



SJ-17
Navajo
Settlement

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Navajo Nation Water Rights Settlement: These Are the Facts

by DL Sanders, Chief Counsel, Office of the State Engineer

Reading the "overzealous" misstatements by Michael Sullivan in his opinion piece dated August 7, compelled me to set the record straight. His "facts" are outlandish and false. Mr. Sullivan repeats the erroneous allegations made by his attorney – Victor Marshall - in his pleadings, which have led certain parties to seek sanctions. These are the actual facts:

- 1997 - Governor Johnson and President Hale executed "Memorandum of Agreement between the State of New Mexico and Navajo Nation." Then State Engineer Tom Turney was designated NM's representative.
- 2001 - Turney requested that John Utton be engaged as legal advisor to assist in negotiations.
- 2002 until signed in 2005 - Agreement revised based on input from public meetings and submitted for approval by the State Engineer, the Governor and the Attorney General.
- After 15 years, the settlement never was, nor is now, a "Richardson-D'Antonio" deal, but a "State of NM, Navajo, Farmington, Gallup and US" agreement.
- The total actual usable right based on current Navajo irrigation practices is 451,660 acre feet per year (AFY). 606,660 AFY was based on amounts required for flood irrigation for the Navajo Indian Irrigation Project (NIIP). NIIP has switched to sprinkler irrigation which decreases their diversion by 149,000 AFY.
- The Navajo Nation's water rights are for irrigation of 122,795 acres with a Farm Delivery Requirement of 3.3 AFY.
- The Navajo Nation's irrigation water rights to be recognized are consistent with or less per irrigated acre than other types of irrigation entities around the State.

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- On average the Farm Delivery Requirement for Navajo irrigation is virtually identical to others within the San Juan River Basin.
- When the Navajo irrigation rights (419,731 AFY) are subtracted from the actual total Navajo rights (451,660 AFY) only 31,924 AFY is left for municipal use, less than 1/3 the amount diverted by Albuquerque (98,000 AFY).
- The Navajo's ability to export water is subject to the same laws governing anyone proposing to export water out of state.
- The U.S. Supreme Court has held that states can deny the export of water under certain conditions.
- NM has adopted laws that address conditions required for State Engineer approval of exports.
- The Navajo Nation has agreed that before it even applies to the State Engineer to export water, it must receive approval of the NM Interstate Stream Commission.
- Federal law restricts transfers of water between the Upper Basin (Colorado Compact) and lower basin states (California, Nevada, Arizona), further restricting the export of water.
- Gallup's water will be provided by the Jicarilla Apache Nation.
- Pipeline construction will begin in 2012. In 2010, a mandatory appropriation of \$180 million was included by Congress in the Claims Resolution Act and the Fiscal Year 2012 Federal executive budget recommendation for this project is about \$35.2 million.
- The Navajo-Gallup pipeline is a trunk line to move bulk water that will be delivered by the Navajo Tribal Utility Authority for distribution to members.

This settlement resolves over 35 years of litigation. The Navajos limited their claims to acreage within existing irrigation projects and dropped extensive "practicably irrigated acreage" claims in favor of a pipeline. Mr. Sullivan's "facts" are merely fabrications to scare the public and obscure the realities of this important agreement. NM's citizens can be assured this settlement is not a self serving deal, but the product of efforts undertaken and scrutinized at great length by MULTIPLE administrations, the state legislature, the U.S. Congress and ultimately signed by the President.

At this point whether the settlement is implemented or not is no longer a simple matter of changing engineers and lawyers, it's a matter for the Courts. I believe the public servants involved have served the State well. Careful evaluation of Mr. Sullivan's claims will reveal them to be little more than scare tactics.

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