

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

January 11, 2005

The Navajo Nation will receive substantial benefits from the Settlement Agreement. There are multiple reasons for other parties to also support the Settlement Agreement, as summarized below.

Protection of Existing and Authorized Uses

1. NIIP diversions recognized at 508,000 AF/yr, but State Engineer permit needed for diversions over 353,000 AF/yr. The settlement agreement recognizes an average annual diversion of 508,000 AF/yr for the Navajo Indian Irrigation Project (NIIP) pursuant to the NIIP authorizing legislation. 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. Quantity that fits within apportionment. Based on projections of anticipated depletions in the San Juan River Basin through 2060, the settlement resolves the Navajo's claims at 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 NIIP (270,000 AF/yr of depletion) and the Navajo-Gallup Project (20,800 AF/yr of depletion) will be supplied from the Navajo Reservoir water supply 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, Hogback and Fruitland 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 are agreeing 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 would 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 would be 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.
7. Navajo allottees. The Navajo Nation is agreeing 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.

Agreements for Water Rights Adjudication and Administration

8. 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.
9. Settlement of Farmington rights. The State and the Navajo Nation in a related matter are agreeing to adjudication of the primary water rights of the City of Farmington, including pursuant to the City's trust rights, and the proposed agreement will be submitted shortly to the Farmington City Council for approval.
10. No out-of-state marketing without State consent. Under the settlement, the Navajo Nation may not market water out-of-state without the consent of the New Mexico Interstate Stream Commission. That requirement is in addition to the otherwise applicable legal requirements, including obtaining a State Engineer permit under Article 72-12(B) and applicable provisions of the Colorado River and Upper Colorado River Basin compacts.
11. 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.

12. 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 as necessary to comply with interstate compact obligations and other applicable law. 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.
13. 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 in addition to the rights being recognized by the settlement agreement. The settlement agreement recognizes the authorized amount for the NIIP, existing farm acreage under the Hogback and Fruitland projects, and other existing Navajo uses. The "new" water provided by the settlement agreement is 22,700 AF/yr of diversion for municipal and domestic Navajo uses in New Mexico under the Navajo-Gallup Project and 6,400 AF/yr of diversion for municipal and domestic Navajo uses in Arizona under the Project that would be supplied from a combination of Navajo Reservoir water and inflow arising below Navajo Dam. The Project uses in Arizona are subject to accounting of the uses under the State of Arizona's apportionments of Colorado River System water and non-impairment of non-Navajo uses in New Mexico. Based on the State's experience in the Rio Grande Basin, litigation of Indian water rights claims is very time-consuming, divisive and costly. Settlement with the Navajos would provide certainty to basin water users, which would help promote economic development.

Water Development

14. 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.
15. Cost of settlement has been reduced. Consistent with the requests of Senators Domenici and Bingaman to reduce the cost of settlement to approximately \$750 million, the settlement agreement approved by the Navajo Nation does not include funding for the NIIP. Under the agreement, the only contribution that the State is required to make is \$25 million (2004 index) towards construction of the Navajo-Gallup Project. In addition, the Legislature will be asked to appropriate \$10 million for ditch improvements in the San Juan River valley, benefiting primarily non-Navajo irrigators. The City of Gallup may ask for state assistance with its cost share of the project.
16. Navajo-Gallup Water Supply Project. The Navajo Nation is settling its water rights claims for the development of the Navajo-Gallup Project to provide a reliable and

renewable source of domestic water supply to Navajo households across the reservation in New Mexico. By 2040 the project is expected to serve approximately 250,000 people, including all the residents of Gallup. It would be one of the largest water systems in the State. Many of the beneficiaries currently have inadequate local supplies and some are hauling water. Also, the water treatment plant for the Project to be located in the San Juan River valley may be used to treat non-Project water for domestic water suppliers in the region.

17. Rehabilitation of Fruitland and Hogback Projects. The settlement would provide \$23.5 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.
18. Development of New Mexico's Apportionment. The settlement better enables New Mexico to fully develop and use its Upper Colorado River Basin Compact apportionment.