



SS-17
Navajo Settlement



STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

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March 9, 2005

VIA FACSIMILE AND US MAIL

John Stomp
City of Albuquerque
PO Box 1293
Albuquerque, New Mexico 87103

Re: Navajo Nation Water Rights Settlement Agreement in San Juan River Basin, New Mexico; Comments by City of Albuquerque.

Dear Mr. Stomp:

I want to thank you and Jay Stein for taking the time on March 2, 2005, to meet with me, Estevan Lopez, Bill Hume, DL Sanders and Tanya Trujillo. The meeting was helpful to us in better understanding comments submitted by the City of Albuquerque regarding the Navajo Settlement.

We were pleased to hear that you support the settlement, including authorization and construction of the Navajo-Gallup Water Supply Project. We appreciate that the purpose of your comments is not to impede or delay the settlement, but instead to seek refinements to the proposed legislation. In particular, you clarified that you are not seeking to exempt the San Juan-Chama Project from priority calls by downstream seniors on the San Juan River system in New Mexico; rather you seek to statutorily preserve the status quo in order to better assure the availability of a firm supply for San Juan-Chama contractors.

By this letter, I want to comment briefly on the three areas of concern raised by you at our meeting. In addressing your concerns, I want to say at the outset that negotiating the Navajo settlement has required a careful balancing of all New Mexico interests in the waters of the San Juan River system. As with virtually all settlements, I doubt there is any party fully satisfied with the final product. Because settlements are a matter of give and take, no party, including the Navajo, walks away with everything it would like. Nonetheless, we strongly believe that the settlement strikes a fair balance and is an equitable resolution.

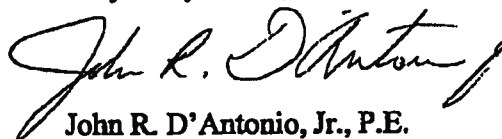
Your first comment was that the proposed legislation should amend section 11 of the 1962 Act to remove the San Juan-Chama Project from shortage sharing with Navajo Reservoir contractors. We will not be able to support that request, as it is an issue larger than the settlement itself. I have asked DL Sanders to prepare a legal analysis of this issue, which we will forward to you shortly. I must note, however, that even though we cannot go as far as you propose, the settlement legislation would provide substantial protections to the San Juan Chama Project by clarifying that the project's basis for shortage sharing is an annual diversion requirement of 135,000 AF and by establishing an impairment trigger for NIIP releases at 353,000 AF/yr, as discussed below.

Your second concern is that water development authorized by the settlement would increase shortages on the San Juan, a portion of which would have to be absorbed by the San Juan-Chama Project. The State simply disagrees that the settlement would cause this result. Without settlement, the potential demands on the water supplies of the San Juan are much greater. In addition to resolving Navajo claims, the settlement will set the total authorized demand on Navajo Reservoir at less than 430,000 AF/yr, considerably less than demand would be if the full amount authorized to the Secretary by the State Engineer was fully developed. Staff of the Interstate Stream Commission is preparing a memo addressing this concern, which we will also forward to you.

The final issue raised by you is the effectiveness of the 353,000 AF/yr impairment trigger. Although the settlement agreement recognizes an average annual diversion of 508,000 AF for NIIP consistent with the 1962 Act, the settlement agreement also provides that if any portion of the NIIP right is used for purposes other than irrigation, then any diversion exceeding 353,000 AF/yr would require a new State Engineer permit. The State Engineer would approve such a permit only if the additional diversion would not impair existing water uses, including by other Reclamation contractors. You commented that you are not convinced that this permit requirement, as provided for in the proposed Decree, would be sufficient to bestow the State Engineer with this authority. Although we believe the proposed Decree provisions are sufficient, nevertheless, we are willing to consider your concerns further and what, if, anything, may be done to constructively address them.

Again, I thank you for your time in meeting with us and for your support of the settlement. I am firmly of the belief that the settlement provides substantial protections and benefits to the San Juan-Chama Project and avoids protracted and potentially risky litigation. I look forward to working with you and the City of Albuquerque to secure approval and implementation of the settlement.

Very Truly Yours,



John R. D'Antonio, Jr., P.E.

cc: Bill Hume
Estevan Lopez
Steve Farris
Stanley Pollack
Jay Stein