



DINÉ POWER AUTHORITY

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*Jan 15, 2004*

Exhibit "A"

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

**RE: Position Statement on San Juan River Basin in New Mexico Navajo  
Nation Water Rights Settlement**

The Dine' Power Authority ("DPA") submits the following comments regarding the proposed Navajo Nation water rights settlement in the San Juan River Basin in New Mexico. These comments are directed towards the Navajo Indian Irrigation Project ("NIIP") because the waters reserved for that project comprise a significant portion of the Navajo Nation's San Juan River Basin water claims.

The United States Congress by the Act of June 13, 1962, 43 U.S.C. 615ii, et seq., approved the Navajo Indian Irrigation Project for the purpose of furnishing water for the irrigation of irrigable and arable lands and for municipal, domestic, and industrial uses, providing recreation and fish and wildlife benefits, and controlling silt, and for other beneficial purposes. DPA submits its comments consistent with the original vision, intent and spirit of creating an economic engine for the Navajo people by developing the Navajo Indian Irrigation Project and it appears that the Navajo people have been precluded from fully realizing the economic benefits envisioned by developing the Navajo Indian Irrigation Project.

In pursuit of achieving its purposes and furthering the economic well being of the Navajo people, the DPA with various partners is undertaking to develop, construct and operate the Navajo Transmission Project, a 500 KV high voltage transmission line originating in the Four Corners area of New Mexico and terminating near Las Vegas, Nevada. Additionally, DPA has entered a Development Agreement with Steag Power, LLC., to develop, construct and operate a 1200-1500 mw power generating facility in the San Juan River Basin. To facilitate such development and apply Navajo water to the highest beneficial uses, DPA respectfully submits the following comments.

## FEDERAL LEGISLATION COMMENTS

1. DPA requests the inclusion of additional language in the Bill to enable DPA and partners to acquire and use approximately 20,000 acre-feet, or sufficient water to meet the needs of a 1200-1500 mw power generation facility proposed for the Four Corners area of New Mexico.

- Section 203(a)(3) seems to imply certain limited uses for waters reserved for the Navajo Indian Irrigation Project. DPA requests inclusion of the following language at Section 203(a)(3) which is consistent with the economic engine concept envisioned for the NIIP.

"(B) domestic, industrial or commercial purposes ~~relating to agricultural production and processing~~; and

(C) the generation of **both thermal**, and hydroelectric power as an incident to the diversion of water by the Project for the foregoing purposes."

2. DPA intends to request the Navajo Nation to utilize features and capacity of the Navajo Indian Irrigation Project works to convey approximately 20,000 acre-feet of water to a proposed power generating facility near the existing BHP coal lease area.

- DPA strongly supports the provision in Section 203(a)(4) which provides: "The Secretary is authorized to use capacity of the Navajo Indian Irrigation Project works to convey water supplies for purposes of the Navajo-Gallup Water Supply Project authorized by title I of this Act, and may use said capacity for conveyance of water for other non-agricultural purposes if sufficient capacity is available and the associated diversion and use of water is not inconsistent with applicable federal and state law and does not impair, directly or indirectly, other water uses in New Mexico. Use of Navajo Indian Irrigation Project works to convey water for non-agricultural purposes consistent with this subsection shall not be cause for the Secretary to reallocate construction costs of the Project."

3. DPA asserts that the Navajo Nation is entitled to savings in depletions of water due to the conversion of the Navajo Indian Irrigation Project from gravity irrigation to a sprinkler irrigation project. In a memorandum dated December 6, 1974, the Deputy Secretary in the Office of the Solicitor of the United States Department of the Interior issued an opinion addressing this issue. The Deputy Secretary concluded that the Navajo Nation is entitled to a net savings of 24,000 acre-feet of depletions which resulted from converting the project from a gravity to a sprinkler irrigation system. This savings in depletions is not currently recognized in the proposed settlement agreement, legislation or decree.

## SETTLEMENT CONTRACT COMMENTS

4. DPA supports existing language in the Bill which allows the Navajo Nation to transfer and/or subcontract its Water Storage Contract with the Secretary of the Interior which ensures

flexibility in the contract to enable the Navajo Nation to utilize a portion of that storage for additional municipal and industrial uses.

- The water delivery provision currently provides at Article 4(a): “The United States agrees to deliver, or make available for delivery, to the Navajo Nation water for diversion of up to 530,650 acre-feet of water per year, on average, during any period of ten consecutive years, from the Navajo Reservoir Supply in accordance with the provisions of the Settlement Agreement and this contract. Of the water to be made available under this subsection, the Nation may divert or receive:
  - (i) up to 508,000 acre-feet per year, on average, during any period of ten consecutive years, directly from Navajo Reservoir at the intake to the Navajo Indian Irrigation Project main canal for delivery to the Navajo Indian Irrigation Project; and
  - (ii) up to 22,650 acre-feet in any one year from either the Navajo Reservoir at the intake to the Navajo Indian Irrigation Project main canal or a Navajo-Gallup Water Supply Project diversion on the San Juan River, or both in combination, for delivery to communities, recipients or subcontractors allotted water by the Navajo Nation under its water rights for the Navajo-Gallup Water Supply Project uses in New Mexico.
- DPA strongly supports Section 304(c)(2) Rights of the Navajo Nation, which provides: "The Navajo Nation shall be entitled under the Settlement Contract to:
  - (2) transfer diversions and depletions authorized by this Act, except for those use in the State of Arizona authorized by title I of this Act, to other uses or purposes in the State of New Mexico to meet water resource needs of the Nation; provided that:
    - (A) such transfers are subject to and consistent with the terms of the Settlement Agreement and this Act; and
    - (B) any transfers of water use by the Navajo Nation affecting one or more of the water development projects authorized in titles I and II of this Act shall not alter the obligations of the United States, the Navajo Nation, or other parties to pay or repay project construction, operation or maintenance costs as specified in titles I and II of this Act and the Settlement Contract.
- DPA strongly supports Section 305(a) of the Bill which provides that: “When water made available for uses in the State of New Mexico under the Settlement Contract approved by this title is not being used by the Navajo Nation, the Navajo Nation may subcontract with third parties, subject to the approval of the Secretary in accordance with this section, to supply water for beneficial use in the State of New Mexico outside Navajo lands, subject to and not inconsistent with the same requirements and conditions of State law, applicable Federal law, interstate compacts and international law as apply to the exercise of water rights held by non-Federal, non-Indian entites."

DPA generally supports the San Juan River Basin in New Mexico Water Settlement between the Navajo Nation and other parties with these recommended changes.

Respectfully submitted on January 15, 2004

Sincerely

A handwritten signature in black ink, appearing to read "Tim T. Goodluck". The signature is written in a cursive style with a large initial "T".

Tim T. Goodluck  
Chairman, DPA Board of Directors