**Written Testimony of Justin Ahasteen, Executive Director, Navajo Nation Washington Office**
**House Natural Resources Subcommittee on Indian and Insular Affairs**
**Economic Diversification to Create Prosperous Tribal Economies**
**February 15, 2024**

*Yá'át'ééh* Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee.

My name is Justin Ahasteen. I am *Bilagáana* (White), born for *Tótsohnii* (Big Water). My maternal grandfather is *Bilagáana* (White) and my paternal grandfather is *Kiis'áanii* (Hopi). I am the Executive Director of the Navajo Nation Washington Office, providing testimony on behalf of Dr. Buu Nygren, President of the Navajo Nation ("**Nation**").

Thank you for the opportunity to testify before the Subcommittee on Indian and Insular Affairs on the topic of economic diversification in Indian Country. The Navajo Nation is one of the largest Native American tribes in the country and provides critical governmental services to over 400,000 members, half of whom reside our lands. The Navajo Nation encompasses over 27,000 square-miles or just over 17.5 million acres, stretching across 11 counties in three states—Arizona, New Mexico, and Utah.

In 1868, the United States entered into a treaty with the Navajo Nation, promising health care, education, agricultural assistance, and to improve the wellbeing of the Navajo people in perpetuity. As such, the United States government is legally and morally bound with a treaty responsibility and a sacred trust obligation, to support the Navajo Nation in addressing the many challenges we face, including in developing our economy, which is proven to be one of the most effective ways to increase the overall wellbeing of a people.

Given our land and population size, the social and economic needs of the Navajo people are heavy in many of our communities, including a lack of basic infrastructure such as running water, sanitation, housing, electricity, paved roads, as well as a high unemployment rate of 57% across the Nation. The strain on our tribal government is large, making it difficult to provide adequate services to our *Diné* people. The Navajo Nation is pursuing new and innovative ways to create economic prosperity for our citizens, and we look forward to working with this Subcommittee to advance tribal sovereignty, self-determination, and the economic well-being of the Navajo Nation and all of Indian Country.

## ***Early Development of the Navajo Economy***

With a population spread out across one of the more arid regions of the American Southwest, life has never been easy for the Navajo people. Despite the harsh living conditions of our environment, we adapted, and we slowly built an economy that could sustain us. But as anyone familiar with economics knows, capital is built slowly over generations, but it can be destroyed in an instant.

In 1864, following a series of conflicts with American military forces, thousands of Navajo men, women, and children were forcibly removed from our ancestral homelands in what would become the states of Arizona and New Mexico, and sent on a forced march of 300 miles, which came to be known as the "Long Walk." Hundreds of our people died on the journey, and thousands more, approximately one in four, died during the subsequent internment at Bosque Redondo.

Prior to the Long Walk we had spent centuries perfecting an agricultural system that was suited to the conditions available. Then Colonel Kit Carson and his men were ordered to force the Navajo people into starvation by razing everything to the ground. As part of their scorched earth policy, his men destroyed everything, burning our villages, chopping down the peach orchards that once covered the floor of Canyon de Chelly, and slaughtering our livestock, all of which providing our people with shelter and a reliable source of sustenance.

Once we were allowed to return to our lands, we had nothing and had to build our lives again from scratch. Most Navajo families maintained small herds of sheep, cattle, and other livestock to provide a meagre income through end of the 19th and the first half of the 20th centuries. Just as the Navajo people began to accumulate some wealth in the form of their herds, the federal government initiated the livestock reduction program, citing concerns about the impact of the growing herds on the local vegetation as a justification. The program led to the slaughter of as many as two-thirds of our sheep, forcing a strict quota on the number of animals we could own. This program devastated the already-weak Navajo economy, throwing many families who were already living in poverty into even greater hardship. It quickly became clear that our people would have to look to outside sources for additional income.

Shortly before the livestock reduction program was enacted, oil and gas were discovered on the Navajo Nation. Anxious to gain access to these precious resources, the Department of Interior established the Navajo Business Council (the eventual primary legislative body of the Nation in the form of the Navajo Nation Council) to certify mineral leases on Navajo lands. Navajo leaders were not given much choice but to allow outsiders to come and extract their natural resources. In time these industries proved to provide some benefit in the form of jobs for the Navajo people, but the jobs were often dangerous and while they provided significant revenues, the harm caused by the industry often outweighed the benefits.

Uranium mining employed thousands of Navajo citizens during the Cold War, but left behind a legacy of radiation poisoning, death, and open mines that have yet to be fully remediated, more than thirty years after most of the mines ceased operations. The Black Mesa coal mine generated millions of dollars in revenue for the Navajo government, but ultimately depleted over 44 billion gallons of water from our aquifers, drying up springs that our people relied on to provide water to their families and livestock. The aquifer may take decades to fully recover, assuming it ever does. The only saving grace of these operations is that they provided jobs, but one by one each of them was shutdown, leaving us with few viable alternatives. The most recent blow was probably when the Navajo Generating Station ("**NGS**") near Page, Arizona was permanently shut down. NGS had 538 employees, a majority of whom were Navajo, and paid about $52 million in wages every year. The loss of that income severely damaged the Navajo economy, and the local community has yet to recover.

Long before the NGS shutdown, we recognized that we could not rely on a single industry forever to provide the growth and stability that our economy needs. Rather than place all our proverbial eggs into one basket, we have worked tirelessly for over 50 years to diversity our economy. We have a dozen tribal enterprises that bring varying amounts of revenue to the Nation, including a hospitality enterprise focused on increasing our tourism industry; a newspaper and radio station; four casinos; the Navajo Tribal Utility Authority; the Diné Development Corporation—which for over 20 years have provided IT, professional, and other support to governmental agencies and commercial organizations—the Navajo Arts and Crafts Enterprise, as well as many others. The *Diné* people are hardworking and creative, and ready to take on any opportunity.

However, the fact of the matter is none of our enterprises makes up for the revenue lost from our waning economy based on mineral extraction. Despite our efforts to seize every opportunity, we find that many opportunities are illusory. In many instances, the Nation faces bureaucratic red tape which prevents us from accessing the opportunities afforded to us or from creating opportunities for ourselves. In other instances, the opportunity to create economic development is fleeting and more time and money is needed from Congress.

Below are examples of areas where the Navajo Nation and other tribes have experienced difficulties in creating economic development, as well as potential solutions on how this Subcommittee can assist us—and all Indian Country—in overcoming them.

***Gravel Pits and Unpaved Roads***

Given the size and rural nature of our reservation, it is important to the safety and well-being of our people—as well as for their economic prosperity—that we have paved roads. Unfortunately, 77% of our roads are unpaved roads, which equates to approximately 13,000 miles of unpaved roads. During poor weather, our unpaved roads can become muddy and impossible to practically or safely traverse, which forces drivers to either abandon their trips or find other ways around. It is not uncommon for an unpaved road in poor weather conditions to add over 2 hours to a trip.

The current cost per mile of pavement is over $3 million in the Nation, three times higher than the cost per mile to pave a road in a major metropolitan area like Phoenix. Much of this cost is due to restrictions created by the Department of the Interior ("**DOI**") which have prohibited the Navajo Nation from using its own gravel pits. Instead, we have been forced to import road materials from off the reservation significantly driving up costs. Most recently, DOI has informed the Nation that we would need to develop our own regulations in order to access and use our own gravel pits. We have requested technical assistance from DOI and the Bureau of Indian Affairs for what specifically is needed in these regulations and have not received a response.

*Potential Solution:* Amend the legislation and/or call on DOI to make itself immediately available to provide technical assistance or to reduce its regulatory requirements so we can access and use our gravel pits on our reservation.

***Fractionalization and Economic Development***

Another barrier to paving our roads has been fractionalization. As this Subcommittee knows, the Navajo Nation was able to make some of the largest recoveries under the Land Buy-Back Program. This was important for many reasons, including for the construction of paved roads. One of the successes that we were able to achieve through the Land Buy-Back Program was the paving of a road in our Casamero Lake Chapter. This was impossible before because we were unable to locate the approximately 400 landowners needed to approve the construction. Through the Land Buy-Back Program we were able to consolidate our interests without having to locate these landowners and move forward with the construction. The impact on the Casamero Lake Chapter has been dynamic. Our people out there now have safer roads and improved access to school, work, commerce, health, and emergency services.

Despite that success, there are still 1,200 fractionated parcels held by nearly 15,000 landowners checkerboarded across our reservation. These fractionated parcels prevent us from exercising our jurisdiction over the lands and from providing critical resources such as water, electricity, and other utility services. The result of these fractionations is a substantial hardship on our people, which is exacerbated by the chilling effect that these fractionations produce on outside investors.

*Potential Solution:* Continue to fund and support the Land Buy-Back Program.

***<u>Non-Metropolitan Statistical Area Designations</u>***

The Department of Treasury's Internal Revenue Service ("**IRS**") uses statistical areas defined by the Bureau of Labor Statistics ("**BLS**") to distort the economic circumstances of the Navajo Nation, which results in our being ineligible for various tax credit programs. The distortion is that the Navajo Nation is not considered a stand-alone non-metropolitan statistical area ("**non-MSA**") and is instead evaluated with consideration to counties in Arizona, New Mexico, and Utah. The use of employment and other economic data from areas outside the Navajo Nation to determine the economic health of the Navajo Nation distorts the economic reality faced by our citizens and creates negative effects.

An example of the negative effect our BLS statistical areas classification is our ineligibility to use certain tax credits. Under the Inflation Reduction Act ("**IRA**"), for instance, energy projects can enjoy an Energy Community Tax Credit bonus when located in Energy Communities for the purpose of supporting and revitalizing the economies of coal and power plant communities. The Navajo Nation is a coal and powerplant community, yet through the Department of Treasury's interpretation of Section 13702 of the IRA, projects located on the Navajo Nation will not necessarily enjoy the Energy Community Tax Credit Bonus because the criteria for determining if a project developed on the Navajo Nation is located in an Energy Community will be reviewed using economic data from areas far beyond the Navajo Nation. This result seems inconsistent both with Congress' general intentions under the IRA and this Administration's focus on racial equity and environmental justice through Executive Order 13985 (Advancing Racial Equity and Support for Underserved Communities), Executive Order 14008 (Tackling the Climate Crisis at Home and Abroad), Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All), and the Justice40 Initiative.

*Potential Solution:* Call on BLS to revisit their non-MSA statistical determinations through consultation with tribes.

***<u>Jurisdictional Issues</u>***

While fractionalization can create areas within our reservation where we lack jurisdiction, our jurisdiction on our own lands is limited due to dual compliance and taxation. Having to share our authority and jurisdiction with outside governments not only harms our sovereignty but also greatly reduces our ability to attract outside investment onto our reservation.

Economics teaches us that to be competitive, communities need to identify areas where they can establish a competitive advantage over other communities. One way poorer countries have successfully built a competitive advantage over the years has been to offer generous tax rates that attract business investment. So long as non-Native companies have to pay both tribal and state taxes, it is impossible for tribes to offer competitive rates, leaving us with the option of either making the business climate on the reservation less competitive than doing business off-reservation in the state, or charging no tax at all, eliminating an important revenue source that supports our tribal government and services to our people. The same is true of environmental and other clearances. We often find that a business needs twice as many clearances to build on a reservation as they do off the reservation, which can mean the difference of millions of dollars and years to establish a large enterprise.

The fact of the matter is the Navajo Nation is not a small casino tribe with a few hundred citizens that can all live off gaming revenue. We cannot employ all of our citizens directly, nor is it advisable that we do so. Central planning rarely works on a large scale, so we need a variety of employers operating in the Nation representing a variety of industries. Such diversity will enable us to build a more resilient economy that can weather the changing economic climate in an uncertain world. But building that kind of economy is going to require outside capital and investment, and that is currently difficult given the unfavorable business climate on most reservations due to the jurisdictional overlap between tribal and state governments.

This is particularly true of our entrepreneurs. The beauty of a market economy is that individual entrepreneurs can innovate and produce new ventures that a central government planner could never have dreamed of. We need to empower our entrepreneurs to dream and to take risks, knowing that even failed ventures help pave the way for future innovations and growth. That is why we have worked with the Department of the Treasury to set up our State Small Business Credit Initiative ("**SSBCI**") program discussed in more detail below. By making loans to small Navajo-owned businesses, we can help fill the credit gap that exists on many reservations. But providing credit is not enough. Our small business owners and entrepreneurs will face many of the same challenges, if not more, that currently prevent larger investments on tribal lands. That is why it is so important to eliminate some of the barriers to entry that exist because of the jurisdictional overlap.

*Potential Solution*: End dual taxation and dual compliance requirements for environmental and other clearance processes.

***Tribal Energy Loan Guarantee Program***

The Department of Energy's ("**DOE**") Tribal Energy Loan Guarantee Program ("**TELGP**") was established by the Energy Policy Act of 2005. The intention behind TELGP was to support tribal investment in energy-related projects by providing loan guarantees to tribes seeking financing for capital intensive energy projects to prevent tribes from being shut out of capital markets due to a lack of commercial credit histories or ratings. Recently, the funding for the program was increased under the IRA from $2 billion to $20 billion, with an additional $75 million allocated to the Department of Energy to run the program. Despite Congress' intent to create important opportunities through TELGP for Indian Country, <u>not a single dollar</u> has been used from this program to guarantee a tribal loan for an energy-related project.

Here are three examples of issues with the TELGP program and a potential solution for each.

1. **The DOE requirement that a tribe or tribal entity first obtain a credit rating from a nationally recognized rating agency defeats the entire purpose of the loan guarantee program and is burdensome and costly.**

Obtaining and maintaining a rating can cost over $100,000 per year. This is a significant cost for a tribe or tribal entity who has no guarantee of obtaining the subsidy from the TELGP. Also, in many cases misperceptions concerning the riskiness of lending to Native borrowers hampers the ability of tribes and tribal entities to receive the rating requirement. Again, this was the very problem this program was <u>intended</u> to solve.

*Potential Solution*: Amend the legislation and/or call on DOE to eliminate the need for a tribal credit rating and instead require that DOE rely on the bank's loan review and monitoring process. A tribal entity can demonstrate its ability to repay loans of this size through its history of doing so and its forward cash flow projections. This has worked with the Bureau of Indian ("**BIA**") loan guarantee program and Small Business Administration loan guarantee program.

2. **Expand the Number and Type of Qualified Financial Institutions.**

DOE uses an approval process for financial institutions that is overly restrictive, sidelining specialized lending institutions that are seeking to support tribal energy projects. DOE's Financial Institution Partnership Program works for large national banks and projects with utilities and well-financed publicly traded energy corporations, but it does not work for tribes and tribal entities.

*Potential Solution:* Amend the legislation and/or call on DOE to allow specialized lenders and other types of lenders who issue credit and finance projects as a regular course of business. DOE could achieve this by modeling procedures developed and implemented by the BIA loan guarantee program to monitor and approve loan guarantees.

3. **DOE Due Diligence Is Unnecessarily Burdensome and Redundant.**

Rather than relying on and confirming the due diligence of the lending institution, DOE has developed a separate internal process that requires additional review and documentation unnecessary to the program.

*Potential Solution:* Amend the legislation and/or call on DOE to streamline the due diligence process so that the diligence effort falls on the bank or lending institution. DOE and tribes will benefit by simplifying the process and providing certainty: If the borrower can meet payment obligations, then DOE issues the loan guarantee.

***Elective Pay to Tribes Under the Inflation Reduction Act***

The IRA added significant potential benefits for tribal entities to the Internal Revenue Code. Specifically, qualifying tribal entities are eligible for 12 years of elective (direct) pay on projects under IRC Section 45Q (carbon capture), 45V (hydrogen) and 45X (renewable) projects. I understand that the Department of the Treasury is working to finalize the IRS rules to allow elective pay to tribal entities for a "Project" if the tribal entity has an equity position in the project. If the intention is for public and/or private entities to include tribes in new energy projects on tribal lands, or for tribal entities to invest in energy projects, the regulations need to allow for lower tribal equity ownership in order to qualify for benefits.

As discussed above, tribes do not have easy access to the significant amounts of capital that are necessary to plan, develop, build and maintain medium or large-scale energy projects. Additionally, tribes and tribal entities lack the experience and expertise to solely develop energy projects of this magnitude. If the elective pay benefits under IRC Section 45 are only available to entitles that have a controlling (51% or greater) interest in a "Project", it is highly unlikely that any tribal entity would have the financial wherewithal to take advantage of the newly created elective pay benefits.

*Potential Solution:* Amend the legislation and/or call on Treasury to promulgate regulations requiring either a threshold of a 10% ownership interest or $100 million investment in a qualifying project to qualify for elective pay. Investment at this level would ensure that any project investment was above a nominal threshold, while incentivizing private industry to invest in the advancement of tribes and tribal entities, thus enabling a much-needed economic boost to tribes.

As these rules are finalized, IRS must be very mindful of the objective these incentives were created for and very thoughtful on what the rules need to be to create these outcomes. Energy projects in the tens of millions of dollars are nice, but they do not provide the indirect benefits needed to help stimulate additional development. Energy projects in the hundreds of millions of dollars and, even more so, in the billions of dollars create significant long-term direct and indirect benefits that have real, meaningful impact. The rules must be finalized to incentivize private industry to include tribes and tribal entities in projects of this magnitude. With respect to the amount of financial benefit provided by the federal government, there is no difference between a tax credit or direct payment. There is, however, a massive difference in where that benefit lands. Direct payment provides an opportunity for those benefits to incentivize private industry to include tribes and tribal entities as well as ultimately providing additional benefits to the underdeveloped communities on tribal lands; whereas tax credits predominantly require the developer to monetize the tax credits allowing a significant percentage of the financial benefit to go, once again, to large corporations and financial institutions.

***Office of Clean Energy Demonstration***

In May of 2023, the Navajo Transitional Energy Company ("**NTEC**") was one of eight projects awarded a funding opportunity by DOE's Office of Clean Energy Demonstration ("**OCED**"). NTEC's project is for a carbon capture front-end engineering design ("**FEED**") study at the Four Corners Power Plant ("**FCPP**") on the Navajo Nation. The funding will cover 50% of the cost of the study, or approximately $7.5 million. To underscore the significance of this potential project to the Navajo Nation, the FCPP and adjoining Navajo Mine provide over 40% of the annual revenue into the Navajo Nation General Fund.

Upon announcement of being selected, OCED provided a list of the initial required documents and a description of the negotiation process. The negotiation process was stated to take up to three months to complete and had a deadline of August 31, 2023. The only items requested were responses to a Pre-Award questionnaire and an Organization and Financial Management review; and a project kickoff meeting was held where all parties were introduced, a high-level roadmap was provided by OCED, and a weekly progress meeting was set with OCED, NTEC, and Enchant Energy ("**EE**").

NTEC and EE submitted the required documents on May 19, 2023. Over the next five months, OCED failed to provide a schedule for negotiations and instead demanded additional documentation without guidance on what was required and provided additional limitations on the grant. For example, OCED requested an updated Statement of Project Objectives ("**SOPO**") and then later informed NTEC and EE <u>for the first time</u> that no grant money could be used for assessing Enhanced Oil Recovery and that the SOPO would need to be revised.

With still no definitive schedule or detailed scope provided, a joint meeting between OCED, including Acting Director Kelly Cummins, and representatives from the Navajo Nation, EE, and NTEC was held on November 2, 2023. During this meeting, NTEC informed OCED that they must start the FEED Study by December 15, 2023, or risk losing resources from their project partners. OCED agreed to have the FCPP Carbon Capture Integrated FEED cooperative agreement fully executed by December 15, 2023. As of February 1, 2024, NTEC is not under contract and OCED is still requesting new and additional information.

NTEC started the FEED Study on December 15, 2023, but due to the erratic and poor communications with OCED, NTEC is currently working at its own financial risk to fund the entirety of the FEED Study.

*Potential Solution:* Call on DOE to simplify the approval process for this grant and to honor the original schedule and conditions.

***<u>State Small Business Credit Initiative</u>***

The Navajo Nation's journey toward economic diversification and stability has been fraught with challenges, historical setbacks, and environmental impacts from industries that, while once lucrative, have left damaging legacies. As we look to the future, it is imperative that we support the entrepreneurial spirit of the *Diné* people and nurture small businesses that can contribute to a robust, diversified economy.

SSBCI funding, made available for the first time ever to tribes under the American Rescue Plan Act ("**ARPA**"), represents a critical opportunity for the Navajo Nation to invest in its small business ecosystem. Access to capital is a critical component to the growth of every successful company. Small businesses are the backbone of the American economy, and for the Navajo Nation, they do not only represent income and jobs, but also the preservation and advancement of Navajo culture, values, and community. By effectively utilizing the SSBCI funds, the Navajo Nation can provide the needed financial support to overcome this hurdle, enabling small businesses to thrive, innovate, and create jobs for our people.

The anticipated receipt of our first payment from the SSBCI under ARPA is a step in the right direction, but admittedly it will not be enough. States have benefited from the SSBCI program for over a decade, but it was only in the last few years that the opportunity to participate has been extended to tribes, despite the fact that our needs are so much greater. We have higher unemployment that the off-reservation economy, currently at 57% in the Navajo Nation, and our entrepreneurs have less access to capital as they are unable to leverage resources like the equity in their homes, that is frequently a source of start-up capital off the reservation. We hope this program will prove to be a good start, but as has been true of so many federal programs meant to empower tribal economies, we worry that the bureaucratic complexities and red tape will hinder our ability to reap the full benefits.

*Potential Solution:* As the SSBCI program continues to roll out for tribal participants, the Navajo Nation urges the Subcommittee to be vigilant and to keep an open mind. As challenges with the full implementation of the SSBCI program are identified, we will need this Subcommittee to work with tribal governments and other committees to come up with solution in a timely manner. By doing so, Congress will be playing a pivotal role in promoting the economic resilience and prosperity of the Navajo Nation to empower our entrepreneurs and small businesses with the resources they need to succeed.

## ***Conclusion***

In conclusion, I would like to reaffirm our unwavering commitment to building a diverse and sustainable Navajo economy and creating opportunities for all members of our community. While we are fully dedicated to this endeavor, it is essential to acknowledge the formidable barriers that obstruct our path at every turn. Despite these challenges, we remain steadfast in our determination to overcome them and forge ahead towards a future of economic resilience and prosperity for all Navajo citizens. I would once again like to express my thanks to this Subcommittee for the opportunity to testify on behalf of the Navajo Nation. I look forward to working with you to continue to improve the lives of the Navajo people and all of Indian Country, and it is my sincere hope that through our efforts we will be able to remove some of the barriers that stand in the way of the blossoming of the Navajo economy.

*Ahéhee'* and thank you.