



**THE
NAVAJO
NATION**

P.O. Box 9000 • Window Rock, Arizona 86515 • (520) 871-6000

File
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ALBERT A. HALE
PRESIDENT

SEP 09 1996

THOMAS E. ATCITY
VICE PRESIDENT

Governor Gary Johnson
Office of the Governor
State Capitol Building
Santa Fe, NM 87503

Re: Resolution of the Navajo Nation's Water Rights to the San Juan River

Dear Governor Johnson:

The Government-to-Government Policy Agreement executed this past July between the Governor, the Attorney General, and the presidents and governors of the Indian reservations and pueblos in New Mexico affirmed the need to address issues of mutual concern, such as water rights, in a cooperative and respectful manner. I am writing to express the willingness of the Navajo Nation to meet with the State of New Mexico in order to explore the possibility of a negotiated resolution of our San Juan River water rights in New Mexico. We are prepared to commence appropriate discussions with the State of New Mexico consistent with the Policy Agreement.

For too long, the Navajo Nation's water rights in the San Juan River Basin of New Mexico have remained unquantified, creating a cloud over water development in the basin. Our Indian and non-Indian neighbors seek to develop the water resources of the basin through various mechanisms including the Animas-La Plata Project, the San Juan-Chama Project, water contracts from Navajo Dam, and the Jicarilla Apache Water Settlement. The Navajo Nation has not supported such development in light of the uncertainty of our own water rights. The recent application of the Endangered Species Act in the basin has created additional uncertainty in the amount of water available for future development in the basin.

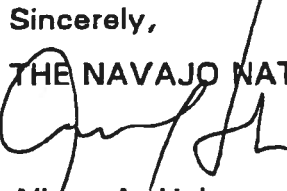
This uncertainty can be resolved through litigation; however, the general stream adjudication for the San Juan River has been virtually dormant since it was filed in 1975. An adjudicated resolution of our water rights promises to be extremely costly and contentious. Under various legal doctrines, including the reserved rights doctrine as articulated in *Winters v. United States*, the Navajo Nation claims sufficient water from the San Juan River necessary to create a permanent homeland for the Navajo people. Pursuant to legal precedent, as articulated by the United States Supreme Court in *Arizona v. California*, the Navajo Nation possesses sufficient "practicably irrigable acreage" within the San Juan River Basin to fully utilize the entire flow of the San Juan River to satisfy our reserved right. It is axiomatic that the New Mexico State Engineer would vigorously oppose the Nation's position and that the resulting protracted litigation would be contrary to the best interests of our respective sovereigns.

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Resolution of our San Juan River rights has been hampered by assertions that the Navajo Nation waived its San Juan River water rights in return for the Navajo Indian Irrigation Project. We believe that such a theory has no basis in law or in fact. Nor is it clear whether the State Engineer currently subscribes to this position. Nevertheless, for purposes of settlement negotiations, we respectfully suggest that productive discussions can best proceed if claims by the Navajo Nation to "every drop of water" in the river and claims by the State of New Mexico that Navajo rights have already been quantified are not brought to the negotiation table. These theories should be left to our lawyers in the event that litigation is necessary. I am hopeful that the discussions envisioned herein will make such litigation unnecessary.

For purposes of these discussions, your staff should consider Johnnie D. Francis, Director, Department of Water Resources and Stanley M. Pollack, Special Counsel for Water Rights, to be the designated persons to conduct the initial negotiations. Mr. Pollack and I will be speaking at a water resources conference in Farmington on September 19 concerning regional water issues. New Mexico State Engineer Tom Turney and Phil Mutz from the Interstate Stream Commission will also be speaking that day. Perhaps an initial meeting can be arranged to coincide with the conference.

I look forward to productive discussions to resolve issues of great importance to all the people of northwest New Mexico.

Sincerely,

THE NAVAJO NATION
Albert A. Hale
President

xc: Johnnie D. Francis, Director
Department of Water Resources
(520) 729-4003

Stanley M. Pollack, Special Counsel for Water Rights
Natural Resources Unit, Department of Justice
(520) 871-6931