

December 10, 2004, Revised
Draft
**SAN JUAN RIVER BASIN IN
NEW MEXICO NAVAJO
NATION WATER RIGHTS
SETTLEMENT**

Disclaimer: This summary is a
product of NMISC staff. A settlement
has not been approved.

SETTLEMENT COMPONENTS

- Major Components:
 - Fruitland and Hogback Projects
 - Navajo Indian Irrigation Project
 - Navajo-Gallup Water Supply Project
- Other Components:
 - Animas-La Plata Project
 - Tributary Uses
 - Ground Water Uses
 - Allocation of Increase in NM Apportionment
 - Water Rights Administration
- Funding

FRUITLAND AND HOGBACK IRRIGATION PROJECTS

- Existing Acreage – No PIA Claims
- Reserved 1868 Priority
- Consistency with Echo Ditch
 - CIR and farm delivery requirement extrapolated from 1938 Hydrosurvey
 - Maximum diversion rates equal to 1 cfs per 40 acres
 - Annual diversions consistent with 1938 Hydrosurvey
- Depletion right quantified based on CIR and 16% incidental depletions

FRUITLAND PROJECT

- Acres: 3,335
- Diversion Rate: 100 cfs, reduces to 83 cfs if rehabilitation permits
- CIR: 2.0 AF/ac
- Depletion: 7,970 AF/yr (2.39 AF/ac)
- Diversion: 18,180 AF/yr (5.45 AF/ac)

HOGBACK PROJECT

- Acres: 8,830
- Diversion Rate: 221 cfs
- CIR: 2.1 AF/ac
- Depletion: 21,280 AF/yr (2.41 AF/ac)
- Diversion: 48,550 AF/yr (5.50 AF/ac)

FRUITLAND AND HOGBACK ADMINISTRATION

- Navajo Nation Administration of Uses
 - Diversion metering and reporting of uses
 - Acreage surveys
 - Monitoring of farm turnouts
 - Physical gate adjustments
- State Engineer Watermaster Authority
 - Diversion and use monitoring
 - Beneficial use determinations
 - Availability of direct flow and storage water
 - Curtailment orders
 - Availability of supplemental carriage water

SUPPLEMENTAL CARRIAGE WATER

- Not a water right or consumptive use right
- Not quantified
- Subject to non-impairment of water rights
- Only available upon determination of State Engineer that excess flow in river is available
- Must be returned to San Juan River
- May allow other waters to be depleted
- Does not prevent transfers or future allocations

ALTERNATE WATER SOURCE AGREEMENT

- Navajo Nation would supply NIIP water for use on Fruitland and Hogback in lieu of a priority call when the direct flow is insufficient for the uses
- Alternate water would be a delivery charged to NIIP under the Settlement Contract
- Pre-approved transfer of NIIP rights
- Up to 12,000 AF in years that NIIP has a full supply, reducing to 0 AF if shortage to NIIP exceeds 20%
- Does not increase Fruitland/Hogback rights

ALTERNATE SOURCE AGREEMENT CONDITION

- River must be administered consistent with section 11 of the Act of June 13, 1962, such that only users with contracts for Navajo Reservoir water have rights to use stored water released from the reservoir
- If condition fails, all users on the San Juan River, including the Fruitland and Hogback projects, would have access without a contract to stored water released from the reservoir and there would be little reason to commit NIIP water to the projects

BENEFITS OF ALTERNATE SOURCE AGREEMENT

- Direct flow users would receive benefit of stored water without contract or cost
- Priority calls for Fruitland and Hogback would be reduced from 46% to 4% of years
- Isolates supply issues by stream segments for local administration and management
- Condition protects NIIP supply if alternate water not needed
- Does not affect depletion schedule (San Juan River and Animas River depletions not shorted)

NAVAJO INDIAN IRRIGATION PROJECT

- Acres: 110,630 acres service area
- Priority: 1868, subordinated to June 1955 under File No. 2849
- Diversion Rate: 1,800 cfs capacity
- Depletion: 270,000 AF/yr over 10-years (2.44/ac), 310,500 AF in any one year
- Recognizes average depletion amount from 1999 NIIP Biological Assessment
- 10-year averaging provides flexibility to manage supply for alternate water source agreement and other risks

NIIP DIVERSIONS

- 10-year Average Diversion: 508,000 AF/yr (4.59 AF/ac), or the amount of water necessary to deplete 270,000 AF/yr, whichever is less
- Annual Diversion: 584,200 AF, or the amount of water necessary to deplete 310,500 AF, whichever is less
- Diversion under authorized irrigation uses:
 - 337,500 AF/yr consulted on with the FWS
 - Additional diversions require reconsultation
- Tail water reuse charged against diversions

ADMINISTRATION OF NIIP RIGHTS

- Navajo Nation Administration of Uses:
 - Measuring and reporting acreage and uses
 - NIIP right fungible to non-irrigation uses
 - Navajo Nation has authority to change uses within Navajo lands in New Mexico if diversion <353,000 AF/yr and there is no impairment to other uses
- State Engineer Authority
 - Diversion and use monitoring
 - Determination of Fruitland and Hogback alternate water source requirements
 - Applications to divert more than 353,000 AF/yr if rights are used for non-irrigation purposes or if a transfer involves a change in the point of diversion

NAVAJO-GALLUP WATER SUPPLY PROJECT

- Annual Water Delivery Allocations:
 - Navajo Nation in NM 22,650 AF/yr
 - Jicarilla Apache Nation 1,200 AF/yr
 - City of Gallup 7,500 AF/yr
(supplied through Jicarilla contract)
 - Navajo Nation in AZ 6,410 AF/yr
(requires contract and use rights in AZ)
- Navajo Nation in NM Distribution:
 - San Juan River Basin 15,100 AF/yr
 - Little Colorado/Rio Grande 7,550 AF/yr

NAVAJO NATION RIGHTS FOR ITS NGWSP USES

- Priority: 1868, subordinated
- Supply: Secretary of Interior filings
 - File No. 3215 for inflows arising below Navajo Dam with a December 1968 priority
 - File No. 2849 for flow originating above Navajo Dam with a June 1955 priority
- Distribution by Diversion Points for Navajo Nation Uses in New Mexico:
 - Navajo Reservoir/NIIP - 3,800 AF/yr
 - San Juan River/Kirtland - 18,850 AF/yr

SHORTAGE SHARING PER ACT OF JUNE 13, 1962

- Section 11 of the Act of June 13, 1962, requires contract for water from Navajo Reservoir and shortage sharing between contracts and San Juan-Chama Project
- File No. 2849 for water above Navajo Dam shares shortage with File Nos. 2847 (SJCP) and 2848 (Hammond Project)
- File No. 3215 for water arising below Navajo Dam used to reduce demand on reservoir storage, but is not subject to section 11 shortage sharing

ALLOCATION OF NAVAJO RESERVOIR WATER SUPPLY

- Shortage based on anticipated supply for the year
- NGWSP uses in AZ shorted first consistent with Upper Colorado River Basin Compact
- Remainder of shortage distributed to normal diversion requirements of SJCP and diversion requirements from Navajo Reservoir under water delivery contracts
- Section 11 Allocation of Supply on Annual Basis:
 - Flow above Dam - SJCP & Navajo supply contractors
 - Navajo Reservoir Storage - Navajo supply contractors
 - Heron Reservoir Storage - SJCP contractors

NORMAL DIVERSION REQUIREMENTS

- San Juan-Chama Project: 135,000 AF/yr
- Navajo Reservoir water supply:
 - Irrigation uses – The amount of water required from Navajo Reservoir, up to the limit of the contract delivery right, to irrigate the project acreage based on the current year's cropping plan
 - Non-irrigation uses - The amount of water required from Navajo Reservoir, up to the limit of the contract delivery right, to supply the water demands of the project for the current year
 - Exclude diversion demands met from inflow below Navajo Dam under File No. 3215

PROTECTION OF NGWSP DOMESTIC USES IN AZ

- Renewable municipal and domestic water supply for the Navajo Nation capitol in Window Rock
- Approximately half of the Navajo Nation's uses in AZ would be sourced out of Navajo Reservoir and subject to shortage curtailments
- The Navajo Nation in years of shortage could forbear use of its shorted allocation of reservoir water for uses in NM to allow delivery of domestic water to Window Rock

ANIMAS-LA PLATA PROJECT

- Navajo Nation allocation from Colorado Ute Settlement Act Amendments of 2000:
 - Annual Depletion - 2,340 AF/yr
 - Annual Diversion - 4,680 AF/yr
- Priority: 1868, subordinated to May 1956 under File No. 2883
- Additional future allocation if available under File No. 2883 to be shared equally between the Navajo Nation and member entities of the San Juan Water Commission

TRIBUTARY USES

- Hydrographic Survey historic/existing uses
 - Irrigation uses
 - Livestock and stockpond uses
 - Uses not a part of public domestic water supply systems
- Quantify irrigation rights consistent with 1938 Hydrosurvey and Echo Ditch Decree methodology
- Reserved 1868 priority
- Navajo Nation administration
 - Meter, administer and report uses
 - Administer transfers subject to no impairment

RESERVED GROUND WATER RIGHTS

- Priority: 1868
- *De minimus* residential domestic and stock uses
- Hydrographic Survey historic/existing uses other than public domestic water systems
- 2,000 AF/yr ground water withdrawal and use, includes historic/existing uses by public domestic water systems (NTUA/IHS)

ADDITIONAL GROUND WATER RIGHTS

- Priority: date of application or notice
- Amount: not quantified
- Conditions:
 - No impairment of existing uses
 - Cumulative impacts to San Juan River flows in excess of 2,000 AF/yr must be offset by forbearance of surface water rights
- Ground water pumped from underneath NIIP to maintain the water table below the root zone can be treated as reuse and not counted against the Navajo ground water rights

INTERSTATE GROUND WATER DELIVERIES

- Existing Navajo domestic and sanitary water supply systems straddle NM-AZ state line within San Juan River Basin
- Ground water pumped in NM may be used in AZ, ground water pumped in AZ may be used in NM
- Settlement:
 - Approve diversions in NM for delivery to AZ, and uses in NM supplied from diversions in AZ, up to 400 AF/YR delivery at the state line for existing/future uses
 - Ground water moved across state line not marketable
 - Use is a part of the Upper Basin apportionment of the state in which the use is made
 - Must be consistent with rights in Arizona

GROUND WATER ADMINISTRATION

- Navajo Nation Authority:
 - Meter, report and administer ground water diversions
 - Provide notice of intent to drill wells/increase pumping
 - Jurisdiction over new uses on Navajo trust lands
- State Engineer Authority:
 - Monitor Navajo ground water uses for compliance
 - Jurisdiction over applications to appropriate ground water on Navajo fee or state lands
 - Approve offset plans for pumping on trust or fee lands
- Cooperate in ground water model development
- Court jurisdiction to enforce decree conditions

INCREASED ALLOCATION OF NM APPORTIONMENT

- Settlement based on conservative estimate of yield available to Upper Basin and New Mexico
- If Upper Basin yield determined to be greater than 6.0 MAF, ISC would determine the amount of additional allocation that can be made considering uses under the San Juan River Adjudication and other relevant factors
- Additional allocation to be shared equally between the Navajo Nation and non-Navajo users

PROTECTION OF ALP

- Navajo Nation to forbear uses under Settlement Contract to protect NM ALP allocations made by the Colorado Ute Settlement Act Amendments of 2000 to same % water supply as Navajo-Gallup Project uses in NM
 - If ALP allocations curtailed due to over-allocation of NM apportionment
 - If ALP allocations curtailed in a given year pursuant to a call to meet the Lee Ferry delivery requirement under the Colorado River Compact
- One-third of ALP protection conditioned on AF/AF abandonment, forfeiture or retirement of rights – not to affect adjudication of rights

WATER RIGHTS ADMINISTRATION

- State Engineer is water master on San Juan River
- Minimum amount of flow at Navajo Dam to be made available to direct flow users during the irrigation season = 225 cfs if storage in Navajo Reservoir >1 MAF on May 31
- No user has right to stored water from Navajo Reservoir under File No. 2849 without a contract with the Secretary
- Top Water Bank would provide limited opportunity to bank acquired water rights, subject to no impairment of File No. 2849

TRANSFER OF NAVAJO RIGHTS

- Non-impairment standard
- Navajo authority to change purpose and place of use on Navajo trust lands in New Mexico (limit on NIIP)
- State Engineer or Court must approve:
 - Changes in place of use to off trust lands
 - Changes in point of diversion
- NM must approve interstate transfers of rights, or interstate leases or deliveries of water, subject also to applicable law

LEASING OR CONTRACTING NAVAJO WATER

- Navajo Nation may lease or contract its water for use on or off trust lands, subject to transfer requirements
- Secretary of Interior must approve subcontracts under Settlement Contract
- Navajo Nation may participate in cooperative water sharing agreements with other users

SAN JUAN RIVER ADJUDICATION

- Navajo Nation agrees not to challenge the Echo Ditch or other previous decrees
- Navajo Nation agrees to other irrigation rights quantified consistent with permits, licenses or the 1938 Hydrosurvey
- Navajo Nation may object to rights on the basis of forfeiture, abandonment, or unauthorized use since entry of the Echo Ditch Decree or issuance of permits and licenses
- Navajo Nation agrees to permitted Hammond Project acreage of 3,900 acres

ADMINISTRATION OF DECREE AND AGREEMENT

- Navajo Nation metering, reporting and administration responsibilities
- State Engineer monitoring and watermaster authorities
- Adjudication Court jurisdiction to enforce the decrees adjudicating the Navajo Nation rights and provisions of the Settlement Agreement

FUNDING SUMMARY

- Settlement of claims for water development
- Development funds authorized by settlement legislation -
 - Fruitland rehabilitation: \$ 7.7 million
 - Hogback rehabilitation: \$ 15.7 million
 - NGWSP construction: \$564.6 million
(plus \$25 million state cost-share)
 - Ground water wells: \$ 77.6 million
- Additional funds -
 - Hydrographic Survey \$ 5.0 million
 - Navajo Water Trust Fund \$ 50.0 million
- NIIP and NN Municipal Pipeline – secure funds separately through existing authorizations, funding not required for settlement

CONSTRUCTION SCHEDULE

- Milestones under settlement legislation
 - Fruitland Project rehabilitation: 2012
 - Hogback Project rehabilitation: 2015
 - Navajo-Gallup Water Supply Project: 2020
 - Ground water wells with NGWSP: 2022
- Estimated completion dates under existing construction authorizations
 - Animas-La Plata Project facilities, including Navajo Nation Municipal Pipeline: 2012
 - Navajo Indian Irrigation Project: 2022

PROCESS SCHEDULE

- Approve Settlement Agreement: 2005
- Enact Settlement Act: 2006
- Complete NGWSP EIS/ROD: 2006
- Execute Settlement Contract: 2007
- Entry of Partial Final Decree: 2010
- Complete Hydrographic Survey: 2011
- Entry of Supplemental Decree: 2013
- Complete Trust Fund deposits: 2016
- Last date to file for revocation of decree: 2025

WATER ALLOCATIONS IN SAN JUAN RIVER BASIN

- New Mexico's Upper Basin apportionment of depletions from the river system measured at Lee Ferry - 669 TAF
- NM share of CRSP evaporation - 58 TAF
- Allocations of NM depletions:
 - Navajo Nation: 56%
 - Jicarilla Apache Nation: 5%
 - San Juan-Chama Project: 17%
 - Power plants: 6%
 - Non-Indian uses in San Juan Basin: 16%