



55-17
Navajo Settlement



THE NAVAJO NATION DEPARTMENT OF JUSTICE

TELECOPIER COVER LETTER

TO : John Utton 505.842.8890
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FROM : Stanley M. Pollack, Water Rights Counsel
Water Rights Unit, Dept. of Justice

DATE : March 9, 2005

TOTAL PAGES : This page and the attached 6 pages.

Recent attack on settlement by former State Senator Henderson. Please note second page: "The reducing our already reduced settlement and sovereignty will become more clear with each passing month." Need to get the agreement executed.

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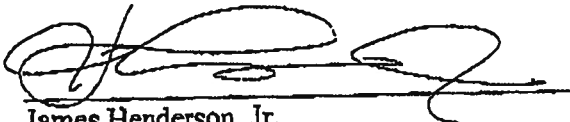
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(928) 871-5134

MEMORANDUM

TO : *Hon. Speaker of the Navajo Nation Council
Hon. Members of the Navajo Nation Council*

FROM : 
James Henderson, Jr.

DATE : February 7, 2005

SUBJECT : **NON-NAVAJOS SECRETLY CHANGING THE SAN JUAN SETTLEMENT AFTER YOU APPROVED IT?**

First Issue: Pulling the Wool Over Our Eyes?

On January 22, 2005, the "Farmington Daily Times" reported on the San Juan Water Commission. They allegedly violated the New Mexico Open Meetings Act. The real trouble for the Navajo Nation had to do with what the meeting was allegedly about and who was there.

The newspaper reported the meeting was between the San Juan Commission and representatives from Senators Bingaman and Domenici. There was also a lawyer from the U.S. Senate's Energy and Natural Resources Committee. The Commission was recommending "changes to a Senate bill on the Navajo Nation Water Rights Settlement Agreement."

Did you know about this? Did your lawyer? If he did, did he tell you? Is he helping them? Are some non-Navajos trying to pull a fast one over on the Council and the Navajo people? What are they changing that you already approved? Why is this happening? Who is behind it? Everyone of these is an important question.

Second Issue: Senator Hiding Behind Another Tribe's Water Settlement?

On January 27, 2005, the "Gallup Independent" had a water settlement article. It was titled "Navajo water rights fight not finished." It talked about how an Indian water rights law suit issue in a court in Santa Fe County, filed in 1966, was going to cause a problem for Navajo. The water rights payment for the U.S. over there for the Pojoaque, Tesuque, Narnbe, and San Ildefonso pueblos and other parties was to be \$200 million. But the U.S. Justice Department lawyers now say they will try to limit it to only about 5% of that amount, \$11 million. That is about 95% reduction. Sounds a lot like a broken treaty promise. That is not all.

Senator Domenici is pretending to support the New Mexico water settlements fundings. But his arguments are weak. He says "It is my sincere hope that the administration will reconsider its position." This is not the language of a "strong supporter." Look at what went on in Farmington. Add what is going on for those pueblos. Add also Mr. Domenici's already reducing the NIP settlement money by about \$373 million. I have respect for Mr. Domenici, but I can see so easy the political maneuvers that are going on. The Bush administration wants to rebuild Iraq; not

NIIP and not the Navajo Nation. Mr. Domenici and our own water rights negotiators have already done us great damage. Now they are ready to do us more. The best way to protect ourselves is to inform ourselves. But, we still only get our water rights information from one source. What a big mistake that is proving to be. It will only get worse.

The reducing our already reduced settlement and sovereignty will become more clear with each passing month.

The settlement part of the Independent newspaper report says, "The final San Juan settlement package likely will reduce the development fund, reduce the rehabilitation money as well as groundwater components of the Navajo-Gallup water project, and increase the non-federal contribution (which means put the cost on us and Gallup).

It is more and more broken promises, like I said about broken treaties. We started out with a weak negotiation position in the settlement. That position was weakened even more by the time the Council "approved" the settlement. Now the final settlement is not going to be what the Council "approved" in December 2004. Isn't this sounding like there is some deception somewhere?

How much have we been led on? How much have we been tricked? How much have we been weakened? Who is behind it outside the Nation? Who is behind it inside the Nation?

Shouldn't the Council pass a special resolution? Shouldn't it declare that any changes to any of the settlement documents already "approved" by the Council are void. Doesn't the Navajo Nation Council have the sovereign authority for our people to decide what it approves and what it doesn't? Are the actions and approvals of the Navajo Nation Council meaningless, like the playground activities of children? I say NO. I encourage you to say NO also.

Please stand up for our people on this or it is only going to get worse and worse.

Thank you for considering my perception and what I have to say.

In Bagnhead B5
 1-22/05
LUCKY NUMBERS:

ROADRUNNER CASH
 4-8-11-20-34-30
 Top Prize: \$29,000
PIZZA 3
 6-8-7
 Top Prize: \$500

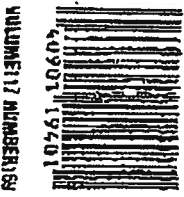


Weather . . . B8

High 52, Low 25

Local
 Memorial A4
 Regional A7
 County's B6
 Sports G5
 Classifieds G2

VOLUME 17 NUMBER 159



bell and utter these same simple words: "Would you like to buy some Girl Scout cookies?"

For six-year-old Alyssa Baker, that moment occurred Friday after school in a Farmington neighborhood.

A member of Brownie Troop 286, Alyssa's mission Friday was to sell as many boxes of cookies as she could. She was joined to her quest by three members of Girl Scout Troop 71, Jessica Gomez, 10, Brianna Bahre, 9, and Christina Collins, 9, who are all trying to finance a summer trip to San Diego by selling 1,000 boxes of cookies.

Alyssa said she was excited about her venture into the world

of Girl Scout cookie sales, as were her three musical companions.

Jessica, Brianna and Christina are selling as Alyssa's mentors, teaching the six-year-old how to talk to strangers, walk safely from house and house and deal with the sometimes not-so-nice homebuyer.

The three Girl Scouts said they could remember the first time they had to sell cookies as Brownies.

"I was nervous because I had never been around a bunch of people before," Jessica said. "Jessica, Brianna and Christina said they had all been shy when they were younger, some-



Jessica Gomez, 10, right, Brianna Bahre, 9, center, and Alyssa Baker, 6, take a look at Alyssa's order form as they walk back from selling Girl Scout cookies Friday afternoon in Farmington.

Jessica Gomez helped them overcome.

Jessica said when she sells Girl Scout cookies she feels "really happy" because she knows she is making another person feel good.

Christina said she also enjoys selling the cookies.

"It's fun and you get to meet a lot of interesting people," she said.

See Cookies A.1.

Water Commission violates Open Meetings Act

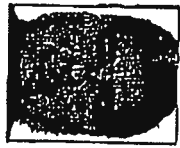
Foundation for Open Government: Commission failed to notify public

—By Jim Snyder —
The Daily Times

FARMINGTON — The San Juan Water Commission violated the state's Open Meetings Act by failing to provide adequate public notice of a special meeting it held Thursday morning in Farmington, said Bud Johnson, director of the New Mexico Foundation for Open Government.

Commission Chairman Mark Dunne said the commission did not notify The Daily Times of the meeting, which questioned Friday after the paper learned of it from other sources. The commission met with Washington officials to discuss changes it wanted to see in a U.S. Senate bill on the River-to-water rights settlement. No other details were provided.

"Why should I notify your



paper? I have a hard time wanting to share information with you guys," Dunne said.

Dunne explained he was unhappy over a Jan. 19 Daily Times story on him running as a Central School District School Board candidate in Kirland. The

meeting to do with the meeting of the commission," Johnson said. "It's not up to him to determine that. He didn't do his duty as the chairman."

See Waterboard A.3.

'Why should I notify your paper? I have a hard time wanting to share information with you guys.'

Mark Dunne, San Juan Water Commission Chairman

U.S. Department of Agriculture. The six families were selected from 300 who showed interest in San Juan County when the national program was first announced in November. Since then, consultants have narrowed down the list to families for the first phase of construction and treated a waiting list for at least two more phases within the next two years.

"I'm excited," said Randy Rubens of Farmington, a single mother who has a 2-year-old son named Kylan. "I thought I wouldn't even qualify for it, but Ryan called me Christmas Eve and said 'Merry Christmas, you're on the list.'"

See Housework A.3.



The Daily Times Farmington, New Mexico

Subscription to The Daily Times online at <http://www.daily-times.com>

Saturday, January 22, 2005 A

Violated

(Continued from Page A1)

A short time later, Duncun recalled his explanation, saying there was no correlation between the school board story and the commission. He also said, "He (Johnson) has an opinion. I take nothing personally. I could care less."

The Open Meetings Act states, "Any meetings in which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and in which a majority of quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public."

Cookies

(Continued from Page A1)

Jessica and Bhiana held hands while they waited to cross the street Friday. The girls, along with Christine, have been in the Girl Scout organization together since kindergarten.

Their troop leader, Lisa Collins, considers their ability to sell Girl Scout Cookies a rite of passage.

"When they're young ... they don't understand, as they get older ... it's a privilege for them. They know what they have to do and they get it done," Collins said.

This year, Jessica, Bhiana and Christine, and the other seven members of Troop 71, must work

the Senate Bill in the commission's meeting was reason, given under the Open Meetings Act, for the public to be notified through its daily community newspaper.

Duncun said the commission met the requirements of the act because it had notified other media. He added he did not know which media was notified.

That violated the act even if the commission had notified Farmington radio or television stations because it did not constitute "adequate public notice," Johnson said, explaining

that broadcasting a meeting announcement did not legally meet requirements of the Open Meetings Act because the public would have to be used in to the station at that exact moment.

"It has to be posted in writing where the public can see it," Johnson said.

If the commission had notified an Albuquerque newspaper, the act was still violated because people in San Juan County would not ordinarily look to the Albuquerque paper for a notice on a Farmington meeting, he added.

Duncun and commissioners Jerry Hanhardt and Lynne Rasco — forming a quorum — met with representatives of U.S. Sen. Pete Domenici's, R-N.M., and U.S. Sen. Jeff Bingaman's, D-N.M., office as well as with an attorney with the U.S. Senate's Energy and Natural Resources Committee. Commission Executive Director Randy Kirkpatrick also attended the meeting.

The commission made recommended changes to a Senate Bill on the Navajo Nation Water Rights Settlement Agreement on the San Juan

Basin set to go before Congress, Duncun and Hanhardt said without providing any specifics.

"There wasn't a call to order or any kind of stuff," Hanhardt said. "We just talked to these people from Washington. It was a conversation over coffee."

"I didn't think it was that big a thing. I think The Daily Times has to be notified when we have more information (on the Senate Bill)," Kirkpatrick could not be reached Friday for comment on this story. A day before the commission

meeting, the city of Farmington held a closed City Council meeting to discuss the water settlement.

The city paid for a public notice in the legal section Tuesday's Daily Times published announcing that meeting. A agenda was available 24 hours prior to the meeting, which announcements are also available for free in the paper's Town Talk section.

Hanhardt said the commission had no printed agenda. Jill Snyder, jingder@daily-times.com

FINAL WEEKEND!

**NO MONEY DOWN
NO PAYMENTS
NO INTEREST UNTIL...**

Our volume buying power has allowed us to negotiate huge savings from our manufacturers, and

help you receive these savings on in town. Show us how you can!

... reservation... from the 90,000 Navajo students out and around the reservation — and are restricted with the delay.

The longer the tribe waits to get started with the reforms, they say, the longer it will take their Navajo students to close the graduation and persistent academic achievement gap between them and the rest of the country.

Even before the bill arrived before the Council Wednesday, educators, who are more-often behind the thrust of the tribe's plan, began to raise concerns at public hearings.

The Council and Division were waiting across the reservation. A major concern was the tribe's proposal to officially recognize each of the three associations — each with a slightly different focus — as a separate entity representing the reservation. A hundred schools on the reservation in response, the tribe proposed placing all three with an entirely new association.

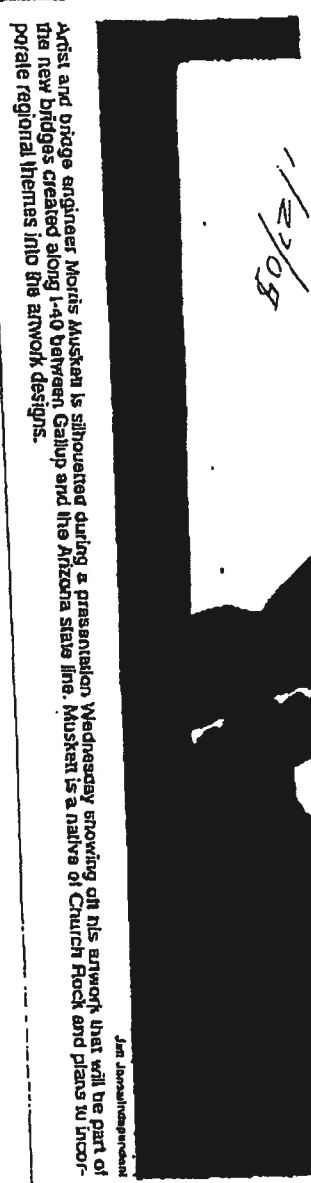
The Council, however, declined "willingly to change the composition of the proposed advisory board."

But the amendment the Council adopted assures that the different associations each retain some say. Education Division Director Leiland Upwood believes the associations are just trying to protect their turf, and called the entire bill's chances of passing "dubious at best."

It's about the three associations, he said of the amendment.

Education Committee Chairman Council Chief and Vice-Chairman Valance Chantley, who sponsored the bill, agrees that the associations' interests in self-preservation probably had a lot to do with the Council's decision to put the bill on ice Wednesday. But they believe the public schools had more than a little to do with it, too.

Public schools on the reservation receive millions of federal dollars each year to compensate them for the tribal land in their boundaries that keep them from earning revenue



Artist and bridge engineer Moritz Musker is silhouetted during a presentation Wednesday showing off his artwork that will be part of the new bridges created along I-40 between Gallup and the Arizona state line. Musker is a native of Couch Rock and plans to incorporate regional themes into the artwork designs.

Navajo water rights fight not finished

By Kathy Means
Dino Bureau

FOUR DEFLECTIONS — U.S. Sen. Pete Domenici said Friday he is concerned that the Justice Department's recent "contradictory" policy approach "on a water rights settlement for other water settlements in New Mexico."

"I am concerned about two additional pending conflicts involving the Navajo Nation water settlement and the Texas Valley (N.M.) water settlement (Aboya case), which require ongoing active negotiation on the part of the U.S. government for final resolution," Domenici wrote in a letter to Joshua Bolton, director of the White House Office of Management and Budget (OMB).

Justice Department officials recently announced that rather than spend the approximately \$200 million the government was expected to pay toward development of a regional water system in what's known as the Aboya Case, the federal liability would be an estimated \$11 million. The case is included in

respective water rights claims of Paganay, Tanguay, Nambor and San Ildefonso pueblos.

Domenici encouraged the Bush administration to become more involved in pending water settlements involving Indian tribes in New Mexico and to be more realistic in its evaluation of federal liability in the Aboya case.

"It is my sincere hope that the administration will reconsider its position and will continue to work with the respective parties to determine an appropriate and realistic federal contribution to these long-

settled water rights," he stated in his letter.

The Aboya case was filed in 1966 and is the longest-standing case in the federal court system. It has been in court-ordered mediation since 2000. The proposed settlement would guarantee the pueblos the first priority water rights to 3,650 acre feet of water.

Under the proposed San Juan settlement, the Navajo Nation would have the right to use (divert) 606,650 acre-feet per year and the right to consume (deplete) 325,670 acre-feet per year, plus 50 percent of

any additional appropriation, acre foot equals 325,651 gallons.

Initial proposed settlement on \$613,900,000. The revised settlement which passed the Navajo Nation Council last month, eliminated a guarantee that would have increased the budget ceiling for Navajo in litigation Project (NHIP) by \$242 million and authorized \$11.8 million in rehabilitation expenses.

Domenici said the director of the U.S. government evidences Navajo water rights settlements.

See Navajo water; go



Students step up

Reinbooth teens look to 'Save Your Socks'

By Elizabeth Hamour-Barron

REINHOUTH — "A show and a sock" is a rather strange idea, but Doug Eshelton has been saying it a lot lately. And he's hoping lots of people in Gallup will be donating a sock and a book to the high school students who will be attempting to work in over 1000 feet door in Gallup.

And how many people does it take to build a sock? According to Eshelton, the Director of Development for Kids Nite uses 175,000 shirts-worth of the artificial turf in one t-shirt. And why should people help, who may have no chance

vajo water rights

... and from page 1
... resolve Indian water rights
... a manner beneficial to all
... part of this, while the As-
... the justice Department
... pronounced that the ad-
... of the Asanofit case that
... \$11 million. This small
... distribution indicates to me
... change of policy and it
... "Dumont's views."
... issued Jan. 12, in
... \$11 million figure from
... Department is a little less
... But frankly, as far
... I think the federal govern-
... did in the end be liable for
... the very large amounts that
... suggested.

Council to address NIMP

One of the last pieces of legisla-
... to be considered this week by
... the Navajo Nation Council as it
... wraps up its winter session will be
... an action calling on Dounment, Sen.
... Jeff Bingaman, and Rep. Tom Udall
... to fully fund and complete construc-
... tion of NIMP.

On June 13, 1962, Congress
... promised to build NIMP in exchange
... for creating the San Juan-Chama Di-
... version project to divert water to the
... Rio Grande Basin from which the
... pueblo tribes involved in the As-
... moni case get their water. The Ch-
... ma was finished in 10 years. To-
... date, NIMP is only 67 percent com-
... plete. It is comprised of 110,630
... acres of irrigable land and has an
... annual diversion of 500,000 acre feet
... of water.

The NIMP legislation prepared by
... Resources Committee Chairman
... George Arthur passed the Navajo
... Intertribunal Relations Com-
... mittee 6-0 on Jan. 6 with an amend-
... ment which would authorize the
... Speaker of the Navajo Nation Coun-
... cil or the President of the Navajo
... Nation to pursue any and all neces-
... sary legal remedies to cease di-
... verting Navajo water from the San
... Juan-Chama if the funds fail to com-
... plete NIMP.

irley: Mining

... Small said the bill would
... pit and their mining of
... and place a 25-year morat-
... a 10-mile back starting of
... to the sovereign right of
... to Nation to say: "We're
... vuk shlet uli woker." Nav-
... rdwater contaminated by
... mining would be rendered
... for hundreds of thousands
... the said

... spreading leaching. Liquid variable
... the uranium deposit where it subse-
... quently can contaminate groundwater,
... ter.
... Usually said she agreed with
... Shirey's contention that financial
... gain is the reason some allottees op-
... pose the provision act.
... "I agree with my think that
... inquiry is the reason some allottees
... oppose this legislation. They must
... remember that the water belongs to
... everyone and we have a right in

... But for selling, leasing, etc., they
... would have to have a claim to it,"
... Arthur explained.
... Water from the Navajo Indian Ir-
... rigation Project (NIMP) is reserved
... for NIMP, except for instances in
... which the Navajo Nation would
... want to lease or utilize the water for
... purposes other than agricultural
... use. "The Navajo Nation has a right

... the city and county of Santa Fe
... hold a San Juan-Chama contract that
... allows them to use 5,685 acre feet of
... water per year.
... According to a Navajo official,
... the unquandred water rights of the
... Navajo Nation passed out just a
... threat to the San Juan Basin, but in
... the San Juan-Chama project and
... thus to the city of Albuquerque. Do-
... ment reportedly has been singe-
... ing just how credible the Navajo
... threat is and wants to know what it
... would take for Navajo to actually
... develop its Potential Irrigable Acres
... in order to create a downstream
... threat on non-pueblo and on the
... Navajo Reservation supply.
... The large irrigation projects at
... Hogback and Fruitland could pose a
... threat to non-pueblo water users
... during certain times of the year,
... such as the summer, when Navajos
... could force a priority call on the av-



... "He felt the pressure, the bill, and
... he broke," said Charley of Council
... man Larry Noble, a member of the
... Ganado Unified School District's
... governing board, who made the
... motion to table the bill until sum-
... mer.
... Noble rejected the idea of a hart
... war between the three associations
... and said he proposed delaying the
... bill in order to give everyone more
... time to work out the many concerns
... they still have with the overhaul the
... Education Committee and Division
... are proposing.
... "I support the issue, but I want it
... done with ease," said Noble. "I
... want them to come together and

... Although its critics want a num-
... ber of revisions at the very least,
... Char and Charley say it will be the
... exact same bill they looked at
... Wednesday. Although they could
... revise and refine the bill between
... now and then, the two Education
... Committee members say it would
... be a serious drain on their time and
... resources, and they don't plan on
... going through the trouble just to
... please what they consider a few ex-
... tremes, fringe interests.

Bridging the gaps

... Continued from page 1
... some delays for truckers while work
... is done at the Fort of Entry but high-
... way officials said that this will prob-
... ably only be for a day or two.
... Most of the questions posed at
... Wednesday's meeting surrounded
... the removal of the underpasses and
... the building of the new bridges.
... Escudero said that there was

... Something new will be added to
... the bridges this time around.
... For the past year, the state has
... been conducting artwork on the
... bridges for mainly aesthetic reason.
... and the sides of the bridges will in-
... clude some designs. Drivers on the
... Interstate won't be able to see them,
... but those who go under the bridges
... will

... All set with improve-
... Navajo
... C. J. ...
... Navajo ...
... Navajo ...