

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

S. 1898 - Navajo-Gallup Water Supply Project Amendments Act of 2023

July 12, 2023

Yá'át'ééh, Chairman Schatz, Vice Chairwoman Murkowski and members of the Committee. My name is Buu Nygren and I am the President of the Navajo Nation (“Nation”). Thank you for the opportunity to testify in support of the Navajo-Gallup Water Supply Project Amendments Act of 2023, S. 1898. Thank you also to Senators Lujan and Heinrich for sponsoring this legislation, which is critical to ensuring implementation of the Navajo Nation San Juan River Basin Water Rights Settlement in New Mexico (the “San Juan Settlement”) and the completion of the Navajo-Gallup Water Supply Project (the “Project”). Their leadership will help secure a reliable water supply for the Navajo Nation and other water users in the State of New Mexico.

The Navajo Nation and the San Juan Settlement

The Nation is the largest Native American tribe in the country. We provide critical governmental services to more than 400,000 members, almost half of whom reside on the Navajo Nation, which encompasses more than 27,000 square miles and spans portions of 11 counties across the states of Arizona, New Mexico, and Utah. Unfortunately, ensuring adequate drinking water for our members continues to be a struggle with approximately 30 percent of Navajo households lacking running water and relying on hauling water to meet their daily needs.

To address this dire need, in 2005, the Nation entered into the San Juan Settlement with the State of New Mexico. Specifically, in exchange for water development projects, including the Project, the Nation agreed, among other things, to quantify its water rights and release claims to water in the San Juan River Basin in New Mexico. Ultimately, the parties recognized that in the absence of a settlement, final resolution of the proceedings in the San Juan River Adjudication would take

many years, entail great expense, and prolong uncertainty concerning the availability of water supplies in the San Juan River Basin in New Mexico.

In 2009, Congress approved and ratified the San Juan Settlement and authorized the Bureau of Reclamation to construct, operate and maintain the Project in substantial accordance with the preferred alternative outlined in the Draft Environmental Impact Statement, which Reclamation completed in July 2009. *See*, Omnibus Public Land Management Act of 2009, Title X, Part III (Public Law 111-11) (the “2009 Act”). Consistent with the San Juan Settlement and the 2009 Act, the Nation agreed to execute waivers and releases of claims against the United States relating to water in the San Juan River Basin in exchange for the benefits of the San Juan Settlement and legislation. The waivers can be nullified if the Project is not completed under the timeline set forth in the legislation.

On December 17, 2010, the United States, the Nation, and the State of New Mexico executed the San Juan Settlement. On November 1, 2013, the San Juan River adjudication court entered two Partial Final Judgments and Decrees (“decrees”) adjudicating the water rights of the Navajo Nation.

The Project

The Project, once fully constructed, will convey a reliable municipal and industrial water supply from the San Juan River to the eastern section of the Nation, the southwestern portion of the Jicarilla Apache Nation, and the City of Gallup, New Mexico through two pipelines approximately totaling 300 miles, nineteen pumping plants, and two water treatment plants. The areas currently rely on a rapidly depleting groundwater supply that is of poor quality and inadequate to meet the current and future demands of more than 43 Navajo chapters, the City of Gallup, and the Teepee Junction area of the Jicarilla Apache Nation. Of specific concern is that the City of Gallup’s groundwater levels have dropped over 200 feet over the past decade and, as noted, nearly 30 percent of the Nation’s households rely on hauling water.

The Project is designed to serve a 2040 population of approximately 250,000 through the annual delivery of 37,764 acre-feet of water from the San Juan Basin. The 2009 Act requires that all project features be completed no later than December 31, 2024, unless the Nation, the State of New Mexico, and the Department of the Interior agree to extend the completion date.

The Project's Construction Cost Estimate of \$870 million as provided in the 2009 Act was based on Appraisal-Level designs and cost estimates. Appraisal Level studies are typically only conducted at a level to determine if there is a Reclamation interest in a proposed project and if a viable project alternative may be recommended by Reclamation for feasibility level of study. Appraisal Level studies are based primarily on existing data and information, and they only include designs and cost estimates for major features that can be used to compare potential project alternatives.

A number of elements have created conditions that have increased the Project's cost beyond what was anticipated in the 2009 Act. Among the factors are greater expenses than expected for compliant water treatment plants to meet Safe Drinking Water Act requirements, engineering challenges in diverting water from the San Juan River, and market volatility that the indexing provided for under the 2009 Act did not completely reflect (including a 40-year high in the inflation rate). Since 2009, Reclamation has developed a Project Working Cost Estimate based on actual contract awards, required Project revisions, and final detailed design and engineering. The greatly improved quality and accuracy of the design and cost data that has gone into the current Working Cost Estimate supports the revised construction ceiling of \$2,175,000,000 (with indexing), which will adequately support the completion of this critical Project.

In 2012, construction on the Project began and is anticipated to be completed in 2029. Reclamation and its partners have made significant progress, completing certain portions of the Project. In October 2020, the Cutter Lateral, one of the two pipelines, was completed and the Navajo Tribal Utility Authority begin making initial water deliveries to Nation communities. By May 2021, Project water was being delivered to approximately 6,000 people in eight Navajo Chapters. Much work, however, is left to be done to serve the remaining population who need a reliable water supply. Although progress has been made on the Project, Reclamation does not anticipate that

construction will be completed until 2029. This timeline is problematic because the 2009 Act requires the completion of all Project features by no later than December 31, 2024.

Amendments to the 2009 Act

To address the appropriations shortfall and ensure full implementation of the 2009 Act, S. 1898 makes the following amendments to the 2009 Act:

- increases project funding by increasing the appropriations ceiling to \$2,175,000,000 for the Project. It would also update provisions on adjustments to the appropriations ceiling to reflect changes in construction cost and applicable regulatory standards and to accommodate unforeseen market volatility, including repricing for the types of construction and current industry standards involved.
- increases appropriations for conjunctive use wells in the San Juan River Basin to \$37,500,000 from \$30,000,000 and allows appropriations for conjunctive use wells in the Little Colorado River and Rio Grande Basins, as well as the San Juan River Basin, to be available through fiscal year 2032.
- extends the completion deadline for the Project from 2024 to 2029.
- allows for deferral of construction of facilities to save operation and maintenance costs associated with such facilities. The bill would create a Deferred Construction Fund to provide funding for facilities that have been deferred and allow for alternate project facilities if the relevant parties agree. The fund would consist of amounts that correspond to portions of the Project that have been deferred.
- creates operations and maintenance trust funds for the Navajo Nation and the Jicarilla Apache Nation to use for the Project's operations, maintenance, and replacement costs. These trust funds are created as a substitute for language in the 2009 Act allowing the Secretary to waive operation, maintenance, and replacement costs for the Nation for up

to 10 years after they would otherwise be required under the Nation's contract. Trust funds would be used to lower customers' operations and maintenance charges and will help develop adequate customer bases for the water projects in their early stages.

- authorizes the expansion of the service area beyond the San Juan River Basin to deliver water supply from the Project to communities within the Rio San Jose Basin in New Mexico. The Nation would also be authorized to expand the service area in Arizona beyond Fort Defiance and Window Rock to deliver water supply from the Project to the Nation community of Lupton, Arizona, within the Little Colorado River Basin, but would still be subject to section 10603(c)(1) of P.L. 111-11 limiting the delivery of water to Arizona until certain conditions are met.
- clarifies which construction activities are subject to state taxation and which ones are subject to tribal taxation, preventing double taxation.
- caps the repayment obligation of the City of Gallup for the Project at \$76,000,000.
- takes into trust land on which project facilities are located.
- authorizes the Secretary to expend funds for the development of renewable energy, including hydropower, to provide affordable energy for the Project.

The passage of S. 1898 is critical to the health and well-being of the Navajo Nation and the other communities to be served by the Project that are struggling with inadequate groundwater supplies. If S. 1898 is not enacted, the San Juan Settlement and the completion of the Project will be threatened, which would increase the cost of the Project, exacerbate the drinking water crisis on the Navajo Reservation, and bring uncertainty to all of the water users in the San Juan River Basin in New Mexico. I therefore respectfully urge the Committee to support the swift passage of S. 1898.