

Testimony of Bidtah N. Becker
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U.S. House of Representatives Committee on Appropriations
Subcommittee on Energy and Water Development

Addressing Tribal Needs Through Innovation and Investment in Water Resources
Infrastructures through the U.S. Bureau of Reclamation

March 10, 2021

Chairwoman Kaptur, Ranking Member Simpson, Members of the Subcommittee, thank you for providing me an opportunity to speak to you about the funding opportunities for the Bureau of Reclamation to address innovation and investment in water resources infrastructure needs in Indian country.

Yá'át'ééh. My name is Bidtah Becker. I am a member of the Navajo Nation and I am speaking with you today from my office on the Nation. I am sitting right along the border between New Mexico and Arizona next to a community named Fort Defiance Chapter. It is named after a 19th century United States fort located at the mouth of the Blue Canyon, strategically placed to establish a military presence on the Navajo homeland.

I am currently serving as an attorney with the Navajo Tribal Utility Authority (NTUA) which is wholly owned by the Nation and delivers six utilities to the Navajo communities: water, wastewater, electricity, gas, broadband, and photovoltaic services. I am a member of the Leadership Team for the Water and Tribes Initiative in the Colorado Basin. I have the great honor to serve as the Vice-Chair of the New Mexico Interstate Stream Commission. I do not speak on behalf of the New Mexico Interstate Stream Commission today.

Prior to my current employment, I had the honor of a lifetime to serve as the Director of the Navajo Nation Division of Natural Resources as an appointee of then President Begaye and Vice-President Nez and confirmed by the Navajo Nation Council. I took on that role after representing the Nation as an attorney for several years in water rights and natural resources matters. In all of my roles, I have focused on water management frameworks and water supply solutions that benefit tribal members and surrounding non-Indian communities and that work to correct historical injustice.

BACKGROUND

Water is a critical unmet need for many Native American tribes. It is essential for both physical

and spiritual health. Access to clean and safe water is essential to public health, educational attainment, and economic development – in other words, communities without clean water struggle to thrive. A century ago, the U.S. government invested in modern water and sanitation systems as a means of eradicating water-borne diseases and stimulating economic prosperity, but this government investment in water infrastructure over the past one hundred years has largely bypassed reservations. Today roughly 400,000 people -- nearly 30% of homes in Native communities across the United States -- either have inadequate or no access to reliable water and sanitation services. This number compares to the U.S. as a whole where less than 1% of homes lack these facilities. Race is the strongest predictor of water and sanitation access, with Native Americans more likely than any other group to face water access issues. On my own reservation, it is estimated that up to 40% of households do not have clean water to drink or wash with.

The COVID-19 pandemic has shone a bright light on this inequity. COVID-19 has had a disproportionate impact on Native American people with infections 3.5 times higher than in the white population, largely attributable to persistent racial inequity and lack of public health infrastructure, including access to running water. Not only are COVID infection rates higher in the Native American population, but death rates are significantly elevated as well. Infectious diseases, respiratory ailments, skin infections, and childhood obesity are all many times more common in these communities that lack reliable and safe water service.

While some tribal communities have obtained water infrastructure as a result of reserved water rights settlements or Indian Health Service programs, many Native American and Alaska Native communities have been left behind. Longstanding claims to federal reserved water rights have been allowed to languish or have been actively opposed. Existing water systems have fallen into disrepair and have suffered from reliability and contamination problems. The federal government has a fiduciary trust responsibility to federally recognized Indian tribes which simply cannot be reconciled with the widespread lack of access on reservations to this basic necessity of life.

BUILDING BACK BETTER

Providing the same level of basic water access to Native Americans aligns perfectly with the priorities of the Biden-Harris Administration – COVID-19, Economic Recovery, Racial Equity, and Climate Change.

COVID-19. We must provide basic clean water service to Indian country to provide the sanitation procedures recommended by scientists and epidemiologists so that native people have the same opportunity to be safe and healthy as other Americans. The COVID pandemic has provided a stark reminder that access to clean water is a matter of life or death. Viruses pass over the land regardless of political boundaries and communities that lack basic water infrastructure can be a source of transmission to other communities. This global pandemic has

taught us that we are all in this together.

We weren't prepared for this pandemic in Indian Country. I do not mean because we lack masks or the ability to socially distance. It is because we began from a deficit. This deficit is shown by the Indian Health Services reported list of sanitation deficiencies. We were not prepared to shelter at home on the Navajo Nation because so many homes lack basic utilities. We need to build now to reach a minimal level of equality and to be prepared for the next global pandemic. We need to ensure that before the next one hits, we will not be starting from a deficit but from the same level of infrastructure expected by our fellow American citizens.

Economic Recovery. We can build water infrastructure that will address income injustice and create jobs and resilient communities at the same time. Data compiled by the Indian Health Service shows that every dollar spent on sanitation facilities in tribal areas in the United States has at least a twentyfold return in health benefits. Schools, retail establishments, hospitals, and governmental facilities are all affected by the lack of clean water availability. Tribal communities cannot be left behind again in the efforts to achieve economic recovery across the United States.

While I don't have statistics to share, I can personally attest to the positive economic effect that the recent injection of CARES Act funds has had on the Navajo Nation. The Navajo Nation allocated significant federal CARES Act funds to NTUA to build electric, broadband, water and wastewater services to combat the spread of COVID-19, including ensuring that Navajo citizens can safely shelter at home. NTUA partnered with forty contractors and other businesses from in and around the Navajo Nation to build this much needed utility infrastructure. One of those contractors was the Utility's sister enterprise, the Navajo Engineering and Construction Authority, which enjoyed higher employment this past year with the influx of CARES Act funds.

Racial Equity. Racial injustice has resulted from barriers that prevent native communities from thriving. Reducing the existing disparity in public health, educational attainment, and economic prosperity on Native American reservations is essential to have a just society. A nation that allows its indigenous communities to suffer from lack of access to clean water at a rate many times that of neighboring white communities cannot be said to be providing equal opportunity for all.

Of particular import when addressing racial equity in Indian Country is the concept of Native Nation building and the role of the federal government in providing assistance to Native Nations that is respectful of the government-to-government relationship. Through this testimony I will be sharing real life stories of how the United States and the Bureau of Reclamation in particular have respectfully assisted the Navajo Nation in our nation building. I speak from personal experience as I was often the tribal official benefitting and learning from their respectful assistance.

Climate Change. Lack of water access is being exacerbated by climate change. Groundwater

levels are dropping, more frequent extreme weather events threaten existing systems, and reduced supplies have created increased tension among all water users. The western United States is experiencing a prolonged drought. Solutions for water access can and must be designed to create resilient appropriate infrastructure on Indian reservations that will be able to withstand the impacts of climate change.

Universal Access to Clean Water on Indian Reservations

Tribal households are 19 times more likely than white households to lack sufficient plumbing.¹ The lack of access to water and sanitation in native communities reflects historical and persisting racial inequities that continue to result in health and socioeconomic disparities. The COVID-19 pandemic has tragically laid bare the federal government's failure to provide these basic services for tribes and the devastating impacts of that failure. The richest country in the world cannot continue to allow this structural inequity to plague its native citizens. It's time to ensure that all Americans have access to clean water in their homes.

This injustice is even more egregious given the United States' trust responsibility to tribal nations that requires it to ensure livable homelands for Indian tribes. When the United States entered into treaties with tribes to set aside land for reservations or issued executive orders establishing reservations, those lands were to serve as permanent homelands. The Nation entered into such a treaty with the United States on June 1, 1868. Tribes and the United States envisioned these homelands as places where reservation citizens would thrive, as they had from time immemorial. But no one can thrive without clean water -- it is essential to public health, educational attainment, and economic development. Providing basic water and sanitation services is directly tied to the federal government's original commitment to provide permanent homelands for tribes, and until all native communities have access to these services, the government's legal fiduciary obligation to tribes will remain unfulfilled.

The Bureau of Reclamation can play a unique role in reaching the goal of universal access to clean drinking water in Indian Country. It cannot address the task alone and it will take a whole of government approach including the United States Department of Agriculture, the Indian Health Service, and the Environmental Protection Agency. The Navajo Nation has developed a Water Development Strategy based on integrating the resources of these and other programs. Reclamation's history as a highly successful builder of complex water projects and of several decades of Indian water rights settlement work provides it a strategic and modern view of what Indian Country can and should be. The Navajo Nation Water Development Memoranda of Understanding with Reclamation for the development of water infrastructure attest to the strong and always evolving working relationship that has been established over decades.

1 U.S. Water Alliance and DigDeep, Closing the Water Access Gap in the United States: A National Action Plan (2019), found at [uswateralliance.org/sites/uswateralliance.org/files/Closing the Water Access Gap in the United States_DIGITAL.pdf](https://uswateralliance.org/sites/uswateralliance.org/files/Closing_the_Water_Access_Gap_in_the_United_States_DIGITAL.pdf)

U.S. BUREAU OF RECLAMATION FUNDING

Indian Reserved Water Rights Settlements

Since 1989, the policy of the United States has been to resolve disputes over Indian water rights through negotiated settlement rather than litigation. The Bureau of Reclamation plays an integral role in ensuring that the commitments in Indian Water Rights Settlements are met. Reclamation provides monetary, personnel, and technical support for the Secretary's Indian Water Rights Settlements Office and Reclamation staff chair several settlement negotiation teams and settlement implementation teams.

To date the Navajo Nation has successfully negotiated two water rights settlements: one to the San Juan River in New Mexico and the other to the Utah portion of the Navajo Nation. The Navajo Nation is slightly larger than the size of West Virginia and is located in the heart of the Colorado River Basin. The Nation still has other settlement negotiations in process. There is an existing federal negotiation team established for Navajo Arizona which includes Hopi and San Juan Southern Paiute and a negotiation team for the Ramah Navajo Satellite Reservation and the Pueblo of Zuni.

Navajo-Gallup Water Supply Project

In the case of the Navajo Nation's water rights settlement with the State of New Mexico, in 2009 Congress authorized the Bureau of Reclamation to construct the Navajo Gallup Water Supply Project (NGWSP or Project). The Project consists of two laterals that will be or are delivering a clean, reliable supply of water to the Navajo Nation in Northwest New Mexico. Delivery of water through the Cutter Lateral of the Navajo Gallup Water Supply Project began last fall. That lateral will also serve a portion of the Jicarilla Apache Nation. The San Juan Lateral is under construction and expected to be fully constructed by 2027. The San Juan Lateral is much larger than the Cutter Lateral and will serve the City of Gallup as well as Navajo communities in Arizona.

Settlement projects are so much more than simply hardware in the ground. They are opportunities for addressing racial equity by healing historic harms and for building a strong economy by providing skilled jobs during construction and the opportunity for developing a stronger economy. I know this because I have worked on two large settlement projects and have worked on the Navajo Gallup Water Supply Project since 2002, yes before the Project was authorized.

I began as a baby lawyer working with a broad team of Navajo Nation staff to settle our water rights claims with the State of New Mexico, and doing the day-to-day labor of educating forty-

three Navajo communities called Chapters to obtain their support for the settlement. The Navajo Gallup Water Supply Project has been envisioned since the 1950s and many of the elder Navajos we spoke with were skeptical that the Project would come to fruition as we were discussing its mere authorization some 50 years after conceptualization. Communicating with the Chapters was both challenging and exhilarating and a good reminder of what our communities need and desire for themselves.

Settlement implementation began in 2009 and the federal implementation team is led by a Reclamation employee. To ensure that the Navajo Gallup Water Supply Project would be a success, Reclamation came to the capital of the Navajo Nation to meet with political leaders, several Navajo Nation departments, and several Navajo Nation enterprises to discuss the Project and the support that it would need from the Nation. The Reclamation staff was terrific, answering tough and thorough questions from Navajo Nation Council Delegates. To this day, Reclamation staff continue to regularly meet with the Nation, including with the forty-three Chapters. It is important to note that these meetings include not just technical staff working on the Project but also accountants and other administrators responsible for processing mounds of paperwork and average Navajo citizens interested in the Project and planning for the future.

Reclamation is providing funding to NTUA through a financial assistance agreement. The financial assistance to NTUA allows NTUA to expand its existing technical team and develop its capacity to eventually take over the operations and maintenance of the Project. By developing capacity early, all are ensured a smooth transition for the transfer of operations and maintenance to NTUA. All of this is an exercise in nation building.

Several years into the implementation process, Reclamation created and filled a position in the Farmington, New Mexico, construction office called the Navajo Outreach Coordinator. The Navajo Outreach Coordinator's job it is to help Reclamation effectively communicate with Navajo government officials and tribal members by translating presentations into the Navajo language. It is a critical that information be shared in the Navajo language on the Navajo Nation and it is respectful to do so. Indeed at the beginning of the pandemic, researchers determined that the two factors that correlated to lower rates of COVID -19 infection in Indian Country were the presence of indoor plumbing and the percentage of households that were English only². Said another way, people more quickly adapt to changing events when information is shared in their native tongue.

Through the implementation process, I have observed Reclamation's ability to be creative problem solvers. Reclamation could have told Project Participants and other stakeholders to stand back and could have built the Project by itself, potentially running roughshod over the local communities and sister federal agencies. Instead, Reclamation saw that it was critical for

²Desi Rodriguez-Lonebear, Nicolas E Barcelo, Randall Akee, and Stephanie Russo, Carroll Public Health Management Practice, found at [American Indian Reservations and COVID-19: Correlates of Early Infection Rates in the Pandemic - PubMed \(nih.gov\)](#)

it to work with the Navajo Nation and its sister federal agency the Indian Health Service to let those organizations do what they do best -- so Reclamation could do what it does best.

For instance, the Code Talker Lateral of the Project is the pipeline that conveys NGWSP water from the main San Juan Lateral west towards Window Rock, the capital of the Navajo Nation, and Fort Defiance. Reclamation is building the first two of three reaches of the trunkline. Reclamation is funding the Navajo Nation Department of Water Resources through a federal assistance agreement to allow the Nation to oversee construction of the third reach. Reclamation and the Navajo Nation are working with the Indian Health Service in the design phase for this third reach. The Indian Health Service is using its programmatic funding to build connections from the trunkline to existing NTUA water distribution systems and to unserved homes. This reach will have temporary access to groundwater and there could be drinking water provided to these unserved homes before completion of the rest of the Project. Left in another set of bureaucratic hands, this entire project could very well have been developed in sequential stages, rather than simultaneously. Reclamation is also working with the National Renewable Energy Laboratory to analyze the feasibility of providing economic renewable solar energy to parts of the NGWSP that do not have direct access to Colorado River Storage Project (CRSP) power. This is a whole of government approach that can be replicated across Indian Country to address the lack of access to clean, safe and drinkable water.

There are times when the projects envisioned in Indian Water Rights Settlements exceed the funding ceilings imposed by Congress when initially authorizing a settlement project. This is true of the Navajo Gallup Water Supply Project. The working cost estimate for constructing the Project currently exceeds the authorized cost ceiling by \$240 million. The Navajo Nation and the other project partners are currently working with Reclamation on how to address this funding gap. This Subcommittee will likely be hearing about this status in the near future. That being recognized, these settlement projects are critical lifelines for tribes and reservation communities and transform an abstract legal right into critical water infrastructure serving tribal communities.

Other Critically Needed Reclamation Funding

I have described how the Reclamation's construction of the NGWSP and creative doggedness are helping the Navajo Nation do the business of nation building. **Reclamation's Native American Technical Assistance Program (TAP)** currently provides experienced technical resources to assist tribes located within the seventeen (17) western states, not including Alaska, in developing, managing, and protecting their water and related resources. The limitations on geographic service area has largely been due to funding levels. Reclamation could serve all of Indian Country and Alaska Native villages and communities with greater funding. This assistance has historically taken the form of water needs assessments, improved water management studies, water quality data collection and assessments, and water measurement studies. Many tribes that lack access to clean water do not have the internal technical expertise to assess the

types of engineered solutions available that would achieve the result needed and provide a practical fit with the terrain, water source availability, workforce requirements, and the identified need. Technical help is necessary to allow tribes to develop “shovel-ready” projects that stand a higher chance of attracting funding. The TAP can also help as needed in applying for grants or loans to help plan and build the required systems.

Again, I speak from personal experience when I say that the Reclamation’s Native American Affairs TAP can help tribes. This office was invaluable in working with the Ten Tribes Partnership to the Colorado River in developing the Tribal Basin Study. That Study is a “go to” resource for anyone who wants to understand the complexities of a river with a less certain supply facing increased water demands of millions of people in Tribal and non-Tribal communities.

Funding for the TAP has historically ranged from \$2 to \$3 million per year. Reclamation’s current criteria for Technical Assistance awards limit contributions to \$200,000 per year and prohibit funding for feasibility studies, purchase of equipment, or construction. Funded projects cannot last longer than two years. Technical assistance funds cannot be used to perform biological activities, such as fisheries work. The limitations of the program criteria, although understandable in light of the limited funding available, hamper the utility of the program. Because the program has been significantly over subscribed, many significant worthwhile proposals go unfunded leaving the Tribal applicants with little to show for their efforts to apply. And the administrative process can further discourage tribes from future applications.

An interesting example of how this funding can be used is that Reclamation secured funding from the Native American TAP to fund the production of a documentary about the NGWSP. The producers of the documentary are Navajo Technical University students who are interviewing people as we speak and expect to publish their documentary at the end of the semester in May. The students are learning about water rights and the history of the Project. Importantly they will be sharing the message that there are highly skilled jobs required for operating and maintaining the Project and those jobs will be available to them when they graduate and qualify for them. This work allows our students to stay home and be gainfully employed while serving their communities. This is racial equity and building a strong economy at its best.

Reclamation has estimated the current need for tribal Technical Assistance at around \$44 million. This amount includes only projects and requests that Reclamation is currently aware of. The actual need is much greater. Particularly in light of the increased pressure for systems that provide access to clean water on reservations, funding of \$90 million over 5 years is not unreasonable.

The **Rural Water Supply Act of 2006** created the Rural Water Supply Program and authorizes Reclamation to work with rural communities and tribes to identify municipal and industrial water needs and options to address such needs through appraisal investigations and feasibility studies. The intention was that Congress would then consider feasibility studies recommended by the Administration before authorizing specific project construction in legislation. This authority expired in 2016, but various bills have been introduced to reauthorize the program (for example, H.R. 2473 and H.R. 4022, 116th Congress).

The Rural Water Supply Program should be reauthorized and prioritized for projects that provide access to clean water on Indian reservations. Reclamation's particular expertise is the design and construction of large water supply projects that bring water from distant sources to a point of connection that can then be used as a distribution hub to communities. These types of projects are desperately needed in Indian country, as demonstrated by the inclusion of exactly these types of water systems in many previous Indian Water Rights Settlements. Clean drinking water projects that bring this basic service to Indian people should not be forced to wait until all the tribe's reserved water rights claims are settled, a process that can last for decades and sweeps in many more issues than the fundamental need for drinking water. The Indian Health Services projects demonstrate that clean drinking water projects can be built without a settled right. Indeed, Congress authorized IHS in the 1950s, long before the settlement era began. The pandemic has taught us is that we do not have the luxury of decades of time for projects to be authorized and constructed.

The Indian Health Service is authorized to construct facilities that provide a safe water supply to existing Indian homes and communities and does so to the extent of the funding available to its Sanitation Facilities Construction program. The facilities constructed pursuant to this program tend, however, to be smaller systems connecting tens of households to clean water supplies, rather than the large water supply projects that are Reclamation's specialty. Both contributions are needed as I have discussed above. Reclamation's Rural Water Supply authority should be updated and focused on tribal clean water infrastructure. A minimum of \$1 billion is needed and should be appropriated for this purpose.

Drought

Addressing drought is critical in the arid west. The entire Navajo Nation, along with most of the States of Utah, Arizona, and New Mexico, are experiencing severe, extreme or exceptional drought. The outlook is that these conditions will continue to deteriorate throughout 2021 and into 2022. This weather pattern will once again devastate the range, create enormous clouds of dust over the region, and impact farming. Drought is nothing new to the Navajo people. However, the relentlessly dry conditions experienced during the last few years is a new problem of a different magnitude. The need for drought relief during the upcoming months is a certainty.

At first blush, it may seem like drought would only exacerbate issues of access to clean drinking water in Indian Country. Instead addressing drought means developing resilient systems that will ensure successful management of water supplies. Mitigating the impacts of drought ahead of time is far more effective than responding to drought after the fact. Reclamation has been in the lead in providing drought mitigation resources to the Navajo Nation.

The Drought Resiliency Program offers an opportunity to smartly manage water supplies in the face of drought. Over ten years ago, Reclamation assisted the Navajo Nation Department of Water Resources (NNDWR) to develop a drought mitigation and response plan, and over the last ten years has funded more than a dozen drought mitigation projects. Recently Reclamation staff worked with the Navajo Nation Water Management Branch of NNDWR in the understanding the funding proposal process. A couple of significant funding examples are Reclamation is contributing \$947,000 from the Drought Resiliency Program for part of the Western Navajo Pipeline Phase 1 in Arizona and contributing \$300,000 for a well in Oljato Chapter in Utah. Reclamation has been very helpful in assisting with the necessary paper work to ensure the Nation timely receives the funding in the near future.

CONCLUSION

Now is the time. As hard as this pandemic has been for all of human society, we are positioned to take the historic trajectory we have been on and heed Dr. Martin Luther King's words to take that historic trajectory and bend the arc of history toward justice. Now is the time to boldly invest in the water infrastructure that will protect all human lives in this country, including the first peoples of this land.

The challenge is daunting to be sure. I am not an elected leader, but I have held a position appointed by elected leaders and I have a sense of the challenges that the members of this Subcommittee face. When I speak about the arc of history, I am empowered by the recognition that in 1918, in the face of the Spanish flu pandemic which also took many, many Navajo lives, human society was not prepared to build back better to address the racial inequities of their time. Now we are.

One last Navajo Gallup Water Supply Project story. In 2018, Reclamation worked with the Navajo Nation Water Rights Commission to hold a traditional Navajo ceremony to bless the groundbreaking for the Cutter Lateral Water Treatment Plant. It was a beautiful ceremony that brought current and former tribal, federal and state officials together. Importantly 2018 also marked the 150th anniversary of the Navajo Nation's 1868 Treaty with the United States and we noted how far U.S. - Navajo relations had come in those years.

The arc of history is bending, and Congress has the unprecedented opportunity to ensure that that curve is bending toward the justice of a racial equity that will provide good jobs, ensuring

that this pandemic is defeated, laying the foundation so that future pandemics do not leave this level of damage behind, and turning around climate change so that seven future generations will live on a planet in balance.

Navajo Gallup Water Supply Project

