






SJ-17

Navajo Settlement

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Whipple, John J., OSE

From: Trujillo, Tanya, OSE **Sent:** Tue 11/6/2007 9:23 AM
To: Stangl, Karin, OSE; Whipple, John J., OSE
Cc:
Subject: Final Navajo Settlement Documents
Attachments:  [Navset Reasons Doc.11.05.07.doc\(1MB\)](#)  [Limitations on Export of Water.11.05.07.doc\(1MB\)](#)  [Timeline of SJAWUA re Nav Sett.11.05.07.doc\(1MB\)](#)  [Hydrologic Determination Summary.11.05.07.doc\(1MB\)](#)

Attached are the final versions of the documents that were sent to the Farm Bureau delegates.

Thanks for all of you help.



REASONS FOR NON-NAVAJO PARTIES TO SUPPORT THE SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT AGREEMENT

November 5, 2007

Protection of Existing and Authorized Uses

1. NIIP diversions over 353,000 af/yr require State Engineer permit. The settlement agreement recognizes an average annual diversion of 508,000 AF/yr for the Navajo Indian Irrigation Project (NIIP) pursuant to the 1962 NIIP authorizing legislation and the existing NIIP contract for water from Navajo Reservoir. However, the settlement agreement provides that if any portion of the NIIP right is used for purposes other than irrigation, then the State Engineer must approve a permit to allow the total diversion under the NIIP right to exceed 353,000 AF/yr, which permit would be subject to non-impairment of existing water rights.
2. Water Rights fit within New Mexico's compact apportionment. Based on projections of anticipated depletions in the San Juan River Basin through 2060, the settlement resolves the Navajo Nation's water rights claims in an amount that fits within the apportionment available to New Mexico under the Upper Colorado River Basin Compact without displacing existing and authorized non-Navajo uses in the basin.
3. Federal projects supplied under junior priorities. The Navajo uses under the NIIP (270,000 AF/yr of depletion) and the Navajo-Gallup Water Supply Project (20,800 AF/yr of depletion) will be supplied from the Navajo Reservoir water supply and administered with the Navajo Dam priority date of June 1955, as opposed to a reserved priority date of 1868. Part of the water diverted by the Navajo-Gallup Project will be supplied from inflows arising below Navajo Dam with a priority date of 1968.
4. Alternate water supply. Under the alternate water supply provision of the settlement, the Navajo Nation agrees that the Hogback and Fruitland projects will refrain from requesting priority calls against upstream junior appropriators and instead will deliver up to 12,000 AF in any year of NIIP contract water in storage in Navajo Reservoir when the direct flow is insufficient to meet water demands. If this amount is exhausted in any year, then priority calls may occur in that year. Based on the hydrologic record, this provision would mean that instead of priority calls in one out of two years, the Hogback and Fruitland projects would only request priority calls in one out of every twenty years, on average.

5. ALP Protection. In the event that curtailment of New Mexico's uses is required by the Upper Colorado River Basin Compact, the Navajos agree to provide protection to New Mexico contractors of up to their 13,520 AF/yr of use authorized as part of the Animas-La Plata Project (ALP). Under this protection, the Navajos agree to forgo uses to make water available to the ALP, which has a 1956 priority date, to the same percentage supply available to the Navajo-Gallup Project uses in New Mexico.
6. San Juan-Chama normal diversion requirement of 135,000 AF/yr. The proposed legislation would clarify that the normal annual diversion requirement for the San Juan-Chama Project is 135,000 AF for the purposes of allocating shortages under federal law, which would mitigate against shortage for the project that diverts only about 105,000 AF/yr on average over the long term.
7. Navajo allottees. The Navajo Nation agrees to use its water rights to supply or offset any future uses that may be awarded in the San Juan River Adjudication to individual Navajos that have been allotted lands in the San Juan River Basin by the United States.
8. Protection of non-Navajo farmland. In the Jicarilla Apache Nation's Settlement Contract approved by Congress in 1992, the United States agreed to buy-out private water rights aggregating 11,000 AF/yr of depletion from the San Juan River stream system by 2040, or to make other satisfactory provision to reconcile those commitments with New Mexico's compact allocation. If the buy-out provision were implemented, the United States would likely seek to acquire and retire approximately one-third of the remaining irrigated non-Indian farmland in the San Juan River and Animas River valleys, excluding Reclamation's Hammond Project. With the Navajo Settlement, the State of New Mexico is willing to recommend that the Hydrologic Determination signed by the Secretary of the Interior in May 2007 provides the other satisfactory reconciliation of anticipated depletions to allow New Mexico to stay within its Upper Basin allocation. As a result, the United States would no longer be required to buy-out and retire any existing private water rights in the basin to comply with the Jicarilla Settlement.
9. Hogback and Fruitland project rights consistent with Echo Ditch Decree. The Navajos agree to diversion rates of 1 cfs per 40 acres and to per-acre consumptive irrigation requirements and farm delivery requirements for the Hogback and Fruitland projects that are consistent with the rates for non-Indian ditches contained in the 1938 Hydrographic Survey report and the Echo Ditch Decree.

Agreements for Water Rights Adjudication and Administration

10. No challenge to Echo Ditch Decree. The Navajo Nation agrees not to challenge the elements of Echo Ditch Decree rights except on the basis of forfeiture, abandonment or illegal use since entry of the Decree in 1948. The Navajos may challenge any quantifications of carriage water requested for irrigation uses that are in excess of the per-acre farm delivery or diversion amounts provided in the report of hydrographic survey approved by the Decree.

11. Settlement of Farmington rights. The State has entered into an agreement with the City of Farmington regarding the adjudication of the City's primary water rights, including the City's trust rights described in the Echo Ditch Decree. The Navajo Nation has signed the agreement and the City of Farmington has agreed to support the Navajo settlement.
12. No out-of-state marketing without State consent. The provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and other federal law restrict the marketing of water between Colorado River Basin States and between the Upper and Lower Basins. State law also restricts interstate movement of water if an application to take New Mexico water out-of-state for use in another state will result in impairment or is contrary to the conservation of water or to the public welfare. Under the settlement, the Navajo Nation agrees to comply with state and federal law, and as an additional restriction, the Navajos agree that they will not market water out-of-state without the consent of the New Mexico Interstate Stream Commission.
13. Limit to groundwater pumping impacts on river. The Navajo Nation agrees to not pump groundwater so as to deplete the flow of the San Juan River by more than 2,000 AF/yr, unless and until the State Engineer approves a plan by which the Navajos would forgo use of surface water rights to offset any such depletion in excess of that amount. Any Navajo groundwater uses beyond those quantified in the settlement agreement also would be subject to non-impairment of existing water rights.
14. State Engineer administration/water master. Under the settlement, the Navajo Nation agrees that the State Engineer has authority to serve as the water master in the San Juan River Basin and to administer water rights in priority and in accordance with beneficial use standards as necessary to comply with interstate compact obligations and other applicable law. This includes State Engineer jurisdiction to determine beneficial uses and any needs for curtailments of use in response to priority call requests made by the Navajo Nation on behalf of the Hogback and Fruitland projects. In addition, the State Engineer shall have authority to make determinations of current beneficial uses for any changes in points of diversion and for any changes in purposes or places of use of Navajo water rights off of Navajo lands.
15. Hogback and Fruitland project conditions on use. The Navajo Nation agrees that its diversions for irrigation uses on the Hogback and Fruitland projects will be subject to the total project depletions, as well as the per-acre farm deliveries, specified in the settlement. The limit on total depletions for each project protects New Mexico's compact compliance, and is unique to the Navajo projects. The Echo Ditch Decree does not impose such a constraint on irrigation depletions by non-Indian ditches.
16. Repayment of overuse. The Navajo Nation agrees that if it inadvertently diverts or consumes more water for its uses under the NIIP, the Navajo-Gallup Project or the Animas-La Plata Project than it is entitled to under the settlement, the Navajos in the following year will repay the stream system by forgoing the diversion and use of water on these projects in amounts that are equal to the quantities of overuse.

17. Adjudication court jurisdiction. The San Juan River Adjudication court will retain jurisdiction over the rights of the Navajo Nation to divert and use water within New Mexico, including on the Navajo Reservation, under the proposed settlement agreement and decree.
18. Avoids Costly and Uncertain Litigation. The Navajos have the largest federal reserved water rights claim in the state. Based on either a practicably irrigable acreage (PIA) standard or more modern economic development standards, the Navajos might claim rights to hundreds of thousands of acre-feet of water from the San Juan River Basin in New Mexico beyond the rights being recognized by the settlement agreement. The settlement agreement recognizes the amount of water authorized for the NIIP by Congress in 1962, existing acreage under the Hogback and Fruitland projects that is currently allotted to Navajo people for farming, and other existing Navajo uses. The only “new” water provided by the settlement agreement for use in New Mexico is about 22,000 AF/yr of diversion for municipal and domestic Navajo uses in New Mexico to be supplied through the Navajo-Gallup Pipeline Project. Settlement with the Navajos would provide certainty to basin water users, and avoid extended litigation, which would help promote economic development in the region.

Water Development

19. Marketing of Navajo water. The settlement agreement allows for the Navajo Nation to lease its reserved rights or its Navajo Reservoir water supply contract water to others for either irrigation or non-irrigation uses on and off Navajo lands in New Mexico.
20. Funding for Non-Indian Irrigation Improvements. The settlement provides for \$10 million of State funding for ditch improvements in the San Juan Basin benefiting non-Navajo irrigators. In addition, S. 1171 and HR 1970 provide \$11 million in federal funding to repair non-Indian irrigation diversion and ditch facilities in the San Juan Basin.
21. Navajo-Gallup Water Supply Project. The Navajo-Gallup Water Supply Project will provide a reliable and renewable source of domestic water supply for the Navajo Nation in New Mexico and the City of Gallup. By 2040, the project is expected to serve approximately 250,000 people. The beneficiaries currently have inadequate local supplies and many Navajo families are hauling water. Also, the water treatment plant for the Project may be used to treat non-Project water for domestic water suppliers in the region.
22. Rehabilitation of Fruitland and Hogback Projects. The settlement provides \$23 million for the rehabilitation of the Navajo’s Fruitland and Hogback projects on the lower San Juan River. The rehabilitation would make operation of the projects more efficient and productive for the benefit of the Navajo irrigators, and consequently would reduce the demand of these projects on the river. The settlement specifically calls for the Fruitland project diversion rate to be reduced after the rehabilitation has occurred.



RESTRICTIONS ON THE EXPORT OF WATER FROM NEW MEXICO

November 5, 2007

It is extremely unlikely that any water will ever be exported out of New Mexico, especially in light of the special protections provided by the Navajo Settlement.

1. Colorado River Compact/Federal Law Restrictions – Unless otherwise approved by Congress, the Colorado River Compact, the Upper Colorado River Basin Compact and other provisions of federal law restrict transfers of water between the Upper Basin States (New Mexico, Wyoming, Colorado and Utah) and the Lower Basin States (Arizona, California and Nevada). The legislation to authorize the Navajo Settlement does not authorize or otherwise allow export of any of New Mexico's water to any other state.
2. State Law Restrictions – Although New Mexico cannot prohibit the export of water because that would violate the United States Constitution, New Mexico can regulate the export of water. Sections 72-12B-1 and 2 of the New Mexico statutes provide very strict rules regarding the export of water. For example, in order to approve an application to export water, the state engineer must find that the applicant's withdrawal and transportation of water for use outside the state would not impair existing water rights, is not contrary to the conservation of water within the state and is not otherwise detrimental to the public welfare of the citizens of New Mexico.

Through the Navajo Settlement, the Navajo Nation agrees to comply with this law with respect to export of water.

3. Additional Settlement Protections – In addition to the above legal constraints, through the Navajo Settlement, the Navajo Nation agrees that it will not lease, contract, exchange or otherwise transfer water for use outside New Mexico without the consent of the New Mexico Interstate Stream Commission. This contractual provision would not apply without the settlement agreement, and does not apply to other water users.



SUMMARY OF THE 2007 HYDROLOGIC DETERMINATION RELATING TO THE NAVAJO SETTLEMENT

November 5, 2007

Background Regarding Relevant Federal Laws

In 1956, Congress enacted the Colorado River Storage Project Act, which authorized the construction and operation of Navajo Dam and Reservoir on the San Juan River. In 1962, Congress enacted PL 87-483, which authorized the construction and operation of the Navajo Indian Irrigation Project (NIIP) to irrigate approximately 110,630 acres in the San Juan River Basin and the San Juan-Chama Project to supply uses in the Rio Grande Basin. Section 11 of the 1962 Act provides that no person or entity is entitled to use water from the Navajo Reservoir supply without a contract with the Secretary of the Interior. The Navajo Nation has an existing contract with the Secretary for the delivery from Navajo Reservoir of up to 508,000 af/yr of water for its uses on the NIIP. Section 11 of the 1962 Act also provides that no additional contracts shall be entered into for the delivery of water stored in Navajo Reservoir unless and until the Secretary has determined by hydrologic investigations that sufficient water to fulfill the contract is reasonably likely to be available for use within the State of New Mexico under the allocations made in Articles III and XIV of the Upper Colorado River Basin Compact, and the Congress has approved the contract.

Hydrologic Determinations

In 1988, in connection with the Jicarilla Apache Nation's water rights settlement process, the Secretary of the Interior signed a Hydrologic Determination that concluded that sufficient water is reasonably likely to be available within New Mexico's Upper Basin apportionment to fulfill a proposed Jicarilla Navajo Reservoir water supply contract. The Jicarilla's water contract was later approved by Congress as part of the Jicarilla Apache Tribe Water Rights Settlement Act of 1992. The April 2005 Navajo Nation water rights settlement includes a proposed Navajo Reservoir water supply contract to supply approximately 20,800 acre-feet per year of new Navajo depletions from the San Juan River for municipal and domestic uses under the Navajo-Gallup Water Supply Project. In May 2007, the Secretary signed a hydrologic determination that concluded that sufficient water is reasonably likely to be available within New Mexico's Upper Basin apportionment and from Navajo Reservoir to fulfill the proposed Navajo Reservoir water supply contract for the Navajo uses under the Navajo-Gallup Project, in addition to the NIIP. The 2007 Hydrologic Determination took into account the supply available to the Upper Basin under the Colorado River Compact, the supply available for uses in New Mexico under the Upper Colorado River Basin Compact, the physical availability of water from Navajo Reservoir, and all water demands in the San Juan River Basin in New Mexico, including demands to meet reasonably anticipated future depletions under existing and authorized water projects and uses.

The 2007 Hydrologic Determination was reviewed by hydrologists and engineers from the United States and each of the Colorado River Basin States prior to the Secretary signing it, and its conclusions are technically sound. The chronology below presents highlights of the Secretary's approval process, and the table below highlights the key difference between the 1988 Hydrologic Determination and the 2007 Hydrologic Determination.

Approval Steps for the 2007 Hydrologic Determination

April 19, 2005 – New Mexico Governor Richardson and Navajo Nation President Shirley signed the Navajo Nation Water Rights Settlement Agreement.

June 5, 2006 – After months of technical review by representatives of the Bureau of Reclamation and the States of Colorado, Utah, Wyoming and New Mexico, the Upper Colorado River Commission passed a resolution providing its support for the findings of the Bureau of Reclamation's May 2006 draft Hydrologic Determination that: (1) at least 5.76 maf of water is available annually for use by the Upper Basin, exclusive of shared Colorado River Storage Project reservoir evaporation; and (2) sufficient water is reasonably likely to be available to fulfill the Navajo Settlement water supply contract under the allocations made to New Mexico in Articles III and XIV of the Upper Colorado River Basin Compact.

July 13, 2006 – Reclamation staff met with the Lower Division States of Arizona, California and Nevada to brief them on the May 2006 draft Hydrologic Determination, and agreed to consider any comments provided by the Lower Division States regarding the draft Hydrologic Determination.

September 6, 2006 – The Lower Division States via letter to the Secretary of the Interior stated their concerns with the May 2006 draft Hydrologic Determination, and requested that the Secretary direct the Bureau of Reclamation to reexamine its hydrologic analysis in light of their concerns.

December 3, 2006 – The Assistant Secretary for Water and Science via identical letters to each of the Lower Division States reported that: (1) Reclamation's technical staff completed a thorough review of the issues raised by them in their September 6, 2006, letter regarding the draft Hydrologic Determination; (2) as a result of the review, the Interior Department does not anticipate a change to the conclusion reached in the May 2006 draft Hydrologic Determination that sufficient water is likely to be available for the proposed Navajo-Gallup Project; and (3) Reclamation staff will consult with the Basin States to review their conclusions prior to submitting the determination to the Secretary for approval.

May 23, 2007 – The Secretary of the Interior approved and signed the Bureau of Reclamation's April 2007 final draft Hydrologic Determination finding that sufficient water is reasonably likely to be available within New Mexico's Upper Basin apportionment and from the Navajo Reservoir supply to service a contract for the Navajo Nation's uses under the Navajo-Gallup Project.

June 8, 2007 – The Secretary of the Interior via identical letters transmitted the 2007 Hydrologic Determination to the Governors of each of the seven Colorado River Basin States. The letters state that the finding of the 2007 Hydrologic Determination removes any Department of the Interior concerns about potential limitations on water supply for the proposed Navajo Nation water supply contract.

Comparison of 1988 and 2007 Hydrologic Determinations

Both the 1988 and 2007 Hydrologic Determinations evaluate the availability of water for development in the Upper Basin, and consequently, for uses in New Mexico, based on the worst or driest period of hydrology in the historic record, commonly referred to as the “critical period”. The supply available during wetter years outside the critical period exceeds the supply available during the critical period, and as such is not the focus of the evaluation. Because extension of the hydrologic record to include the hydrology of the past two decades did not result in the occurrence of a new critical period, the 2007 Hydrologic Determination found essentially the same amount of water yield available to the Upper Basin at Lee Ferry as did the 1988 Hydrologic Determination (about 6.0 maf). The most significant difference between the two determinations relates to how, in computing the amount of water available during the critical period for development and use by the Upper Division States, each determination treated reservoir evaporation at Colorado River Storage Project (CRSP) unit reservoirs that is shared among the States. Evaporation from Lake Powell, Flaming Gorge Reservoir and the Aspinall Unit reservoirs is shared among the Upper Division States because these reservoirs are operated to regulate the flow of the Colorado River at Lee Ferry for meeting the Upper Basin’s obligations under Article III of the Colorado River Compact, as well as to generate hydroelectric power for CRSP participating projects. The 1988 Hydrologic Determination assumed an average demand of about 0.52 maf/yr for shared CRSP evaporation based on the long-term average evaporation for the entire period of hydrologic record; whereas, the 2007 Hydrologic Determination utilized the average demand of about 0.25 maf/yr for shared CRSP evaporation estimated to actually occur during the critical period only. The evaporation demand for the critical period only, not for the lengthier period of record, was used in the 2007 Hydrologic Determination so that demand and supply is compared for the same period of time, which provides a consistent basis for planning water uses for the critical period. CRSP evaporation is less during the critical period than outside the critical period because reservoir storage is drawn down to consistently lower levels, on average, during periods of dry hydrology.

	<u>1988 HD</u>	<u>2007 HD</u>
Upper Basin Water Supply		
Upper Basin Yield at Lee Ferry for Critical Period	6.00 maf/yr	6.01 maf/yr
Upper Basin Apportionment to Arizona	0.05 maf/yr	0.05 maf/yr
Depletion Available to Upper Division States for Critical Period	5.95 maf/yr	5.96 maf/yr
Upper Basin Water Demand		
Shared CRSP Reservoir Evaporation	0.52 maf/yr _(LT)	0.2maf/yr _(CP)
Depletion Available for Development within Upper Division States	5.43 maf/yr	5.71 maf/yr

	<u>1988 HD</u>	<u>2007 HD</u>
State of New Mexico Uses		
New Mexico's 11.25% Share (per Upper Basin Compact)	611 taf/yr	642 taf/yr
New Mexico's Anticipated Future Upper Basin Depletions	622 taf/yr	642 taf/yr

US Commitment to Buy and Retire Private Water Rights

Based on the results of the 1988 Hydrologic Determination, the United States in the Jicarilla's Settlement Contract approved by Congress in 1992 agreed to make provision for the buy-out of private water rights aggregating 11,000 af/yr of depletion from the San Juan River stream system by 2040 to reconcile New Mexico's anticipated future Upper Basin depletions with the State's share of Upper Basin water, or to make other satisfactory provision to reconcile New Mexico's demand with New Mexico's supply. With the Settlement Agreement with the Navajo Nation, the State of New Mexico is willing to recommend that the 2007 Hydrologic Determination provides the other satisfactory reconciliation of New Mexico's anticipated depletions with the State's Upper Basin allocation without requiring the United States to buy-out and retire any existing private water rights.



TIMELINE OF THE SAN JUAN AGRICULTURAL WATER USERS ASSOCIATION'S PARTICIPATION IN ACTIVITIES RELATING TO THE NAVAJO NATION WATER RIGHTS SETTLEMENT

November 5, 2007

Settlement discussions began between the State and the Navajo Nation regarding the Navajo Nation's water rights claims over 10 years ago and have included extensive input from non-Indian stakeholders. The following timeline indicates that the San Juan Agricultural Water Users Association and other non-Indian parties have been informed regarding the elements of the Navajo Settlement and have had an opportunity to provide input into the Navajo Settlement. In addition to the Association, other non-Indian parties include the Bloomfield Irrigation District and the Hammond Conservancy District, the cities of Bloomfield, Aztec, Farmington and Gallup, BHP, PNM, and San Juan-Chama Project contractors such as the cities of Santa Fe and Albuquerque. All parties with standing in the San Juan River Adjudication Court will have an opportunity to object to the provisions of the Navajo Settlement when it is presented to the Court for approval through entry of the Partial Final Decree.

The San Juan Agricultural Water Users Association and other non-Indian stakeholders have had an opportunity to be involved in the Navajo Settlement activities from a legal perspective (filing motions and otherwise participating in Court proceedings), an administrative perspective (providing input to the State and receiving information from the State regarding settlement terms), a political perspective (corresponding with and attending meetings with federal and state legislators, and providing testimony to Congress), and a public perspective (submitting newspaper editorials and participating in public forums). Certain input from the Association has been incorporated into the terms of the settlement, and the Association has acknowledged that certain of its members' concerns have been met.

October 23, 2003 – The Association filed a motion with the San Juan River Adjudication court for limited discovery of the status and approval process for a Navajo Nation water rights settlement agreement, and requested any documents containing agreements reached and proposed resolutions or legislation to approve the settlement. The Court denied the motion.

December 5, 2003 – Initial draft settlement documents, including a draft settlement agreement, a draft proposed decree to be submitted to the Adjudication court for its consideration, and draft legislation for Congress to approve the settlement, were completed and released for public review and comment.

December 15, 2003 – The State Engineer and ISC held a public meeting on the draft settlement at the Farmington Civic Center, and made a presentation describing the main elements of the draft settlement documents and terms. The public asked questions and made comments on the draft settlement, and agricultural interests, including the Association, expressed concerns regarding depletion schedules, priority dates, and the Echo Ditch Decree. The Association stated that it was pleased with the Navajo Nation's willingness to settle their claims without litigation, but that it needed time to review the draft settlement documents.

January 5, 2004 – ISC representatives met with the Association's directors to discuss the December 5, 2003, draft settlement terms and documents. Concerns raised by the Association and discussed included: (1) consistency with State law; (2) the basis for irrigation depletion calculations, including irrigated acres; (3) consistency between quantifying Navajo and non-Navajo irrigation rights; (4) State Engineer control over transfers of Navajo water rights; (5) protection of the Hammond Conservancy District's water rights; (6) the subordination of NIIP and Navajo-Gallup Project contract rights to a 1955 priority for water rights administration purposes; and (7) concerns regarding the size of the NIIP.

January 13, 2004 – ISC representatives attended the annual meeting of the Association to make a presentation on the December 5, 2003, draft settlement, and to answer questions and engage in discussions regarding the draft settlement. The Association opined that: (1) irrigation uses should be quantified using the same approach for Navajo and non-Navajo ditches; (2) the State should retain jurisdiction for water rights administration; (3) the Hogback project acreage should not include acres not historically irrigated; and (4) the non-Indian irrigation depletions used in New Mexico's schedule of anticipated future depletions is not correct and should not be a basis for quantifying the rights of Association constituents.

January 14, 2004 – The Association submitted written comments to the ISC regarding the December 5, 2003, draft settlement. The Association's comments raised concerns relating to: (1) the description of certain State Engineer permits; (2) ten-year averaging of the NIIP right; (3) irrigation depletion calculations; (4) maintenance of state control of transfers of use off reservation; and (5) the priority date for the Hogback project. The Association requested that the Hogback project have a split priority rather than a federal reserved right 1868 priority date for the whole project.

March 9, 2004 – The Navajo Nation and ISC representatives held a public meeting at the Bloomfield Cultural Center to discuss the December 5, 2003, draft settlement with non-Navajo stakeholders, including the Association. The Association stated opinions about: (1) the Hogback farmland acreage and priority date; (2) the Fruitland project diversion rights; (3) consistency in how depletion rights are handled between Navajo and non-Navajo ditches, and over 10-year averaging of diversions for the NIIP; (4) State jurisdiction for water rights administration; and (5) the Navajo-Gallup Project priority date.

March 17, 2004 – The ISC held a regular meeting at the Farmington Civic Center and heard public comments on the draft Navajo Nation water rights settlement. Mike Sullivan made remarks to the ISC on behalf of the Association.

April 1, 2004 – ISC representatives met with invited stakeholders at the City of Farmington Municipal Building to discuss the status of negotiations on the proposed settlement, including whether or not certain of their comments could be effectively addressed through further negotiation and including proposals for changes to the settlement documents to address some of the concerns of the non-Navajo interests. Michael Sullivan and James Rogers attended the meeting on behalf of the Association.

July 9, 2004 – Revised draft settlement documents, including a revised draft settlement agreement, a revised draft proposed decree to be submitted to the Adjudication court for its consideration, and revised draft legislation for Congress to approve the settlement, were released for public review and comment. Also released by the ISC to the public was a document of written responses to all issues raised by the public comments that the ISC had received relating to the initial December 5, 2003, draft settlement.

July 21, 2004 – The Association filed motions with the San Juan River Adjudication court for discovery relating to Practically Irrigable Acreage (PIA) for the Navajo Nation for consideration in the water rights settlement process, for postponement of the settlement process, and seeking information on irrigation uses under the Hogback and Fruitland projects. The Court denied the motions through order dated August 30, 2004. The Partial Final Decree will be subject to an inter-se process that all parties to the adjudication will be entitled to participate in.

August 2, 2004 – The State Engineer, ISC representatives and the Navajo Nation held a public meeting regarding the July 9, 2004, revised draft of the settlement at the Farmington Civic Center, and made a presentation describing the main elements of the revised draft settlement documents. The presentation described changes made to the December 5, 2003, initial draft settlement documents, including changes to address some of the concerns of the Association. The public asked questions and made comments on the revised draft settlement.

August 9, 2004 – A memorandum of this date from John Whipple, ISC staff, to the Association's Board was distributed to and discussed with the board members. The memorandum describes how certain changes to the draft settlement documents addressed concerns raised by the Association regarding the proposed settlement. The memorandum notes that: (1) the Navajo Nation agreed to waive objections to the priority dates and quantifications of water rights adjudicated by the Echo Ditch Decree, and may challenge previously decreed rights only on the basis of forfeiture or abandonment since the decree was entered, as was requested by the Association; (2) the Navajo Nation would not agree to the Association's request for a split priority for the Hogback project diversion rights, but the Navajos did agree to add provisions to the settlement documents to reduce the frequency of possible priority calls to the benefit of irrigation and non-irrigation users by requiring the Navajo Nation to use some of its NIIP water at Hogback without cost to non-Navajo users, which partially addresses the Association's concerns; and (3) the Navajo Nation would not agree to the Association's request for a 1955 priority for Navajo uses under the Navajo-Gallup Project, but agreed that the Navajo-Gallup Project right will be administered through the Secretary of the Interior permits with a 1955 priority.

August 18, 2004 – The ISC held a regular meeting at the Farmington Civic Center, and received public comments regarding the July 9, 2004, revised draft Navajo Nation water rights settlement. Questions and comments related to the Echo Ditch Decree water rights, administration of NIIP diversion rights, PIA and other reserved rights claims, and contractual protections against exporting uses out of state in addition to legal compact and state law impediments. Mike Sullivan presented comments on behalf of the Association relating to: (1) State Engineer administration of diversion rights of non-Indian ditches; (2) the use of NIIP water at Hogback; (3) the priority for the Hogback project; (4) hydrographic survey issues; (5) and a complaint that the Association was not a party at the negotiation table, although it had been active in asserting its positions regarding the settlement. Mike Sullivan and Jim Rogers answered questions from the ISC commissioners regarding the Association's positions.

December 10, 2004 – Final draft settlement documents, including a final draft settlement agreement, a final draft proposed decree to be submitted to the Adjudication court for its consideration, and final draft legislation for Congress to approve the settlement, were released for public inspection. The ISC also released responses to all issues raised by the public comments that the ISC had received on both the December 5, 2003, initial draft settlement and the July 9, 2004, revised draft settlement, including the issues raised by the Association.

January 12, 2005 – The ISC held a regular meeting at the Farmington Civic Center and received comments on the final draft settlement documents. ISC staff made a presentation and answered questions posed by ISC commissioners regarding changes to the July 9, 2004, draft settlement documents, and highlighted issues raised by non-Navajo interests that were addressed, either in whole or in part, through the settlement negotiation process. Mike Sullivan made remarks to the ISC on behalf of the Association noting that: (1) the Association met with the ISC in various meetings, but was not involved in the negotiation sessions between the State and the Navajo Nation; and (2) the Association was effective in causing some changes to the settlement, but did not get the split priority that it requested for the Hogback project. The ISC passed a resolution approving the terms and provisions of the December 10, 2004, final draft settlement agreement.

April 19, 2005 – New Mexico Governor Richardson and Navajo Nation President Shirley signed the final settlement agreement.

October 20, 2006 – Senator Bingaman sent letters to interested parties, including the Association, asking for comments regarding a draft of the settlement legislation.

December 7, 2006 – Senator Bingaman (S. 4108) and Representative Udall (HR 6436) introduced the Northwestern New Mexico Rural Water Projects Act to authorize and fund the settlement.

January 29, 2007 – The Association sent a letter to Senator Bingaman with comments on the settlement legislation and the settlement. Senator Bingaman met with representatives of the Association and discussed their concerns, which were that the settlement: (1) takes water away from existing water uses; (2) would result in damage to

the Colorado River ecosystem; (3) threatens the San Juan-Chama Project; (4) competes with Indian rights settlements in the Rio Grande Basin for water and funding; (5) does not fund extensions of existing regional water distribution systems; (6) incorrectly applies federal reserved water rights doctrine and is not supported by a PIA analysis; (7) does not resolve water rights for the State Land Office or the Ute Mountain Ute Tribe; (8) does not resolve the Association's Hogback and Fruitland project diversion right concerns; (9) does not equitably distribute the State's surface water on a per-capita basis; and (10) does not settle the Navajo Nation's water rights in Arizona and Utah. The Association also suggested that the United States should first implement its commitment under the Jicarilla settlement to buy-out and retire 11,000 acre-feet of private depletion rights in the San Juan Basin before settling the Navajo Nation's water right claims, and that the Navajo-Gallup Project is uneconomical and will never be fully funded.

March 25, 2007 – Mike Sullivan, Chairman of the Association, wrote an op-ed piece in the Albuquerque Journal claiming that: (1) there is not enough water in the San Juan River for the settlement; (2) the Navajo Nation under the settlement would control too much of the State's surface water to the detriment of citizens throughout New Mexico who then could not access it; (3) the Navajo Nation will sell New Mexico's water for uses in Arizona, California or Nevada; (4) NIIP wastes water because NAPI is a financial failure; and (5) the Navajo Nation and everyone else in the State should share the State's surface water in equal proportions.

March 28, 2007 – ISC staff met with representatives of the Association, the La Plata Conservancy District and New Mexico's Congressional delegation at San Juan Community College to discuss the Association's concerns regarding the settlement and answer questions regarding the settlement and the draft hydrologic determination.

March 30, 2007 – UNM adjunct professor on Indian water law, Tim Vollman submitted an op-ed article in response to Mike Sullivan's March 25 editorial.

April 8, 2007 – State Engineer John D'Antonio, Jr., submitted an op-ed article in response to Mike Sullivan's March 25 editorial.

April 19, 2007 – Legislation to authorize the Navajo-Gallup Project and approve the settlement agreement was introduced by Senators Bingaman and Domenici (S. 1171) and Representative Udall (HR 1970).

May 2, 2007 – ISC staff participated in the Four Corners Irrigation Workshop at the Farmington Civic Center and responded to questions regarding the settlement and the draft Hydrologic Determination.

June 12, 2007 – Victor Marshall, attorney for the Association, submitted a public records request relating to the Water Haulers documentary. On June 15, 2007, the OSE/ISC produced responsive records. Additional documents requested were produced on October 5, 2007.

June 27, 2007 – The Senate Energy and Natural Resources Committee held a hearing regarding the settlement legislation (S.1171). The Association submitted testimony to the committee for the record reiterating many of the claims made in the January 29, 2007, letter to Senator Bingaman and in Mike Sullivan's March 25, 2007, opinion piece.

August 28, 2007 – The Association and Steve Cone file a lawsuit relating to the documents produced in response to the Water Haulers documentary. The OSE/ISC have moved to dismiss the lawsuit.

August 29, 2007 – Victor Marshall made a presentation to the Interim Water and Natural Resources Committee of the New Mexico legislature raising concerns similar to those raised in the January 29, 2007, letter to Senator Bingaman and in Mike Sullivan's March 25, 2007, editorial.

October 1, 2007 – The Association filed a motion with the San Juan River Adjudication court for discovery relating to the 2007 Hydrologic Determination approved by the Secretary of the Interior. As of October 31, 2007, the Court has not ruled on the motion.