

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

Introduction

The Navajo Nation is currently in negotiations 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 *Dibé Ntsaa*, our northern mountain, and are two of the four sacred rivers that set the boundaries for *Diné'tah* (Navajoland). In these negotiations, the Nation is seeking 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 *Hózhóóji* (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 close to completion 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 additional time to learn about the key elements of the settlement while the Negotiation Team finalizes the settlement agreement. Once the settlement agreement is final, legislation to approve the agreement will be introduced before the Navajo Nation Council and a public comment period will begin. At that time, the settlement legislation will be published and 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 are being negotiated among the parties, but until each and every term is agreed to, there is no settlement agreement. The Nation is working diligently to resolve each of the remaining issues to arrive at a final settlement agreement. 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 (“NNWRSNT”). The NNWRSNT is comprised of Council Delegates from communities that will be affected by the settlement and a Legal & Technical Team (“LTT”). The LTT is made up of the Attorney General, the Department of Justice Water Rights Unit, the Office of the President and Vice-President, the Navajo Department of Water Resources, and contracted consultants.

After the Council approves the settlement agreement, legislation will be introduced in Congress to ratify and approve the settlement by December 2024. Congress may require changes to the settlement agreement in order to obtain approval of the legislation. The Navajo Nation will work with Congress in this regard.

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

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| <i>Claims to Settle</i> | This agreement will settle all of the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe water rights claims 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) |
| <i>Settling 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. |

Settlement Elements

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| <i>Navajo Trust Land as Reservation</i> | The settlement agreement recognizes that all existing Navajo trust land, and future trust land acquired under the 1974 Navajo Hopi Settlement Act, is Navajo Reservation land upon which the Navajo Nation may use its settled water rights. |
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| <i>Navajo Water Sources</i> | Upper Basin Colorado River water, Little Colorado River mainstream and tributary water, 4 th priority Lower Basin Colorado River water, Cibola Lower Basin Colorado River water, groundwater, and effluent. |
| <i>Navajo Nation Settlement Water Rights</i> | <u>Upper Basin Colorado River Water</u> : 44,700 AFY (acre-feet per year) of the Arizona Upper Basin allocation. |
| | <u>Little Colorado River Mainstem Water</u> : 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. |
| | <u>Little Colorado River Tributary Water</u> : All tributary water that reaches the Navajo Reservation. |
| | 4 th priority Lower Basin Colorado River Water: 3,600 AFY (including 100 AFY of Cibola Lower Basin Water). |
| | <u>Coconino Aquifer</u> : All that underlies the Navajo Reservation. |
| | <u>Navajo Aquifer</u> : All that underlies the Navajo Reservation subject to an agreement between the Navajo Nation and the Hopi Tribe that limits Navajo pumping to 8,400 AFY (2,000 AFY may be used for industrial purposes). |
| | <u>Shared Washes</u> : There are 5 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. |
| | 1,000 AFY from the City of Flagstaff’s Red Gap Ranch Regional Project will be available to the Navajo Nation. |
| | The Navajo Nation may lease, exchange, accrue long-term storage credits, bank water in the Navajo Reservoir, store water in aquifers on the Navajo Reservation for recovery, and engage in inter-basin transfer of Colorado River water in Arizona as authorized in Congressional legislation. |
| <i>Hopi Water Sources</i> | Upper Basin Colorado River water, Little Colorado River mainstream and tributary water, Cibola 4 th , 5 th & 6 th priority Lower Basin Colorado River water, groundwater, and effluent. |
| <i>Hopi Tribe Settlement Water Rights</i> | <u>Upper Basin Colorado River Water</u> : 2,300 AFY of the Arizona Upper Basin allocation. |
| | <u>Little Colorado River Mainstem Water</u> : 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. |
| | <u>Little Colorado River Tributary Water</u> : 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. |
| | <u>Lower Basin Colorado River water</u> : 4,178 AFY of 4 th priority Cibola Water, 750 AFY of 5 th priority Cibola Water, and 1,000 AFY of 6 th priority Cibola Water. |
| | <u>Coconino Aquifer</u> : 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 (2,000 AFY may be used for industrial purposes).

Shared Washes: There are 5 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.

500 AFY from the City of Flagstaff's Red Gap Ranch Regional Project will be available to the Hopi Tribe.

Leasing, exchanges, long-term storage credits accrued as a result of storage, storage on the Hopi Reservation for aquifer recovery, and inter-basin transfer of Colorado River water rights in Arizona as authorized in Congressional legislation.

*San Juan Southern
Paiute Tribe's
Settlement Water
Rights
Allotments*

The San Juan Southern Paiute's settlement terms remain under discussion

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

*Off-Reservation
Surface Water*

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

New surface water uses for irrigation purposes are prohibited.

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 within the Little Colorado River Watershed for storage purposes in accordance with state law.

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

The operation, alteration, and enlargement of existing reservoirs 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 hydrologic unit 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 number of side agreements 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 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.

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

A side agreement between the Navajo Nation and the City of Flagstaff governs the City’s pumping limitations south of the Navajo Reservation at Red Gap Ranch. See below.

*Infrastructure,
Projects, and
Estimated Funding*

NAVAJO - HOPI PIPELINE: divert water from Lake Powell to deliver (1) up to 6,422 AFY of Colorado River Upper Basin and Lower Basin Colorado River Water to LeChee, Kaibeto, Coppermine, Bodaway/Gap, Tuba City, and Cameron and (2) up to 2,300 AFY to the Hopi Reservation at the combined estimated cost of \$1.7 billion.

NAVAJO PROJECTS:

Southwest Navajo Regional Project: extend the Leupp-Dilkon Project to deliver up to 6,124 AFY of C-Aquifer water to Leupp, Bird Springs, Tolani Lake, Teesto, Dilkon, Indian Wells, White Cone, and Greasewood at the estimated cost of \$134.6 million.

Ganado Area Project: develop and expand public water systems to deliver up to 5,964 AFY of C-Aquifer and Lower Basin Colorado River Water to Kinlichee, Ganado, Klagetoh, Cornfields, Wide Ruins, Jeddito, and Steamboat at the estimated cost of \$249.6 million.

Black Mesa Project: develop and expand public water systems to deliver up to 5,172 AFY of N-Aquifer water to Black Mesa, Forest Lake, Hard Rock, Low Mountain, Pinon, Blue Gap/Tachee, and Whippoorwill at the estimated cost of \$193.1 million.

Four-Corners Project: develop and expand public water systems to deliver up to 13,194 AFY of Upper Basin Colorado River Water to Chinle, Many

Note: There is no guarantee that Congress will provide all the funding identified in this table. We will learn what Congress can fund as we work through the Congressional legislative process over the summer and fall of 2024.

Farms, Nazlini, Rock Point, Rough Rock, Round Rock, Sweetwater, Teec Nos Pos, and Tsaile/Wheatfields/Blackrock at the estimated cost of \$780 million.

Kayenta Area Project: develop and expand public water systems to deliver up to 5,587 AFY of N-Aquifer and Upper Basin Colorado River Water to Chilchinbeto, Dennehotso, and Kayenta at the estimated cost of \$195 million.

Lupton Area Project: develop and expand public water systems to deliver up to 5,000 AFY of Alluvial Aquifer and Lower Basin Colorado River Water to Houck, Lupton, Nahata'Dzil, and Oak Springs at the estimated cost of \$195 million.

Code Talker Lateral: extend the Code Talker Lateral waterline and expand public water systems to deliver up to 9,576 AFY of Groundwater and Lower Basin Colorado River Water to Fort Defiance, Red Lake, Saint Michaels, and Sawmill and intertie to Ganado Area Project at the estimated cost of \$390 million.

Local N-Aquifer and C-Aquifer Projects: develop and expand public water systems to deliver additional Groundwater to Inscription House, Navajo Mountain, Coalmine Mesa, Shonto, Tonalea, and other Chapters at the estimated cost of \$300 million.

Total Navajo Project Costs: \$2.4 billion

NAVAJO RENEWABLE ENERGY PROJECT: support Navajo water development projects with additional energy at the estimated cost of \$40 million

NAVAJO FUNDS:

Navajo Agricultural Conservation Fund: \$80 million

Navajo OM&R (Operation, Maintenance & Replacement) Fund: \$230 million

Colorado River Water Acquisition Fund: \$28.8 million

HOPI PROJECTS & FUNDS:

Hopi Arsenic Mitigation Project (HAMP) and Hopi Side Rock Project: \$390 million

Hopi Tribe Agricultural Conservation Fund: \$30 million

Hopi OM&R Fund: \$87 million

SAN JUAN SOUTHERN PAIUTE TRIBE PROJECT & FUNDS:

San Juan Southern Paiute Water Development project: \$13 million (Navajo estimate)/\$28.2 million (San Juan Southern Paiute estimate)

San Juan Southern Paiute Agricultural Conservation Fund: \$300 thousand

San Juan Southern Paiute Water Rehabilitation Project: \$1 million (San Juan Southern Paiute estimate)

San Juan Southern Paiute OM&R Fund: \$1 million (Navajo estimate)/\$1.5 million (San Juan Southern Paiute estimate)

Rights-of-Way

Waivers & Retentions

The Tribes will have the ability to exercise discretion to determine whether the scope of trust fund-eligible projects need to be amended.

**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.*

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

Navajo Nation, United States, Hopi Tribe, San Juan Southern Paiute Tribe, and other Parties to the settlement waive claims, as set forth in the agreement. The agreement also sets forth certain claims to be retained by the Tribes and the United States.

Side Agreements

C-Aquifer 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 restrictions relating to Buffer Zone 1 and Buffer Zone 2 do not apply the parties of this agreement in the Navajo Hopi C-Aquifer Pumping Restriction Area.

THE HOPI TRIBE

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 $\frac{3}{4}$ 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. See Figure 1 (Hopi Buffer North) and Figure 2 (Hopi Buffer West) of the Navajo Hopi C Aquifer Pumping Restrictions Area.

Prohibits future wells greater than 35 GPM in Hopi Tribe Buffer North and Hopi Tribe Buffer West.

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).

Limits Bluebird Well to 450 GPM (approximately 720 AFY).

Exempts Hopi Tribe wells less than 35 GPM from the 6,570 AFY pumping limit.

Creates a Bluebird Buffer of $\frac{1}{2}$ mile around the Hopi Bluebird Well.

BAR T BAR RANCH

Limits 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.

Arizona State Land Department: The State Land Department will not permit the drilling of wells greater than 35 GPM in Buffer Zone 1. In Buffer Zone 2, on land that is currently State Trust Land, developers may drill wells greater than 500 GPM as 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.

Red Gap Ranch Agreement

Parties: The Navajo Nation and the City of Flagstaff (City)

Limits pumping on Red Gap Ranch within Buffer Zone 1 by the City to 35 GPM or less and limits pumping within Buffer Zone 2 to 12,000 AFY for municipal purposes by the City. Outside Buffer Zone 1 and Buffer Zone 2, limits City pumping to an additional 4,000 AFY for municipal purposes.

Allows pumping of an additional 1,000 AFY within Buffer Zone 2 for delivery to the Navajo Nation. Allows pumping of an additional 500 AFY within Buffer Zone 2 for delivery to the Hopi Tribe for use at Hart Ranch, Drye Ranch, and Hopi Twin Arrows property.

The Red Gap Regional Pipeline Project offers points of delivery at the Ranch House and at Interstate-40 exits, including at Twin Arrows, to deliver water to Navajo Nation and Hopi Tribe. The point of delivery at the Ranch House can be connected by the Navajo Nation to the C-aquifer water distribution system established on the Navajo Nation near Leupp. Navajo Nation agrees not to market delivered water to a third party.

The Parties mutually agree to provide rights-of-way that the other party may need to acquire for the Project.

Navajo Nation will provide a limited waiver of sovereign immunity for enforcement of this side agreement as part of the broader settlement agreement.

Terms To Be Included in Congressional Legislation

Limited Waiver of Sovereign Immunity

The Tribes and the United States will agree to limited waivers of sovereign immunity only for the limited and sole purpose of interpretation or enforcement of the settlement agreement, the Act, and the LCR and Gila River Decrees.

Creation of San Juan Southern Paiute Reservation

Congress will direct the Secretary of the Interior to partition and establish the San Juan Southern Paiute Reservation pursuant to a Treaty between the Navajo Nation and the San Juan Southern Paiute Tribe.