

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

H.R. 8945 - Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024

July 23, 2024

Yá'át'ééh, Chairman Bentz, Ranking Member Huffman and members of the Subcommittee. My name is Dr. Buu Nygren and I am the President of the Navajo Nation. I appreciate this opportunity to share with you the Navajo Nation's strong support for H.R. 8945, the Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024. I also wish to convey the gratitude of the Navajo Nation to Representative Leger Fernandez for her commitment to improving the lives of the Navajo People and for her leadership in sponsoring this important legislation.

H.R. 8945 would authorize the Secretary of the Interior to execute, on behalf of the United States, a settlement agreement to quantify the Navajo Nation's water rights in the Rio San José Basin, ending four decades of litigation over that basin, and recognize water rights in the Rio Puerco basin as well. The Navajo Nation Council approved the Navajo Nation Rio San José Settlement Agreement (the "Navajo Nation Settlement Agreement") unanimously in May 2024. The Rio San José Basin is one of the driest basins in New Mexico, and the last 150 years have seen significant non-Indian development result in depletion of surface and groundwater. Without congressional action to authorize this settlement, and the legal protections and infrastructure development, including water imports, that it promises, the water supply situation will become more dire. The Navajo Nation Settlement Agreement provides a path forward that will protect the flow that remains in the Rio San José and provide the Navajo Nation with funding that would enable us to import water to serve Navajo Chapters in the Rio San José and Rio Puerco Basins.

The Navajo Nation Settlement Agreement authorized by H.R. 8945 is the Navajo Nation counterpart to the agreement settling the water rights claims of the Pueblos of Acoma and Laguna (titled the "Local Settlement Agreement"), which has authorizing legislation pending as H.R. 1304. The same parties who worked on the settlement for these Pueblos came together to develop an agreement that resolves the Navajo Nation's claims in the same geographic area covered by the Pueblos' Local Settlement Agreement. The Navajo Nation Settlement Agreement is written as an Addendum to the Local Settlement Agreement. These fully compatible water rights settlement agreements, if they are implemented, provide a comprehensive settlement of tribal claims in the Rio San José Stream System.

I. Geography and History of the Negotiations Leading to Settlement

The area covered by the settlement is in the Eastern part of the Navajo Nation, within the Rio Grande Basin. Tó Ba'áadii (Female River – the Rio Grande), born from one of our sacred mountains, is one of the four sacred rivers that set the boundaries for Dinétah (Navajoland) and is a protector for the Navajo People. The Rio Grande is a binational stream system, with its

headwaters in Colorado. It flows down towards New Mexico, Texas, and 5 states in Mexico, all within a 335,000 square mile watershed. The Rio San José, located in west-central New Mexico and west of Albuquerque, is a tributary of the Rio Puerco, which flows into the Rio Grande. Approximately 41,000 acres of land are held in trust for the Navajo Nation within the Rio San José basin and 35,500 acres of land are held in trust within the Rio Puerco basin. Nine chapter communities are located in the Rio San José Basin (Baca/Prewitt, Casamero Lake, Crownpoint, Littlewater, Mariano Lake, Ramah, Smith Lake, Thoreau, Tóhajiile) and seven chapter communities are located in the Rio Puerco Basin (Tóhajiilee, Torreon, Ojo Encino, Pueblo Pintado, Whitehorse Lake, Counselor, and Littlewater). Approximately 7,500 Navajo Nation citizens live in these two basins. Two Pueblos, Acoma and Laguna, are also located in this area.

The Navajo Nation Settlement Agreement is the product of approximately 40 years of litigation and decades of negotiations. The Rio San José general stream adjudication, known as *New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, still pending in the Thirteenth Judicial District Court for the State of New Mexico, was initiated in 1983. The Navajo statement of claims was filed in 1987. Negotiations regarding a potential settlement of the claims of the Navajo Nation and Pueblos' claims in the Rio San José basin were kickstarted in 1993, when the United States established teams to negotiate comprehensive settlements of the tribal claims. More intense settlement discussions were held starting in 2014. The Pueblos of Acoma and Laguna, the State of New Mexico, and non-Indian water users signed what they titled the Local Settlement Agreement in 2022, setting out the water rights to be quantified for the two Pueblos in the Rio San José Basin and reaching agreement on other key issues. The Navajo Nation's rights remained to be negotiated. In spring of 2024, after working together for over a year, an agreement on the Navajo Nation's rights was reached. The parties to the Navajo Nation agreement include the same parties to the Local Settlement Agreement: the Pueblos of Acoma and Laguna, the State of New Mexico, the City of Grants, the City of Milan, and the Association of Community Ditches of the Rio San José as well as member acequias. This agreement on the Navajo Nation's water rights in the Rio San José Stream System is written as an addendum to the Local Settlement Agreement, to which the Navajo Nation is now a party.

II. Key Provisions of the Settlement

This Act fairly and finally settles the claims of the Navajo Nation, and the United States acting as the trustee for the Navajo Nation, in the general stream adjudication of the Rio San José Stream System entitled *State of New Mexico, ex rel. State Engineer v. Kerr-McGee, et al.*. The Act further recognizes water rights of the Navajo Nation in the Rio Puerco Basin and limits future claims for the Nation's water rights in that basin. The settlement does not quantify or affect any water right, or any claim or entitlement to water, of an Allottee in the Rio San José Stream System or the Rio Puerco Basin. Water rights for allotments will be separately adjudicated from the Navajo Nation water rights.

As in the Pueblos' settlement, in exchange for significant funding for needed water infrastructure, the Navajo Nation agrees to make no priority calls against non-Indian uses under existing water rights. The Nation further agrees to not impair other users in the development and use of groundwater on Navajo lands.

The legislation establishes a trust fund for the Navajo Nation consisting of \$200,271,000 for the Navajo Nation Rio San José Settlement Trust Fund to be used for water infrastructure development, acquiring water supplies, Navajo Nation's Water Rights management and administration, watershed protection and enhancement, support of agriculture, water-related Nation community welfare and economic development, and settlement implementation costs. \$15,000,000 of this amount is to be made available upon appropriation for feasibility studies, planning, engineering, and design and related regulatory and pre-construction compliance work for water infrastructure, as well as for installing groundwater wells on Nation lands to meet immediate domestic, commercial, municipal, and industrial needs. Another trust fund is established in the amount of \$23,000,000 for the Navajo Nation Operations and Maintenance Account, to be used for operation, maintenance, and replacement of the Nation's water infrastructure.

Under the Navajo Nation Settlement Agreement, the Nation's water rights will be administered on Nation lands under the Navajo Nation Water Code. The Navajo Nation permit processes will include protections for protestants, including the opportunity to appeal Navajo permitting decisions to state court. The Navajo Nation Settlement Agreement further provides that the acequias will receive an additional \$3,000,000 from the State of New Mexico for specified water infrastructure improvements and water acquisition and management-related costs above the amount provided under the Pueblos' Local Settlement Agreement, with a provision allowing the acequias to seek additional state funding if necessary. The concept is that the hydrologic benefits of improvements made by the acequias should mitigate impacts of Navajo and Pueblo water development.

III. Planned Water Imports and Value of the Settlement

An important aspect of this settlement is that the Navajo Nation intends to use part of the funding that would be provided in its trust fund for costs related to two separate projects that will import water to help address the water shortfalls in this basin. First, the Rio San José Regional Water Supply Project will import water from the San Juan River through the Navajo Gallup Water Supply Project. H.R. 8945 includes authorization language to enable the Navajo Gallup Water Supply Project to service the Rio San José basin and to provide for coordination with the Bureau of Reclamation in design of the connector. The main water transmission line from Crownpoint is proposed to be along Highway 371 to Thoreau, with connections from the main water transmission line to the water supply points of the local Navajo Tribal Utility Authority (NTUA) public water systems. Value Planning is ongoing to determine if an alternative NGWSP alignment through the City of Gallup and Iyanbito is more cost-effective. The most cost-effective route will be adopted. Second, the Nation intends to use trust fund expenditures to import water from the Middle Rio Grande basin to the Rio Puerco basin. The Tóhajiilee Waterline Phase 1 is under construction, but lacks a permanent water supply. Securing a permanent water supply to use in this waterline is the highest Rio Puerco Basin settlement priority. The waterline alignment begins at the westernmost tank operated by the Albuquerque Bernalillo County Water Authority, and it ends at the systems supply point at Tóhajiilee Well #2. Together, the Tóhajiilee Waterline Phase 1 and the Rio San José Regional Water Supply Project will bring a much-needed, dependable, and high-quality water supply to Navajo chapters in the Rio Puerco and Rio San José basins.

An additional benefit of the water imports will be to take pressure off of groundwater and surface water supplies of the Rio San José and Rio Puerco basins. The Settlement Agreement authorizes these imports into these basins and calls on the Navajo Nation to make them a priority in order to conserve the scarce water resources of these basins. Water imports are one of the most effective ways to mitigate the impacts of groundwater pumping. The imported water will help to enable more sustainable management of the supplies in these basins, to the benefit not only of the Navajo Nation but the other water users in the basin struggling with water shortages.

I want to address this Subcommittee's concern with ensuring that these water rights settlements are a good value to the American taxpayer. At a total cost to the United States of \$223,271,000, this settlement is set up to provide excellent value by building off of the investments already made in the Navajo Gallup Water Supply Project and Tóhájilee Waterline Phase 1. The Navajo Nation, and the United States as trustee for the Nation, is waiving all claims to water rights within the Rio San José Stream System that the Navajo Nation or the United States acting as trustee for the Nation could assert in any proceeding beyond the rights that are recognized in the Navajo Nation Settlement Agreement, and the Nation waives other claims against the United States and other parties to the settlement, as set forth in the Navajo Nation Settlement Agreement and this legislation. The settlement funding will also cover federal programmatic responsibilities for health care and water infrastructure. Obtaining access to safe and adequate water supplies will further save the federal government money that would otherwise go towards treating diseases, some of which are a direct result of not having access to clean and safe drinking water. Overall, this agreement saves significant resources of the United States and all the parties to the settlement that would otherwise go into costly and divisive litigation. Instead of fighting over this scarce resource, the Navajo Nation will obtain funding to use for infrastructure to ameliorate water supply and management challenges.

IV. Conclusion

In conclusion, I want to say a few words about the importance of water to my people. Since Navajo creation, water has served as a fundamental element to Navajo life. Tó béí da' iiná, (with water, there is life), and it is elemental to Hózhóogo Oodáál (the Navajo Way of Life). We pray and make offerings for rain to fill our rivers so our animals, crops, land, and people can grow and thrive. In the Hózhóoji (Blessingway Ceremony), we cleanse our bodies with water and wash our hair to restore harmony to our lives. Many Navajo People are connected to water through our clan names. The spiritual aspect of water is intertwined with the economic and social value of water as a basic need for any community. This settlement of additional aspects of the Navajo Nation's water rights claims in New Mexico will ensure that a meaningful water source will be available and accessible to the Navajo People living in the Rio San José and Rio Puerco basins in the near term and for generations to come. This settlement represents a win-win outcome for all parties, including the Navajo Nation, the non-Navajo water users, the State of New Mexico and the United States. I therefore respectfully urge the Committee to support swift passage of this legislation.