

**TESTIMONY OF DR. BUU NYGREN, PRESIDENT OF THE NAVAJO NATION,
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS**

S. 4633, the Northeastern Arizona Indian Water Rights Settlement Act

September 25, 2024

Yá'át'ééh, Chairman Schatz, Vice Chairwoman Murkowski, and members of the Committee. My name is Dr. Buu Nygren and I am the President of the Navajo Nation (the "Nation"). Thank you for the opportunity to testify in support of the Northeastern Arizona Indian Water Rights Settlement Act, S. 4633, which will secure a sustainable water supply for the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe (collectively, the "Tribes"). This settlement will resolve the most significant outstanding water claims in the State of Arizona. Thank you also to Senators Kelly and Sinema 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 federal and non-federal parties that have worked so hard to make this settlement a reality.

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 sovereign territory spans the states of Arizona, New Mexico, and Utah. There is an urgent need for access to safe, clean drinking water remains largely unmet for the Navajo people. Approximately one-third of Navajo families still lack 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, S. 4633 addresses these needs by investing significantly in desperately needed water delivery infrastructure projects on the Navajo Nation that will bring safe and reliable clean 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 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 lost 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 were 30.3 per 100,000, our preliminary data from the Navajo Nation Epidemiology Center shows that the COVID-19-associated death rate among our people was over 800 per 100,000. Our people were disproportionately impacted by the COVID pandemic and continue to experience high rates of morbidity and mortality from infectious diseases. This is in part due to the lack of access to clean water on the Nation. It's difficult to wash your hands without running water, and a recent Navajo Nation Health Survey confirmed that the lack of piped water in homes is a key factor contributing to poor health across the Nation. 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

Over 30 percent of Navajo households lack running water and must rely on hauling it, which significantly affects both the quantity and quality of water available to these households. Families that haul water sometimes must rely on non-potable water sources such as livestock wells to meet their daily household water needs, including drinking water. 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 from the closest available water source 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 Nation 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 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, families that 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 S. 4633 will not eliminate water hauling altogether, it will deliver a source of potable water that is of higher quality, more reliable, and closer to homes.

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 remains a significant funding gap to meet the basic needs of our people. S. 4633 will largely address these funding deficiencies.

II. Key Components of the Settlement

S. 4633 authorizes, ratifies, and confirms a 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, the Arizona State Land

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, available at [Strategy Document \(frontiernet.net\)](#).

³ *Id.*

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

Department, Salt River Project, Arizona Public Service, Central Arizona Water Conservation District, Bar T Bar Ranch, local irrigation districts and ranchers located within the Little Colorado River watershed, and the Cities of Winslow, Flagstaff, Holbrook, Taylor, Snowflake, Show Low, Eagar, Springerville, and St. Johns. The Settlement Agreement reflects decades of settlement negotiations among these parties. The 25th Navajo Nation Council unanimously approved the Settlement Agreement on May 23, 2024. That same week it was unanimously approved by the councils for the Hopi Tribe and the San Juan Southern Paiute Tribe. The legislation, once enacted by Congress, will settle the Navajo Nation’s claims to the Little Colorado River, the Gila River, and the Upper and Lower Basins of the Colorado River. It will also address the Nation’s claims 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 our people’s health and living standards, and ensure that our homeland and our people thrive now and into the future.

A. Water Claims Resolved

The Settlement Agreement, once confirmed by Congress through enactment of S. 4633 and House companion bill H.R. 8940, 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 aquifer (the “N-Aquifer”) and the Coconino 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 of 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. S. 4633 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, S. 4633 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 – \$29.8 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 potable 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 potable water to Kinlichee, Ganado, Cornfields, Lower Greasewood, Jeddito, and Steamboat.
- The Black Mesa Project that will develop and expand public water systems to deliver potable water to Black Mesa, Forest Lake, Pinon, and Shonto.
- The Four-Corners Project that will develop and expand public water systems to deliver potable water to Chinle, Many Farms, Rock Point, Round Rock, Sweetwater, Teec Nos Pos, and Tsaile/Wheatfields/Blackrock.
- The Kayenta Area Project that will develop and expand public water systems to deliver potable water to Chilchinbeto, Kayenta, Dennehotso, Mexican Water, and Oljato.
- The Lupton Area Project that will develop and expand public water systems to deliver potable 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 potable water to Fort Defiance, Red Lake, and Saint Michaels, with an intertie to the Ganado Area Project.
- The Local Upper Basin Water Projects, 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, S. 4633 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, including replacement and development of livestock wells and impoundments;
- The Navajo Nation 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 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 the Settlement 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 Lease Colorado River Water

The Navajo Nation is uniquely located in both the Upper Basin and the Lower Basin of the Colorado River. In order to efficiently provide water to Navajo communities it must move 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 Navajo Nation's ability to move water depends on Congressional action and S. 4633 authorizes such movement of water. 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 and high population/high growth communities like Cameron and Tuba City. There is a lack of viable options for the 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 S. 4633 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 hinder the Navajo Nation from being able to obtain the full value of the water that it negotiated.

The Upper Colorado River Basin states have raised certain questions regarding these provisions. The Navajo Nation, the United States, and the Basin states are having productive conversations and are working diligently to resolve any outstanding issues. I believe all Basin states are committed to the goal of addressing critical water needs on the Navajo Reservation irrespective of which basin a particular Navajo community is located in. As a result, the Navajo Nation is optimistic that we can resolve these issues.

III. Value of the Settlement

This historic settlement is a critical 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. Ratification of the Settlement Agreement will avoid protracted and costly 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, rather than fighting over this limited and critical water resource.

Additionally, S. 4633 will fund important unfunded federal programmatic responsibilities by using S. 4633 infrastructure development monies to fund federal programmatic responsibilities. It will also secure and deliver a clean water supply to the Navajo Nation that will save the federal government money that would otherwise be spent treating infectious diseases on the Navajo Reservation. For example, the Indian Health Service (“IHS”) estimates each dollar invested in water and sewer infrastructure could yield savings of \$1.18 in avoided direct healthcare costs for these diseases.⁵ The projects contemplated in the Settlement Agreement and funded in S. 4633 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 with a secure and safe water supply.⁶

IV. Conclusion

S. 4633 is historic legislation. When history is written, the 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 same health and prosperity as 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. Enactment of this legislation and ultimate implementation of the Settlement Agreement as conformed to be consistent with this legislation 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’.

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.

TESTIMONY
OF DR. BUU NYGREN, PRESIDENT OF THE NAVAJO NATION,
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

S. 4998 - A bill to approve the settlement of water rights claims of the Navajo Nation in the Rio San Jose Stream System in the State of New Mexico, and for other purposes.

September 25, 2024

Yá'át'ééh, Chairman Schatz, Chairwoman Murkowski and members of the Committee. My name is Dr. Buu Nygren and I am the President of the Navajo Nation (the “Nation”). I appreciate this opportunity to share with you the Nation’s strong support for S. 4998, which would approve a settlement of the water rights of the Nation in the Rio San José Stream System. I also wish to convey the gratitude of the Nation to Senators Heinrich and Luján for their commitment to improving the lives of the Navajo People and for their leadership in sponsoring this important legislation.

S. 4998 would authorize the Secretary of the Interior to execute, on behalf of the United States, a settlement agreement to quantify the 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 unanimously approved the Navajo Nation Rio San José Settlement Agreement (the “Navajo Nation Settlement Agreement”) on May 23, 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 that it promises, including water imports, the water supply situation will become significantly 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 authorized by S. 4998 is a counterpart to the Pueblos’ Local Settlement Agreement addressing the water rights claims of the Pueblos of Acoma and Laguna in the same geographic area, which has authorizing legislation pending in S. 595. The Navajo Nation Settlement Agreement is written as an addendum to the Pueblos’ Local Settlement Agreement. If implemented, these fully compatible water rights settlement agreements 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 sets 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 southward through New Mexico, Texas, and five 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. Nine chapter communities are located in the Rio San José Basin (Baca/Prewitt, Casamero Lake, Crownpoint, Littlewater, Mariano Lake, Ramah, Smith Lake, Thoreau, Tóhajiilee) 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 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 an agreement on other key issues. The Navajo Nation's rights remained to be negotiated. In the 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, the Association of Community Ditches of the Rio San José, and 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 the 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 Allottees in the Rio San José Stream System or the Rio Puerco Basin. Water rights for allotments will be separately adjudicated from the Navajo Nation's 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. The legislation also establishes a trust fund 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 the basins. First, the Rio San José Regional Water Supply Project will import water from the San Juan River through the Navajo Gallup Water Supply Project. S. 4998 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 the 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 also the other water users in the basins struggling with water shortages.

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 Tóhajiilee 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 for 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 of Navajo life. Tó éi iiná até, (with water, there is life), and it is elemental to Hózhóogo Oodááł (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 the swift passage of this legislation.