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President Shelly Provides FAQ's Sheet on the Little Colorado Water Rights Settlement

WINDOW ROCK, Ariz.- President Ben Shelly wants the Navajo people to have factual information on the Little Colorado Water Rights Settlement.

“I want our people to know what’s at hand here with this agreement. We are going to make sure we answer questions from our people. We want them to have accurate and factual information,” President Shelly said.

In light of providing the public with factual information, the following are responses to frequently asked questions.

➤ **What are Water Rights?**

- “Water Rights” refer to the amount of water a person (or other legal party) has the right to use typically on an annual basis from a given source. These rights quantify how much water a person can divert from a well, stream or other source for beneficial use.
- In the western states, priority dates are attached to water rights. Parties with older (senior) priority rights are allowed to make full beneficial use of their water rights before those junior priorities.

➤ **Navajo Efforts to Obtain Water Rights**

- Based on the interpretation of laws and court cases, the Navajo Nation is entitled to water. However, the water rights of the Navajo Nation have not been fully quantified by adjudication or settlement for the Navajo People.

- The Nation however has successfully negotiated a settlement of its claims to water rights in the San Juan Basin in New Mexico. Negotiations require the participation of key professionals from the tribe and all other affected parties in the state where the negotiations occur. The Nation is still actively quantifying its water rights in the basins of the Main stem Colorado River, Little Colorado River, San Juan River (Arizona and Utah), Rio San Jose, and the Zuni River.
- The resulting litigation or negotiated settlements will ensure that the water rights of the Navajo people will be protected for future generations.

➤ **What is the process of obtaining Navajo Water Rights?**

- The process of quantifying Indian water is long and complex. Great amounts of time and money are required for lawyers and for technical experts.
- Hydrologists, for instance, determine how much water is available in a given watershed. Agricultural specialists determine suitable crops and water requirements.
- If a negotiated settlement includes a water development project, engineers provide water demands, designs and project cost estimates.

➤ **State Courts have Jurisdiction**

- In 1952 Congress approved the McCarran Amendment, 43 U.S.C. § 666(a), waiving the sovereign immunity of the United States to permit the U.S. to be sued in state general stream adjudications to determine federal water rights. Since that time, the U.S. Supreme Court has held that Indian water rights can also be decided in state courts based on the McCarran Amendment.

➤ **Negotiations v. Litigation**

- Some Indian tribes have been able to negotiate rather than litigate their water rights. Negotiation still involves lawyers and technical experts.
- Litigation is uncertain, costly, and a court cannot order Congress to fund the development of water projects for tribes.
- In 2009, Public Law 111-11 was signed by President Obama and contained the authorization to fund and support the Navajo Nation's water rights settlement of the San Juan Basin in northwest New Mexico, including water delivery projects.

- **Why is the Navajo Nation waiving its aboriginal water rights?**
 - The Navajo Nation must resolve its water rights claims either by settlement or by litigation. In either scenario, there cannot be a final determination of the Nation's water rights if the Nation retains the right to claim additional water. In the LCR settlement, the Nation is settling its water rights claims, which include claims based on aboriginal, historic, present and future uses. Waivers are executed to ensure that the Nation will not seek additional water rights over and above the water rights that are recognized in the settlement. The other parties will also waive their claims to the water rights secured by the Navajo Nation from the Little Colorado River. Resolving your claims ensures we have water for future generations.
 - Under most western state laws, priority is based on the date the user first put the water to beneficial use. Indians have not been appropriated water to the same extent as non-Indians. According to this doctrine, Navajo Nation water rights would be very junior to those of many non-Indians, even though Navajos have been here longer.

- **What are the water rights claims of the Navajo Nation to water from the Little Colorado River system and source?**
 - In 1908, the United States Supreme Court held in *Winters v. United States* that when the U.S. sets aside a reservation for an Indian tribe, water is also reserved to make the reservation a permanent homeland for the tribe.
 - The water rights recognized in the settlement are *Winters* rights, which includes all rights for all past, present and future water uses, including aboriginal uses. These rights are not limited to water that has been put to use by the Nation, and they cannot be lost through non-use.

- **Why doesn't the Little Colorado River Settlement quantify the Nation's water rights in the Little Colorado River Basin?**
 - Under the settlement the Navajo Nation has the right to use ALL of the water arising on, running through, or under the Navajo Reservation, without limits except with respect to water sources shared with the Hopi Tribe. Putting quantified numbers on these rights would only result in a limit or restriction on these uses. The Nation's water rights would be recognized in the settlement, but the rights are not being "quantified" in the sense that a specific limit is put on their use.

➤ **What happened to the Northeastern Arizona Indian Water Rights Settlement Agreement (NAIWRSA) approved by the Navajo Nation Council in November of 2010?**

- The Navajo Nation was the only party to approve the NAIWRSA. In March of 2011, Senator Kyl informed the parties to the proposed settlement that a major component of the settlement, the Western Navajo Pipeline, was not economically feasible.
- The Navajo Nation was unwilling to enter into a settlement of its claims to the main stem of the Colorado River without infrastructure to deliver that water to the Reservation. Settlement efforts since that time have focused on a settlement only of the Navajo Nation and Hopi Tribes claims to the Little Colorado River.

➤ **What happens if the Navajo Nation does not approve the Little Colorado River settlement?**

- If the settlement is not approved, the settlement legislation (S. 2109) will not proceed through Congress.
- The Navajo Nation and the other settling parties will return to litigation. Eventually, the water rights of the Navajo Nation to the LCR will be determined by the state court in St. Johns. The litigation will result in a final determination of Navajo water rights to the surface and groundwater within the LCR system and source, and the court will impose limits on the amount of water that the Navajo Nation can use.
- If the settlement is not approved, the Navajo Nation will have to find other means to build the drinking water projects that are authorized in the settlement, and the Colorado River allocations will not be reserved to the Navajo Nation for use in a future Colorado River settlement.

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