

18 February 1958

Hon. Clinton P. Anderson  
Senator from New Mexico  
United States Senate  
Washington 25, D. C.

Dear Senator Anderson:

This is in answer to your long telegram of February 3, 1958. Steve Reynolds has informed me that he discussed the matters raised in this telegram with you by long distance telephone and that you and he have reached agreement on them. However, undoubtedly you will wish to get my views as Chairman of the Navajo Tribal Council.

Section 7 of the draft of proposed legislation to authorize construction of the Navajo Indian Irrigation Project and the initial stage of the San Juan Chama Project approved by the Navajo Tribal Council in Resolution No. CD-86-57 on December 12, 1957, and approved with the addition of a proviso by the New Mexico Interstate Stream Commission on February 6, 1958, is by no means intended to give a preferential position to the Utah Construction Company. It is, however, designed to provide for the maximum industrial development based on use of the San Juan River in New Mexico. It does represent an abandonment by the Navajo Tribe of its rights of absolute first priority under the Winters doctrine, and the reason for this is that the Tribal Council is convinced that the future welfare of the Navajo people is dependent upon large-scale industrial development in the San Juan River Basin to an equal extent with development of the Navajo Indian Irrigation Project. Great as the benefit to the Tribe will be from construction of the irrigation project, this alone will not provide a livelihood for our rapidly increasing population. It is obvious to us that the maximum development of agriculture on our reservation, together with the maximum development of our other natural resources still will

not provide enough jobs for Navajo Indians to raise our standard of living to an equal plane with that of the majority of other Americans. We believe that development of fabricating industries is essential for full Navajo employment. Thus, it is of utmost concern to us that an adequate water supply be provided for the Utah Construction Company's power plant and for the industries which we and the Utah Construction Company hope to attract into the San Juan River Basin by reason of low-cost power. In addition, we have very recently had an offer from the El Paso Natural Gas Company for a coal lease similar to the Utah Construction Company coal lease and immediately adjoining it to the south. Coal from this proposed lease would be used to supply a plant on the Reservation for manufacture of natural gas and gasoline. This also, of course, would require water and is the sort of industrial development which we had in mind when agreeing to share shortages across the board.

I believe you will be interested in the history of Section 7 of the proposed bill to authorize the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama Project, as it appears in the draft recommended by the Navajo Tribal Council in Resolution No. CD-86-57.

As you are aware, under the Winters doctrine, the Navajo Tribe would have first priority over all other uses for irrigation of the Navajo Indian Irrigation Project. However, the Governors of New Mexico from the time the Upper Colorado River Project was first proposed have insisted that the San Juan-Chama Transmountain Diversion have equal priority of water rights with the Navajo Indian Irrigation Project. This was stated by Governor Mechem in a letter dated March 4, 1953, to the Secretary of the Interior, where he wrote:

"The competition of water between the in-basin and trans-mountain projects necessitates closely coordinated operation. Neither project can assert a superior right as against the other without virtually destroying the other. Hence, it has been necessary to seek simultaneous authorization and understanding that the projects will be so operated. It is recognized that the two projects may not be able to proceed simultaneously with construction, and every effort must be exerted to protect each from encroachment by the other."

It has been our understanding, consequently, that unless the Navajo Tribe agreed to equal priority with the Navajo Indian Irrigation Project for at least the initial stage of the San Juan-Chama Project, neither that project nor our project would be authorized. On that basis, a draft of proposed authorizing legislation was prepared jointly by attorneys for the New Mexico Interstate Stream Commission and our Tribal attorneys, and was approved by the Interstate Stream Commission in Farmington on October 17, 1957. The Phoenix draft prepared on November 5, 1957, which had the personal review of the Solicitor of the Department of the Interior, who was in Phoenix at the time, carried forward the principle of equal priority of water rights for the Navajo Indian Irrigation Project and the initial phase of the San Juan-Chama Transmountain Diversion, from the first Interstate Stream Commission draft.

Actually, however, our Assistant General Counsel had suggested in a preliminary meeting at Window Rock on October 9, 1957, when the draft was being prepared for submission to the Interstate Stream Commission, that not only the initial stage of the San Juan-Chama Project, but also subsequent industrial uses in the San Juan Basin served from stored water behind the Navajo Dam or from the canals or other works of the Navajo Indian Irrigation Project, should share equal priority with the Navajo Indian Irrigation Project. At that time, the State Engineer would not agree to this proposal, but after giving it further thought he requested in the presence of Solicitor Bennett in Phoenix that he be given an opportunity to make hydrological studies with the view to revising Section 7 to provide for this across-the-board sharing.

Accordingly, Mr. Philip B. Mutz, Engineer for the Interstate Stream Commission of New Mexico, made the proposed hydrological study and submitted it to the State Engineer. Subsequently, on December 2, 1957, a meeting was held in Santa Fe with the State Engineer, Mr. Mutz, Mr. John Bliss and Mr. Claud Mann representing the State of New Mexico, Mr. G. B. Keesee, representing the Bureau of Indian Affairs, and Dean H. T. Person and Laurence Davis, representing the Navajo Tribe. At that meeting it was unanimously agreed that a revision of Section 7 to provide for across-the-board shortages would make possible the maximum industrial development of the San Juan River Basin, and that no other plan would. As you see, the Navajo Tribe was represented by competent, independent

engineering and legal advisers. The decision of the Tribal Council to support across-the-board sharing made by Resolution No. CD-86-57 was based on the recommendations of these independent advisers of ours.

The technical basis for our decision to approve across-the-board sharing is stated in Steve Reynolds' letter to Mr. Thomas G. Morris, Chairman of the New Mexico Interstate Stream Commission, dated January 29, 1958, which you have. Briefly, the reasons are these: --

1. If the Navajo Project, initial stage of the San Juan-Chama Project, and the already-authorized Hammond Project are served with equal priority ahead of the block of 224,000 acre feet of water remaining annually in the San Juan River, the three projects named would suffer no serious shortages. 100,000 acre feet of the remaining 224,000 acre feet could be developed with negligible shortages, but as to the last 124,000 acre feet of water the average annual shortage would be 21%. The lowest priority water in the block remaining after the needs of the three projects have been met would suffer 100% shortages in some years. Obviously, most of this remaining block of water will be unusable for industrial purposes.

2. On the other hand, if all uses of the presently unappropriated 900,000 annual acre feet of water of the San Juan River above Navajo Dam shared shortages in proportion to their diversion requirements, without regard to their dates of initiation of use, the average annual shortage to all users would amount to only 3%, and in the period of 1928-1954, upon which the study was based, actual shortages would have occurred in only four years, with a maximum of 34% in 1954.

Obviously, only under the across-the-board sharing plan can the last 124,000 acre feet of San Juan River water allocated under the Upper Colorado River Basin Compact to New Mexico be put to beneficial use in the State.

Our Tribal Council felt in adopting Resolution No. CD-86-57, that in the long run it would be far more beneficial to the Navajo people to have the maximum industrial development in New Mexico, rather than to insist upon absolute priority for the irrigation project only and to see water which otherwise could be used for job-giving industrial

development in the San Juan Basin go down river unused to California. Full explanations were given to our Council not only by Steve Reynolds, but also by our own consulting engineer, Dean H. T. Person of the University of Wyoming, prior to adoption of Resolution No. CD-86-57.

State Engineer Reynolds informs us that he has given you full information on the application pending in his office by the Utah Construction Company to divert 139,000 acre feet of water. Therefore I need not go into detail about this, but should point out that this application gives the company no right to store water behind Navajo Dam, and further that the application is based on a fifty-year development plan, whereas the State Engineer is authorized to approve appropriations of only so much water as can be put to beneficial use within ten years. Consequently, only a small portion of the 139,000 acre feet applied for can legally be appropriated by the Utah Construction Company, and we have hopes that the Utah Construction Company will be persuaded to assign its filing to the Secretary of the Interior and to take water from the Navajo Dam, on an equal priority basis with the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama Project, and subject to repayment of the incremental cost.

Under the across-the-board sharing principle which is embodied in the Tribal Council draft of the authorizing legislation, the 224,000 acre feet of water remaining in the river after construction of the initial stage of the San Juan-Chama Project and the Navajo Indian Irrigation Project would be applied to beneficial use on a first-come, first-served basis, although in time of shortage, the shortages would be shared equally rather than on a priority bases. Thus, whether remaining portions of this water would go to subsequent stages of the San Juan-Chama Transmountain Diversion or exclusively to industrial and municipal use within the San Juan River Basin, would depend upon how soon plans could be perfected and moneys obtained for actual beneficial use in or out of the Basin. Of course, we would like to see all this water developed for industrial purposes on our side of the Continental Divide, but whether this can be done will depend upon the relative economic feasibility, and diligence of the proponents, of projects on our side and of further stages of the San Juan-Chama Transmountain Diversion.

18 February 1958

I hope the above answers your telegram of February 3. I shall be happy to talk to you and clarify any questions which you have remaining in your mind. We appreciate your ceaseless efforts on behalf of the Navajo Project and the entire State of New Mexico.

A copy of Resolution No. CD-86-57 of the Navajo Tribal Council is enclosed.

Sincerely yours,

Chairman  
Navajo Tribal Council

Enclosure

cc: Mr. Norman M. Littell  
Mr. Dean H. T. Person  
Mr. G. B. Keesee  
Mr. Steve Reynolds  
Mr. Laurence Davis

C  
O  
P  
YRESOLUTION OF THE  
NAVAJO TRIBAL COUNCIL

Urging authorization by Congress of the Navajo Indian Irrigation Project and the San Juan-Chama Project in New Mexico and approving in principle legislation proposed for this purpose

## WHEREAS:

1. The Congress of the United States by Public Law 485, 84th Congress, 2d Session, 43 U.S.C. § 620, has authorized the Upper Colorado River Storage Project, which includes the Navajo Dam in New Mexico, and has appropriated funds for the actual construction of this dam; but has not yet authorized the proposed Navajo Indian Irrigation Project, which, however, is listed in Public Law 485 for priority of study by the Secretary of the Interior in order to determine its feasibility for later authorization as a participating project of the Upper Colorado River Storage Project, and

2. The principal justification for construction of the Navajo Dam is to provide a water supply for the proposed Navajo Indian Irrigation Project and for industrial and municipal uses in the San Juan River basin in New Mexico, and

3. In order for the members of the Navajo Tribe, now comprising 85,000 people, to attain a standard of living equal to that enjoyed by the majority of the other American citizens, not only prompt construction of the Navajo Indian Irrigation Project, but also the greatest possible industrial development in the San Juan River Basin on and adjacent to the Navajo Indian Reservation are essential, and

4. In return for the generous support of the State of New Mexico for the proposed Navajo Indian Irrigation Project, and in recognition of the fact that the maximum economic development of all parts of New Mexico is a benefit to all citizens of New Mexico, including Navajo citizens of New Mexico, the Navajo Tribal Administration has supported authorization of the proposed San Juan-Chama Transmountain Diversion at the same time the Navajo Indian Irrigation Project is authorized, and

5. While the original Feasibility Report on the proposed Navajo Indian Irrigation Project, dated January 1955, contemplated a 137,250-acre project, 20,000 acres of which were to be for non-Indian use, further study, embodied in a supplemental report dated March 1957, has shown that reducing the total acreage to a net area of 110,600 acres making use of the best lands available for irrigation purposes under Navajo Dam, both on and off the present Navajo Indian Reservation, and reserving the entire project for exclusive Navajo Indian use, would result in a much more feasible project with a greatly improved cost-benefit ratio, in increased availability of water for industrial use in the San Juan River Basin in New Mexico, and consequently in greater over-all benefit to the Navajo people. Such plan would involve transfer of approximately 14,360 acres of Federal public domain, 960 acres of New Mexico State land, and 4,320 acres of privately-owned land of non-Indians to Indian Reservation status, so that the Project could be exclusively for Navajo use, and the provisions of Public Law 485 and the Leavitt Act would be applicable thereto. Such plan has been approved by the Advisory Committee of the Navajo Tribal Council on January 9, 1957, by Resolution No. ACJ-1-57, which contemplated an exchange of non-irrigable lands of the present Navajo Indian Reservation for the irrigable off-reservation lands needed for the Project, or in the alternative, purchase of the off-reservation lands by the Navajo Tribe and their transfer into trust status by Federal legislation. Further study, however, has shown that the plan of exchange is impractical because of the population displacement it would create but that purchase is feasible; and accordingly, the Advisory Committee has authorized initiation of a Tribal land purchase program to acquire the off-reservation portions of the proposed Navajo Indian Irrigation Project, and has authorized the expenditure of Tribal funds for that purpose, and

6. It appears feasible at this time to proceed with construction of only the initial phase of the proposed San Juan-Chama Project, with an average annual diversion requirement of 110,000 acre feet, building the tunnel to sufficient size, however, to accommodate the originally proposed annual diversion of 235,000 acre feet so that further stages of the project may be authorized without excessive cost when and if they become feasible, and

7. The Interstate Stream Commission of New Mexico approved the plan for reducing and consolidating the area of the proposed Navajo Indian Irrigation Project, and of purchase



and transfer to trust status of the off-reservation lands required therefor, and of simultaneous authorization of the initial stage of the San Juan-Chama Project, in a meeting in Farmington on October 17, 1957. At said meeting, the Interstate Stream Commission approved proposed legislation for Congress to accomplish this purpose and further to provide for equal priority of water rights for the revised Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama Project, and appointed the State Engineer and the Commission's legal advisor to work with representatives of the Navajo Tribe and the Department of the Interior to make further refinements in the proposed legislation, and

8. The State Engineer of New Mexico and the legal advisor to the New Mexico Interstate Stream Commission met in Phoenix, Arizona, on November 5, 1957, with the Solicitor of the Department of the Interior, the Field Solicitor and the Irrigation Engineer from the Gallup Area Office of the Bureau of Indian Affairs, and the Assistant General Counsel of the Navajo Tribe, and agreed on a draft of legislation to authorize simultaneously the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama Project. Such draft, with revisions in sections 4 and 7 is attached to this resolution, and

9. Subsequent to this meeting, the State Engineer of New Mexico and his advisers have met with the Chairman of the Navajo Tribal Council and his advisers and representatives of the Bureau of Indian Affairs to discuss revision of sections 4 and 7 of the proposed legislation so as to provide for the sharing of shortages by all users of water in New Mexico from the San Juan River whose uses are hereafter initiated, and the Engineer and the Chairman and representatives of the Bureau of Indian Affairs have agreed that all such uses should share proportionately in all water shortages on the basis of their respective authorized diversion requirements, rather than on the basis of priority of appropriation.

NOW THEREFORE BE IT RESOLVED THAT:

1. The attached proposed bill entitled "To authorize the Secretary of the Interior to construct, operate, and maintain in the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama Project as participating projects of the Colorado River Storage Project, and for other purposes," consisting of the draft made in Phoenix on November 5, 1957, but containing revisions as proposed by the State

Engineer of New Mexico in sections 4 and 7 thereof, is hereby approved in principle, and the Congress of the United States is respectfully urged to enact legislation substantially similar thereto into law at the earliest practicable date, and to provide funds for early commencement of construction of the Navajo Indian Irrigation Project and initial stage of the San Juan-Chama Project.

2. The Chairman of the Tribal Council is hereby authorized to consider, and if in his discretion advisable in the interest of the Navajo Tribe to approve, further changes and modifications in such proposed legislation, provided the following principles are always adhered to:

- (1) The Navajo Indian Irrigation Project not be reduced below a net area of 110,630 acres.
- (2) The authorized average annual diversion requirement of the Navajo Indian Irrigation Project not be reduced below 508,000 acre feet.
- (3) The Project be exclusively for Indian use, and the legislation provide for acquisition and transfer into trust status of the presently off-reservation areas susceptible to irrigation as part of the Project.
- (4) No use in New Mexico of water of the San Juan River not heretofore authorized be given priority ahead of the Navajo Indian Irrigation Project.

#### C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present, and that same was approved by a vote of 70 in favor and 0 opposed, this 12th day of December, 1957.

/s/ Paul Jones

Chairman  
Navajo Tribal Council

A B I L L

To authorize the Secretary of the Interior to construct, operate, and maintain in the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama Project as participating projects of the Colorado River Storage Project, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby approves as participating projects of the Colorado River Storage Project the Navajo Indian Irrigation Project as described in the Bureau of Indian Affairs report entitled "Navajo Project, New Mexico Feasibility Report, January 1955," and as modified by the Bureau of Indian Affairs Supplemental Report entitled "Navajo Project, New Mexico Supplemental Report, March 1957 to Feasibility Report, January 1955," and the San Juan-Chama Project as described in the Bureau of Reclamation report entitled "San Juan-Chama Project, Colorado-New Mexico, November, 1955," such project plans and reports having been prepared and submitted as required under the provisions of the Act of April 11, 1956, 70 Stat. 105.

Sec. 2. Pursuant to the provisions of the Act of April 11, 1956, 70 Stat. 105, the Secretary of the Interior is authorized to construct the Navajo Indian Irrigation Project to include a net area of 110,630 acres of land with an average annual diversion requirement of 508,000 acre feet of water, the repayment of the costs of construction thereof to be in accordance with the provisions of said Act of April 11, 1956, 70 Stat. 105, including, but not limited to Section 4 (d) thereof.

Sec. 3 (a) In order to provide for the most economical development of the Navajo Indian Irrigation Project, the Secretary of the Interior is hereby authorized and directed to declare by publication in the Federal Register that the United States of America holds in trust for the Navajo Tribe of Indians any legal subdivisions or unsurveyed tracts of Federally-owned land outside the present boundary of the Navajo Indian Reservation in New Mexico in Ts. 28 and 29 N., Rs. 10 and 11 W., and Ts. 27 and 28 N., Rs. 12 and 13 W., N.M:P.M., susceptible to irrigation as part of the Navajo Indian Irrigation Project or necessary for location of any of the works or canals of such project; Provided, however, That no such legal subdivision or unsurveyed tract shall be so declared to be held in trust by the United States for the

Navajo Tribe until the Navajo Tribe shall have paid the United States the full appraised value thereof; and Provided further, That in making appraisals of such lands the Secretary of the Interior shall consider their values as of the date of approval of this Act, excluding therefrom the value of all minerals subject to leasing under the Act of February 25, 1920, as amended (30 U.S.C. 181-286), and such leasable minerals shall not be held in trust for the Navajo Tribe and shall continue to be subject to leasing under the Act of February 25, 1920, as amended, after the lands containing them have been declared to be held in trust by the United States for the Navajo Tribe.

(b) The Navajo Tribe is hereby authorized to convey to the United States, and the Secretary of the Interior is hereby directed to accept on behalf of the United States, title to any land or interest in land within the above-described townships acquired in fee simple by the Navajo Tribe, and after such conveyance said land or interest in land shall be held in trust by the United States for the Navajo Tribe as a part of the Navajo Indian Irrigation Project.

(c) The Secretary of the Interior is hereby authorized and directed to acquire by purchase, exchange, or condemnation any other land or interest in land within the townships above described susceptible to irrigation as part of the Navajo Indian Irrigation Project or necessary for location of any of the works or canals of such project. After such acquisition said lands or interest in lands shall be held by the United States in trust for the Navajo Tribe of Indians and the price of such lands or interest in lands or of the land given in exchange therefor by the United States shall be charged to funds of the Navajo Tribe of Indians on deposit in the Treasury of the United States.

Sec. 4 In developing the Navajo Indian Irrigation Project, the Secretary of the Interior is hereby authorized to provide capacity for municipal and industrial water supplies or miscellaneous purposes over and above the diversion requirements for irrigation purposes stated in Section 2 of this Act. Such additional capacity shall not be constructed unless, prior to such construction, contracts shall have been executed which the Secretary finds will provide satisfactory assurance of repayment of all costs assignable to such additional capacity.

Sec. 5 The Navajo Indian Irrigation Project shall be constructed, operated, and maintained subject to the provisions of Section 4 of the Act of April 11, 1956 (43 U.S.C.

§ 620c) to the same extent as if such project were authorized by section 1 of said act (43 U.S.C. § 620). Payment of operation and maintenance charges of the irrigation features of the Navajo Indian Irrigation Project shall be in accordance with the provisions of the Act of August 7, 1946, CO Stat. 667; Provided, That the Secretary of the Interior in his discretion may transfer to the Navajo Tribe of Indians the care, operation, and maintenance of all or any part of the Navajo Indian Irrigation Project works, subject to such rules and regulations as he may prescribe, and in such event, the Secretary may transfer to the Navajo Tribe title to movable property necessary to the operation and maintenance of project works.

Sec. 6 Pursuant to the provisions of the Act of April 11, 1956, 70 Stat. 105, the Secretary of the Interior is authorized to construct, operate and maintain an initial stage of the San Juan-Chama Project, in accordance with the Bureau of Reclamation report entitled, "Supplemental Report, San Juan-Chama Project, Colorado-New Mexico, May 1957," said initial stage to have an average annual diversion of 110,000 acre feet of water.

Sec. 7 Notwithstanding any provision of existing law, the annual water supply available from the San Juan River and its tributaries above Navajo Dam for the projects authorized herein and all other uses hereafter lawfully initiated in New Mexico shall be shared in proportion to the respective diversion requirements for said projects and uses in any year in which the Secretary of the Interior finds that the annual water supply in addition to water in storage will be inadequate for said projects and uses.

Sec. 8 Section 12 of the Act of April 11, 1956, 70 Stat. 105, shall not apply to the works authorized by this Act. There are hereby authorized to be appropriated out of any moneys in the treasury not otherwise appropriated such funds as may be required to carry out the purposes of this Act, but not to exceed \$208,000,000.