



The Navajo Nation
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**Ninth Circuit Court of Appeals decision
delivers significant victory for the Navajo Nation**

WINDOW ROCK, Ariz. – On Wednesday, the United States Ninth Circuit Court of Appeals reversed the decision of the District Court for the District of Arizona that previously dismissed the Navajo Nation’s 2003 lawsuit against the U.S. Department of the Interior, related to the Nation’s water rights.

In the 2003 lawsuit, the Navajo Nation asserted that the Secretary of Interior had taken various actions relating to the management of the Colorado River in breach of the federal government’s trust obligations to protect the water resources of the Navajo Nation or to secure and protect water supplies from the Colorado River necessary for the needs of the Navajo Nation in Arizona.

“Water resources are becoming a greater concern for the southwest portion of the United States. Over 150 years after the signing of the Treaty of 1868 between the Navajo people and the United States, we are still having to fight for water allocations. Today’s ruling is due to the hard work and commitment of the Navajo Nation Department of Justice, under Attorney General Doreen McPaul. I commend their team and offer my continued support for them,” said Navajo Nation President Jonathan Nez.

The U.S. District Court of Arizona previously dismissed the Navajo Nation’s lawsuit on the grounds that the U.S. had not waived its sovereign immunity. The Navajo Nation appealed to the Ninth Circuit, and in 2017, the Court joined the majority of Circuits in holding that the Administrative Procedures Act waives the sovereign immunity of the U.S. for all causes of action not seeking monetary damages, reversing the decision of the district court and remanding the case to allow the Navajo Nation’s breach of trust claim to proceed. On remand, however, the district court again dismissed the Navajo Nation’s case on the grounds that the Nation had failed to identify an enforceable cause of action against the U.S.

The Navajo Nation Department of Justice’s Water Rights Unit handled this effort on behalf of the Navajo Nation, led by then Assistant Attorney General Stanley Pollack. In October of 2020, now

retired Navajo Nation Department of Justice Water Rights Attorney Kate Hoover, argued the case before the Ninth Circuit, on behalf of the Navajo Nation.

“This particular case has been a long hard-fought issue. My appreciation goes out to the many dedicated attorneys and staff who have laid their hands to this work in support of securing water for our Navajo people. As we move forward, the Nez-Lizer Administration will continue to support the Navajo Nation Department of Justice and advocate for more water resources,” said Vice President Myron Lizer.

In its reversal, the Ninth Circuit determined that the Navajo Nation had identified provisions in the Nation’s treaties with the U.S. and related statutes and executive orders establishing the “Navajo reservation” that give rise to enforceable duty by the U.S. to protect the water resources of the Navajo Nation. The Court remanded the case back to the district court with instructions to permit the Navajo Nation to amend its complaint.

Navajo Nation Attorney General Doreen N. McPaul stated that most significant aspect of the Ninth Circuit’s decision is its recognition that an enforceable trust duty arises from the implied reservation of water, recognized in *Winters*, to serve the permanent homeland needs of the Navajo Nation, as found and supported in the treaties establishing the “Navajo reservation” and setting the terms for the relationship between the Navajo Nation and the United States, the federal statutory and regulatory governance of the Colorado River and the Secretary’s pervasive control of the river’s management; the United States’ prior actions in *Arizona v. California*; and very importantly, the impacts of COVID-19 on the Navajo people due in part to the lack of water.

The trust relationship is comprised of many elements, as carefully detailed in the Ninth Circuit’s opinion. According to the Department of Justice, the broad spectrum serves not only as the guide to the parties on remand to the district court, but may also guide tribes in other litigation to protect their federal reserved rights.

Wednesday’s decision of the Ninth Circuit represents the second significant victory for the Navajo Nation to protect its water rights in recent weeks. On March 28, the New Mexico Supreme Court dismissed all challenges to the Navajo Nation’s water rights settlement with State of New Mexico concerning the San Juan River, a major tributary of the Colorado River, bringing an end to litigation that was initiated in 2009 after Congress approved the settlement.

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