



NAVAJO NATION DEPARTMENT OF JUSTICE
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**OPINION OF THE ATTORNEY GENERAL
OF THE NAVAJO NATION**

February 3, 2025

The Effect of the Treaty between the Navajo Nation and the San Juan Southern Paiute Tribe and the Northeastern Arizona Indian Water Rights Settlement Agreement on the Navajo Nation Homesite Lease Regulations for San Juan Southern Paiute Members

The Attorney General is the Chief Legal Officer of the Navajo Nation (the "Nation") and issues this Opinion pursuant to her authority under 2 N.N.C. § 1965(A). No adverse action may be taken by the Navajo Nation government against any official or employee of the Navajo Nation government who follows the advice contained in this Opinion.¹

I. ISSUE PRESENTED

What is the effect of the Treaty between the Navajo Nation and the San Juan Southern Paiute Tribe and the Northeastern Arizona Indian Water Rights Settlement Agreement on the Navajo Nation Homesite Lease Regulations for San Juan Southern Paiute tribal members?

II. SHORT ANSWER

San Juan Southern Paiute tribal members are eligible for a Navajo Nation Homesite Lease. Non-members of the Navajo Nation are eligible for a Homesite Lease under certain circumstances as determined on a case-by-case basis. In the Treaty between the Navajo Nation and the San Juan Southern Paiute Tribe, the Navajo Nation committed up to 300 acre-feet annually of water and grant of utility easements. In the Northeastern Arizona Indian Water Rights Settlement Agreement, the Nation affirmed its delivery of water through the Navajo Tribal Utility Authority in a non-discriminatory manner applied to all Navajo Tribal Utility

¹ This Opinion relies on the laws of the Navajo Nation on the date this Opinion was issued. If that Navajo Nation Council amends any of the laws relied on or the Navajo Nation Supreme Court issues a relevant opinion, the advice contained in this Opinion will need to be revised accordingly.

Authority customers. Therefore, the Navajo Nation must facilitate the delivery of water and other utility services to San Juan Southern Paiute tribal members presently residing within the exterior boundaries of the Navajo Reservation.

III. ANALYSIS

Diné bi beenahaz'áanii calls for respecting and honoring relationships and agreements with other nations. See 1 N.N.C. § 202(I). By Council Resolution CJY-69-99, the Navajo Nation approved the 2000 Treaty between the Navajo Nation and the San Juan Southern Paiute Tribe (hereinafter "Treaty"). As set forth in Article XV of the Treaty, the final determination of the San Juan Southern Paiute Tribe's water rights claims is determined by the Little Colorado River Adjudication. The Northeastern Arizona Indian Water Rights Settlement Agreement (hereinafter "Settlement Agreement") resolves any and all water rights claims in the State of Arizona by the Navajo Nation and the San Juan Southern Paiute Tribe, among others, including the Little Colorado River Adjudication. Paragraph 6 of the Settlement Agreement addresses the San Juan Southern Paiute Tribe's land and water rights, including approximately 5,400 acres of land within the Navajo Indian Reservation as the San Juan Southern Paiute Reservation and delivery of up to 350 acre-feet annually of water. Upon the date as of which the legislation approving the Settlement Agreement has been enacted by Congress,² the approximately 5,400 acres of land will be established as a reservation for the exclusive benefit of the San Juan Southern Paiute Tribe, subject to the rights of access under the Treaty. Subparagraph 6.3.1 of the Settlement Agreement states the mechanism for delivery of water is a water services agreement between the San Juan Southern Paiute Tribe and the Navajo Tribal Utility Authority.

Pursuant to the Navajo Nation Trust Land Leasing Act of 2000, 25 U.S.C. § 415(e), and the Navajo Nation General Leasing Regulations of 2013 approved by the Secretary of the Interior, the Navajo Nation is authorized to unilaterally issue leases on its trust lands subject to applicable Navajo law. The Resources and Development Committee of the Navajo Nation Council has final approval authority for all non-mineral leases, rights-of-way, easements and other clearance related to power lines, water lines, and sewer line extensions. 2 N.N.C. § 501(B). The Resources and Development Committee delegated its authority to approve utility access and service line agreements for electricity, water, sewer, and natural gas to the Director of the Navajo Land Department by Resolution RCF-19-00, as amended by

² The Northeastern Arizona Indian Water Rights Settlement Act [will be/has been] introduced into the 119th Congress for approval - BILL NUMBERS.

Resolution RDCS-96-17. The Resources and Development Committee also delegated its authority to issue Homesite Leases to the Navajo Land Department and approved the Homesite Lease Regulations by Resolution RDCO-74-16, as amended by Resolutions RDCMY-53-18 and RDCJA-06-24.

Relevant to the issue presented are the facts that (1) a Homesite Lease is required to process utility access and service line agreements and (2) non-members of the Navajo Nation are eligible for a Homesite Lease under certain circumstances as determined on a case-by-case basis. Pursuant to the Treaty and the Settlement Agreement, the Navajo Nation is obligated to facilitate the delivery of water and other utilities to San Juan Southern Paiute tribal members presently residing within the exterior boundaries of the Navajo Nation, specifically within the approximately 5,400 acres that will be established as the San Juan Southern Paiute Reservation. Therefore, a determination must be made as to whether these non-members of the Navajo Nation are eligible for a Homesite Lease. If eligible, then utility access and service line agreements, including but not limited to the water services agreement called for in Subparagraph 6.3.1 of the Settlement Agreement, can be processed.

Under the circumstances of the Treaty, the Settlement Agreement, and the Homesite Lease Regulations, San Juan Southern Paiute tribal members residing within the approximately 5,400 acres that will be established as the San Juan Southern Paiute Reservation are eligible for a Homesite Lease. This eligibility allows for Homesite Lease applications to be submitted and processed in accordance with the Homesite Lease Regulations.

IV. CONCLUSION

For the reasons set forth in this Opinion, San Juan Southern Paiute tribal members are eligible for a Homesite Lease. The Navajo Land Department is hereby directed to process Homesite Leases for San Juan Southern Paiute tribal members consistent with this Opinion.

Similarly, San Juan Southern Paiute tribal members are eligible for Navajo Tribal Utility Authority services subject to a water services agreement and/or applicable service line agreements. Though the water services agreement is between the San Juan Southern Paiute Tribe and the Navajo Tribal Utility Authority and certain provisions are required by the Settlement Agreement, the water services agreement should closely reflect the service line agreement approved and amended by Resolutions RCF-19-00 and RDCS-96-17, respectively. The Navajo Land

Department is further directed to process a water services agreement and/or applicable service line agreements consistent with this Opinion.

Finally, this Opinion is limited to the case-by-case determination of San Juan Southern Paiute tribal member Homesite Lease applicants subject to the rights and privileges set forth in the Settlement Agreement. All other non-member Homesite Lease eligibility determinations remain subject to the Homesite Lease Regulations and other applicable laws and regulations.

Navajo Nation Department of Justice

A handwritten signature in black ink, reading "Heather L. Clah". The signature is written in a cursive, flowing style with a large initial 'H'.

Heather L. Clah, Acting Attorney General