

SJ-17
Navajo Settle



P.O. Box 43020 • Phoenix, AZ 85080-3020
23636 North Seventh Street • Phoenix, AZ 85024
623-869-2333 • www.cap-az.com

June 21, 2007

Honorable Jeff Bingaman
Chairman, Senate Energy and Natural Resources Committee
304 Dirksen Senate Building
Washington, DC 20510

Subject: S. 1171, the "Northwestern New Mexico Rural Water Projects Act"

Dear Chairman Bingaman:

We cannot support this bill as introduced because (1) it fails to resolve the Navajo Nation's claims to the Lower Colorado River and Little Colorado River in Arizona and (2) it fails to resolve litigation filed by the Nation challenging Interior Department initiatives that are vital to the Central Arizona Project and other Colorado River water users in the Lower Basin. The legislation also fails to address critical issues related to its potential impact on the Law of the Colorado River. All of these matters must be addressed before the bill is permitted to move forward.

This bill would authorize a settlement of the water rights claims of the Navajo Nation to the San Juan River in New Mexico and also provide funding for projects to deliver San Juan water to Window Rock and Gallup. The San Juan River is a tributary to the Colorado River, and the bill affects the accounting for Colorado River water required by the 1922 Colorado River Compact and the United States Supreme Court's 1964 Decree in *Arizona v. California*, the decision that confirmed that Arizona is entitled to 2.8 million acre feet of water each year from the Lower Colorado River. Most of that water is delivered to central and southern Arizona through the Central Arizona Project. While the New Mexico bill would affect Arizona's Colorado River entitlement, it fails to resolve the claims of the Navajo Nation to Arizona's water supplies or to require, as it should, that those claims be settled before the Nation receives the benefits of *any* water rights settlement.

The Navajo Nation has asserted that it has rights to water from the Colorado River that are superior to the rights of the Central Arizona Project. The Nation has sued the United States in federal district court here in Phoenix in an effort to compel the Secretary of the Interior to assert those rights on the Nation's behalf. Unless and until the Secretary takes steps to resolve the Nation's claims to the Colorado River, the Nation seeks to stop the

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Secretary from implementing important programs put in place to better manage the water supplies of the Lower Colorado River for the benefit of the Central Arizona Project and others.

In a separate action, the Navajo Nation has also sought to prevent the required court approval of another Indian water rights settlement that is vital to the citizens of central Arizona, a comprehensive water rights settlement with the Gila River Indian Community. This settlement, which was decades in the making, was authorized by the Arizona Water Settlements Act of 2004, but if the Navajos succeed in their challenge, all of the Arizona water settlements authorized by that act, including the Gila River settlement, will fail. Since the water rights of the Navajo Nation are not affected by the Gila River settlement, as a lower court has already found, one can only conclude that the Navajo Nation is seeking to hold the Gila River settlement hostage until its own water rights claims are resolved.

These actions by the Navajo Nation lead us to conclude that we could only support authorization of a New Mexico settlement with the Navajo Nation if an Arizona settlement with the Nation is also concluded and included in the authorizing legislation. While New Mexico may object to this, it shouldn't. After all, New Mexico demanded and received significant benefits, in the form of project authorizations and money for that state, in the *Arizona* Water Settlements Act of 2004.

From a public policy perspective, an Arizona settlement of the Navajo Nation's water rights claims *should* proceed hand in glove with a New Mexico settlement. As it stands, the New Mexico bill fails to deal comprehensively with the Navajos' claims to the river systems that cross or border the Navajo Reservation. The Navajo Reservation is the largest Native American reservation in the United States. It occupies parts of three states, but by far the largest part of the Reservation, as well as the greatest share of the Reservation population, is situated in Arizona. Within Arizona, the northwestern portion of the Navajo Reservation is near the mainstream of the Lower Colorado River, and the Little Colorado River traverses the southern portion of the Reservation. If anything, priority should be given to settlement of the Nation's claims to the waters of *these* rivers. Including a settlement of the Nation's Arizona claims in the New Mexico bill would go a long way toward fixing the public policy problems associated with the current version of this legislation.

The Central Arizona Project has long supported the comprehensive settlement of Indian water rights claims. Our organization has participated in a number of such settlements, including most recently, the settlement of the claims of the Gila River Indian Community, the largest Indian water rights settlement in Arizona's history. While successfully crafting a settlement agreement is never easy, we are fully committed to doing the hard work necessary to achieve an Arizona settlement with the Navajo Nation, and to accomplishing that in a timely way, so that congressional authorization of an Arizona settlement can be included in what is now a New Mexico only bill.

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We look forward to the opportunity to work with you, the State of New Mexico, and the Navajo Nation to settle the claims of the Navajo Nation to the San Juan and the Lower and Little Colorado River basins, and to prepare a comprehensive settlement act that addresses the needs of all affected parties.

Sincerely,

/s/

Susan Bitter Smith
President, Central Arizona Water Conservation District
(The District operates the Central Arizona Project)

cc. Arizona Congressional Delegation

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TESTIMONY OF SUSAN BITTER SMITH,
PRESIDENT, BOARD OF DIRECTORS,
CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
ADDRESSING S. 1171, THE NORTHWESTERN NEW MEXICO RURAL WATER
PROJECTS ACT

June 27, 2007

The Central Arizona Water Conservation District (CAWCD) is pleased to present written testimony regarding S. 1171, the "Northwestern New Mexico Rural Water Projects Act."

CAWCD is a political subdivision of the State of Arizona, governed by an elected 15-member board of directors. CAWCD was created in 1971 for the purpose of repaying the reimbursable costs of construction of the Central Arizona Project, authorized by the Colorado River Basin Project Act of 1968. CAWCD has since assumed responsibility for operating and maintaining the Project.

CAWCD cannot support this legislation in its current form because (1) it fails to resolve the Navajo Nation's claims to the Lower Colorado River and Little Colorado River in Arizona and (2) it fails to resolve litigation filed by the Nation challenging Interior Department initiatives that are vital to the Central Arizona Project and other Colorado River water users in the Lower Basin. The legislation also fails to address critical issues related to its potential impact on the Law of the Colorado River. All of these matters must be addressed before the bill is permitted to move forward.

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Juan water to Window Rock and Gallup. The San Juan River is a tributary to the Colorado River, and the bill affects the accounting for Colorado River water required by the 1922 Colorado River Compact and the United States Supreme Court's 1964 Decree in Arizona v. California, the decision that confirmed that Arizona is entitled to 2.8 million acre feet of water each year from the Lower Colorado River. Most of that water is delivered to central and southern Arizona through the Central Arizona Project. While the New Mexico bill would affect Arizona's Colorado River entitlement, it fails to resolve the claims of the Navajo Nation to Arizona's water supplies or to require, as it should, that those claims be settled before the Nation receives the benefits of any water rights settlement.

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