

RESOLUTION OF THE
NAVAJO TRIBAL COUNCILObjecting to Proposed Re-evaluation of the Navajo Irrigation
Project

WHEREAS:

1. Senator Clinton P. Anderson of New Mexico has proposed to Secretary of the Interior Udall, and the Secretary has agreed that the Navajo Irrigation Project totalling 110,630 acres of land, as authorized by the Act of June 13, 1962, (76 Stat. 96), shall be "re-evaluated" with the objective of reducing said irrigation project to approximately 77,000 acres, in order to make available more water for municipal and industrial purposes, allegedly on the grounds of increased costs of reducing the proposed acreage.

2. Factors now relied upon in proposing such changes were well known when the said Act of June 13, 1962, was passed, and the acreage deemed feasible for irrigation purposes was changed for various reasons from the original amount of 137,250 acres in the Feasibility Report of January, 1955, to the amount of 110,630 acres for Navajos only in a Supplemental Feasibility Report of March, 1957. The project was accordingly designed, planned and authorized by Congress to provide for irrigating 110,630 acres with an average annual diversion of 508,000 acre-feet of water for this purpose -- all represented to Congress as the principal reason for passage of said Act.

3. In addition to federal lands to be embraced in the Navajo Irrigation Project, the Navajo Tribe has proceeded in good faith in reliance upon said Act in purchasing privately owned land at a substantial cost to the Tribe for inclusion in said project, in order to assure and carry out the principal objective of relocating approximately 2,000 Navajo families and offering direct and indirect employment to approximately 17,000 Navajos through direct and collateral forms of employment, all as set forth in Senate Report 83 (87th Congress, 1st Session, pages 6-10), in a letter from the then-Secretary of the Interior to Senator Anderson and in said Act of June 13, 1962 (76 Stat. 96, Sec. 2).

4. The Navajo Tribal Council endorsed and supported the passage of the Act by Resolution CD-86-57, dated December 12, 1957, and again by Resolution CMA-14-64, dated March 2, 1964, authorizing substitution of other lands more practicably usable for the irrigation project pursuant to the Act of June 13, 1962 (requesting Congress to amend said Act to include lands in Township 26 North, Ranges 11, 12, and 13 West, and Township 27 North, Range 11 West, N.M.P.M.). The Navajo Tribal Council also authorized the signing of a contract between the Navajo Tribe and the United States for delivery of water to said project, which said form of contract was signed and sent to Secretary Udall in July, 1964, but has never been acted upon by Secretary Udall.

5. Throughout said Tribal Council resolutions and at all times in supporting the passage of the Navajo Irrigation San Juan-Chama Act of June 13, 1962, the Navajo Tribe has in good faith relied upon the commitments of all parties, including the Congress of the United States, to create said Navajo Irrigation Project of 110,630 acres and commit thereto an annual diversion of 508,000 acre-feet of water, and in addition the Tribe would be entitled to apply for and receive a reasonable portion of an additional 200,000 acre-feet which Secretary Udall has found to be available for municipal and industrial purposes. Said advantages and considerations moving to the Tribe would be greatly impaired, and the principal purpose of the Act defeated, if the irrigation project is now reduced in size and the water to which the Tribe is rightfully entitled is made available for municipal and industrial purposes to the great advantage of New Mexico and Albuquerque, and industries to be served.

6. The Navajo Tribe in good faith, and in deference to its neighbors in Albuquerque, New Mexico, compromised its legal rights under the Doctrine of Winters vs. U. S., 207 U. S. 564 (see proposed contract between the Tribe and the United States, P. 10g) by agreeing to share shortages of water from the San Juan instead of insisting upon the Tribe's paramount rights, all in consideration of the foregoing and other advantages to the Tribe, such as benefits of the Levitt Act applicable to this irrigation project.

7. The Tribe now notes that the San Juan-Chama Diversion Tunnel originally planned for a capacity of 235,000 acre-feet was built to a far greater capacity, which said capacity could only be filled by diversion of water rightfully

belonging to the Navajos, pursuant to the arrangement sought by Senator Anderson and Secretary Udall in "re-evaluation" of the Navajo Irrigation Project about which the Navajos first learned by reading in the newspapers.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council reaffirms and confirms the conditions established by the Council in its Resolution of December 12, 1957 (CD-86-57), namely, the following:

- (a) The Navajo Irrigation Project not be reduced below a net area of 110,630 acres.
- (b) The authorized annual diversion requirement of the Navajo Irrigation Project not be reduced below 508,000 acre-feet.
- (c) The project be exclusively for Indian use and transfer into trust status of the presently off-Reservation areas susceptible to irrigation as part of the project.
- (d) No use in New Mexico of water of the San Juan River not heretofore authorized be given priority ahead of the Navajo Irrigation Project.

2. The Navajo Tribal Council finds that the reasons assigned by Senator Anderson and Secretary Udall for "re-evaluation" of the Navajo Irrigation Project, namely, increased cost of construction and related factors, are insincere for the following principal reasons:

- (a) The Tribe's proposed contract for receiving the water has been on the desk of Secretary Udall since July, 1964, at which time had Secretary Udall not improperly delayed his official action of approving the contract, the increased and inflated costs of today would not have been present;
- (b) All other government projects are subject to the same increased inflationary costs but such other projects are not abandoned for this reason;

- (c) Factors now relied upon in proposing this "re-evaluation" were well known when the Act was passed on June 13, 1962, and no new factors have arisen since the Act provides for covering additional costs due to changes in construction cost, based on June, 1961, construction costs (Section 61500 of the Act).
- (d) The purpose of the Act, namely, the re-settlement of 2,000 or more Navajos and employment of approximately 17,000 Navajos from a failing, grazing economy to a sustaining agricultural way of life on this irrigation project is even of greater force today than when the Act was proposed and approved by Congress.
- (e) The tunnel called for in the original San Juan-Chama diversion plan was to have a capacity of 235,000 acre-feet, however, the tunnel as actually built has a capacity for in excess of 235,000 acre-feet. The excess amount to be carried by this tunnel could be obtained from only one source: water rightfully belonging to the Navajos.

3. Unless the Navajo Irrigation Project is carried out to completion as contemplated by the Act of June 13, 1962, the Navajo Tribal Council hereby finds a complete failure of consideration and therefore revokes any past actions of the Navajo Tribal Council in compromising or in any way waiving the Winters Doctrine.

The Council hereby gives notice that the Navajo Tribe will assert any and all rights thereunder against any person or governmental bodies whatsoever who might seek to divert water from the San Juan River or its tributaries in any manner or for any purpose inconsistent with the defined objectives and purposes of said Act of June 13, 1962. The General Counsel of the Navajo Tribe in Washington, D. C., and the Tribe's Legal Department are hereby authorized and directed to take any and all steps deemed necessary, advisable or incidental to carrying out the purposes of the resolution, including the full assertion of the Winters Doctrine, under any circumstances and by any

means deemed by them appropriate in the event of any departure from the purposes of the Act of June 13, 1962, in diminution of the conditions heretofore and herein approved by the Navajo Tribal Council.

4. The Navajo Tribal Council, on behalf of the Navajo people, hereby memorializes Congress that the Navajo Tribe has complete faith that the Congress will keep faith with the commitment which it made in passing the Act of June 13, 1962, and will not allow any deviation therefrom.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of 58 in favor and 0 opposed, this 28th day of April, 1966.

Nelson Damon
Vice Chairman
Navajo Tribal Council