

ST-11  
Navajo Settle.  
July 12, 2008



## REASONS FOR NON-NAVAJO PARTIES TO SUPPORT THE SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT AGREEMENT

### Protection of Existing and Authorized Uses

1. NIIP diversions over 353,000 af/yr require State Engineer permit. The settlement agreement recognizes an average annual diversion of up to 508,000 AF/yr for the Navajo Indian Irrigation Project (NIIP) pursuant to the 1962 NIIP authorizing legislation and the existing NIIP contract for water from Navajo Reservoir. However, the settlement agreement provides that if any portion of the NIIP right is used for purposes other than irrigation, then the State Engineer must approve a permit to allow the total diversion under the NIIP right to exceed 353,000 AF/yr, which permit would be subject to non-impairment of existing water rights.
2. Water rights fit within New Mexico's compact apportionment. Based on projections of anticipated depletions in the San Juan River Basin through 2060, the settlement resolves the Navajo Nation's water rights claims in an amount that fits within the apportionment available to New Mexico under the Upper Colorado River Basin Compact without displacing existing and authorized non-Navajo uses in the basin.
3. Federal projects supplied under junior priorities. The Navajo uses under the NIIP (270,000 AF/yr of depletion) and the Navajo-Gallup Water Supply Project (20,800 AF/yr of depletion) will be supplied from the Navajo Reservoir water supply and administered with the Navajo Dam priority date of June 1955, as opposed to a reserved priority date of 1868. Part of the water diverted by the Navajo-Gallup Project will be supplied from inflows arising below Navajo Dam with a priority date of 1968.
4. Alternate water supply. Under the alternate water supply provision of the settlement, the Navajo Nation agrees that the Hogback and Fruitland projects will refrain from requesting priority calls against upstream junior appropriators and instead will deliver up to 12,000 AF in any year of NIIP contract water in storage in Navajo Reservoir when the direct flow is insufficient to meet water demands. If this amount is exhausted in any year, then priority calls may occur in that year. Based on the hydrologic record, this provision would mean that instead of priority calls in one out of two years, the Hogback and Fruitland projects would only request priority calls in one out of every twenty years, on average.

5. ALP Protection. In the event that curtailment of New Mexico's uses is required by the Upper Colorado River Basin Compact, the Navajos agree to provide protection to New Mexico contractors of up to their 13,520 AF/yr of consumptive use authorized as part of the Animas-La Plata Project (ALP). Under this protection, the Navajos agree to forgo uses to make water available to the ALP, which has a 1956 priority date, to the same percentage supply available to the Navajo-Gallup Project uses in New Mexico.
6. San Juan-Chama normal diversion requirement of 135,000 AF/yr. The proposed legislation would clarify that the normal annual diversion requirement for the San Juan-Chama Project is 135,000 AF for the purposes of allocating shortages under federal law, which would mitigate against shortage for the project that diverts only about 105,000 AF/yr on average over the long term.
7. Navajo allottees. The Navajo Nation agrees to use its water rights to supply or offset any future uses that may be awarded in the San Juan River Adjudication to individual Navajos that have been allotted lands in the San Juan River Basin by the United States.
8. Protection of non-Navajo farmland. In the Jicarilla Apache Nation's Settlement Contract approved by Congress in 1992, the United States agreed to buy-out private water rights aggregating 11,000 AF/yr of depletion from the San Juan River stream system by 2040 to reconcile total commitments of depletion in the basin with New Mexico's allocation of Upper Basin water, or to make other satisfactory provision to reconcile those commitments with New Mexico's compact allocation. If the buy-out provision were implemented, the United States would likely seek to acquire and retire irrigation rights to approximately one-third of the remaining irrigated non-Indian farmland in the San Juan River and Animas River valleys, excluding Reclamation's Hammond Project. With the Navajo Settlement, the State of New Mexico is willing to recommend that the Hydrologic Determination signed by the Secretary of the Interior in May 2007 provides the other satisfactory reconciliation of anticipated depletions to allow New Mexico to stay within its Upper Basin allocation. As a result, the United States would no longer be required to buy-out and retire any existing private water rights in the basin to comply with the Jicarilla Settlement.
9. Hogback and Fruitland project rights consistent with Echo Ditch Decree. The Navajos agree to diversion rates of 1 cfs per 40 acres and to per-acre consumptive irrigation requirements and farm delivery requirements for the Hogback and Fruitland projects that are consistent with the rates for non-Indian ditches contained in the 1938 Hydrographic Survey report and the Echo Ditch Decree.

#### **Agreements for Water Rights Adjudication and Administration**

10. No challenge to Echo Ditch Decree. The Navajo Nation agrees not to challenge the elements of Echo Ditch Decree rights except on the basis of forfeiture, abandonment or illegal use since entry of the Decree in 1948. The Navajos may challenge any quantifications of carriage water requested for irrigation uses that are in excess of the per-acre farm delivery or diversion amounts provided in the report of hydrographic survey approved by the Decree.

11. Settlement of Farmington rights. The State has entered into an agreement with the City of Farmington regarding the adjudication of the City's primary water rights, including the City's trust rights described in the Echo Ditch Decree. The Navajo Nation has signed the agreement and the City of Farmington has agreed to support the Navajo settlement.
12. No out-of-state marketing without State consent. The provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and other federal law restrict the marketing of water between Colorado River Basin States and between the Upper and Lower Basins. State law also restricts interstate movement of water if an application to take New Mexico water out-of-state for use in another state will result in impairment or is contrary to the conservation of water within the State of New Mexico or to the public welfare of its citizens. Under the settlement, the Navajo Nation agrees to comply with state and federal law, and as an additional restriction, the Navajos agree that they will not market water out-of-state without the consent of the New Mexico Interstate Stream Commission.
13. Limit to groundwater pumping impacts on river. The Navajo Nation agrees to not pump groundwater so as to deplete the flow of the San Juan River by more than 2,000 AF/yr, unless and until the State Engineer approves a plan by which the Navajos would forgo use of surface water rights to offset any such depletion in excess of that amount. Any Navajo groundwater uses beyond those quantified in the settlement agreement also would be subject to non-impairment of existing water rights.
14. State Engineer administration/water master. Under the settlement, the Navajo Nation agrees that the State Engineer has authority to serve as the water master in the San Juan River Basin and to administer water rights in priority and in accordance with beneficial use standards as necessary to comply with interstate compact obligations and other applicable law. This includes State Engineer jurisdiction to determine beneficial uses and any needs for curtailments of use in response to priority call requests made by the Navajo Nation on behalf of the Hogback and Fruitland projects. In addition, the State Engineer shall have authority to make determinations of current beneficial uses for any changes in points of diversion and for any changes in purposes or places of use of Navajo water rights off of Navajo lands.
15. Hogback and Fruitland project conditions on use. The Navajo Nation agrees that its diversions for irrigation uses on the Hogback and Fruitland projects will be subject to the total project depletions, as well as the per-acre farm deliveries, specified in the settlement. The limit on total depletions for each project protects New Mexico's compact compliance, and is unique to the Navajo projects. The Echo Ditch Decree does not impose such a constraint on irrigation depletions by non-Indian ditches.
16. Repayment of overuse. The Navajo Nation agrees that if it inadvertently diverts or consumes more water for its uses under the NIIP, the Navajo-Gallup Project or the Animas-La Plata Project than it is entitled to under the settlement, the Navajos in the following year will repay the stream system by forgoing the diversion and use of water on these projects in amounts that are equal to the quantities of overuse.

17. Adjudication court jurisdiction. The San Juan River Adjudication court will retain jurisdiction over the rights of the Navajo Nation to divert and use water within New Mexico, including on the Navajo Reservation, under the proposed settlement agreement and decree.
18. Avoids costly and uncertain litigation. The Navajos have the largest federal reserved water rights claim in the state. Based on either a practicably irrigable acreage (PIA) standard or more modern economic development standards, the Navajos might claim rights to hundreds of thousands of acre-feet of water from the San Juan River Basin in New Mexico beyond the rights being recognized by the settlement agreement. The settlement agreement recognizes the amount of water authorized for the NIIP by Congress in 1962, existing acreage under the Hogback and Fruitland projects that is currently allotted to Navajo people for farming, and other existing Navajo uses. The “new” water from the San Juan River provided by the settlement agreement for use in New Mexico is about 22,700 AF/yr of diversion for municipal and domestic Navajo uses in New Mexico to be supplied through the Navajo-Gallup Project. Settlement with the Navajos would provide certainty to basin water users, and avoid extended litigation, which would help promote economic development in the region.

## **Water Development**

19. Marketing of Navajo water. The settlement agreement allows for the Navajo Nation to lease its reserved rights or its Navajo Reservoir water supply contract water to others for either irrigation or non-irrigation uses on and off Navajo lands in New Mexico.
20. Funding for non-Indian irrigation improvements. The settlement provides for \$10 million of State funding for ditch improvements in the San Juan Basin benefiting non-Navajo irrigators. In addition, S. 1171 and H.R. 1970 provide \$11 million in federal funding to repair non-Indian irrigation diversion and ditch facilities in the San Juan Basin.
21. Navajo-Gallup Water Supply Project. The Navajo-Gallup Water Supply Project will provide a reliable and renewable source of domestic water supply for the Navajo Nation in New Mexico and the City of Gallup. By 2040, the project is expected to serve approximately 250,000 people. The project participants currently have inadequate local ground-water supplies, and many Navajo families are hauling water. Also, the water treatment plant for the project may be used to treat non-project water for domestic water suppliers in the region.
22. Rehabilitation of Fruitland and Hogback projects. The settlement provides about \$23 million for the rehabilitation of the Navajo’s Fruitland and Hogback projects on the lower San Juan River. The rehabilitation would make operation of the projects more efficient and productive for the benefit of the Navajo irrigators, and consequently would reduce the demand of these projects on the river. The settlement specifically calls for the Fruitland project diversion rate to be reduced after the rehabilitation has occurred.