Testimony of the Honorable Dr. Buu Nygren, President of the Navajo Nation
Before the U.S. Senate Committee on Environment & Public Works
Regarding the 50th Anniversary of the Safe Drinking Water Act

Good Morning, Chairman Carper, Ranking Member Capito, and esteemed members of the Senate Committee on Environment and Public Works. I appreciate the opportunity to provide this testimony on behalf of the Navajo Nation ("**Nation**") regarding the Safe Drinking Water Act of 1974.

The Navajo Nation is the largest Native American tribe in the United States, encompassing over 17.5 million acres, or 27,000 square miles, across rural Arizona, New Mexico, and Utah. The Nation has over 400,000 tribal citizens, about half of whom reside on the reservation.

In 1868, the United States entered into a treaty with the Navajo Nation, committing to provide healthcare, education, and agricultural support and to promote the general welfare of the Navajo people—the Diné forever. This treaty establishes a legal and moral obligation on the part of the U.S. government to assist the Navajo Nation in addressing the myriad challenges we face in ensuring the well-being of our people within our ancestral homelands.

In keeping with the spirit of our government-to-government relationship, as established in the Treaty of 1868, this testimony reflects our perspectives and priorities as we continue to address the important issue of access to safe drinking water.

Navajo Implementation of SDWA

For decades, many Navajo families have struggled with limited access to safe drinking water. The passage of the Safe Drinking Water Act ("**SDWA**") in 1974 marked a significant milestone, allowing the Navajo Nation and other tribes to establish their own drinking water standards and enforce regulations. This empowerment gave tribes the tools to manage water quality within their reservations, a crucial step in addressing the long-standing challenges Native American communities face in securing clean and reliable water sources.

Building on the framework established by the SDWA, several partnerships and initiatives were launched to further address water access and quality challenges on Navajo land. These collaborative efforts sought to develop comprehensive systems for monitoring and improving public water supplies, solidifying the foundation for tribal sovereignty in water resources management.

Through collaboration, the United States Environmental Protection Agency ("**USEPA**"), Region 9, and the Indian Health Service's Office of Environmental Health and Engineering ("**IHS-OEHE**") worked together to inventory drinking water sources and ensure that sanitary survey inspections were conducted. Building on this effort, on December 10, 1986, IHS-OEHE collaborated with the Division of Water Resources to establish the Navajo Public Water

Systems Supervision Program ("**PWSSP**") under Title 22, Navajo Tribal Code, Chapter 7, Subchapter 15. This program was guided by the Resolution of the Navajo Nation Council (CD-57-86), which affirmed:

"*The Navajo Nation, as a sovereign government, has an obligation to its citizens and all others present within the Navajo Nation to ensure that public water supply systems operating within the Navajo are providing safe, healthy water.*"

The program and regulations were formally incorporated into the Navajo Nation Water Code in 1986, laying the foundation for ensuring safe drinking water across the Navajo Nation.

The United States Congress amended the Safe Drinking Water Act (42 USC 300F, et seq.) to authorize tribal governments to assume primary responsibility, similar to states, for regulating and controlling public drinking water supply systems. In July of 1987, a Memorandum of Understanding between the Navajo Tribe and the Navajo Area Indian Health Service established a framework collaboration to support project development and construction reviews, sanitary survey inspections, and support services in the event of a water emergency. Under this agreement, IHS-OEHE worked with the USEPA Region 9 to conduct inventories and routine inspections, ensuring that public water systems were informed of and compiled with sampling requirements.

The Navajo Public Water Systems Supervision Program was established in 1991 with the support of a United States Environmental Protection Agency grant. In 1995, the Council reorganized and separated the then Navajo Environmental Protection Commission from the Natural Resources Division. The Commission was renamed the Navajo Nation Environmental Protection Agency. Today, the Navajo Nation Environmental Protection Agency operates as an independent division within the Executive Branch of the Navajo Nation government and is the largest and most sophistical tribal EPA in the United States.

Since 1991, the Navajo Nation EPA has developed a program to ensure that piped water to homes, businesses, and schools is sampled routinely for several drinking water contaminants and to ensure compliance with the SDWA. The Nation formally adopted the "Navajo Nation Safe Drinking Water Act" on July 31, 1995.

The PWSSP developed the program using 40 Code of Federal Regulations Part 141 and 40 CFR Part 142. The federal Safe Drinking Water Act allows tribes to submit a primary enforcement authority (primacy) application to the USEPA. The application consisted of the Navajo Nation Safe Drinking Water Act, the Navajo Nation Primary Drinking Water Regulations, a list of public water systems, and a jurisdictional map with supporting documents showing the water system in the Navajo Nation. The PWSSP submitted several Navajo codes along with the initial application demonstrating the Navajo Nation's capability, including the Navajo Nation's court policies, the Division of Health's laws, regulations, policies, and other supporting documents.

The Navajo Nation Primary Drinking Water Regulations ("**NNPDWR**") was adopted on March 21, 1996, and includes requirements for sampling and reporting of approximately 90

contaminants. The regulations were updated again to include Stage 1 Disinfection by Products, Consumer Confidence Reports, Enhanced Surface Water Treatment, Operator Certification, Minimum Design Standards, Construction Permitting, and Well Head protection, Secondary Drinking Water Standards, Consecutive Systems and Cross Connection Control and Backflow Prevention on April 8, 2004.

Progress with SWDA

Addressing water access challenges involved identifying and addressing the unsafe use of livestock water sources by Navajo families for drinking purposes. During an inventory of public water systems, the IHS-OEHE discovered that many families were hauling drinking water from windmills and other sources intended for livestock. In response, USEPA Region 9 assigned formal public water system identification numbers to these sources to track and regulate their use. At the request of the Navajo Nation Council, USEPA Region 9 removed all livestock sources from the official inventory of public water systems and issued public notices to clarify that these sources were altogether unsuitable for human consumption.

This collaborative effort marked a critical step in safeguarding public health while raising awareness about water safety. Despite these advancements, challenges persist, with thousands of Navajo families still lacking access to piped water. The Navajo Nation remains committed to working with the IHS and other partners to improve access to clean drinking water, ensuring that every family has the resources they need for a healthy and dignified life.

The NNPDWR have made significant strides in aligning with advanced water quality standards to safeguard public health. On July 8, 2010, the NNPDWR were updated to adopt Enhanced Filtration and Disinfection methods to improve water treatment processes and ensure the removal of harmful contaminants. These updates also included Initial Distribution System Evaluations, which assess water quality within distribution systems, and the implementation of Stage 2 Disinfection By-Products ("**DBP**") regulations to reduce potentially harmful by-products formed during the disinfection process. Additionally, Enhanced Filtration rules were established to address Cryptosporidium, a dangerous waterborne pathogen, and the Ground Water Rule was introduced to improve the safety of groundwater systems by requiring robust monitoring and preventive measures.

The most recent update to the regulations occurred on October 22, 2018, including Aquifer Protection measures and the Revised Total Coliform Rule. The Aquifer Protection measures are designed to safeguard groundwater sources from contamination, ensuring a long-term, reliable supply of clean water. Meanwhile, the Revised Total Coliform Rule improves monitoring for coliform bacteria, a key indicator of waterborne pathogens, by emphasizing preventive and corrective actions to reduce the risk of contamination in distribution systems. These comprehensive updates demonstrate the NNPDWR's ongoing commitment to enhancing water quality and protecting the health of Navajo communities.

USEPA Region 9 is reviewing our primacy application for the Long Term 1, Term 2, interim surface water treatment rule, and the revised total coliform rule. PWSSP also submitted the Short-Term Lead and Copper Rule and the Public Notice Rule for primacy to USEPA Region

9. The program intends to adopt and implement all new drinking water regulations (Lead and Copper rule revisions, PFAS, and PFOA) and completion of lead service line inventories.

USEPA awarded the Navajo Nation PWSSP full primacy on December 5, 2000. The Navajo Nation is the first tribe in the United States to attain primacy in implementing the SDWA on all water systems across its trust lands. The program has continued to adopt new regulations as required by all primacy states and apply for implementation authority over all new regulations adopted by USEPA.

Expansion of Primacy and Design Review Program for Navajo Water Systems

The Western Navajo Agency – the Nation is divided into five (5) agencies for administrative purposes - primacy application was approved on March 22, 2018, bringing the Bureau of Indian Education schools in the Western Agency, along with public schools and businesses, under the authority of PWSSP. This area had previously been impacted by the "Bennett Freeze" until 2009. In 2019, the PWSSP submitted a primacy application for the Eastern Agency to oversee BIE schools in the region. However, revisions to land plans and legal descriptions were requested, and PWSSP is currently working on this to resubmit the application.

Currently, the PWSSP is responsible for regulating 26 water purveyors, overseeing a total of 171 water systems across the Navajo Nation. These systems serve an estimated 169,200 people, providing essential access to clean and safe drinking water for communities spanning vast and diverse areas. The program's reach is significant, ensuring that water quality and public health standards are met throughout the Nation.

In addition to managing these existing systems, the PWSSP is actively working to expand its regulatory authority. We are in the process of applying for primacy over 17 additional water systems, which serve 4 Navajo communities and 13 schools in the Eastern Agency. This area presents unique challenges due to the complicated land status, requiring careful attention to legal and jurisdictional considerations. Securing primacy over these additional systems is critical for ensuring that more communities and educational institutions receive the oversight and support necessary to maintain safe drinking water and compliance with water quality standards.

The PWSSP is also the first tribal drinking water program to review construction plans and designs for all water systems, for all new construction, and for modifications/upgrades to system components. Before the Design Review Program, the IHS had the only design standards that applied to water systems that they funded and constructed. Other construction companies were installing water infrastructure that was not subject to design standard review. The main concern was the use of substandard materials and engineering. Today, the Design Review Program ensures that all design plans, specifications, and building materials are built to comply with the Navajo Nation Safe Drinking Water Act. System capacity, hydraulic conditions, and changes to treatment processes that affect water quality must be addressed.

The PWSSP developed an operator certification program to ensure that all operators in water and wastewater facilities are trained to have the knowledge and understanding to operate these systems in the Navajo Nation. We will continue to provide training materials, workshops, classroom training, and hands-on training for all operators. We will continue to work with our testing partner, Water Professionals International, to ensure that operators receive fair and applicable testing for all water and wastewater disciplines, levels one through four, with level four being the highest level an operator can achieve certification. We will ensure that other states and certifying entities recognize the Navajo Nation Utility Operators certification program.

Enforcement

The Public Water Systems Supervision Program remains committed to addressing all violations of the Navajo Nation Safe Drinking Water Act. In 2013, PWSSP issued several administrative orders to ensure compliance with water quality standards. Four of these orders are still in place until the affected systems demonstrate that contamination levels for arsenic and disinfection by-products are below the Maximum Contaminant Levels (MCLs). However, progress is being made, and these administrative orders are expected to be lifted by 2025, as the water purveyor has successfully constructed treatment plants to remove arsenic and total organic compounds.

The water purveyor has collaborated with the Indian Health Service's Office of Environmental Health and Engineering, utilized USEPA Indian Set-Aside funds, and secured other funding sources to reduce arsenic and Total Trihalomethanes (TTHMs) in affected communities. These efforts have focused on the communities of Aneth and Montezuma Creek, Utah; Greasewood Springs-Whitecone-Dilcon, Arizona; and Toadlena, New Mexico. These collaborative efforts have made significant progress in improving water quality and ensuring safe drinking water for these communities.

Access to safe drinking water remains a significant challenge for many Navajo communities, as not everyone has access to piped water. A considerable number of Navajo families still rely on hauling water, and some use unregulated sources, which further exacerbates the problem. The PWSSP is committed to ensuring continued collaboration with the Indian Health Service and other federal agencies to fund and construct new drinking water systems, with the goal of reducing the number of households without access to piped water for their primary res idences.

Challenges

As progress continues, infrastructure needs will arise, including improvements to electrical capacity and the development of remote communication systems to effectively operate and monitor water systems. Even new construction projects have identified these challenges, underscoring the need for ongoing investment in modern infrastructure to ensure reliable, long-term access to clean drinking water for all Navajo communities. Through these efforts, PWSSP remains focused on addressing these barriers and improving water access across the Nation.

The Indian Health Service continues to expand drinking water lines to homes that still lack access to safe water. One of the primary challenges is the need to install water lines through difficult terrain, such as rock and long distances, which significantly increases the cost and complexity of these projects. Prior to the passage of the Biepartisan Infrastructure Law (BIL) many projects on Navajo lands were deemed economically infeasible and therefore ineligible for IHS funding. The Nation appreciates the BIL funding for the IHS Sanitation Deficiency Program.

Many projects aimed at improving water access across the Navajo Nation have been funded through a combination of IHS funds, Indian Set-Aside funds, and the American Recovery and Reinvestment Act of 2009. For example, a water line extension from Shiprock, NM, to Sweetwater, Red Mesa, Todahaidekani, and Mexican Water (Utah) was made possible by these funding sources, helping to reduce arsenic levels in these communities.

Blending groundwater sources has proven to be an effective method for reducing arsenic and radionuclides in drinking water. To this end, IHS-OEHE collaborated with the Navajo Tribal Utility Authority to install larger diameter pipes, facilitating the blending of groundwater sources and thus lowering arsenic levels in the Four Corners Region of the Navajo Nation. We will continue to work on similar efforts to continue addressing water quality issues and look forward to Congress's continued support of such efforts.

Funding

The construction and completion of the Navajo-Gallup Water Supply Project dramatically advances the progress of delivering clean drinking water to more Navajo communities, specifically in the eastern area of the Navajo Nation. As a result, the Public Water Systems Supervision Program staff are now transitioning from regulating primarily groundwater systems, both basic and advanced, to overseeing surface water treatment systems.This presents new regulatory challenges.

This shift underscores the critical need for a deeper understanding of surface water filtration and disinfection requirements to manage these newly regulated systems effectively. To ensure that staff are equipped to meet these challenges, PWSSP continues to actively seek training resources, providing both classroom education and hands-on field experience. This investment in training is essential for ensuring that the program can successfully monitor, regulate, and report on the operation of these evolving water systems, ultimately ensuring the continued delivery of safe and reliable water to the Navajo communities. However, continued funding will be crucial to maintain this progress, as the complexity of regulating these new systems requires significant resources.

As the Nation continues to develop large clean drinking water projects across the Navajo Nation, the NNEPA Public Water Systems Supervision Program will continue to expand its efforts to ensure safe drinking water for our growing population. With the Safe Drinking Water Act continuously evolving to address emerging contaminants and set new regulatory limits, the NNEPA PWSSP remains committed to keeping pace with these changes. By staying

aligned with the latest federal regulations and requirements, the program will effectively safeguard the health and well-being of our communities while adapting to the evolving landscape of water quality management.

The Navajo PWSSP greatly appreciates the continued support from Congress and USEPA for Tribal Primacy Programs, particularly through funding, training, and program development.To maintain and expand our efforts, we urgently need the restoration of annual grant funding to $866,666. Since 2019, USEPA has reduced our annual funding support, which has impacted our ability to manage the increasing demands of the program effectively. In addition to our ongoing responsibilities for enforcement, inspections, and program implementation, additional funding is essential to ensure that surface water treatment plants remain compliant with regulations. This funding will also support operator training and certification, which are critical to maintaining the safety and reliability of our water systems.

Commitment and sustained funding

The Safe Drinking Water Act underscores the federal government's enduring commitment to ensuring that every community, regardless of size or location, has access to clean and safe drinking water. This commitment transcends regulatory goals for the Navajo Nation—it is a cornerstone of public health, human dignity, and tribal sovereignty. Safe drinking water is essential for the well-being of Navajo families and for upholding the inherent rights of our people to manage and protect our resources.

We are profoundly grateful for the continued support provided by Congress and federal agencies, which has been vital in advancing safe drinking water initiatives across the Navajo Nation. This collaboration has made significant progress possible, yet the growing demands on our water systems highlight the urgent need for additional action and resources. To maintain compliance with both federal and tribal drinking water regulations, we are requesting the restoration of annual grant funding for the Public Water Systems Supervision Program to $866,666. This funding is critical to supporting enforcement measures, conducting inspections, providing operator training, and ensuring the long-term sustainability of our water systems. Without these resources, the capacity to address both routine and emerging challenges may be compromised.

The 50-year legacy of the Safe Drinking Water Act stands as a testament to a shared commitment between the federal government and tribal nations to ensure clean water for all. This Act represents more than a regulatory framework for the Navajo Nation—it embodies the promise of sovereignty, health, and dignity for our people. Continued partnership and investment will honor this promise and fulfill the federal government's responsibility to provide clean and safe drinking water to all Navajo communities now and for future generations.

Thank you once again for providing me the opportunity to testify. *Ahéhee'* (Thank you).