

**John Whipple**

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**From:** scone  
**Sent:** Friday, January 09, 2004 9:45 PM  
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**Subject:** Navajo breath of fresh "AIR"

**RECEIVED 9 JANUARY 2004 FROM DOI IN RESPONSE TO FOIA NO. OS-2004-00122**

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Joe Shirley, Jr. PRESIDENT  
Frank J. Dayish, Jr. VICE PRESIDENT

December 7, 2003

Gale A. Norton  
Secretary of the Interior  
United States Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

RE: NIIP MOU Initial Position

Dear Madame Secretary:

In directing my thoughts to the needs of the NIIP MOU in this discussion phase, there are a number of points that I believe are fundamental to the wellbeing of the Navajo Nation. As such, I want them included as critical issues slated for the discussions and eventually incorporated in the final document. Please allow me to introduce them in this communication. The relative importance of each should not be construed by the number in which it is arrayed, rather, I have attempted to introduce each as a core issue that must be addressed.

In building the concept implicit in these points, my directive has been to make sure there is assurance in completing the project, insurance in the success of the eventual ownership transition, and resolve on the part of both parties to make this an unqualified success. The points introduced above and

detailed below are built around these needs. Yes, it is with a breath of fresh "AIR" that I seek to form the hallmark of this process, and it is with that spirit that I begin this effort. The first points arrayed below are issues that I identify as assurance points. As such, they assure Navajo rights within the framework of the original agreement. they are as follows:

1. Rather than an MOU, I believe that there is the need to make this a memo of agreement (MOA). When this process is done, a firm agreement should be the result.
2. The discussion points must be limited to NIIP in its original form. I don't want to discuss other projects, tradeoffs, a modified NIIP, or any variation thereof. The focus is simply NIIP as originally promised and originally conceived.
3. NIIP must consist of 110,630 acres of "net" farmable land. this means that there must be 110,630 acres in excess of roads, ditches and facilities receiving irrigation water under pivot and being farmed.
4. The allocation of water must conform to the original agreement of "508,000 acre feet of diversion rights". I am fully aware that there will be years that that amount of water is not available in the basin, but, when it is, the project can and will have the right to divert the full amount.
5. This diversion right must be termed "wet water" and the rights to its storage in Navajo Dam must be clearly set out in the document.

The next several points are included in a general category of what I refer to as insurance. Originally, my thoughts in this regard were for insuring that the project would succeed, but this has been altered slightly to also insure that the project be completed. This project is critically needed in our overall efforts to boost employment. It must be finished and finished posthaste. The insurance points and explanations continue as follows:

6. I am told time and again that the cost of water in the project may jeopardize its ultimate success. As such, it should be agreed that the component of the process that contributes to the possible failing needs to be addressed. Rather than an open-ended relationship to subsidize OM&R, I want a trust established to serve as cushion in the event that this part of the deal becomes a project breaker. Currently, I am told that the annual OM&R budget is \$6 million. I want a trust to cover that amount of annual expenditure.
7. The failure of the project to be completed has an ongoing opportunity cost for my Nation. Currently, lands are being rented to various lessees for \$80-\$250 per acre. there are approximately 45,000 acres unfinished, and, with prevailing rents, that constitutes a revenue loss of \$3.6-\$11.25 million annually. That opportunity cost must be addressed in the form of "payment in lieu of completion" and paid annually into the trust. Such payments make both participants keenly aware of the need to finish this project. A rent of \$100 per acre on unfinished acres must be agreed upon for this ongoing opportunity cost to my Nation. As acreage is brought into the project, this payment would be adjusted accordingly, and, of course, when the project is completed all such payments would disappear.
8. As long as the project is unfinished, I cannot accept any transfer of ownership for my people. I am aware of the original agreement stating right to transfer, but in this regard, please recognize that I would be giving up a measure of control toward the final completion of the project if a stepwise transfer of ownership was ongoing. this project must be finished!
9. The issue of rehabilitation on the existing equipment is similar to the foregoing in that the responsibility of adhering to a scheduled rehab must fall on the United States as long as the project remains incomplete. I don't want this expense to be associated with the ongoing development appropriations. It is a separate expense and must not be subjected to political issues. The management of NIIP need not make any decisions in regards to priorities of where moneys should be allocated. Construction should be separate and distinct from rehabilitation and rehabilitation must

continue as long as the project remains incomplete (and in accordance with number 15 below).

Again, the need is to finish the project!

10. The issue of drainage and other technical issues (and other technical issues) is ongoing and must be addressed when and where it is encountered. As long as the project is incomplete, the United States must deal with drainage issues aggressively as a cost of the ongoing agreement. When the project is finished, and since this is a sensitive issue for basin participants, I propose this is one area that the United States participate with the Navajo Nation on an ongoing and open ended basis with a cost sharing agreement that should be incorporated in the document.

The final points are generally included in what I have termed resolve. This is an area that includes both Navajo resolve and United States resolve in successfully finishing, transferring and managing the ongoing project. the points continue as follows:

11. I want this project finished by 2010.

12. I want this MOA concluded during the first quarter of 2004.

13. I want an accurate forecast of moneys needed to finish the project updated annually.

14. I want the right to manage all tailwater in a "normal and customary" means that is consistent with prevailing practices among well managed farming projects. If and when any waters return to the San Juan Basin, all right to that water is given up by my Nation. As long as the water is retrievable by surface access on project lands, however, it is within our right to manage it actively.

15. When completion of the project occurs, the equipment, lands, and facilities will be accepted by the Navajo Nation as long as they are in good condition, normal wear and tear accepted.

16. Although this item is more correctly included in insurance above, the position it falls relative to the transfer of ownership above lead [sic] me to include it at this point. In the need to pass the ownership along with a high likelihood of success, it is my desire to have the transfer occur over a twenty year period commencing concurrent with the completion of the project. In this approach, whole blocks would be transferred intact in an incremental schedule. When each transfer is made all expenses involved in the management of that particular block would be assumed by my Nation. Until the transfer is done, the United States would continue with participative action similar to current practices. This would include rehabilitation and subsidized water costs. This would conclude the transfer process in 2030.

17. In an effort to have some means of added resolve to finish this all important project, I want your agreement to allow my Nation to have the right to secure private financing (in the amount noted in 13 above) in order to finish this project if and when there is any upset that threatens its completion by the dates set forth. In such a mechanism, a United States guaranty of the loan would be required and payment thereof would be the responsibility of the United States, but the Navajo Nation would have the right to manage the completion of the work and any moneys saved would accrue to the trust.

As President of the Navajo Nation, I must always try to balance the need to expedite this process with the responsibility that was bestowed upon me by my people. In saying this, I am well aware of your desire to conclude this process, but I must be satisfied that what we do does not harm our ability to fully administer this project. After reviewing the content of this communication, I am fully confident that you will understand my resolve to finish this project and set the stage for its future. Together, we can come to an agreement that allows that to happen. My Nation needs it, and the United States can at long last finish its promise that set this whole process in motion. I will await your quick response.

Sincerely,

Joe Shirley, Jr.  
President, Navajo Nation