

THE CHAIRMAN: This is evidently for advertising for sale of leases for oil and gas mining purposes, which is before this Committee at this time for further consideration.

WILSON HALONA: Mr. Chairman, Members of the Advisory Committee: I would like Mr. Pohlmann to point out where these are.

(Whereupon, Mr. Pohlman goes to the map and indicates the locations.)

MR. POHLMANN: This sale covers the area I follow here now. (indicating) There; here, over into New Mexico there and a few pieces here on Beautiful Mountain and a narrow strip one section wide from there to there over to Chilchinbito. This is basically the main part of the claim, going across Arizona and this segment right here. (indicating) Here is the Four Corners. Here is the dispute area here.

FRANK LUTHER: Mr. Chairman, I make a motion to approve this proposed resolution.

FRANK BRADLEY: Mr. Chairman, I second the motion.

THE CHAIRMAN: Motion and second are in order to approve this proposed resolution. All in favor signify by raising your right hand. Those opposing?

The vote is 5 approving and 0 opposing.

MR. POHLMANN: May I say something? Do you ladies and gentlemen of the Advisory Committee have time? I would like to tell you that the Hopi Reservation are having their first sale on the 29th of next month. Our sale will come a week after that; but keep this in mind, we are starting to get competition now. Before, we were selling completely on our own. This time we are starting to get competition; so we can expect to hear from these people.

And one other point I want to make is: I painted a rather pessimistic picture before. It is not quite that bad. Nineteen wells have been drilled in here, and that is bad, since there have been no hits. But there is a lot of looking that will take place in here yet. And the main part of what we have to sell is inside this black line (indicating) and particularly inside that line there--that's the heart of the Black Mesa Basin. So, actually our biggest prices are yet to come in the dispute land.

But we are now getting some competition from the Hopi Reservation. We don't have it all to ourselves any more.

THE CHAIRMAN: We have another proposed resolution before us, so we will have the reading of the same at this time.

CARL BEYAL: Mr. Chairman, Members of the Committee. We would like to request that we take up Number 7 on your agenda. We have the material and personnel here that are to present it.

This is a proposed resolution of the Advisory Committee Approving Amendment to Water Contract for Navajo Indian Irrigation Project.

(Whereupon, the following proposed resolution was read by CARL BEYAL and made a part of the record.)

PROPOSED RESOLUTION
OF THE ADVISORY COMMITTEE
OF THE NAVAJO TRIBAL COUNCIL

Approving Amendment to Water Contract for Navajo Indian Irrigation Project

WHEREAS:

1. By Navajo Tribal Council Resolution CMA-14-64, the Navajo Tribal Council authorized the Chairman, Navajo Tribal Council, to execute on behalf of the Navajo Tribe of Indians a water contract with the United States to provide a water supply for the Navajo Indian Irrigation Project.

2. The Navajo Tribal Council also delegated authority to the Chairman, Navajo Tribal Council, to approve changes in the contract as may be desirable or necessary, provided such changes are also approved by the Advisory Committee of the Navajo Tribal Council.

3. The Bureau of Indian Affairs has now proposed two changes in the contract, which appear to be in the best interest of the Tribe and are submitted for approval of the Advisory Committee.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Advisory Committee of the Navajo Tribal Council hereby approves the following changes in the water contract between the Navajo Tribe of Indians and the United States as proposed by the Bureau of Indian Affairs:

- (a) Delete the period at the end of section 6, add a comma instead, and then add the following, "except as to movable property as provided in section 4a of this contract."

(b) Delete section 10g of the contract entirely and add instead:

g. Priority Claims - The Navajo Tribe hereby waives prior rights or claims to project waters and agrees to the apportionment and distribution of available project water as provided in this contract.

2. The Advisory Committee approves of the Chairman, Navajo Tribal Council, executing such documents as may be necessary to effect the changes above set out in the said water contract.

THE CHAIRMAN: We then have here a proposed resolution as reflected on your agenda. Mr. Wolf has handled this and had wished that this be brought to the Committee's attention. Here he is. Mr. Wolf.

WALTER WOLF: Mr. Chairman, Members of this Committee: This resolution is brought before you as a result of a letter addressed to Mr. Leland O. Graham. In that letter the acting Deputy Assistant Commissioner, George Mathis, who signed it, says: "The Bureau of Indian Affairs recommends that the two changes which are listed in the resolution be made in the contract." And the Commissioner states we can make the changes in this office without returning the contracts to the field provided that the Tribal Chairman, with the approval of the Advisory Committee, authorizes the changes.

Mr. Chairman, the first change which speaks of Section 6 and adds some words to it--Section 6 provides right now, Contract approved by the Council in March, that the title to all projects works shall remain in the United States until otherwise provided by Congress. The change would then add "except as to movable property as provided in section 4a of this contract."

Section 4a of this contract allows the Secretary of the Interior to transfer to the Navajo Tribe such movable property as is necessary for the operation and maintenance of the irrigation projects.

The second correction the Bureau suggests is section 10g which deals with priority claims for water. At the present time that section reads: "The Navajo Tribe hereby waives any claims it may have to project waters including prior rights therein based upon judicial construction of Navajo Tribe rights in the case of Winters vs. the United States and agrees to apportion the distribution of contract waters as provided in this contract."

The change, as shown in the proposed resolution, makes it read "The Navajo Tribe hereby waives prior rights or claims to project waters and agrees to the apportionment and distribution of available project water as provided in this contract".

This new change merely paraphrases the requirements of the Navajo Indian Irrigation San Juan-Chama Project Act as passed by Congress June 13, 1962, and drops the reference to Winters vs. United States.

Mr. Graham in Washington recommends this change and says insofar as he is concerned that the suggested language from the Bureau of Indian Affairs is just as acceptable as the prior language which was already in the contract, and I do not have any objection to changing the phrase to drop any reference to the Winters document.

Now, Mr. Chairman, the Council resolution CMA 16-64 authorized the Chairman to execute the contract that the Council approved as attached to resolution CMA 16-64. In addition, paragraph 2 of that resolution stated that the Chairman with the approval of the Advisory Committee is hereby authorized to approve such further changes in the contract as may be necessary or desirable in the best interests of the Navajo Tribe. Thus the occasion for this resolution being presented to you in accordance with the authority delegated by the Council to the Chairman with the approval of the Advisory Committee.

We believe the BIA proposed changes are in the best interests of the Navajo Tribe, and therefore ask that you approve this resolution so that we can get this contract on the way to the Secretary of the Interior.

FRANK LUTHER: Mr. Chairman and Members of the Committee: Should this be CMA 16 instead of 14, or is there another resolution?

WALTER WOLF: Fourteen--the Council's resolution is No. 14-64. Did I say 16? Pardon me, I should have said 14-64. That is the Council resolution.

FRANK LUTHER: Let me ask you one more question. Now what does this do, now, to that contract on that "g". I know you explained it, but I would like to ask the same question again. Maybe I could get a clear picture in our minds on this change "10g". It says "delete the contract entirely". You are talking about this priority claim. And then down here (indicating) "the claim to project waters and agrees to the apportionment and distribution of available project water as provided in this contract."

Just what does that phrase cover? What I am after now is, we don't want it where we have to do some construction work in there maybe.

WALTER WOLF: Mr. Chairman, very briefly again, what is involved in this thing is as Committee members will recall, in order to get the Navajo Indian Irrigation Project it was necessary for the tribe to determine whether or not it would stand on its prior rights to water in the San Juan River. If the Tribe were to assert its prior rights to water in the San Juan Basin for purposes of irrigation it was not feasible to construct the San Juan-Chama Diversion, which will take water across to the Rio Grande Valley. Now, if the Navajo Tribe agreed to share in years of shortages ratably, or equally, with the other people who are using water in the San Juan Basin, then it is feasible to construct both the Navajo Irrigation Project and the San Juan-Chama Diversion. I think I can show it on the board here.

(Whereupon, Mr. Wolf goes to the board and indicates.)

We have the Navajo Dam holding back the waters of the San Juan River which normally flowed down out of New Mexico. In order to get our irrigation system authorized and constructed by Congress, the Tribe had to agree to share in years of shortages with the San Juan Chama Diversion which takes water over into the Rio Grande Valley. Otherwise, Congress would not appropriate the money to build the irrigation project. This clause in the contract that we are talking about states that the Navajo Tribe waives its prior rights to all of this water coming down and agrees to share equally in shortages with the San Juan-Chama Diversion and Navajo Irrigation Project. When there is a year that there is not enough water for both, we share the losses equally with the San Juan Chama Diversion. If there are ten barrels of water, we get our share and they get their share, but we don't get all ten. Now, that, basically, is what this thing is talking about when it talks about priority claims.

FRANK BRADLEY: Mr. Chairman, Members of the Advisory Committee, Mr. Wolf: I believe when this was discussed two or three years ago it was explained to the Council at that time that the San Juan-Chama would get two cups of water to our one cup. How can we apportion this equally? Say there were fifteen gallons left in the pond, there, and they would get ten gallons and we would get five gallons.

WALTER WOLF: It's the other way around, Frank.

FRANK BRADLEY: They would get two cups, and we would get one cup. At the time that was my understanding of it, and it seems as if we would be giving up our rights there. We are the ones that are going to be dried out.

WALTER WOLF: Very briefly, suppose we assume that there are fifteen gallons of water, and that is all you need to make an irrigation system function and the diversion system function. The Tribe and the irrigation system would get ten gallons. San Juan-Chama would get five gallons. Now, that's how much you need to make it operate properly. But, suppose next year, one year suddenly comes along that there is only twelve gallons of water available in this whole system. You need fifteen to make it operate properly. Suppose there are only twelve available. In that case, what this whole thing is talking about, the Tribe would get eight and they would get four. By waiving your claims you don't get ten and they get two. They reduce it ratably, so instead of getting ten you get eight, and instead of getting five they get four. This reduces ratably.

FRANK BRADLEY: It's the other way around. They get two cups, and we get one cup.

WALTER WOLF: No, this is the way it's set up; and you share shortages ratably; and this is what you had to agree to in order to get the \$ 135,000,000.00 to build the Navajo Indian Irrigation Project.

FRANK BRADLEY: Well, I hope you are right. I think it is the other way around.

WALTER WOLF: The change in this language as proposed merely deletes the reference to Winters vs. United States case, and just restates the understanding without the Winters case being in there.

FRANK LUTHER: I make a motion to table this resolution until we have more members present and, also, until we look into this contract and make a study of it.

WALTER WOLF: Let me say one more thing. I can quote you right from the Act here on this matter of water. The Act provides that: "The Tribe shall have an annual division of 508,000 acre feet of water". That's the Navajo Irrigation. The San Juan-Chama shall have 270,000 acre feet of water.

FRANK LUTHER: Two hundred and seventy thousand.

WALTER WOLF: Now, you can see from that that it is almost twice-- the Tribe is getting almost twice as much as the San Juan-Chama Diversion. So, because of the fact that this contract is necessary to getting the project under way and that these changes are merely restatements of what the Council agreed to in its March session, I would urge you to take favorable action on this thing so we can get it on to Washington and get the water contract approved. The Commissioner, in his letter of July 9, states that he could make the changes without returning the contract provided that the Chairman with the approval of the Advisory Committee authorizes it.

Mr. Graham has looked into it. The Commissioner has recommended it; and we think it's acceptable to the Tribe.

FRANK LUTHER: Mr. Chairman, can we meet tomorrow morning and discuss this same item more? I make a motion.

FRANK BRADLEY: Mr. Chairman and Members of the Committee: I think, since we are on this, since the Bureau has asked us to make some changes, perhaps we should make some changes on this, too. I think I am going to ask Mr. Wolf--in the contract where it states that this is a contract for fifteen years for the completion of the Navajo Project, and everything is based on the prices of today. What if prices of materials and everything go up in fifteen years, and we don't have enough money to complete it? Would the Navajo Tribe have to go ahead and complete the project with their own money if they run out of the money that is appropriated for that? I think, if that's the case, then we should turn around and make a request that they go ahead and complete this project with their own money instead of the Tribe's.

WALTER WOLF: There is nothing in the Act, Mr. Bradley, that would allow the Secretary of the Interior to ask the Navajo Tribe to make up any differences due to the inflationary prices. As a matter of fact, when the costs are estimated in these irrigation and reclamation projects at a particular year's prices, when appropriately made, they are not made all in one sum, they are made as construction progresses, and Congress takes into account inflationary trends may increase the prices as time passes by. The Act says that the Secretary is authorized to construct, operate and maintain the Navajo Indian Irrigation Project. I don't see anything in there that is talking about fifteen years, or twenty years or how many ever years. It is their responsibility to build, and if prices increase their appropriations would increase along the way.

THE CHAIRMAN: So that being that way, what is the pleasure of this Committee? Do you wish to go ahead and approve this or table it?

FRANK BRADLEY: Mr. Chairman, Members of the Advisory Committee: Since the Council already approved this I would like to approve that resolution; the wording on here in paragraph 1 states that the Navajo Tribal Council authorized the Chairman, "comma", Navajo Tribal Council. I think that we should put the Chairman of the Navajo Tribal Council in paragraph 1. And, also, in paragraph 2 where it says Chairman, Navajo Tribal Council, I think we should put of the Navajo Tribal Council in there; and, also, on the second page, paragraph 2, of the Navajo Tribal Council. It goes on that basis that it is the Chairman of the Navajo Tribal Council, and, if we can insert those words there, I make a motion that we go ahead and approve this proposed resolution.

WILSON HALONA: I second the motion.

THE CHAIRMAN: The motion is on the floor by Mr. Frank Bradley to approve this proposed resolution with the amendment in three specific places where of the would be included in place of the comma inserted between "Chairman" and "Navajo Tribal Council." Second is in order by Mr. Wilson Halona. Those approving raise your hand. Those opposed?

The vote is five approving and none disapproving.

This Council now stands at recess. You will be notified as to the next time you are scheduled to meet again.

(Whereupon, at 10:20 a.m., the Advisory Committee stood at recess sine die.)