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NAVAJO NATION STATEMENT ON ARIZONA, ET AL. V NAVAJO NATION CASE BEFORE THE SUPREME COURT OF THE UNITED STATES

WASHINGTON, DC – On Monday, March 20, 2023, the Supreme Court of the United States (SCOTUS) will hear arguments in the consolidated cases of Department of the Interior v. Navajo Nation and State of Arizona v. Navajo Nation.

This case will help determine how water is managed in the West. To understand why, here is the background.

The two questions before SCOTUS are whether the United States has a treaty-based duty to assess the Navajo Nation's water needs and develop a plan to meet them, and whether a lower federal court order requiring the United States to assess the Nation's water needs and develop a plan to meet them would conflict with the Court's decree in *Arizona v. California*, a ruling that limited the circumstances in which the federal government could divert water from the Lower Colorado River.

Navajo Nation President Buu Nygren, the tribe's president, told NBC News the case offers the United States an opportunity to live up to its trust responsibility: "We honored our end of the deal, and they just need to honor their end of the deal," he added.

The Navajo Nation lacks adequate water to meet the needs of its people. The United States promised to assist the Navajo people meet those needs when it entered into two treaties with Navajo leaders. In 1849, the federal government promised to take the Navajo people under its protection and establish a reservation for their exclusive use. And in 1868, the government began to fulfill that second promise by setting aside a small part of the Nation's aboriginal territory as the Navajos' permanent home. By these treaties the United States undertook a duty of trust to the Navajo Nation.

"The Navajo People were asked to not stand in the way of the United States in development of the country. We fulfilled that obligation and went as far as fighting alongside you, including the Navajo Code Talkers in World War II," stated Navajo Nation Vice-President Richelle Montoya.

As the Supreme Court recognized in 1908 in the case of *Winters v. United States*, a permanent home for Indigenous Nations requires water. But the United States has failed to live up to its solemn obligation to make the lands of the Navajo Reservation located in Arizona adjacent to the

Colorado River productive and allow the Navajo people to thrive as their non-Native neighbors in Arizona have done. After repeated requests that the United States specifically address unmet needs on this part of the Navajo Reservation, in 2003 the Nation sued the federal government for breach of trust. The states of Arizona, Nevada and Colorado intervened together with two California irrigation districts over concerns that the Nation's suit would impair their water rights.

This Monday the court will hear that dispute.

Under the *Winters* Doctrine, the Nation has rights to all the water necessary to meet both the past and future needs of its Reservation, with the caveats that the water must not have already been put to use by others when the Reservation was established and that the water is appurtenant to the Reservation. But it has been more than a century since the Supreme Court decided *Winters*, and the Nation's rights to the Colorado River in Arizona have not been addressed by any court. And contrary to the assertions of the states, the Nation is not seeking by its suit to quantify its water rights. Nor is it attempting to upset the scheme for allocating rights to the Colorado River.

Rather, the Nation seeks to have the United States live up to its trust obligations. This is all the Nation was asking the federal government to do when it brought its claims in the lower court seeking to require the United States to assess the Nation's water needs and to develop a plan to meet those needs – necessary first steps in fulfilling the promise of a vibrant permanent homeland for the Navajo people.

Speaker of the Navajo Nation Council Crystalyne Curley said, “This case goes beyond the fiduciary duty of the federal government. The outcome of this hearing may determine the livelihood of our Navajo people now, and for all future generations. The right to water centers on our right to a permanent homeland through our treaties and the prayers of our ancestors since time immemorial. As a child, I grew up in a home without running water and to this day, we still have over 30-percent of our people who don't have access to clean running water in their homes. Our leaders long ago fought for our right to our homeland and that includes the right to water, the right to life.”

The Navajo Nation within Arizona, where this case arose, is in the arid high desert, where water is scarce, and water development lags far behind the rest of the United States. Most Americans have access to water at their fingertips. In contrast, approximately 40% of Navajo people lack access to running water in their homes. Navajo families are required to haul water, often from unsanitary sources and at a high cost. Lack of adequate water supplies on the Navajo Nation contributed significantly to the disproportionately adverse impact of the COVID-19 pandemic on the Navajo Nation, where at times the infection rate on the Nation exceeded everywhere else in the country. These abject deficiencies stand in stark contrast to most homes in the United States that rely on indoor plumbing and running water as basic amenities.

“Growing up as a child herding sheep in Coppermine Chapter, Western Agency, close to the mainstem Colorado River, today my family and many relatives continue to haul water...” stated Navajo Nation Water Rights Commissioner Chair, Joelynn Ashley, Western Agency Commissioner. “I am here to hear what the highest court will decide for our present and future water rights, for our great Navajo Nation.”

The Navajo Nation is asking the U.S. Supreme Court to rule in its favor and confirm that it has stated a viable claim against the federal government and permit the Nation to return to the District Court to present its claim that the United States as the Nation's trustee has an enforceable duty to fulfill its treaty promises that the Nation will have access to the water it needs to support a flourishing permanent homeland.

"I have three Harvard degrees, but my mother still has to haul water. I just want my people to be treated like other Americans. Water is life, and I want my people to have access to that in our homeland, just as our great leaders negotiated for when they ceded vast rights almost two centuries ago," stated Navajo Nation Attorney General Ethel Branch.

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