

MEMO

Councilor Mary Fischer

To: JB

From: Jay Burnham, City Attorney

Date: April 8, 2004

Re: Meeting to Discuss Navajo Water Rights Settlement

Bob Hudson has asked me to respond to some voice mails he received from you asking about the April 1, 2004 meeting in regard to the Navajo Water Rights Settlement. At the same time, Dana has forwarded to me some questions you addressed to me about the same meeting. This is my response to both requests.

On Monday or Tuesday, March 29th or 30th, I received a phone call from Jim Dunlap in his capacity as Chairman of the Interstate Stream Commission. He stated that he and John Whipple of the ISC staff wanted to set up a meeting with some of the major water users to discuss the proposed Navajo Water Rights Settlement and address some the questions that had been raised concerning the settlement. He suggested Thursday, April 1 as a possible date for a meeting and asked me if I could schedule a room. After the day and time was firmed up for April 1 at 9:00 a.m., I scheduled the Executive Conference Room.

Since we as staff had met with Jim and John on two other previous occasions, I assumed it was a continuation of those discussions. I discussed the meeting with Bob and Joe, and we all put it on our calendars. When we arrived at the meeting, we discovered that it was going to be a little different than the previous meetings. Instead of discussing the proposed settlement that was released on December 5, we were told that we were going to be informed about some of the changes to the proposed settlement that were being currently negotiated between the state and the Navajo Nation. However, since these things were still being negotiated and had not been finalized, we must sign a confidentiality statement in order to remain in the room. Several people there asked whether they could relay the information received at the meeting to their boards, commissions or governing bodies. They were told that they could, but only in one-on-one sessions or in a closed meeting, and only if all in attendance would sign the same confidentiality agreement beforehand. Bob, Joe and I all signed the confidentiality agreement (copy attached).

Bob could not stay for the entire meeting, but both Joe and I kept notes for the express purpose of being prepared to brief the Council on the issues discussed. We fully intend to do that at one of the Council's upcoming meetings. It was never our intent to keep anything from the Council. You asked about other elected officials in attendance. There may have been more, but I do remember seeing two, Jerry Hanhardt from Aztec and Lynne Raner from Bloomfield. Both are their respective cities representatives on the San Juan Water Commission, which may explain why they were invited. However, I was not involved in the invitations, so I am only speculating. Of

course, all members of the governing bodies could not have been invited without advertising the meeting as a special meeting of each of the entities.

If you would like a briefing on the contents of the meeting before we brief the entire Council and are willing to sign the confidentiality agreement, I would be glad to set up a time where Joe and I could meet with you and go over our notes with you. Just let me know when you would like to meet. Of course, the same invitation would apply to the Mayor and any other members of the Council as well.

xc: Mayor and Council

Bob Hudson, City Manager

Joe Schmitz, Community Development Director

**Acknowledgment of Confidentiality
and Disclaimer**

CONFIDENTIAL BRIEFING

Undersigned acknowledges that the information received or discussed as part of the briefing by representatives of the State of New Mexico on April ___, 2004, regarding pending settlement issues between the State of New Mexico and the Navajo Nation in the San Juan stream adjudication, *State of New Mexico v. United States*, No. 75-134, San Juan County, New Mexico, are confidential and shall be treated as compromise negotiations under Rule of Evidence 408. Undersigned agrees not to disclose the contents of any information received or discussed during the briefing with any other person or party that has not executed this form Acknowledgment of Confidentiality and Disclaimer. Except for the provisions of Rule of Evidence 408, the terms of this Acknowledgment of Confidentiality and Disclaimer shall terminate once a revised proposed settlement agreement has been released hereafter. It is expressly understood that the governing bodies or authorities of the proposed signatories to the settlement, i.e., the United States, the Navajo Nation and the State of New Mexico, have not approved the proposed settlement agreement, including the draft partial final decree, draft settlement act and draft settlement contract.

Date

Signature

Name (printed)

Organization

Address

Contents of Judicial Volumes / Rules Of Evidence / ARTICLE 4 Relevancy And Its Limits /11-408. Compromise and offers to compromise.

11-408. Compromise and offers to compromise.

Contents of Judicial Volumes / Rules Of Evidence / ARTICLE 4 Relevancy And Its Limits / 11-408. Compromise and offers to compromise. / Statute text

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution.

Contents of Judicial Volumes / Rules Of Evidence / ARTICLE 4 Relevancy And Its Limits / 11-408. Compromise and offers to compromise. / History

[As amended, effective April 1, 1976.]

Contents of Judicial Volumes / Rules Of Evidence / ARTICLE 4 Relevancy And Its Limits /11-408. Compromise and offers to compromise. / Annotations

Committee commentary. — This rule was changed to conform to federal rule. Addition of the third sentence makes facts disclosed during compromised negotiation admissible if otherwise discoverable.