

How Underfunded Native Nonprofits Beat the Odds to Protect Water Rights

By Lisa Ranghelli

NCRP's series of reports, *Strengthening Democracy, Increasing Opportunities*,¹ featured the advocacy and organizing impacts of several native organizations among our sample of 110 nonprofits in 13 states. Our research revealed that policy change and civic engagement in native communities are defined and executed in culturally-specific ways and may require foundations to think differently about their grantmaking in this context. The exciting victory described below in my Q & A with Jihan Gearon of Black Mesa Water Coalition² illustrates this point well.

Additionally, a timely new study released by Native Americans in Philanthropy and Common Counsel Foundation provides a strong rationale for philanthropy to make substantial investments in native organizing and leadership development that support self-determination. Authored by former NCRP board member Louis T. Delgado, *Native Voices Rising: A Case for Funding Native-led Change*³ describes both the strategies grassroots native groups employ to achieve change and the unique barriers they face when seeking grant funds. The paper provides guidance on how foundations can most effectively partner with these organizations.

Former Senator Jon Kyl (R-Ariz.) introduced SB 2019, the Navajo-Hopi Little Colorado River Water Rights Settlement Agreement and Act of 2012, in February of that year. Senator John McCain (R-Ariz.) was the bill's only cosponsor. Why was it important to try

to defeat that bill? What was the significance of it for your communities?

We (the Navajo Nation) would be required to permanently waive our aboriginal (as in first priority) rights to the Little Colorado River (LCR) watershed in exchange for promises from Congress for two water delivery projects serving two (out of 110) communities. At the time of the debate, funding for these projects was not identified. To me, this already seemed like an unfair deal, but there were many, many other things proposed in the settlement that made it even worse. I will highlight only a few here.

Of great importance to our organization, the Black Mesa Water Coalition (BMWC), was the inclusion in the water settlement of lease extensions for the Navajo Generating Station (NGS) located in Page, Ariz. This is a coal-fired power plant that is located on the Navajo Nation, powered by coal from the Navajo Nation, and runs with the help of free water from the Colorado River (that the Navajo Nation agreed to waive for NGS's use). NGS and the Kayenta Mine, which feeds it, have caused serious environmental and health impacts for the Navajo communities that surround them, and we have been advocating for a just transition of the plant. The water settlement would have supported the ongoing environmental injustices caused by the coal economy on Navajo Nation.

More specifically, the water settlement would have made water delivery

to Navajo and Hopi communities contingent upon the renewal of various leases – for transmission lines, coal and water supplies – for the Navajo Generating Station through 2044. For example, the Window Rock area would have gotten water only if the Navajo Nation approved a water lease for NGS for 34,000 acre-feet/year. This would have been a 32-year extension on what is provided to the plant now. The settlement also would have let the federal government off the hook from protecting the Navajo Aquifer, which already has been drawn down to dangerous levels by coal mining on Black Mesa. Under current law, the Department of the Interior has a responsibility to protect the N-Aquifer, but under this deal it wouldn't have.

Other key issues are that the settlement did not actually quantify Navajo water rights to the LCR and did not allow for fair compensation for Navajo water from the LCR. While upstream users were allocated and guaranteed specific amounts of water, even in times of drought, we were not. We would only be allowed to use whatever *reached* us and is not appropriated to upstream users. The settlement also would not allow us to lease or market LCR water, use it for agricultural purposes or bank (save for a rainy day) our water. All of these are allowed for upstream and downstream users, so why not us?

Lastly, the process to approve the settlement completely excluded the Navajo people and their actual needs for water. It was introduced in a press release from Kyl's office before it was even



Photo credit: Black Mesa Water Coalition

introduced to the Navajo Tribal Council. It was announced as a done deal, with an attempt to railroad it through the Navajo Nation Council in a week. The settlement and act comprise more than 200 pages of dense legal language that was never explained to the Navajo People. This is simply not the way to make such an important decision.

Why did the Navajo tribal leadership initially support the legislation?

The water settlement was brokered by Stanley Pollack, the water attorney for the Navajo Nation. Since we pay him as our lawyer, I believe our council trusted him to arrive at the best deal possible. When the council was asked to vote on the settlement, Pollack provided only a two-page summary of it. With community members present in the council chambers at that meeting – asking questions and asking to see the settlement agreement itself – the council also started asking questions.

How did you get the Navajo leaders to change their minds and vote no? What were some of the most important tactics and strategies of the campaign?

BMWC engaged in the water settlement issue through the larger Dine’ Water

Rights Committee (DWRC), which included various Navajo and Hopi organizations and individuals, including To Nizhoni Ani, the Forgotten People Corporation, Dine’ Citizens Against Ruining the Environment, Nxt Indigenous Generation, Council Advocating an Indigenous Manifesto, Dine’ Hada’ Asidi, IINA Solutions and others. Together, the DWRC was able to organize and support nine community forums to educate Navajo people about the settlement; attend and participate in each of the seven town hall meetings sponsored by the president’s office to voice our concerns and questions; sponsor three radio forums on *KTNN* “The Voice of the Navajo Nation” and two newspaper ads in the *Navajo Times* that provided information about the settlement; attended and presented information at several chapter meetings; collected 23 chapter resolutions and two agency resolutions (agencies represented 34 chapters) against the settlement; presented to the Navajo Nation Council the reasons to oppose the settlement; collected 1,347 Navajo petition signatures against the settlement; and mobilized hundreds to write letters voicing their opposition. Essentially, we made grassroots opposition to the settlement impossible to ignore.

BMWC’s role was an important one in the larger Dine’ Water Rights

Committee. We contributed staff time and funds to the collective efforts, played lead educational roles during the radio forums and various meetings, led our collective media work and brought vanloads of people to the Navajo Nation on the days of the decision. Most important, though, was our role as coordinator of the coalition and its base. We organized and facilitated meetings and conference calls, ensured transparency and collective decision-making in the coalition, engaged the coalition’s base (for example, by motivating the 1,347 petition signatories to write letters to their council delegates), compiled the evidence against the settlement and basically ensured that the committee stayed coordinated.

Did the groups that came together to challenge SB 2019 have a track record of working together? What enabled the coalition to be so effective?

Yes, most of the groups and individuals involved in the Dine’ Water Rights Committee had worked together at some point or another. BMWC, To Nizhoni Ani and Dine’ CARE particularly have worked closely together in the past several years as an “indigenous caucus” working within a larger group-

ing of environmental organizations. I think a key factor that enabled the group to be effective was the coordinating role that we were able to play in making sure that everyone's roles were clear, decision-making was collective and everyone's work was coordinated. This is an important role that we need more Navajo and Hopi people to be trained to play.

What role did philanthropy play (in the short or long term) to support your capacity to succeed?

Philanthropy's role was minimal during the actual campaign against the settlement. It happened so fast that the group did not have the capacity to make a real effort in fundraising. However, organizations that already had consistent funding were able to step up and reallocate those funds to things like educational forums, etc. BMWC pitched in for radio forums and newspaper ads, and even paid members of DWRC who were doing significant work for the campaign, such as managing and updating the Dine' Water Rights Facebook page. Mostly, organizers volunteered their time and money to this campaign. Our estimated cost was \$4,000. We conservatively estimated our tribal government (the executive branch) spent \$500,000 in comparison.

Which foundations were most helpful in providing that "consistent funding" and why?

We have counted on the Solidago Foundation and Common Counsel Foundation for support for many years. They are also great at advocating for us and our work and have opened doors for us. Also, the Marguerite Casey Foundation (we are in our first grant with them) has, from my perspective, been the most excited about the successful campaign of the DWRC. It has shown a real interest in understand-

ing how we were able to accomplish so much with so little, and has also become an advocate for our work and the work of indigenous organizations in general. It has been extremely helpful to get general support grants because it is easier to reallocate these funds when something important but unexpected comes up (such SB 2019).

What can philanthropy do to better support indigenous organizing and advocacy?

In a nutshell, philanthropy can invest more money in indigenous organizers and organizing. We've seen in our region that most money goes to mainstream environmental organizations. However, these organizations could never have accomplished what we did with the water settlement, especially with so few resources. They do not speak Navajo, do not understand how to appeal to a Navajo audience and do not have familial, community and clan ties to depend on and organize from.

Jon Kyl is no longer in the Senate. Is this bill likely to be introduced in the new congressional session, or is it dead for now?

This iteration of a settlement is dead. However, a water settlement of some kind will come up again. An outcome of the campaign was the creation of a Water Rights Task Force that includes grassroots members from the DWRC, for example Nicole Horseherder of To Nizhoni Ani. It has been working to develop a new settlement that better benefits the Navajo Nation. ■

Jihan Gearon is Diné (Navajo) and African American from the community of Old Sawmill, located on the eastern part of the Navajo reservation in Arizona. She is the executive director of the Black Mesa Water Coalition.

Lisa Ranghelli is director of NCRP's Grant-making for Community Impact Project.

Notes

1. See www.ncrp.org/gcip.
2. See www.blackmesawatercoalition.org.
3. Louis Delgado, *Native Voices Rising (Executive Summary)* (Oakland, CA & Minneapolis, MN: Common Counsel Foundation and Native Americans in Philanthropy, April 2013), <http://www.nativephilanthropy.org/wp-content/uploads/2013/04/INTERACTIVE-EXECUTIVE-REPORT.pdf>.

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