NNHRCMAY-18-12

Resolution of the
Navajo Nation Human Rights Commission

Urging the Compliance with the Free, Prior, and Informed Consent Standard Outlined by the United Nations Declaration on the Rights of Indigenous Peoples by which the Navajo People Have a Right to Participate in the Final Decision Regarding when Diné Land, Territories, Water Resources and Other Resources are Negotiated Such As the Navajo-Hopi Little Colorado River Settlement Act of 2012

WHEREAS:

1. Pursuant to 2 N.N.C. § 920, the Navajo Nation Human Rights Commission (herein referred to as "Commission") is established in the Legislative Branch as an entity of the Navajo Nation government; and

2. The Navajo Nation and Diné people advocated for the rights of indigenous peoples at the United Nations in Geneva, Switzerland on drafting the Declaration on the Rights of Indigenous Peoples. The Navajo Nation advocated for 15 years before the United Nations that the Diné people have the right to the protection and preservation of lands, territories and resources, and that the resources belong to the Diné people; and

3. The United Nations Declaration on the Rights of Indigenous Peoples ("Declaration") was adopted by the United Nations General Assembly on September 13, 2007 where the United States of America, Canada, Australia and New Zealand voted against the Declaration. However, by December 2010, each of the four nation-states reversed their decisions and announced support for the Declaration; and

4. The Declaration's Articles 26, 27, 28, 29 and 32 directly address rights associated with indigenous lands, territories and resources. Water is a Navajo natural resource. Article 26 indicates that,"(1) Indigenous ***peoples*** have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and (2) Indigenous ***peoples*** have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired" (emphasis added). In the case of the Navajo Nation, water belongs to the Diné people; and

5. Resources include the surface and subsurface waters on lands and territories traditionally owned and used by the Diné people are fundamental, sacred and spiritual sustenance to the Diné people since time immemorial. Diné traditional values and customs direct that Diné people must conserve and appropriately use water in order to sustain the Navajo people for the future. Water is intricate to the Diné people as it is not only a fundamental sustenance but also woven into the daily lives of the people. Water is in the Diné clans such as Tó'áhání, Tábąąha, To'aheedlíinii, Tóhdich'íinii, Tótsohnii, Tó Baazhní'ázhi, to name a few. Also, Diné traditional narratives provide that Diné journeyed through aquifers through a female reed in the southwest region of what is now known as the United States of America, specifically around the four corners region which is the Diné female heart of the

earth, to arrive at surface of the third world after the horned toad and before the turkey. Moreover, water is part of every ceremony conducted by the Diné people; and

6. One of the fundamental standards of indigenous human rights recognized by the Declaration is that when lands, territories and other resources are to be taken, indigenous peoples have the right to Free, Prior, and Informed Consent, meaning that:
    a. Free: indigenous peoples concerns must freely secure the information without coercion,
    b. Prior: the information must be shared in advance of a final decision,
    c. Informed: the information shared must be fully understood which include the information shared in their own languages,
    d. Consent: indigenous peoples must consent to the taking of their lands, territories and resources; and

7. Each element of Free, Prior, and Informed must be met first in order to proceed to the Consent element of the Free, Prior, and Informed Consent standard where the Diné people and Navajo Nation consents through the voting mechanism for the acceptance or objection to negotiating resources. Final consent may be obtained pursuant to Navajo Election Laws, Title Eleven of the Navajo Nation Code, the Diné people have the right to petition to vote on an initiative in order to enact law on the Navajo Nation or in their respective chapter(s), or the Navajo Nation Council may refer to the Diné people a referendum measure for the people to directly vote on a legislative measure; and

8. United States Senator Jon Kyle introduced Senate Bill 2109 entitled the Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012. While the bill is intended to permanently settle the water rights of the Diné and Hopi peoples as it pertains to the Little Colorado River, it also contains provisions stating that the Navajo Nation will forever waive any other water rights claims. The Navajo people was not informed of the proposed settlement until April 2012 when the Navajo Nation Water Rights Commission conducted several public meetings only on the Arizona side of the Navajo Nation; and

9. In order to fulfill the international human rights standard on free, prior and informed consent, adequate time be set aside and information be disseminated, in a transparent manner, to the Navajo people in order for the people to fully understand and comprehend in their own language the content of Senate Bill 2109 and the settlement agreement. The Navajo people are being requested to respond in a short time frame to a weighty legislative measure that affects them not only on a daily basis but generations into the future. Placing the Navajo people in a position to respond to a complex legal issue without freely informing them in advance and making decisions based on a transparent process is violating their right to free, prior and informed consent human rights standard; and

10. By Resolution NNHRCOCT-8-10, the Commission recommended that the Navajo Nation Council refer the water rights settlement affecting the rights of the Navajo people as they pertained to San Juan River to the Diné people. However, the Navajo Nation Council did not refer the legislative measure to the Diné people; and

11. The Commission finds it in the best interest that the Diné people, as stated in the Declaration, exercise their right to participate in the final decision regarding the use and disposal of their lands, territories and water resources such as surface and subsurface waters on lands and territories, and other resources traditionally owned and used by the Diné people.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Human Rights Commission hereby determines that the Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012 directly violates the human rights of the Diné people as the Diné people did not have a direct voice and exercise their right to participate in a final decision regarding Diné water resources and other resources under negotiation.

2. The Navajo Nation Human Rights Commission, therefore, recommends that Navajo Nation Water Rights Commission, Navajo Nation Council, and Navajo Nation President and Vice President vehemently reject the Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012 Senate Bill 2109, companion House Bill 4067, and the Navajo-Hopi Little Colorado River Water Rights Settlement Agreement.

3. The Navajo Nation Human Rights Commission further recommends that the United States of America and Navajo Nation government comply with the international human rights standard of free prior and informed consent as it relates to the Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012 by ensuring that adequate and significant time is set aside to inform the Navajo people and ensure that they have a direct input in the decision to approve or disapprove the settlement act.

4. The Navajo Nation Human Rights Commission further recommends that the following be the threshold standard to satisfy the free, prior and informed consent requirement when negotiating settlements, the taking of, and/or returning lands, territories and resources, surface and subsurface, that are traditionally owned or otherwise acquired by the Navajo people:
    a. Free: Navajo people freely secure and receive the information without coercion, in a transparent manner, and without incurring cost to obtain the information;
    b. Prior: the information must be shared with the Navajo people well in advance of a final decision, including but not limited to, information such as multi-year development plans that affect the lands, territories and resources concerned and resource strategy plans;
    c. Informed: the information shared must be fully understood by the Navajo people, which include the information shared in the Navajo language, audio and visual information presented in a manner that all Navajos comprehend the content of the information, and institute a mechanism that illustrates comprehension by the Navajo people;
    d. Consent: Navajo people must consent to the taking of their lands, territories and resources, surface and subsurface, by referring a referendum vote to the Navajo

people so that eligible Navajo electorate can cast a ballot; prevailing "yes" vote is consenting and prevailing "no" vote is not consenting.

5. The Navajo Nation Human Rights Commission further hereby directs the Office of Navajo Nation Human Rights Commission to transmit this resolution to the Navajo Nation Council, Navajo Nation Water Rights Commission and Navajo Nation President and Vice-President.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting at St. Michaels, Navajo Nation (AZ), at which a quorum was present and that same was passed by a vote of 4 in favor and 0 opposed this 21st day of May, 2012.

Duane H. Yazzie, Chairperson
Navajo Nation Human Rights Commission