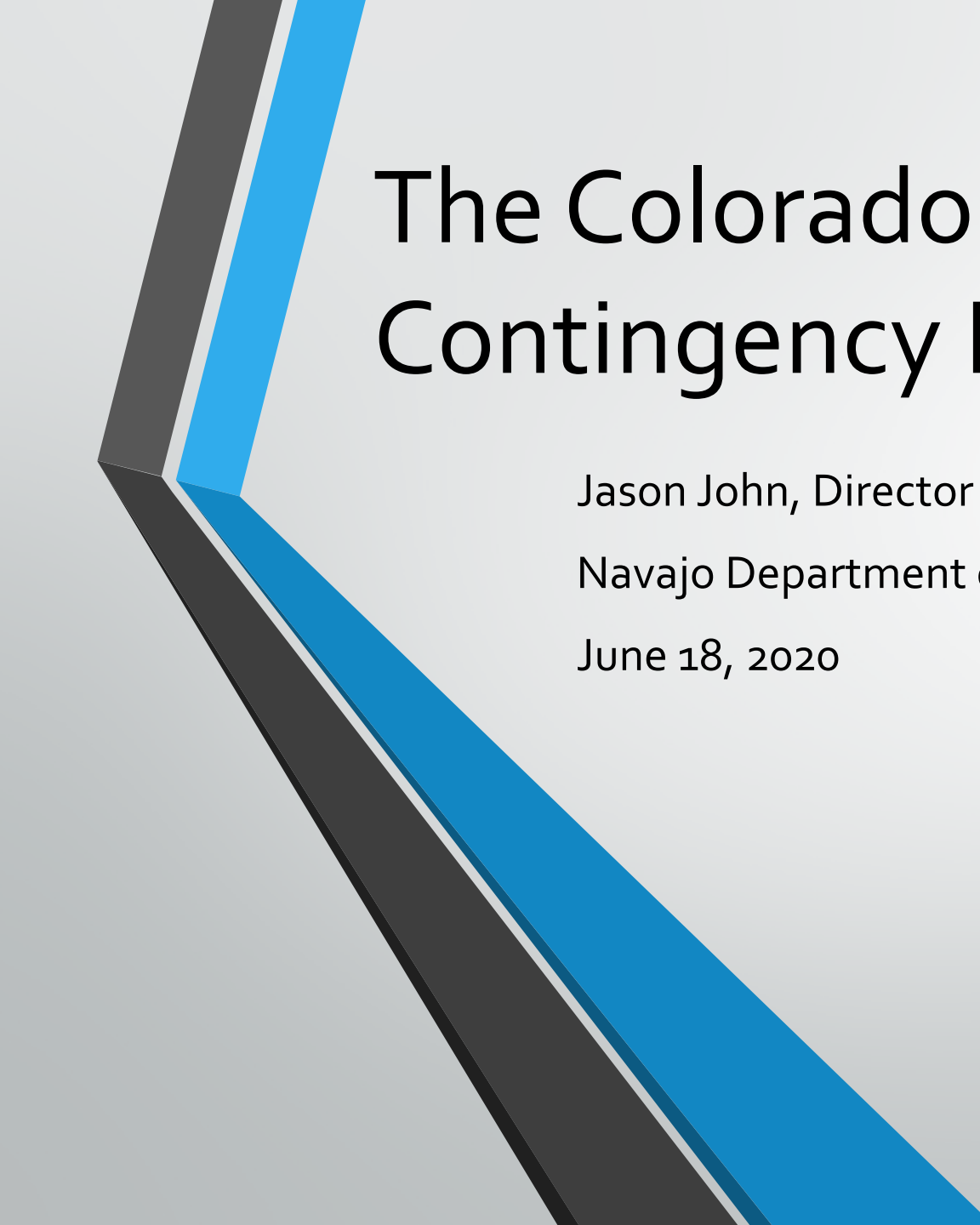




The Colorado River Drought Contingency Plan: A Tribal Perspective

Jason John, Director

Navajo Department of Water Resources

June 18, 2020

COLORADO RIVER BASIN



- The Navajo Nation needs access to Colorado River supplies and any current and future Colorado River uses need adequate protection from shortages.
- A major component to gaining access to Colorado River supplies and addressing Drought Contingency Plans is the quantification of tribal water rights that will inform other users of future uses by the tribes.
- “The Nation possesses extensive water rights which are largely unquantified except in the San Juan River Basin in New Mexico, Upper Basin. The Navajo Nation claims historic, appropriative and reserved rights to the use of all the water necessary for the Navajo Nation to be the permanent homeland for the Navajo people...These rights are not lost through non-use and cannot be abandoned.” Navajo Nation (2012)

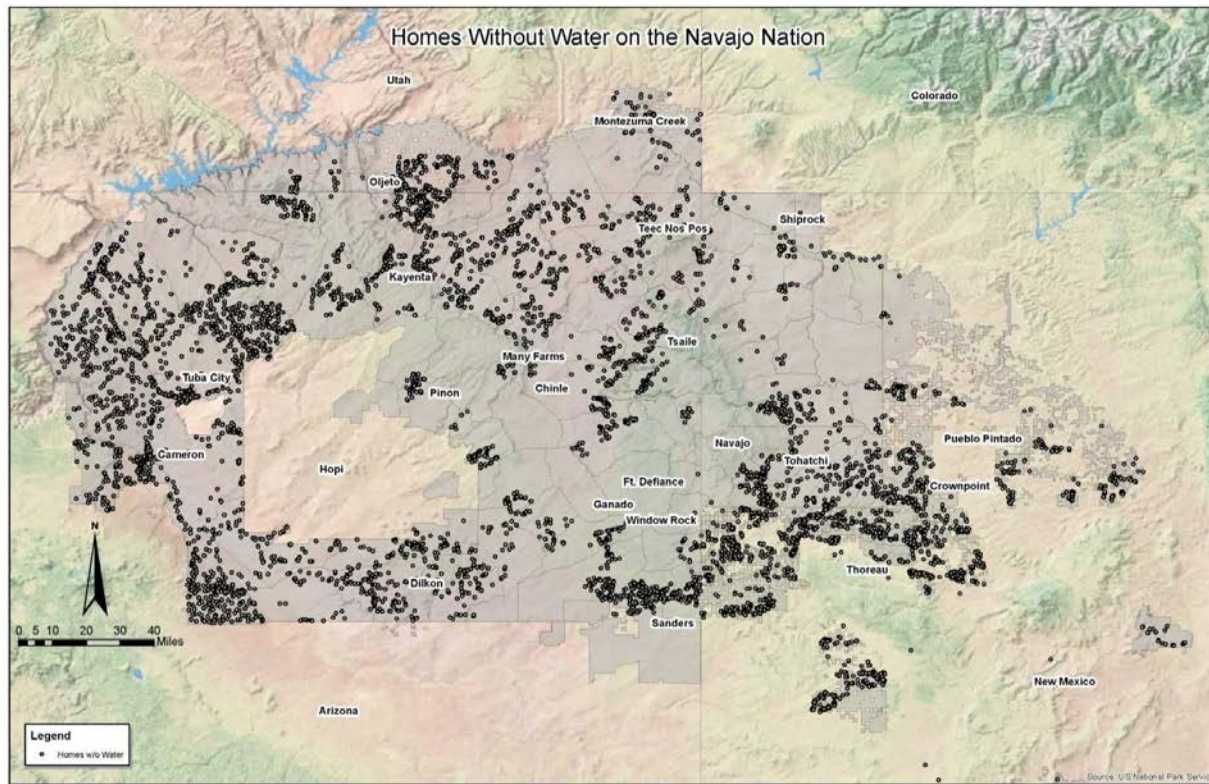
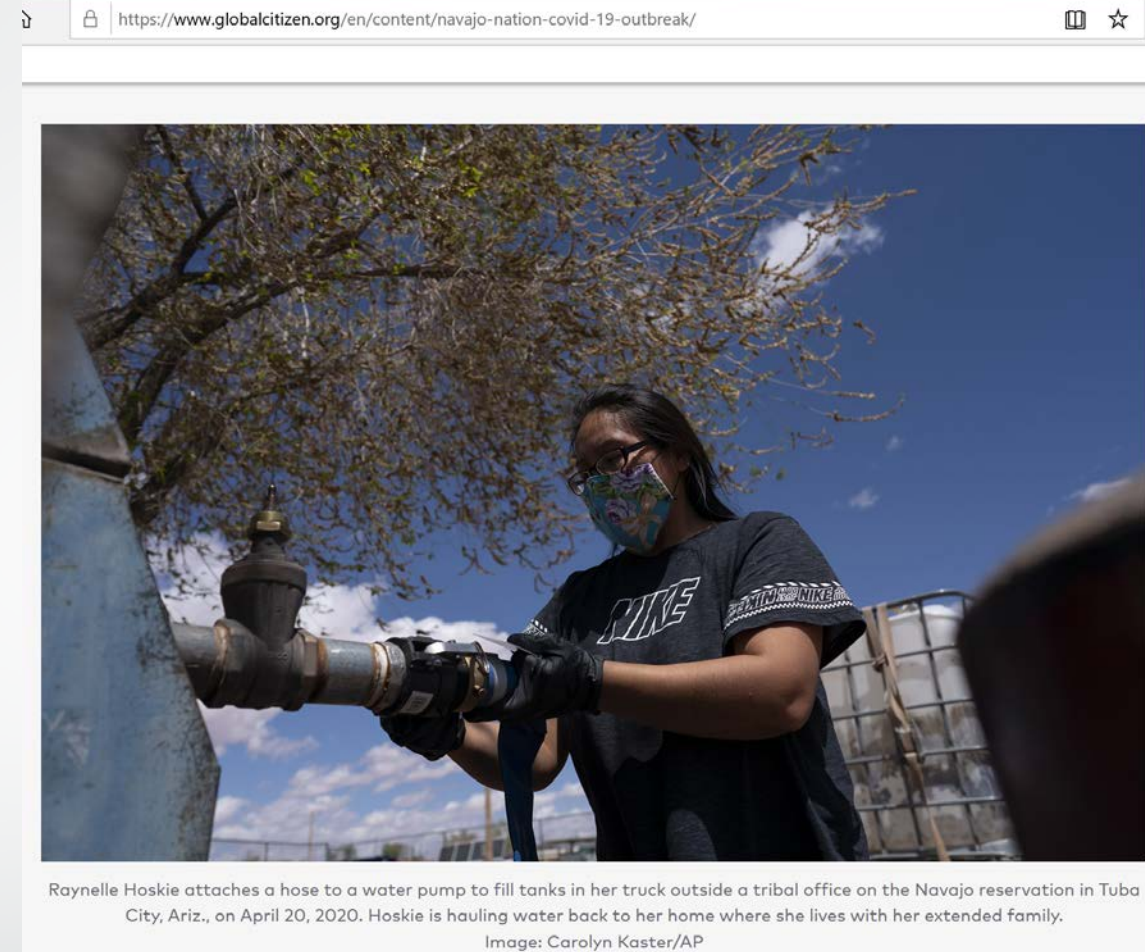


Figure 1. Homes lacking potable water and sewer connections on the Navajo Reservation (adapted from Navajo Access Workgroup 2010)

- “members of the Navajo Nation living within a stone's throw of the [Colorado] River continue to haul water to their homes to meet their most basic needs. In sum, the Department's long neglect of Navajo needs for water from the Colorado River is doubly defective since it is both grossly unfair to the Navajo Nation and cannot be reconciled with the Department's stated objective of providing certainty to its management of the Colorado River.” (2005 Navajo Nation letter to Reclamation)



- Unlike litigation, water rights settlements can provide funding for much needed water infrastructure. The Navajo Nation Settlement in New Mexico was monumental achievement.
- Many water right settlements have negotiations occurring throughout the process. In Congress, tribes may not have leverage and may have to agree to additional terms in order to have it approved or risk losing everything.
- In the NN-NM settlement, Arizona delegation insisted on restrictions for delivery of NGWSP water for Navajo communities in Arizona. Arizona delegation will say Navajo Nation "agreed" to those terms. That restriction was eventually included in P.L. 111-11.

News Release



<http://domenici.senate.gov>

Pete V. Domenici

United States Senator

FOR IMMEDIATE RELEASE
JANUARY 4, 2005

CONTACT: CHRIS GALLEGOS
202-224-7082

DOMENICI STATEMENT ON NAVAJO WATER SETTLEMENT VOTE

WASHINGTON - U.S. Senator Pete Domenici, chairman of the Senate Energy and Natural Resources, today issued the following statement regarding the vote of the Navajo Nation Council to approve a proposed water settlement and to eliminate the Navajo Indian Irrigation Project from the settlement proposal:

"I am very pleased at the overwhelming approval by the Navajo Nation Council of a proposed water settlement that will impact water users throughout northwest New Mexico. I am especially pleased that the Council agreed to eliminate the Navajo Indian Irrigation Project from the proposed settlement language.

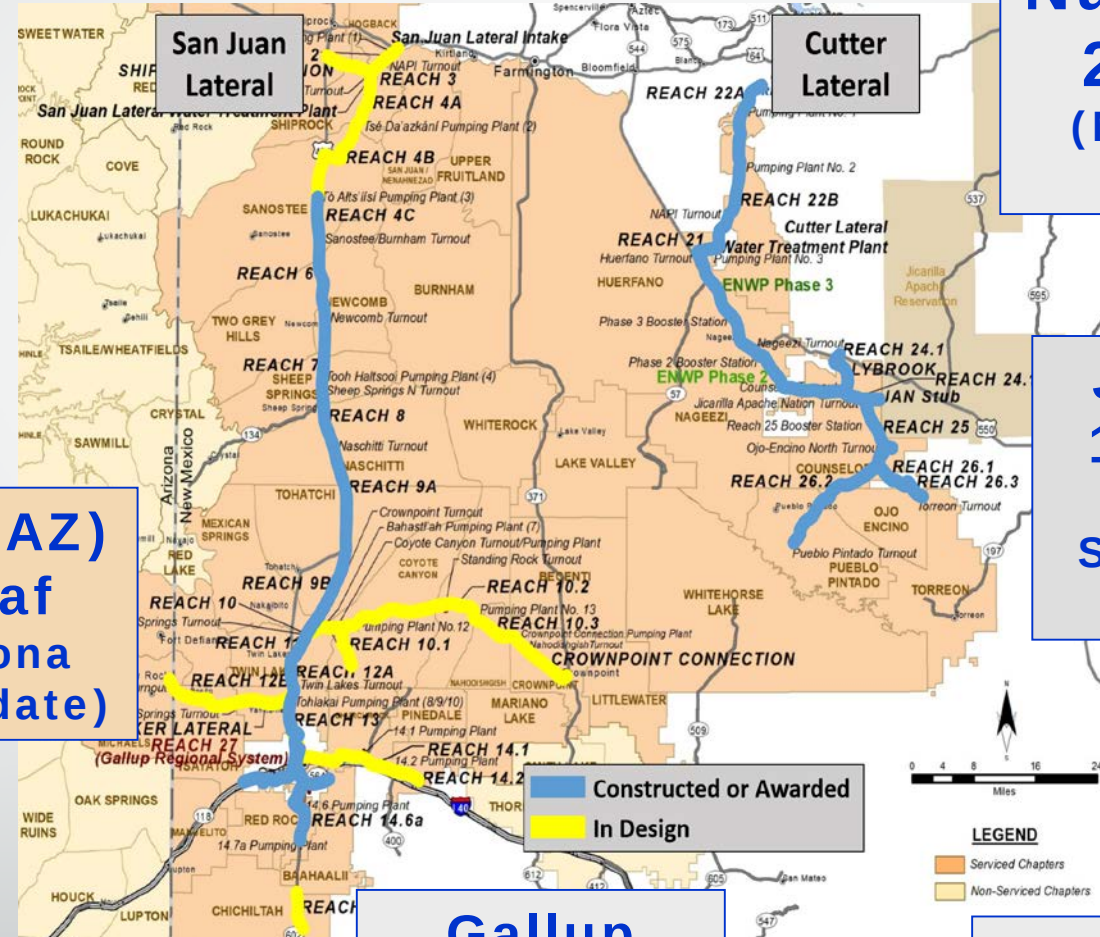
"The action by the Council is an important step forward in this long-standing issue. Many of us have had a vision of a global settlement on this matter for decades. That vision includes potable water for many new parts of the Navajo Nation, a pipeline and more potable water for the city of Gallup, and a resolution of long-festering water rights controversies that have plagued the region.

"At the same time, I continue to support funding for NIIP as a separate matter and will push for as much funding as our tight national budget allows.

"Many steps remain in this process, including extensive hearings by Congress. I intend to hold hearing this year as chairman of the Senate Energy and Natural Resources Committee to air comments and concerns from every party affected by this proposed settlement. I expect that all parties involved will have to compromise further, as in any such legislative matter.

NN – NM San Juan Basin Settlement includes the Navajo Gallup Water Supply Project

- Drought Plans are easier to develop once uses are identified and the nature of water rights are known.
- There are benefits to addressing the quantification of tribal water rights but there needs to be a process to provide tribal communities the water that is needed today. The basic right to water should not be used as leverage.



Navajo (NM)
22,653 af
(Navajo Nation Settlement)

Jicarilla
1,200 af
(Jicarilla Settlement water)

Navajo (AZ)
6,411 af
(No Arizona supply to date)

Gallup
7,500 af
(Leased from Jicarilla)

Total
37,764 af

Attempts to resolve Water Rights in Arizona

- 2010 AZ LCR/Mainstem Proposed Settlement – Too costly.
- 2012 AZ LCR Proposed Settlement – Inclusion of controversial language in Congressional legislation.
- 2013-2015 – No substantive negotiation discussions. Litigation resumed.
- 2016 - 2020 – Restarted negotiation discussions. Outcome is uncertain.

Diné divided on Little Colorado settlement

By Kathy Helms
Diné Bureau

Gallup Independent,
September 17, 2011

WINDOW ROCK — Navajo Nation President Ben Shelly proclaimed support for a Little Colorado River water rights settlement and Navajo Generating Station lease renewal in a meeting Wednesday with U.S. Department of the Interior Deputy Assistant Secretary David Hayes. But in a separate meeting with Council delegates, Hayes heard a different story.

“NGS was initially allowed to use what was considered water from the Navajo Nation free of cost and then renew that after 25 years,” Delegate Dwight Witherspoon told the Washington delegation. “Certainly we would like to say, ‘No fricking way’ to giving that 34,000 acre-feet of water for free to NGS.”

Water from the Upper Basin of the Colorado River is necessary for the continued operation of Navajo Generating Station, which provides power to move Colorado River water through the Central Arizona Project. The NGS lease expires in 2019 but includes the right to a 25-year lease extension and the use of 34,100 acre-feet per year of Upper Basin water.

Interior officials, including Hayes and Deputy Assistant Secretary for Indian Affairs Del Laverdure, met with Shelly before discussing a proposed Little Colorado River settlement with the Navajo Nation Council’s Nabiki’yati’ Committee.

“The Navajo Nation needs the Department of the Interior’s support for the delivering of Central Arizona Project water to Window Rock,” Shelly said, adding that the Nation is “continuing its support of the Navajo Generating Station and is currently negotiating the terms of a lease renewal.”

Hayes told delegates that a nearly billion dollar settlement proposed in 2008 and approved last year by Council would have resolved both Little Colorado and Mainstem Colorado River issues. It included a \$515 million Western Navajo Pipeline project. However, the price tag precluded it from becoming law. Since then, the Navajo Nation and the United States have regrouped and “there is the potential for a \$400 million settlement,” he said.

If Navajo and Hopi can agree, Sen. Jon Kyl, R-Ariz., is interested in making it happen. They have the potential to get the settlement across the line, Hayes said, “but only if we can close on the final issues in the coming weeks. That’s how critical it is. If we miss this window, I don’t know when it would come again.”

- The Covid-19 pandemic has elevated the lack of water for families on the Navajo Nation to national news.
- The Navajo Nation recently requested Arizona to assist in allowing delivery of water into Arizona through NGWSP. ADWR's response on June 16, 2020 reaffirms Arizona's position that the Navajo Nation resolve its LCR and Lower Basin water rights claims in Arizona before water can be delivered.
- It is unimaginable that access to water is openly being used as leverage against a tribe that has needs.
- Based on the past, there is concern that a water settlement in Arizona could fail again if unwarranted terms and conditions are imposed on the Navajo Nation that result in public opposition.
- A Settlement should focus on providing adequate water supplies and much needed water projects.

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



May 28, 2020

Honorable Doug Ducey
Office of the Arizona Governor
1700 W Washington St, Phoenix, AZ 85007

Re: Water for Window Rock

Dear Governor Ducey,

We write to request your support as we ask Congress to expedite the delivery of potable drinking water to Window Rock and other Navajo communities in Arizona that can be served by the Navajo-Gallup Water Supply Project ("the Project"). The Navajo Nation is seeking Congressional authority for the Project to deliver Upper Colorado River basin water to these communities without the need for a settlement of the Nation's water rights claims in Arizona. The support of the State of Arizona to remove this impediment to the delivery of drinking water to the state's Navajo citizens is critical, and we ask that you endorse and take the lead on behalf of the State in this effort.

Construction of the Project was authorized by Congress in 2009 in Public Law 111-11, the Northwestern New Mexico Rural Water Act, legislation which also ratified the Navajo Nation's water rights settlement with the State of New Mexico. When complete, the Project will divert water from the San Juan River in New Mexico to provide potable water to Navajo communities in Northwestern New Mexico and the City of Gallup. The Project will also provide critically-needed drinking water to Navajo communities in Northwestern Arizona, including Window Rock, the capital of the Navajo Nation. Congress authorized the delivery of 6,411 acre-feet of water to Navajo communities in Arizona, accounting for that water as either the Central Arizona Project water set aside for a future water settlement with the Navajo Nation in the Arizona Water Rights Settlement Act of 2004 or water from Arizona's Upper Colorado River basin allocation of 50,000 acre-feet per year.

However, at the insistence of the State of Arizona, Congress conditioned the delivery of *any* water to the Navajo communities in Arizona on the Nation reaching a settlement of its water rights claims to the Little Colorado River and the Colorado River in the Lower Colorado River basin. At the time the legislation was pending, such a settlement appeared imminent; however, circumstances beyond the control of the Navajo Nation, including budgetary concerns by members of Arizona's congressional delegation, derailed a settlement reached between the Navajo Nation, the State of Arizona and the interested parties. We now realize the inherent inequity of requiring a water rights settlement as a precondition to providing drinking water to Arizonians living on the Navajo Nation.

This is especially inequitable because the Navajo Nation has no control over other parties who may not be inclined to agree to a settlement. The Arizona parties insist that no settlement with Navajo can be reached without a settlement with the Hopi Tribe, and the United States now insists that no settlement of Navajo Lower Basin claims can be made without a settlement of Navajo's Upper Basin claims.

Conditioning the delivery of drinking water to members of the Navajo Nation on future water settlements that they can only secure through relinquishment of important sovereign interests is unreasonable and violates the admonition made by the Arizona Supreme Court that "Water is far too ecologically valuable to be used as a political pawn in the effort to resolve the centuries-old conflict between Native Americans and those who followed them in settling the West." For the State of Arizona to limit the access of its citizens to drinking water is unconscionable, especially in the face of the coronavirus pandemic.

Medical experts confirm that the lack of access to clean potable water has contributed to the catastrophic rate of Covid-19 coronavirus infection on the Navajo Nation. The per capita rate of infection on the Navajo Nation is higher than any state and more than *ten times* the rate in Arizona. The Navajo Nation has had more deaths from the coronavirus than in fourteen (14) states. It is unlikely that a vaccine will be found for COVID-19 in the immediate future, but even if a cure were found tomorrow, the continued lack of access to potable water will leave Navajo citizens in Arizona vulnerable to myriad other medical conditions.

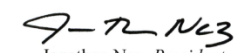
The Project, which is being built at no cost to the State of Arizona, will soon be capable of delivering potable water to Navajo communities in Northwest Arizona. The water supply for these communities can be satisfied either from the Central Arizona Project supply set aside in the Arizona Water Settlements Act or from the 50,000 acre-feet of Arizona's Upper Colorado River basin allocation. It is understandable that Arizona desires a settlement of the Nation's Lower Basin claims as such claims could affect the supply of water available to the Central Arizona Project. However, there is no compelling reason for the Nation to resolve its Lower Basin claims in order to use water from the Upper Basin. It has been widely acknowledged that Arizona's Upper Basin allocation was primarily meant for the use of the Navajo Nation in the Upper Basin, and with the closure of the Navajo Generation Station there is an abundance of water available such that the 6,411 acre-feet of water needed for the Project will not put Arizona in jeopardy of exceeding its consumptive use limit of 50,000 acre-feet annually.

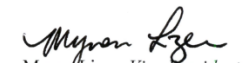
The Navajo Nation proposes a simple fix to this problem. Subsection 10603(c) of Public Law 111-11 can be amended so that the delivery of Upper Basin water to Navajo communities does not require a settlement of the Navajo Nation's Little Colorado River and Lower Colorado River basin claims. Language for the proposed amendment is attached. Rest assured that the Navajo Nation is committed to reaching a settlement of its Little Colorado River and Lower Colorado River basin claims and has requested all parties to return to the negotiation table to achieve that goal. However, the immediate drinking water needs of the Arizonans residing on the Navajo Nation in Window Rock and adjacent communities should not be delayed by protracted water negotiations. The need for the water is paramount. The means to deliver the water is near completion. The water supply is available. There is no simply no reason to delay, and as a Report by the House Committee on Natural Resources convincingly demonstrated, "water delayed is water denied." Water to meet

the basic needs of your Navajo constituents has been too long delayed. As Governor, you have the power to address this inequity.

We respectfully request your favorable support for this solution and pledge to work together with Arizona leadership to ensure its implementation.

Sincerely,


Jonathan Nez, President
THE NAVAJO NATION


Myron Lizer, Vice President
THE NAVAJO NATION

- The Navajo Nation approved the Utah Settlement in 2016 and the Senate approved it in June 2020.
- The Navajo Nation continues to work to access Colorado River supplies and is willing to take part in management discussions. Tribal representation in decisions on future use of the Colorado River is critical to achieving success.
- Thank you



The Navajo Nation
Office of the President and Vice President

CONTACTS:
Jared Touchin, Communications Director
(928) 274-4275
Crystalyne Curley, Sr. Public Information Officer
(928) 274-2758

nnopvp.communications@gmail.com

FOR IMMEDIATE RELEASE
June 4, 2020

**Navajo Nation commends the U.S. Senate's
approval of the Navajo Utah Water Rights Settlement Act**



PHOTO: Navajo Nation President Jonathan Nez testifying in support of the Navajo Utah Water Rights Settlement Act before the U.S. House Subcommittee on Water, Oceans, and Wildlife in Washington D.C. on June 26, 2019.