

SJ-17  
Settle

July 30, 2004

John Leeper  
Navajo Nation Department of Water Resources  
P.O. Drawer 678  
Fort Defiance, AZ 86504

John Whipple  
New Mexico Interstate Stream Commission  
P.O. Box 25102  
Santa Fe, NM 87504-5102

Re: Proposed Navajo Water Rights Settlement

Gentlemen:

In light of some of the comments made during recent discussions with the Farmington City Council, I wanted to forward two suggested modifications to the proposed settlement documents that would address concerns that were raised.

First, staff has suggested that the City of Farmington's ability to serve its needs in future years is dependent on the City's ability to preserve water rights that were adjudicated to the City in the *Echo Ditch* Decree. The City joined those that commented on the December 5, 2003 draft that it would be helpful to include a provision that those rights would be protected. We were pleased to see the additions to the settlement agreement addressing those concerns.

However, after reading these additions, I became concerned that the current language does not protect a key part of the City's rights, those rights we call the "Trust" rights. Since conveying this concern to the City Council, the Council has expressed their interest in addressing this issue before they make any decision on whether to support the settlement.

Therefore, I have taken the liberty to draft and enclose some suggested language that could be added to the settlement agreement that would provide us the protection we need. This language may not be in final form, but should provide a vehicle to begin discussion on the subject that hopefully will lead to a mutually agreeable solution. Please review it and let me know what you think.

CITY ATTORNEY

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Another concern that keeps coming up during discussions on the proposed settlement deals with the legal effect the passage of the authorizing legislation will have on the District Court's jurisdiction in the San Juan River Adjudication. I am wondering if it might be possible to put these concerns to rest by adding or amending language in the proposed Bill which would clarify that the state court retains jurisdiction over the adjudication of rights belonging to the Navajo Nation after passage of the legislation. Of course, I understand that the settlement would terminate should the partial final decree change substantially. However, it should be clear that the court retains the power to approve, reject or modify the proposed partial final decree in any event.

I hope this information is helpful to you and I look forward to further discussions. Thank you for your time.

Sincerely,



Jay B. Burnham  
City Attorney

xc: Stanley Pollack, Navajo Nation Dept. of Justice  
John Utton, Sheehan, Sheehan and Stelzner, PA  
D. L. Sanders, Office of the State Engineer  
Bob Hudson, City Manager  
Joe Schmitz, Community Development Director

## SETTLEMENT AGREEMENT

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Add:

9.6.8 The Navajo Nation and the United States as trustee for the Navajo Nation agree that the 10755.8 acre feet of water adjudicated to the Town (now City) of Farmington in the Echo Ditch Decree to be owned in trust for the use and benefit of the owners of lots and parcels of land within the Town (City) are valid and existing water rights, have not been forfeited or abandoned, and the Navajo Nation agrees it will not object to the transfer of these rights from irrigation uses to municipal and industrial uses within the City of Farmington municipal water system.