A tank stores water on Navajo Nation land off Highway 89 in Arizona. (Photo: Erica Gies)

TAKEPART FEATURES

The Navajo Are Fighting to Get Their Water Back

A third of tribe members lack clean water while cities thrive on rivers running through reservations. New deals are enabling them to take some of what's theirs.

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Erica Gies' work has appeared in *The New York Times*, *The Guardian*, *Scientific American*, *The Economist*, and other outlets.

Bio

Shirley Peaches hails from Tall Mountain in the Navajo Nation, 25 miles from the nearest paved road and functioning water faucet. “My family still uses melted snow to wash dishes, wash clothes,” she says. Drinking water is hauled from Shonto, a reservation town in northern Arizona. It’s a two-hour drive round-trip when the road is passable. In February, Peaches says, it was dicey: “The snow is melting; the road is muddy. You have to get there early in the morning when the ground is frozen, and you can’t get back until 11 p.m. when the ground is refrozen.”

Peaches’ water story is all too familiar in the Navajo Nation, which stretches across parts of Arizona, New Mexico, and Utah. Thirty-eight percent of people on the reservation don’t have water in their homes and must truck it in from long distances. They typically rely on watering points—simple hoses at public spots such as post offices that are common features in towns bordering the reservation—or perhaps a visit from the “water lady,” Darlene Arviso, who delivers water in a tanker to a couple hundred families in New Mexico (as shown in the video below).

Delivering Water on the Reservation

Darlene Arviso provides an essential service to some of New Mexico's Navajo families.

Monument Valley, the Grand Canyon, the Petrified Forest, the Painted Desert, Canyon de Chelly, and Canyons of the Ancients National Monument lie in or border the reservation. It's a cruel irony that this landscape so spectacularly crafted by water is so arid today, and climate change promises worse to come. Annual rainfall here averages seven to 16 inches, supporting only sparse farming and livestock. The animals roam free so they can follow the forage, and the reservation's human population of 200,000 is cast wide, scattered across the plateau.

The San Juan and Little Colorado rivers, tributaries of the most contested river in the West, the Colorado, are the Navajo Nation's primary water resources, but with the infrastructure necessary to bring that water to homes limited, many on the reservation rely on groundwater. Small wooden buildings housing wells and round tanks topped by windmills dot the land, but many are contaminated from decades of uranium, coal, and other mining in the region, as well as from naturally occurring toxins such as arsenic. Still, people draw from them to water livestock and sometimes for drinking.

The picture makes for a bitter contrast to the Navajo's growing numbers of neighbors in cities such as Phoenix, Las Vegas, and Albuquerque, New Mexico.

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Navajo without running water limit their consumption to around 10 gallons a day per person, which doesn't go far: A low-flow showerhead uses two gallons a minute, and washing dishes efficiently by hand drains eight gallons. Forget about flushing toilets; many Navajo make do with outhouses. Meanwhile, residents of the Southwest's boomtowns go through 100 to 200 gallons per person a day. The fountain outside Las Vegas' Bellagio hotel alone loses 12 million gallons of water annually to evaporation and leakage.

The Navajo Water Access Project

These starkly different realities are not unrelated. Lack of water has left the Navajo and other local tribes languishing in poverty, while access to it has been the single enabling factor for population booms in the Southwest's desert cities. The excess of the urban Southwest—the misting wands at chain restaurants, the acres of alfalfa and cotton carpeting the floor of the Sonoran Desert—are to no small degree a function of the Navajo not having the resources to develop the water claims to which the law entitles them.

Now the Navajo have the opportunity to secure legal rights to some of their water and much-needed funds to supply water for the first time to thousands of people. In exchange, they must relinquish to the federal government, states, and private interests such as developers and investor-owned utilities their claims to water the rest of the West is using (or wants to use), easing several states' anxiety about water security. Western tribes have completed 29 such water rights settlements

with the U.S. Department of the Interior since 1978, and 17 more are in process, according to Pamela Williams, the director of the Secretary's Indian Water Rights Office at the department.

In January the Navajo Nation Council passed the latest such deal, with Utah, which will bring the Nation's Utah chapters water and $192 million to build pipelines, water treatment facilities, and irrigation systems. Some Navajo support the settlements, seeing them as a crucible they must pass through to gain economic growth and a better quality of life, and Navajo in New Mexico have already seen benefits from their deal with that state. Others feel they are giving up too much, and the settlements will cut off the Navajo Nation from water it will need to sustain itself in what climate change models predict will be much drier years to come.

Running through much of the Navajo reservation, the San Juan River in Mexican Hat, Utah, is one of the most contested water sources in the West. (Photo: Erica Gies)

Like other tribes across the West, the Navajo have extensive claims to their local waterways, dating to a 1908 Supreme Court decision, *Winters v. United States*, that said Indian reservations came with implied rights to the amount of water

"sufficient to fulfill the reservation's purpose."

But the court didn't say how much that was. Because the figure was disputable, the question of how much water tribes were entitled to remained, and *Winters* effectively went unenforced. That uncertainty—and a federal blind eye—allowed other users, including the federal government, to assume that any water a tribe was not using was water they could take, and they helped themselves. The Bureau of Reclamation and the Army Corps of Engineers built 30,000 dams across the West over the next several decades, spurring a regional population boom.

The water grabs may have been illegal, though, because *Winters* made clear that the "use it or lose it" principle that has been a cornerstone of water policy in the American West since the 19th century didn't apply to tribes: They are entitled to more than the tiny amount they've been able to draw from surrounding rivers with their existing limited infrastructure.

For the Navajo, as for many Western tribes, poverty has limited their access to water, and perversely, water is the key ingredient needed to lift them from poverty. The U.N.'s *World Water Development Report* for 2016 found that three of four jobs globally are either heavily or moderately dependent on water and that water shortages and lack of access to water and sanitation could limit economic growth and job creation in the coming decades. "Water and jobs are inextricably linked on various levels, whether we look at them from an economic, environmental, or social perspective," said the director-general of UNESCO, Irina Bokova, in a statement.

> We can't grow nothing out here because those people are just jumping in the water and wasting it. What would happen if we turned that off? How would they feel?
>
> **AMBROSE YANITO, NAVAJO NATION RESIDENT**

In 1963, the Supreme Court weighed in again: Tribes were entitled to the amount of water needed to irrigate their fertile acreage, more or less. Because that amount, like the allocation in *Winters*, was vague, the court recommended that tribes and other water users work it out legally—tribes could either sue or settle. Suing has a certain appeal, but even if a tribe wins a lawsuit, it doesn't come with any money for infrastructure development, effectively leaving the tribe with "paper water" that's not much use. Settlements, on the other hand, come with money to build infrastructure. Although they would potentially be giving up significant quantities of water, at least tribes would get "wet water."

Life as most people know it in the Southwest would not be possible had the Navajo and other tribes been able to exercise their claims on the Colorado. This offers a powerful incentive for states to settle with tribes. Even today, tribal claims cast a shadow over lifestyles and the expansion potential of cities, states, electric utilities, housing developments, industry, ranches, and farms.

The Navajo's deal with Utah is typical: The tribe signs away a large portion of its claim, relinquishing it to the non-Indian users who have already been taking it. In exchange it gets money from the federal government and the state to build infrastructure and bring water to people who have been living without. The tribes end up with more wet water than they had, and states get to continue the lifestyle to which they've become accustomed and secure water for growth. The funds that settlements provide to tribes are "a major benefit," says Williams. "Settlements provide certainty to tribes in terms of water rights while protecting existing non-Indian users. It's a win-win."

Ambrose Yanito (left) and Curtis Yanito oppose the water rights settlements. (Photo: Erica Gies)

Not everybody thinks so. On a bright day in February, I'm on Navajo land just across the southern border of Utah to meet Curtis Yanito, a Navajo grazing official who is strongly against the Utah water settlement.

Because Yanito's house is remote and difficult to find—out here, street addresses don't exist—we exchange several fruitless phone calls before he gives up on my navigation skills and drives down the mesa, meeting me on a dirt track framed by tufts of rabbitbrush and scraggly Mormon tea. About 70 miles north, the Blue Mountains jut out of the tableland like snowy gods. Yanito has brought a posse of dogs, friends, and family, including his brother Ambrose. Both wear bandannas tied into thick headbands.

I am greeted with a "*Yá'át'ééh*!"—"Hello!"—as Yanito lets down the tailgate of his truck and spreads out papers in his "office," inviting me to park my laptop there as well. The others lean against the sides of the truck, listening, chiming in, and snapping phone photos.

The Navajo Nation has entered into water settlement negotiations with each state into which it extends. A 2010 deal with New Mexico funded a 14-year construction project that will serve many people water for the first time, while a contentious deal with Arizona fell apart in 2012. As for the Utah settlement that the Navajo Nation Council passed in January, it must still be approved—and funded—by the U.S. Congress and Utah's state government and then signed by Navajo Nation President Russell Begaye.

Most Navajo agree that settlements offer the promise of economic development, improvement of their quality of life, and the last chance to stop the creeping de facto loss of their water rights. Yet there is an undeniable power imbalance in the negotiations: on one side, a tribe that suffered an attempted genocide, with a 43 percent poverty rate and a 42 percent unemployment rate; on the other, states made wealthy by water, giant utilities, and developers. Some tribal activists say their leaders unquestioningly accept the non-Indian worldview as a starting point, setting the stage for unfair deals for the tribe. If the process were more open, they would have a better chance to make their voices heard, they say.

The Yanitos are outraged at the basic premise of water settlements: that non-Indian water users, who as far as they are concerned have been appropriating Indian water for 100 years, must be allowed to keep it.

Gesturing across the plain to distant cities, Ambrose says, “Everybody has got a swimming pool out there, just about.” If the tribe had more of its water, people could grow vegetable gardens and eat healthier, perhaps reducing the 22 percent rate of diabetes on the rez. “We can’t grow nothing out here because those people over there are just jumping in the water and wasting it,” he says. His voice rises. “What would happen if we turned that off? How would they feel?” he asks. “We gave them their life! See?”

Curtis’ ideal solution would be to take the tribe’s entire claim on the San Juan River and lease some of it to existing users. With the money, he says, “we can build our own swimming pools and water parks for our kids, alfalfa fields for livestock....”

Widespread poverty among the Navajo has prevented investment in infrastructure such as the irrigation works seen in this field near Bluff, Utah. (Photo: Erica Gies)

A group of activists agrees with the Yanitos in principle but is perhaps more pragmatic. A few days earlier I met with two members of the activist group Tó Bei Nihi Dziil, which means “Water is our power.” I drove into hardscrabble Gallup,

racing the Burlington Northern Santa Fe along old Route 66, past payday loan shops, un-gentrified Mexican restaurants serving sopapillas, and ’50s-era motels with campy neon signs featuring cowboys and Indians. Turning down a residential street studded with adobes, I pulled up at a modest house.

Inside was Colleen Cooley, who spent her high school and college years boarding in Flagstaff, graduating with a master’s degree in climate science and solutions from Northern Arizona University in 2012. Now she has returned to her childhood home in Shonto, where she wants to promote the use of renewable energy and teach students how to grow food, compost, and reduce waste. Her water bottle was plastered with stickers, one of which read, “Indigenous Liberation: Resist Existence, Expect Resistance.”

Sitting across from her at a small table was Janene Yazzie, a fierce woman with a ready laugh who works as a community organizer. The walls were decorated with children’s artwork and activist propaganda painted on plywood. Both young women multitasked on laptops and cell phones, pulling up supporting documents and sources and extracting relevant papers from surrounding piles. When Yazzie’s two-year-old daughter wandered into the room, she sat with Cooley, a favorite “aunt.”

Colleen Cooley is a member of the activist group Tó Bei Nihi Dziil, which means 'Water is our power.' (Photo: Erica Gies)

Cooley and Yazzie see the settlements as water grabs motivated by states' greed. Yazzie cites an Arizona Department of Water Resources document that identifies the department's No. 1 strategy to achieve water security as resolving Indian water rights claims.

The deal with Arizona drew the ire of Tó Bei Nihi Dziil, group members say, because it was larded with handouts to corporate interests that had historically taken advantage of the Navajo. Former Sen. Jon Kyl, representing the state in the Senate at the time, didn't improve the optics when he introduced the proposed settlement to Congress on the 100th anniversary of the state's induction into the union, saying, "I think it would be a fitting birthday present to people in the state of Arizona."

The activists say they have largely been shut out of the Navajo political process, a

contention that tribal leaders strongly dispute. When tribal leaders collude with states and the federal government to exclude so many tribal members from the process, they run afoul of the international law standard of free, prior, and informed consent for indigenous people, maintains Peaches, who also works on water issues.

The Utah draft deal, which all seven Utah chapter presidents supported, now awaits congressional funding, which is usually the largest hurdle to implementation, said Pamela Williams in a 2013 presentation. James Adakai, president of the Oljato Chapter of the Navajo Nation, says the Navajo population is growing, and the water will facilitate schools, health care, public safety, and regional development. “We have maybe over 50 percent of people who still need water” in the Oljato chapter, says Adakai. A proposed road project would funnel Monument Valley tourists through his town of Oljato, as well as Navajo Mountain (another Utah chapter) and Ts’ah Bii Kin, also known as Inscription House. “We need water to do this,” he says.

Shirley Peaches' family relies on melted snow for washing. (Photo: Erica Gies)

One aspect of the draft settlement with Utah particularly troubles Tó Bei Nihi Dziil: The tribe could go without water in times of drought. By law, those with the oldest water rights get most of their water in dry years, while junior rights holders suffer drastic reductions. Most Navajo rights in Utah date to 1884, when land there was added to the reservation; that gives the tribe seniority over most other water users in the area. But the settlement forces it to waive its right to assert its seniority on the vast majority of the water that the settlement allots to it. In a time of shortage, today's users will be ahead of the tribe in line for all but about 10 percent of its settlement quantity. With a 22-year drought underway, causing reduced spring snowpack, decreases in at least 30 surface water features, and expanding sand dunes that now extend over one-third of the reservation, the activists see the Utah settlement as a bad deal. "We don't want our grandchildren to say, 'Why did you waive that?' " says Peaches.

Although it may seem counter to the *Winters* ruling, which pinpointed tribes' seniority to the establishment date of their reservations, the waiver is typical of water rights settlements, says Stanley Pollack, the Navajo Nation's assistant attorney general and an Indian water rights specialist.

"Every Indian water rights settlement protects the existing non-Indian users," he says. In general neighbors don't fear that tribes will develop infrastructure and take some of their water because they know that tribes don't have the money—but the settlements give them that money. "States say, 'We will help you get funding, but in return, we need to protect non-Indians because they're operating under the assumption that tribal water development isn't going to occur. Now we're developing it.' "

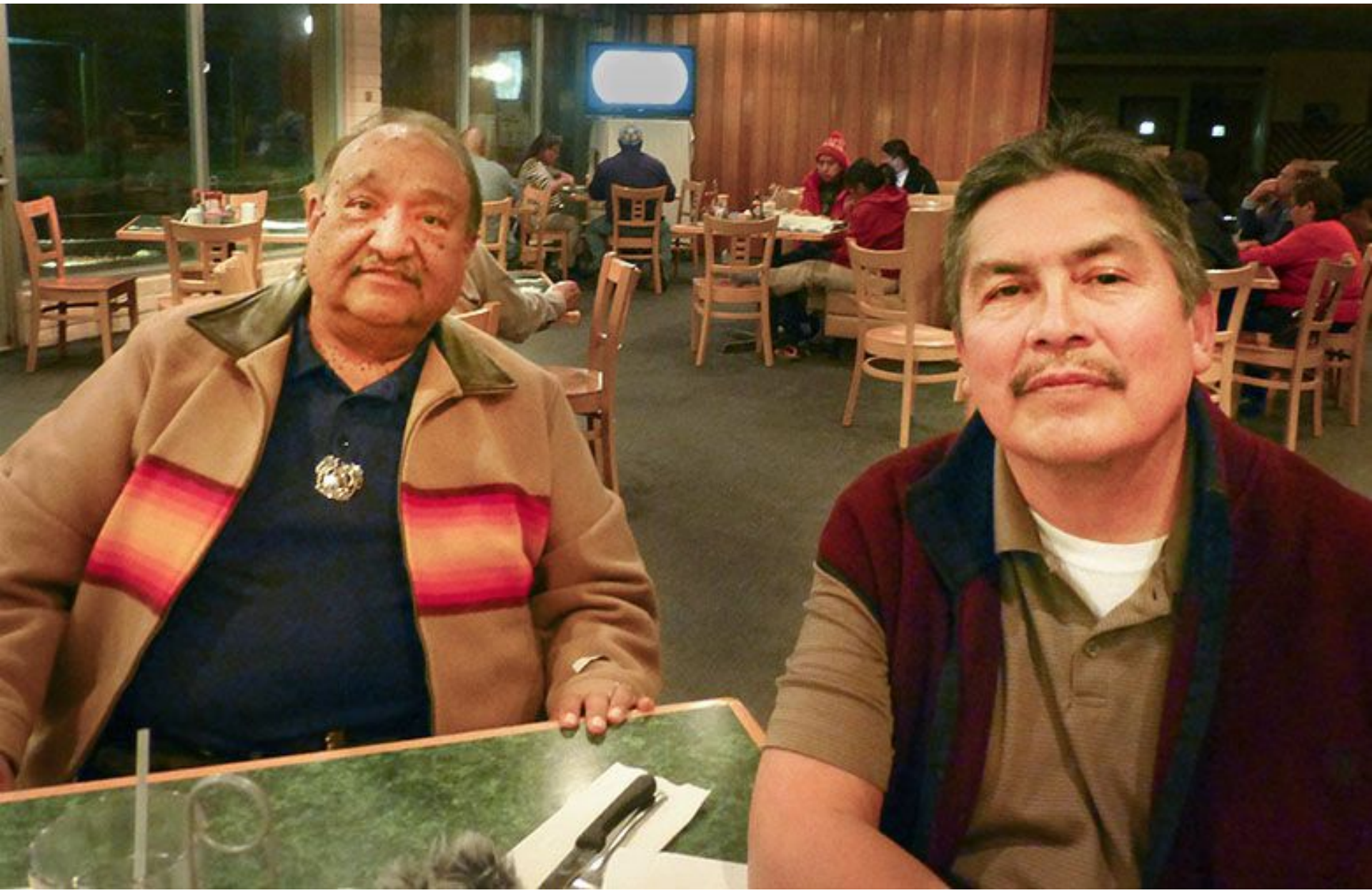
Livestock roam free on Navajo land, which receives between seven and 16 inches of rain per year on average. (Photo: Erica Gies)

After meeting with the women in Gallup, I drove west at sunset toward Window Rock, the capital of the Navajo Nation, to meet with the chair and the vice-chair of the Navajo Nation Water Rights Commission, Benjamen Cowboy and Gil Arviso. Gnarled piñons and junipers stood sentinel on hills, silhouetted against the sky. On the radio I flipped through multiple country stations, Christian talk and rock, classic rock, and Navajo-language talk. In the capital, plain buildings housing government offices sat at the feet of charismatic stone monoliths, including the eponymous Window Rock.

Despite the activists' contention that tribal leaders could negotiate more forcefully, Cowboy and Arviso said they don't feel that power in the negotiating room. They are trying to restart the Arizona talks but are not hopeful about improving the terms this time around.

Arizona is "pretty motivated to get us a small deal," said Cowboy while Arviso laughed ruefully. "That's their motivation." Negotiating is different with each state, and in Arizona, "you're not only dealing with state folks but all of the corporations that are tied into using water," he continued. "So you're negotiating

with different groups of maybe 50 or more people sitting at the table."



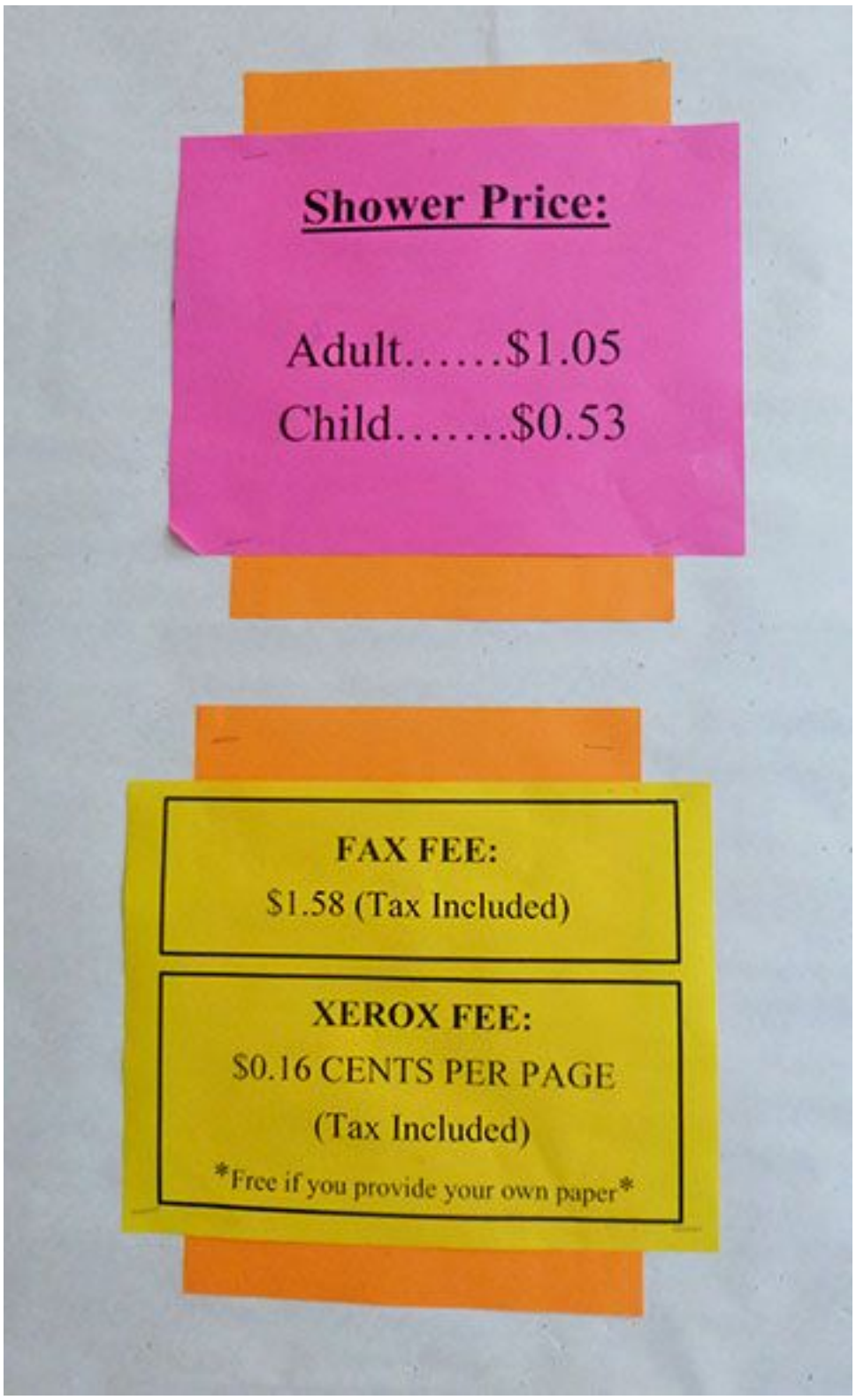
Gil Arviso (left) and Benjamen Cowboy, vice-chair and chair of the Navajo Nation Water Rights Commission, negotiate settlements with representatives of states and private interests. (Photo: Erica Gies)

Yet despite the decades-long processes, despite the concessions, despite disgruntled constituents, the water settlements have value, he said: "Really, to me it's like security. We will finally have water that we can actually call Navajo water."

Six years after the nearly $1 billion New Mexico deal was completed, some tribal communities are beginning to benefit from running water in their homes, a new reality that tends to make them appreciative of the settlement. In Whitehorse Lake I met chapter President Chee Smith. He welcomed me into the chapter house, a simple building used for community meetings and offering various services to local people, including showers, copies, and faxes.

The Bureau of Reclamation, using funds from the New Mexico settlement, is

building two water lines, two water treatment plants, and several pumping stations in two north-south transects. The first water line will run about 100 miles along the New Mexico border with Arizona. It will bring water from the San Juan River, which travels nearly 400 miles from southwestern Colorado to Lake Powell, to users as far as 15 miles south of Gallup. The second will run along the eastern portion of the reservation in central New Mexico.



The chapter house in Whitehorse Lake, New Mexico, offers services to locals. (Photo: Erica Gies)

Whitehorse Lake was one of the first communities to receive water pipelines. Meanwhile, Smith worked with the state of New Mexico and the Navajo agency that builds water infrastructure to get pipes in local houses. Right now, those

houses are receiving groundwater. By 2024 the whole project should be built, and people in Whitehorse Lake will start to receive river water as a result of the settlement. (Even when the project is completed, not all Navajo in New Mexico will have running water; some houses are too remote.) But life in Whitehorse Lake is already much improved, said Smith. “One hundred percent of my community has running water now,” he said.

Getting water lines has allowed his chapter to turn a corner, said Smith. Plans are in the works to build police and fire stations, a convenience store, a gas station, a road maintenance yard for heavy equipment, and homes. Smith expects the improvements to reverse the population decline of recent decades: “When there was no water or electricity, a lot of the people moved into the border towns. So since they saw that we have water now, they’re starting to move back to the community.”

It’s a big change, he said, from when daily driving to fetch water was a fact of life, as it still is for many Navajo. Smith is particularly grateful that his father, who died a year ago at Thanksgiving, lived to see the water turned on for the first time. “It really put a smile on his face,” he said, choking up a bit. “I think he thought he’d never see the day it would happen.”