July 9, 2004 Draft - Navajo Nation Water Rights Settlement

New Mexico's Upper Basin Allocation is 669,375 acre-feet

Some of New Mexico's allocation goes toward reservoir evaporation.

Only 583,675 acre-feet is available for use by New Mexico.

Upper Colorado River Basin Compact of 1948

- Allocated 5,000 acre-feet of consumptive use to Arizona in Upper Basin
- Appropriates water to Upper Basin States:
  - Colorado 51.75%
  - New Mexico 11.25%
  - Utah 23.00%
  - Wyoming 14.00%

PROPOSED NAVAJO NATION WATER RIGHT

- San Juan River Basin in New Mexico
- Diversion: 606,060+ acre-feet per year
- Depletion: 325,370 acre-feet per year
- 50% of any additional apportionment

Why 11.25%?

- New Mexico geographically contributes "3%" to the water yield of the Upper Colorado River Basin
- Recognition of the potential claims by the San Juan Basin Indian communities resulted in New Mexico being granted 11.25% of the Upper Basin Supply.

San Juan River Depletions
NIIP

110,630 Acres
Diversion Right: 508,000 a/f
Depletion Right: 270,000 a/f

1868 Priority satisfied out of Navajo Reservoir storage.
Right to reuse tail water, so long as the depletion is not increased.
Water right transferable to other uses by Navajo Nation.

1868 Reserved Right and Navajo Dam Storage Right

All Navajo Reserved Water Rights have a priority of June 1, 1868, based on the Treaty of 1868.
The 1868 priority is subordinated for NIIP and Navajo-Gallup unless water from Navajo Dam is "irretrievably lost."

Navajo-Gallup Water Supply Project

- Total Diversion: 37,760 acre-feet
- Total Depletion: 30,800 acre-feet
- Settlement Depletion: 20,780 acre-feet
- Navajo in NM: 20,780 acre-feet
- Navajo in AZ: 6,410 acre-feet
- City of Gallup: 7,500 acre-feet
- Jicarilla Apache: 1,200 acre-feet
- Total: 35,890

Navajo uses its water rights from Arizona to come from Arizona's allocation of water.
City of Gallup needs to find its own supply of water.
Jicarilla Apache will use its decreed water rights in New Mexico.
Ground Water

2,000 AFS/yr (1858 Priority)

Right to additional ground water, subject to:

1) non-impairment of existing ground water users.
2) Depletions > 2,000 AFS/yr from San Juan River requires offset plan approved by OSE.

Funding Summary

Development funds authorized by settlement legislation
- NIIP completion: $372.6 million
- Fruitland rehabilitation: $7.7 million
- Hogback rehabilitation: $15.7 million
- NGWSP construction: $586.6 million
- NN Municipal Pipeline: unauthorized
- Ground water wells: $77.6 million

Additional funds
- Hydrographic Survey: $5.0 million
- Navajo Water Trust Fund: $50.0 million
(half federal, half NM)

Total Federal share: $1.1 billion

Miscellaneous Uses

Additional water, including small irrigation, stockpounds, stockwells, and livestock uses to be added after hydrographic survey. 1868 Priority.

Water Rights Summary

<table>
<thead>
<tr>
<th>Diversion (AFS/yr)</th>
<th>Depletion (AFS/yr)</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irrigation Projects:</td>
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<tr>
<td>NIIP</td>
<td>505,000</td>
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<tr>
<td>Fruitland-Cambridge</td>
<td>16,180</td>
<td>1868</td>
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<tr>
<td>Hogback-Cutei</td>
<td>48,550</td>
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<tr>
<td>Tributary</td>
<td>Hyrosovey</td>
<td>1898</td>
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<td>M &amp; I and Domestic Uses:</td>
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<td>Navajo-Gallup</td>
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<td>Animas-La Plata Project</td>
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<tr>
<td>San Juan River</td>
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<tr>
<td>Ground water</td>
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<td>1898</td>
</tr>
<tr>
<td>TOTAL</td>
<td>696,680</td>
<td>325,370</td>
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</tbody>
</table>

Alternate Water Supply

- Pre-approved transfer of NIIP water right, within authorized depletion.
- Eliminates need to assert “call” against other water users in most years.
- Hogback & Fruitland to receive up to 15,000 AFS/yr out of NIIP water supply.
- Limited by shortage from reservoir supply.
San Juan River Adjudication

- Navajo Nation not to challenge the Echo Ditch or other previous decrees.
- Navajo Nation agrees to other irrigation rights quantified consistent with the 1938 Hydrosurvey and the Echo Ditch Decree.
- Navajo Nation agrees to Hammond Project right of 26,724 AF/yr.
- Navajo Nation may object to rights on the basis of abandonment, forfeiture or unauthorized use since entry of the Echo Ditch Decree or issuance of permits/licenses.

Administration of NIIP

- Navajo Nation Administration of Uses
  - NIIP right fungible to non-irrigation uses
  - Navajo Nation has authority to change uses within Project area if diversion <353,000 AF/yr and there is no impairment to other uses.
- State Engineer Authority
  - Diversion and use monitoring
  - Applications to divert more than 353,000 AF/yr if rights used for non-irrigation purposes.

ALP Protection

- ALP Priority 1956
- Navajo Nation to forbear uses under Settlement Contract to protect NM ALP allocations made by the Colorado Ute Settlement Act Amendments of 2000 to same % water supply as Navajo-Gallup Project uses in NM.
  - If over-allocation of NM apportionment
  - If call to meet the Lee Ferry delivery requirement under the Colorado River Compact.
- One-third of ALP protection conditioned on AF/AF abandonment, forfeiture or retirement of rights – not to affect adjudication of rights.

Leasing/Marketing

- Navajo Nation may lease or contract its water, subject to transfer requirements.
- Secretary of Interior must approve subcontracts under Settlement Contract.
- NM must approve and consent to interstate transfers of rights.
Shortage Sharing among Contractors

- Shortage based on anticipated supply for year
- NGWSP uses in AZ shotted first consistent with Upper Colorado River Basin Compact
- Remainder of shortage distributed to normal diversion requirements
  - San Juan/Chama Project: 135,000 AF/yr
  - Navajo Reservoir current demands, excluding demands met from inflow below Dam

Schedule

- Approve Settlement Agreement 2004
- Enact Settlement Act 2006
- Complete NGWSP EIS/ROD 2006
- Complete Hydrographic Survey 2011
- Entry of Partial Final Decree 2015
- Complete Trust Fund deposits 2016
- Construction completion 2022
- Last date for revocation of decree 2025

Summary of Benefits to Non-Navajos

1) Quantity that fits within apportionment
2) Priority that is 90% subordinated
3) Alternate Water Supply
4) No challenge to Echo Ditch
5) ALP Protection
6) State Engineer administration
7) No out-of-state marketing without state consent
8) State Engineer permit required for NIIP diversions over 353,000 AF/yr
9) San Juan/Chama normal diversion requirement of 135,000 AF/yr