

New Mexico State Land Office

Patrick H. Lyons, Commissioner of Public Lands



June 26, 2007

Mike Coma

The Honorable Jeff Bingaman
703 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bingaman:

The Commissioner supports the general idea of providing adequate water resources to the Navajo and Apache Nations and to the other urban and rural residents served by the San Juan, Animas and La Plata Rivers. Moreover, the federal trust administered by the Commissioner has substantial lands in the area that can be benefited by a proper settlement. However, the details of the proposed "Navajo Settlement" need further examination, and there is reason to believe that approval at this time may be premature.

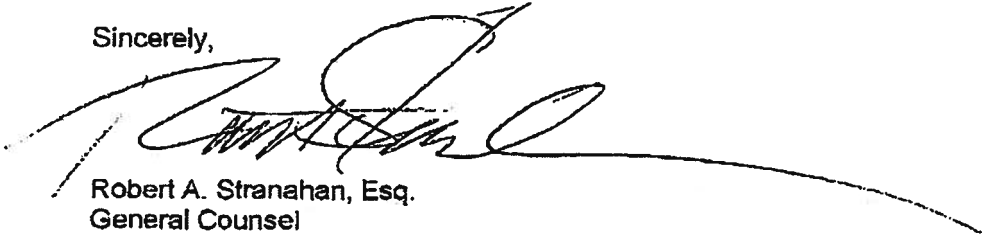
The Commissioner has asserted a claim to federal reserve rights in the New Mexico San Juan water rights adjudication (*State of New Mexico ex re. State Engineer v. United States*, CV-75-184, Eleventh Judicial District Court). That claim has been heard at the trial level and is being appealed. It is most likely that this issue will be taken to the New Mexico Supreme Court and perhaps the United States Supreme Court. A similar claim is going through the courts of Arizona. The Commissioner's claim to federal reserved water rights is analogous, but not identical to, the claims of the Navajo and Apache Nations, and would involve some of the same water resources that are the subject of the proposed Navajo Settlement, though the priority and quantity of the Commissioner's federal reserved rights have yet to be asserted or tried. Therefore, depending on the outcome of such litigation, some of the terms of the proposed Navajo Settlement might be affected. This is evidenced by the fact that both the Navajo Nation and Apache Nation have intervened in the subfile proceeding in which the Commissioner's claim is being tried.

The Commissioner's claim is being asserted in conformity with his fiduciary duty to the federal trust established in New Mexico's Enabling Act in 1910. Federal reserve water rights would constitute a trust asset if proven, and it is the Commissioner's duty to protect that potential asset. In fact, his claim is being asserted at this time because parties in the San Juan adjudication forced the claim into litigation asserting that they could not go forward with their own claims until the Commissioner's reserve rights claims were resolved. The Commissioner's request that the Navajo Settlement be given further time for consideration is in keeping with their insistence that his claims be tried first.

It is the Commissioner's hope that he can resolve any potential issues with the Navajo and Apache Nations and to the other urban and rural residents served by the San Juan, Animas and La Plata Rivers. However, the Commissioner has not been afforded any opportunity, to date, to discuss or negotiate these potential issues, or to have his representatives speak with

Congress regarding these matters. Any determination regarding the Navajo Settlement should await such further settlement and negotiations.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Stranahan', with a long horizontal flourish extending to the right.

Robert A. Stranahan, Esq.
General Counsel
New Mexico State Land Office