

United States Senate

November 7, 2007

John F. Wortman, Jr.
Executive Vice President
New Mexico Farm & Livestock Bureau
P.O. Box 20004
Las Cruces, New Mexico 88004

Dear Mr. Wortman:

Thank you for your letter dated September 25, 2007, regarding the proposed Navajo Water Rights Settlement. As you note, the settlement is critical to New Mexico and very complex in its terms. For that reason, my staff and I have taken an active role in evaluating its merits, including the process used in its development. Based on that review and discussions with the parties involved, I introduced legislation (S. 1171) to enact the settlement earlier this year.

As a threshold matter, the settlement will benefit the agricultural community and other parties in the San Juan River adjudication by helping to avoid years of litigation. As shown by the *Aamodi* case (Rio Pojoaque adjudication), these proceedings can last for decades with little to show for the cost incurred by the parties. This settlement will avoid that result, and in a manner that appears reasonable when considering the likely outcome of protracted litigation. While some have asserted the settlement provides the Navajo Nation more water rights than they would secure in the adjudication, that position does not appear well-founded. In adjudicating Indian water rights claims, courts have not only placed great emphasis on Congressional actions establishing an Indian reservation, but also on subsequent actions that provide tribes water. Several such statutes apply here. In 1962, Congress enacted Public Law 87-483 which allocated significant amounts of water to the Navajo for the Navajo Indian Irrigation Project. That legislation also recognized the existence of at least 11,000 acres of additional irrigable lands associated with projects constructed by the Bureau of Indian Affairs. In 2000, Congress allocated more water to the Navajo as part of the Animas-La Plata project legislation. At a minimum, the Navajo would likely be successful in securing these congressionally recognized rights in the adjudication, and they make up about 92% of the water provided by the settlement. If the matter were left to litigation, the Navajo Nation has made it clear it will claim the water just described, plus additional water for mining and energy development, domestic and industrial uses, commercial and industrial development, and more irrigation,¹ all at priority dates that would pre-date and potentially usurp existing uses. The settlement

¹ Significantly, the settlement limits Navajo acreage at the Hogback & Fruitland irrigation projects to 12,165 acres, but the legislative history for P.L. 87-483 references a possible 26,000 acres of irrigable land.

avoids the potential impact of these additional claims, and does so with minimal, if any, disruption to agricultural water users.

The settlement is also beneficial because it addresses critical water needs for the Navajo people and other citizens in New Mexico. At least 40% of the residents on the Navajo Reservation now haul water to meet their daily needs. The settlement will address this situation through construction of the Navajo-Gallup Pipeline Project, bringing a stable and better quality supply of water much closer to tribal members. Additionally, Gallup is facing significant water shortages in the next decade. Those shortages will be avoided by its participation in the Project.

Overall, the settlement guarantees New Mexico will fully benefit from its Colorado River allocation. It does not authorize export to other states, a concern expressed in your letter. Simply put, an export proposal would be extremely controversial if not illegal under the law of the Colorado River, and would result in significant opposition from other states. New Mexico, however, has secured unanimous support for this settlement from its upper Colorado River basin counterparts (CO, UT, and WY). The settlement allows New Mexico the full benefit of its water supply while protecting environmental needs, such as those required by the Endangered Species Act.

Finally, with respect to the process used in developing the settlement, the Interstate Stream Commission (ISC) indicates there was substantial public input as the settlement was being negotiated, and significant changes were made based on that input. The ISC coordinated two public review periods from December 2003 to December 2004, and held 6 public meetings in San Juan County. Several private meetings with individual stakeholders were also held. Overall, it's my understanding the ISC responded to all submitted comments, and negotiated significant changes to protect agricultural water users. These include developing an alternative water supply provision to reduce the likelihood of Navajo priority calls, and convincing the Navajo to waive objections to the Echo Ditch Decree. I also sought comments from the major parties before introducing legislation to implement the settlement. Notwithstanding near-unanimous support, additional changes were made, including a water conservation program to benefit agricultural water users in the basin. A hearing on the legislation was held before the Senate Energy & Natural Resources Committee this past June, in which all aspects of the settlement were thoroughly discussed.

I hope this letter is helpful in explaining the significant consideration given this settlement. I believe it represents a fair resolution to these difficult issues and addresses the needs of a great many of New Mexico's water users. Please contact Mike Connor of my staff, at 202-224-5479, if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'JB', written over the printed name.

Jeff Bingaman
United States Senator