

John Whipple

From: scott33
Sent: Thursday, January 15, 2004 9:19 AM
To: johnleeper; John Dantonio; John Whipple; scott33; scone
Subject: suggestion for Navajo settlement

Further comments by Jack W. Scott

It is sad that the process promoting the Navajo Settlement Agreement, which appears so mismanaged and misguided, is proceeding. The arrogant demeanor of its spokespersons is doing nothing to help the process. What could have been a fairly good proposal had it been truly open to public input and public consideration is now less than so. Should the Settlement proceed without thorough rewriting and reformulation, I fear that the future will show the writers and promoters of said proposal as less than competent. This proposal, as currently written, and in its speedy and forced proceeding is not in the best interests of either the Navajo or non-Navajo alike. The implications and impacts of the settlement appear to have not been thought through or analyzed

If I felt even remotely that public comments were to be taken seriously, I might offer further substantive suggestions than the following but the Farmington meeting made clear, in many minds of those who attended, that public input was not desired or wanted. The promoters of this proposal failed to recognize that trust is so important in the political arena. Trust in and faith in this process is lost. Is it in the public's interest to try to salvage a closed door and probably failed process or is it in a better serving interest, just to fight it?

There is a lack of trust in the Navajo Nation administering water on the San Juan River and circumventing established and lawful administration of water in New Mexico. The State Engineer would be negligent in his duties to allow this. I would suggest wording for administration of water near and on the reservation as was placed in the Colorado Ute Indian Consent Decree under 12. Although not perfect, it is far better than no supervision or control under the Engineer's office.

FROM:

DISTRICT COURT, WATER DIVISION 7, COLORADO

Case NO. W-1603-76F

STIPULATION FOR A CONSENT DECREE

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA (BUREAU OF INDIAN AFFAIRS, SOUTHERN UTE AND UTE MOUNTAIN UTE INDIAN TRIBES) FOR CLAIMS TO THE ANIMAS RIVER IN WATER DIVISION NO. 7, COLORADO

Based on the Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986, and the Colorado Ute Indian Water Rights Settlement Act of 1988, Public Law 100-585 (102 Stat. 2973), the undersigned parties request the Court to approve this Stipulation as proposed which shall become the Final Consent Decree in this case in accordance with the terms of paragraph 16³.

12. ADMINISTRATION

In the Settlement Agreement, the parties reached a compromise on the administration of the Tribes' reserved water rights within the exterior boundaries of the Tribes' Reservations. The State, the Tribes, and the United States further acknowledge the hydrologic relationship between the surface and underground use of water and among the Tribes' reserved water rights, the water rights used by non-Indians within Colorado, and the waters used outside the State. The parties recognize the need for a cooperative and coordinated administration of water rights arising under state law and the reserved water rights secured to the Tribes and intend to provide for such administration. The purpose of this paragraph 12 is to establish the means by which the water rights confirmed in paragraphs 6 and 7 shall be administered. Administration by the State Engineer as described below shall ensure that the water rights of all users, including the Tribes, are fully protected. The Tribes agree to coordinate their administrative responsibilities under this paragraph 12 with the Secretary of the Interior when those administrative responsibilities affect the water rights of allottees. The Tribes agree to allow the State Engineer access to Reservation lands solely for the purpose of performing his administrative duties.

A. Surface Diversions

The State Engineer shall have primary administrative responsibility over all waters apportioned to the Tribes at the points of diversion located on the Animas River. The Tribes shall have primary administrative responsibility over all the waters within the Tribes' canal distribution systems.

When water is put to use, the tribes agree to install and maintain headgates on the diversion points from the Animas River and to install and maintain necessary totalizing or accumulating meters, gauges, or other measuring devices on these headgates, to inspect the recorders on a weekly basis, and to report to the State Engineer the reading of these meters as often as needed to ensure compliance with the Final Consent Decree.

The Tribes agree to allow reasonable inspection of headgates by the State Engineer upon request. The Tribes further agree to keep their diversion, transportation, and storage facilities in good repair. The Tribes agree to annually provide the State Engineer with: (1) Aerial photos or remote sensing images of the lands irrigated or (2) Bureau of Indian Affairs Crop Reports, showing the lands irrigated. If these aerial photos, remote sensing images, or crop reports are unsatisfactory, the tribes agree to allow the State Engineer access to Tribal lands to inventory the number and location of irrigated acres. The Tribes may elect to allow the State Engineer to conduct an annual examination of the irrigated lands so that the State Engineer can inventory the number of irrigated acres in substitution for the images and reports. At least once in every five-year period the Tribes shall provide the State Engineer with aerial photos or remote sensing images satisfactory to the State Engineer, or shall allow the State Engineer access to Tribal lands to inventory the location and number of irrigated acres.

The Tribes agree that when there is administrative call on the waters of the Animas River and a demonstrated likelihood of shortages exists, the tribes will permit the State Engineer to monitor the tribes' diversions of water within the priority system to ensure that the waters are being beneficially used in compliance with the terms of the final Consent Decree.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes over whether waters are being beneficially used in compliance with the terms of the Final Consent Decree.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes over whether waters are being used in accordance with the terms of paragraph 12, provided that disputes involving solely Tribal members or lessees of the Tribes over the use of water within the Tribes' canal distribution system may be resolved in a Tribal forum.

B. Individual Wells

The Tribes agree to provide the State Engineer with the following information in a Tribal permit 30 days before the Tribes intend to permit the drilling of a well for individual domestic or livestock purposes as set forth in subparagraphs 6.C. and 7.C: the aquifer or, if the aquifer is unknown, the depth from which the water is proposed to be withdrawn, the location of the proposed well, the name of the owner of the land on which the well will be located, the estimated average annual amount of water applied for in acre-feet, and the estimated maximum pumping rate in gallons per minute. Thirty (30) days after receipt of a Tribal permit to drill a well, the State shall issue well permits for individual domestic and livestock wells within the parameters and up to the amounts specified in Article III, Section C, Subsection 2 of the Settlement Agreement and in subparagraphs 6.C. and 7.C. of this Stipulation or Final Consent Decree. The parties shall present to the Colorado District Court for water Division No. 7 all disputes arising under this subparagraph 12.B.

C. Aquifer Protection and Water Well and Pump Installation

The Tribes agree to drill, maintain, and/or abandon wells in a manner consistent with public health and safety and applicable laws or regulations. Well completion reports and well drilling logs shall be completed and filed with the State Engineer within 30 days of completion of the well. Disputes arising under this subparagraph 12.C. shall be decided by a court of competent jurisdiction.

D. Change of Water Rights

The Tribes may change water rights described in paragraphs 6 and 7 from the types of use, places of use, amounts, times of use or location of points of diversion set forth in paragraphs 6 and 7. No change shall be allowed unless the Tribes and the United States file, to the same extent other project water users are required to file, an application for a change of water rights in the Colorado District Court for Water Division No. 7 and the Court grants such change. If the change is to an off-reservation use, the Tribe must affirmatively state that it is voluntarily electing to change the use to an off-reservation place of use, and understands that as a condition precedent, that portion of the water right shall be changed to a Colorado State water right, but be such a State water right only during the use of that right off the Reservation. Changes of water rights may be to any beneficial use.

A change of water right shall be granted by the District Court if the change does not increase the consumptive use of the Tribal water right or injure other water rights. In determining the consumptive use of Tribal water rights and injury to other water rights for the change of a Tribal water right within the boundaries of a Reservation or from within the boundaries of a Reservation to outside the boundaries of that Reservation, the Tribal water right shall be deemed to have been historically diverted and beneficially used in the full amounts, in the manner and for the purposes set forth in paragraphs 6 and 7 above.

The Tribes and the United States further agree that for a change of a surface diversion of agricultural irrigation water to a groundwater diversion, the Tribes will provide the State Engineer with a permit containing the following information before the Tribes and the United States file an application for a change of water right in Colorado District Court for Water Division No. 7: the aquifer or, if the aquifer is unknown, the depth from which the water is proposed to be withdrawn, the location of the proposed well, the name of the owner of the land on which the well will be

located, the estimated average annual amount of water applied for in acre-feet, and the estimated maximum pumping rate in gallons per minute, the proposed use, and a description of the land proposed to be irrigated or the use to which the water will be put and the location of that use. Within thirty (3) days after receipt of a Tribal permit to drill a well, the State engineer shall issue a well permit for the proposed well if the change does not increase the consumptive use of the Tribal water right or injure other water users. In determining the consumptive use of water and injury to other water users, the Tribal water right shall be deemed to have been diverted and beneficially used in the full amounts, and manner, and for the purposes contemplated in paragraphs 6 and 7 above.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes arising under this subparagraph 12.D.

E. State Appropriative rights

The parties acknowledge that the administrative provisions of this paragraph 12 govern the Tribes' use of the reserved water rights confirmed in paragraphs 6 and 7 herein. The parties further agree that any and all other waters appropriated by the Tribes or on their behalf or on behalf of individual members of the Tribes pursuant to the State adjudication or permitting process will be decreed, administered, and regulated by the State pursuant to State law. The State shall also administer all rights to the use of surface or groundwater within or outside the Reservations which are not a part of the Tribes' reserved water rights. Further, the District Court for Water Division No. 7 shall have exclusive jurisdiction to resolve all disputes over uses of nonreserved water rights established under State law. The Tribes or their members, or the United States, on its own behalf, or on behalf of the Tribes or Tribal members, shall be entitled to seek additional water rights by purchase, relinquishment, or other operation of law.

Should you have further questions or desire any further input, please contact me.

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