

MEMO

To: Bob Hudson, City Manager
 From: Jay Burnham, City Attorney *JB for JB*
 Date: August 16, 2004
 Re: Meeting on Navajo Water Rights Settlement-Subjects for Discussion

Following is a preliminary list of items I feel we should discuss with the ISC staff and Navajo representatives at Tuesday's meeting:

1. Depletion Schedule: Our concerns that the depletion schedule that is being used to show that there is enough water to provide for the settlement and current non-Indian uses may be incomplete because it fails to properly account for: (a) an increase in the demand for water for municipal and industrial uses based on growth in population, and a review of the City of Farmington's water rights within the municipal and industrial calculations, (b) the claim for water filed by the Ute Mountain Ute Tribe, (c) the possibility that the NAPI may not leave 5% of the NIIP lands fallow and use their full allotment, (d) Navajo Nation tributary irrigation and tributary irrigation and livestock uses that may total as much as 10,000 acre feet according to the settlement documents, and (e) depletions from current federal non-Indian proprietary uses.
2. NIIP Allocations: (a) The allocation should not be the full 508,000 acre feet of diversion because only 330,000 to 372,000 is necessary to irrigate the full 110,630 acres. Why isn't it limited to no more than a diversion of 372,000 acre feet and a depletion of 270,000? (b) Why is the priority 1868 when it appears from the authorizing Act for NIIP that the Navajos agreed to waive its reserved rights claims in return for the Project? (c) Why are the Navajos not limited to 270,000 depletion each year instead of a ten year average.
3. Permit 2883: The authorizing legislation for the ALP Project clearly stated that the Permit 2883 water above and beyond the amount needed for the Project would be shared by the Project beneficiaries, the SJWC and its member entities. The proposed settlement, in giving 50% of this water to the Navajos takes a lot of water away from the SJWC and its member entities, including the City of Farmington.
4. Trust Rights: In the Echo Ditch Decree, the City was allocated water rights to be held in trust for the benefit of its residents. The City has filed an application with the OSE to change these rights from irrigation to municipal use. The proposed settlement contains language recognizing irrigation rights as determined by the Echo Ditch Decree. It is unclear whether this language is intended to include the "trust rights." The agreement should have language added clearly recognizing these rights and allowing the city to use them in its Municipal system.

xc: Mayor and Council
 Gina Morris, City Clerk
 Joe Schmitz, Community Development Director
 Paul Martin, City Engineer
 Paul Montoia, Water Resource Manager