

January 14, 2004

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Gentlemen:

The following are the comments of the San Juan Agriculture Water Users Association concerning the proposed Navajo Nation Water Rights Settlement.

San Juan Agriculture Water Users Association represents 36 of the 38 irrigation ditches in the San Juan Basin. The members of our association have water rights from the Echo Ditch Decree and appropriations for approximately 35,000 acres of irrigated land with a farm delivery of over 110,000 acre-feet of water. We are also entitled to divert approximately 1,000 cfs from the rivers of the Basin. Our members consist of about 15,000 irrigators and their families. We represent the second largest stakeholder in the basin after the Navajo Nation. We appreciate the dialogue that we have had with you previously on January 5th at a meeting with our Directors and on January 13th at our annual meeting. We have expressed most of our concerns to you face-to-face and will reiterate them in these comments. We continue to believe that there are several parts of the Settlement that embody harmful effects for our Association and residents of the Basin in general.

1. Language in the Settlement referring to the Bureau of Reclamation having a "water right" associated with their permits should be changed to denote they will have a "storage right" in relation to those permits. This could create a similar situation to that experienced in the Middle Rio Grande and result in misunderstandings and lawsuits about ownership of the water.
2. We believe that the 10-year average diversions are not consistent with New Mexico State Law and would be detrimental to our members under a scenario in which excess Navajo Nation water could be taken in one year or a group of years shorting the rights of our members. All state water law is based on per annum rights, not 10-year averages.

3. We continue to express the concern that the data and calculations for the depletion amounts may be flawed as much as up to twenty percent. The depletion amounts are critical as they speak to the total amount of water available in the Basin. Inability to measure and enforce depletions could create possible harm to Association members.
4. We express concern that diversions to Navajo Nation lands and the use of Navajo Nation water off Navajo Nation lands remain under the control and jurisdiction of the New Mexico State Engineers Office.
5. We question the fairness of the Settlement concerning the calculation of the depletions, we calculate that the Navajo Nation land are given about 25% more water for depletion than non-Nation lands. Likewise is the enforcement and penalties for non-compliance to be administered in an equal manner?
6. We particularly have concerns about the amount of water to be diverted by the Fruitland-Cambridge and Hogback-Cudei ditches. We believe that it is fair and equitable to apply one cfs per 40 acres of beneficially used water and if in the future more land is developed for irrigation under these projects the water for those lands be given a subordinated right. Specifically, the Fruitland-Cambridge maximum diversion rate would be changed from 100 cfs to 83 cfs with an 1868 priority date. The Hogback-Cudei maximum diversion rate would be changed from 225 cfs to 115 cfs with an 1868 priority date and the remaining 110 cfs with a 1909 priority date.
7. Language should be removed or changed in all documents to reflect State Engineer File No. 2848 as a separate permit for water reserved for Hammond Conservancy District only and is not encumbered in any way to satisfy the Navajo Nation water rights. The Association supports Hammond's position in their comments.
8. We understand your need to proceed with this Settlement as soon as possible to take advantage of favorable conditions for creation and funding which may have a narrow window of opportunity, but we are still concerned about the effects a rush-to-settlement may have for our Association members. Stanley Pollack expressed his opinion regarding litigation versus a negotiated settlement. We agree that if a revised draft with satisfactory changes is presented, the Association and its members would view that as a positive step forward.

Thank you for this opportunity to comment on the Navajo Nation Water Rights Settlement and for your consideration in this matter.

Sincerely,



Michael B. Sullivan
Chairman
San Juan Agriculture Water Users Association