

TESTIMONY OF
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SERVING AS
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NAVAJO-GALLUP WATER SUPPLY PROJECT

BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
of the COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 1970

“THE NORTHWESTERN NEW MEXICO RURAL WATER PROJECTS ACT”

Resolving the Navajo Nation’s Water Rights Claims
in the San Juan River Basin in New Mexico and
authorizing the construction and rehabilitation of
water infrastructure in Northwestern New Mexico

July 24, 2007

Mr. Chairman and Members of the Subcommittee, I am Patricia Lundstrom, member of the New Mexico House of Representatives in my fourth term serving House District 9, and Executive Director of the Northwest New Mexico Council of Governments since 1985.

State House District 9 encompasses about 3,000 square miles in northwestern New Mexico, including the western portion of the City of Gallup and 9 rural Navajo communities lying within McKinley and San Juan Counties. Navajos comprise about two-thirds of the population of this District.

The Northwest New Mexico COG is the regional planning agency designated by the State of New Mexico and the Federal government to serve the State's three counties of the Four Corners region: Cibola, McKinley and San Juan Counties. This is about 15,000 square miles of high desert territory, including large reservation areas for four Indian tribes and a population of about 225,000 people residing in 6 municipalities and 77 rural communities. About one-half of the land base and one-half of the population are Native American.

I want to thank you for inviting me to participate in this historic hearing today.

I come before you to speak in favor of the proposed Settlement of Navajo Nation water rights in the San Juan River and the other associated titles included in H.R. 1970. My primary interest in this bill and in the Settlement is that this legislation is an essential instrument for authorizing and financing the proposed rural water infrastructure project we have been working on for decades. We have known it as the *Navajo-Gallup Water Supply Project*, and in the context of this bill it is titled the *Northwestern New Mexico Rural Water Supply Project*.

Since 1991, I have served as Chair of the Intergovernmental Steering Committee for the *Navajo-Gallup Water Supply Project*. This project is the flagship of the proposed water rights Settlement, as it plans to construct primary water pipelines to deliver water from the San Juan River to rural Navajo communities in northwestern New Mexico, to the southwestern portion of the Jicarilla Apache Nation, and to the City of Gallup.

During these past 16 years, I have seen the Navajo-Gallup project revived from its prior stalemate condition and, with the consistent leadership and support of Senators Bingaman and Domenici, I have seen it sustained as a planning initiative to the present day through a minefield of legal, technical, bureaucratic, political, financial and environmental issues.

The Steering Committee has been the primary nexus and forum in which these issues have been addressed and resolved by a persevering coalition of partners, including:

- The Navajo Nation, with representatives from the Nation's Natural Resources Division, Division of Justice, President's Office, and Water Rights Commission;
- The Jicarilla Apache Nation, with staff and policy representation from the Nation's Water Rights Commission and from the Office of the President;
- The City of Gallup, which serves as a project beneficiary (for 20% of the project's eventual capacity) and as a hub distribution system for the project's water supply at its southern end, to water users not only within the City limits but also in a number of neighboring Navajo communities;

- The State of New Mexico, primarily through its State Engineer's Office and the Interstate Stream Commission; the State is a party to the interstate compacts affecting the Colorado River and its tributaries, as well as to a negotiated settlement of the Navajo Nation's water rights in the San Juan River, and (through its Legislature) the State is a major contributor to infrastructure improvements in support of the overall Navajo-Gallup Water Supply Project;
- The Bureau of Reclamation, which serves as federal lead for the project out of its Western Colorado Area Office; and
- The Bureau of Indian Affairs, which is federal administrator of the Navajo Indian Irrigation Project, and which has a substantial role with regard to real properties and rights-of-way affected by the project;
- The Navajo Tribal Utility Authority, the Navajo Nation's utility enterprise that operates all of the public water systems on the Navajo Reservation;
- The Navajo Area Indian Health Service, a division of the Public Health Service in the US Department of Health & Human Services, which is responsible for planning and constructing water facilities in service to Navajo communities; and
- The Northwest New Mexico Council of Governments, a federal- and state-designated regional planning agency which chairs the Steering Committee.

In addition to these Steering Committee groups, we have enjoyed the professionalism and cooperation of two agencies in particular that have also contributed greatly to the success of our planning efforts thus far:

- The Upper Colorado River Commission has worked thoughtfully and cooperatively with the State of New Mexico and the Navajo Nation in accommodating the unique needs and configurations of this project. In particular, in 2003 the Commission resolved to support and consent to diverting water from the Upper to the Lower Basin of the Colorado River for the purposes of the Navajo-Gallup project, and it certified its support for "such Congressional action as may be necessary to authorize the Navajo-Gallup Water Supply Project."
- The United States Fish and Wildlife Service worked cooperatively with all parties to complete appropriate planning studies in the San Juan River that would identify the depletions from the river that could be made without negatively impacting the recovery of endangered species of fish in the river.

This project is the most ambitious and complex of the many local and regional initiatives I have been a part of for over two decades. It has also evoked the highest levels of cooperation, professionalism and commitment by a group of agencies and individuals that I have ever seen. My Council of Governments staff and I have been working on this project continuously since the early 1990s, and there have been many other individuals from all the participating agencies who have worked with us on it for years at a time. For all of us, this is not just "any project"; it's

personal. Getting it done makes so much sense, at so many levels, that we are all committed to it for the long-haul.

Since the late 1950s, State and Federal officials have concurred with the Southwest region's top hydrologists that the only hope for long-term sustainable water supply for the eastern Navajo Reservation and for the City of Gallup lies in the surface water supply provided by the San Juan River. The San Juan is a tributary to the Colorado River, originating in the mountains of southwestern Colorado, flowing through a portion of northwestern New Mexico, and proceeding to join the Colorado River at Lake Powell in southern Utah and northern Arizona. Through allocations confirmed in the hydrologic determination recently approved by Interior Secretary Kempthorne, the San Juan River provides about 40% of New Mexico's surface water supply. The Navajo-Gallup project would divert nearly 38,000 acre-feet of water from the river, or about 5½ percent of New Mexico's river allocation.

The needs for the Navajo-Gallup Water Supply Project are clear and evident:

- For the Navajo Nation, there is a significant population of Navajo people in the northwestern New Mexico service area who do not have, and have never had, a public water system. To this day, nearly 40% of Navajo families in the service area still haul water to meet basic household and livelihood needs. It is also clear that the Navajo economy, already struggling well below the poverty line, stands no chance of development without the provision of water as the most basic of all human needs.
- For the Jicarilla Apache Nation, there is already in place a settlement agreement under which this neighboring tribal community has secured water rights, but for which significant economic and infrastructure development is needed in order to tap the fullness of these rights.
- For the City of Gallup, the water table is dropping 200 feet every ten years, and the City will be facing peak-use shortages within five years and chronic shortages within fifteen years.

To focus further on the needs of the City of Gallup: Gallup serves as a multimodal transportation portal for the Southwest and a major commercial center for the Navajo Reservation. As such, it is as much a "home" and integral part of Navajo life as most other places in the region. Within a few decades, we expect that Navajos will make up over 50 percent of Gallup's population. Despite a checkered history of relationships between Gallup and the Navajo people, with some residue of tension and mistrust even today, the partnership that has been forged between Gallup and the Navajo Nation in the context of this project has been remarkable. I foresee only further progress in this relationship as this project moves forward.

It is important to note that, in my 16 years with the Steering Committee, at no point has the City of Gallup attempted to insert its needs and priorities in front of those of the Navajo Nation. Rather, it has been a supporting partner, ensuring that its participation is mutually beneficial to the City and to its Navajo neighbors.

As an example of this partnership, there has been a joint effort to provide municipal water supply to Navajo households bordering the City of Gallup on its east side. Past bureaucratic

barriers to this service have been erased, and by this summer's end, those Navajo families will have running water for the first time.

Another example is the multilateral partnership between the City, the State of the New Mexico, the Navajo Nation, the Indian Health Service and the Navajo Tribal Utility Authority to finance and build components of the Gallup regional water system, with the specific objective of moving water through the City's system to the neighboring Navajo communities adjacent to the City. The State has committed over \$9 million to this initiative, which is being developed in accordance with the plans of the *Northwestern New Mexico Rural Water Supply Project*.

The Navajo-Gallup partnership was further extended when the City concurred with the request by the Navajo Nation, the Governor's office and other agencies for State funding in support of urgently needed water infrastructure serving five rural communities in the northeastern sector of the Navajo-Gallup project service area. Over \$15 million has now been committed by the State to what is referred to as the "Cutter Lateral" project, since this infrastructure will ultimately tie into and be served by the pipeline to be built under the *Northwestern New Mexico Rural Water Supply Project*.

These regional system partnerships have generated broad commitment to the motto: **"Real water to real people in real time."**

Realizing the shortages that are likely prior to the advent of surface water into the City's water supply, the City of Gallup has also risen to the challenge of the region's impending water crisis by exploring and implementing various initiatives to secure its water future – both leading up to and in conjunction with the completion of the *Northwestern New Mexico Rural Water Supply Project*.

- In 2003, the City sponsored a Town Hall on Water, co-facilitated by the public policy group New Mexico First, at which participants adopted a consensus plan to establish Gallup as a model town in the American West in terms of its commitment to secure its water future and cooperate with its neighbors in the "water commons" shared by all residents in the region.
- Emerging from the Town Hall was the formation the Gallup Water Board, which assisted the City Council in the radical revision of the City's water rate structure in support of conservation and the generation of local financing for water infrastructure and future water supply.
- Another initiative was a partnership with the Bureau of Reclamation to study the feasibility of implementing a comprehensive wastewater recycling program utilizing reverse osmosis technology.
- Yet further, Gallup has pursued a permit to develop water supply in water fields east of the City formerly owned and developed by extractive industries.
- Finally, a Memorandum of Understanding is in its final draft stages between the City, the Navajo Nation and the Jicarilla Apache Nation, by which the parties will commit

to ensure that the City is afforded legal access to a share of the water to be supplied by the Navajo-Gallup project.

Within the overall scenario of the Navajo-Gallup project, the City of Gallup remains in full support of the project and of the water rights settlement which is its primary facilitating instrument. At the same time, the City is proactively developing a specific long-range financial plan to be able to afford its share of the cost of the project.

The Economics analysis contained in the project's Planning Report and Draft Environment Impact Statement suggests that the City's ability to pay is fairly close to the threshold formula applied by the federal government in terms of median household income. The somewhat misleading conclusion that might be derived is that the City can readily afford to self-fund its share of the project.

A number of factors mitigate against such a foregone conclusion:

- Gallup's status as a hub commercial center for a broad geographic area results in a unique pattern of impact on the City's infrastructure. Although the current municipal population is about 22,000, the number of people moving around and doing business within the City may soar to between 70,000 and 100,000 people – especially on weekends and on ceremonial occasions. It is essential to understand that Gallup serves a broader service area than its municipal boundaries would indicate. Over 80 percent of the students in Gallup schools are Navajo. The Gallup Indian Medical Center serves the regional Native American population. Due to the lack of water service on the Reservation, area residents regularly use City laundry, car wash and other facilities that increase the demand for water. Higher rates resulting from the City's cost for participating in the new water supply project will be passed on to the low-income residents in the broader regional community, thus affecting the overall "affordability" of the project.
- Although the influx of visitors generates a disproportionately high level of gross receipts tax revenues in the City, the City and surrounding County are severely limited in the development of property tax revenues, and the City is virtually land-locked by public, non-taxable lands on all sides, for which compensation by such funds as Payment in Lieu of Taxes (PILT) is only a fraction of the revenue shortfalls actually occurring.
- Although Gallup's median household income is shown in the Economics report as only a shade or two below the "affordability level" of the project, yet this income figure is deceptive as well, since there is a large gap between the minority of well-to-do households and the majority of low and moderate-income households in the City. Not surprisingly, two-thirds of the City's residential water revenues come from the population group utilizing the lowest quantities of water, that is, fewer than 6,000 gallons per month. These lower water users are predominantly the City's lowest-income households. The City's inverted water rate structure provides some cost protections for these lower users, but these may be insufficient to keep rates within the affordable range for this population.

- The Economics analysis in the Final Report does not take into account the need for replacing aging infrastructure. Even with Gallup's new progressive water rate structure and at maximum bonding capacity, the City's funds are insufficient to meet even current operations, maintenance and replacement costs, much less to develop new infrastructure or participate in a new water supply initiative. Gallup presently has approximately 71 miles of water distribution piping installed prior to 1966, which will need to be replaced over the next 40 years at an estimated cost of \$42.4 million. In addition, a large portion of the remaining 157 miles of pipe currently in service will be 40 to 60 years old at the time Gallup's cost share comes due.
- The City's stake with respect to the Settlement of the Navajo Nation's water rights in the San Juan River is clearly secondary to that of the Nation, the State of New Mexico and the Federal government. With respect to accessing a legal water supply, the City first course of action is to pursue a water source in consultation with the two Indian tribes involved in the project. The City's pursuit of the independent purchase of water rights in the San Juan River would be high in cost, high in controversy and low in feasibility at this point.
- It is the City's position, therefore, that it will need significant Federal funding support for its share of the project costs.

The City is committed, nevertheless, to charting a strong financial course to meet the 25 percent threshold of its share of the project costs. One key piece of the strategy will undoubtedly be investment by the State of New Mexico in a portion of Gallup's share of the project costs. City, County, Tribal and Council of Governments representatives met recently with staff from the offices of the Governor and the State Engineer, and I was very encouraged by the spirit of collaboration in this regard. I will be working with the Governor's and State Engineer's Offices and with the State Legislature on a mechanism to specifically include financial commitments to Gallup over time.

With regard to the City's won commitment to the project cost share, several options are currently under consideration with bond counsel, with a preliminary strategy report to be ready for review by mid-August. However, until such factors as the cost of water, final operations, maintenance and replacement (OM&R) and capital costs, and construction scheduling are determined, it will be difficult for Gallup to determine what its ultimate financial strategy will be. In any event, the approach being pursued is that, in partnership with the State of New Mexico and McKinley County, the city will design and implement a strategy to meet 25% of its project cost share.

All in all, the *Northwestern New Mexico Rural Water Supply Project* represents a "perfect storm" of opportunity for the Federal government to meet the critical water needs of the people in this region of New Mexico, while settling the water rights claims of the Navajo Nation as an essential component of the overall initiative. The project's promise of "**real water to real people in real time**" forms a primary basis for the economic viability of the northwestern quadrant of New Mexico.

The Steering Committee for this longstanding and critical project effort, along with the institutions I represent – the Northwest New Mexico Council of Governments and the New

Mexico State Legislature – urge your support for H.R. 1970, and by implication, for authorization of the *Northwestern New Mexico Rural Water Supply Project*. I acknowledge that the projected costs for this project are high, but we dare not delay any longer in meeting the human and economic needs represented in this initiative.

For our Steering Committee, this worthy cause has been on our watch for a couple of decades, and we hope – now that it’s on your watch as well – that you will not let this opportunity fail.

Thank you for your most favorable and timely consideration of H.R. 1970.