

Handwritten signature/initials

September 30, 1974

Blue Envelope

Memorandum

To: Office of the Solicitor
Attention: Mr. Ernest London

From: Project Construction Engineer

Subject: History of Water Rights

In addition to the data submitted by my letter of September 27, 1974, we have found that testimony given on July 9 and 10, 1958, before the Subcommittee on Irrigation and Drainage, U.S. Senate, S.3648, is pertinent to this matter.

On July 9, 1958, the statement of Mr. N. B. Bennett, Jr., furnishes data relative to stream deletions and the formula for sharing of shortages on the river. Also on that date, Mr. S. E. Reynolds, State Engineer, testified on the same subjects. Mr. Paul Jones, Chairman of the Navajo Tribal Council, too testified on July 9, 1958, and his testimony in part refers to Mr. Bennett's testimony.

Enclosed is a copy of Resolution of the Navajo Tribal Council CO-106-66, approved October 5, 1966.

Handwritten signature: Ray L...

Enclosures

cc: Regional Director, Attn: SW-101
(w/o copy of enclosure)

RESOLUTION OF THE
NAVAJO TRIBAL COUNCILTask Force Report of the Re-evaluation of the Navajo Irrigation
Project

WHEREAS:

1. The Navajo Tribal Council, by Resolution dated December 12, 1957 (CD-86-57), supported the passage of the Act of June 13, 1962 (76 Stat. 96) which provided that the Navajo Irrigation Project would divert an annual average of 508,000 acre-feet of water to irrigate approximately 110,630 acres of land on the Navajo Reservation and lying outside the Reservation to be acquired by the Secretary of the Interior and to be held in trust for the benefit of the Navajo Tribe.

2. The Navajo Tribe consented to compromise its rights under the Winters' Doctrine by agreeing to share shortages of the water from the San Juan River instead of insisting on the Tribe's right of priority to such shortages as consideration for the development of the Project, the acquisition of additional land to make up the 110,630 irrigable acres and the allocation of 508,000 acre-feet per year to the Tribe for irrigation use.

3. Notwithstanding that the said Act clearly authorized the Irrigation Project to be constructed with the capacity to irrigate 110,630 acres and to divert 508,000 acre-feet of water per year, the Secretary of the Interior first ordered the reappraisal, then the re-evaluation of the Project with the possible result that the capacity of the irrigation facilities and the acreage of the lands to be irrigated would be something less than that authorized by the Act and that it would be necessary for the municipal and industrial requirements to be taken from the said 508,000 acre-feet per year authorized by law solely for irrigation purposes.

4. The Act of June 13, 1962 authorizes the Secretary of the Interior to provide capacity for municipal and industrial water supplies over and above the diversion of 508,000 acre-feet per year for irrigating 110,630 acres of land if contracts have been executed which will assure repayment of costs attributable to that capacity for municipal and industrial requirements. Applications for such contracts have been submitted to the Secretary of the Interior but he has so far failed to approve the contract for 48,000 acre-feet per year submitted to him in May 1965 by the Utah Construction and

Mining Company and other applications for the allocation of at least 92,000 acre-feet making a total of 140,000 acre-feet for municipal and industrial purposes, as well as the contract for 508,000 acre-feet per year submitted to him in July 1964 by the Navajo Tribe of Indians.

5. The Navajo Tribal Council, by Resolution dated April 28, 1966 (CAP-56-66), opposed the re-evaluation of the Navajo Irrigation Project and reaffirmed the conditions on which the Navajo Tribe had originally agreed to participate in the Navajo Irrigation and San Juan-Chama Projects.

6. The Task Force assigned to re-evaluate the Irrigation Project published a preliminary draft of their findings in August 1966 and has submitted this report to the Navajo Tribe for its comments. Among the findings made by the Task Force were the following:

- a. It is proposed that the size of the canal coming from the Navajo Dam to the Kutz Pumping Plant be reduced from 2,100 cfs to 1,800 cfs and due to this reduction in capacity the full area of 110,630 acres cannot be irrigated unless a supplemental storage called the Gallegos Reservoir is constructed.
- b. Even if the Gallegos Reservoir is constructed, the capacity of the Project will not be sufficient to deliver water for industrial and municipal requirements during the irrigation season.
- c. The final paragraph of Appendix IV states:
"Therefore it is the recommendation of this Committee that the size of the works be of such size as to permit the irrigation of not less than 90,000 acres with a potential expansion to 100,000 to 110,000 acres dependent on industrial development."
(emphasis added)
- d. With the reduced capacity of the Project tunnels and canals, industrial and municipal requirements can be satisfied only by building further supplemental storage terminals at each municipal and industrial site to be filled at times other than during the irrigation season, and even then supplemental storage terminals can supply the industrial requirements only if all thermal power plants are located in the Burnham area.

- e. The cost of Navajo Irrigation Project has increased from \$135,000,000.00 authorized in the Act to \$175,000,000.00 due partly to the adjustment between 1961 and 1966 prices and the addition of the Gallegos Reservoir.

7. While stating that municipalities and industries could not be supplied by the Project unless additional storage terminals are built, the Task Force has not found and apparently has not investigated whether or not such storage terminals, as a physical practicality, could in fact satisfy all industrial and municipal requirements and further even if it is physically practicable there has been no investigation as to the capacities required, estimated costs for construction and maintenance, resulting evaporation losses, etc., and the extent to which these increased costs and uncertainty of water supply would discourage the development of industry.

8. On June 6, 1966, Senator Clinton P. Anderson introduced Senate Bill S. 3459 to increase the authorized appropriation from \$135,000,000.00 to \$175,000,000.00 and to add more land to the Navajo Irrigation Project outside the boundary of the Navajo Reservation to be held in trust by the United States for the Navajo Tribe, but it is quite certain that this Bill will not be passed during the current session of Congress.

9. Mr. Leon Hill, the Chairman of the Task Force re-evaluating the Irrigation Project, has stated that if the current session of Congress fails to pass the said Bill it is likely that the Project will proceed under one of the alternative plans providing for the irrigation of less than 110,630 acres and delivery of less than 508,000 acre-feet per year.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council again states the conditions agreed upon with the United States established in the Council's resolutions of December 12, 1957 (CD-86-57) and of April 28, 1966 (CAP-56-66):

- a. The land area to be irrigated by the Project must not be reduced below the authorized 110,630 acres and the annual diversion from the Navajo Dam for irrigation must not be less than the authorized 508,000 acre-feet, whether the capacity to supply this quantity is provided by an increase in the size of the tunnels and canals or by the Gallegos Reservoir.
- b. The Irrigation Project must be exclusively for Indian use and there must be transferred into trust status sufficient off-reservation areas necessary to make up 110,630 irrigable

acres which will be included as part of the irrigation project.

- c. No use in New Mexico of water of the San Juan River not heretofore authorized will be given priority ahead of the Navajo Irrigation Project.
- d. All of the Irrigation Project facilities must be constructed with sufficient capacity to supply reasonably anticipated industrial and municipal needs (as evidenced by the applications for water allocations already submitted to and approval being withheld by the Secretary of the Interior) without reducing the 503,000 acre-feet authorized for irrigation and without requiring such industries and municipalities to construct supplemental storage terminals.

2. The Navajo Tribal Council declares that these conditions must be fulfilled before it waives or compromises its paramount rights to the waters of the San Juan River.

3. The Navajo Tribal Council petitions Congress to maintain the good faith of the agreement between the Navajo Tribe and the United States by providing the necessary legislation and direction to complete the Navajo Irrigation Project in accordance with the conditions expressed above.

4. The Navajo Tribal Council hereby authorizes and directs the Director of the Resources Division, with the assistance of the Legal Department and such other Tribal personnel and consultants as he may deem necessary, to draft such amendments to the proposed Re-evaluation Report, Navajo Indian Irrigation Project, New Mexico (July, 1966 - revised August, 1966), as are necessary to make said proposed Re-evaluation Project consistent with the terms of this resolution, and said Director of Resources Division is further authorized and directed to forward said amendments to the Field Task Force at the earliest possible date with the recommendation that they be included in the final Re-evaluation Report.

CERTIFICATION

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 passed by a vote of 58 in favor and 0 opposed, this 5th day of October, 1966.

Nelson Aliman
Vice Chairman
Navajo Tribal Council