



NAVAJO NATION HUMAN RIGHTS COMMISSION

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Statement by the Navajo Nation Human Rights Commission Executive Director *To clarify free, prior and informed consent*

SAINT MICHAELS, Ariz.—Navajo Nation Human Rights Commission (Commission) Executive Director Leonard Gorman was recently quoted in the Gallup Independent on April 14, 2012 in the article *Panel: Water a basic right* for saying “[a]s far as I can tell, the Navajo Nation has not violated any human rights” as it relates to the United States Senate’s Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012 (SB 2109).

For over a decade the Navajo Nation, on behalf of the Navajo people, advocated in Geneva, Switzerland for the adoption of the U.N. Declaration on the Rights of Indigenous Peoples (U.N. Declaration) by the 192 nation-states. One of the legal principles and standards recognized by the U.N. Declaration is indigenous peoples have the right to consent to their resources being affected by respective nation-states. Currently, the Navajo Nation is in prime position to apply U.N. Declaration within the context of water rights. The Navajo Nation must follow its previous stances on free, prior and informed consent (FPIC).

Navajo tradition teaches us that water is life. Water is used in everyday life from ceremonies to growing crops and preserving livestock. Water is one of four sacred elements included in sacred medicine bundles. The U.N. Declaration vindicates Navajo perspective on water and provides that water is a resource that the Navajo people must give free, prior and informed consent.

The Navajo people must be provided enough information to make a knowledgeable decision. Free, prior and informed consent requires the presentation and understanding of the Navajo Nation Department of Water Resources’ water strategy plan and the peoples’ traditional ownership and usage. In addition, other factors must be considered such as, including but not limited to, the Navajo Nation Chapter’s water strategies, the population growth and economic and infrastructure development plans on the Navajo Nation. The Navajo public hearings on SB 2109, begins today Tuesday, April 17, and the Navajo people must ask relevant questions and actively participate to gain the information.

An entire process should unfold to determine if a human rights violation will occur or has occurred regarding SB 2109. First, the Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012 terms must be disclosed. The Navajo people have the right to know the terms of the settlement agreement because they are the stakeholders of the

resources on the Navajo Nation. Second, the terms of the agreement should be translated into Navajo and relayed to all people who use water and would be impacted by the settlement. Third, the water settlement should be reconciled against traditional Navajo water customs and use to determine if the traditional customs and usage is damaged by the settlement.

Currently, there are two Navajo Nation decision-making processes for the people to give their consent to the Navajo Nation. FPIC may be obtained through the Navajo Nation governance system whereby the Navajo Nation Council represents the constituents' perspective when voting on the matter. Alternatively, the Navajo people may give their consent by vote either through the referendum process, where the Navajo Nation Council chooses to place the matter on a ballot or through the initiative process where the Navajo people petition for the matter to be placed on a ballot. Navajo must also provide consent to the United States for the FPIC standard to be met.

On April 6, 2012, the Commission met with the Navajo Nation Water Rights Commission where I recommended to both commissions to have the Navajo people initiate a petition and decide "yes" or "no" to the water rights settlement introduced by Senator Kyl (R-AZ). By not exercising this right it may ultimately indicate the Navajo people are leaving it up the Navajo Nation Council to decide.

If none of these actions occur regarding SB2109 and a decision was made to enter into the water rights settlement without the Navajo people and Navajo Nation consent, then yes, a human rights violation occurred. The decision on the water rights settlement is left in our hands, the Navajo people.

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