Proposed Navajo Settlement

&

Assessments Regarding San Juan Basin

July 21 Session

Comments Related to the
Federal reserved water rights vest on the date a federal reservation of land is created.

- Federal reserved water rights vest on the date a federal reservation of land is created.

- A legal right to use water is obtained when water is put to beneficial use.

- "First in time, first in right." doctrine of prior appropriation.

- New Mexico surface water is subject to the Loss by non-use/ Priority.

Winters Reserve

the federal water right holders do not have priority over holders put water to beneficial use before reservation – even if the state water right state law after the creation of the federal state law before the creation of the federal law. The claims of all water rights acquired under "Federal Reserve Water Rights are senior to Winters Reserve (con't)"
The court explained:

Priority despite non-use.

In addition, federally reserved water rights

Winters Reserve (Cont.)

Gila River System and Source, 35 P.3d 68 ("Gila River") (Arizona S. Ct.

General Adjudication of All Right to Use Water in the non-use.

beneficial use, and it retains priority despite preemptive. Its creation is not dependent on
of Reservation leasing

PL 100-586
Colorado Ute Indian Water Rights Settlement Act of 1988,

Jicarilla Apache Nation, Contract Sec. 14a

users are afforded the same opportunity.

is reservation: "The water may not be used outside Colorado, unless all other Colorado water
portion of a water right committed in the agreement and final consent decree off
voluntarily elect to sell, exchange, lease, use or otherwise dispose of any

The agreement is hereby modified to provide that a (Ute) Tribe may

rights held by non-federal, non-Indian entities.

law; interstate compact, and international law as apply to the exercise of water
same requirements and conditions of State law, and any applicable Federal
beneficial use outside the Reservation, subject to and not inconsistent with the
approvers of the Secretary in accordance with this section, to supply water for
(Jicarilla) Tribe, the Tribe may subcontract with third parties, subject to

When water made available under this contract is not being used by the
New Mexico's Upper Basin

Allocation is 669,375 acre-feet

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

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

1 acre-foot = 325,851 gallons

Available water to deplete by users

- 583,675 acre-feet
- 27,700 acre-feet: Navajo Dam & Other small reservoirs
- 58,000 acre-feet: CRSPA
Reservoir... division point, and then by releases from Ridges Basin

demand, including Project Return Flow entering above the
met first by streamflow available after meeting historic
Downstream demands on the Animas River are

225 cfs. Through March – 125 cfs; and April through September –
intake: October through November, 160 cfs; December
bypass flows in the Animas River at the Pumping Plant
pumping would be further limited to allow the following
demands and Downstream ALP Project Water demands,
After satisfying all Downstream senior water rights

ALP Operations, July 2000 FEIS
... while assuring a spring release as... season releases between 350 and 500 cfs... season, maintaining minimum irrigation... cfs minimum release during the irrigation... reflect a priority desire to augment a 250... below 250 cfs... "... 5,000 cfs. Minimum releases would not fall... Releases would range from 250 cfs to... Reservoir (June 2003 Vol. I)

Draft FEIS Re Operation of Navajo
<table>
<thead>
<tr>
<th>Location</th>
<th>Minimum Flow</th>
<th>Average Flow</th>
<th>Annual Average Flow</th>
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<tbody>
<tr>
<td>Bluff Gage</td>
<td>775 cfs</td>
<td>385 cfs</td>
<td>300 cfs</td>
</tr>
<tr>
<td>Archuleta Gage</td>
<td>250 cfs</td>
<td>385 cfs</td>
<td></td>
</tr>
</tbody>
</table>
General Authority of a Water Master. The Water Master shall have the immediate charge of the Administration of waters within his Water District, and shall so regulate and control the waters within his district to prevent waste. ... The Water Master may as necessary to effect Administration and prevent waste, adjust headgates and restrict diversions or pumping as required to administer water in accordance with principles of prior appropriation and beneficial use, to prevent illegal use of water, and to prevent waste.
Storage right is not exceeded.

For storage, and may be stored, provided the specific dam to meet the senior water right downstream is in priority, the volume of water that must flow past through (past) the reservoir that exceeds the amount of the total inflow into a reservoir that exceeds may be exercised.

If a water right has a priority date that is senior to the administrative date (based upon available water supply), then the right is in priority, and may be exercised.

If current available direct flow water (natural water) is sufficient for distribution for a specific use water right, then...
Reclamation Water Right: L. 464, 471 (1960)

Delivered by the ditch system and that a person adding the water has the right to
redeliver it from the stream, at the place where it is needed for use.


New Mexico. "It is elementary that a stream may be used as a part of
recognized as a valid delivery method in prior appropriation states
delivery through a natural stream channel, which generally has been
delivery through a natural stream channel. Our focus on the second method:
(1) delivery through an artificial ditch or pipe, or (2) delivery
- Delivery of storage water to its place of use can be by either of two

By senior water users.

water, and the stored water is protected from appropriation.

One 10th Circuit Court of Appeals case from Colorado

Water

Rivers can be used to deliver stored
Reservoir.

determined the water was private because it had been stored in a

does not address what the result would be if a New Mexico court had
amount stored would have to be in excess for the amount allowed. It
release of the excess water. However, for that case to apply here, the
water in excess of its decreed rights, downstream users can force the
City of Raton case does hold, that if a water rights owner stores
Mexico

reservoir, and that the Arizona's findings were not binding on New
recognized that the water was "private" because it was in an Arizona
subject to private ownership." The issue there was that Arizona had
New Mexico. It does say "waters flowing in a natural stream are not
Mexico from an upstream Arizona reservoir is subject to adjudication in
The Luna case stands for the proposition that water that flows into New

Luna Case/City of Raton
store water.

That owner cannot store water there or use water.

Specific right to store water in Navajo Reservoir.

Unless a water right owner has a reservoir, even if the water passes through a reservoir, even if the water cannot be stored in a

not listed as a use, the water cannot be stored in a

purposes of use attached to it, and it „storage“ is

Every water right permit from the OSE has specific

practice.

Storage of water; concept and
the water rights in the basin. Changing the decree if it is not legal and it does not protect
that has been passed. The Judge will have the authority to
The Judge will not be bound, therefore, by the legislation
settlement is off.

The settlement documents state that if the final decree is
substantially the same as the parties submit, the
proposed partial final decree: "Adjudication of the San Juan River system in the form of a
adjudication of the San Juan River system in the pending
with the New Mexico District Court in the pending
After that approval, the terms of the settlement will be filed
sign the Settlement Agreement and Contract.
Under the Proposed Settlement, the U.S. Congress will
Court of New Mexico District
Supremacy of New Mexico District
Judicial Review is not a new concept.

- Judge Stanley Frost changed the decree requested by the Jicarilla Apache Indian Nation, the federal government and the OSE when it was offered in this same adjudication. The other parties in this adjudication had significant impact on the final wording of the decree, in an effort to protect existing users.
value of all our water rights.
Navajo Nation will increase the certainty and
A settlement of the Reserve claims of the
them factual.
know our thoughts, but please, let us make
New Mexico Congressional Delegation
It is quickly reaching the moment to let our
Reaching the Settlement