

Senator Bingaman's Statement on S. 1315
Senate Committee on Indian Affairs and
House Resources Committee
November 4, 1999

I want to thank Chairman Campbell and Senator Inouye and Chairman Young and Rep. Miller for holding this hearing on S. 1315. I'd also like to thank my co-sponsors, Senators Hatch, Bennett, McCain, and Domenici and Rep. Tom Udall for taking the lead in the House with the companion bill, H.R. 3181, along with Representatives Hayworth and Cannon.

The problems of fractionated ownership are well known to this committee. Around the turn of the century, the Federal Government attempted to force Indian people to assimilate by breaking up traditional tribal lands and allotting parcels of the land to individual tribal members. In New Mexico, this policy created what is known as the "checkerboard," because alternating tracts of land are now owned by individual Navajos, the state, the federal government, or private landowners. A Navajo allotment was generally 160 acres. Under the allotment system, the Navajo owner was granted an undivided interest in the entire parcel. The heirs of the original owner also inherit an undivided interest, geometrically compounding--or fractionating-- the number of owners of the original 160 acres.

This allotment policy, coupled with other federal laws governing Indian land ownership, land management, and probate, have not served the Navajo people well during this century. S. 1315 will help address the problem created by fractionation.

Mr. Chairman, I'd like to take a few minutes to illustrate why the legislation I am proposing is needed. If a Navajo was allotted a 160-acre parcel and had four heirs, the heirs did not inherit 40 acres each when the original owner died. Rather, each heir inherited a 25 percent undivided interest in the full 160-acre allotment. Going forward, when the current four owners died, assuming again four heirs each, sixteen heirs inherited a 6.25 percent undivided interest in the allotment. The next generation would result in 64 heirs each with a 1.5625 percent undivided interest. And so forth.

What makes this situation so unique is that each heir inherits an undivided interest in the allotment. Over time, individual owners may inherit tiny fractions in many different allotments. In my state, there are about 4,000 individual allotments covering nearly 700,000 acres. At this point, these 4,000 Navajo allotments have a total of 40,000 listed owners, and the number grows every day. It doesn't take a Ph.D. in math to figure out what's wrong with this policy.

In April I held a town meeting with Navajo allottees in Nageezi, New Mexico, a small chapter house in the Northeast section of the Navajo Reservation. The allottees talked about the serious problems that fractionated ownership has caused. Over 100 members of the Navajo Nation came from as far away as Aneth, Utah, to speak at the meeting. As you know, the Navajo Nation extends into three states, New Mexico, Arizona and Utah, and there are allottees living in all three states.

Record keeping of individual land ownership has become a nightmare. In many cases, owners can no longer be located. Also, ownership can be clouded when an owner dies without a legal will--a common situation in Indian Country. Some individuals do not even realize they own one or more of these allotments. Often, individuals are surprised to find out that they are an heir to an allotment on another reservation.

At the meeting in Nageezi, I committed to work with the allottees to develop legislation

to facilitate oil and gas leasing on allotted lands. This bill, S. 1315, is the result of that effort.

We all recognize there are serious problems going back several decades with BIA's management of its trust responsibilities for allotted lands in New Mexico. The management problems were brought out very clearly at a joint Senate hearing in March. The hearing also revealed the extent to which the government's allotment policy contributed to BIA's current trust management problems.

On the Navajo reservation, a five-year pilot project is underway in Farmington, New Mexico, to try to unravel some of the management problems with allotted Navajo lands. This project, called the Farmington Indian Minerals Office, or FIMO, is trying to cut through the red tape created by three different Bureaus in the Department of Interior, BIA, BLM, and MMS, which share responsibility for management of allotted lands. The FIMO has worked hard to assist Navajo allottees determine who their fellow allottees are and what land each allottee owns. I support the efforts of FIMO. If this legislation is passed, FIMO could accomplish even more on behalf of the Navajo allottees in the three states.

Over the years, Congress has tried to deal with the problem of fractionated lands, and has failed every time. The long history of trust management problems is not going to be corrected quickly. Developing and implementing a comprehensive solution is going to take time. The Indian Land Working Group is one of the leaders in this area and has submitted a proposal for Congress to consider. I applaud the efforts of Senators Campbell and Inouye and the members of the Senate Committee on Indian Affairs, as well as the House Resources Committee, for taking on this complex issue. Some of the proposals include improve record keeping, probate and estate planning programs, and new processes for consolidating fractionated lands. I look forward to working with the Committee to craft a comprehensive solution.

While the larger issue of fractionated ownership is being considered by Congress, I believe it is appropriate to consider a stop-gap measure to help stimulate near-term economic development on fractionated Navajo lands. There is an abundance of oil and gas beneath the Navajo allotments, yet the allottees are unable to benefit from this wealth because of federal laws that make it very difficult for Indian allottees to lease their land. To illustrate, during the last 12 years, \$7 million in leasing bonuses has been paid to the state and federal government for leases in the checkerboard region of New Mexico, while only \$27,000 has been paid to owners of Navajo allotments.

The problem lies in the 1909 Mineral Leasing Act. The Act requires all persons who have an undivided interest in any particular parcel to consent to any lease. In the case of Navajo allottees, 100 percent of the allottees must consent to a lease of their land. Because of the fractionated land problem, obtaining 100 percent consent is often impossible because many owners cannot be located. Consequently, the Navajo allottees are precluded from the beneficial use of their land.

This bill will facilitate the leasing of Navajo allotted land for oil and gas development. In the case of non-Indians, most states already allow mineral leases with less than 100 percent consent of the owners as long as all persons who own an interest receive the benefits from the lease. My bill simply extends similar benefits to Navajo allottees. The bill would authorize the Secretary of the Interior to approve an oil or gas lease connected to Navajo allotted land when less than 100 percent of the owners consent to such a lease. A similar bill was passed in the 105th Congress to facilitate mineral leasing of allotted lands on the Ft. Berthold reservation in North Dakota and this year legislation was passed for seven tribes in Oklahoma.

My bill proposes a graded system for approval of oil and gas leases. If there are 10 or fewer owners of an allotment, 100 percent of the owners must consent to a lease. However, if there are 11 to 50 owners of an allotment, only 80 percent of the owners need consent. And, with more than 50 owners, 60 percent consent would be required. Other mineral leases, such as coal and uranium mining, would still require consent of 100 percent of the owners.

This graded system was chosen by the Navajo allottees. They recognize that this is a higher standard than the two previous bills and higher than the administration or Chairman Campbell proposed; however I believe there are different conditions on each reservation, and we should respect the wishes of the allottees. In my view, it is a matter of self-determination.

Mr. President, unemployment on the Navajo Reservation now exceeds 50 percent. The opportunities for economic development on this land are few. It is not appropriate for the federal government to continue to deprive the legal owners of Navajo allotted lands the option to develop their land as they choose. This bill is a small step toward correcting the mistakes of the past and a bigger step towards providing economic prosperity for future generations of Navajo allottees.

In celebrating American Indian Heritage Month, we should seek to preserve the Navajo culture by providing economic security for the elderly and economic benefits for the future generations of Navajo allottees.

I look forward to the testimony of the Shii Shi Keyah Allottees Association. I also ask consent that letters supporting S. 1315 from the Navajo Nation, Governor Gary Johnson of New Mexico, and various oil and gas exploration companies be included in the record of the hearing.

Thank you for this opportunity to testify. I look forward to working with you to move this legislation forward in both the Senate and the House. I'd also like to ask the two committees' permission to join you now to listen to the administration's testimony on the bill.