

SUBSTANTIVE CHANGES TO THE PROPOSED SAN JUAN RIVER BASIN IN
NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT AGREEMENT
BETWEEN THE JULY 9, 2004, AND DECEMBER 10, 2004, DRAFTS

January 12, 2005, ISC Meeting

The December 10, 2004, Draft Settlement Agreement approved by the Navajo Nation Council on December 29, 2004, incorporated the following substantive changes from the July 9, 2004, draft 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 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 reasons 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.

On a related matter, staff of the Interstate Stream Commission, the Office of the State Engineer, the Navajo Nation and the City of Farmington negotiated an agreement to address the City's concerns regarding the adjudication of certain of its water rights, including irrigation rights which it owns in trust pursuant to the Echo Ditch Decree and its other municipal rights. If approved by the Farmington City Council, the agreement also would provide the City of Farmington's support for the Navajo Nation water rights settlement.