

**TESTIMONY OF DR. BUU NYGREN, PRESIDENT OF THE NAVAJO NATION,
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE, SUBCOMMITTEE
ON WATER, WILDLIFE, AND FISHERIES**

*H.R. 8940, the Northeastern Arizona Indian Water Rights Settlement Act
July 23, 2024*

Yá'át'ééh, Chairman Bentz and Ranking Member Huffman and members of the Subcommittee. My name is Dr. Buu Nygren and I am the President of the Navajo Nation (“Nation”). Thank you for the opportunity to testify in support of the Northeastern Arizona Indian Water Rights Settlement Act, H.R. 8940, which will secure a sustainable water supply for the Navajo Nation, the Hopi Tribe and the San Juan Southern Paiute Tribe (collectively the “Tribes”) and resolve the most significant outstanding water claims in the State of Arizona. Thank you also to Representatives Ciscomani, Crane, Stanton, Grijalva, Gallego and Schweikert for sponsoring this historic legislation. And thank you to the Governor of the State of Arizona, Katie Hobbs, for her and her staff’s work and to the many non-federal parties in making this settlement become a reality. For the purposes of my testimony, I am focusing my comments on those provisions of H.R. 8940 that impact the Navajo Nation.

The Navajo Nation is the largest federally recognized Indigenous nation in the country. We provide critical governmental services to more than 400,000 tribal members, approximately half of whom reside on the Navajo Nation. Our Nation encompasses more than 27,000 square miles and is approximately the size of West Virginia. Our lands extend across 11 counties and the states of Arizona, New Mexico, and Utah. Unfortunately, access to safe, clean drinking water for our members continues to be an unrealized dream with approximately 30 percent of Navajo households lacking piped water in their homes. Many of our people must instead rely on hauling water to meet their daily household needs. As discussed in more detail below, H.R. 8940 addresses these needs by investing significantly in desperately needed water delivery infrastructure projects on the Navajo Nation that will bring safe and reliable drinking water to Navajo communities in Arizona. This will make possible the connection of tens of thousands of Navajo people in Arizona to piped water in their homes for the first time ever.

The lack of access to clean drinking water results in a high cost to human life. At the height of the COVID-19 pandemic, we were losing an average of 10 Navajo people a day to the virus. Whereas the Centers for Disease Control and Prevention reports that COVID-19-associated deaths among non-Hispanic Whites was 30.3 per 100,000, our preliminary data from the Navajo Nation Epidemiology Center shows that the COVID-19-associated death rate among Navajo people was over 800 per 100,000. Our people were disproportionately impacted by the COVID epidemic and continue to experience high rates of morbidity and mortality from infectious diseases, in part because of lack of access to clean water. It’s hard to wash your hands if you don’t have running water. Indeed, a recent Navajo Nation Health Survey identified the key factor leading to poor health at the Navajo Nation is the lack of piped water in homes. This settlement offers a path forward in closing the severe water access gap that exists on the Nation and offers the promise of a more healthy and vibrant future for our people.

I. The Drinking Water Crisis within the Navajo Nation

More than 30 percent of Navajo households do not have running water and rely on hauling water, which has a significant impact on the quantity and quality of available water to those Navajo households that must haul water. Families that haul water sometimes must rely on non-potable water sources such as livestock wells to meet their household water needs, even drinking water needs. A recent study of livestock wells on Western Navajo found that 11 percent of livestock wells exceed the maximum contaminant levels set by the EPA for uranium. Seventeen percent contain high levels of arsenic.¹ Unfortunately, as our Department of Water Resources staff sometimes remind us, “when you’re thirsty, you’re thirsty,” and for some Navajo families that means drinking the closest available water even if it is unsafe. A large proportion of those who do have piped water to their homes depend on public water supply systems that have exceeded the maximum sustainable withdrawal capacity of their source aquifers, have poor water quality, and are susceptible to drought.²

The lack of a reliable and affordable potable water supply suppresses economic growth throughout the Navajo Reservation and contributes to a high incidence of disease and infection attributable to the lack of access to clean drinking water. These conditions place significant financial burdens on Navajo and federal programs that treat diseases and illnesses and that could be prevented if adequate safe water supplies were available.³

The lack of a safe and reliable water supply also places a tremendous economic burden on the Navajo people. According to the Navajo Department of Water Resources, “[f]amilies, which haul water for domestic purposes, spend the equivalent of \$43,000 per acre-foot of water compared with \$600 per acre-foot for typical suburban water users in the region. The Navajo water hauling cost is \$133 per thousand gallons. This water is among the most expensive in the United States for a sector of the population that is among the poorest.”⁴ Although H.R. 8940 will not eliminate water hauling, it will deliver a source of potable water that is of higher quality, more reliable, and closer to the homes of water haulers.

In the past decade the Navajo Nation has invested \$800 million in water and wastewater infrastructure from a combination of its own investments and a mix of other federal resources. Notwithstanding the commitment of the Navajo Nation, there is a significant funding gap to meet the basic needs of our people. H.R. 8940 will address these funding deficiencies.

II. Key Components of the Settlement

¹ See [Dissolved Uranium and Arsenic in Unregulated Groundwater Sources – Western Navajo Nation - Jones - 2020 - Journal of Contemporary Water Research & Education - Wiley Online Library](#).

² See Water Resources Management Strategy for the Navajo Nation prepared by the Navajo Nation Department of Water Resources, p. IX (“WRMS”) [Strategy Document \(frontiernet.net\)](#).

³ See WRMS, p. IX.

⁴ *Id.* There are 325,851 gallons in an acre foot.

H.R. 8940 authorizes, ratifies, and confirms an historic water rights settlement (“Settlement Agreement”) between the Navajo Nation and 38 other parties, including, the Hopi Tribe, the San Juan Southern Paiute Tribe, the United States, the State of Arizona, Arizona State Land Department, Salt River Project, Arizona Public Service, Central Arizona Water Conservation District, Bar T Bar Ranch, the Cities of Winslow, Flagstaff, Holbrook, Taylor, Snowflake, Show Low, Eagar, Springerville, St. Johns, local irrigation districts and ranchers located within the Little Colorado River watershed. The Settlement Agreement reflects decades of settlement negotiations and the legislation, once enacted by Congress, will settle Navajo Nation’s claims to the Little Colorado River, the Gila River, and the Upper and Lower Basins of the Colorado River, as well as with respect to washes, tributaries, springs, and underground water flowing on and underlying the Navajo Nation. Upon approval by Congress, the Nation will be able to focus efforts on developing our water resources and building an economy. Thereby we hope to improve the health and living standard of our people and ensure that our homeland and our people thrive now and into the future.

The 25th Navajo Nation Council unanimously approved the Settlement Agreement on May 23, 2024. It was also unanimously approved by the councils for the Hopi Tribe and the San Juan Southern Paiute Tribe in May 2024.

A. *Water Claims Resolved*

The Settlement Agreement once confirmed by Congress through enactment of H.R. 8940 and the Senate companion S. 4633 will provide a comprehensive settlement of the Nation’s water rights in Arizona. Under the terms of the Settlement Agreement, the Navajo Nation will have the right to 44,700 acre-feet per year (AFY) of Colorado River water from the State of Arizona’s Upper Colorado River Basin allocation and 3,600 AFY of Fourth Priority Lower Basin Colorado River water.

The Nation will be entitled to divert and deplete all surface water that is tributary to the Little Colorado River that reaches the Navajo Reservation, provided that such diversions and depletions shall not interfere with or diminish existing surface water uses. The Nation will have the right to divert and deplete any surface water of the mainstem of the Little Colorado River that reaches the Navajo Reservation. The Nation will also have the right to divert and deplete up to 40,780 AFY of surface water from the Little Colorado River for specific historic irrigation projects in specified quantities and with identified priority dates. The Nation will have the right to all the groundwater that underlies the Navajo Reservation including the Navajo (“N”) aquifer and the Coconino (“C”) aquifer. Resources shared by the Navajo Nation and the Hopi Tribe, including the N-aquifer and certain washes, are subject to an intertribal use and management agreement that includes a limit on annual pumping from the confined portion of the N-Aquifer and the Shonto recharge area to 8,400 AFY.

B. *The iiná bá – paa tuwaqat’si pipeline and the Implementation Fund.*

The iiná bá – paa tuwaqat’si pipeline is a key component to the Settlement Agreement. The pipeline will deliver a portion of the Nation’s Upper Basin Colorado River allocation and a

portion of the Nation’s Lower Basin Colorado River allocation from Lake Powell to the Navajo Chapters of Cameron, Bodaway/Gap, Tuba City, Coppermine, Bitter Springs, Cedar Ridge, Coal Mine Mesa, Grey Mountain, and Lechee and to the San Juan Southern Paiute Reservation. It will also deliver water from Lake Powell to Hopi Villages at Moenkopi, First Mesa, Second Mesa, Third Mesa, Howell Mesa, and Keams Canyon. The cost of constructing the pipeline is estimated to be \$1.715 billion based on the Bureau of Reclamation’s Navajo-Hopi Value Planning Study – Arizona dated October 2020, updated in 2023). The sizing of the pipeline project is based on an annual population growth rate of 1.8% and a municipal per capita water demand of 130 gallons per capita per day. H.R. 8940 provides a mandatory appropriation of \$1.715 billion to fund the iiná bá – paa tuwaqat’si pipeline Implementation Fund to be used by the Bureau of Reclamation to plan, design, and construct the pipeline.

C. *Navajo Nation Water Settlement Trust Fund*

In addition to the iiná bá – paa tuwaqat’si pipeline Implementation Fund, H.R. 8940 establishes and funds a water settlement trust fund for each of the three tribes, also funded by mandatory appropriations: the Navajo Nation Water Settlement Trust Fund – \$2.7467 billion, the Hopi Tribe Water Settlement Trust Fund – \$508.5 million, and the San Juan Southern Paiute Tribe Water Settlement Trust Fund – \$29.800 million.

There are five separate accounts in the Navajo Nation Water Settlement Trust Fund. The largest account is the Navajo Nation Water Projects Trust Fund, which will receive \$2.3692 billion and will be used to plan, design, construct, operate, and maintain water supply infrastructure including wells, water treatment facilities, pipelines, storage tanks, pumping stations, electrical transmission equipment wastewater treatment facilities and renewable energy facilities to serve Navajo communities. The proposed projects include:

- The iiná bá – paa tuwaqat’si pipeline lateral that will provide potable water to serve the communities of LeChee and Antelope Point.
- The Southwest Navajo Regional Groundwater Project that will extend the Leupp-Dilkon Project to deliver C-Aquifer water to Leupp, Birdsprings, Tolani Lake, Teesto, Dilkon, and Indian Wells.
- The Ganado Regional Groundwater Project that will develop and expand public water systems to deliver C-Aquifer and Lower Basin Colorado River Water to Kinlichee, Ganado, Cornfields, Lower Greasewood, Jeddito, and Steamboat.
- The Black Mesa Project that will develop and expand public water systems to deliver N-Aquifer water to Black Mesa, Forest Lake, Pinon, and Shonto.
- The Four-Corners Project that will develop and expand public water systems to deliver Upper Basin Colorado River Water to Chinle, Many Farms, Rock Point, Rough Rock, Round Rock, Sweetwater, Teec Nos Pos, and Tsaile/Wheatfields/Blackrock.
- The Kayenta Area Project that will develop and expand public water systems to deliver N-Aquifer and Upper Basin Colorado River Water to Chilchinbeto, Rough Rock, Kayenta, Dennehotso, Mexican Water, and Oljato.
- The Lupton Area Project that will develop and expand public water systems to deliver Alluvial Aquifer and Lower Basin Colorado River Water to Houck, Lupton and Nahata’Dziil.

- The Code Talker Lateral that will extend the Code Talker Lateral waterline and expand public water systems to deliver Groundwater and Lower Basin Colorado River Water to Fort Defiance, Red Lake, and Saint Michaels, with an intertie to the Ganado Area Project.
- The Local Upper Basin Water Projects are small local projects in the Upper Basin that will develop and expand public water systems to deliver additional water to local communities.

In addition to the Navajo Nation Water Projects Trust Fund Account, H.R. 8940 confirms the establishment of four other accounts and appropriates mandatory funding for these accounts:

- The Navajo Nation Renewable Energy Project Fund Account: \$40 million to support Navajo water development projects with renewable energy;
- The Navajo Nation Agricultural Conservation Fund Account: \$80 million to support historically irrigated acreage by implementing modernized irrigation infrastructure, and including replacement and development of livestock wells and impoundments,
- The Navajo Nation OM&R (Operation, Maintenance & Replacement) Fund Account: \$229.5 million to support operation, maintenance, and replacement costs of the water projects, and
- The Navajo Nation Lower Basin Colorado River Water Acquisition Fund Account: \$28 million to purchase land in Arizona with senior water rights with the intention to sever and transfer such water rights for reallocation to the Navajo Nation.

D. *Waivers*

In return for resolution of the Nation's water rights claims, the federal funding to develop the water infrastructure, and such other benefits as provided in the Settlement Agreement, the Navajo Nation will waive claims (i) against the State, the Hopi Tribe, the Hopi Allottees, the San Juan Southern Paiute Tribe and any other individual, entity, corporation, or municipal corporation under federal, State or other law including past, present and future claims for water rights arising from time immemorial and thereafter forever; past, present and future claims for water rights arising from time immemorial and thereafter forever based on aboriginal occupancy of the land; past and present claims for injury to water rights from time immemorial through the enforceability date; past, present, and future claims for injury to water from time immemorial and thereafter forever; past, present and future claims for injury to water rights arising from time immemorial and thereafter forever based on aboriginal occupancy of the land; claims for injury to water rights arising after the enforceability date in a manner not in violation of this Agreement or State law; and past, present and future claims arising out of or relating to the negotiation, execution or adoption of the Settlement Agreement, any judgment or decree approving or incorporating the Settlement Agreement, or the legislation. The Navajo Nation will also waive its claims against the United States for all water rights settled under the Settlement Agreement, including all past, present and future claims for such water; claims of past or present injury to such water rights; past, present, and future claims arising out of monitoring activities by the United States; past and present claims related to foregone benefits from non-Navajo use of water; past and present claims based on damage, loss, or injury to land or natural resources due to loss of water or water rights related to hunting, fishing, gathering, or cultural rights; past and present claims related to failure

to establish or provide water delivery systems; past and present claims relating to irrigation projects; and past and present claims based on failures to provide dam safety improvements.

E. Limited Waiver of Sovereign Immunity

Pursuant to Navajo Nation Resolution CMY-26-24 unanimously approving the Settlement Agreement, the Navajo Nation will consent to a limited waiver of sovereign immunity in the circumstance that a party to the Settlement Agreement brings an action to interpret or enforce the Settlement Agreement or the legislation or a landowner or water user in the Little Colorado River Watershed or the Gila River Watershed brings an action to interpret or enforce the waivers or the decrees and so long as the action does not include request for an award of money damages, court costs, or attorneys' fees.

F. *Right to Use and to Lease Colorado River water*

The Navajo Nation is located in the Upper Basin and the Lower Basin of the Colorado River. In order to efficiently provide water to Navajo communities it must have the ability to move the Colorado River water allocated to the Navajo Nation from the Upper Basin to the Lower Basin and from the Lower Basin to the Upper Basin. The Settlement Agreement authorizes such transfers and H.R. 8940 confirms that ability. The Nation's right to move its water anywhere within the State is consistent with the intent of the settling parties and Congress to address critical water needs on the Navajo Reservation irrespective of which Basin a particular Navajo community is located within. The iiná bá – paa tuwaqat'si pipeline commences in the Upper Basin and crosses into the Lower Basin delivering Colorado River water from Lake Powell to both Upper Basin and Lower Basin communities. Some of the Lower Basin communities it will serve include Bitter Springs, Bodaway/Gap, and Coalmine, as well as high population/high growth communities like Cameron and Tuba City. There is a lack of viable options for development of a firm, sustainable supply of water for the Navajo Nation in Arizona without the iiná bá – paa tuwaqat'si pipeline delivering surface water to these communities. Therefore, it is absolutely essential that the Nation be able to effectively move its water supply within the Navajo Reservation. It would make no sense, neither economically nor from an engineering perspective, to preclude the efficient movement of water simply because the Navajo Reservation happens to be in both Basins.

Like many other congressionally approved Indian water settlements, the Settlement Agreement provides for the Nation to lease its Colorado River water to users anywhere within the State and H.R. 8940 confirms that right. The revenue generated by leasing its Colorado River water to off-reservation Arizona communities will allow the Navajo Nation to further develop and/or defray the cost of water infrastructure for its communities and is an appropriate use of the Nation's Colorado River water until such time as its population grows into its entitlement. The Navajo Nation should not be precluded from leasing Upper Basin Colorado River water to Lower Basin users. Doing so would severely handicap the Navajo Nation from being able to obtain the full value of the water which it negotiated.

III. Value of the Settlement

I understand this Committee has taken a keen interest in ensuring Indian water rights settlements are fiscally sound and provide value to the American taxpayer. This historic settlement is a solid investment for the United States for several reasons.

First, the Navajo Nation will forgo seeking legal confirmation through litigation for a larger amount of water even though we believe we are entitled to additional water rights under well-established legal principles. To reach a settlement, the Nation has agreed to reduce the scope of its water rights to account for the ongoing drought and to stay within Arizona's Upper Basin Colorado River apportionment. Second, the ratification of the Settlement Agreement will avoid protracted and costly litigation. Third, H.R. 8940 will fund important unfunded federal programmatic responsibilities by using H.R. 8940 infrastructure development monies to fund federal programmatic responsibilities. Fourth, securing and delivering a clean water supply to the Navajo Nation will save the federal government money that would otherwise be spent treating infectious disease on the Navajo Reservation. As an example, the Indian Health Service (IHS) estimates each dollar invested in water and sewer infrastructure could yield savings of \$1.18 in avoided direct health care costs for these diseases.⁵ The projects contemplated in the Settlement Agreement and funded in H.R. 8940 will provide the necessary clean and reliable water supply to serve these communities. Although IHS's numbers are not dispositive for the entirety of the funds authorized in the settlement, they are instructive as they show the value of providing these communities a secure and safe water supply.⁶

Finally, and perhaps most important, the Settlement Agreement has the additional benefit of resolving difficult legal questions through settlement rather than through potentially protracted, and expensive, litigation. Indeed, by the Tribes' settling their claims to the Colorado River, they have agreed to avoid complex legal questions regarding the applicability of interstate compact obligations to senior Indian water rights, which could destabilize the delicate balance that exists among the Colorado River Basin states and water users under the Law of the River. The Settlement Agreement enables the many people who depend on the Colorado River to move forward together, in harmony, rather than fighting over this limited and critical water resource.

IV. Conclusion

H.R. 8940 is historic legislation. When the history is written, passage of the Northeastern Arizona Indian Water Rights Settlement Act will be described as providing an opportunity for members of the Navajo Nation and those of the Hopi Tribe and the San Juan Southern Paiute Tribe to enjoy the health and prosperity of other citizens of the State of Arizona and the United States. It provides us with certainty that the Navajo Nation will flourish as a permanent homeland for generations to come. Once legislation is enacted, the Settlement Agreement is conformed to be consistent with the legislation, the adjudication courts issue the decrees, and the Settlement

⁵ See Indian Health Service Announces Allocation Decisions for \$702.6 Million in Bipartisan Infrastructure Law Funding | 2023 Press Releases (ihs.gov).<https://www.ihs.gov/newsroom/pressreleases/2023-press-releases/indian-health-service-announces-allocation-decisions-for-702-6-million-in-bipartisan-infrastructure-law-funding/>

⁶ Settlement trust funds are available to supplement IHS sanitation deficiencies if needed, or to provide programmatic support if the future waste-water infrastructure demands fall outside of the IHS authorities.

Agreement is enforceable, the Settlement Agreement provisions will encourage stronger cooperation, collaboration, and coordination between the settling parties, – both tribal and non-tribal. On behalf of the Navajo Nation, I respectfully request that this Congress pass the Northeastern Arizona Indian Water Rights Settlement Act as soon as possible.

Thank you. Ahéhee’.