

**Testimony of Jonathan Nez
President of the Navajo Nation**

**Before the
United States House of Representatives
Committee on Energy and Commerce**

**Full Committee Hearing on
“Addressing the Urgent Needs of Our Tribal Communities”**

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Yá’át’ééh Chairman Pallone, Ranking Member Walden, and Members of the Committee on Energy and Commerce. My name is Jonathan Nez. I am the elected President of the Navajo Nation. Thank you for this opportunity to provide testimony addressing several urgent needs facing the Navajo Nation.

During the 1860s, the U.S. Army forcibly removed the Navajo people from their homes and forced at gunpoint to walk nearly 400 miles to Fort Sumner at Bosque Redondo in what is now known as Eastern New Mexico. In 1868, after several years in captivity, our Navajo ancestors persevered and returned to our ancestral homelands after we entered into a treaty with the United States Government wherein promises of education and healthcare, to name a few, were made to the Navajo people. A little more than 150 years have passed since the Treaty of 1868 was signed and subsequently codified by the United States Congress, but the Navajo Nation continues to see broken promises and attacks to our inherent sovereignty as aboriginal people of this great land. Our treaty, a living document, was entered into in good faith and we trust that the U.S. Government will not abandon its promises but make every effort to uphold and make good on the promises that were made.

The Navajo Nation is the largest land-based Native American Tribe in the United States, encompassing over 27,000 square-miles across three states, Arizona, New Mexico, and Utah, including all or parts of thirteen counties. It is roughly the size of West Virginia, and larger than ten U.S. states combined. The Navajo Nation has over 309,000 members with over 154,000 people residing in multi-generational households. The Navajo Nation has a poverty rate of more than 40 percent and sits on some of the most remote, challenging, and sparsely populated terrain in the country.

My written testimony is divided into four parts: Part I provides an update of COVID-19; Part II provides an overview of broadband capabilities in the areas of health, education, and employment on the Navajo Nation; Part III focuses on environmental issues; and Part IV discusses the impact of the closure of the Navajo Generating Station. Throughout this testimony, we also include suggestions on how Congress and Federal Agencies might begin to address the disparities in healthcare, education, energy, and environmental issues in Indian Country.

I. COVID-19 Update

Traditionally, Navajos believe the *Diné Bahane*, the Navajo Creation Story in which Changing Woman created the original clans of the Navajo and bore the Monster Slayer Twins who saved the Navajo from destruction by the *Naayéé*, or monsters. Currently, the Navajo Nation is facing a modern-day monster in SARS-CoV-2, the novel Coronavirus disease (“COVID-19”), likened to other monsters that harms and kills like alcoholism, drug addiction, suicide, etc. The Navajo Nation has named the disease *Dikos Nitsaaígíí Náháást’éíts’áadah*, translated to “Big Cough 19.”

The Navajo Nation continues to suffer under a heightened state of emergency as a result of the rapid spread of COVID-19 since we saw our first confirmed positive case on March 17, 2020. As of July 5, 2020, there are a total of 7,840 confirmed COVID-19 positive cases, and we have lost 378 precious lives.¹ We have tested over 56,599 individuals since this crisis entered our borders, which is about 28.6% of our resident population. Reports from all twelve (12) health care facilities on and near the Navajo Nation indicate that approximately 5,581 individuals have recovered from the virus. For almost two months, the Navajo Nation saw the highest per capita COVID-19 infection rate in the United States, which is directly attributable to a breach of the U.S. federal government’s trust responsibility to the Navajo Nation, a legally recognized obligation of the U.S. to protect tribal treaty rights, lands, assets, and resources, including guarantees for healthcare and infrastructure development.

The Navajo government has taken numerous steps to combat this Monster, beginning with declaring a public health state of emergency with Executive Order No. 001-20, which resulted in the establishment of the Navajo Department of Health Command Operations Center, the closure of the Navajo Nation government offices except for essential employees, the cessation of in-classroom instruction for all schools located within the borders of the Navajo Nation, and the issuance of travel restrictions for governmental employees. Over the subsequent months, Navajo Nation Vice President Myron Lizer and I issued five more executive orders extending the state of emergency due to the growing spread of COVID-19.² The latest order signed June 30, 2020, extends the closure of the governmental offices through July 26, 2020, but may be extended on the recommendation of the Navajo Health Command Operations Center, the Navajo Department of Emergency Management Operation Center, and the Navajo Epidemiology Center.

In addition to the Executive Orders, the Navajo Department of Health (“DOH”) has issued seventeen (17) public health emergency orders, to date.³ The Navajo DOH orders include the following: prohibits mass gatherings; orders the closure of all non-essential businesses; encourages residents to follow the CDC guidelines for preventing the spread of COVID-19; and shelter-in-place orders, with daily curfews and 57-hour weekend curfews; and mandating the use of face coverings in public.

Our people have sacrificed a lot in order to prevent the spread of COVID-19. Due to Navajo Nation leadership’s public health orders, the Navajo Nation’s positive case trend is going down. Navajo people showed their resiliency these last few months by staying home and protecting our elders

¹ @NNPrezNez, Twitter (July 5, 2020, 10:33 PM), <https://twitter.com/NNPrezNez/status/1279966775703007232>.

² Navajo Nation Department of Health, *COVID-19 News and Update*, <https://www.ndoh.navajo-nsn.gov/COVID-19/News-Update>.

³ Navajo Nation Department of Health, *COVID-19 News and Update*, <https://www.ndoh.navajo-nsn.gov/COVID-19/News-Update>.

and culture by not traveling, wearing face masks, and respecting the curfews set in place. I am proud of our people and encourage them all to continue this battle while tribal leadership continues to fight for them here in Washington, D.C.

Though we have taken strong actions to fight this deadly disease, we must confront the reality that only systemic relief can be achieved through full collaboration with the United States, including the opportunity for free, prior and informed consent related to all relief matters affecting the Navajo Nation. This public health crisis has shown us just how imperative it is to enhance our ability to provide effective healthcare, education, economic development, public safety, and other services for our tribal members and communities.

I. State of Broadband Capabilities for the Navajo Nation

The vast geographic scope and widespread population densities throughout the Nation have made broadband coverage to most or all parts of the Nation extremely challenging. Achieving availability of broadband access to the entire Nation can only be achieved with appropriate incentives and subsidies to private sector carriers. The Nation currently has approximately 1,000 communications towers providing broadcast and broadband sites for broadband and broadcast carriers. While 1,000 sites may seem significant, by comparison the Federal Communication Chairman's own State of New Jersey, which contains approximately 8,700 square miles and in almost 1/3 the size of the Navajo Nation lands, boasts in excess of 1,300 communications towers or 130% the number of towers on Navajo Nation lands, and that is in addition to any small cell and rooftop installations which cover much of the densely populated areas of New Jersey.

Of the 1,000 sites on the Nation, approximately 25% are located along the borders of the Nation and along highways. Neutral host tower companies or carriers providing their own tower infrastructure will only do so in connection with deployment of communications equipment by carriers. For understandable economic reasons, new communications infrastructure will not be developed absent a willing and able wireless carrier with a specific requested location. Likewise, private, for profit wireless carriers will not deploy equipment absent the appropriate economics or incentives. Without government economic intervention, justifying the cost to develop a communications towers and to purchase, install and place in service communications equipment in remote areas with low densities of population and on extremely low pricing models is a virtual impossibility. It is for these reasons that successful and far-reaching broadband deployment and availability across the Nation will require governmental incentives and subsidies to the private carriers.

This digital divide deepens institutional inequities in many crucial areas across the Navajo Nation by: (1) putting disadvantaged children further behind in their education; (2) hindering an efficient and decisive government; (3) preventing the provision of critical public health announcements; and (4) limiting the Navajo Nation's emergency health care, law enforcement, and emergency command operation responses. Indeed, COVID-19 highlights the importance of access to high-speed fiber-based telecommunications services for every resident of the Navajo Nation. According to the Navajo Tribal Utility Authority, sixty percent of the Navajo Nation's residents lack fixed internet access, and what broadband access that does exist is consequent to a patchwork of service providers that results in sporadic to non-existent connectivity. The Navajo Nation persistently falls

on the wrong side of the digital divide. Indeed, it would be more accurate to say the Navajo Nation is at the bottom of a digital chasm.

As recent events have emphasized to everyone, high-speed broadband is essential in today's economy. The COVID-19 pandemic has demonstrated that telework, telehealth, distance learning, skills training, and job opportunities, all depend on access to broadband, at home, at schools, in libraries, and in the workplace. With the closure of the Navajo Nation's main library branch in Window Rock, Arizona, the 110 Chapter Houses that serve as branch libraries and all the schools and universities located within the borders of the Navajo Nation, residents are struggling to have consistent and reliable access to broadband than usual.

I am frustrated to report that over half of our 110 Navajo communities lack any broadband access. Some Navajo communities have partial internet access at Navajo government buildings, but residences do not. Even then, the broadband speed is often slow and unreliable. Overall, the Navajo Nation lacks high-speed broadband at affordable pricing across the Navajo Nation which is a significant impediment to the Navajo Nation's growth and survival. Our youth need broadband access to support their education and job prospects in the 21st Century. Our Chapter Houses, libraries, and businesses need broadband to permit the Navajo Nation to compete in today's economy. Our homes need access to broadband. To continue our heritage, the Navajo Nation needs to provide ubiquitous broadband, alongside power and water. To preserve our cultural heritage and traditions, and to sustain the Navajo Nation, high-speed broadband is critical.

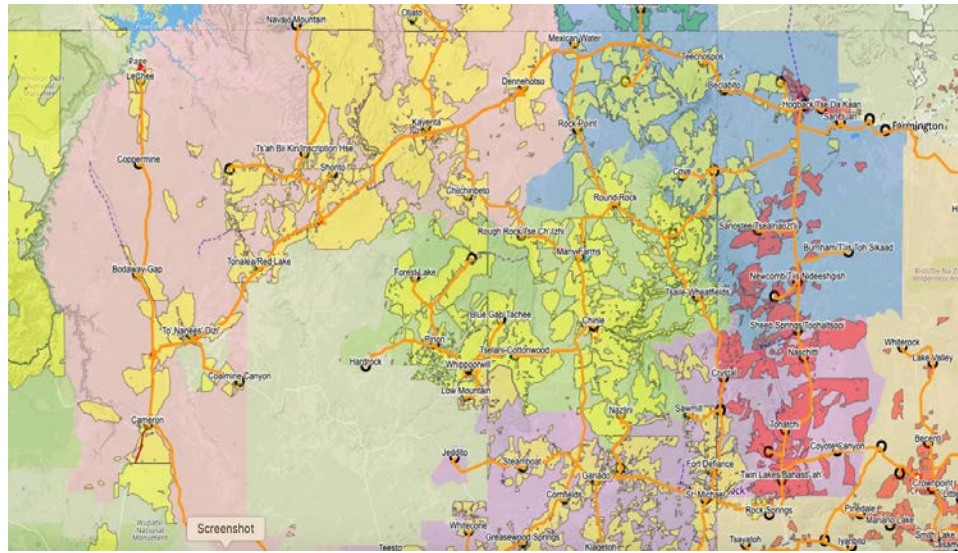
One visual example will demonstrate the dearth of broadband offered in the Navajo Nation. The Federal Communications Commission (FCC) is preparing for Auction 904 under the Rural Digital Opportunity Fund (RDOF), a reverse auction which will permit providers to bid for subsidies for underserved census blocks, where wireless communications today fails to reach the FCC minimum of 25 megabits per second (Mbps) download and 3 Mbps upload, or 25/3.⁴ In return for this 10-year subsidy, the provider gains the right to offer broadband coverage to 100% of the census block phased in over the next 10 years.⁵ In the map below, note how much of the Navajo Nation is unserved by 25/3. In the Auction, the aggregate reserve price for all Navajo Nation blocks is set at over \$433 million, out of \$20.4 billion over two waves of auction.

Image 1: Rural Digital Opportunity Fund (RDOF) – Available Blocks over Navajo Nation⁶

⁴ Fed. Commc'ns Comm'n, Auctions, Auction 904: Rural Digital Opportunity Fund, Summary, <https://www.fcc.gov/auction/904> [hereinafter RDOF]; Fed. Commc'ns Comm'n, Auctions, Auction 904: Rural Digital <https://www.fcc.gov/auction/904/factsheet> [hereinafter RDOF Fact Sheet]; Fed. Commc'ns Comm'n, Auctions, Comm'n Documents, FCC Launches \$20 Billion Rural Digital Opportunity Fund, Fact Sheet, <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0>.

⁵ See RDOF, supra note 4; RDOF Fact Sheet, supra note 4.

⁶ Fed. Commc'ns Comm'n, Reports & Research, Maps, Auction 904 Updated Eligible Areas (pub. June 25, 2020), <https://www.fcc.gov/reports-research/maps/auction-904-updated-jun20-eligible-areas/>.



Eligible areas in AZ/UT

Eligible areas in NM

Note that in the most successful RDOF auction outcome, while broadband may ultimately be available at 25/3 bandwidth to all in a census block, there is still no competition to keep prices low and those offerings to Navajo Nation's entities is still years away, which results in the Navajo Nation being years further behind. The RDOF may be one step in the right direction, but the Nation needs more. The right balance must be struck between federal government incentives and the for-profit economic considerations of private carriers to allow for a successful partnership with the private carriers. The Nation would also look to be a partner in the process. The Nation knows better than any other party the intricacies of its lands and its people. In connection with any grants or incentives covering Navajo Nation lands, such as RDOF or other federal stimulus programs, the Nation should have the opportunity to provide input and approval rights in conjunction with the applicable federal agency responsible for any such grants or incentives.

Application for Universal Service Administrative Company (USAC) E-Rate funding for connecting libraries and head start buildings is in process; when funding is approved, service is more than 12-18 months away. Even then, over two dozen Chapter Houses in the most remote and difficult domains will remain unconnected. Funding under the Coronavirus Aid, Relief, and Economic Security (CARES) Act also provides some short-term options. CARES EDA funding of \$1.5 billion nationwide for Economic Adjustment Assistance (EAA) under Department of Commerce's Economic Development Authority (EDA) is being administered regionally; however, the grant amounts are relatively small, expected to be less than \$7-\$8 million per award. Competition for these funds is high.

While the Navajo Nation during COVID-19 is taking many steps to improve services, and they are all positive, these are only piecemeal and fail to address the real need for high-speed broadband, well in excess of 25/3 speeds.

What is the solution? The Navajo Nation believes the most sustainable, cost-effective solution is to construct a Navajo Nation-owned Broadband Network which provides fiber as middle mile backbone throughout the Navajo Nation, and fixed or other wireless solutions to deliver last mile services to businesses and residences. The Network would support all Government, Education, Healthcare, and Public Safety needs. The Network could connect to regional locations in Phoenix, Denver, Albuquerque, and Salt Lake City. The Network would connect with higher education institutions such as Navajo Technical University, and educational networks like Sun Corridor, Internet-2, to support college and graduate program needs. Digital equity requires that technology capacity exists and can be accessed by all in the Navajo Nation. The Network would support E911 and emergency services. Smart Highways programs, which are being considered in Arizona to provide excess fiber and conduit, should be extended to main roads throughout the Navajo Nation, in all states. Cost efficiencies such as dig-once policies could leverage infrastructure improvements for water and power already planned, but those efforts are also inadequately funded; sufficient, reliable electrical power is required to all Navajo Nation buildings to support broadband. The Navajo Nation could partner with private providers to enable their providing competitive last-mile services.

The Navajo Nation is finalizing its Broadband Plan. Preliminary estimates suggest additional costs for this Network might exceed \$300 million. I believe that the Nation can achieve the broadband coverage its people need, but that success is ultimately tied to three things: 1) partnering with the Nation in connection with grants, subsidies, and other incentives to vet the recipient and the conditions of such awards to the recipient; 2) more awards of such grants and subsidies, and 3) streamlined rules and regulation by the Nation to allow for easier and faster, but responsible, deployment of towers and communications equipment on the Nation lands. The Nation is working on completing the latter in the very near future but will need federal assistance to truly achieve widespread broadband deployment.

a. Health

Overview of the Navajo Health System

As the largest land-based Native American tribe in the country, the Navajo Nation encompasses over 27,000 square-miles across three states and has a registered enrollment of over 300,000 members. Navajo land encompasses portions of three states, Arizona, New Mexico and Utah including all or parts of 13 counties in these states. The Navajo Nation also collaborates with three regions of the U.S. Department of Health and Human Services including Region VI, Region VIII and Region IX.

The Navajo Area Indian Health Service (NAIHS) is divided into 12 regional administrative units tasked with delivering healthcare to American Indians and tribal community members residing in the states of Utah, Arizona, and New Mexico. The federally recognized tribes serviced by NAIHS include the Navajo Nation, San Juan Southern Paiute Tribe, Zuni Tribe, and Hopi Tribe. NAIHS also offers its services to other enrolled tribal members from other tribes who reside in the service area. There are five (5) major health care service facilities that offer direct health care including Chinle, Crownpoint, Gallup, Kayenta, and Shiprock—four (4) of which offer inpatient care facilities. In addition, there are seven (7) health centers providing outpatient care, and an additional

five (5) health stations that provide services in more remote communities. The NAIHS has five (5) P.L. 93-638, contracts and compacts authorized by the Navajo Nation.

For years, health and educational disparities have existed among Navajos and other American Indians and Alaska Natives. While we appreciate the Congressional response allocating \$1.032 billion to Indian Health Service (IHS) under the CARES Act, and \$64 million under the Families First Coronavirus Response Act, it is clear that these resources will be expended long before the end of this pandemic that is ravaging across our most vulnerable populations in Indian Country. The IHS has been underfunded and that has been evident with the level of health care on the Navajo Nation for many years. Unfortunately, when the COVID-19 pandemic reached the Navajo Nation, the underfunded health care system was not adequately equipped or staffed. In this section, I would like to expand on the need for telehealth infrastructure, the need for water and sanitation facilities, and health facility construction.

Telehealth on Navajo Nation

The COVID-19 pandemic has transformed the way healthcare services are provided. Mainstream health facilities quickly adapted to the needs of their patients and transitioned to virtual and telehealth-based delivery of care. While that is a great leap in services for the health field, tribal healthcare systems are behind in this transition. As mentioned earlier in this testimony, there is a significant lack of broadband infrastructure across the Navajo Nation. Many Navajo people cannot access telehealth services from the comfort or safety of their homes.

In order to help increase patient access, the Navajo Nation applied for and received \$954,990 in FCC COVID-19 Telehealth Program funds on May 6, 2020. These FCC COVID-19 Telehealth Program funds will equip 145 of our In-Home Community Healthcare workers with laptops, mobile hotspots and software to allow them to send and receive vital healthcare information from the patient's home instead of having to wait until they got back to their office. This is an important step to modernizing our access to healthcare.

During COVID-19, the IHS expanded telehealth services, following the Centers for Medicare and Medicaid Services guidance on easing restrictions on use of telehealth services during the pandemic. IHS used this guidance to reach patients with audio and video telehealth for a variety of clinical services. Due to this, IHS has reported that the agency has experienced an 11-fold increase in telehealth visits, from around 75 visits per week, to 907 visits per week. While this news is encouraging, there are still significant hurdles to overcome in access to telehealth. The Navajo Nation has reported the outdated health information technology system and the difficulty of using that ineffective technology to adequately conduct disease surveillance, reporting, and contact tracing. Additionally, the electronic health records system is inoperable between IHS, Navajo Nation, and other external EHR systems restricting the ease of access to a patient's health records, which makes expanding telehealth difficult. It is critical that this Committee and Congress provide meaningful investments into modernizing tribal and IHS IT systems in order to fully expand telehealth capabilities on the Navajo Nation and throughout Indian Country.

Water and Sanitation Facilities

The outbreak of COVID-19 on the Navajo Nation has largely been attributed to lack of water in the homes of Navajo people. This lack of access prevents individuals to adhere to CDC guidelines

of regular handwashing to prevent spread of the virus. The 3,400 Navajo homes that deprive water and sewer facilities are often in remote areas of the Navajo Nation. These families often must haul water for home and livestock use. For these families, clean water is a scared and scarce commodity. Using their water reserves for regular hand washing is near impossible when a family has to decide between that and safe drinking water. As a result, the COVID-19 pandemic is drastically impairing the health status of the Navajo people.

Access to safe drinking water and sanitation facilities are an extension of primary health care delivery. Safe drinking water supplies and adequate waste disposal facilities are essential preconditions for most health promotion and disease prevention efforts. Additional resources to the IHS Sanitation Facilities Construction Program will help to reduce the backlog of sanitation facilities needed to serve existing homes and will also address the need for sanitation facilities for eligible new homes being constructed annually.⁷ Legislation such as H.R7056 introduced by Congressman O'Halleran and Congressman Young would be a great step towards providing safe drinking water to Navajo people. I am aware this bill has been packaged into the H.R.2 Moving Forward Act, and I hope that whatever infrastructure package is sent to the President's desk, that this bill be in it. Indian Country needs access to clean and safe drinking water.

Health Facility Construction

The Navajo Area Indian Health Service (NAIHS) currently has three health facilities (one inpatient hospital and two outpatient clinics) on the National IHS Health Facility Construction Priority List, with a total combined cost estimate of \$825.6 million. The existing facilities are obsolete with an average age of 49 years and have long surpassed their useful lives. The facilities are grossly undersized for the identified user populations, which has created crowded conditions among staff, patients, and visitors. In many cases, existing services are relocated outside the main health facility. Often to modular office units to provide additional space for medical primary health care and specialty services. Such displacement of medical services creates difficulties for staff and patients and increases wait times, resulting in numerous inefficiencies within the health care system which delays care.

As the existing health facilities age, associated building equipment and infrastructure also deteriorate to a point of failure. The decreased availability of replacement parts for aged equipment and infrastructure ultimately disrupt the already limited medical services. For example, piping systems that provide potable water for health services, frequently experience failures, requiring the systems to be shut down for extended periods of time. This often results in discontinuation of patient care until the appropriate repairs are made.

The rural and isolated conditions associated with the NAIHS health facilities complicates the repair of failed systems and extends the time required to make needed repairs. The constant system failures deplete designated maintenance and improvement funds and requires the use of third-party collections or other funding sources that would otherwise be used for direct patient care. In terms of medical and laboratory equipment, the NAIHS makes every attempt to keep pace with changed

⁷ Indian Health Service, *Annual Report To the Congress of the United States On Sanitation Deficiency Levels for Indian Homes and Communities*, Fiscal Year 2018, https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/Report_To_Congress_FY18_SanitationFacilitiesDeficiencies.pdf.

and modernized technologies; however, due to limited equipment funds, the NAIHS health facilities will typically use equipment well beyond their expected useful life. The construction of new health facilities alleviates many of the problems associated with failing building systems and equipment, while simultaneously modernizing medical, laboratory and information equipment technologies. The Navajo Nation is seeing a downward trend in COVID-19 cases, while states and surrounding communities are seeing a spike in cases. Our dilapidated healthcare facilities along with these surrounding spikes may not allow Navajo citizens to be transferred to outside hospitals if critical healthcare is needed. We are in dire need for modern healthcare facilities in order to care for our own people and the residents of Navajo Nation.

I encourage this Committee and Congress to increase funding for health facilities construction and renovation. Modernizing these facilities will be a sound investment in eliminating the incidences and complications resulting from diabetes and other chronic diseases; and capitalizes on community health promotion and disease prevention programs.

b. Education

As discussed above, many Navajo households do not have access to fixed broadband internet, which in turn affects a vast majority of Navajo students. With the closure of schools this past spring semester, parents, teachers and school administrators saw the need for fixed internet access in every home so that students could continue their important studies. This lack of internet access made it very difficult for schools to deliver academic programs outside the classroom, seriously jeopardizing Navajo students' education. Technological infrastructure is essential to ensure Navajo students are able to exercise their right to all forms of the levels of education. The United States must, in conjunction with the Navajo government, take effective measures to ensure that students whom reside within the borders of their Tribal Nation have the same access to distance learning methods as their urban counterparts via fixed internet.

The move to distance learning illuminates the need for the Navajo Nation to continue providing education in the Navajo language in keeping with Navajo cultural methods of teaching and learning. Investing in culturally appropriate distance learning resources is essential for the continued cultural education of Navajo youth. National funding should support and strength schools' ability to nurture language and cultural development for students through remote instruction. There is a great need to invest in the development of Navajo cultural resources for the continuous learning of Navajo students in order to ensure that the Navajo Nation can control the provision of education in a culturally appropriate and responsive way.

c. Governmental Operations

Many computers across the Navajo Nation government are considered end-of-life hardware and the software installed on these computers are outdated and obsolete. A number of computers are still running Microsoft Windows 7, which was released in 2009, and, which, Microsoft ended support early this year on January 14, 2020. While other computers are so obsolete that software cannot be installed or upgraded. Every office building requires upgrades to its networking infrastructure, including upgrading network equipment and cables. In fact, many offices and programs have been operating without a centralized network server.

Data sharing between programs within the Navajo Nation government is critical, and any upgrades or improvements will also have to provide adequate data security. For example, Division of Social Services and the Navajo Nation Judicial Branch courts often work together and share case files that contain sensitive and protected client information. Any new telecommunications infrastructure and computer system upgrades will have to protect Navajo Nation data from security breaches and hacking.

Many employees are quite literally unable to work from home due to having no access to fixed internet in their home and for not having the necessary hardware that is needed for teleworking, including a computer or personal laptop with the necessary software licenses, hardware and software for virtual private networking, or VPN, and a telephone or cellphone with reliable and consistent cellular service. Upgrading the telecommunications technology and equipment across the government is essential to bringing the Navajo government into the new decade of 2020. One Division within the Navajo government has reported a need of over \$10.5 million to upgrade the network infrastructure, purchase and procure the necessary equipment including computers, networking hardware, software, and cabling, develop and manage a centralized network server, and update workstations including docking stations for tablets or computers.⁸

Upgrading the technology to allow every employee the ability to telework will include the purchasing and procurement of up-to-date laptops, hotspot devices, software licenses, mobile cellular devices, and VPN hardware. But even if every employee had a hotspot device and the necessary equipment, the current broadband infrastructure that exists across the Navajo Nation, including the patchwork of cellular wireless providers in conjunction with the spectrum ownership realities will still result in many employees being unable to realistically telework.

d. FCC E-Rate Program

Once the pandemic hit, the Navajo Nation's schools, Chapter houses and most Government offices were closed. The ability for residents to communicate via their cell phone or access the internet was drastically reduced. The Navajo Nation Cyber Team immediately reached out to the Navajo Nation's current telecom and cellular providers to seek emergency connectivity. Sacred Wind and NTUAW responded immediately by offering to put up emergency Wi-Fi units throughout the Navajo Nation. The intent was to place the Wi-Fi units within 30 minutes drivetime of most residents in the Navajo Nation. To date, approximately 37 of these mobile Wi-Fi units have been strategically placed throughout the Navajo Nation, 31 supplied by NTUAW and 6 by Sacred Wind. Both companies did request that the Cyber Team apply for emergency FCC (E-Rate) funding to recover the cost of these emergency services which are scheduled to run through June 30, 2021. We are working with our congressional leaders to expedite this emergency funding request.

e. Institute of Museum and Library Services CARES Act Funding

The Cyber Team recently applied for two CARES Act IMLS grants, one for \$500,000 and the other for \$150,000. Both were to help set up and extend library services at each chapter house throughout the Navajo Nation. Currently, these services aren't offered at our chapter houses but,

⁸ Navajo Division of Social Services, CARES Act Funding Proposal, May 20, 2020.

because connectivity is so critical, we have applied for additional hardware and staffing to allow residents to come onsite to access the Internet so students have access to educational materials, teachers can communicate with their students, patients have access to their healthcare professionals, and the hundreds of other needs only accessible via the internet.

f. Spectrum Ownership

Extending the opportunity for Tribal Nations to acquire spectrum ownership over their own tribal lands allows Tribes to exercise greater aspects of self-governance. With respect to the Navajo Nation, in relevant part, spectrum ownership would be consistent with the federal government's obligations outlined in the Treaty of 1868. The Treaty of 1868 reserves the Navajo Nation's sovereign ability to exercise criminal jurisdiction over non-Indians and exclude persons from the reservation and provides a guarantee of education to the Navajo people. Today, this treaty obligation in addition to the federal trust responsibility translates to supporting public safety, primary and secondary educational opportunities, and travel restrictions of any person wishing to travel to the Navajo Nation during the COVID-19 public health emergency.

On July 10, 2019, the Federal Communications Commission ("FCC") adopted the Report and Order In the Matter of Transforming the 2.5GHz Band, which at interest here, established the Rural Tribal Priority Window.⁹ Pursuant to the Rural Tribal Priority Window, federally recognized Indian Tribes will now have first priority in applying for the spectrum license of any unassigned frequency channels¹⁰ on the 2.5 GHz spectrum that covers their Tribal lands, provided that the Tribal Nation meet certain eligibility requirements.¹¹ The Priority Window began on February 3, 2020 and is set to end on August 3, 2020.¹²

For the first time ever, this priority window allows Tribes to obtain available spectrum without having to participate in the FCC's bidding process. This eliminates past barriers that have stifled the Navajo Nation's ability to compete with multimillion-dollar telecommunications companies. The spectrum available in this window is a portion of the 2.5 GHz band, consisting of three channels: one 49.5 MHz channel, one 50.5 MHz channel, and one 17.5 MHz channel. Tribal applications may bid for available spectrum not currently licensed to another entity and, if available, the license to use will be issued. Once issued, the Tribal Authority will immediately have the authority to operate in these areas on these channels. In return for the license grant, the spectrum must be put to use. Two years after the license is granted, the licensee must submit evidence that they are providing service coverage to 50% of the population to access service if they choose. Five years after license, licensee must show that 80% of the covered population must have access. If these targets are not met, the license will be canceled, and spectrum will revert to the overlay license holder for the relevant county.

⁹ Transforming the 2.5 GHz Band, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446 (July 11, 2019), <https://docs.fcc.gov/public/attachments/FCC-19-62A1.pdf> [hereinafter 2.5 GHz Order].

¹⁰ Fed. Commc'ns Comm'n, *Auction 904 Initial Eligible Areas* (pub. March 17, 2020), <https://www.fcc.gov/reports-research/maps/auction-904-preliminary-eligible-areas/>.

¹¹ Fed. Commc'ns Comm'n Wireless, 2.5 GHz Rural Tribal Window (March 13, 2020), <https://www.fcc.gov/25-ghz-rural-tribal-window>.

¹² Fed. Commc'ns Comm'n, Wireless, 2.5 GHz Rural Tribal Window (March 13, 2020), <https://www.fcc.gov/25-ghz-rural-tribal-window>.

Once the Window closes on August 3, 2020, any remaining unassigned spectrum licenses will be available to any entity which seeks the licenses. Relevant to the priority window, the FCC recently granted the Navajo Nation’s request for Special Temporary Authority (“STA”) enabling the Navajo Nation to utilize unassigned 2.5 GHz Educational Broadband Spectrum (“EBS”) on the Navajo Nation as part of the Navajo Nation’s COVID19 pandemic response.¹³ The STA is temporary, and is effective for only 60 days.¹⁴ While the STA does not affect the availability of the Tribal Priority Window, the need for the STA demonstrates the harsh reality of rural connectivity across the Navajo Nation.

The Navajo Nation views this as a step forward in equalizing the digital divide that exists for the majority of Navajo citizens and residents of the Navajo Nation. However, the Navajo Nation faces complex regulatory barriers across multiple federal agencies, each with their own rules, regulations and procedures. The multitude of land status that exist throughout Navajo Nation in many places these differing statuses “checkerboard” across the land, where several land owners exist within close proximity to the next, such as land held in fee-simple, land held in trust for the Tribe by the federal government, federal lands managed by the Bureau of Land Management, the National Park Services, and the U.S. Forest Service. Existing federal laws and regulations stymies and complicates the Navajo Nation’s ability to efficiently start and complete critical infrastructure projects.

II. Environmental Issues

a. Impacts of Climate Change on the Navajo Way of Life

As seen across our globe, climate change is real and the effects from climate change are directly impacting our way of life as Navajo people. In Navajo culture, we have profound respect for our environment - the earth is our mother, the sky is our father, and we revere elements and beings in our natural world like water, wind, breath, fire, animals, etc. In the Navajo culture, we must live in harmony to achieve *hozhó*, or balance. Our way of life is part of our identity. The effects of climate change do not only extend to our natural resources, but the impact of climate change can also be observed in the deterioration of our cultural heritage and traditional way of life.

The Navajo Nation Department of Fish and Wildlife (“DFW”) held several Climate Change Adaptation Planning Workshop in March 2018, where community leaders and elders convened to discuss their eye-witness accounts of the effects of climate change and to develop a plan to address climate change. Based off these workshops, the Natural Resources Priorities were established. During these workshops, DFW heard from Navajo elders, grazing officials, land board members, and farm board members who provided eye-witness testimony on their observations of climate change within their communities. From these meetings and planning by DFW, the Navajo Nation through its *Naabik’iyáti’* Committee found it to be in the best interest of the Navajo Nation and

¹³ Federal Communications Commission, FCC News, *FCC Grants the Navajo Nation Temporary Spectrum Access to Meet Increased Wireless Broadband Needs During COVID-19 Pandemic*, (April 17, 2020), <https://docs.fcc.gov/public/attachments/DOC-363803A1.pdf> (last visited June 8, 2020).

¹⁴ *Id.*

the *Diné* (Navajo people) to accept and approve the Climate Adaptation Plan for the Navajo Nation.¹⁵ On September 5, 2019, the plan was adopted by the Navajo Nation as the official Climate Adaptation Plan for the Navajo Nation.¹⁶

Testimonies and observations provided at the Climate Adaptation Planning Workshops expressed observations on how climate change has affected traditional practices such as sheep-herding, where Navajo youth use ATVs or vehicles, as opposed to walking or using horses, when taking the sheep out to graze or youth who do not have any interest in living off the land. Other observations of climate change effects include less snow fall during the winter months, hotter winters, the drought which effects agriculture, cattle raising, and the irrigation systems that become filled with sand, less vegetation growth due to expanding sand dunes, and growth of invasive and noxious plants, to name a few.

Perhaps one of the most destructive forces of climate change is the prolonged drought that has been plaguing the Southwest on and off for two decades.¹⁷ This drought affects so many facets of the Navajo way of life, including ranching, agriculture, gathering of traditional medicines, and the Navajo ability to be self-sufficient on the land without needing to rely on hauling water, purchasing hay and feed, and grazing cattle far away from one's home. The sand dunes that exist throughout the Navajo Nation are directly attributable to the drought.¹⁸

Navajo Nation has seen an increase in the number of wildfires in the past two decades. A number of massive wildfires in the past few years have even displaced hundreds of Navajo families. Right now, the Navajo Nation is battling a wildfire that has grown to 12,840 acres near Wood Springs, Arizona. As of this testimony, no lives or structures have been lost but one *hogan*, a residential/ceremonial home, sustained some damage by the fire. With the ever-increasing probability of wildland fires occurring on the Navajo Nation, the need to conduct more forest thinning activities is important. The Navajo Forestry Department has identified areas where forest thinning activities need to occur, however the need to abide and follow the National Environmental Policy Act ("NEPA") is long and tedious. In addition to having to follow this process, the Bureau of Indian Affairs will also insert their own internal review process, thus creating a process that will require additional time before a project is actually implemented.

b. Drinking Water

In the arid Southwest, every drop of water is valuable, increasing the need to protect precious water sources and water quality. On the Navajo Nation, over 40 percent of Navajo Nation households do not have running water and rely on hauling water to meet their daily needs. The Navajo Nation currently accesses approximately 20 groundwater aquifers ranging in various depth and capacities. Of the nearly 174,000 Navajo residents across the Navajo Nation, about 30 percent do not have access to reliable, clean drinking water and roughly 40 percent lack running water in their homes.

¹⁵ Navajo Nation Council, Press Releases, Navajo Nation Council Climate Change Adaptation Plan, Sept. 2019, http://www.navajonationcouncil.org/pressReleases/2019/SEP/Navajo_Nation_Council_Climate_Change_Adaptation_Plan.pdf.

¹⁶ Navajo Nation Division of Fish and Wildlife, Climate Adaptation Plan for the Navajo Nation, Dec. 2018, <https://www.nndfw.org/docs/Climate%20Change%20Adaptation%20Plan.pdf>.

¹⁷ ITEP http://www7.nau.edu/itep/main/tcc/Tribes/sw_navajo.

¹⁸ ITEP http://www7.nau.edu/itep/main/tcc/Tribes/sw_navajo.

Some people haul water more than 50 miles to replenish their cisterns. Drought is frequent and pervasive on the Navajo Nation and we are in need of reliable and detailed water infrastructure.

The scarcity of water increases the impact of water pollution due to the concentration of contaminants. Those contaminants impact wildlife, plants, and fisheries. Our wildlife is part of Navajo culture, and so the impact extends to traditional uses of these resources. Navajo traditional ceremonies and practices use feathers from specific birds and pelts and oils from specific animals. Numerous plants and insects are also used for traditional medicines for the restoration of individual harmony and balance. Many of these plants and other wildlife are found in ephemeral waters and wetlands.

Impacts on water quality has deleterious economic effects for the Navajo Nation. Adequate supplies of clean water are essential for economic growth, including tourism. The Navajo Indian Irrigation Project uses water from the San Juan River (Navajo Reservoir) to irrigate farmland managed by the Navajo Agricultural Products Industry. The Navajo Fish & Wildlife Department issues permits for hunting and fishing, which not only assist in the regulation and maintenance of wildlife resources but also are a source of tribal revenue.

Therefore, the importance to the Navajo Nation in protecting the uses of its waters for drinking and other domestic uses, recreation, fish consumption, aquatic and wildlife habitat, agriculture, and livestock watering cannot be overstated. We will fully defend our water rights.

Bonita Peak Mining District Superfund Site

The Gold King Mine spill in August 2015 was a wake-up call for the Navajo Nation regarding the significant role that mines in the Bonita Peak Mining District (BPMD) have on San Juan River water quality. Indeed, the impacts from this spill are still being felt by Navajo communities along the San Juan River today. Because of this tragedy, the Navajo Nation supported adding BPMD to the Superfund National Priorities List in September 2015.

The BPMD is a major source of metals within the San Juan River watershed, decisions made by USEPA regarding remediation actions in this area pose a major concern for the Navajo Nation and clearly contribute to the health and safety of the Navajo people and our environment. It is therefore imperative that USEPA take our concerns seriously and include us in the decision-making process at BPMD.

Regulation of the Navajo Gallup Water Supply Project

The Navajo-Gallup Water Supply Project (NGWSP) is a major infrastructure project that will convey a reliable municipal and industrial water supply from the San Juan River to the eastern section of the Navajo Nation, southwestern portion of the Jicarilla Apache Nation, and the city of Gallup, New Mexico via about 280 miles of pipeline, several pumping plants, and two water treatment plants. These areas currently rely on a rapidly depleting groundwater supply that is of poor quality and inadequate to meet the current and future demands of more than 43 Navajo chapters. Therefore, the completion of NGWSP is both long awaited and highly anticipated.

Though the project will bring about much needed water infrastructure, the Navajo Nation has concerns regarding the regulation of NGWSP. It is the Navajo Nation's position that the best

practice for regulating NGWSP and any associated facilities that will be operated by its Navajo Tribal Utility Authority (NTUA), is a single environmental agency regulatory approach wherein NTUA reports all compliance reporting and regulatory oversight coordination to the Navajo Nation's Environmental Protection Agency (NNEPA). The following information supports this regulatory approach for the entire NGWSP.

The NGWSP facilities to be operated by NTUA primarily serve Navajo communities and existing NTUA operated community water systems. NTUA and NNEPA have an established relationship for delivering safe drinking water on the Navajo Nation. This existing relationship can be extended to the NGWSP facilities as NTUA begins operating such facilities for the delivery of water to Navajo communities.

The introduction of a regulating agency other than NNEPA will add complexity and cost to NTUA operation of NGWSP Facilities. The increased costs come with the dual reporting nature required when multiple environmental agencies regulate. Additionally, NTUA would need to coordinate with different agencies for different Facilities in the normal course of operating and maintaining such Facilities. As an example, NTUA would have to coordinate with the USEPA, New Mexico Environmental Department (NMED), and NNEPA on Cutter Lateral pipeline, water storage tanks, and various facilities constructed under Reach 16.3 of the NGWSP. Furthermore, even if the laws and drinking water standards are relatively consistent across the USEPA, NMED, and NNEPA, the application of the drinking water standards, reporting requirements, permitting requirements, and compliance coordination will differ across the three regulating agencies mentioned above. Therein lies the difficulties of working under a multi-agency regulating environment.

NTUA has consistently requested a single regulating approach to the NGWSP. A policy issue may also arise for the NNEPA where other regulating agencies have oversight of facilities located on Navajo lands. NTUA has full confidence in the abilities of the NNEPA as the primary regulating agency for all NGWSP Facilities. Furthermore, NTUA is a 100% wholly owned Enterprise of the Navajo Nation and should be regulated by the Navajo Nation's Environmental Protection Agency. The Navajo Nation should not allow encroachment of State jurisdiction of oversight of a Navajo Nation Enterprise operating a Navajo Nation utility. The Navajo Nation EPA worked many years to gain primacy to gain location oversight responsibility and authority and should not relinquish that in any shape or form. It is a form of sovereignty that should not be regressed.

The COVID-19 crisis adds additional urgency in bring long-term and sustainable water sources online to serve Navajo communities. Resolving the regulating agency into a single agency approach affords the Navajo Nation and its enterprise, NTUA, the opportunity for focusing on bringing connections and water service to more Navajo families to aid in the prevention of the continued spread of the virus that causes COVID-19.

Consequently, the Navajo Nation calls upon the United States to support NNEPA regulating the sections of the NGWSP operated by NTUA and which deliver water to Navajo communities. This support should be expressed and acknowledged to US Bureau of Reclamation and the State of New Mexico.

Operation and Construction of the NGWSP

In addition to regulatory issues concerning NGWSP, the Navajo Nation, along with NGWSP Participants, will be returning to Congress to seek assistance with issues concerning the operation and construction of it. The Bureau of Reclamation has reported that the current working cost estimate to complete construction of the project exceeds the statutory funding limit. The Navajo Nation is working with the Bureau on a value planning exercise to find recommendations to lessen the gap between the working cost estimate and the statutory limit. In addition, the Navajo Nation has concerns about funding the NGWSP to distribution systems. Finally, the Secretary of the Interior is authorized, in his discretion, to fund the first ten years of operations, maintenance, and replacement costs of NGWSP. The Navajo Nation requests that the Secretary provide the full waiver on OM&R costs. Doing so will ensure the success of the project. Finally, and perhaps of the greatest urgency, we need to resolve all the issues raised herein regarding NGWSP. I say this because we believe that NGWSP, and specifically the Cutter Lateral, could aid in combatting the spread of COVID-19.

Navajo-Utah Water Rights Settlement Act

On June 4, 2020, the United States Senate passed by unanimous consent the Navajo Utah Water Rights Settlement Act (NUWRSA) and we urge the House to pass S. 886 without further delay. Through NUWRSA, the Navajo Nation would receive approximately \$220 million in federal and state funding for desperately needed drinking water infrastructure on the Navajo Reservation in exchange for the Navajo Nation waiving its water-related claims against the United States. Both committees of jurisdiction in the Senate and House have already considered the legislation and unanimously approved the bill. Without access to clean water and adequate sanitation facilities, the Navajo Nation will continue to struggle, and its members will be more susceptible to deadly illnesses such as COVID-19. Again, the Senate passed the legislation by unanimous consent signifying the broad united bi-partisan support for the legislation. NUWRSA is ready for final passage.

c. Solid and Hazardous Waste

Due to the lack of federal funding, the Navajo Nation does not have a department or program that oversees, manages, and implements initiatives related to solid waste reduction, disposal, transport, and long-term storage. As such, illegal dumping on the Navajo Nation continually wreaks havoc on our environment. Besides being an eyesore, chemicals from wastes and certain appliances leach into soil and local waterways causing damage to plants, wildlife, and water quality. Other issues include increased risk of flooding and forest fires, as well as the need for landfills.

Within the waters of the Navajo Nation we have detected elevated levels of flame retardants TCEP, TCPP, and TDCPP. These new and emerging contaminants can be traced to the illegal dumping of foam in couches and chairs, as well as anything else with foam that is being dumped into our Navajo Nation water ways and drainages. Therefore, the Navajo Nation calls upon the United States to provide federal funding to help it address illegal dumping and to develop a comprehensive solid waste management solution for its rural communities and areas, and to develop capacity for a landfill.

d. Air Quality

The Navajo Nation Environmental Protection Agency's Air Quality Department (NNAQ) is responsible for operating and maintaining an ambient air monitoring network on the Navajo Nation. NNAQ uploads collected air quality data to U.S. EPA's Air Quality Systems (AQS) database; which is then used to determine compliance with the National Ambient Air Quality Standards (NAAQS) to protect human health and the environment. The NAAQS consists of six criteria pollutants for which the Navajo Nation monitors four of these criteria pollutants: particulate matter 2.5 (PM_{2.5}, or airborne particles 2.5 microns in diameter and smaller), ozone (O₃), sulfur dioxide (SO₂), and nitrogen dioxide (NO₂).

The program currently has two monitoring stations on the Navajo Nation. One in Shiprock, NM and the other in Nazlini, AZ. The Shiprock station is equipped with federal reference method gaseous analyzers that monitor for ground-level O₃, SO₂ and oxides of nitrogen (NO, NO₂, NO_x). The Shiprock station is also equipped with a 10-meter meteorological tower which measures wind speed, wind direction, relative humidity, temperature, precipitation and solar radiation. The Nazlini station consists of collocated federal reference method monitors that measure filter-based PM_{2.5}. There is a specific need for more federal funding to employ additional monitoring stations across the Navajo Nation. Part of that funding must be utilized to assess emerging environmental areas of concern, such as the transport of radionuclides from abandoned uranium mines. USEPA has only provided funding for one (1) year to NNAQ for an air study in the Cove, Arizona community to assess contaminants of concern associated with abandoned uranium mines in which the Cove community is exposed to and the risk(s) associated with that exposure. Information obtained through this assessment will be beneficial in the on-going investigation and clean-up of surrounding abandoned uranium mines.

Another role of NNAQ is determining the general background pollutant concentration levels on the Navajo Nation and to develop the necessary technical and regulatory capabilities to meet air resource management needs in accordance with the Clean Air Act and its amendments. Considering that, and as a result of current and projected energy development in the region, NNAQ is particularly concerned with monitoring areas of the reservation which may potentially be impacted by significant sources of air pollution. To address this, the Navajo Nation has proposed a rule to establish a minor source permitting program under the Navajo Nation Clean Air Act. Under the proposed Navajo Nation Minor Source Permit Regulations, the Navajo Nation will provide air pollution permits for minor sources to help reduce methane and volatile organic compounds (VOCs) emissions. As proposed, minor sources must not emit more than 5 tpy (tons per year) of VOCs in an attainment area. Also, under the proposed rule, if the Navajo Nation were to become designated as non-attainment, the applicable threshold for a proposed source or modification will be determined based on the designation where the source is or would be located. If the source straddles the two areas, the more stringent thresholds would apply.

Methane emissions not only have an economic impact but also can have an impact on the environment. Methane is a greenhouse gas that contributes to climate change by increasing the atmospheric temperature. The Navajo Nation's proposed minor source rule will help reduce methane emissions by identifying oil and gas facilities on the Navajo Nation through a permitting process. Tracking oil and gas emissions from wells, monitoring the types of oil and gas wells and retaining location information of oil and gas wells will provide a foundation for 5 future

assessments and recommendations on reducing emissions, including planning for regulatory initiatives to further reduce emissions from applicable sources. The Navajo Nation then can provide recommendations to industrial sources such as oil and gas facilities, agriculture, and businesses and homes to lessen emissions.

The “Tribal Minor New Source Review Program for Indian Country”, (76 Fed. Reg. 38784 (July 1, 2011), 40 C.F.R. §§ 49.151-161), currently regulates minor sources on the Navajo Nation. After the Navajo Nation issues its own Minor Source Program regulations, NNAQ will seek to implement this program in place of the federal government. This will give the Navajo Nation greater control over its air resources and will allow the Navajo Nation to regulate emissions of air pollution that may impact the environment, public health and welfare, and cultural and religious resources. The proposed rule also would impose fees to cover the costs of administering the minor source program, including permit application, revision and renewal fees, annual emissions fees, fees for coverage under general permits, and registration fees. Therefore, the Navajo Nation calls upon the United States to support this effort and its pending application with USEPA.

e. Abandoned Uranium Mine Clean-up and Superfund Sites

The Navajo Nation calls for immediate action to address the consequences of the extraction and processing of uranium on Navajo lands. The Navajo people contributed greatly to the WWII war efforts. Not only by the creation of an unbreakable code using our beautiful Navajo language, but also through the millions of uranium ore extracted from Navajo lands for defense purposes by the Federal Government. The United States called for new weapons to be built that needed our uranium and we answered the call to the detriment of our people's lands and health. It is time for the United States government to commit to expeditiously funding a comprehensive and integrated program to address the profound impacts of uranium extraction on the land, health, and culture of our *Diné*.

The legacy of uranium mining on the Navajo Nation

Uranium mining on the Navajo Nation has devastated our lands and our way of life as *Diné*. The impacts have been physical, spiritual, and emotional. On July 16, 1979, the largest radioactive waste spill in the history of the United States occurred in Church Rock, NM, when the earthen dam to the pond holding the mill's uranium tailings was breached. The spill released over 1,000 tons of radioactive mill waste and 93 million gallons of acidic radioactive tailings solution into the Puerco River, traveling downstream through the Navajo Nation to the community of Sanders, AZ, nearly 60 miles west of the spill site. The effects of this spill are still being felt today and may be linked to the discovery of elevated levels of uranium in the local school's drinking water.

According to the U.S. EPA, from 1944 to 1986, approximately thirty million tons of uranium ore were extracted during mining operations within the Navajo Nation for defense purposes by the United States Government. The USEPA states that 524 uranium mines exist on Navajo lands; with possibly more undiscovered. We don't know the actual amount of uranium mine waste left behind. We do know that the legacy of uranium mining and processing in the Navajo Nation has caused unceasing trauma to the *Diné*. Mines have been left unremediated for decades. Navajo families live near radioactive mine contamination, and drink contaminated water. Known health consequences of exposure to uranium and its associated elements include kidney disease and lung

cancer. Despite this, no comprehensive health study of the effects of uranium on the our people has been performed.

Efforts to begin uranium mine cleanup have been slow. Out of the 524 known uranium mines on the Navajo Nation, only 219 have funding secured, and in most cases, the funding covers only initial studies, not full cleanup. Funding to address health impacts, contaminated structures, and other consequences of uranium extraction is not fully secured. Currently there are four Uranium Mill Tailings Remediation Control Act (UMTRCA) sites located within the Navajo Nation. The uranium ore that was mined was processed into yellowcake for nuclear weapons. Radioactive mill tailings were merely capped with clay and rock and left at the former mill sites. The groundwater underneath these sites has been severely impacted with hazardous waste contamination.

The reality is that all uranium mining and processing on the Navajo Nation was directed and controlled by the United States government for the purpose of developing nuclear weapons. The United States has been found to be responsible for cleanup of resulting contamination under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund).

The Navajo Nation's position on uranium cleanup

The position of the Navajo Nation for addressing uranium contamination on Navajo lands and in Navajo water sources is as follows:

1. The United States government should immediately accept responsibility for funding cleanup of all uranium mines, including the remaining known 305 mine sites with no current funding, and including any funding shortfalls that might occur for the mines currently being addressed under existing settlements.
2. The United States government should immediately accept responsibility for cleanup of the uranium processing sites (four on the Navajo Nation and a fifth adjacent to it). Cleanup of these sites should be held to CERCLA standards and should be coordinated and managed jointly with mine cleanups, to ensure consistency, to end the inadequate and less-stringent cleanup efforts currently being managed by the Department of Energy, and to avoid bureaucratic obstacles and delays caused by involvement of the Nuclear Regulatory Commission.
3. All cleanups should incorporate and meet the standards of the Navajo Nation's own laws, including the Navajo Comprehensive Environmental Response, Compensation, and Liability Act.
4. All cleanup efforts should incorporate Navajo fundamental law and the traditional ecological knowledge of the *Diné* people. Navajo people, agencies, and companies should be trained, supported, and utilized for contracting and workforce needs, all in order to facilitate the healing that must take place in order to restore our Navajo people to a state of
5. The United States government should work with the Navajo Nation President, Navajo Nation Council, Navajo Nation Department of Justice, *Diné* Uranium Remediation Advisory Commission, Navajo Division of Natural Resources and its Abandoned Mine Lands Program, and the Navajo Nation Environmental Protection Agency (NNEPA) to

develop a comprehensive cleanup plan and funding package to clean up all sites contaminated by uranium mining and processing.

6. The United States government's primary objective in addressing these issues should be to build the capacity of the Navajo Nation to exercise its sovereignty in leading cleanup efforts for all sites on Navajo lands that are contaminated or scarred by the legacy of uranium mining and processing. USEPA should provide direct funding, mentorship, technical assistance, and training to NNEPA and other involved Navajo Nation agencies.
7. Pending the transition of the cleanup lead to the Navajo Nation, the USEPA should immediately establish and staff a local office in Window Rock, Arizona with authority to manage and coordinate all of the projects outlined in this Position Statement.
8. Cleanup decisions for each site should be made only after extensive outreach to the affected communities and consideration of the views of those most affected by the site, as required by both federal and Navajo law.
9. The United States should fund and conduct comprehensive groundwater studies for all uranium impacted areas and should provide alternative water sources wherever needed.
10. The United States should fund and conduct comprehensive Navajo Nation-wide health studies for the Navajo people to determine the consequences of exposure to uranium and related contamination. Enhanced care and treatment for uranium-related illnesses should be provided, including research and treatment centers dedicated to cancer and kidney disease.
11. All cleanup and health-related efforts should incorporate understanding of Navajo lifeways as they impact potential risk exposure pathways, including the plants we traditionally eat and use for ceremonial purposes, our sheep and livestock, which are primary sources of sustenance, and the water sources our Navajo people use for drinking water and ceremonial purposes.
12. For all Navajo families living in areas impacted by uranium mining where physical or health risks remain, the federal government should provide compensation and replacement housing.
13. The Radiation Exposure Compensation Act, which was intended to provide compensation to uranium workers and their families, should be amended and extended to include all impacted generations of Navajos, and to eliminate the paperwork requirements that have been a severe barrier to just compensation.
14. The federal government should fund a central repository on the Navajo Nation for all uranium-related documentation, including cleanup records, health studies, and historical exhibits regarding the history and consequences of uranium extraction from Navajo lands, with recognition of the Navajo contributions to the United States' success in past wars.

The Navajo Nation calls upon the United States to initiate an intensive, integrated program to address all health, cultural, and environmental consequences of uranium extraction and processing on Navajo lands. The Navajo Nation acknowledges the ongoing efforts of USEPA to clean up

uranium contamination on the Navajo Nation. However, the United States, as the party legally and ethically responsible, must act now in a comprehensive manner to heal the *Diné* and our lands.

III. Energy

Electrification Needs and Projects

There are an estimated more than 10,000 homes on the Navajo Nation that lack electricity. The Navajo Tribal Utility ran an innovate program in 2019 called *Light Up Navajo!*, where brother and sister public power utility companies sent their employees to the Navajo Nation to electrify homes. Last year they lit up 233 homes. The goal for this year was to electrify 300 new homes through *Light Up Navajo!*. However, COVID-19 prevented us from implementing the project this year. This may be one of the more painful experiences as hundreds of families who were expecting to get electricity this year did not.

Without electricity, these families cannot effectively fight off the spread of COVID-19. They also do not enjoy the benefits of mainstream homes who can shelter in place with air conditioning, refrigerators, and internet. I say internet because without electricity, there is no internet. Indeed, without electricity, there is no water. Electricity is necessary for the pumping of water to move it across the Navajo Nation and into homes.

About a decade ago, the United States funded the Navajo Electrification Demonstration Project. The Nation would ask Congress to revisit that program.

Navajo Generating Station Closure

For almost fifty years, the Navajo Generating Station (NGS), a large coal-fired power plant, allowed its utility owners to provide cheap electricity that helped build large metropolitan areas like Phoenix and Los Angeles. The United States, operating through its Bureau of Reclamation (BOR), also had the right to 24.3% of NGS' output, which provided power to pump water through the Central Arizona Project, bringing water to approximately 80% of Arizona's population. NGS and its coal supplier, the Kayenta Mine, both located on the Navajo Nation, provided approximately 1,000 jobs and \$40 million in annual revenue to the Navajo government. Last year, NGS ceased operations, as did the Kayenta Mine. The NGS owners provided short notice, leaving the Navajo Nation little time to mitigate the large negative impacts. The NGS owners should contribute "just transition funding" to assist the Navajo Nation to move away from coal and to assist us with diversifying our economy and energy portfolio. The Navajo Nation is advocating for each NGS owner to contribute \$100,00 per megawatt of their NGS ownership. BOR had an ownership interest in approximately 546MW at NGS, meaning their contribution of "just transition funding" would be approximately \$54,600,000.

IV. Conclusion

As President of the Navajo Nation, I appear before you on behalf of the Navajo people to present some of our greatest needs under this Committee's jurisdiction and to implore you to help address the systemic changes that need to occur for the improvement and advancement of Indian Country. Over the years, we have seen inadequate funding of Federal programs that provide direct services to Indian people such as the Indian Health Services, Bureau of Indian Affairs, Department of

Transportation, Department of Education, and the Environmental Protection Agency. Our dilapidated infrastructure, nearly nonexistent broadband, and attack on our environment and natural resources is in dire need of adequate care and attention.

Our most pressing needs have been highlighted during the COVID-19 pandemic crisis. In fact, our people lack the basic infrastructure needed to survive and combat this monster – water, electricity, broadband, and transportation. Over the past few months, we have called upon Congress to help this Country’s first citizens by revising federal regulations or allowing an expeditious review process for infrastructure projects and by increasing and expediting resources to tribal communities enabling them to combat COVID-19. We humbly ask that our requests be considered since our first nations continue to have the highest infectious rates per capita. Once again, we urge Congress to take swift action to assist Tribal communities.

Navajo tradition teaches us that we must be in balance with the universe, and that when we are out of balance, sickness and suffering will follow. The Navajo people have had to endure great tragedies, but we remain resilient, strong, and secure in knowing who we are and where we come from. Despite incredible odds, we continue to pass on from generation to generation our culture and way of life within the Four Sacred Mountains. Today, I am asking that our environment and natural resources be protected, and our needs be promoted. With the protection of our resource and our participation in the 21st century, we will be able to live in a more harmonious state in our permanent homeland for generations to come.

The Navajo Nation entered into a treaty with the United States in 1868. The federal government, therefore, has a treaty responsibility, as well as a trust obligation, to protect and assist in partnership with the Navajo Nation, in securing our land and resources, which includes the health, safety, and welfare of the Navajo people. I look forward to our continued partnership and am available for any further questions the Committee may have.

Thank you for your attention and consideration. Ahéhee’, thank you.