranking Member Ocasio-Cortez and Members of the Subcommittee. My name is Dr. Buu Nygren, President of the Navajo Nation ("Nation"). I represent over 400,000 enrolled tribal members, almost half of whom live on the Navajo Nation and collectively represent about one-third of all Native people living on Indian reservation lands in the United States. The territorial reach of the Nation extends more than 27,000 square miles and spans portions of 11 counties across the states of Arizona, New Mexico and Utah. The Nation makes up almost a third of all tribal trust lands in the United States. We are the largest Indian Nation in the country by both constituency and sovereign territory.

Thank you for convening this hearing to discuss the Energy Opportunities for All Act, an important bill to the Nation and its members. And thank you for inviting me to testify about this bill, tribal sovereignty, and the United States' trust responsibility to tribes and allottees. The Nation urges the Subcommittee and the broader Congress to pass the Energy Opportunities for All Act to honor and respect the Navajo Nation's sovereignty and ensure that Navajo allottees are able to receive the value of the resources they were allotted by the United States in exchange for lands throughout the Southwest.

Chaco History is Navajo History

Chaco Canyon and the Chaco Wash region have been home to the Navajo people since time immemorial. The Chaco Culture National Historical Park ("CHCU" or "Park") is located between Albuquerque and Farmington, New Mexico in a canyon cut by the Chaco Wash, spanning 30,000 acres. Although it has not been used as a societal center for Chacoan people for nearly 800 years, Chaco Canyon has served as an important area to the Navajo people continuously since that time. Indeed, a number of modern Navajo clans trace their ancestry to the Chacoan people and many Navajo families were forcibly relocated off Park lands, even as recently as 1947.

The National Park Service's website for Chaco Canyon recognizes that "[Chacoan] descendants are the modern Southwest Indians. Many Southwest Indian people look upon Chaco as an important stop along their clans' sacred migration paths—a spiritual place to be honored and respected." Chaco Canyon features prominently in Navajo creation as the place where many of our people were enslaved by Nááhwiilbihi, the gambler, until they were freed through divine intervention. Many present-day Navajo Holy Way ceremonies trace part of their origins to Chaco Canyon or Chacoan Outliers. Today, the Navajo families that remain living close to CHCU continue to access the Park to make offerings, pray, and conduct ceremonies. Our people also continue to gather firewood, plants, and pinyon nuts from the Park, and conduct educational and ceremonial camps there.

We, the Navajo people and the Navajo Nation government, take our role as stewards of Chaco Canyon very seriously and have continuously preserved and protected Chaco Canyon since our

ancestors' time, well before the United States created a Historical Park, and we will continue doing so indefinitely. Hence the continued strong preservation of structures and artifacts in the region.

CHCU was designated by President Theodore Roosevelt as a National Monument in 1907 and became a U.S. National Historical Park in 1980. The CHCU is protected from development and interference by federal law. The lands and cultural resources surrounding CHCU that fall within the jurisdiction of the Navajo Nation are protected by an extensive network of federal and Navajo statutes and regulations, including the Navajo Cultural Resources Protection Act, the National Historic Preservation Act, and the Archaeological Resources Protection Act among others.

Recent efforts by the Nation to preserve Chaco Canyon and related resources include the National Park Service-funded Chaco Sites Protection Program administered by the Navajo Nation Historic Preservation Department through a cooperative agreement with the National Park Service between 1992 and 2014. Through this agreement, the Nation and the Park Service worked collaboratively to “coordinate and mutually assist in protection and resource management actions” both within the Chaco Canyon Park Service Unit and on Navajo lands outside the Park. The resources at issue included 39 Chaco “great houses,” over half of which are located on Navajo lands. The National Park Service stopped funding the Program in 2014. Since then the Navajo Nation Historic Preservation Department has used the information from the Program to continue protecting Chacoan sites on Navajo land and have made multiple requests to the National Park Service to reinstate the Program.

Underlying the CHCU and the San Juan Basin, the Mancos Shale formation is a highly productive source of natural gas, with nearly 40,000 oil and gas wells drilled in the last sixty years—23,000 of which remain active.

Public Lands Order 7923 Disregards the Voice of the Navajo Nation and Fails to Honor Navajo Sovereignty

This brings me to the Secretary of the Interior's withdrawal of a 10-mile “buffer” area around CHCU that will be prohibited from future mineral development through issuance of Public Lands Order 7923. This Order was issued over the objections of the Navajo Nation, the Indigenous sovereign most directly impacted by the Order, and with inadequate consultation with the Navajo Nation government.

I think we can all agree that Chaco Canyon and related cultural and historical resources should be protected. Indeed, we, the Navajo Nation and Navajo people, have been protecting and preserving those resources since time immemorial. But we don't all agree on how to go about doing this. There is a right way, and that includes meaningful sovereign-to-sovereign consultation with the Navajo Nation government, whose jurisdiction extends to Park boundaries and is interspersed throughout the 10-mile buffer zone imposed by the Secretary, and that has taken into consideration the perspective of the descendants of the Chacoan people who continue to live near the Park.

Indeed, the Nation worked hard to broker a compromise with the administration that would honor Navajo sovereignty and the historic and cultural ties our people have to Chaco, and balance the rights of our allottees to maximize the productive value of their land and provide for their families

in an economically challenged region. We did so by offering a 5-mile buffer zone that addressed some of our deepest concerns by carving out the most productive oil and gas development zone even while providing additional protections to Chacoan resources. Notably, this was based on the geology of the region and cognizant of the fact that oil and gas development any closer than six miles from the Park boundary is largely infeasible.

However, this minimally disruptive and reasonable compromise was rejected by the administration with very little nation-to-nation engagement and discussion. This is an affront to Navajo sovereignty and is not what should have happened. Instead, there should have been meaningful sovereign-to-sovereign consultation to ensure that the Nation's sovereign status was honored and respected, and that the interests of Navajo tribal members directly impacted by the Park and the proposed buffer zone were fully considered and taken into account. The disregard and disrespect shown to the Navajo Nation here sets a deeply disturbing precedent for how this administration will engage with Indigenous Nations going forward on issues that matter deeply to us.

The history of engagement between the Nation and the administration on Chaco has been challenging. The Department of the Interior met with the Navajo Nation on a handful of occasions to discuss its views of the proposed withdrawal but failed to truly consider the impacts to vulnerable communities when rejecting the Nation's reasonable alternative. The Nation offered viable compromise solutions that would protect Chaco Canyon beyond the boundaries of the CHCU while still providing viable economic development and self-determination to the Nation and its members. As a people who are indigenous to this area and landscape, we are deeply committed to its preservation and protection, and believe that there are several alternative solutions that protect Chaco Canyon while also providing a livelihood to our tribal members.

On November 15, 2021, without advance consultation with the Navajo Nation, President Biden announced a new effort by the Department of the Interior to protect the area around CHCU that included swaths of Navajo Indian Country. Navajo Nation's then-President Jonathan Nez sent a letter to President Biden requesting consultation on the shared sovereign land interests and the significant expected impacts on lands allotted to Navajo tribal members.

Over the Nation's objections, on January 6, 2022, the Bureau of Land Management ("BLM") formally proposed to withdraw approximately 351,000 acres of public lands surrounding CHCU for a 20-year term. Following the proposed withdrawal, BLM initiated a 90-day comment period from January 6, 2022 to April 6, 2022, which was subsequently extended to May 6, 2022. BLM held two in-person public meetings in urban communities off the Navajo Nation and outside of the directly impacted Navajo communities, and one virtual meeting, which the Nation and allottees attended. The Navajo Nation's Resources and Development Committee also attended a leadership meeting with the Farmington BLM Field Office on March 11, 2022 to raise concerns about the proposed withdrawal, during which the Nation requested a meeting with Secretary Haaland. In March, 2022, then-President Nez met with Secretary Haaland requesting a reduction of the buffer zone from 10 miles to five. After that meeting, the Nation submitted comments opposing the proposal on May 6, 2022.

As part of the regulatory review process, in accordance with the National Environmental Policy Act (“NEPA”), BLM completed an Environmental Assessment (“EA”). The 30-day public comment period for the Chaco Canyon Withdrawal EA began on November 10, 2022. On December 10, 2022, the allottees submitted comments opposing the withdrawal and explaining in detail how the draft EA arbitrarily refused to consider any alternatives that would be less impactful to vulnerable communities, including the five-mile compromise buffer zone proposed by the Nation. The comments also pointed out that BLM failed to consider economic impacts to the region and Navajo tribal members and allottees, ignored the actual geography of the region, and was completed without any meaningful effort to consult with the Navajo Nation. Although Navajo allottees and the Nation raised their concerns and offered compromise solutions throughout the notice and comment process, the draft Withdrawal EA neglected to address a viable alternative that would not destroy tribal members’ mineral interests and, for many, a primary means of income.

On April 25, 2023, Speaker Crystalyne Curley and Members of the 25th Navajo Nation Council met virtually with the Secretary to voice the Nation’s concerns about a 10-mile buffer, explaining that the affected allottees and surrounding Navajo communities did not support any buffer zone at all, and conveying that the Nation’s position had changed from supporting a five-mile buffer to withdrawing support for any buffer zone.

On June 2, 2023—with no advance notice and over numerous and consistent Navajo objections—the Department of the Interior issued Public Lands Order 7923 withdrawing 336,404.42 acres of public lands surrounding CHCU from location and entry under the mining laws and from leasing under the Mineral Leasing Act for a 20-year term “in order to protect these public lands . . . from the potential impacts associated with oil and gas development activities and from adverse effects of locatable mineral exploration and mining, subject to valid existing rights.” The final EA resulted in a Finding of No Significant Impact that contained sparse analysis of the economic impacts to Navajo allottees and the Navajo Nation, and estimated the withdrawal would cause just \$588,831 in foregone royalties over the 20-year withdrawal period.

The withdrawal disregards and fails to honor the Navajo Nation’s sovereignty. Our requests and eminently reasonable solutions were not responded to in a meaningful way. It also ignores that Navajo people have protected Chaco Canyon for many hundreds of years, since before the Department of the Interior existed. For the Navajo Nation, this is an issue of great significance because it elevates outside special interest groups’ agendas over the sovereign interests of the Navajo Nation and the economic interests of our directly impacted allottees and local community members. Navajo leaders are in the best position to know what is best for our people, and we have proven over several hundred years that our Nation and our people are good stewards of land and cultural resources, including Chaco Canyon.

The withdrawal is not in line with President Biden’s stated commitment to honor the nation-to-nation relationship with Indian tribes and respect that tribes are in the best position to determine for themselves what is in their own best interest. The manner by which the Order was issued over the objections of the Nation, with little meaningful consultation, and with no effort to find a mutually agreeable compromise solution suggests that the Department of the Interior was intent

on creating the 10-mile buffer, regardless of any impacts to the Nation or its members, and regardless of whether the 10-mile buffer would be the least disruptive way to protect Chaco Canyon. The Department still has not demonstrated that the solutions presented by the Navajo Nation were less effective at protecting Chaco Canyon than the 10-mile buffer. Indeed, prior to the withdrawal, BLM and all tribes with an interest in Chaco Canyon spent many years developing a new Resources Management Plan, EIS, and Programmatic Agreement addressing development of natural resources and protection of our lands and cultural resources. The withdrawal does not address the Management Plan, EIS, or Programmatic Agreement, which involved several tribes. Significant time, effort, and tax dollars were spent on preservation plans and agreements that now seem to be moot, with no guidance or explanation.

This is not the meaningful consultation or respect for tribal sovereignty and self-determination tribes are due. And it completely ignores the impact the withdrawal will have on Navajo allottees, people the Department has an obligation to protect. Under meaningful consultation, an effort to mitigate adverse impacts to the Nation's allottee members would have been pursued. Additionally, when soliciting public comments from Navajo allottees, those meetings should have been held on the Nation in the directly impacted Chapters, technical resources should have been on hand to answer questions, and Navajo translation should have been provided. Going forward, the Nation is willing to work with Interior on a way to provide for meaningful consultation with the Nation and the Navajo people.

Navajo Allottees Will Bear Disproportionate and Significant Adverse Impacts

The 10-mile withdrawal area includes numerous allotments and negatively affects the mineral interests of over 20,000 allottees. In addition, the withdrawal area overlaps with Navajo trust land and includes four Navajo Chapters (local units of Navajo government similar to counties). It is immediately adjacent to an additional five Navajo Chapters. Six of these Chapters as well as the Eastern Navajo Agency (which includes 33 Chapters in the area immediately adjacent to CHCU) supported by formal resolution and vote a five-mile buffer zone when they thought a compromise with the Department was possible. The five-mile buffer would have only impacted an estimated 2,111 allottees. When it became clear in 2023 that a compromise was not likely to be broached by the Department, four of the local Chapters withdrew their support of any buffer and opposed imposition of any buffer through new resolutions.

The voice of the local Navajo governments and residents to the region directly impacted by the withdrawal is of utmost import to the Nation. Eastern Navajo Agency lies within a portion of New Mexico that remains one of the least economically developed places in the United States. Navajo allottees living in this rural region rely heavily on the royalty payments and infrastructure development from oil and gas activities for their livelihoods—with many deriving the lion's share of their income from mineral development. According to impacted allottees, they receive royalties averaging around \$20,000 per year. This is in a region with a median income below \$27,000. For many in this country, it is difficult to imagine existing on \$27,000 per year, or even less. These tribal members have been able to get by due to royalties received from their mineral interests and the ancillary benefits derived from resource development in the region.

It is deeply disheartening to read the Department's EA estimating that royalty losses for Navajo allottees will be only \$588,831. This is a gross underestimation of the losses that will be sustained by Navajo allottees, and completely discounts the impact the withdrawal is already having on them. Enduring Resources, one of the active resource developers in the region, estimates that Navajo allottees actually stand to lose nearly \$200 million in royalties over the next 20 years due to the withdrawal, which was not addressed in the EA. It is as if the United States hit allottees with a bus and is saying "actually, it was a Matchbox car."

As we stated in our May 6, 2022 comments, allottees' interests will be completely nullified in areas where allotted lands are not contiguously aligned or grouped in such a way that allows a company to extract minerals through horizontal drilling. This will result in minerals remaining stranded, stagnating future development. The EA barely addressed this necessary consequence of the withdrawal, or the devastating economic impacts on allottees. In addition to the pure financial impacts, we also indicated in our comments that much of the infrastructure—such as roads and electric and water lines—in the area has been put in place by mineral development companies, not the United States or the State of New Mexico. Without these companies, the infrastructure in the region will deteriorate, potentially cutting off residents from access to critical services. The EA paid little attention to these significant impacts to Navajo allottees. This failure is incredibly disappointing considering the level of poverty in that region and the United States' trust obligations to tribes and Indian allottees for whom it manages mineral interests. These deficiencies cannot be ignored, and the Navajo people living on and around these lands cannot be erased.

Conclusion

Given the extensive federal and tribal statutory and regulatory framework that already protects Chaco Canyon and related resources, Public Lands Order 7923 is unnecessary. Furthermore, the manner by which it was issued—with no advance notice to the Nation and a mere handful of government-to-government meetings over the strong objections of the Nation and an offer of a compromise that would have met all interested parties' goals—fails to honor Navajo and tribal sovereignty. For this to happen to the largest Indigenous Nation in the country in its own backyard is deeply disturbing. Tribal sovereignty must be respected even when it is not politically expedient. We expect more of our trustee and this administration. Nonetheless, despite these disappointing actions, we have been and remain ready to work with the Secretary should she choose to reevaluate the withdrawal and work with the Nation to ensure a balanced approach that protects both cultural heritage as well as Navajo allottees' ability to make a living from their rightful mineral interests. The Nation supports the protection of Chaco Canyon, and in protecting Chaco those human beings who have continued to live in the area cannot be left behind. Indigenous Nations are not relics; our people remain living and breathing and have complex human needs. Elected tribal leaders are best positioned to strike the balance between cultural continuity, adaptation into modernity, and preservation of economic opportunity for our constituents. As Indigenous sovereigns, our perspective should matter greatly, and guide our trustee in its actions that bear directly upon us and our people. That was not done here. Absent a change of heart by the Secretary and Department, we believe that enacting the Energy Opportunities for All Act is critical to ensure that tribal

sovereignty is respected, and that tribal members do not suffer crippling economic losses due to the withdrawal. The Nation supports this bill and urges its passage.