

# NEW MEXICO INTERSTATE STREAM COMMISSION

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JAMES WILCOX, Carlsbad



BATAAN MEMORIAL BUILDING, ROOM 101  
STATE CAPITOL  
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SANTA FE, NEW MEXICO 87504-5102

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FAX:(505)827-6188

October 1, 2004

Steve Cone  
for "electors Concerned about Animas Water"  
1217 Chaco Avenue  
Farmington, New Mexico 87401

Re: Inspection of Public Records Act request

Dear Steve:

The ISC received your check for nine dollars and forty cents (\$9.40). Accordingly, as we agreed by telephone last week, I enclose the following documents totaling 45 pages that you requested:

1. Possible wording for settlement from City of Gallup;
2. Letter from Senator Domenici to Governor Richardson dated April 7, 2004;
3. Draft study of effects of provisions of subparagraphs 9.1 and 9.2 of the proposed settlement;
4. Comments from City of Farmington dated July 30, 2004;
5. Whipple responses to remarks by Mr. Gary Horner, dated July 28, 2004;
6. Status Report of ISC dated June 24, 2004 to NM Legislature Water and Natural Resources Committee;
7. Draft Memorandum from John Whipple to San Juan Agricultural Water Users Association, August 9, 2004;
8. Signed confidentiality agreements;
9. Memos re: June 25th draft of Settlement Agreement.

Please note that my initial page count, and your corresponding check, corresponded to 47 pages, not 45. I have verified that I have copied each document you requested, and I apologize for the error resulting in an overcharge of \$0.40. Please let me know if you wish reimbursement of this overcharge, or if you have any questions or concerns; I can be reached at 476-0557.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Rubin".

Daniel Rubin  
Interstate Stream Commission

# NEW MEXICO INTERSTATE STREAM COMMISSION

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October 1, 2004

## RECEIPT

Received from Steve Cone for "electors Concerned about Animas Water", the sum of \$9.40, by check no. 3130, for copies made per his public records request of August 22, 2004.

  
Terry Harper, Paralegal

*Bank of America Advantage*

<b>STEVEN E. CONE</b> 08-88	3130
<b>KATHERINE LATHAN</b>	
1217 CHACO PH. 327-0743	95-32/1070 NM
FARMINGTON, NM 87402	9642
	Date <u>9/29/04</u>
Pay <u>ISC</u>	\$ <u>9.40</u>
to the order of <u>mine</u>	€ — <u>40/100</u> Dollars
<b>Bank of America.</b> 	<i>Advantage</i>
ACH R/T 107000327	<u>Steven E. Cone</u> MP
Memo	
⑆ 107000327⑆ 000515505196⑆ 3130	

SJ-17  
Navajo Sett.

### Definitions

“Project Area” means the communities in northwestern New Mexico described in the Navajo-Gallup Water Supply Project: Appraisal Level Designs and Cost Estimates, U.S. Bureau of Reclamation, April 2002, and shown on USBR Drawing No. 1695-406-49, encompassing portions of San Juan, McKinley, and Rio Arriba counties in New Mexico which would receive Project water.

“Water Authority” means an inter-agency entity created by the Project Beneficiaries and Reclamation under State, Federal, and Tribal law to insure construction and/or ongoing operation maintenance, and repair of the Navajo Gallup Water Supply Project.

### Findings

Congress finds that:

- a) Groundwater supplies are inadequate to meet the sustainable needs of the Navajo communities, the Jicaralla Apache communities, and the City of Gallup within the Project Area;
- b) The lack of groundwater resources poses a current and growing threat to the public health and welfare to the communities within the Project Area;
- c) The only potential source of renewable water supplies for the Project Area is from the San Juan River;
- d) Renewable supplies vary depending on yearly weather patterns;
- e) The best method for ensuring adequate water supplies for communities in the Project Area is to build a regional water system which can deliver renewable surface supplies, and supplement surface depletions with groundwater depending on climatic conditions;
- f) The Project Beneficiaries will have an ongoing interest in ensuring their water supply from the Project; further, they will have an interest in keeping the Project costs to a minimum.

### Authorization

- a) Construction, Operation, Maintenance, and Repair: The Secretary is authorized to enter into Cooperative Agreements for the construction and OM&R of the Project with a Water Authority *provided that*,
  - 1) the Secretary finds that the Water Authority is properly constructed under Federal, State, and Tribal law; and
  - 2) the Secretary finds that the Water Authority has the engineering capability to adequately oversee construction and maintenance of the Project.



SENATOR PETE V. DOMENICI  
NEW MEXICO

COMMITTEES:  
ENERGY AND NATURAL RESOURCES  
APPROPRIATIONS  
BUDGET  
INDIAN AFFAIRS

*SJ-17  
Navajo sit*

**United States Senate**  
WASHINGTON, DC 20510-3101

April 7, 2004

Governor Bill Richardson  
Office of the Governor  
State Capitol  
Room 400  
Santa Fe, NM 87501

Dear Governor Richardson:

This letter is to confirm and expand upon our recent conversation regarding the three New Mexico water settlements pending action before Congress: Aamodt, Navajo/Gallup, and Gila.

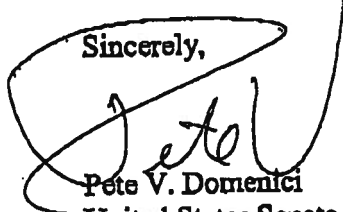
As you well know, the water situation in New Mexico has reached a critical level. In order to allocate our water resources reliably and judiciously, we first must need to determine each interested parties rightful water allocation. Our ability to take this critical step toward water planning has been hindered by our state's numerous pending water rights settlements. These prolonged disputes have pitted the state, municipalities, and private landholders against one another and have resulted in prolonged and costly litigation. Senator Bingaman and I have been working in good faith and with varying degrees of progress to address these three major water settlements.

In order to best proceed with resolving these long-standing disputes, I suggest that we look at the settlements collectively instead of singularly and work with all members of the delegation in a unified and coordinated manner. I request that you and the rest of the New Mexico delegation join me in a bi-partisan manner to address these problems. While each member of Congress has different interests, my sincere hope is that we can meet and discuss this approach.

I stand ready to host a meeting here in Washington, DC or in New Mexico at everyone's earliest convenience to discuss how we can best approach this pressing problem.

Resolving these water disputes is an indispensable component of addressing our state's water woes. I hope you will give my request every consideration and I look forward to working with you on this issue.

Sincerely,



Pete V. Domenici  
United States Senate

cc: Senator Jeff Bingaman  
Representative Heather Wilson  
Representative Steve Pearce  
Representative Tom Udall

AS Lid talk soon  
bw

July 9, 2004 Draft - Navajo Nation Water Rights Settlement

Disclaimer. This document is a product of New Mexico Interstate Stream Commission staff only and is not a settlement document. It is expressly understood that the governing bodies or authorities of the proposed signatories have not approved the revised draft settlement agreement. This document is provided for informational purposes.

Study of the Effects of the Provisions of Subparagraphs 9.1 and 9.2 of the Proposed Settlement Agreement Assuming Historic Hydrology for the Available Period of Record 1956-2003

Annual Summary of Amounts of Water Released from Navajo Reservoir Storage to Meet the Minimum Direct Flow Determination as per Subparagraph 9.1 of the Agreement and the Alternate Water Source Provisions for Navajo Nation San Juan River Diversions, including the Fruitland and Hogback Irrigation Projects, as per Subparagraph 9.2 of the Agreement

Year	Modeled May 31 Navajo Reservoir Storage (1) (af)	Release from Storage to Maintain Minimum Direct Flow (af)	Release from Storage for Alternate Water Source Demands for Fruitland and Hogback (2) (af)	Ten-year Running Average of Releases per Alternate Water Source Provisions (af)	Depletion of Storage for Alternate Water Source Demands for Fruitland and Hogback Projects (3) (af)	Ten-year Running Average of Depletions per Alternate Water Source Provisions (af)	Shortage to Direct-Flow Uses Not Met by Alternate Water Source Provisions (af)	Period of Shortage to Direct-Flow Uses (dates)	Shortage to Direct-Flow Uses Not Met if Endangered Fish Habitat Releases Provide Carriage Water (5) (af)
1956	944,200	0	15,000	6,480	0	0	16,864	9/16-10/31	6,344
1957	891,700	0	0	0	0	0	0		0
1958	1,685,700	0	222	96	0	0	0		0
1959	1,388,300	690	15,000	6,480	0	0	4,109	9/17-9/30	0
1960	1,377,700	0	4,979	2,151	0	0	0		0
1961	1,269,600	0	212	92	0	0	0		0
1962	1,440,500	0	3,855	1,865	0	0	0		0
1963	1,424,400	0	2,383	1,029	0	0	0		0
1964	1,173,100	0	726	314	0	0	0		0
1965	1,145,600	0	0	4,238	0	1,831	0		0
1966	1,670,900	0	683	2,806	295	1,212	0		0
1967	1,360,200	0	0	2,806	0	1,212	0		0
1968	1,281,300	0	10	2,785	4	1,203	0		0
1969	1,393,300	0	0	1,285	0	555	0		0
1970	1,481,900	0	113	798	49	345	0		0
1971	1,506,000	0	0	898	523	388	0		0
1972	1,372,200	0	9,025	1,415	3,899	611	0		0
1973	1,374,000	0	0	1,177	0	508	0		0
1974	1,591,500	0	10,179	2,122	4,397	917	0		0
1975	1,325,300	0	0	2,122	0	917	0		0
1976	1,530,600	0	0	2,054	0	887	0		0
1977	1,188,900	216	10,203	3,074	4,408	1,328	0		0
1978	1,085,000	0	7,580	3,829	3,266	1,654	0		0
1979	1,204,500	0	0	3,829	0	1,654	0		0
1980	1,451,900	0	0	3,818	0	1,649	0		0
1981	1,432,300	0	651	3,762	281	1,625	0		0
1982	1,502,800	0	0	2,859	0	1,235	0		0
1983	1,468,100	0	0	2,859	0	1,235	0		0
1984	1,654,300	0	0	1,841	0	795	0		0
1985	1,567,400	0	0	1,841	0	795	0		0
1986	1,429,500	0	0	1,841	0	795	0		0
1987	1,571,400	0	0	821	0	355	0		0
1988	1,543,400	0	1,229	65	0	28	0		0
1989	1,511,800	0	0	188	531	81	0		0
1990	1,278,400	0	0	188	0	81	0		0
1991	1,523,100	0	0	123	0	53	0		0
1992	1,542,500	0	0	123	0	53	0		0
1993	1,616,900	0	0	123	0	53	0		0
1994		0	9	124	4	53	0		0
1995		0	0	124	0	53	0		0
1996		0	4,622	586	1,997	253	0		0
1997		0	0	586	0	253	0		0
1998		0	0	586	0	253	0		0
1999		0	0	463	0	200	0		0
2000		0	11,059	1,569	4,777	678	0		0
2001		0	121	1,581	52	683	0		0
2002		0	7,500	2,331	3,240	1,007	62,258	6/27-10/25 multiple (4)	57,998
2003		0	7,500	3,081	3,240	1,331	7,042		2,782
Average		19	2,376	1,026	1,881	1,440			

Notes:

- (1) Modeled storage is from the draft Navajo Reservoir operations EIS. Navajo Reservoir gaged inflow records are available daily beginning 1956, and the modeling period used in the EIS ended 1993. The total depletion in New Mexico used in the model was 610,600 acre-feet, as compared to 609,800 acre-feet projected in New Mexico's Upper Basin depletion schedule. The total depletion served from the Navajo Reservoir water supply is also similar between documents. It is assumed that May 31 storage in 2002 and 2003 would be modeled under full development conditions to be less than 1 million acre-feet due to the severity of the recent drought, and in particular, the 10% of average runoff that occurred in 2002.
- (2) Model results showed no shortages to the amount of depletions modeled while operating Navajo Dam to make contract deliveries and to meet flows for endangered fish habitat in the San Juan River recommended by the San Juan River Basin Recovery Implementation Program. Under full development, shortages may have occurred during 2002 and 2003, and a 10% shortage to the Navajo Indian Irrigation Project diversion demand is assumed for both years.
- (3) The depletion of the consumptive irrigation use after accounting for canal and irrigation efficiencies, and incidental depletions equal to 16% of the consumptive use. Possible re-division and re-use at Hogback of incremental return flows from the Fruitland project resulting from diversion of alternate source water at Fruitland is not included in this calculation.
- (4) Periods of shortage to direct-flow users include August 8-14, August 20-23, and September 27-October 31. Based on provisional flow data for 2003.
- (5) Assumes return flows from diversions by the Fruitland and Hogback projects under the alternate water source provisions are credited towards meeting the habitat flow needs of endangered fish in the San Juan River and would be released from Navajo Dam to maintain such habitat flows without the alternate water source provisions. The amount of release chargeable to the NIIP contract right may vary depending on the recommended flows for endangered fish habitat, Navajo Dam operations to meet such flows, whether any portions of the return flows bypass gages used to measure performance under the flow recommendations, and the extent to which dam releases for endangered fish habitat may be considered as carriage water. To the extent that Navajo Dam releases made to meet the flow recommendations can be considered as carriage water and not as a delivery chargeable against the NIIP contract diversion right, the depletions associated with alternate water sourcing for 1956, 1959, 2002 and 2003 chargeable to the NIIP contract right would exceed those shown, and the releases from storage specifically for use at Fruitland and Hogback for other years would be less than those shown. The flow recommendations for endangered fish habitat are subject to change through adaptive management.

Summary of findings:

- (1) The minimum direct flow determination provisions of subparagraph 9.1 of the Settlement Agreement do not affect contract deliveries from runoff above Navajo Dam.
- (2) Under the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, the years of shortage experienced by the direct-flow users below Navajo Dam are reduced from 46% of the years (22 years out of 48, excluding total shortages of 10 acre-feet or less in 1968 and 1994) to 8% of the years (4 years out of 48) for the period of record. If historic hydrology patterns repeated, about two years of shortage would occur every 45 years or so, or in about 4% of years, pursuant to subparagraph 9.2. If releases made from Navajo Dam to benefit endangered fish species in the San Juan River can be used as carriage water to and through the Fruitland and Hogback projects, the releases from Navajo Dam made pursuant to subparagraph 9.2 can provide greater coverage against the occurrence or extent of priority calls. Actual accounting of alternate water source deliveries would be determined based on conditions at the times of delivery.

Assumptions generally used in study:

- (1) Analysis considers only water rights in New Mexico.
- (2) Hogback and Fruitland projects combined divert 324 cfs every day during April through October (includes municipal and domestic use diversions at Shiprock pursuant to subparagraph 3(d) of the proposed Partial Final Decree).
- (3) Rate of daily average direct flow needed to satisfy all demands of direct flow users during April-September:
  - (a) combined direct flow of the Animas River near Cedar Hill and the San Juan River at Archuleta of 700 cfs, with direct flow of the San Juan River at Archuleta of 250 cfs; or
  - (b) direct flow of the San Juan River at Archuleta of 450 cfs, with direct flow of the Animas River near Cedar Hill of 250 cfs or less.
- (4) Rate of daily average direct flow needed to satisfy all demands of direct flow users during October:
  - (a) combined direct flow of the Animas River near Cedar Hill and the San Juan River at Archuleta of 500 cfs, with direct flow of the San Juan River at Archuleta of 250 cfs; or
  - (b) direct flow of the San Juan River at Archuleta of 250 cfs, with direct flow of the Animas River near Cedar Hill of 250 cfs or less.
- (5) Direct flow of the San Juan River at Archuleta equals the maximum of:
  - (a) the inflow to Navajo Reservoir computed using a water budget computation for the reservoir, averaged over three consecutive days; and
  - (b) the sum of the gaged inflows to Navajo Reservoir at four gaging stations (San Juan River at Carracas, Piedra River near Arboles, Los Pinos River at La Boca, and Spring Creek at La Boca), plus 20 cfs for intervening inflow between the gages and Navajo Dam under pre-dam conditions, averaged over three consecutive days.Provided, that the direct flow, if computed pursuant to (a) and (b) to be less than 225 cfs, will be determined for the purpose of water rights administration as a minimum of 225 cfs if Navajo Reservoir storage exceeds 1 million acre-feet at the end of May.

Sensitivity of results to study factors:

Factor:

- (a) Peak irrigation consumptive use and river loss conditions apply during April-September
- (b) Irrigation, including at Fruitland and Hogback, is at maximum cfs rates with no annual volume limits
- (c) No re-division and re-use occurs at Hogback of returns from alternate source water used at Fruitland
- (d) No inflows occur below Cedar Hill and Navajo Dam, including from the La Plata River, except return flows
- (e) Historic flows repeat on the Animas River near Cedar Hill and in the drainage above Navajo Dam

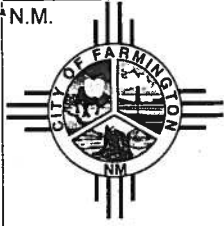
impact on estimated amount of release pursuant to alternate water source provisions:

- tends to over-estimate
- tends to over-estimate
- tends to over-estimate
- tends to over-estimate
- impact depends on future hydrology and uses in Colorado

Other remarks:

State Engineer administration of the rights to divert from the direct-flow and from stored water is expected to follow approval of statewide rules and regulations for active water resource management. It is anticipated that a draft water resources administration manual for the San Juan River Basin may be released for public review and comment in the fall of 2004. The assumptions made in the study regarding the determination of the direct flow at Navajo Dam and administration of the direct flow should not be viewed to pre-determine the outcome of the public review process on basin-specific administrative criteria. Regardless of minor differences that may occur between study assumptions and actual administration conditions, it can be concluded from the study that the alternate water source provisions provide significant protection to direct-flow users in the San Juan River Basin in New Mexico against the occurrence of curtailment by priority call when the direct flow is insufficient to meet all the demands under the rights to divert and use direct flow in New Mexico. The Navajo Nation and non-Navajo water users in the Basin may still need to come together to cooperatively address severe conditions from time to time in the future.

UTAH | COLO.  
ARIZ. | N.M.



*Whipple 1105*  
CITY OF FARMINGTON

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<http://www.farmington.nm.us>

*SJ-17  
Settle*

July 30, 2004

John Leeper  
Navajo Nation Department of Water Resources  
P.O. Drawer 678  
Fort Defiance, AZ 86504

John Whipple  
New Mexico Interstate Stream Commission  
P.O. Box 25102  
Santa Fe, NM 87504-5102

Re: Proposed Navajo Water Rights Settlement

Gentlemen:

In light of some of the comments made during recent discussions with the Farmington City Council, I wanted to forward two suggested modifications to the proposed settlement documents that would address concerns that were raised.

First, staff has suggested that the City of Farmington's ability to serve its needs in future years is dependent on the City's ability to preserve water rights that were adjudicated to the City in the *Echo Ditch Decree*. The City joined those that commented on the December 5, 2003 draft that it would be helpful to include a provision that those rights would be protected. We were pleased to see the additions to the settlement agreement addressing those concerns.

However, after reading these additions, I became concerned that the current language does not protect a key part of the City's rights, those rights we call the "Trust" rights. Since conveying this concern to the City Council, the Council has expressed their interest in addressing this issue before they make any decision on whether to support the settlement.

Therefore, I have taken the liberty to draft and enclose some suggested language that could be added to the settlement agreement that would provide us the protection we need. This language may not be in final form, but should provide a vehicle to begin discussion on the subject that hopefully will lead to a mutually agreeable solution. Please review it and let me know what you think.

CITY ATTORNEY



John Leeper  
John Whipple  
Page 2  
July 30, 2004

Another concern that keeps coming up during discussions on the proposed settlement deals with the legal effect the passage of the authorizing legislation will have on the District Court's jurisdiction in the San Juan River Adjudication. I am wondering if it might be possible to put these concerns to rest by adding or amending language in the proposed Bill which would clarify that the state court retains jurisdiction over the adjudication of rights belonging to the Navajo Nation after passage of the legislation. Of course, I understand that the settlement would terminate should the partial final decree change substantially. However, it should be clear that the court retains the power to approve, reject or modify the proposed partial final decree in any event.

I hope this information is helpful to you and I look forward to further discussions. Thank you for your time.

Sincerely,



Jay B. Burnham  
City Attorney

xc: Stanley Pollack, Navajo Nation Dept. of Justice  
John Utton, Sheehan, Sheehan and Stelzner, PA  
D. L. Sanders, Office of the State Engineer  
Bob Hudson, City Manager  
Joe Schmitz, Community Development Director

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SETTLEMENT AGREEMENT

p. 25

Add:

9.6.8 The Navajo Nation and the United States as trustee for the Navajo Nation agree that the 10755.8 acre feet of water adjudicated to the Town (now City) of Farmington in the Echo Ditch Decree to be owned in trust for the use and benefit of the owners of lots and parcels of land within the Town (City) are valid and existing water rights, have not been forfeited or abandoned, and the Navajo Nation agrees it will not object to the transfer of these rights from irrigation uses to municipal and industrial uses within the City of Farmington municipal water system.

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SJ-17  
Navajo Set

Responses to Remarks Made by Mr. Gary Horner at the July 21, 2004,  
Special Farmington City Council Work Session

By John Whipple, New Mexico Interstate Stream Commission Staff  
July 28, 2004

Remark 1. The Navajo Nation's reserved rights are not subject to loss for non-use, as compared to rights of other users.

Federally-based reserved rights are by law different than appropriative rights under state law, and are not subject to historic use standards or loss for non-use. The Navajo Nation and Jicarilla Apache Nation have reserved rights.

Remark 2. The Navajo Nation's reserved rights would all have an 1868 priority date and be senior to other uses, such that all non-Navajo water uses would be curtailed before any Navajo uses.

The Navajo Nation's reserved rights would have an 1868 priority. However, as per the Settlement Agreement, the reserved rights for diversions from the direct flow of the San Juan and Animas rivers would be supplied under contract with the Secretary of the Interior and administered in accordance with the following priority dates:

- 1955 for the Navajo Indian Irrigation Project;
- 1968 for the Navajo-Gallup Water Supply Project diversions of inflow below Navajo Dam and 1955 for Project diversions of flow above Navajo Dam; and
- 1956 for the Animas-La Plata Project.

Water previously stored in priority and currently available for release from reservoir storage to the Navajo Nation would be delivered pursuant to contract. The three projects would share in shortages with other contractors.

In addition, when the direct flow is insufficient to meet the demands under the Hogback and Fruitland irrigation projects, the Navajo Nation under the settlement would agree to use up to 15,000 acre-feet of its 1955 priority NIIP contract water in any year to supply the needs of these two projects and would not request a priority call against other users that are junior to 1868 to meet the needs of the two projects unless and until the contract water is completely used. The amount of contract water to be used for this purpose would be reduced in the event of shortages to NIIP.

Remark 3. The Navajo Nation may lease its water off its reservation, including for uses in the Lower Colorado River Basin.

The proposed Partial Final Decree recognizes uses on Navajo lands. The Navajo Nation under the settlement may lease its water on or off reservation to non-

Navajo entities, just as the Jicarilla Apache Nation pursuant to its water rights settlement leases water off reservation to the Public Service Company of New Mexico for use at the San Juan Generating Station. Any lease off reservation requires a State Engineer permit. Under the current Law of the River, water rights in the Upper Basin may not be leased interstate or to the Lower Basin. Neither tribe is prevented from litigating, however, to what extent the Law of the River applies to them. Even if it is later determined that the Navajo Nation may lease its New Mexico water rights for use outside the State, the settlement would require the consent of the State of New Mexico to do so in addition to compliance with applicable law.

Remark 4. The Navajo Nation gets 85 percent, not 56 percent, of New Mexico's compact apportionment based on diversion rights.

New Mexico's compact apportionment is of consumptive use or depletions. The difference between diversions and return flow is depletion. With settlement, the table of anticipated depletions in New Mexico through 2060 indicates that Navajo Nation uses would account for approximately 56 percent of the total depletions. Also with settlement, it is anticipated that diversions by the Navajo Indian Irrigation Project would average approximately 340,000 acre-feet per year, plus or minus depending on acreage irrigated and water conservation, to make the beneficial consumptive use for the Project even though a diversion right of up to 508,000 acre-feet per year is provided consistent with the authorizing legislation for the Project. The difference between 340,000 acre-feet and 508,000 acre-feet could not be transferred to other uses separate from the consumptive use right for the Project. Total diversions from the San Juan River and its tributaries in New Mexico therefore would average approximately 750,000 acre-feet per year by 2040, approximately 58 percent of which would be Navajo Nation diversions.

Remark 5. New Mexico's compact apportionment is 838,000 acre-feet, but is limited by the Bureau of Reclamation to 669,000 acre-feet.

The Colorado River Compact requires the Upper Basin to deliver 75 million acre-feet of water during any ten-year period on the Colorado River at Lee Ferry, plus half the deficiency in deliveries to Mexico under the Mexican Treaty. Using a conservative estimate that the deficiency is equal to the entire Mexican Treaty delivery obligation, the Bureau of Reclamation made a hydrologic study and determination that the yield available to the Upper Basin for use is at least 6.0 million acre-feet annually. The Upper Colorado River Commission, while not agreeing with all of Reclamation's assumptions, agreed for planning purposes that the yield available to the Upper Basin is at least 6 million acre-feet per year. Of this amount, the Upper Colorado River Basin Compact apportionment to New Mexico is at least 669,400 acre-feet per year. About 58,000 acre-feet of Colorado River Storage Project reservoir evaporation is chargeable to New Mexico's apportionment pursuant to Article V of the Compact, leaving about 611,400 acre-

feet for depletion by New Mexico. The depletions apportioned by the Compact are of the flow at Lee Ferry.

Remark 6. Releases from Navajo Dam will be only 250 cfs during the irrigation season and winter months with reoperation of the dam to meet endangered fish flows.

Reclamation will bypass inflows to Navajo Reservoir as necessary to meet downstream senior water rights. Reclamation will further bypass inflows or release water from reservoir storage as necessary to meet demands under contracts for water from the Navajo Reservoir supply. In addition, Reclamation will bypass inflows or release water from reservoir storage as necessary to provide for the San Juan River Basin Recovery Implementation Program's flow recommendations for endangered fish habitat below the confluence of the San Juan River and Animas River, or a reasonable alternative, to be satisfied. If the amount of release necessary for these purposes at any time is less than 250 cfs because of inflows below the dam, then Reclamation will still release at least 250 cfs at a minimum anyway. Typically, summertime releases from Navajo Dam may be as high as 600 cfs to 1000 cfs to satisfy downstream water rights and maintain fish habitat during periods of low flow, as has occurred during recent years. This reoperation of Navajo Dam is not a part of the settlement, and will occur with or without settlement in accordance with the Environmental Impact Statement for Navajo Dam operations.

Remark 7. The State Engineer hired a watermaster to curtail water rights below Navajo Dam during the summer to make water available for endangered fish.

The watermaster as part of the State Engineer's Active Water Resources Management will protect the bypass of inflows to Navajo Reservoir and inflows to the San Juan River below Navajo Dam to ensure that the inflows are available for diversion to satisfy senior direct flow water rights in priority. If inflow to the reservoir is less than 225 cfs but the total amount of water in storage at the end of May exceeds 1 million acre-feet, then the watermaster will protect 225 cfs of the release from the dam as if inflow was 225 cfs (this operation would be approved only with the settlement and would not impair contract uses). When inflow to the reservoir exceeds the amount necessary to be bypassed to meet downstream senior water rights, Reclamation in priority may store inflow in the reservoir. The watermaster will protect from diversion by direct flow users the subsequent releases of water from reservoir storage made for delivery to downstream contractors of that water or to benefit endangered fish species. This administration of Navajo Reservoir inflows and releases is consistent with Section 11 of Public Law 87-483, which provides that no person or entity is entitled to water from Navajo Reservoir storage without a contract for such water; and, it is similar to administration of river and reservoir operations on other river systems throughout the western United States, including the Rio Chama, Rio Grande, Pecos River, Cimarron River and Costilla Creek in New Mexico and the planned operation and administration of the Animas-La Plata Project on the Animas River.

Administration of Navajo Dam releases in this manner will occur with or without settlement; except, that the settlement under certain storage conditions would allow at least 225 cfs of the release from the dam to be made available to senior direct flow users without contract when inflow to the reservoir actually is less than 225 cfs, and that this provision would not be in place without the settlement.

Remark 8. Court cases determined that waters in rivers in New Mexico that are released from reservoir storage are public waters available to any user and cannot be protected for contractors.

Under both New Mexico and western water law, stored waters released from reservoirs are reserved for use by the reservoir beneficiaries and may not be appropriated by others. The *Luna* case simply stated that the rights of the beneficiaries to divert and use such waters are subject to adjudication. The rights of the Navajo Nation and other contractors for use of water from Navajo Reservoir storage must be adjudicated, and the proposed settlement would adjudicate such rights for the Navajo Nation. The same thing applies to the diversion and use in New Mexico of water that will be released from Ridges Basin Reservoir storage under the Animas-La Plata Project. Further, the *Raton* case simply stated that storage of inflow to a reservoir must be accomplished in priority after downstream senior rights are satisfied. Protection of direct flows, including reservoir inflows, for diversion in priority and protection of deliveries of contract water from reservoir storage will be accomplished as described in responses to remarks 6 and 7 above with or without settlement.

Remark 9. The Navajo Indian Irrigation Project diversion right would be 1,800 cfs.

The Navajo Indian Irrigation Project canal as constructed has a physical diversion capacity of 1,800 acre-feet, and the proposed settlement was revised to reflect this capacity. Without settlement, the Project could divert at this rate. The diversion capacity amounts to about 1 cfs per 61.5 acres of irrigation rights, which is significantly less than the 1 cfs per 40 acres adjudicated by the Echo Ditch Decree for many of the non-Indian irrigation rights in the San Juan River Basin. The Project has historically diverted up to about 900 cfs, and the acreage irrigated by the project has been as much as about 55,000 acres, or about half the water right acreage.

Remark 10. The settlement does not allow challenges to proposed Navajo Nation water rights and sets forth how non-Navajo Nation water rights will be adjudicated.

Under the settlement, the Navajo Nation's reserved rights for the Hogback and Fruitland irrigation projects are limited yearly by the annual per-acre depletion and diversion amounts determined consistent with the hydrographic survey approved by the Echo Ditch Decree. Also, the settlement includes waivers by the Navajo Nation that it would not object to rights in the San Juan River Basin previously adjudicated by the Echo Ditch Decree, to which the Nation was not a

party, except on grounds of abandonment, forfeiture or illegal use since the time the rights were decreed. The limitations on the Hogback and Fruitland project rights and the waivers were included in the settlement in response to public comments submitted by agricultural and municipal water users requesting such limitations and waivers. However, the settlement does not bind the Court as to how to adjudicate the rights of the Navajo Nation or other water users. If the Court uses a methodology that differs from the Echo Ditch Decree, then the settlement provides that the Navajo Nation's rights may be increased accordingly and the Navajo Nation may object to rights for non-Navajos that exceed the Echo Ditch Decree amounts. If the Court through the *inter se* process makes substantial changes to the proposed Partial Final Decree, then the settlement would be voided.

In addition, the Navajo Nation agrees under the settlement that when the direct flow is insufficient to meet the demands under the Hogback and Fruitland irrigation projects, the Navajo Nation would use up to 15,000 acre-feet of its 1955 priority NIIP contract water in any year to supply the needs of these two projects and would not request a priority call against other users that are junior to 1868 to meet the needs of the two projects unless and until the contract water is completely used. If the Court adopts methodologies for quantifying rights that result in rights for non-Navajos that exceed the Echo Ditch Decree amounts, then the agreement of the Navajo Nation to use its NIIP rights to protect non-Navajo Nation users from priority calls to deliver water to the Hogback and Fruitland projects would be nullified. This condition recognizes a relationship between protection of direct flow uses and protection of the Navajo Reservoir water supply. The settlement also provides that the Navajo Nation will protect the Animas-La Plata Project uses in the event of compact calls, with a part of the protection being dependent upon the outcome of the adjudication. Again, while the settlement conditions certain protections that the Navajo Nation is willing to provide on the outcome or results of the San Juan River Adjudication, the settlement does not require that the Court adjudicate non-Navajo Nation water rights in a certain manner.

*Estevan Opper presented to interior  
water and natural resources committee  
of NM Legislature*

*55-17  
Navajo Settle*

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

Status Report of the Interstate Stream Commission  
June 24, 2004

*Disclaimer. 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.*

**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 18% (uses in Rio Grande basin)
  - iv. power plants 6% (9% with Jicarilla-SJGS lease)
  - v. non-Indian uses in SJ basin 15% (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:
  - i. NIIP completion \$284 million (occurs w/o settlement)
  - ii. Fruitland/Hogback rehab \$ 18 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 are attempting to address 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. complete and release revised draft settlement documents and responses to public comments in July
- b. allow several weeks for public inspection and decision-maker review
- c. Navajo Nation approval processes begin 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

SJ-17  
Navajo Set

Memorandum  
August 9, 2004, Draft

To: San Juan Agricultural Water Users Association Board  
From: John Whipple, Staff Engineer, New Mexico Interstate Stream Commission  
Subject: Concerns of the San Juan Agricultural Water Users Association regarding the Proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement, Dated July 9, 2004

The San Juan Agricultural Water Users Association seeks clarity as to whether or how some of its concerns regarding the proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement were addressed.

1. The Association desires protection of water rights adjudicated by the Echo Ditch Decree, with waivers from the Navajo Nation that the Nation would not challenge the decreed rights except on the basis of forfeiture for non-use after entry of the Decree.

The requested waivers were included in the revised proposed Settlement Agreement dated July 9, 2004. Specifically, the Navajo Nation would agree to waive objections to the priority dates and to the quantifications of irrigation rights adjudicated by the Echo Ditch Decree; except, that the Nation may raise objections in the San Juan River Adjudication relating to whether water rights acreage has been forfeited or abandoned for non-use or other lawful cause since the time the rights were decreed.

2. The Association desires that the Hogback Irrigation Project diversion right have a split priority: a 115 cfs diversion rate with a priority date of 1868, plus a 110 cfs diversion rate with a priority date of 1909.

The priority date for the Hogback Project diversion remains 1868 in the revised proposed Settlement Agreement. The Hogback Project rights are federal reserved rights, and as such are not subject to historic use standards. The Project acreage of 8,830 acres included in the Settlement Agreement is all land reserved by the United States in trust for the Navajo Nation in 1868, and the priority date for the rights to irrigate the lands ties back to the date lands were reserved by the United States to create a Navajo homeland. All the proposed water right acreage for the Project lies within the existing service area of the Project canal system, is currently allotted to members of the Navajo Nation for farming purposes, and is likely to be determined to be practicably irrigable.

Non-Navajo municipal, industrial and irrigation users all expressed concerns over risks of curtailment due to priority calls being implemented to satisfy the rights for the Fruitland and Hogback irrigation projects at such times that the direct flow is not sufficient to meet the demands of the direct-flow water rights. Further, both Navajo and non-Navajo ditches on the San Juan River expressed a desire to receive benefits

from Navajo Reservoir storage. However, avoiding administration of direct-flow and stored water rights, or obtaining new contracts for water from the Navajo Reservoir water supply over and above the proposed contract for the Navajo-Gallup Water Supply Project, are not viable options.

A substantial solution to the concerns expressed is that the Navajo Nation under the proposed Settlement Agreement would agree to use in any year up to 15,000 acre-feet of its Navajo Indian Irrigation Project contract water from Navajo Reservoir to supply uses under the Fruitland and Hogback irrigation projects as necessary to prevent or delay priority calls. The amount of alternate water supply to be provided by the Navajo Nation would be reduced in years that contract deliveries to the Navajo Indian Irrigation Project are shorted because of shortage sharing between contractors. The Navajo Nation would not request a priority call in any year to meet current demands of the Fruitland and Hogback projects until the contract water is exhausted. For purposes of water rights administration, this solution much of the time effectively subordinates the senior 1868 priority rights for the Fruitland and Hogback irrigation projects to the 1955 contract rights of the Navajo Indian Irrigation Project.

The Interstate Stream Commission staff estimates based on historic hydrology that without the alternate water source provisions for the Fruitland and Hogback irrigation projects, the administration of direct-flow rights and contract rights for stored water in the San Juan River Basin in New Mexico would result in priority calls against junior direct-flow uses for weeks to months at a time during approximately 46 years out of every 100 years. The State Engineer has committed to such administration to protect water rights. With the alternate water source provisions provided by the Settlement Agreement, the risk of occurrence of shortages to direct-flow users would be substantially reduced to about 4 years every 100 years. A summary of the Commission's evaluation of risk is attached. Those who benefit most from the Navajo Nation's agreement to supply Navajo Indian Irrigation Project water to the Fruitland and Hogback projects in accordance with this agreement are those who have the more junior rights on the San Juan River stream system because they are the ones more vulnerable to the occurrence of curtailments in priority.

This solution provides non-Navajo direct-flow users on the San Juan and Animas rivers with substantial protection against priority calls for the Fruitland and Hogback projects, and provides them the benefits of stored water in Navajo Reservoir without a contract and at no cost. By reducing potential priority calls that could ripple up the San Juan, Animas and La Plata rivers, this solution also allows water supply management issues on the three streams to more often be addressed locally.

Also, the Navajo Nation under the Settlement Agreement would agree that the annual consumptive irrigation requirements and diversion requirements for the Fruitland and Hogback irrigation projects would be limited to being determined on the same basis as the non-Navajo irrigation rights adjudicated by the Echo Ditch Decree. The maximum diversion rate for the Hogback Project was reduced to 221 cfs total to be consistent with the one cfs per 40 acres diversion rates adjudicated to non-Navajo

irrigation ditches in the San Juan River Basin by the Echo Ditch Decree. The annual diversion requirement for the Project was changed to reflect consistency with the determinations of annual diversion requirements for non-Navajo irrigation ditches in the report of Hydrographic Survey approved by the Echo Ditch Decree. These agreements help protect direct-flow water rights in the San Juan River Basin. But, if irrigation rights in the San Juan River Adjudication are determined using a methodology that results in per-acre consumptive irrigation requirements and diversion requirements that are different than those determined in the report of hydrographic Survey approved by the Echo Ditch Decree, the diversion and depletion rights of the Navajo Nation for the Fruitland and Hogback irrigation projects would be increased accordingly for reasons of equity. Further, because a basin-wide increase in irrigation water rights senior to the Secretary of the Interior's right to store water in Navajo Reservoir would add risk to the Navajo Reservoir water supply contractors, including for uses under the Navajo Indian Irrigation Project contract rights, the agreement of the Navajo Nation to use some of its Navajo Indian Irrigation Project water on the Fruitland and Hogback projects as alternate water supply would be nullified. The conditions for the alternate water source provisions for the Fruitland and Hogback projects simply mirror the waivers that non-Navajo irrigation users in the Basin sought to be included as part of the proposed Settlement Agreement.

The Navajo Nation under the proposed Settlement Agreement further would agree to limit its water rights acreage under the Fruitland and Hogback irrigation projects to existing farm acreage under the project service area, which totals 12,165 acres. Without settlement, the Navajo Nation may claim additional acreage as part of a practicably irrigable acreage claim. Subsection 11(c) of Public Law 87-483 makes reference to expansion of the Fruitland and Hogback irrigation projects in an aggregate amount of up to 11,000 acres, and the Congressional record refers to a total acreage under both projects combined of 26,000 acres with expansion. Public Law 87-483 makes clear that the Navajo Nation did not waive its claims to waters originating either above or below Navajo Dam for water to irrigate expanded projects. Acreage under expanded projects would have reserved senior water rights, and as such Public Law 87-483 exempts the water required to irrigate the expanded projects from the requirement that water users must have a contract for the delivery of water to which the United States is entitled that originates above Navajo Dam. A consultant to the Navajo Nation more recently prepared an evaluation of potentially irrigable lands within the Navajo Nation in the area near and between Shiprock and Four Corners, and reportedly found about 37,000 acres of potentially irrigable land in New Mexico over and above the 12,165 acres under the current service area of the Fruitland and Hogback projects. It is not clear how many acres might be determined by the Court in the San Juan River Adjudication to be practicably irrigable.

3. The Association desires that a 1955 priority date be provided for the uses under the Navajo-Gallup Water Supply Project, as opposed to a priority date of 1868 subordinated to 1955.

The priority date for the Navajo Nation uses in New Mexico under the Navajo-Gallup Water Supply Project remains 1868 in the revised proposed Settlement Agreement. The Navajo Nation's rights under the Project for uses in New Mexico are being treated as federal reserved rights because the Nation must have domestic water supplies if the reservation is fulfill the purpose of being a permanent homeland for the Navajo people. Still, the senior 1868 reserved priority for these uses would be subordinated to the priority dates of permits held by the Secretary of the Interior for water development in New Mexico consistent with Public Law 87-483, which from a practical perspective addresses the concerns of non-Navajo users regarding possible impacts that otherwise could result from quantifying large senior rights. Similarly, the uses under the Navajo-Gallup Water Supply Project by the Jicarilla Apache Nation, including a proposed lease of its Navajo Reservoir water supply contract water to the City of Gallup, would be subordinated to the priority dates of the permits held by the Secretary.

For purposes of water rights administration, the portion of the Navajo-Gallup Water Supply Project demand that is served by diversions through the Navajo Indian Irrigation Project facilities would be supplied out of Navajo Reservoir under State Engineer File No. 2849 with a priority date of 1955. The Project demand that is served by diversions from the San Juan River at the Public Service Company of New Mexico diversion weir near Kirtland, including also the diversions for delivery to Navajo Nation uses under the Project in Arizona, would be supplied first from inflow to the San Juan River arising below Navajo Dam under State Engineer File No. 3215 with a priority date of 1968 to the extent inflow is available in priority, and would be supplied second from water originating above Navajo Dam under File No. 2849 with a priority date of 1955.

Under the Settlement Agreement, the Project uses in Arizona would be administered as junior to water uses in New Mexico so as to not cause detriment to contractors in New Mexico. The demand on the Navajo Reservoir water supply of the Arizona portion of the Project would be shorted in its entirety in any year before allocating shortages among the New Mexico uses of water from that supply.

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and Disclaimer**

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David Velasquez  
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Date

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RG Campbell  
Signature

4-1-04  
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Lynne Raner  
Signature

April 1, 2004  
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Lynne Raner  
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Carroll Crawford  
Signature

4-1-2004  
Date

CARROLL CRAWFORD  
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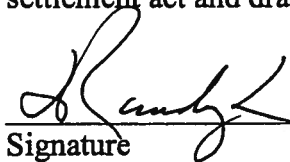
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\_\_\_\_\_  
Signature

4-1-03  
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Signature

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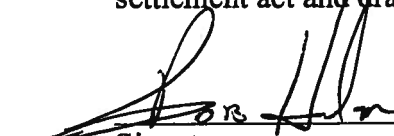
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\_\_\_\_\_  
Signature

APRIL 1, 2004  
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Loren V. Linville  
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Signature

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Signature

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Cynthia Murray  
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4-7-04  
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June 25, 2004, Revised Draft – Navajo Nation Water Rights Settlement

*Disclaimer. This document is the product of the New Mexico Interstate Stream Commission staff only and is not a settlement document. This document is provided for informational purposes.*

MEMORANDUM

June 25, 2004

To: Philip Mutz, Upper Colorado River Commissioner for New Mexico  
From: John Whipple, Staff Engineer, Interstate Stream Commission  
Subject: Revised Upper Colorado River Basin Depletion Schedule for New Mexico

For Congress to approve the Settlement Contract between the United States and the Navajo Nation that is proposed as Appendix 3 to the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement, the Secretary of the Interior pursuant to Public Law 87-483 will need to make a determination that sufficient water is reasonably likely to be available under the apportionments made by the Upper Colorado River Basin Compact for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project. New Mexico State Engineer Thomas Turney via letter to Rick Gold dated February 19, 2002, transmitted to the Bureau of Reclamation a schedule of anticipated depletions in the San Juan River Basin in New Mexico, dated February 2002, that indicated that sufficient water would be available through the year 2060 to service the existing and authorized uses in New Mexico and the Navajo-Gallup Water Supply Project. The New Mexico Interstate Stream Commission staff has prepared a revised depletion schedule that incorporates minor adjustments to the February 2002 schedule for Navajo Nation uses pursuant to the proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement. The revised depletion schedule indicates that under the Settlement Agreement, sufficient water would be available to service the Settlement Contract. The revised depletion schedule is to be provided to the Bureau of Reclamation for the

Secretary's consideration pursuant to subparagraph 5.1 of the Settlement Agreement, and would be subject to further minor adjustments as may be appropriate.

The depletion schedule shows anticipated average annual depletions over time for use for planning purposes only. The schedule is not a tabulation or determination of water rights and is not binding on any party with respect to how a party may use its water rights. The anticipated depletions are based on reasonable assumptions of use within the water rights for Navajo Nation and non-Navajo uses in the Basin. For example, it is anticipated that, on average, about 5 percent of the acreage within large irrigation projects such as the Navajo Indian Irrigation Project and the Hogback-Cudei Irrigation Project will be fallow. Similarly, it is anticipated that the non-Indian irrigators will not irrigate every water right acre each year and will not deplete water in excess of the historic irrigation use. To use the full water right acreage to determine average annual depletions would guarantee that some of New Mexico's Upper Basin apportionment would remain unused by New Mexico. In some instances, most notably in the Animas River valley, current irrigation use is significantly less than the historic irrigation use. With the exception of the Bureau of Reclamation's Hammond Irrigation Project, the non-Indian irrigation depletions shown in the depletion schedule are based on the historic peak of the amount of acreage irrigated in a year within the specified areas or projects, which peak generally occurred about 1965. No attempt is made in the depletion schedule to reflect transfers of water rights from irrigation to municipal and industrial uses from 1965 to the present or into the future because to do so would not change the total anticipated depletion in the Upper Basin in New Mexico, and no attempt is made to speculate as to how much water rights may be determined in the San Juan River Adjudication to be forfeited or abandoned for non-use. Also, while over 60 years of hydrologic data indicate that the San Juan-Chama Project over the long-term physically will be able to divert an average of about 107,500 acre-feet per year, the Project during any given ten-year period may divert up to 135,000 acre-feet per year under the

Project authorization in Public Law 87-483 depending upon availability of water. For these reasons, the total amount of water rights in the San Juan River Basin in New Mexico exceeds the total amount of anticipated average annual depletions shown in the depletion schedule, and the actual depletions in the Basin in 1990 and 2000 were less than the nominal current depletions shown in the schedule.

Pursuant to the proposal to source the reserved rights for Navajo Nation uses on the Navajo Indian Irrigation Project under New Mexico State Engineer File No. 2849 and to source the rights for Navajo Nation uses on the Navajo-Gallup Water Supply Project under State Engineer File Nos. 2849 and 3215, the Navajo Nation would share in shortages in the Navajo Reservoir water supply with the San Juan-Chama Project, the Jicarilla Apache Nation, the Hammond Irrigation Project and other contractors. Pursuant to the proposal to source the reserved rights for Navajo Nation uses on the Animas-La Plata Project under New Mexico State Engineer File No. 2883, the Navajo Nation would share in shortages in the Project water supply with the San Juan Water Commission and other Project contractors. Senior direct flow water rights in the San Juan River Basin, including irrigation rights for Navajo and non-Navajo ditches on the San Juan River and its tributaries, would retain their rights in a priority administration of the river system and not share shortages. However, pursuant to subparagraph 9.2 of the Settlement Agreement, the Navajo Nation would not call for a priority administration of the river system to supply the Hogback-Cudei and Fruitland-Cambridge irrigation projects; rather, when the available direct flow is insufficient to satisfy senior direct flow water rights in the Basin, the Nation would provide an alternate water supply for the two projects from the water delivery rights for the Navajo Indian Irrigation Project under the Settlement Contract. The anticipated depletion amounts for the Hogback-Cudei and Fruitland-Cambridge irrigation projects include depletions that would be accounted against the Navajo Indian Irrigation Project rights as a result of the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement. Although there are limits to the amount of

water to be supplied under subparagraph 9.2 of the Settlement Agreement, the anticipated depletions for both Navajo and non-Navajo irrigation uses, and for other uses, on the San Juan River and on the Animas River do not include reductions for shortages that may still occur during times of administration of direct flow priorities.

The depletion schedules for the Upper Basin States have been developed only to project future uses to facilitate planning for future development of the water resources available to the Upper Basin States. The depletion schedules do not provide a definitive accounting of use under the Upper Colorado River Basin Compact apportionments. In the Hydrologic Determination approved by the Secretary of the Interior on February 2, 1989, the Bureau of Reclamation determined that the yield available to the Upper Basin States under the apportionment of water to the Upper Basin by Article III of the Colorado River Compact is at least 6.0 million acre-feet of water annually based on a minimum objective release of 8.23 million acre-feet per year from Glen Canyon Dam. The Upper Colorado River Commission disagrees with the assumption of a minimum release of 8.23 million acre-feet per year from Glen Canyon Dam, but the Commission does not object to the determination. The depletion schedule shows the State of New Mexico's share of 6.0 million acre-feet minimum yield available to the Upper Basin to be about 669,400 acre-feet of consumptive use annually. If in the future it is determined that the yield available to the Upper Basin States exceeds 6.0 million acre-feet of water annually and an additional allocation of water can be made available for use within the State of New Mexico's Upper Colorado River Basin Compact apportionment, then additional Navajo and non-Navajo uses can be projected or scheduled consistent with subparagraph 8.2 of the Settlement Agreement. On the other hand, if in the future it is determined that actual uses in New Mexico exceed its Upper Basin apportionment, the New Mexico State Engineer is vested with the authority to determine curtailments of junior water uses in

New Mexico as necessary to comply with the Colorado River and Upper Colorado River Basin compacts.

The depletion schedule does not reflect salvage by use. The apportionments made by the Upper Colorado River Basin Compact to the Upper Basin States are of the flow available to the Upper Basin at Lee Ferry under Article III of the Colorado River Compact. When a use of water is made in the Upper Basin, the depletion of the flow at Lee Ferry is less than the depletion of the flow at the place of use because a portion of the streamflow used would have been lost to evaporation or evapotranspiration had the water remained in the stream channels. The savings in river channel loss above Lee Ferry resulting from putting the water to use in the Upper Basin constitutes salvage by use. In particular, uses of water in intermittent tributary drainages, such as in the Chaco River drainage in New Mexico, do not result in an equivalent reduction in flow of the San Juan River. Further, uses of ground water from non-tributary aquifers, and uses of tributary ground water at locations that are far removed from perennial streams in the San Juan River Basin, do not deplete stream flow of the San Juan River by the amount of use. The Upper Colorado River Commission has not made determinations of salvage by use, and has not made determinations as to methodologies for accounting certain consumptive uses such as irrigation depletions or ground water uses. No such determinations have been considered because the Upper Basin States have not approached full development of the Upper Basin apportionment. Nevertheless, the effects of salvaged channel losses on man-made depletions of the flow at Lee Ferry by Upper Basin States were presented in the November 29, 1948, Final Report of the Engineering Advisory Committee to the Upper Colorado River Compact Commission, and Tipton and Kalmbach in 1965 prepared a report for the Upper Colorado River Commission on water supplies available for use by the Upper Division States that included the Department of the Interior's July 1965 projections of depletions at Lee Ferry that

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were reduced for salvage estimated to be 4 percent of at-site depletions by projects in the Upper Basin. Only depletions of flow at Lee Ferry are chargeable against a state's Upper Basin apportionment.

Considering uncertainties in future uses and determinations, the revised depletion schedule is a reasonable projection of future development and use of the State of New Mexico's Upper Basin apportionment, and it indicates that sufficient water is reasonably likely to be available under the apportionment for the Navajo Nation's uses in New Mexico under the Settlement Contract.