

July 9, 2004, Draft – Navajo Nation Water Rights Settlement

Disclaimer. This document is a product of New Mexico Interstate Stream Commission staff, and it is not a settlement document. It is expressly understood that the governing bodies or authorities of the State of New Mexico, the Navajo Nation and the United States have not approved a settlement or settlement documents.

STATUS PRESENTATION

**SAN JUAN RIVER BASIN IN NEW MEXICO
NAVAJO NATION WATER RIGHTS SETTLEMENT**

July 9, 2004

I. BACKGROUND

1. San Juan River Basin

- a. basin drainage covers much of northwest New Mexico
- b. most of San Juan River flow enters New Mexico from Colorado
- c. the water yield of the basin measured at Bluff, UT, is 2 MAF/year
- d. roughly half the yield of the basin is regulated by Navajo Reservoir
- e. federal law requires contract for water originating above Navajo Reservoir and Congressional approval of contract

2. Interstate Water Compacts

- a. New Mexico is party to the Colorado River Compact and Upper Colorado River Basin Compact
- b. New Mexico's Upper Basin apportionment is 11.25% of the allocation to the Upper Basin by the Colorado River Compact
- c. the San Juan River Basin in New Mexico contributes only 3% of the yield available to the Upper Colorado River Basin
- d. NM's relatively large apportionment was to address Indian rights

3. Indian Water Rights

- a. federal reserved rights for permanent homelands
- b. practicably irrigable acreage standard for quantifying rights
- c. claims for municipal, domestic and other uses
- d. priority dates relate to when lands were reserved for tribes
- e. rights not lost for non-use

4. Indian Tribes

- a. Navajo Nation
 - i. extensive lands in New Mexico, Arizona and Utah
 - ii. capitol is Window Rock, AZ, near New Mexico border
 - iii. existing Fruitland and Hogback projects – San Juan River
 - iv. existing/authorized Navajo Indian Irrigation Project – Navajo Reservoir contract
 - v. proposed Navajo-Gallup Water Supply Project – proposed contract
- b. Jicarilla Apache Nation
 - i. lands in New Mexico
 - ii. Congress approved water rights settlement in 1992
 - iii. leases of Navajo Reservoir supply contract rights for SJGS, Gallup
- c. Ute Mountain Ute Tribe
 - i. lands in Colorado and New Mexico
 - ii. Congress approved water rights settlement in Colorado
 - iii. no resident population or irrigation in New Mexico
 - iv. reservation does not adjoin San Juan River in New Mexico
 - v. minor historic use claims and future use claim

5. Non-Indian Water Users

- a. Cities and San Juan Water Commission
 - i. Farmington
 - ii. Aztec
 - iii. Bloomfield
 - iv. domestic water user associations
 - v. Animas-La Plata Project underway
- b. Power Plants
 - i. San Juan Generating Station – Public Service Co. of NM
 - ii. Four Corners Power Plant – Arizona Public Service Co.
 - iii. coal mines – BHP Billiton
- c. Irrigators
 - i. Hammond Conservancy District – Navajo Reservoir contract
 - ii. San Juan River users – Bloomfield Irrigation District, Farmers Mutual and Jewett Valley ditches
 - iii. Animas River ditches
 - iv. La Plata River ditches

II. PROPOSED SETTLEMENT

1. Major Components

- a. adjudicate reserved senior priority rights for existing acreage under Fruitland and Hogback projects – no PIA claims
- b. recognize and complete NIIP as authorized by Congress in 1962 – supplied under Navajo Reservoir supply contract with junior priority (NIIP buildout continuing and is now about 75% complete)
- c. authorize and construct the Navajo-Gallup Water Supply Project to service domestic needs of Navajo Nation under a Navajo Reservoir contract (also puts Jicarilla contract rights to use and meets needs of Gallup to 2060)
- d. settlement of Navajo claims largely boils down to about 23,000 AF/year of new water allocation for the Navajo share of the NGWSP and construction of the project at a cost of about \$600 million, plus additional funds

2. Allocations of Water

- a. New Mexico's Upper Basin apportionment is at least 669,000 AF/year of depletion, including NM share of Colorado River Storage Project evap
- b. settlement respects and fits within New Mexico's compact apportionment
- c. allocations of depletions from NM's apportionment under settlement:
 - i. Navajo Nation 56% (irrigation and domestic uses)
 - ii. Jicarilla Apache Nation 5% (most leased for SJGS, Gallup)
 - iii. San Juan-Chama Project 17% (Rio Grande non-Jicarilla uses)
 - iv. power plants 6% (9% with Jicarilla-SJGS lease)
 - v. non-Indian uses in SJ basin 16% (irrigation and domestic uses)

3. Joint Water Rights Administration

- a. Navajo Nation distributes water on its lands
- b. State Engineer administers diversions on San Juan, Animas and La Plata
- c. San Juan River Adjudication court has jurisdiction to enforce decree

4. Funding Requirements

- a. federal water development funds requested through settlement legislation:
 - i. NIIP completion \$373 million (occurs w/o settlement)
 - ii. Fruitland/Hogback rehab \$ 23 million (occurs w/o settlement)
 - iii. Navajo-Gallup Project \$590 million
 - iv. ground water wells \$ 78 million (associated with NGP)
- b. additional funds requested:
 - i. Hydrographic survey \$ 5 million (uses off San Juan R.)
 - ii. Navajo Water Trust Fund \$ 50 million (half federal, half NM)
- c. Congress must approve funding and Navajo Reservoir supply contract

III. PUBLIC CONCERNS

1. Public Process

- a. draft settlement released for public review on December 5
- b. written public comments received January 15, oral comments continued
- c. negotiators addressed public concerns to the extent possible or practical in the context of an Indian rights settlement

2. Summary of Public Concerns

- a. possibility of over-allocation with respect to NM's Upper Basin apportionment and related impacts on existing and authorized water uses
- b. consistency in water rights between Fruitland and Hogback project water rights and non-Indian irrigation rights
- c. impacts to non-Navajo water uses of priority calls during drought for senior Fruitland and Hogback project rights
- d. impacts of NIIP and Navajo-Gallup Project contract rights on Hammond Project, Jicarilla Apache Nation and San Juan-Chama Project contracts
- e. need for clarity in Navajo Nation ground water rights
- f. economic costs of settlement

IV. PROCESS AND SCHEDULE

1. Settlement

- a. revised draft settlement documents and responses to public comments are available for inspection in July
- b. several weeks allowed for public inspection and decision-maker review
- c. Navajo Nation approval processes began after public release of documents
- d. ISC meeting in Farmington in August to consider resolution approving settlement
- e. settlement executed in August if approved
- f. settlement bill introduced to Congress within weeks after execution

2. Related activities

- a. Bureau of Reclamation to complete planning documents, environmental impact statement and ESA compliances for the Navajo-Gallup Project
- b. Adjudication court to hear objections to Navajo water rights decree