

John Whipple

From: ptdoe
Sent: Thursday, January 15, 2004 10:26 PM
To: John Whipple; johnleeper
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Subject: Comments on the Navajo Nation Water Rights Settlement Agreement

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In his recent book, "Inventing a Nation," Gore Vidal recalls a leisurely conversation with John F. Kennedy, his cousin through marriage. Vidal relates the murdered President's lament that the policy makers he had met, the movers and shakers of the world as he called them, were so unremittingly second rate. As Vidal tells it, Kennedy thought this was most painfully obvious when comparing his contemporaries to America's leaders during the revolutionary period, a time when the nation's entire population was about 3 million people. We can only wonder at what Kennedy might think of the moral lightweights, who in the heady privacy of the back room, cobbled together the so-called "Navajo Nation Water Rights Settlement Agreement."

This document, we understand, is primarily the handiwork of a few lawyers for the Navajo, the Dept. of Interior, and the State of New Mexico. Sadly, the product only further diminishes the reputation of that profession. The document speaks volumes, too, about those legislators who insist this tortured piece of nonsense must be in Washington by March 1, 2004, if it is to become part of the annual pork parade in western water development, about 900 million dollars worth for New Mexico we are told. But we're experineded in this water-development fandango. Thus, we know the final price tag will be in the many billions of dollars.

We have these suggestions:

1. An independent review of the Navajo Indian Irrigation Project must be conducted before any more public money is squandered on it. All indications are that the project is a failure, that it is propped up every year by millions of federal tax dollars so as to protect the guilty and postpone a long overdo review. The project may benefit a few federal and Navajo bureaucrats, but it leaves little if anything for the average Navajo. We steadfastly think federal assistance should be designed to benefit the people of the Navajo Nation, not to aggrandize worn out federal bureaucracies such as the Bureau of Reclamation and the Bureau of Indian Affairs.

NIIP is by any reasonable measurement an endless bundle of subsidies, one piled on top the other in almost endless succession. For example, the American people still pay the annual operating costs of NIIP even though the project is several decades old and Interior policy outlaws it. In a recent letter to Secretary Gail Norton, Navajo President Joe Shirley asserts those costs come to about \$6 million annually and that they must continue indefinitely. We also know that while the Navajo lease the irrigation land, about 70,000 acres, for farming by non-Navajo, they've received over \$15 million in federal farm subsidy payment in the last few years. But even so, the Navajo Nation, as poor as it is, recently had to come up with over \$10 million in bailout funds for the farming enterprise. Does this look like something we should be investing hundreds of millions, if not billions, of dollars more in? Will the Navajo welcome more and greater loses? Isn't this the logical outcome knowing what we do about the present operation?

2. An array of reasonable alternatives must be presented and analyzed prior to deciding on how best to satisfy Navajo water rights. Despite the opinion of New Mexico attorney John Utton, apparently a thoroughly

Dickensian little fellow, who thinks the public should be delirious for whatever crumbs of information he and his confederates deign to throw our way, alternative evaluation and public participation are grounded in federal law, several of them actually. These mechanisms protect both the Navajo people and the American taxpayer. Each alternative must examine the environmental consequences and the economic impacts from a national economic development perspective. How do you think NIIP and even greater NIIP would fare under this microscope? Knowing what we know, as outsiders, why would the Navajo support this approach? Is it their fear that if they don't embrace irrigation their water rights can not be equitably settled, that the only way they can realize what should be theirs is through the losing proposition of large-scale irrigation of surplus crops by an outlander?

3. The alternative of down-stream leasing of Navajo water must be examined, equitably. The predictable outcry from the water buffaloes must be ignored. The Indian tribes along the Colorado River are not parties to the Colorado River Compact and should not be bound by it. What is more the Compact is hopelessly outdated and destructive to the Colorado River system. There is a huge bill coming to the American people for the destruction of the Colorado River delta. It will be in the billions of dollars, and it will require the Mexican and United States governments to acquire water from present users to restore the estuary. Only the state of Colorado and Colorado River Indian tribes have water they could reasonably make available for those purposes.

Our back of the envelop estimate is that what the Navajo are now using to irrigate NIIP is probably worth at least \$300 million annually if leased downstream. The same would be true of Colorado's unused share of the Colorado River, only more so. Compare this income stream with what the Navajo realize from NIIP.

Moreover, the Navajo should be entitled to power revenues their water would generate as it passes through federal hydro power plants. Then there is its value in controlling salinity. Right now there is a bill in Congress to reopen the Yuma Desalting Plant in Arizona at \$35 million annually. Navajo water would assuredly make that wasteful piece of outdated technology unnecessary. The feds should recover some of these values for the Navajo. Moreover, if the Navajo water were leased in basin, say to Las Vegas rather than Los Angeles, then the possibility exists that return flows could still be earmarked as Navajo water. As such, it could be used secondarily for restoring the Delta, which again the United States and Mexico should compensate the Navajo for. Overall, we think Navajo water, easily, could result in an income stream from all source of over \$500 million annually.

The American taxpayer would also be well served by this alternative, since they would be paying for real values received. Moreover, we could hope that the offices of the Bureau of Reclamation in New Mexico and southwestern Colorado would close from lack of business. Maybe even those of the BIA. A real savings, indeed!

4. Any settlement must follow the guidelines established by the Department of Interior as set forth in its published policy for negotiating and settling Indian water rights, Criteria and Policy for Indian Water Rights Settlements, 55FR9223, published in the Federal Register of March 12, 1990. Among other things this policy establishes that Indian settlements involving a single river system, in this case the San Juan, must be done so as to simultaneously evaluate and negotiate all Indian claims on that river system. Obviously, the clear intent is avoid the dreaded unintended effect through piecemeal negotiations, awards, and settlements and secondary taxpayer costs of undoing what was mistakenly done through ignorance and bureaucratic imperiousness.

We made these comments with regard to both the Animas-La Plata Project and the Navajo Reoperation EIS. They were ignored. In fact, one of the

attorneys for Interior, Michael Connors, Esq., now a trusted aid to Senator Bingamon and a young mover and shaker for sure, told us that, while the policy still stood, it only had to be observed when the Department of Interior found it convenient to do so. It is past time, whether convenient or not.

5. The requirements of the Endangered Species Act must be observed under any settlement scenario. Obviously, downstream leasing of Navajo water has the least adverse impact on those species. In fact, Navajo releases should make unnecessary the tremendously costly hatchery program that another Interior agency, the Fish and Wildlife Service, is undertaking as a result of NIIP, ALP, and anticipated greater NIIP. Some of the savings of that program, were it to vanish, could go to the Navajo.

6. The requirements of the National Environmental Policy Act and the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G) must also be observed in reaching a settlement. In total these requirements should be seen for what they are, an attempt to protect all Americans and their environment from an imperious and/or self serving bureaucracy. If implemented wisely, they should speed settlement, not protract it.

7. Finally, before any settlement is proposed, a full survey of present water uses in the San Juan basin should be published along with the extent of conditional water rights. For example, the Ute Mountain Utes are on record as saying they still have unsatisfied water rights in New Mexico which they intend to perfect-20 percent of their reservation is in New Mexico. We know the number of conditional water rights in Colorado are also substantial. Moreover, all water right claims of 6,000 acre feet or fewer are exempt from tally under the agreement reached for ALP endangered species protection. This inexplicable exception is big enough to drive a water truck through, or at least 10 to 20 6,000 acre-foot projects.

8. Moreover, Colorado needs to know how much water if any it has remaining in the San Juan sub basin. It appears to us that some of the numbers being thrown around for Indian settlements in New Mexico exceed the state's entitlement under the Colorado River Compact. This is not an argument to suggest that the Indians, especially the Navajo, should be shortchanged. It is simply an admission that some present and planned uses may not be possible given the real physical limits of the system which have always been fudged in the favor of developers. It is also citizen friendly since it will allow the small guy, the family farmer, the small town municipal user, to understand where he or she hangs, however tenuously, on the great chain of being. They may be devastated, but it is their right to know, and, we hope, their knowledge of how the pieces fall out may lead to a settlement that doesn't tear the region apart.

In closing we offer fair warning, for we agree with Thomas Jefferson that we were not bred with saddles on our back, for the use of the favored few, booted and spurred. The most important public issue in the west is the use of our rivers. Those decisions cannot and will not be left to the ruling elite, while we are left to carry their bags and pay their bills.

Sincerely,

Phil Doe
Chair
Citizens Progressive Alliance