

UPPER COLORADO RIVER COMMISSION

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FAX TRANSMITTAL FORM

Sender: Don Ostler Date: 5 August 2004
Send to: Phil Mutz Number of Pages: cover + 3

1 - 505 - 927 - 3806

Note:

Transmitting Farmington City letter
for your response -

Attached Commission Resolution for info.

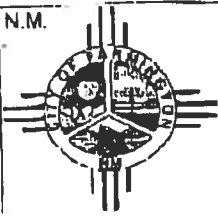
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FAX Numbers:

Don

Send (801) 531-9705

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August 5, 2004

File Copy

Facsimile: 801-531-9705

Mr. Don Ostler
 Executive Director
 Upper Colorado River Commission
 355 South 400 East
 Salt Lake City, Utah 84111


Dear Mr. Ostler:

The State of New Mexico and the Navajo Nation are discussing a proposed settlement of the Navajo water rights claims on the San Juan River. As you may know, this proposed settlement would include federal funding for the Navajo-Gallup Water Supply Project. As proposed, the Project would include the construction of a water line that would transport water from the San Juan River south to the Gallup/Window Rock area and serve areas in Arizona and areas that are in the Little Colorado River Basin.

A member of the Farmington City Council has asked me whether the transportation of water from an Upper Basin state (New Mexico) to a Lower Basin state (Arizona) or the transportation of water from an Upper Basin drainage (the San Juan) to a Lower Basin drainage (Little Colorado) would (1) be in accordance with the Compact, and (2) require approval of the Commission or the Upper Basin States.

Since I could not answer these questions, I seek your assistance in answering them. I realize this is short notice, but we are having further discussion at our City Council meeting at 7:00 p.m. this Tuesday, August 10th. Would it be possible for you to fax me a response before close of business on Tuesday? It would be greatly appreciated.

Sincerely,


 Jay Burnham
 City Attorney

cc: Mayor and Council
 Bob Hudson, City Manager
 Gina Morris, City Clerk
 Joe Schmitz, Community Development Director

CITY ATTORNEY

RESOLUTION OF THE
UPPER COLORADO RIVER COMMISSION

Regarding the Use and Accounting of Upper Basin Water Supplied to the Lower Basin in
New Mexico by the Proposed Navajo-Gallup Water Supply Project

WHEREAS, part of the State of New Mexico is within the Upper Basin and part is within the Lower Basin as defined in Article II of the Colorado River Compact (45 Stat. 1057); and

WHEREAS, New Mexico has proposed the Navajo-Gallup Water Supply Project to divert water from the Upper Basin to serve communities located within the Lower Basin in New Mexico; and

WHEREAS, New Mexico needs to provide a water supply for municipal, industrial, commercial and domestic purposes to Navajo and non-Indian communities located within the Lower Basin in New Mexico that do not have an adequate Lower Basin source of water; and

WHEREAS, Subsection 303(d) of Public Law 90-537, the Colorado River Basin Project Act, authorized a thermal generating plant to be located within the State of Arizona and provided that if the plant was served by water diverted from the drainage area of the Colorado River system above Lee Ferry such consumptive use of water would be a part of the consumptive use apportioned to the State of Arizona by Article III (a) of the Upper Colorado River Basin Compact (63 Stat. 31) regardless of whether the plant was located in the Upper Basin or the Lower Basin; and

WHEREAS, the states of Colorado, New Mexico, Utah and Wyoming all support the proposed Navajo-Gallup Water Supply Project, but the states are not in agreement as to whether, under the Law of the River, New Mexico may use a part of its Upper Basin apportionment to serve uses in the Lower Basin portion of New Mexico, without obtaining the consent of the other states. However, in the spirit of comity, and without prejudice to the position of any state regarding these unresolved issues, all the states support and to the extent necessary consent to the Navajo-Gallup Water Supply Project in New Mexico.

NOW, THEREFORE, BE IT RESOLVED by the Upper Colorado River Commission that the States of Colorado, New Mexico, Utah and Wyoming, support and to the extent necessary consent to the diversion of water from the Upper Basin for use in the Lower Basin solely within New Mexico via the proposed Navajo-Gallup Water Supply Project; provided, that any water so diverted by said project to the Lower Basin portion of New Mexico, being a depletion of water at Lee Ferry, shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III (a) of the Upper Colorado River Basin Compact; and

BE IT FURTHER RESOLVED, that the use of any return flows which result from use of water through the Navajo-Gallup Water Supply Project within the Lower Basin shall be subject to applicable laws; and

BE IT FURTHER RESOLVED, that nothing resulting from the implementation of this Resolution shall limit the right or ability of any Upper Basin State to develop the full apportionment made to it under the Colorado River Compact and the Upper Colorado River Basin Compact; and,

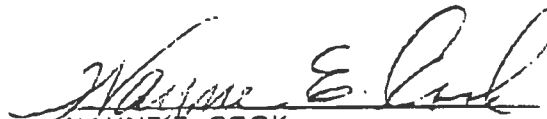
BE IT FURTHER RESOLVED, that the construction and operation of, and use of water through, the Navajo-Gallup Water Supply Project shall be subject to all other applicable provisions of law; and,

BE IT FURTHER RESOLVED, that the Upper Colorado River Commission supports such Congressional action as may be necessary to authorize the Navajo-Gallup Water Supply Project.

CERTIFICATE

I, WAYNE E. COOK, Executive Director and Secretary of the Upper Colorado River Commission, do hereby certify that the above Resolution was adopted by the Upper Colorado River Commission at its Meeting held at the Half Moon Lake Resort near Pinedale, Wyoming on June 17, 2003.

WITNESS my hand this 19th day of June, 2003.


WAYNE E. COOK
Executive Director and Secretary