

**EXECUTIVE SUMMARY  
OF THE  
SAN JUAN RIVER BASIN IN NEW MEXICO  
NAVAJO NATION WATER RIGHTS SETTLEMENT**

April 19, 2005

The State of New Mexico and the Navajo Nation on April 19, 2005, signed the proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Settlement Agreement). The Settlement Agreement would resolve the claims of the Navajo Nation to the use of waters of the San Juan River Basin in New Mexico in a manner that would inure to the benefit of the Navajo Nation and the State of New Mexico. The Settlement Agreement is intended to provide water rights and associated water development projects, including the Navajo-Gallup Water Supply Project, for the benefit of the Navajo Nation in exchange for a release of claims to water that potentially might otherwise displace existing non-Navajo water uses in the Basin in New Mexico. The Settlement Agreement includes four appendix documents:

- (1) a Partial Final Decree for entry in the San Juan River Adjudication setting forth the rights of the Navajo Nation to use and administer waters of the San Juan River Basin in New Mexico;
- (2) a Supplemental Partial Final Decree for entry in the Adjudication quantifying certain reserved rights of the Navajo Nation for historic and existing uses within the Basin in New Mexico from tributaries to the San Juan River and ground water, and rights of the Navajo Nation to the use of water in the Basin acquired pursuant to New Mexico state law;
- (3) a Settlement Act for Congress to authorize the construction and operation of the Navajo-Gallup Water Supply Project, to fund construction and rehabilitation of Navajo water projects in the San Juan River Basin in New Mexico, and to approve the Settlement Agreement and other authorizations to secure to the Navajo Nation a water supply to meet the needs of the Nation and its members; and
- (4) a Settlement Contract to provide for deliveries to the Navajo Nation under Bureau of Reclamation water projects, namely the Navajo Indian Irrigation Project, the Navajo-Gallup Water Supply Project, and the Animas-La Plata Project.

The Settlement Agreement will become effective if the Congress passes the Settlement Act and the President of the United States signs the act into law. Once the Settlement Act becomes law, the Secretary of the Interior must execute the Settlement Agreement and the Settlement Contract.

The following tabulation is a summary of the rights that the Navajo Nation would have under the Settlement Agreement. The stated diversion rates are maximum instantaneous flow rates.

	<u>Diversion</u>			<u>Administration</u> <u>Priority</u>
	<u>Amount</u> <u>(af/yr)</u>	<u>Rate</u> <u>(cfs)</u>	<u>Depletion</u> <u>(af/yr)</u>	
<b>Irrigation Projects:</b>				
- Navajo Indian Irrigation Project	508,000	1,800	270,000	1955 <sup>1</sup>
- Fruitland-Cambridge Irrigation Project	18,180	100	7,970	1868
- Hogback-Cudei Irrigation Project	48,550	221	21,280	1868
- Tributary irrigation projects, including storage	Determine by Hydrosurvey <sup>2</sup>			1868
<b>Municipal, Industrial, Commercial and Domestic Uses:</b>				
- Navajo-Gallup Water Supply Project <sup>3</sup>	22,650	48	20,780	1955 <sup>1</sup>
- Animas-La Plata Project	4,680	13	2,340	1956 <sup>1</sup>
- San Juan River municipal/industrial diversions	2,600	5	1,300	1868
- Ground water diversions	2,000	N/A	2,000	1868
- Tributary recreation and livestock uses	Determine by Hydrosurvey <sup>2</sup>			1868

In addition, the Navajo Nation: (1) may divert supplemental carriage water, if needed, at such times as the New Mexico State Engineer determines that there is surface water available for such diversion without impairment to water rights in New Mexico; (2) may develop additional ground water on Navajo lands subject to no impairment of other water rights and forbearance of surface water rights to offset any amount of depletion of San Juan River flows above 2,000 acre-feet per year caused by the aggregate of Navajo Nation ground water diversions; (3) would have a small amount of rights it has acquired under state law; (4) would have additional rights to *de minimus* residential domestic and stock uses that are not served by public water supply systems; (5) would have a contractual right to storage in Ridges Basin Reservoir for supplying Navajo Nation uses under the Animas-La Plata Project; and (6) may re-use tail water or waste water so long as the re-use does not cause the Nation's diversion and depletion rights to be exceeded. In all instances, the rights of the Navajo Nation to divert and use water from the San Juan River Basin in New Mexico would be limited to the amounts of water necessary for current beneficial uses.

Individual members of the Navajo Nation that have been allotted land by the United States are not bound by the Settlement Agreement and may have additional claims to historic and existing agriculture, stock and domestic uses in the San Juan River Basin. The aggregate amount of the historic and existing uses is included in estimates of the current depletions in the Basin. However, any reserved rights that may be adjudicated to such members for additional future uses would be serviced by, or offset by corresponding reductions in use under, the rights of the Navajo Nation in order to keep the water demands in the Basin from exceeding New Mexico's apportionment under the Upper Colorado River Basin Compact.

For Congress to approve the Settlement Contract, the Secretary of the Interior must determine that sufficient water is reasonably likely to be available to New Mexico for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project and for existing and authorized Navajo and non-Navajo uses from the San Juan River Basin in New Mexico under the apportionment made by the Upper Colorado River Basin Compact. The New Mexico Interstate Stream Commission has prepared for the Secretary's consideration a schedule of anticipated depletions in the San Juan River Basin in New Mexico that indicates that sufficient water would likely be available through the year 2060 to service the

Settlement Contract. The anticipated depletions are based on reasonable assumptions of use within the water rights for Navajo and non-Navajo uses in the Basin.

The rights for Navajo Nation uses on the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project would be sourced under contract for water from the Navajo Reservoir water supply, and the Navajo Nation would share in shortages in the supply with the San Juan-Chama Project, the Jicarilla Apache Nation, the Hammond Irrigation Project and other contractors. The rights for Navajo Nation uses on the Animas-La Plata Project would be sourced under contract for water from the Project, and the Navajo Nation would share in shortages in the Project water supply with the San Juan Water Commission and other Project contractors. Senior direct-flow water rights in the San Juan River Basin, including irrigation rights for Navajo and non-Navajo ditches on the San Juan River and its tributaries, would retain their rights in a priority administration of the river system and not share shortages. However, the Navajo Nation under the Settlement Agreement would not call for a priority administration of the river system to supply the Hogback-Cudei and Fruitland-Cambridge irrigation projects; rather, when the available direct flow is insufficient to satisfy senior direct-flow water rights in the Basin, the Nation would provide an alternate water supply for the projects from the water delivery rights for the Navajo Indian Irrigation Project under the Settlement Contract. Although the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement have limits, the provisions substantially reduce the risks and occurrences of shortage to direct-flow users that otherwise would be anticipated to result from priority calls on the river. Priority calls on the San Juan River might be expected in the future every two years or so, on average, with full water development on the San Juan River stream system, but would be expected about once every twenty years, on average, if the alternate water source provisions are implemented.

Under the Settlement Agreement, the Navajo Nation would administer its rights on Navajo lands in New Mexico subject to non-impairment of non-Navajo Nation water rights and subject to the provisions of the Partial Final Decree and the Settlement Agreement. Transfers of water uses by the Navajo Nation to locations off Navajo lands would require approval of the State Engineer. The Navajo Nation would be responsible for measuring and reporting water uses under its rights, and the State Engineer would monitor Navajo Nation water uses for compliance with the decree.

The Settlement Act would authorize federal appropriations for the construction or rehabilitation of the following water development projects and purposes to benefit the Navajo Nation, and would require that certain project construction and funding milestones be achieved by specified completion dates.

	<u>Service Acres</u>	<u>Federal Funds (current dollars)</u>	<u>Completion Date</u>
<b>Irrigation Projects:</b>			
- Navajo Indian Irrigation Project <sup>4</sup>	110,630	N/A	-----
- Fruitland-Cambridge Irrigation Project	3,335	\$ 7.7 million <sup>5</sup>	Dec. 2012
- Hogback-Cudei Irrigation Project	8,830	\$ 15.7 million <sup>5</sup>	Dec. 2015
<b>Municipal, Industrial, Commercial and Domestic Uses: <sup>6</sup></b>			
- Navajo-Gallup Water Supply Project	N/A	\$695.0 million <sup>7</sup>	Dec. 2020
- Navajo Nation Municipal Pipeline <sup>8</sup>	N/A	N/A	-----
- Conjunctive use ground water wells <sup>9</sup>	N/A	\$ 77.6 million <sup>5</sup>	Dec. 2022

Other Purposes:

- Joint Hydrographic Survey N/A \$ 5.0 million<sup>5</sup> Dec. 2011
- Navajo Nation Water Development Trust Fund N/A \$ 50.0 million<sup>10</sup> Dec. 2016

The Upper Colorado River Basin Compact apportionment to New Mexico has been determined to be at least 669,400 acre-feet of consumptive use, or depletion, annually. Of that amount, about 58,000 acre-feet is New Mexico's share of reservoir evaporation from Colorado River Storage Project reservoirs (Flaming Gorge Reservoir, Aspinall Unit reservoirs and Lake Powell) that regulate flow for the Upper Basin's delivery at Lee Ferry under the Colorado River Compact. Authorization and completion of water projects as proposed in the Settlement Act would allow the State of New Mexico to fully utilize the minimum apportionment available for uses within New Mexico, after deduction of New Mexico's share of the Colorado River Storage Project reservoir evaporation consistent with Article V of the Upper Colorado River Basin Compact. Under the Settlement Agreement, New Mexico's Compact apportionment is respected and is allocated as follows, in percent of depletion:

<u>User</u>	<u>Allocation</u>	<u>Comment</u>
Navajo Nation	56%	Irrigation and domestic uses
Jicarilla Apache Nation	5%	Most leased for power plants/municipal uses
San Juan-Chama Project	17%	Municipal/irrigation uses in Rio Grande Basin
Power Plants	6%	Use 9% of total including lease with Jicarilla
Non-Indian uses in San Juan Basin	16%	Irrigation and municipal uses

Because the Upper Colorado River Basin Compact apportions consumptive uses, depletions are the primary consideration for water planning and administration in the San Juan River Basin under the Compact. Nevertheless, it is expected that approximately 750,000 acre-feet of water would be diverted in New Mexico annually by 2040 from the flows of the San Juan River and its tributaries, including from return flows. That amount of diversion includes approximately 340,000 acre-feet per year for the Navajo Indian Irrigation Project assuming that the sprinkler irrigation systems on the Project are operating, planned water management measures result in water conservation in at least half the total amount anticipated, and 5 percent of the Project acreage, on average, is fallow. Under the terms of the Partial Final Decree, the Navajo Nation would be able to change the place and purpose of use of its Navajo Indian Irrigation Project rights so long as the total average diversion for all uses under the rights in the aggregate does not exceed 353,000 acre-feet per year and the change does not impair other water rights. If the Project rights are not used solely for irrigation, the Navajo Nation must file application with the State Engineer to increase the total diversion for all uses under the rights for the Project above an average of 353,000 acre-feet per year. An additional 105,200 acre-feet per year, on average over the long term, would be diverted from tributaries to the San Juan River in Colorado for uses in New Mexico under the San Juan-Chama Project. In comparison, the average annual inflow into Navajo Reservoir, after San Juan-Chama Project diversions, is approximately 900,000 acre-feet per year, and the flow entering New Mexico in the Animas River is projected to be approximately 600,000 acre-feet per year after anticipated future Animas-La Plata Project uses in Colorado.

After passage of the Settlement Act into law and execution of the Settlement Agreement by the Secretary of the Interior, a joint motion would be submitted to the Court in the San Juan River Adjudication requesting that the Partial Final Decree be made final and binding on all claimants in the

Adjudication. The Secretary and the Navajo Nation also would execute the Settlement Contract. In addition, a hydrographic survey would be conducted by the United States and the State of New Mexico to identify rights of the Navajo Nation to historic and existing irrigation, recreation and livestock uses on Navajo lands in areas tributary to the San Juan River and rights acquired by the Nation under state law. After completion of the hydrographic survey report, the Supplemental Partial Final Decree would be completed and a joint motion would be submitted to the Court in the Adjudication requesting that the Supplemental Partial Final Decree be made final and binding on all claimants in the Adjudication. Parties to the San Juan River Adjudication would be able to submit objections to the Court regarding the Partial Final Decree and the Supplemental Partial Final Decree through an expedited *inter se* process after the respective motions for entry of the decrees are submitted to the Court.

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<sup>1</sup> The 1868 reserved priority for the Navajo Indian Irrigation Project, the Navajo-Gallup Water Supply Project and the Animas-La Plata Project uses would not be asserted or exercised; rather, the Secretary of the Interior would supply the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project uses from Navajo Reservoir under New Mexico State Engineer File No. 2849 with a 1955 priority and from the San Juan River below Navajo Dam under State Engineer File No. 3215 with a 1968 priority, and the Secretary would supply the Animas-La Plata Project under File No. 2883 with a 1956 priority. Consistent with the Act of June 13, 1962, the delivery of water from Navajo Reservoir for the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project would be treated as equal in priority to, and will share in shortages with, the San Juan-Chama Project, the Hammond Irrigation Project, Jicarilla Apache Nation uses under its water rights settlement contract, and other small contracts. The Navajo Nation's uses under the Animas-La Plata Project would share in shortages in the water supply for that project with the San Juan Water Commission and other project contractors.

<sup>2</sup> Water rights for historic and existing irrigation, recreation and livestock uses on Navajo lands in areas of New Mexico that are tributary to the San Juan River and outside the San Juan River valley would be determined by a hydrographic survey of these uses to be prepared jointly by the United States and the State of New Mexico. It is anticipated that the amount of water rights for these tributary uses could total approximately 10,000 acre-feet per year or more of depletion at the places of use, but that the actual depletion of the flow of the San Juan River after consideration of locations of use and the physical water supplies available will average substantially less than 10,000 acre-feet per year.

<sup>3</sup> The diversion and depletion amounts for the Navajo-Gallup Water Supply Project tabulated above include only those for Navajo Nation uses in New Mexico. In addition, the Project would divert annually from the San Juan River 6,410 acre-feet for use by the Navajo Nation in Arizona, 1,200 acre-feet for use by the Jicarilla Apache Nation under its water rights settlement contract, and 7,500 acre-feet for use by the City of Gallup. The City of Gallup's share of the Project diversion would be sourced by a subcontract with the Jicarilla Apache Nation under the Jicarilla Apache Nation's settlement contract with the United States. The diversion of water by the Project for Navajo Nation uses in Arizona would not be included in the Settlement Contract and would not occur until an accounting of the use of the water within the apportionments of Colorado River Basin water made to the State of Arizona through compact, statute or court decree has been resolved and Congress has approved a water delivery contract between the Navajo Nation and the United States for such diversion. Also, the Bureau of Reclamation would have to comply with the National Environmental Policy Act, the Endangered Species Act and other applicable laws in implementing the Project. If to comply with the Endangered Species Act it is deemed necessary to arrange for some amount of use in the San Juan River Basin to be forborne for some period of time to allow full use under the Project to be made in New Mexico, the Project contractors would not be prohibited from making such arrangements as may be appropriate.

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<sup>4</sup> Previous Acts of Congress authorized funding to construct the Navajo Indian Irrigation Project, and there remains authorization for about \$120 million within the existing cost ceiling for construction of the Project. The construction costs of the Project to date have been non-reimbursable. An additional \$372.8 million, over and above the currently authorized cost ceiling for the Navajo Indian Irrigation Project, now is estimated to be needed to complete construction of the Project and refurbish existing on-farm facilities on the Project. Under the Settlement Agreement, funding for construction on the Project would not be a part of the settlement and would continue to be sought through separate authorizations and appropriations. Also, the United States would continue to pay the operation and maintenance costs for the Navajo Indian Irrigation Project, as it does currently, until ownership of the Project facilities is transferred to the Navajo Nation. Completion of construction of the Project would be accomplished in accordance with the authorizing legislation for the Project.

<sup>5</sup> The federal funding shown for the rehabilitation of the Fruitland-Cambridge and Hogback-Cudei irrigation projects, the conjunctive use ground water wells, and the joint hydrographic survey is in 2004 dollars and would be indexed for subsequent inflation of costs.

<sup>6</sup> The Navajo Nation would pay the operation and maintenance costs of the Navajo-Gallup Water Supply Project and the Animas-La Plata Project that are allocable to the Navajo Nation. The City of Gallup and the Jicarilla Apache Nation would pay the operation and maintenance costs of the Navajo-Gallup Water Supply Project allocable to them. The total population within the service area of the Navajo-Gallup Water Supply Project, the Navajo Nation Municipal Pipeline and the conjunctive use ground water wells is projected to be about 250,000 people by the year 2040, of which over 80 percent will be members of the Navajo Nation. The City of Gallup's population is anticipated to grow from approximately 20,000 today to almost 50,000 by 2040.

<sup>7</sup> The total construction cost for the Navajo-Gallup Water Supply Project included in the Settlement Act is \$589.6 million in 2004 dollars. The US Bureau of Reclamation in March 2005 reevaluated the estimated construction cost for the Project to take into account the approximately 40 percent increase in the price of steel pipe that occurred during 2004 and other cost indexes. The total construction cost for the Project is now estimated to be \$720.0 million in 2005 dollars. The State of New Mexico would contribute \$25 million in cost-share funding towards construction of the Project. The City of Gallup and the Jicarilla Apache Nation would be required to repay to the United States portions of the construction costs of the Project that are allocable to each, which costs in 2005 dollars are estimated to be \$135.0 million and \$26.0 million, respectively, based on their ability to pay. The construction costs allocable to the Navajo Nation, which are estimated to be \$559.0 million in 2005 dollars, would be non-reimbursable to the Nation. Funds expended by the City of Gallup and the State of New Mexico prior to authorization of the Project for enhancement and expansion of the regional water supply distribution system in and around Gallup, currently anticipated to be as much as \$5 million, would be in addition to the State's cost-share amount and would be credited towards Gallup's repayment requirement. Use of Gallup's water supply infrastructure to assist in delivering water to surrounding Navajo communities minimizes the amount and cost of works needed to serve water to these communities.

<sup>8</sup> The Colorado Ute Settlement Act Amendments of 2000 authorized funding to construct the Navajo Nation Municipal Pipeline. The current cost estimate to construct the Pipeline is about \$47 million. Ownership, maintenance and operation of the Navajo Nation Municipal Pipeline would be transferred to the Navajo Nation upon completion of Pipeline construction. Completion of construction of Animas-La Plata Project facilities, including the Navajo Nation Municipal Pipeline and Ridges Basin Dam, would be accomplished in accordance with the authorizing legislation for the Project.

<sup>9</sup> The ground water wells to be developed would provide conjunctive ground water uses within the service area of the Navajo-Gallup Water Supply Project to help meet water needs of Navajo communities in the San Juan, Little Colorado and Rio Grande basins and minimize the demand for water from the San Juan River.

<sup>10</sup> The funding for the Navajo Nation Water Resources Development Trust Fund would be deposited over the course of ten years following the date of passage of the Settlement Act into law. The Trust Fund would be used to investigate, construct, maintain and operate water facilities, and to implement water conservation measures and improvements, for the Navajo Nation to make use of its water rights under the Settlement Agreement.