

THE NAVAJO NATION -- Joe Shirley, Jr. PRESIDENT

September 7, 2003

Walter A. Norton
Secretary of the Interior
United States Department of the Interior
49 C Street, N.W.
Washington, D.C. 20240

Re: NIIP MOU Initial Position

Dear Madame Secretary:

Directing my thoughts to the needs of the NIIP MOU in this discussion phase, there are a number of points that I believe are fundamental to the wellbeing of the Navajo Nation. As such, I want them included as critical issues slated for the discussions and eventually incorporated in the final document. Please allow me to introduce them in this communication. The relative importance of each should not be construed by the number in which it is arrayed, rather, I have attempted to introduce each as a separate issue that must be addressed.

In building the concept implicit in these points, my directive has been to make sure there is assurance in completing the project, insurance in the success of the eventual ownership transition, and resolve on the part of both parties to make this an unqualified success. The points introduced above and detailed below are built around these needs. Yes, it is with a breath of fresh "AIR" that I seek to form the hallmark of this process, and it is with that spirit that I begin this effort. The first points detailed below are issues that I identify as assurance points. As such, they assure Navajo rights within the framework of the original agreement. They are as follows:

Rather than an MOU, I believe that there is the need to make this a memo of agreement (MOA). When this process is done, a firm agreement should be the result.

The discussion points must be limited to NIIP in its original form. I don't want to discuss other subjects, tradeoffs, a modified NIIP, or any variation thereof. The focus is simply NIIP as originally promised and originally conceived.

NIIP must consist of 110,630 acres of "net" farmable land. This means that there must be 110,630 acres in excess of roads, ditches and facilities receiving irrigation water under pivot and being irrigated.

The allocation of water must conform to the original agreement of "508,000 acre feet of diversion rights". I am fully aware that there will be years that that amount of water is not available in the basin, but, when it is, the project can and will have the right to divert the full amount.

This diversion right must be termed "wet water" and the rights to its storage in Navajo Dam must be clearly set out in the document.

The next several points are included in a general category of what I refer to as insurance. Originally, my thoughts in this regard were for insuring that the project would succeed, but this has been altered slightly to also insure that the project be completed. This project is critically needed in our overall efforts to boost employment. It must be finished and finished posthaste. The insurance points and explanations continue as follows:

I am told time and again that the cost of water in the project may jeopardize its ultimate success. As such, it should be agreed that the component of the process that contributes to the possible failing needs to be addressed. Rather than an open-ended relationship to subsidize OM&R, I want a trust established to serve as cushion in the event that this part of the deal becomes a project breaker. Currently, I am told that the annual OM&R budget is \$6 million. I want a trust to cover that amount of annual expenditure.

The failure of the project to be completed has an ongoing opportunity cost for my Nation. Currently, lands are being rented to various lessees for \$80-\$250 per acre. There are approximately 100,000 acres unfinished, and, with prevailing rents, that constitutes a revenue loss of \$3.6-\$11.25 million annually. That opportunity cost must be addressed in the form of "payment in lieu of completion" and paid annually into the trust. Such payments make both participants keenly aware of