

July 9, 2004, Revised Draft – Navajo Nation Water Rights Settlement

Disclaimer. This document is only a summary of the proposed settlement and is not a settlement document. It is expressly understood that the governing bodies or authorities of the proposed signatories have not approved the revised draft settlement agreement, including the revised draft partial final decree, revised draft settlement act and revised draft settlement contract. New Mexico Interstate Stream Commission staff also prepared the revised draft executive summary of the proposed settlement and the draft responses to public comments received on the December 5, 2003, discussion draft of the settlement.

**EXECUTIVE SUMMARY
OF THE
SAN JUAN RIVER BASIN IN NEW MEXICO
NAVAJO NATION WATER RIGHTS SETTLEMENT**

Representatives of the Navajo Nation and the State of New Mexico have considered public comments on the December 5, 2003, draft San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement and associated documents, and as a result have revised the proposed Settlement Agreement and associated documents. The proposed Settlement Agreement would resolve the claims of the Navajo Nation to the use of waters of the San Juan River Basin in New Mexico in a manner that would inure to the benefit of the Navajo Nation and the State of New Mexico. The Settlement Agreement is intended to provide water rights and associated water development projects, including the Navajo-Gallup Water Supply Project, for the benefit of the Navajo Nation in exchange for a release of claims to water that potentially might otherwise displace existing non-Navajo water uses in the Basin in New Mexico. The Settlement Agreement includes three appendix documents:

- (1) a Partial Final Decree for entry in the San Juan River Adjudication setting forth the rights of the Navajo Nation to use and administer waters of the San Juan River Basin in New Mexico;

- (2) a Settlement Act for Congress to authorize the Bureau of Reclamation to construct and operate the Navajo-Gallup Water Supply Project, to fund the Bureau of Reclamation to complete and rehabilitate Navajo water projects in the San Juan River Basin in New Mexico, and to approve the Settlement Agreement and other authorizations to secure to the Navajo Nation a water supply to meet the needs of the Nation and its members; and
- (3) a Settlement Contract to provide for deliveries to the Navajo Nation under Bureau of Reclamation water projects, namely the Navajo Indian Irrigation Project, the Navajo-Gallup Water Supply Project, and the Animas-La Plata Project.

The proposed Settlement Agreement has been submitted to the governing bodies or authorities of the Navajo Nation and the State of New Mexico for their consideration. If approved, the Settlement Agreement will be forwarded to the New Mexico Congressional delegation with a request that the delegation introduce the Settlement Act to Congress. The revised draft Settlement Agreement and appendix documents are available for inspection at the Office of the State Engineer website (www.ose.state.nm.us). The Navajo Nation and the New Mexico Interstate Stream Commission will consider action to support the proposed Settlement Agreement at meetings to be announced.

The following tabulation is a summary of the rights that the Navajo Nation would have under the proposed Settlement Agreement. The stated diversion rates are maximum instantaneous rates.

	<u>Diversion</u>			<u>Administration</u> <u>Priority</u>
	<u>Amount</u> <u>(af/yr)</u>	<u>Rate</u> <u>(cfs)</u>	<u>Depletion</u> <u>(af/yr)</u>	
Irrigation Projects:				
- Navajo Indian Irrigation Project	508,000	1,800	270,000	1955 ¹
- Fruitland-Cambridge Irrigation Project	18,180	100	7,970	1868
- Hogback-Cudei Irrigation Project	48,550	221	21,280	1868
- Tributary irrigation projects, including storage	Determine by Hydrosurvey ²			1868

Municipal, Industrial, Commercial and Domestic Uses:

- Navajo-Gallup Water Supply Project ³	22,650	48	20,780	1955 ¹
- Animas-La Plata Project	4,680	13	2,340	1956 ¹
- San Juan River municipal diversions	2,000	3	1,000	1868
- Ground water diversions	2,000	N/A	2,000	1868
- Tributary recreation and livestock uses	Determine by Hydrosurvey ²			1868

Notes:

¹ The 1868 reserved priority for the Navajo Indian Irrigation Project, the Navajo-Gallup Water Supply Project and the Animas-La Plata Project uses would not be asserted or exercised; rather, the Secretary of the Interior would supply the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project uses from Navajo Reservoir under New Mexico State Engineer File No. 2849 with a 1955 priority and from the San Juan River below Navajo Dam under State Engineer File No. 3215 with a 1968 priority, and the Secretary would supply the Animas-La Plata Project under File No. 2883 with a 1956 priority. Consistent with the Act of June 13, 1962, the delivery of water from Navajo Reservoir for the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project would be treated as equal in priority to, and will share in shortages with, the San Juan-Chama Project, the Hammond Irrigation Project, Jicarilla Apache Nation uses under its water rights settlement contract, and other small contracts. The Navajo Nation's uses under the Animas-La Plata Project would share in shortages in the water supply for that project with the San Juan Water Commission and other project contractors.

² Water rights for historic and existing irrigation, recreation and livestock uses on Navajo lands in areas of New Mexico that are tributary to the San Juan River and outside the San Juan River valley would be determined by a hydrographic survey of these uses to be prepared jointly by the United States and the State of New Mexico. It is anticipated that the total amount of water rights for these tributary uses will not exceed approximately 10,000 acre-feet of depletion at the places of use.

³ The diversion and depletion amounts for the Navajo-Gallup Water Supply Project tabulated above include only those for Navajo Nation uses in New Mexico. In addition, the Project would divert from the San Juan River 6,410 acre-feet for use by the Navajo Nation in Arizona, 1,200 acre-feet for use by the Jicarilla Apache Nation under its water rights settlement contract, and 7,500 acre-feet for use by the City of Gallup. The City of Gallup's share of the Project diversion would be sourced by a subcontract with the Jicarilla Apache Nation under the Jicarilla Apache Nation's settlement contract with the United States. The diversion of water by the Project for Navajo Nation uses in Arizona would not be included in the Settlement Contract and would not occur until an accounting of the use of the water within the apportionments of Colorado River Basin water made to the State of Arizona through compact, statute or court decree has been resolved and Congress has approved a water delivery contract between the Navajo Nation and the United States for such diversion. Also, the Bureau of Reclamation would have to comply with the National Environmental Policy Act, the Endangered Species Act and other applicable laws in implementing the Project. If to comply with the Endangered Species Act it is deemed necessary to arrange for some amount of use in the San Juan River Basin to be forborne for some period of time to allow full use under the Project to be made in New Mexico, the Project contractors would not be prohibited from making such arrangements as may be appropriate.



In addition, the Navajo Nation: (1) may divert supplemental carriage water, if needed, at such times as the New Mexico State Engineer determines that there is surface water available for such diversion without impairment to water rights in New Mexico; (2) may develop additional ground water on Navajo lands subject to no impairment of other water rights and forbearance of surface water rights to offset any amount of depletion of San Juan River flows above 2,000 acre-feet per year caused by the aggregate of Navajo Nation ground water diversions; (3) would have a small amount of rights it has acquired under state law; (4) would have additional rights to *de minimus* residential domestic and stock uses that are not served by public water supply systems; (5) would have storage capacity space in Ridges Basin Reservoir allocated by contract for its exclusive use under the Animas-La Plata Project; and (6) may re-use tail water or waste water so long as the re-use does not cause the Nation's diversion and depletion rights to be exceeded. In all instances, the rights of the Navajo Nation to divert and use water from the San Juan River Basin in New Mexico would be limited to the amounts of water necessary for current beneficial uses.

Individual members of the Navajo Nation that have been allotted land by the United States are not bound by the Settlement Agreement and may have additional claims to historic and existing agriculture, stock and domestic uses in the San Juan River Basin. The aggregate amount of the historic and existing uses is included in estimated current depletions in the Basin. However, any reserved rights that may be adjudicated to such members for additional future uses would be serviced by, or offset by corresponding reductions in use under, the rights of the Navajo Nation in order to keep the water demands in the Basin from exceeding New Mexico's apportionment under the Upper Colorado River Basin Compact.

For Congress to approve the Settlement Contract, the Secretary of the Interior will need to make a determination that sufficient water is reasonably likely to be available to New Mexico for the Navajo

Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project and for existing and authorized Navajo and non-Navajo uses from the San Juan River Basin in New Mexico under the apportionment made by the Upper Colorado River Basin Compact. The New Mexico Interstate Stream Commission has prepared for the Secretary's consideration a revised schedule of anticipated depletions in the San Juan River Basin in New Mexico that indicates that sufficient water would likely be available through the year 2060 to service the Settlement Contract. The anticipated depletions are based on reasonable assumptions of use within the water rights for Navajo and non-Navajo uses in the Basin.

Pursuant to the proposal to source the reserved rights for Navajo Nation uses on the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project under New Mexico State Engineer File Nos. 2849 and 3215, the Navajo Nation would share in shortages in the Navajo Reservoir water supply with the San Juan-Chama Project, the Jicarilla Apache Nation, the Hammond Irrigation Project and other contractors. Pursuant to the proposal to source the reserved rights for Navajo Nation uses on the Animas-La Plata Project under New Mexico State Engineer File No. 2883, the Navajo Nation would share in shortages in the Project water supply with the San Juan Water Commission and other Project contractors. Senior direct flow water rights in the San Juan River Basin, including irrigation rights for Navajo and non-Navajo ditches on the San Juan River and its tributaries, would retain their rights in a priority administration of the river system and not share shortages. However, the Navajo Nation under the Settlement Agreement would not call for a priority administration of the river system to supply the Hogback-Cudei and Fruitland-Cambridge irrigation projects; rather, when the available direct flow is insufficient to satisfy senior direct flow water rights in the Basin, the Nation would provide an alternate water supply for the projects from the water delivery rights for the Navajo Indian Irrigation Project under the Settlement Contract. Although the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement have limits, the provisions substantially reduce the risks and occurrences of

shortage to direct flow users that otherwise would be anticipated to result from priority calls on the river. Priority calls on the San Juan River might be expected in the future every two years or so, on average, with full water development on the San Juan River stream system, but would be expected about once every twenty years, on average, if the alternate water source provisions are implemented.

Under the Settlement Agreement, the Navajo Nation would administer its rights on Navajo lands in New Mexico subject to non-impairment of non-Navajo Nation water rights and subject to the provisions of the Partial Final Decree and the Settlement Agreement. Transfers of water uses by the Navajo Nation to locations off Navajo lands would require approval of the State Engineer. The Navajo Nation would be responsible for measuring and reporting water uses under its rights, and the State Engineer would monitor Navajo Nation water uses for compliance with the decree.

The Settlement Act would authorize federal appropriations for the construction or rehabilitation of the following water development projects and purposes to benefit the Navajo Nation, and would require that certain project construction and funding milestones be achieved by specified completion dates.

	<u>Service Acres</u>	<u>Federal Funds</u>	<u>Completion Date</u>
Irrigation Projects:			
- Navajo Indian Irrigation Project	110,630	\$372.8 million ¹	-----
- Fruitland-Cambridge Irrigation Project	3,335	\$ 7.7 million	Dec. 2012
- Hogback-Cudei Irrigation Project	8,830	\$ 15.7 million	Dec. 2015
Municipal, Industrial, Commercial and Domestic Uses: ²			
- Navajo-Gallup Water Supply Project	N/A	\$589.6 million ³	Dec. 2020
- Navajo Nation Municipal Pipeline ⁴	N/A	N/A	-----
- Conjunctive use ground water wells ⁵	N/A	\$ 77.6 million	Dec. 2022
Other Purposes:			
- Joint Hydrographic Survey	N/A	\$ 5.0 million	Dec. 2011
- Navajo Nation Water Development Trust Fund	N/A	\$ 25.0 million ⁶	Dec. 2016

Notes:

¹ The authorization for federal appropriations of \$372.8 million to complete construction of the Navajo Indian Irrigation Project is in addition to the currently authorized cost ceiling for the Project and includes funding to complete refurbishment of existing on-farm facilities on the Project. There remains authorization for about \$120 million within the existing cost ceiling for construction of the Project. The construction costs for the Project would be non-reimbursable. The United States would continue to pay the operation and maintenance costs for the Navajo Indian Irrigation Project, as it does currently, until ownership of the Project facilities is transferred to the Navajo Nation. Completion of construction of the Project will be accomplished in accordance with the authorizing legislation for the Project.

² The Navajo Nation would pay the operation and maintenance costs of the Navajo-Gallup Water Supply Project and the Animas-La Plata Project that are allocable to the Navajo Nation. The City of Gallup and the Jicarilla Apache Nation would pay the operation and maintenance costs of the Navajo-Gallup Water Supply Project allocable to them. The total population within the service area of the Navajo-Gallup Water Supply Project, the Navajo Nation Municipal Pipeline and the conjunctive use ground water wells is projected to be about 250,000 people by the year 2040, of which over 80 percent will be members of the Navajo Nation. The City of Gallup's population is anticipated to grow from approximately 20,000 today to almost 50,000 by 2040.

³ The City of Gallup and the Jicarilla Apache Nation would be required to repay construction costs of the Navajo-Gallup Water Supply Project that are allocable to each, estimated to be \$110.1 million and \$21.4 million, respectively, based on their ability to pay. The remainder of the federal funding for the Project, which includes \$458.1 million for construction costs allocable to the Navajo Nation, would be non-reimbursable. Funds expended by the City of Gallup and the State of New Mexico prior to authorization of the Project for enhancement and expansion of the regional water supply distribution system in and around Gallup, currently anticipated to be as much as \$5 million, would be credited towards Gallup's repayment requirement. Use of Gallup's water supply infrastructure to assist in delivering water to surrounding Navajo communities minimizes the amount and cost of works needed to serve water to these communities.

⁴ The Colorado Ute Settlement Act Amendments of 2000 authorized funding to construct the Navajo Nation Municipal Pipeline. The current cost estimate to construct the Pipeline is about \$47 million. Ownership, maintenance and operation of the Navajo Nation Municipal Pipeline would be transferred to the Navajo Nation upon completion of Pipeline construction. Completion of construction of Animas-La Plata Project facilities, including the Navajo Nation Municipal Pipeline and Ridges Basin Dam, will be accomplished in accordance with the authorizing legislation for the Project.

⁵ The ground water wells to be developed would provide conjunctive ground water uses within the service area of the Navajo-Gallup Water Supply Project to help meet water needs of Navajo communities in the San Juan, Little Colorado and Rio Grande basins and minimize the demand for water from the San Juan River.

⁶ The federal funding for the Navajo Nation Water Resources Development Trust Fund would be deposited over the course of ten years following the date of passage of the Settlement Act into law and would be matched by equal contributions from the State of New Mexico. The Trust Fund would be used to investigate, construct, maintain and operate water facilities, and to implement water conservation measures and improvements, for the Navajo Nation to make use of its water rights under the Settlement Agreement.

Not all of the water project costs tabulated above are a result of the proposed Settlement Agreement. Without settlement, it is reasonable to assume that the United States would continue to construct the Navajo Indian Irrigation Project, now approximately 70 percent complete, to service 110,630 acres in accordance with the authorization for the Project provided by the Act of June 13, 1962, and would continue to pay the operation and maintenance costs in accordance with the existing water delivery contract for the Project between the Navajo Nation and the United States. Also, the Department of the Interior, pursuant to the trust responsibility of the United States to the Navajo Nation, would rehabilitate and maintain the Fruitland-Cambridge Irrigation Project and Hogback-Cudei Irrigation Project facilities. The Colorado Ute Settlement Act Amendments of 2000 authorized construction of, and funding for, the Navajo Nation Municipal Pipeline. Thus, the federal cost of settlement amounts to about \$565.7 million, which is the sum of: (1) the Navajo Nation's share of the construction cost of the Navajo-Gallup Water Supply Project plus associated conjunctive management ground water wells; (2) the federal contributions to the Navajo Nation Water Development Trust Fund; and (3) the cost of the Joint Hydrographic Survey. Of this amount, \$37.2 million for construction of wells outside the San Juan River Basin in New Mexico, but within the Navajo-Gallup Water Supply Project service area, would result in less demand for water from the San Juan River and may contribute to settlement of Navajo Nation claims in other basins. In addition, facilities needed to deliver power generated by the Colorado River Storage Project to the Navajo-Gallup Water Supply Project facilities would be financed from revenues collected through the sale of Colorado River Storage Project power.

The Upper Colorado River Basin Compact apportionment to New Mexico has been determined to be at least 669,400 acre-feet of consumptive use, or depletion, annually. Of that amount, about 58,000 acre-feet is New Mexico's share of reservoir evaporation from Colorado River Storage Project reservoirs (Flaming Gorge Reservoir, Curecanti Unit reservoirs and Lake Powell) that regulate flow for the Upper Basin's delivery at Lee Ferry under the Colorado River Compact. Authorization and completion of water projects as proposed in the Settlement Act would allow the State of New Mexico to fully utilize the minimum apportionment available for uses within New Mexico, after deduction of New Mexico's share of the Colorado River Storage Project reservoir evaporation consistent with Article V of the Upper Colorado River Basin Compact. Under the Settlement Agreement, New Mexico's Compact apportionment is respected and is allocated as follows, in percent of depletion:

<u>User</u>	<u>Allocation</u>	<u>Notes</u>
Navajo Nation	56%	Irrigation and domestic uses
Jicarilla Apache Nation	5%	Most leased for power plants/municipal uses
San Juan-Chama Project	17%	Municipal/irrigation uses in Rio Grande Basin
Power Plants	6%	Use 9% of total including lease with Jicarilla
Non-Indian uses in San Juan Basin	16%	Irrigation and municipal uses

Because of large potential Indian claims to water, the State of New Mexico was apportioned 11.25% of the water available to the Upper Basin, after Arizona's use, to provide for Indian and non-Indian uses in New Mexico even though the flows contributed by runoff originating in New Mexico amount to only a few percent of the total flow of the Upper Basin.

Because the Upper Colorado River Basin Compact apportions consumptive uses, depletions are the primary consideration for water planning and administration in the San Juan River Basin under the Compact. Nevertheless, it is expected that approximately 750,000 acre-feet of water would be diverted in New Mexico annually by 2040 from the flows of the San Juan River and its tributaries, including from return flows. That amount of diversion includes approximately 340,000 acre-feet per year for the

Navajo Indian Irrigation Project assuming that the sprinkler irrigation systems on the Project are operating, planned water management measures result in water conservation in at least half the total amount anticipated, and 5 percent of the Project acreage, on average, is fallow. Under the terms of the Partial Final Decree, the Navajo Nation may change the place and purpose of use of its Navajo Indian Irrigation Project rights so long as the total average diversion for all uses under the rights in the aggregate does not exceed 353,000 acre-feet per year and the change does not impair other water rights. If the Project rights are not used solely for irrigation, the Navajo Nation must file application with the State Engineer to increase the total diversion for all uses under the rights for the Project above an average of 353,000 acre-feet per year. An additional 107,500 acre-feet per year, on average over the long term, would be diverted from tributaries to the San Juan River in Colorado for uses in New Mexico under the San Juan-Chama Project. In comparison, the average annual inflow into Navajo Reservoir, after San Juan-Chama Project diversions, is approximately 900,000 acre-feet per year, and the flow entering New Mexico in the Animas River is projected to be approximately 600,000 acre-feet per year after anticipated future Animas-La Plata Project uses in Colorado.

It is anticipated that approval of a Settlement Agreement could occur as early as August 2004, and that a Settlement Act could be introduced to Congress as early as September 2004. Execution of the Settlement Agreement and the Settlement Contract by the United States Secretary of the Interior would be expected to occur upon passage of the Settlement Act into law. Also after passage of the Act, a Joint Hydrographic Survey would be conducted by the United States and the State of New Mexico to identify rights of the Navajo Nation to historic and existing irrigation, recreation and livestock uses on Navajo lands in areas tributary to the San Juan River and rights acquired by the Nation under state law. After completion of a Joint Hydrographic Survey report, the Partial Final Decree would be completed and a joint motion would be submitted to the Court in the San Juan River Adjudication requesting that the

Partial Final Decree be made final and binding on all claimants in the Adjudication. The proposed Settlement Agreement would require that: (1) the Settlement Act be enacted into law by October 31, 2006; (2) the Joint Hydrographic Survey report be completed by December 31, 2011; (3) the Partial Final Decree be entered by the Court in the San Juan River Adjudication by December 31, 2015; and (4) certain project construction and funding milestones be achieved by the specified completion dates.

For more information regarding the proposed Settlement Agreement or the approval process, please contact Dr. John Leeper of the Navajo Nation Department of Water Resources at 928-729-4004 or Mr. John Whipple of the New Mexico Interstate Stream Commission at 505-827-6160. Public discussion of the Settlement Act and the Settlement Contract would continue throughout the legislative process, and public review of the Navajo-Gallup Water Supply Project will continue through the Bureau of Reclamation's preparation process for the Environmental Impact Statement for the Project. Parties to the San Juan River Adjudication would be able to submit objections to the Court regarding the Partial Final Decree through an expedited *inter se* process after a motion for entry of the decree is submitted to the Court.