

**Draft Summary of Public Meeting on the Navajo Nation Water Rights Settlement  
Shiprock Chapterhouse, January 5, 2004 – 6:00 - 8:30 pm**

**Facilitator and recorder:** Lucy Moore

**Welcome and Introduction:** Following an opening prayer, Navajo Nation Vice President Frank Dayish welcomed participants and introduced elected officials and representatives of the Navajo Nation in attendance. State Engineer John D'Antonio expressed his appreciation to the Shiprock Chapter and Navajo Nation Water Resources staff for the opportunity to present the settlement and learn about the concerns of the community. He and Albert Hale, former Nation president and current chair of the Navajo Water Rights Commission, gave a power point presentation describing the main elements of the settlement. These documents are on the OSE website. For help accessing the documents, or to for other questions, please call the OSE at 505-827-6166, or 505-827-6160.

**DISCUSSION:** The participants asked questions and offered comments on the following points.

*Appreciation of Negotiation Efforts:* Many congratulated the State and the Nation representatives who have worked for years on this settlement. They appreciated the effort and the commitment behind the product.

*Desire for Broader Inclusion:* A participant emphasized that local Navajo farmers have worked hard to maintain an irrigation system in the area, and have survived many hardships. He wondered why this interest was not included in the negotiations. He also remarked that the BIA and the federal agencies didn't seem to be included either. D'Antonio answered that the BIA, the Bureau of Reclamation, the US Fish and Wildlife Service, Department of Justice, and the Secretary of the Interior were all represented on a federal team which attended meetings and followed the process closely.

The Dine Bizil Coalition objected to the development of the settlement without their participation. They lobbied for a citizens' water rights commission, and said they were denied access to the process. They see the subordination of water rights as "giving away our water," and "an insult to our ancestors." Navajo land is not a resource colony, they said, and accused the government of giving away too much already. Navajo Nation law requires bringing any settlement must come before the people, and the Coalition feels that the current actions are part of a bigger plan to stifle the grassroots voice.

*Chance for Greater Benefits for Navajos:* Some said they hoped for greater inclusion in order to negotiate for more flexibility and more money for Navajos in the settlement. Negotiators pointed out that this is the largest Indian water rights settlement ever proposed, and asked that critics look carefully at the settlement and not oppose all aspects of it. The decision about whether to endorse this settlement or negotiate further is up to the elected officials of the Nation and the State.

*Need for Assistance:* Many spoke of needs in the area which they hoped could be met through this settlement. The rehabilitation program for the Hogback, Cudei, Cambridge and Fruitland areas should include laterals and underground structures, to reduce the waste of water.

*Purpose of Hydrographic Survey:* A participant asked about the purpose of the hydrographic survey. D'Antonio responded that it will determine the historic and existing uses in the region, including livestock watering, and that this survey will likely result in an increase in Navajo uses.

*Diversion v. Depletion:* There was some confusion about the terms "diversion" and "depletion." Hale explained that diversion is the amount you take out of the source, like a bucket; depletion is the amount that you consume, or drink; and return flow is the amount that you put back.

*Future of BHP Water:* BHP does not have the right to the permanent use of the water. When it is not used, it is lost. Navajos may be able to negotiate for use of that water.

*Navajo Priority Dates:* The date for natural flow of the river is 1868. For stored water or project water, the date is 1956.

*Projected Growth:* There was confusion about the projected growth calculations. The settlement contemplates 160 gallons per person per day, a number which is much greater than current Navajo use. Population growth can be accommodated because of this additional amount which is used for planning purposes. In addition, the Nation can change water rights from one use to another, if they wish.

*Priorities for Funding:* What will be the priority for funding projects, asked a participant? Those decisions are up to the tribal council and the chapters.

*Water Trust Fund:* Funding for the water trust fund will come from the state and the federal government, in the amount of \$ 25 million each, to be paid over a ten year period.

*Need for More Time to Consider the Documents:* Duane Yazzie, Shiprock Chapter President, spoke as an individual and a local farmer, and submitted a statement in writing. Others echoed his concerns during the evening about time constraints on the process. Mr. Yazzie said that the time period allotted for public comment (December 5 - January 15) was much too short given the importance of the issue and the length and complexity of the documents. The short comment period led some to be suspicious of the state and the federal government and to fear the intent of the settlement and the benefits to the Navajo Nation and communities. He feared that the Navjao people might not be "getting the best deal," and that the settlement might be driven by the needs of the middle Rio Grande valley and Gallup. He and others wondered if "Navajo water was being used to rescue the state." He felt that \$ 17 million was inadequate to meet the local needs, and that the Shiprock reservoir should be independent from Farmington. An independent analysis fo the settlement could help evaluate whether or not the provisions are fair to Navajos.

The State Engineer and President Hale acknowledged that community members and local government officials, both Navajo and non-Navajo, are under a lot of pressure to respond to the proposed settlement. They explained that the negotiating parties have put the documents on a fast track in order to take advantage of the key role that New Mexico representatives play in Congress at this time. They also pointed out that this is not the last chance for the public to comment, but merely a window of opportunity to review the draft document before it is delivered to Congress for consideration. During the Congressional debate and during the adjudication process, all participants will have time to comment and protest if necessary. By opening up the draft for public comment the State and the Nation hope to create a better document for presentation to Congress. Attorneys for the State and the Navajo Nation both spoke in support of this fast track, and asked the public to realize that although not perfect, the settlement is good – good for everyone in the basin.

In answer to some of Mr. Yazzie's and others' questions above, settlement negotiators emphasized that it is important to quantify water for the future security of all in the region, and that the settlement provides a significant amount of money to put the water to use. There is no plan to deliver any additional water to the Rio Grande system. The Navajo Nation will be able to use NIIP water for other uses, if they wish.

*Other Issues Raised:* Participants remarked that the settlement would provide water development and structure repairs, which the Shiprock area badly needs. There were questions about whether or not NIIP would be built out without the settlement. The answer was yes. There was also discussion about the original amount of water earmarked for NIIP. There were concerns about how the Nation would pay for operation and maintenance of the water facilities. Water rights could have been settled by Chairman MacDonald in the 1970's, said a participant, but New Mexico wasn't ready. There is an enormous potential, said another, to lease water to Santa Fe and Albuquerque.

*Summary prepared by Lucy Moore. Please contact her with comments or corrections.*

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