

**Detailed Summary of Navajo Water Rights
to be Adjudicated by the Proposed Navajo Settlement Decrees
May 1, 2011**

The settlement agreement concerning the water rights of the Navajo Nation in the San Juan River Basin of New Mexico (“Navajo Settlement Agreement” or “Settlement Agreement”) was initially signed by the Navajo Nation (“Navajo Nation” or “Nation”) and the State of New Mexico (“State”) on April 19, 2005. On March 30, 2009 the President of the United States signed Public Law 111-11 which authorized the United States to enter into the settlement with the Navajo Nation and the State. On December 17, 2010 the Secretary of the Interior signed the Navajo Settlement Agreement and the United States became a settling party along with the Navajo Nation and the State. Today, the water rights of the Navajo Nation in the San Juan River Basin of New Mexico (“SJRB”) have been resolved and settled between the State, the United States, and the Navajo Nation (collectively, “Settling Parties”).

The Navajo Settlement Agreement contemplates that two decrees will be entered by the New Mexico District Court in San Juan County (“Navajo Settlement Decrees”). The proposed Navajo Settlement Decrees consist of a Partial Final Decree (sometimes referred to as “Appendix 1 Decree”), which primarily addresses the Navajo Nation’s water rights associated with the mainstem of the San Juan River and groundwater uses in the SJRB, and the Supplemental Partial Final Decree (sometimes referred to as “Appendix 2 Decree”), which primarily addresses the Navajo Nation’s water rights associated with historic irrigation, livestock and recreational water uses from tributaries throughout the SJRB. This document provides a detailed summary of the water rights described in the proposed Navajo Settlement Decrees. However, any person desiring to review all the terms of the proposed settlement should inspect the Settlement Documents available as described in the Notice of Expedited *Inter Se* Proceeding to Adjudicate the Water Rights of the Navajo Nation (“Notice”).

Copies of the Navajo Settlement Agreement, the Settlement Act, and the proposed Settlement Decrees, all of which serve as the basis for the description of the Navajo Nation's rights, are available for review at the locations described in the Notice that was mailed and published in May 2011. Additional information concerning the proposed Navajo Settlement Decrees includes the United States’ hydrographic survey of the major water and irrigation projects of the Navajo Nation (“U.S. Hydrographic Survey”)¹ and a Statement of Claims filed by the United States summarizing claims that could be pursued by the United States and the Navajo Nation if the Settlement Agreement fails (“U.S. Statement of Claims”).

Summary of Water Rights Associated with the Proposed Partial Final Decree:

Under the proposed Partial Final Decree, the Navajo Nation would be adjudicated reserved water rights whose source of supply is the San Juan River Basin for a total diversion and use of 606,660 acre-feet per year (afy) or the quantity of water necessary to supply a total depletion of 325,670 afy, whichever limit applies (“Navajo Mainstem Water Rights”).² The Navajo Mainstem Water Rights are summarized in Table 1 below. Pursuant to the terms of the proposed Partial Final Decree, the rights

¹ As ordered by the Court in this case, the United States independently completed a hydrographic survey of water uses on lands held in trust on behalf of the Navajo Nation, lands held in trust on behalf of individual Navajo Nation members, and lands held in fee by the Navajo Nation throughout the SJRB (“U.S. Hydrographic Survey”). The U.S. Hydrographic Survey completed in December 2010 is not the hydrographic survey contemplated by the Settlement Agreement; that survey has yet to be completed by the United States in a manner acceptable to the New Mexico State Engineer.

² The use of the term “Mainstem” includes uses from the Animas River, a perennial tributary to the San Juan River.

described in the table below will be adjudicated a priority date of June 1, 1868; **however**, for purposes of priority administration, the Navajo Nation has agreed in the Settlement Agreement that the uses served by projects built by the Bureau of Reclamation shall be administered with more recent priorities, designated by the “*” below, in accordance with the terms of the proposed Partial Final Decree.

Navajo Mainstem Water Rights Described in the Proposed Partial Final Decree			
	Diversion (afy)	Depletion (afy)	Priority
(1) Navajo Indian Irrigation Project	508,000	270,000	06/17/1955 *
(2) Fruitland-Cambridge Irrigation Project	18,180	7,970	06/01/1868
(3) Hogback-Cudei Irrigation Project	48,550	21,280	06/01/1868
(4) Navajo-Gallup Water Supply Project	22,650	20,780	06/17/1955 * 12/16/1968 **
(5) Animas-La Plata Project	4,680	2,340	05/01/1956 *
(6) San Juan River municipal/industrial uses	2,600	1,300	06/01/1868
(7) Reserved groundwater uses***	2,000	2,000	06/01/1868
TOTAL:	606,660	325,670	

* Priorities of June 1, 1868 administered with more recent priorities.

** Priority for water from inflows arising below Navajo Dam (per Permit No. 3215).

*** Pursuant to the proposed Partial Final Decree, the Navajo Nation’s groundwater uses in total, including under the proposed rights with a priority date of June 1, 1868 shown in this table, under any additional groundwater rights that might be provided under the proposed Supplemental Partial Final Decree, and under any additional rights that might be established under future appropriations, may have no more than a 2,000 afy net depletion impact on the San Juan River. Any cumulative impact on river flow exceeding 2,000 afy from Navajo Nation ground-water uses would have to be offset by curtailment of Navajo Nation surface water uses.

A further description of water rights listed above can be found in the Appendix A attached to this document.

Additional Settlement Terms Governing Navajo Mainstem Water Rights

The water made available to the Navajo Nation for the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project is based upon water rights held by the United States described in New Mexico State Engineer File No. 2849, for uses from water originating above Navajo Reservoir, and New Mexico State Engineer File No. 3215, for inflows to the San Juan River arising below Navajo Dam. Under the terms of the Settlement Agreement, 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 all other Navajo Reservoir contractors.

The water made available to the Navajo Nation for the Animas-La Plata Project is based upon water rights held by the United States described in 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, La Plata Conservancy District, and all other Project contractors.

Under the Settlement Agreement, the direct-flow water rights of the Navajo Nation associated with the Fruitland-Cambridge Irrigation Project, the Hogback-Cudei Irrigation Project, and certain San Juan River municipal/ industrial uses would retain a senior priority date of June 1, 1868 and not share shortages.³ However, when the flow of the San Juan River is insufficient to supply current beneficial use demands under direct-flow water rights in New Mexico, the Navajo Nation agrees to make up to 12,000 afy of water available from its Navajo Reservoir supply water allocations to serve the reserved rights for these uses prior to making a call for priority administration of the river system. This alternate water source provision of the Settlement Agreement, incorporated by the proposed Partial Final Decree, reduces the risks and occurrences of shortage to water users with direct-flow water rights that otherwise would be anticipated to result from the Navajo Nation's priority calls on the river without the settlement. Under the proposed Partial Final Decree, the Hogback-Cudei and Fruitland-Cambridge irrigation projects would have rights to divert up to 221 cfs and 100 cfs, respectively, from the direct flow of the San Juan River to the extent necessary to meet beneficial use demands.

In addition to the rights described above, under the settlement the Navajo Nation: (1) may divert supplemental carriage water if needed and only at such times as the New Mexico State Engineer determines that excess direct flow exists for such diversion without impairment to water rights in New Mexico; (2) may develop additional groundwater uses on lands held in trust on behalf of the Navajo Nation ("Trust 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 in excess of 2,000 afy caused by the aggregate of all Navajo Nation groundwater diversions (exclusive of *de minimis* residential domestic and stock tank uses); (3) would have a small amount of rights it has acquired under state law; (4) would have additional rights to *de minimis* residential domestic and stock tank uses that are not served by public water supply systems; and (5) 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 SJRB in New Mexico would be limited to the amounts of water necessary for beneficial uses.

The rights of individual members of the Navajo Nation whose lands are held in trust by the United States ("Allotment Lands") are not resolved by the Settlement Agreement or the proposed Settlement Decrees. These individuals may have additional claims to reserved water rights based on historic and existing water uses in the SJRB. However, pursuant to the Settlement Agreement any reserved rights that might be adjudicated to such members for additional future uses would be served by, or offset by corresponding reductions in use under the water rights of the Navajo Nation.

Under the proposed Navajo Settlement Decrees, the Navajo Nation would administer its rights on Trust Lands and lands held in fee by the Navajo Nation ("Navajo Fee Lands") in New Mexico subject to non-impairment of non-Navajo Nation water rights and subject to the provisions of the Settlement Decrees and the Settlement Agreement. 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 Settlement Decrees. Transfers of water rights of the Navajo Nation to uses to be located on lands other than Trust Lands would require approval of the State Engineer.

³ Direct-flow water rights are rights to divert, store and use the flow that would be available in the river without upstream reservoir regulation. Rights to receive deliveries of water that is previously stored in reservoirs, including pursuant to contracts with the United States for water from Navajo Reservoir or Ridges Basin Reservoir, are not direct-flow water rights.

Summary of Navajo Water Rights Associated with the Supplemental Partial Final Decree:

In addition to the water rights associated with the proposed Partial Final Decree described above, the Settlement Agreement provides that the Court would adjudicate to the Navajo Nation water rights based on historic and existing stock, irrigation and recreational uses whose source of supply is from groundwater or ephemeral surface water generally located away from the San Juan River. The Settlement Agreement contemplates that these rights will be addressed in the Supplemental Partial Final Decree entered after the Partial Final Decree has been entered. Because the rights associated with the proposed Supplemental Partial Final Decree are made up of numerous stock ponds and ephemeral surface water irrigation uses spread primarily across the Navajo Lands⁴ in the SJRB, a final Hydrographic Survey Report will be prepared by the United States in a manner acceptable to the New Mexico State Engineer (“Final Hydrographic Survey”).

Until the Final Hydrographic Survey is completed, the precise location and other elements of these additional Navajo Nation water rights will not be available. Nonetheless, in order to provide information about the maximum potential depletion quantity of these Navajo Nation water rights and based on the information contained in the U.S. Hydrographic Survey, the United States has made the following estimates concerning water uses associated with historic and existing irrigation and livestock uses whose source of supply is from groundwater or ephemeral surface water generally located away from the San Juan River and whose use is on Trust Lands:⁵

- (1) **Tributary Irrigation Projects⁶ using water sources other than the Mainstem of the San Juan River:** 8,426 acres (cumulative total on Trust Land in the SJRB); 15,528 afy (at-site depletion);
- (2) **Tributary Irrigation Non-Project Lands⁷ using water sources other than the Mainstem of the San Juan River:** 3,734 acres (cumulative total on Trust Land in the SJRB); 6,273 afy (at-site depletion);
- (3) **Irrigation Impoundment Storage:** 11,365 af for the 84 irrigation impoundments identified on Trust Land in the SJRB;
- (4) **Livestock Watering Uses:** 304 afy (depletion) for the estimated 24,893 Animal Unit historically or presently raised on Trust Land in the SJRB; and
- (5) **Stock Impoundment Storage:** 12,693 af for the 1,729 stock impoundments identified on Trust Land in the SJRB.

The Navajo water rights associated with the proposed Supplemental Partial Final Decree:

⁴ “Navajo Lands” refer, collectively, to the following: Trust Land, Navajo Fee Land, and Allotment Land.

⁵ Some irrigation and stock impoundments are also used for recreational or fish and wildlife purposes.

⁶ Tributary Irrigation Projects are those substantial, organized irrigation projects on Trust Lands that were funded and built by governmental and private entities. These projects use water from sources other than the San Juan River.

⁷ Tributary Irrigation Non-Project Lands refer to Trust Lands irrigated by individual Navajos. These irrigated lands are typically smaller areas of land, are typically found along or near tributary drainages to the San Juan River, and are not associated with irrigation projects. To irrigate these lands, farmers use whatever surface water and groundwater sources that might be available.

- (1) will be limited to historic and existing use by the Navajo Nation in the SJRB;
- (2) are located mostly on ephemeral tributaries in the Chaco Wash drainage, which enter the San Juan River downstream of the Hogback Project diversion dam and upstream of Shiprock;
- (3) have an average annual at-site consumptive use that for most uses will likely be significantly less than the potential maximum use due to inadequate supply;
- (4) have a depletion impact on the San Juan River that is substantially less than the actual at-site consumptive uses due to salvage of channel losses in the ephemeral tributary drainages; and
- (5) are not anticipated to result in an increase over the historic depletions on the San Juan River. Furthermore, the Settling Parties believe that there are no circumstances under which the Navajo Nation could make a priority call to curtail uses from the San Juan, Animas or La Plata Rivers based on the Navajo water rights associated with the proposed Supplemental Partial Final Decree.

Appendix A

Summary of the Navajo Mainstem Water Rights.

(1) **Navajo Indian Irrigation Project.** This project was authorized by Public Law 87-483 (76 Stat. 96) in 1962, and the US Bureau of Reclamation presently continues to construct and develop the project facilities. According to Bureau of Indian Affairs records, about 79,760 acres were developed for irrigation under the project as of 2010, which acreage amounts to about 70% percent of the 110,630 acres authorized by Public Law 87-483 to be irrigated by the project. Water deliveries to the project are subject to sharing of shortages in the Navajo Reservoir supply with other Navajo Reservoir supply water contracts for uses in New Mexico per section 11 of Public Law 87-483, as amended by the Settlement Act.

Source of Water Supply: Navajo Reservoir supply.
Administrative Priority Date: June 17, 1955 (per Permit No. 2849).
(under the Settlement Agreement)

Purposes of Use: Irrigation, agricultural products processing, aquaculture and other project-related uses (per Settlement Act).

Water Right Acres: 110,630 acres under the project (per Public Law 87-483).

Diversion Amount: An average diversion amount of 508,000 acre-feet per year from Navajo Reservoir (per Public Law 87-483), though it is anticipated that average annual diversions will be less than this amount due to project design changes and future implementation of water conservation measures. To be measured as running ten-year averages, with the annual diversion not to exceed the ten-year average maximum diversion by more than 15 percent.

Depletion Amount: An average depletion amount of 270,000 acre-feet per year from the San Juan River stream system, based on diversions less return flows to the San Juan River. To be measured as running ten-year averages, with the annual diversion not to exceed the ten-year average maximum diversion by more than 15 percent.

Maximum Diversion Rate: 1,800 cubic-feet-per-second (cfs) per physical capacity of existing diversion works.

(2) **Fruitland-Cambridge Irrigation Project.** This project is an irrigation project on Trust Lands that is tied to an existing ditch on the San Juan River. All of the 3,335 project acres are currently under ditch and have been assigned to members of the Navajo Nation for irrigation by Bureau of Indian Affairs (BIA) Land Use Permits.

Source of Water Supply: San Juan River.
Priority Date: June 1, 1868.

Purpose of Use: Irrigation.

Water Right Acres: 3,335 acres under the project.
Farm Delivery Requirement: 3.3 acre-feet per acre.
Diversion Amount: An annual maximum diversion amount of 18,180 acre-feet at the existing Fruitland Project diversion dam, to be enforced only if annual project diversion requirements are enforced for non-Navajo ditches in the San Juan River Basin in New Mexico.
Depletion Amount: An annual maximum depletion amount of 7,970 acre-feet.
Maximum Diversion Rate: 100 cfs, with provisions to reduce the maximum diversion rate to as low as 83.4 cfs depending effectiveness of project rehabilitation in reducing the rate of diversion necessary to meet the beneficial use demands under the project.

(3) **Hogback-Cudei Irrigation Project.** This project is an irrigation project on Trust Lands that is tied to an existing irrigation ditch on the San Juan River. All of the 8,830 project acres are currently under ditch and have been assigned to the Navajo Nation or its members for irrigation by BIA Land Use Permits.

Source of Water Supply: San Juan River.
Priority Date: June 1, 1868.

Purpose of Use: Irrigation.
Water Right Acres: 8,830 acres under the project.
Farm Delivery Requirement: 3.3 acre-feet per acre.
Diversion Amount: An annual maximum diversion amount of 48,550 acre-feet at the existing Hogback Project diversion dam, to be enforced only if annual project diversion requirements are enforced for non-Navajo ditches in the San Juan River Basin in New Mexico.
Depletion Amount: An annual maximum depletion amount of 21,280 acre-feet.
Maximum Diversion Rate: 221 cfs.

(4) **Animas-La Plata Project.** This project was authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III). The US Bureau of Reclamation has begun the initial filling of the project's water storage facility, Lake Nighthorse, formed by Ridges Basin Dam near Durango, Colorado. The authorized Navajo Nation Municipal Pipeline is in the beginning stages of construction, which pipeline will convey the Navajo Nation's project water allocation from Farmington to Navajo communities between Fruitland and Shiprock. The Navajo Nation's use of its project water will commence upon completion of the pipeline, and is subject to sharing of shortages in the project water supply with other project contractors in New Mexico and Colorado.

Source of Water Supply: Animas River.
Administrative Priority Date: May 1, 1956 (per Permit No. 2883).
(under the Settlement Agreement)

Purpose of Use: Municipal, domestic, industrial, and commercial uses.
Diversion Amount: An annual maximum diversion amount of 4,680 acre-feet from the Animas River.

Depletion Amount: An annual maximum depletion amount of 2,340 acre-feet from the San Juan River stream system (per Public Law 106-554), based on diversions less measured return flow discharges.

Maximum Diversion Rate: 12.9 cfs.

(5) **Navajo-Gallup Water Supply Project**. This project was authorized in 2009 by the Settlement Act. The US Bureau of Reclamation has completed National Environmental Policy Act and Endangered Species Act section 7 consultation compliance activities for the project, and is working on final design criteria preparatory to project construction. The project has two points of diversion: (1) Navajo Reservoir for delivery of water to communities along the US Highway 550 corridor; and (2) the San Juan River near Kirtland for delivery of water to communities along the San Juan River valley from Fruitland to Shiprock and generally along the US Highway 491 corridor between Shiprock and Gallup, with connections also to communities in the vicinity of Crownpoint and Gallup, New Mexico, and Window Rock, Arizona. It will be several years until project pipeline and water treatment facilities are sufficiently constructed to allow the Navajo Nation to begin taking delivery of its project water.

- (a) Rights for Project Uses in New Mexico: Water deliveries to the project for uses in New Mexico are subject to sharing of shortages in the Navajo Reservoir supply with other Navajo Reservoir supply water contracts for uses in New Mexico per section 11 of Public Law 87-483, as amended by the Settlement Act.

Source of Water Supply: Navajo Reservoir supply and San Juan River.
Administrative Priority Date: June 17, 1955, for water from the Navajo Reservoir
(under the Settlement Agreement) supply (per Permit No. 2849) and December 16, 1968, for water from inflows arising below Navajo Dam (per Permit No. 3215).

Purpose of Use: Municipal, domestic, industrial, and commercial uses.
Diversion Amount: An annual maximum diversion amount of 22,650 acre-feet for project uses in New Mexico (per Settlement Act). At full project development, it is anticipated that about 3,800 acre-feet would be diverted at Navajo Reservoir through the existing Navajo Indian Irrigation Project canal intake and about 18,850 acre-feet would be diverted at the existing Public Service Company of New Mexico's San Juan Generating Station diversion dam.
Depletion Amount: An annual maximum total depletion amount of 20,780 acre-feet for project uses in New Mexico (per Settlement Act), based on diversions less measured return flow discharges.
Maximum Diversion Rate: 48.1 cfs combined for both points of diversion.

- (b) Rights for Project Uses in Arizona: In the event of shortage in the Navajo Reservoir supply, water deliveries to the project for uses in Arizona from the Navajo Reservoir supply are to be shorted completely before any residual amount of shortage is to be shared among Navajo Reservoir supply contracts for uses in New Mexico per section 11 of Public Law 87-483, as amended by the Settlement Act. These diversion rights for project uses in Arizona are not transferrable to other uses, including to uses in New Mexico, and may not be leased or subcontracted by the Navajo Nation to third parties.

Source of Water Supply: Navajo Reservoir supply and San Juan River.
Administrative Priority Date: June 17, 1955, for water from the Navajo Reservoir
(under the Settlement Agreement) supply (per Permit No. 2849) and December 16, 1968, for water from inflows arising below Navajo Dam (per Permit No. 3215); provided, that all project diversions for uses in Arizona shall be subject to non-impairment of water rights for uses in New Mexico.

Purpose of Use: Municipal, domestic, industrial, and commercial uses.
Diversion Amount: An annual maximum diversion amount of 6,411 acre-feet from the San Juan River in New Mexico at the existing Public Service Company of New Mexico's San Juan Generating Station diversion dam for project uses in Arizona (per Settlement Act).
Depletion Amount: An annual maximum depletion amount of 6,411 acre-feet for project uses in Arizona (per Settlement Act), subject to an accounting of said depletion within the State of Arizona's allocations of water from the Colorado River system.
Maximum Diversion Rate: 12.0 cfs.

(6) Additional Surface Water Rights for Municipal, Industrial and Domestic Uses. These rights are intended to settle claims to water rights of the Navajo Nation for reserved and historic municipal, industrial, domestic, and commercial uses in the SJRB in New Mexico. According to water use reports filed by the City of Farmington with the Office of the State Engineer, the Navajo Tribal Utility Authority (NTUA)-Shiprock Agency during the period 2003-2007 purchased about 1,820 acre-feet of treated water per year from the City, on average, for Navajo municipal and domestic uses by communities located on Trust Lands along the San Juan River, including about 2,160 acre-feet in 2007. According to Navajo Nation Department of Water Resources data, the NTUA-Shiprock Agency during the same period pumped an additional 320 afy from the San Juan River or the Hogback Canal for Navajo municipal and domestic uses, including about 580 acre-feet in 2005. In 2005, a total of about 2,280 acre-feet of water was diverted by or delivered to the NTUA-Shiprock Agency. In the future, these uses will be accounted against the Navajo Nation's water rights. Rights claimed by the Navajo Nation for industrial uses at the Navajo Shiprock Helium Plant and the Navajo Shiprock Mill, both of which operated during the 1950s and 1960s, under License No. 2472 (for an annual diversion of about 1,450 acre-feet) and License No. 2807 & 2875 (for an annual diversion of 1,200 acre-feet), respectively, will be cancelled.

Source of Water Supply: San Juan River.
Priority Date: June 1, 1868.

Purpose of Use: Municipal, domestic, industrial, and commercial uses.
Diversion Amount: An annual maximum diversion amount of 2,600 acre-feet.
Depletion Amount: An annual maximum depletion amount of 1,300 acre-feet, based on diversions less measured return flow discharges.
Maximum Diversion Rate: 5.0 cfs.

(7) Groundwater Rights for Municipal, Industrial and Domestic Uses. Because of the expansive, arid nature of the San Juan River Basin within New Mexico, the Navajo Nation meets many individual, community, and agricultural needs throughout the basin from local groundwater sources.

Additional future development of these groundwater sources may have a depletion impact on the San Juan River, depending upon the location and geologic formation from which the groundwater is withdrawn. Under the Settlement Agreement, any cumulative depletion of San Juan River flow resulting from all groundwater withdrawals by the Navajo Nation for any and all uses that is in excess of 2,000 afy, including historic and existing uses but excluding *de minimis* uses from individual domestic wells, would have to be offset by the Navajo Nation by reducing equal amounts of depletion under its surface water rights.

Source of Water Supply:	Groundwater in the San Juan River Basin.
Priority Date:	June 1, 1868
Purpose of Use:	Municipal, domestic, industrial, commercial, agricultural and other purposes.
Diversion Amount:	An annual maximum diversion amount of 2,000 afy with an administrative priority date of June 1, 1868. Additional groundwater diversions over and above 2,000 afy would have an administrative priority date equal to the date on which the Navajo Nation gives notice to the State Engineer of its intent to drill or pump wells to implement such additional diversions (except in the case of drilling a replacement well), and would be subject to non-impairment of surface water and groundwater rights in New Mexico.
Depletion Amount:	An annual maximum depletion of San Juan River flow of 2,000 afy.