

55-17
Navajo Settle

INTER-OFFICE MEMORANDUM

TO: Mayor and City Council

FROM: Joe Schmitz, Community Development Director

DATE: July 28, 2004

SUBJECT: Revised Proposed Navajo Nation Water Rights Settlement Agreement

In addition to the legal concerns cited by the City Attorney and the City's counsel in the San Juan Basin Adjudication Case related to the Settlement Agreement, staff has begun to evaluate that Agreement in relation to the City's water supply and future water planning. Most of this effort has focused on the Depletion Schedule that was included in the documents distributed with the draft Settlement Agreement, since this is the best available information against which the Settlement Agreement can be evaluated.

We have noted some concerns regarding the structure of the Depletion Schedule and whether all of the water uses, both current and future uses, are properly reflected in the schedule. More specifically, some of the concerns we have noted involve the following:

1. The Proposed Settlement Agreement, together with the depletion schedule, will fully allocate all of the water in the basin to within 0.2% of the total available. Full allocation of the water will make accurate water accounting more critical and place management of water usage under greater scrutiny when all of the allocations are fully developed. However, we acknowledge that this is likely to occur as a result of completion of the pending adjudication.
2. The discussion documents indicate that the depletion schedule is a planning document prepared by the ISC and the numbers in it are not precise, yet it reflects full allocation of the water available in the basin to within 1,600 acre feet out of 669,400 acre feet. There is little, if any, room for error and would require any expansion of current usage, particularly for M&I purposes to come from other existing uses, such as irrigation. Even though it is considered a planning document, it is the only information source available regarding the water available within the basin and the current and projected uses of that water and against which the proposed Settlement Agreement can be evaluated.
3. The Depletion Schedule shows only 256,500 acre feet of depletions in 2060 for NIIP even though 270,00 acre feet of depletions have been allocated to the project in the Settlement Agreement. The 256,500 acre feet assumes that 5% of the project will be fallow each year. While this may be a reasonable assumption, there is nothing in the Settlement Agreement limiting the total depletions for the project in this manner or restricting any portion of this depletion from being transferred to another use that would use this water. This represents 13,500 acre feet of water that is in the proposed Settlement Agreement that is unaccounted for in the Depletion Schedule.

4. The Depletion Schedule may not make adequate provision for the additional 10,000 acre feet that could be allocated to the Navajo Nation for tributary irrigation uses and tributary recreation and livestock uses that are to be determined later by a hydrographic survey. This represents as much as 10,000 acre feet of water that is in the proposed Settlement Agreement that may be unaccounted for in the Depletion Schedule.
5. The Depletion Schedule makes no apparent provision for possible settlement of water rights claims that may be asserted by the Ute and Southern Ute Indian Tribes. We understand that the exact amount of this claim is not yet known, but with little unaccounted for water in the Schedule, there is a concern that if a claim is upheld, it would have to come from some other uses.
6. The Depletion Schedule shows 9,700 acre feet of water for current municipal and industrial uses, but no increase in this amount in future years. The commentary provided by the ISC staff indicates that this amount includes 7,200 acre feet for the City of Farmington which appears to be consistent with 1990 usage figures. However, this approach does not take into consideration the total number of water rights claimed by the City of Farmington that have not yet been put to use, but that are being banked for future use under its 40-year water plan, as allowed by State law. We believe the 7,200 feet attributed to the City of Farmington may be less than the amount of water rights that were directly adjudicated to the City in the Echo Ditch Decree and may not include other water rights held by the City.

I should acknowledge that we have begun some discussions with the State regarding these concerns, but there has not been sufficient time to fully evaluate the information recently received.

Without having a better understanding of the Depletion Schedule, it is difficult to give a definitive answer regarding the potential impact of the settlement on the City's water rights and future water planning. It should be noted that until the current adjudication is completed, the City will not know with certainty the status of all of the water rights to which we lay claim. At present, we believe we will have adequate water rights for future development, but a statement of this type must be qualified by mentioning the unknowns over which we have little control. It is our intent to keep working on the City's 40-Year Water Plan and complete it within the next six months. However, even with a completed water plan, status of the City's water supply will not be confirmed until completion of the adjudication suit.