

*Estevan Lopez presented to interior
water and natural resources committee
of NM Legislature*

*55-17
Navajo Settlement*

**SAN JUAN RIVER BASIN IN NEW MEXICO
NAVAJO NATION WATER RIGHTS SETTLEMENT**

Status Report of the Interstate Stream Commission
June 24, 2004

Disclaimer. The governing bodies or authorities of the State of New Mexico, the Navajo Nation and the United States have not approved a settlement or settlement documents.

I. BACKGROUND

1. San Juan River Basin

- a. basin drainage covers much of northwest New Mexico
- b. most of San Juan River flow enters New Mexico from Colorado
- c. the water yield of the basin measured at Bluff, UT, is 2 MAF/year
- d. roughly half the yield of the basin is regulated by Navajo Reservoir
- e. federal law requires contract for water originating above Navajo Reservoir and Congressional approval of contract

2. Interstate Water Compacts

- a. New Mexico is party to the Colorado River Compact and Upper Colorado River Basin Compact
- b. New Mexico's Upper Basin apportionment is 11.25% of the allocation to the Upper Basin by the Colorado River Compact
- c. the San Juan River Basin in New Mexico contributes only 3% of the yield available to the Upper Colorado River Basin
- d. NM's relatively large apportionment was to address Indian rights

3. Indian Water Rights

- a. federal reserved rights for permanent homelands
- b. practicably irrigable acreage standard for quantifying rights
- c. claims for municipal, domestic and other uses
- d. priority dates relate to when lands were reserved for tribes
- e. rights not lost for non-use

4. Indian Tribes

- a. Navajo Nation
 - i. extensive lands in New Mexico, Arizona and Utah

- ii. capitol is Window Rock, AZ, near New Mexico border
- iii. existing Fruitland and Hogback projects – San Juan River
- iv. existing/authorized Navajo Indian Irrigation Project – Navajo Reservoir contract
- v. proposed Navajo-Gallup Water Supply Project – proposed contract
- b. Jicarilla Apache Nation
 - i. lands in New Mexico
 - ii. Congress approved water rights settlement in 1992
 - iii. leases of Navajo Reservoir supply contract rights for SJGS, Gallup
- c. Ute Mountain Ute Tribe
 - i. lands in Colorado and New Mexico
 - ii. Congress approved water rights settlement in Colorado
 - iii. no resident population or irrigation in New Mexico
 - iv. reservation does not adjoin San Juan River in New Mexico
 - v. minor historic use claims and future use claim

5. Non-Indian Water Users

- a. Cities and San Juan Water Commission
 - i. Farmington
 - ii. Aztec
 - iii. Bloomfield
 - iv. domestic water user associations
 - v. Animas-La Plata Project underway
- b. Power Plants
 - i. San Juan Generating Station – Public Service Co. of NM
 - ii. Four Corners Power Plant – Arizona Public Service Co.
 - iii. coal mines – BHP Billiton
- c. Irrigators
 - i. Hammond Conservancy District – Navajo Reservoir contract
 - ii. San Juan River users – Bloomfield Irrigation District, Farmers Mutual and Jewett Valley ditches
 - iii. Animas River ditches
 - iv. La Plata River ditches

II. PROPOSED SETTLEMENT

1. Major Components

- a. adjudicate reserved senior priority rights for existing acreage under Fruitland and Hogback projects – no PIA claims
- b. recognize and complete NIIP as authorized by Congress in 1962 – supplied under Navajo Reservoir supply contract with junior priority (NIIP buildout continuing and is now about 75% complete)

- c. authorize and construct the Navajo-Gallup Water Supply Project to service domestic needs of Navajo Nation under a Navajo Reservoir contract (also puts Jicarilla contract rights to use and meets needs of Gallup to 2060)
- d. settlement of Navajo claims largely boils down to about 23,000 AF/year of new water allocation for the Navajo share of the NGWSP and construction of the project at a cost of about \$600 million, plus additional funds

2. Allocations of Water

- a. New Mexico's Upper Basin apportionment is at least 669,000 AF/year of depletion, including NM share of Colorado River Storage Project evap
- b. settlement respects and fits within New Mexico's compact apportionment
- c. allocations of depletions from NM's apportionment under settlement:
 - i. Navajo Nation 56% (irrigation and domestic uses)
 - ii. Jicarilla Apache Nation 5% (most leased for SJGS, Gallup)
 - iii. San Juan-Chama Project 18% (uses in Rio Grande basin)
 - iv. power plants 6% (9% with Jicarilla-SJGS lease)
 - v. non-Indian uses in SJ basin 15% (irrigation and domestic uses)

3. Joint Water Rights Administration

- a. Navajo Nation distributes water on its lands
- b. State Engineer administers diversions on San Juan, Animas and La Plata
- c. San Juan River Adjudication court has jurisdiction to enforce decree

4. Funding Requirements

- a. federal water development funds requested through settlement:
 - i. NIIP completion \$284 million (occurs w/o settlement)
 - ii. Fruitland/Hogback rehab \$ 18 million (occurs w/o settlement)
 - iii. Navajo-Gallup Project \$590 million
 - iv. ground water wells \$ 78 million (associated with NGP)
- b. additional funds requested:
 - i. Hydrographic survey \$ 5 million (uses off San Juan R.)
 - ii. Navajo Water Trust Fund \$ 50 million (half federal, half NM)
- c. Congress must approve funding and Navajo Reservoir supply contract

III. PUBLIC CONCERNS

1. Public Process

- a. draft settlement released for public review on December 5
- b. written public comments received January 15, oral comments continued
- c. negotiators are attempting to address public concerns to the extent possible or practical in the context of an Indian rights settlement

2. Summary of Public Concerns

- a. possibility of over-allocation with respect to NM's Upper Basin apportionment and related impacts on existing and authorized water uses
- b. consistency in water rights between Fruitland and Hogback project water rights and non-Indian irrigation rights
- c. impacts to non-Navajo water uses of priority calls during drought for senior Fruitland and Hogback project rights
- d. impacts of NIIP and Navajo-Gallup Project contract rights on Hammond Project, Jicarilla Apache Nation and San Juan-Chama Project contracts
- e. need for clarity in Navajo Nation ground water rights
- f. economic costs of settlement

IV. PROCESS AND SCHEDULE

1. Settlement

- a. complete and release revised draft settlement documents and responses to public comments in July
- b. allow several weeks for public inspection and decision-maker review
- c. Navajo Nation approval processes begin after public release of documents
- d. ISC meeting in Farmington in August to consider resolution approving settlement
- e. settlement executed in August if approved
- f. settlement bill introduced to Congress within weeks after execution

2. Related activities

- a. Bureau of Reclamation to complete planning documents, environmental impact statement and ESA compliances for the Navajo-Gallup Project
- b. Adjudication court to hear objections to Navajo water rights decree