

SJ-17  
Navajo Settle



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**Date:** July 23, 2004  
**To:** Mr. John Whipple  
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**E-Mail:**  
**From:** Richard B. Cole, Esq.  
**RE:** Depletion Schedule Comments

Total Number of Pages Including Cover: 02  
Hard Copy to Follow: NO  
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**MESSAGE:**

Below are the comments I have prepared to date:

- (1) The Depletion Schedule shows only 256,500 acre feet of depletions in 2060 for NIIP even though 270,00 acre feet of depletions have been allocated to the project in the Settlement Agreement. The 256,500 acre feet assumes that 5% of the project will be fallow each year. While this may be true now, there is nothing in the Settlement Agreement limiting the total depletions for the project in this manner or restricting any portion of this depletion from being transferred to another use that would use this water. This represents 13,500 acre feet of water that is in the proposed Settlement Agreement that is unaccounted for in the Depletion Schedule.
- (2) The Depletion Schedule makes no apparent provision for the additional 10,000 acre feet that could be allocated to the Navajo Nation for tributary irrigation uses and tributary recreation and livestock uses that are to be determined later by a hydrographic survey. This represents 10,000 acre feet of water that is in the proposed Settlement Agreement that is unaccounted for in the Depletion Schedule.
- (3) The Depletion Schedule makes no apparent provision for possible settlement of water rights claims that may be asserted by the Ute and Southern Ute Indian Tribes. It is our understanding that this could represent as much as 7,000 to 9,000 acre feet of water. Even if it is less, it is water that is unaccounted for in the Depletion Schedule.
- (4) The Depletion Schedule shows 9,700 acre feet of water for current municipal and industrial uses, but no increase in this amount in future years. The commentary provided by the ISC staff indicates that this amount includes 7,200 acre feet for the City of Farmington which appears to be consistent with 1990 usage figures. However, this approach does not take into consideration the total number of water rights claimed by the City of Farmington that have not yet been put to use and are being banked for future use under its 40-year water plan, as allowed by State law. We believe the 7,200 feet attributed to the City of Farmington is about 3,300 acre feet less than the amount of water rights that were directly adjudicated to the City in the Echo Ditch Decree and also does not include the water rights appropriated to the City in Farmington Lake under State Engineer Permit Number 2995. This represents as much as 10,500 acre feet of water that is unaccounted for in the Depletion Schedule.