

ISC STAFF REPORT ON THE SAN JUAN RIVER BASIN IN NEW MEXICO  
NAVAJO NATION WATER RIGHTS SETTLEMENT  
December 10, 2004, ISC Meeting

Staff of the Interstate Stream Commission and the Navajo Nation completed negotiations of revised documents for a San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement. The revised settlement documents will be available today on the State Engineer/ISC website for public inspection. The following significant changes were made from the July 9, 2004, draft settlement agreement in response to public comments and input from New Mexico’s Congressional delegation:

1. The decree that would adjudicate the rights of the Navajo Nation to divert and use water from the San Juan River Basin in New Mexico was divided into two parts – a decree to set forth the Nation’s rights to use and administer water in the Basin, including rights for diversions from the San Juan River, that would undergo inter se in the San Juan River Adjudication after a settlement act is passed by Congress, and a supplemental decree to quantify the Nation’s rights for uses on ephemeral tributaries that would undergo inter se in the Adjudication after the these uses are hydrosurveyed.
2. The language describing the waiver that the Navajo Nation would not challenge rights adjudicated by the 1948 Echo Ditch Decree was modified – the Nation would not challenge the basic Echo Ditch rights so long as the rights remain as adjudicated in 1948, except that the Nation may challenge the use of the rights since 1948 for reason of forfeiture and abandonment.
3. The condition that non-Indian irrigators must be limited by Echo Ditch Decree rights before the Navajo Nation would agree to provide water from the Navajo Indian Irrigation Project to the Fruitland and Hogback projects to avoid priority administration was eliminated, and the maximum amount of alternate water supply the Nation would be obligated to provide to the Fruitland and Hogback projects in any year was reduced from 15,000 acre-feet to 12,000 acre-feet.
4. The municipal and industrial reserved rights of the Navajo Nation from the San Juan River were increased by 300 acre-feet of depletion and 600 acre-feet of diversion to reflect existing diversions for ore processing site reclamation near Shiprock, and License Nos. 2472, 2807 and 2875 that collectively amount to about 2,700 acre-feet of diversion for industrial uses at Shiprock would be cancelled.
5. The State funding contribution of \$25 million was shifted from the Navajo Nation water trust fund to non-federal cost-share for the Navajo-Gallup Water Supply Project, and the contribution is now measured in 2004 dollars.

6. Authorizations for increasing the cost ceiling to complete the Navajo Indian Irrigation Project and for funding refurbishment of existing project facilities was removed from the settlement act – funding to complete the project would be pursued separately in accordance with the existing project authorization and would not be a condition of settlement.

Staff of the Interstate Stream Commission, the Office of the State Engineer, the Navajo Nation and the City of Farmington are working on a side agreement to address the City's concerns regarding the adjudication of irrigation rights which it owns in trust pursuant to the Echo Ditch Decree and its other municipal rights, and the Nation's concerns regarding arrangements for delivery of treated water from Farmington to Shiprock and construction of the Navajo Nation Municipal Pipeline. It is anticipated that the side agreement would result in the City of Farmington's support for the Navajo Nation water rights settlement.

The Navajo Nation Water Rights Commission and the Navajo Nation Natural Resources Committee approved the revised settlement. The Navajo Nation Council is expected to consider approval of the settlement in special session next week. If approved by the Council, staff recommends that the Interstate Stream Commission meet in Farmington the second week in January to consider approval of the settlement.