



RESTRICTIONS ON THE EXPORT OF WATER FROM NEW MEXICO

November 5, 2007

It is extremely unlikely that any water will ever be exported out of New Mexico, especially in light of the special protections provided by the Navajo Settlement.

1. Colorado River Compact/Federal Law Restrictions – Unless otherwise approved by Congress, the Colorado River Compact, the Upper Colorado River Basin Compact and other provisions of federal law restrict transfers of water between the Upper Basin States (New Mexico, Wyoming, Colorado and Utah) and the Lower Basin States (Arizona, California and Nevada). The legislation to authorize the Navajo Settlement does not authorize or otherwise allow export of any of New Mexico's water to any other state.
2. State Law Restrictions – Although New Mexico cannot prohibit the export of water because that would violate the United States Constitution, New Mexico can regulate the export of water. Sections 72-12B-1 and 2 of the New Mexico statutes provide very strict rules regarding the export of water. For example, in order to approve an application to export water, the state engineer must find that the applicant's withdrawal and transportation of water for use outside the state would not impair existing water rights, is not contrary to the conservation of water within the state and is not otherwise detrimental to the public welfare of the citizens of New Mexico.

Through the Navajo Settlement, the Navajo Nation agrees to comply with this law with respect to export of water.

3. Additional Settlement Protections – In addition to the above legal constraints, through the Navajo Settlement, the Navajo Nation agrees that it will not lease, contract, exchange or otherwise transfer water for use outside New Mexico without the consent of the New Mexico Interstate Stream Commission. This contractual provision would not apply without the settlement agreement, and does not apply to other water users.