

Summary of the Proposed Northeastern Arizona Indian Water Rights Settlement Agreement for Public Discussion Purposes

Introduction

Over the past year, the Navajo Nation participated in final negotiation sessions to settle all of the Nation's water rights claims in the State of Arizona, including with respect to *Tólchíí' Koooh* (Red Water Wash – the Little Colorado River) and *Bits'íís Nínee* (River of Long Life Span – the Colorado River). These rivers are protectors for the Navajo people born from our sacred mountains, and are two of the four sacred rivers that set the boundaries for *Dinéetah* (Navajoland). In these negotiations, the Nation sought to ensure that these rivers will continue to protect our people and sustain life on our lands – forever.

Since Navajo creation, water has served as a fundamental element to Navajo life. *Tó'él'iiná at'e* (water is life), and it is elemental to *Hózhó*, 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 *Hózhóji* (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.

To ensure a permanent homeland for our people and the Navajo way of life, the Navajo Nation Government continues to advocate for the Nation's water rights in the State of Arizona. A settlement agreement with the State of Arizona, the United States, and parties to the Little Colorado River adjudication is complete and will be presented to the Navajo Nation Council and the Navajo Nation President for consideration and approval in the coming days.

Navajo Nation President Dr. Buu Nygren, Navajo Nation Vice-President Richelle Montoya, Speaker Crystalyne Curley, and the entire 25th Navajo Nation Council support transparency in Navajo Nation Government. To that end, we are providing the following chart summarizing the proposed Northeastern Arizona Indian Water Rights Settlement Agreement. This Summary will allow the Navajo people to learn about the key elements of the settlement. Legislation to approve the agreement was introduced on May 13 before the Navajo Nation Council and a public comment period has begun. For a digital copy of the documents or to view and track the legislation, please refer to the Diné Bibeehaz'aanii binaaltsoos (DIBBs) Public Reports webpage managed by the Navajo Nation Office of Legislative Services at the following link: <http://dibbs.nnols.org/publicreporting.aspx>. The Navajo public can submit comments to comments@navajo-nsn.gov in order to be heard and participate in the Nation's legislative process.

The Navajo Nation has participated in water rights settlement negotiations in Arizona on at least four other occasions over the past six decades. In the arid west, water rights agreements are challenging. A settlement agreement represents what the participating parties agree to and is designed to meet the needs of all involved. The Nation's primary objective with this settlement is to affirm and quantify the Nation's enforceable rights to water in Arizona and to secure funding to build much needed water delivery infrastructure on the Navajo Nation. The past few years taught us the high price of not having access to clean drinking water in our homes. This

settlement offers a path forward in closing the severe water access equity gap that exists in our community and offers the promise of a healthy and vibrant future for our people.

This Summary reflects the terms that have been agreed to among legal representatives of the parties, but until the settlement agreement has been agreed to by each party, including the United States Congress passing federal legislation to approve the settlement agreement, there is no settlement. The Nation is working diligently to ensure that the Navajo people are knowledgeable of the terms and conditions of the settlement. The Navajo Nation Water Rights Commission (NNWRC), by the authority granted in its Plan of Operation, established the Navajo Nation Water Rights Settlement Negotiation Team. The Settlement Negotiation Team is comprised of Council Delegates from communities that will be affected by the settlement and a Legal & Technical Team that includes the Attorney General, attorneys from the Department of Justice Water Rights Unit, Chief Legal Counsel to the President and Vice-President, and hydrologists from the Navajo Department of Water Resources.

After Council approves the settlement agreement, federal legislation will be required to ratify and approve the settlement and to authorize the federal funds for the projects discussed below. Congress may require changes to the settlement agreement as a condition to enacting the legislation to approve the settlement. Congress will also be determining how much in federal funds it will authorize for the settlement. The Navajo Nation will work with Congress and with the other settling parties through the Congressional legislative process.

Community education efforts led by NNWRC will continue to allow all interested Navajo Nation members the opportunity to ask questions and speak on the settlement. Information on community education sessions can be found at <https://nnwrc.navajo-nsn.gov>.

The Northeastern Arizona Indian Water Rights Settlement Agreement

<i>Claims to be Settled</i>	This agreement will settle the water rights claims of the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe in Arizona, as follows: <ul style="list-style-type: none">• Upper Basin of the Colorado River• Lower Basin of the Colorado River• Little Colorado River (LCR) Basin• Groundwater (including the Navajo Aquifer (N-Aquifer), the Coconino Aquifer (C-Aquifer), and alluvial aquifers)• Gila River Basin (Big Boquillas Ranch)
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<i>Settlement Parties</i>	The Navajo Nation, the Hopi Tribe, the San Juan Southern Paiute Tribe, the United States, the State of Arizona, Arizona State Land Department, Salt River Project, Arizona Public Service, Central Arizona Water Conservation District, Bar T Bar Ranch, the Cities of Winslow, Flagstaff, Holbrook, Taylor, Snowflake, Show Low, Eagar, Springerville, St. Johns, and other principal parties to the LCR general stream adjudication.
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NAVAJO NATION SETTLEMENT ELEMENTS

***Trust Land as
Reservation***

The settlement agreement recognizes that all existing Navajo trust land in Arizona, and future trust land acquired under the 1974 Navajo Hopi Settlement Act prior to the effective date and with some exceptions after the effective date, is Navajo Reservation land upon which the Navajo Nation may use its settled water rights.

Water Sources

Upper Basin Colorado River Water, Lower Basin Colorado River Water, Fourth Priority Lower Basin Water, Little Colorado River Water, tributary water, springs, underground water, and effluent.

***Settlement Water
Rights***

Upper Basin Colorado River Water: 44,700 AFY (acre-feet per year) of the Arizona Upper Basin allocation.

Lower Basin Colorado River Water: 3,600 AFY of Fourth Priority Lower Basin Colorado River Water (including 100 AFY of Cibola Lower Basin Water).

Little Colorado River Mainstem Water: All the Little Colorado River mainstem water that reaches the Navajo Reservation (historic flows are estimated to be 122,000 AFY). Includes quantified amounts and priority dates for specific historic Navajo irrigation projects.

Little Colorado River Tributary Water: All LCR tributary water that reaches the Navajo Reservation.

Coconino Aquifer: All that underlies the Navajo Reservation.

Navajo Aquifer: All that underlies the Navajo Reservation subject to an agreement between the Navajo Nation and the Hopi Tribe that limits Navajo pumping from the Confined Aquifer and the Shonto Recharge Area to 8,400 AFY (and within that amount limits the use of that water for industrial purposes to 2,000 AFY).

Shared Washes: There are 5 major washes shared by the Navajo Nation and the Hopi Tribe that are subject to an agreement between the Tribes to (1) grandfather existing water uses, (2) provide limitations on new uses upstream of the southern boundary of the Hopi Reservation, (3) provide for the rehabilitation of historic irrigation uses, and (4) permit traditional agriculture and wash restoration.

The Navajo Nation may lease, exchange, and accrue long-term storage credits for its Arizona water; store its Arizona water in two Reservoirs in New Mexico; store its Arizona water in aquifers on the Navajo Reservation for later recovery; engage in inter-basin transfer of Colorado River water in Arizona as authorized in Congressional legislation; and

divert its water in New Mexico and Utah for use in Arizona as authorized in Congressional legislation.

HOPI TRIBE SETTLEMENT ELEMENTS

Water Sources

Upper Basin Colorado River Water, Cibola 4th, 5th, & 6th Priority
Lower Basin Colorado River Water, Little Colorado River Water,
tributary water, springs, underground water, and effluent.

Settlement Water Rights

Upper Basin Colorado River Water: 2,300 AFY of the Arizona Upper Basin allocation.

Lower Basin Colorado River Water: 4,178 AFY of 4th priority Cibola Water, 750 AFY of 5th priority Cibola Water, and 1,000 AFY of 6th priority Cibola Water.

Little Colorado River Mainstem & Tributary Water: Existing uses, the same limited new uses as permitted for non-Indian parties, and certain limited rights to participate with the Navajo Nation in new and enlarged reservoir projects on or adjacent to Hopi Land.

Coconino Aquifer: All the water that underlies the Hopi Reservation; the Hopi Tribe has agreed to pumping limitations at the Hart Ranch (see description of C-Aquifer Agreement below and Figure 1 and Figure 2 of the Navajo Hopi C- Aquifer Pumping Restrictions Area).

Navajo Aquifer: All that underlies the Hopi Reservation subject to an agreement between the Navajo Nation and the Hopi Tribe that limits Hopi Tribe’s pumping to 5,600 AFY (and within that amount limits the use of that water for industrial purposes to 2,000 AFY).

Shared Washes: There are 5 major washes shared by the Navajo Nation and the Hopi Tribe that are subject to an agreement between the Tribes to (1) grandfather existing water uses, (2) provide limitations on new uses upstream of the southern boundary of the Hopi Reservation, (3) provide for the rehabilitation of historic irrigation uses, and (4) permit traditional agriculture and wash restoration.

The Hopi Tribe may lease, exchange, and accrue long-term storage credits for its water; store its water in aquifers on the Hopi Reservation for later recovery; and engage in inter-basin transfer of Colorado River water in Arizona as authorized in Congressional legislation.

SAN JUAN SOUTHERN PAIUTE TRIBE SETTLEMENT ELEMENTS

Settlement Water Rights

Surface water that reaches and flows on the San Juan Southern Paiute Southern Area; underground water, springs, and effluent on the Southern

Area; Delivery of up to 350 AFY from NTUA (either groundwater or Colorado River water delivered through a pipeline from Lake Powell.)

On-Reservation Allotments

Navajo Section 1 Allotments (On-Reservation): The United States will settle these claims. Navajo Section 1 Allottees will be served with Navajo Nation water.

Hopi Allotments (On-Reservation): The United States will settle these claims. Existing surface water rights will be grandfathered.

OTHER SETTLEMENT ELEMENTS

Off-Reservation Surface Water

New reservoirs and impoundments are prohibited except when: (1) located in a closed basin, (2) located in the Lower LCR Watershed and used for municipal water purposes, (3) developed for the purpose of storing surface water that becomes available due to a change in purpose or use, or point of diversion, (4) used for flood control on a temporary basis, (5) related to C.C. Cragin Reservoir and the Lake Mary Reservoirs, (6) used to impound effluent, (7) used to impound irrigation tailwater, or (8) used to impound underground water.

Navajo Nation may construct new reservoirs and impoundments, or enlarge existing ones, within the Little Colorado River Watershed but outside of the hydrologic units that serve the Cragin Reservoir and the St. Mary's Reservoirs and in accordance with state law.

Navajo Nation may store Colorado River water in the Navajo Reservoir and the Frank Chee Willetto, Sr. Reservoir in New Mexico.

The operation, maintenance, and modification of existing reservoirs will not be subject to challenge.

The operation, modification, and enlargement of existing impoundments that contain the following will not be subject to challenge: (1) effluent, (2) irrigation tailwater, and (3) underground water.

Applications for severance and transfer, change in use, or change in point of diversion of a decreed right to surface water use will not be subject to challenge.

Relocation of an existing reservoir within the same Watershed of the LCR will not be subject to challenge unless (1) it will cause harm to Hopi Tribe's rights under the Norviel Decree or (2) the reservoir has a storage capacity greater than 500 acre-feet (excluding C.C. Cragin Reservoir and the Lake Mary Reservoirs); Movement of surface water outside the LCR Watershed is prohibited, except with respect to C.C. Cragin Reservoir and the Lake Mary Reservoirs.

***Off-Reservation
Groundwater***

Buffer Zone 1, Buffer Zone 2, and a side agreement establish protections for the Navajo Nation’s groundwater rights.

Buffer Zone 1 is within 2 sections of the southern boundary of the Navajo Reservation in Arizona.

Buffer Zone 2 is between 2 sections and 6 sections south of the southern boundary of the Navajo Reservation in Arizona.

Existing wells within Buffer Zone 1 and Buffer Zone 2 are grandfathered so long as they are registered in a catalog that will be developed and maintained by the Arizona Department of Water Resources.

The Navajo Nation may object to new wells greater than 35 GPM (gallons per minute) within Buffer Zone 1 that cause injury to the Navajo Nation’s groundwater rights.

The Navajo Nation may object to new wells greater than 500 GPM (or that pump 800 AFY or more) within Buffer Zone 2 that cause injury to the Navajo Nation’s groundwater rights.

Groundwater pumping from wells outside of Buffer Zone 1 and Buffer Zone 2 are not subject to challenge by the Navajo Nation.

The US Forest Service, US National Park Service and the Zuni Tribe are exempt from the Buffer Zone pumping limitations.

A C-aquifer side agreement between the Navajo Nation, the Hopi Tribe, Bar T Bar Ranch, the Arizona State Land Department, and the United States governs those parties’ pumping limitations south of the Navajo Reservation. See below.

***Infrastructure,
Projects, and
Estimated Funding***

The iiná bá – paa tuwaqat’si pipeline Implementation Fund. Fund to finance Bureau of Reclamation construction of pipeline to divert Colorado River water from Lake Powell to deliver (1) Colorado River Upper Basin and Lower Basin Colorado River Water to LeChee, Coppermine, Bitter Springs, Cedar Ridge, Bodaway/Gap, Tuba City, Coal Mine Mesa, Cameron, and Grey Mountain; (2) Colorado River Water to the San Juan Southern Paiute Southern Area and (3) Colorado River Water to the Hopi Reservation at the combined preliminary estimated cost of \$1.715 billion.

Navajo Nation Water Settlement Trust Fund: A total of \$2.7467 billion to support 5 accounts.

- Navajo Nation Water Projects Trust Fund Account. \$2.3692 billion for specified projects on the Navajo Reservation:

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- Southwest Navajo Regional Project: extend the Leupp-Dilkon Project to deliver C-Aquifer water to Leupp, Bird Springs, Tolani Lake, Teesto, Dilkon, and Indian Wells.
 - Ganado Area Project: develop and expand public water systems to deliver C-Aquifer and Lower Basin Colorado River Water to Kinlichee, Ganado, Cornfields, Lower Greasewood, Jeddito, and Steamboat.
 - Black Mesa Project: develop and expand public water systems to deliver N-Aquifer water to Black Mesa, Forest Lake, Pinon, and Shonto.
 - Four-Corners Project: develop and expand public water systems to deliver Upper Basin Colorado River Water to Chinle, Many Farms, Rock Point, Rough Rock, Round Rock, Sweetwater, Teec Nos Pos, and Tsaile/Wheatfields/Blackrock.
 - Kayenta Area Project: develop and expand public water systems to deliver N-Aquifer and Upper Basin Colorado River Water to Chilchinbeto, Rough Rock, Kayenta, and Oljato.
 - Lupton Area Project: develop and expand public water systems to deliver Alluvial Aquifer and Lower Basin Colorado River Water to Houck, Lupton and Nahata'Dziil.
 - Code Talker Lateral: extend the Code Talker Lateral waterline and expand public water systems to deliver Groundwater and Lower Basin Colorado River Water to Fort Defiance, Red Lake, and Saint Michaels, with an intertie to the Ganado Area Project.
 - Local Groundwater Projects: develop and expand public water systems to deliver additional water to local communities.
 - Navajo Nation Renewable Energy Project Fund Account: \$40 million to support Navajo water development projects with renewable energy.
 - Navajo Nation Agricultural Conservation Fund Account: \$80 million to support historically irrigated acreage by implementing modernized irrigation infrastructure, and including replacement and development of livestock wells and impoundments.
 - Navajo Nation OM&R (Operation, Maintenance & Replacement) Fund Account: \$230 million to support operation, maintenance, and replacement costs of the water projects.
 - Navajo Nation Lower Basin Colorado River Water Acquisition Fund Account: \$28 million to purchase land with senior water rights with the intention to sever and transfer such water rights for reallocation to the Navajo Nation.

Hopi Tribe Water Settlement Trust Fund. \$508.5 million to support the following 4 trust fund accounts:

- Hopi Tribe Groundwater Project Trust Fund Account: \$390 million to support construction of the expanded Hopi

Arsenic Mitigation Project (HAMP) and the Hopi Side Rock-Moenkopi Project.

- Hopi Tribe Agricultural Conservation Fund Account: \$30 million to support historically irrigated acreage by implementing modernized irrigation infrastructure, and including replacement and development of livestock wells.
- Hopi Tribe OM&R Trust Fund Account: \$87 million to support operation, maintenance, and replacement for the Hopi Tribe groundwater projects.
- Hopi Tribe Lower Basin Colorado River Water Acquisition Trust Fund Account: \$1.5 million to purchase land with senior water rights with the intention to sever and transfer such water rights for reallocation to the Hopi Tribe.

San Juan Southern Paiute Tribe (“SJSPT”) Water Settlement Trust Fund.

\$29.8 million to support the 3 trust fund accounts:

- SJSPT Groundwater Project Trust Fund Account: \$28 million for groundwater infrastructure development.
- SJSPT Agricultural Conservation Trust Fund Account: \$300 thousand to support historically irrigated acreage by implementing modernized irrigation infrastructure, and including replacement and development of livestock wells.
- SJSPT OM&R Trust Fund Account: \$1.5 million to support operation, maintenance, and replacement for the San Juan Southern Paiute Tribe groundwater project.

Each of the Tribes will have the ability to exercise discretion to determine whether the scope of trust fund-eligible projects need to be amended and to contribute funds to the iiná bá – paa tuwaqat’si pipeline.

**Navajo AFY projections are for a 2120 Navajo population based on a 1.3 percent growth rate of the 2010 US Census Bureau Census of the Navajo population corrected for an estimated 4.9 percent undercount.*

***Note, there is no guarantee that Congress will provide all the funding identified in this table. We will learn what Congress will fund as we work through the congressional legislative process.*

Rights-of-way

The Tribes agree to grant each other rights-of-way for these projects without objection, cost, or payment of taxes.

Waivers, Releases and Retentions

The Navajo Nation, Hopi Tribe, San Juan Southern Paiute Tribe, United States, and other Parties to the settlement provide waivers and releases and retain certain claims, as set forth in the settlement agreement.

C-AQUIFER SIDE AGREEMENT

Parties: The Navajo Nation, the Hopi Tribe, the United States, Bar T Bar Ranch, and the Arizona State Land Department.

Creates a Navajo Hopi C-Aquifer Pumping Restriction Area, which is south and west of the Navajo Reservation in Coconino County.

The general restrictions relating to Buffer Zone 1 and Buffer Zone 2 do not apply to the parties to the Side Agreement in the C-Aquifer Pumping Restriction Area.

Hopi Tribe Provisions

The Side Agreement sets limitations on the Hopi Tribe’s pumping on their off-Reservation trust lands south and west of the Navajo Reservation.

Establishes a Hopi Tribe Buffer North that extends south of the Navajo Reservation 1-mile on Hopi trust land within Hart Ranch and 1 section on land the Hopi Tribe leases from the Arizona State Land Department. Establishes a Hopi Tribe Buffer West that creates a ¾ mile buffer around the two primary wells serving Twin Arrows Navajo Casino (TANC), and extends north 1-mile west from the 1934 Navajo Reservation boundary.

Hopi Tribe Buffer West also extends south from the protected TANC wells to encompass those portions of Section 32 (Township 21N, Range 11E) outside the western boundary of the 1934 Navajo Reservation. Prohibits future wells greater than 35 GPM in Hopi Tribe Buffer North and Hopi Tribe Buffer West.

Limits Bluebird Well to 450 GPM (approximately 720 AFY). Creates a Bluebird Buffer of ½ mile around the Hopi Bluebird Well near TANC. Limits aggregate total Hopi Tribe pumping within the Hart Ranch to 6,570 AFY in Hopi Tribe Buffer West and Hopi Tribe Buffer South (located between Hopi Tribe Buffer North and six miles south and west of the southern boundary of the Navajo Reservation within Hart Ranch). Exempts Hopi Tribe wells less than 35 GPM from the 6,570 AFY pumping limit.

Bar T Bar Ranch Provisions

Limits pumping from Bar T Bar new wells to 4,000 AFY. Excludes Bar T Bar’s five existing wells from this pumping limitation. Restricts use of water from existing wells to Bar T Bar land.

Defines a Northern Restrictive Area where new Bar T Bar wells may not exceed 500 GPM (with a cumulative cap of 3,000 GPM).

Creates a Bar T Bar Southern Area where wells can be of any size for any use within the LCR Watershed.

	Excludes wells that pump 35 GPM or less from Bar T Bar pumping limitations.
<i>Arizona State Land Department Provisions</i>	<p>Prohibits the drilling of wells greater than 35 GPM in Buffer Zone 1.</p> <p>In Buffer Zone 2, on land that is currently State Trust Land, developers may drill wells greater than 500 GPM so long as the developer sets aside land and foregoes water development on 1.25 acres for every GPM if the well capacity is greater than 500 GPM. This will ensure well spacing in Buffer Zone 2.</p>
<i>TERMS TO BE INCLUDED IN CONGRESSIONAL LEGISLATION</i>	
<i>Terms</i>	<p>Ratifies the Northeastern Arizona Indian Water Rights Settlement Agreement.</p> <p>Confirms the water rights of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe, the Navajo Allottees, and the Hopi Allottees as set forth in the Settlement Agreement.</p> <p>Provides for the allocation of Colorado River Water to the Navajo Nation and the Hopi Tribe and the location where that water can be used and stored.</p> <p>Provides that the Navajo Nation may lease its water rights under certain terms.</p> <p>Authorizes the construction of the iiná bá – paa tuwaqat’si pipeline.</p> <p>Authorizes federal funds to be deposited in:</p> <ul style="list-style-type: none"> • The iiná bá – paa tuwaqat’si pipeline Implementation Fund (\$1.715 billion) • The Navajo Nation Water Settlement Trust Fund (\$2.7472 billion) • The Hopi Tribe Water Settlement Trust Fund (\$508.5 million) • The San Juan Southern Paiute Tribe Water Settlement Trust Fund (\$29.8 million) <p>The Navajo Nation, Hopi Tribe, San Juan Southern Paiute Tribe, United States, and other Parties to the settlement provide waivers, releases and retain certain claims, as set forth in the Settlement Agreement.</p>
<i>Establishment of Reservation</i>	Proclaims approximately 5,400 acres of land within the Navajo Reservation as the San Juan Southern Paiute Northern Area and the San Juan Southern Paiute Southern Area and establishes those areas as the San Juan Southern Paiute Reservation.