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January 15, 2004

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Dr. John Leeper
Navajo Nation Dept. of Water Resources
PO Drawer 678
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Mr. John Whipple
NM Interstate Stream Commission
PO Box 25102
Santa Fe, NM 87504-5102

Subject: Town of Taos comments on *Proposed Navajo Nation Water Rights Settlement Agreement for the San Juan Basin*

Sirs:

By this letter the Town is submitting its initial comments on the subject settlement documents released by the State Engineer Office (OSE) on December 5, 2003. The in general supports the State's efforts to equitably settle Indian water rights claims, and the Town is not principally opposed to the proposed water right settlement agreement between the State and the Navajo Nation. The Town, however, has a number of concerns and reservations as set forth in the comments below.

The comment period as provided by the State is extremely short, with many days lost to holidays. The stated goal of the State is to submit Federal legislation by March 1, 2004. The Town, therefore believes that it was not afforded sufficient time to undertake a thorough review of all the documents comprising the settlement package. At this time the Town can only submit comments that are preliminary in nature, and the Town reserves the right to supplement its comments at a future date.

Issue: The proposed settlement adds new users and diversion demands to the San Juan River and Navajo Reservoir, including the City of Gallup, and

unquantified diversion requirements to meet the requirements of Federal law, including the Endangered Species Act. These new demands would have equal standing with the San Juan-Chama Project (SJCP) and its contractors.

Discussion: The Town does not oppose the City of Gallup receiving water from the San Juan River and Navajo Reservoir. However, the addition of new users and new uses, could adversely affect the Town in a number of ways, including: (1) the unspecified and unquantified Federal interests, may gain standing to interfere in the Town's ability to convert its SJCP contract to a permanent, repayment contract, (2) the assignment of equal priority to the new and unspecified and unquantified Federal uses could reduce the Town's share of SJCP deliveries under shortage conditions.

Issue: Section 8(F) of the SJCP authorizing legislation established minimum project by-pass flows to protect the riparian environments of the Navajo, Little Navajo and Blanco Rivers, which are upper tributaries of the San Juan River from which the SJCP diverts water into New Mexico. Under drought conditions, by-pass flow targets must be met before the SJCP project can begin any diversions. The proposed settlement will require the SJCP under drought (both natural and man-made) conditions, to meet both the by-pass schedule and to bypass its pro-rata share of water needed to satisfy minimum flow requirements on the San Juan River to meet various Federal mandates such as the Clean Water Act and the Endangered Species Act.

Discussion: The SJCP's pro-rata share to meet Federal mandates that have not been quantified under the proposed settlement, and that are likely to change from year to year, upsetting the Town's reliance on its contracted allocation of SJCP water. The Town is very concerned that the OSE's *ad hoc* and secretive approach to Indian water right negotiations and settlements could negatively impact the ability of the Town's ability to undertake long-range water resources planning. **The increased uncertainty in future SJCP project deliveries could also negatively affect the Town's ability to undertake and conclude meaningful negotiations with Taos Pueblo and the other defendants in the Abeyta water right adjudication.**

To address the concerns outlined above, the Town is requesting that the settlement documents be amended to specifically state that SJCP share of any shortages, whether natural or man-made, on the San Juan River and its tributaries shall be no greater than the by-pass requirements of Section 8(F). In addition the protections afforded SJCP contractors by the *Domenici rider* of 2003 should be recognized under applicable laws with which the proposed settlement and enabling legislation must comply.

The Town is looking forward to your response in this regard. If you have any question, please contact me at 505-751-2003 or 751-2006.

Sincerely,



Gustavo Cordova
Town Manager

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