

**Statement of Arvin Trujillo
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Division of Natural Resources**

**Committee on Energy and Natural Resources
United States Senate
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Chairman Bingaman, Senator Domenici, and members of the Senate Energy and Natural Resources Committee (Committee), good morning. I appreciate the opportunity to come before the Committee to provide the Navajo Nation's (Nation) insight on the implementation of the amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). My name is Arvin Trujillo, and I am the Executive Director of the Navajo Nation's Division of Natural Resources. I have been in this position since 1999, first in the cabinet of former President Kelsey Begaye and now under the leadership of President Joe Shirley, Jr.

This morning I would like to provide information on the Nation's progress in implementing the SMCRA amendments approved in December 2006, as it pertains to the Abandoned Mined Lands (AML) program and the Nation's efforts to obtain primacy over mining and reclamation activities on the Navajo reservation. I would also like to take this opportunity to thank the leadership of the Committee in their support of the amendments made to SMCRA under the Health Care and Tax Relief Act of 2006.

Progress by the Office of Surface Mining Reclamation and Enforcement (OSM) with the amendments to the AML program is steady, but the Nation is respectfully requesting that the timelines stay on schedule with the Proposed Rule. OSM is still in the process of drafting the final Proposed Rule and the Nation is anticipating these regulations to be completed by the summer of 2008. The Nation has been working closely with the National Association of AML Programs (NAAML) in providing feedback to OSM on the development of the Proposed Rule and the Nation is in support of the western states' position to allow for funding flexibility for high priority non-coal sites. Navajo AML has met its obligation of reclaiming abandoned coal sites within the reservation and we are certified. This provides the Nation the opportunity to contribute to needed infrastructure development through its Public Facilities Program, which is a program allowed under current legislation to certified state and tribal programs. Finally, OSM is in the process of collecting fees from mining companies for the coming year and it is anticipated

that funds will be distributed to both state and tribal programs by mid December of this year. The Nation is requesting that OSM stay with this schedule because the program's planning for fiscal year 2008 is dependent on appropriations received from this distribution in December.

The focus of the Navajo Nation's Division of Natural Resources (Division) and the Minerals Department, which is one of 11 departments under the Division, is for the Minerals Department to obtain primacy under SMCRA to oversee the mining and reclamation activities within the Nation. There are three issues that concern the Nation in developing an application for review and in how the application will be reviewed to determine the qualifications of the Nation to take on responsibilities under SMCRA.

First, it is the understanding of the Nation that tribes will develop an application that will be reviewed in the same manner that state applications are reviewed when they apply for primacy under SMCRA. OSM has stated that they will be developing proposed rules under which tribes would submit an application for primacy. The Nation does not think this is necessary. This position has been debated with OSM since the Nation first began its efforts to develop an application in January 2007, and the position by OSM adds confusion to the process. Furthermore, there have been interpretations by OSM staff that tribes can only apply for partial primacy, but it is the understanding of the Nation that dependent on the application submitted by an Indian tribe, a tribe can apply for partial or full primacy of activities including permitting, inspection, enforcement, and bonding. It is, therefore, the position of the Nation that proposed rules do not need to be developed and that a tribe has the opportunity to apply for full or partial primacy.

Secondly, the Nation is requesting assistance from OSM to develop a complete application and to provide funding to help defray cost in the development of the application. The Minerals Department has hired a consultant to assist in the development of a formal submission, which would include: 1) the surface mining and reclamation code as adapted by the Navajo Nation Council; 2) a set of tribal regulations comparable to 30 CFR Subchapter D; and 3) a complete discussion of the proposed Tribal Regulatory program including staffing, budget, and detailed descriptions of how the regulatory process will work. OSM has formed a team to work with the Nation in its efforts to develop a formal application for primacy. A preliminary draft Navajo Nation Mining and Reclamation Code (NNMRC) has been prepared and has been sent to OSM for their initial review. We are requesting OSM to provide the Nation with a timeline for

completion of their review. Once the NNMRC is completed, this will require the approval of the Navajo Nation Council. While the NNMRC is being finalized, regulations will need to be developed and from our discussions with OSM, our approach will be to develop regulations which will rely on existing regulations within 30 CFR by cross referencing and establishing new regulations where needed for clarification. Finally, the Nation plans to draw OSM into the Tribal Program development process. OSM has been the Regulatory Authority for coal mining operations on Indian Lands for 30 years. We plan on utilizing their experience and will be requesting information and assistance from them. Under one of the purposes of SMCRA (Sec. 201 (c) (9), OSM is to “assist states (tribes) in the development of State (Tribal) programs.” This effort will take personnel to accomplish and the Nation will be requesting an increase in its budget to add to the four staff members currently in place with the Surface Mining program. It is requested that OSM complete all reviews of documentation in a timely manner and it would be preferred that timelines be provided as to when these reviews will be completed. The Nation is also requesting OSM to provide assistance and funding to complete the formal submission for primacy consideration.

Tertiary, once primacy is awarded to the Nation, the program will need to be funded. Unlike the funding commitments to State programs, the amendments to SMCRA provides for 100% funding for Tribal programs. The Nation is not advocating a “blank check” for the Nation, but fund those programs to the need requested. This commitment could also be in place for current programs. In all cases, the Nation can and will provide the necessary justification to OSM for the planned budget amounts submitted to OSM. Senators, this is where the Nation could also ask for your support in providing adequate funding to OSM to see that sufficient allocations are provided to both State and Tribal programs.

The Navajo Nation has been working towards this goal since 1982. The Nation is of the opinion that it has the capability of overseeing mining operations within its borders. There seems to be reluctance on OSM’s part to move this effort forward in a timely manner. The Nation is aware that this effort will affect the operations of the local field office, but I would like to have this process completed by the end of 2008 at the latest. I would also like to emphasize that the proposed rule for the allocation of funding under AML be completed by the summer of 2008. Again, I would like to express my gratitude to the Committee’s leadership in supporting the Nation’s effort to obtain primacy under SMCRA.