

58-11
Navajo Settlements
November 27, 2007 -
Presented by Victor
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of the San Juan County
Ap Users to the Water
and Natural Resources
Committee

SOME ISSUES PRESENTED BY THE PROPOSED "SETTLEMENTS"
OF INDIAN WATER RIGHTS

In varying degrees, there seem to be some common characteristics shared by the proposed Indian water rights settlements in New Mexico:

1. The settlements are "conditional", meaning that they do not take effect unless certain conditions are met.
2. The conditions to the settlement are unrealistic, and unlikely to be met in full.
3. The parties to negotiate the settlements have tried to settle their differences by using other people's money, and other people's water. ("Don't tax you, don't tax me, tax that fellow behind the tree.")
4. The United States government over allocates water in favor of the tribes.
5. Many of the established water users are excluded from the real negotiations.
6. There is no one at the table representing the interests of the general public in New Mexico.
7. The threat from the so-called "Winters Doctrine" is real, but overstated.
8. The last three "settlements" have been decreed by Governor Richardson. The "settlements" provide good press conferences and photo opportunities.
9. Therefore, state employees are not free to use their best judgment, or to say what they really think. They must follow the governor's script.
10. The "settlement" may prolong the litigation.

These problems are most pronounced in the proposed San Juan "settlement".

Victor R. Marshall
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KEY INFORMATION ABOUT THE RICHARDSON - NAVAJO AGREEMENT

1. The Richardson - Navajo deal gives away one third of New Mexico surface water.
2. If the tribe gets this water, New Mexico cannot prevent the tribe from exporting it to other states.
3. It is a "conditional settlement", premised upon unrealistic conditions which will never be met. So it actually is a non-settlement.
4. The agreement is opposed by the Interior Department, the BIA, OMB, and Arizona.
5. The agreement does not settle the existing litigation. Even if passed by Congress, it will be subject to further challenges in state court.
6. The Navajo Gallup pipeline could cost \$2 billion, but the Tribe and the OSE do not want an independent cost estimate. The pipeline will never be fully funded by the federal government. The U.S. and the Tribe have not spent any money on this project, while New Mexico is spending \$15 million. On what ?
7. The Navajo tribe has not agreed to put any water in the pipeline for Gallup.
8. The agreement does not provide Gallup with a permanent water supply, at a price it can afford.
9. The pipeline will not supply water to Navajo households. [Contrary to The Water Haulers, a fake news program on KNME that was funded and secretly written by OSE and the Tribe.]
10. But water will go to powerplants: Desert Rock, PNM, Arizona Public Service, BHP Navajo Coal.
11. There is not enough wet water in the Colorado River system, so the BOR made a new 2007 hydrologic determination that "magically" finds more water, contrary to all the most recent scientific studies.
12. The Jicarilla settlement obligates the US government to buy back 11,000 acre feet, but the ISC and OSE are proposing to forgive this obligation, based on the magical new 2007 estimate by the BOR.
13. In court, the OSE, the Tribe, the U.S., and the power companies are trying to prevent discovery into how the BOR magically found new water for the settlement.
14. The Navajo non-settlement does not settle the tribe's claims for water in the Gallup area.

15. The Navajo non-settlement does not settle the Navajo water claims against Arizona, Utah, or the United States.
16. The agreement would use New Mexico's water to satisfy the obligation of the federal government to the tribe, contrary to the Colorado River compacts. The State has no obligation under the Winters doctrine to provide water to any tribe.
17. It is unclear whether the proposed agreement actually protects the San Juan-Chama supply to the Rio Grande.
18. The agreement would give the Tribe far more water than the Winters doctrine would justify.
19. The Richardson-Navajo deal evades a PIA study, which will disprove most of the Navajo claims.
20. The NIIP-NAPI project has proven to be an uneconomic use, which loses millions every year. Waste of water is not allowed by the Winters doctrine. NAPI water should be used to supply Gallup and Window Rock.
21. The NIIP-NAPI project was intended to settle the Navajo water claims.
22. The OSE is suing all of the 15,000 water users in the San Juan basin to push through the settlement, but it has refused to serve over 90% of the defendants. Many of them don't even know they are in a lawsuit, and that their water rights are at risk.
24. The OSE and the Tribe are trying to cut back on San Juan water rights that were adjudicated by the 1948 Echo Ditch Decree. The Tribe reserves the right to challenge existing water users for abandonment and forfeiture.
25. Question: Does this agreement require approval by the Legislature ?

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ONE WAY TO ANALYZE THE RICHARDSON - NAVAJO DEAL:

How much would the deal give to each Navajo on the Reservation, on average, compared to all the other people in New Mexico ?

#1. Use 2000 Census data:

The total population of New Mexico was 1,819,046. This includes 44,636 persons (Indian and non-Indian) living on the Navajo Reservation.

#2. Use this generally accepted data from the CRWUA website: “ Although San Juan County comprises only 4.5 percent of the land area in New Mexico, more than 60 percent of the state’s surface water flows through it. However, this water flowing through New Mexico is impacted by a number of Interstate Water Compacts, Federal Reserved Water Rights, Indian Water Rights and Pueblo Water Rights.”

#3. The Richardson-Navajo deal would give the Navajo Tribe 56% of the San Juan River.

#4. 56% of 60% equals 33.6% of all the surface water in New Mexico.

#5. So, each person on the Navajo Reservation would get, on average - 33.6% divided by 44,636 equals .000752756 %.

#6. That leaves 66.4% for all the other people in New Mexico - 66.4% divided by 1,774,410 equals .000037421 %.

#7. This means that each person on the Navajo Reservation would get a share of the state’s water which is 20.11 times greater than each person in the rest of the state.

#8. To put it another way, under the Richardson deal, the average non-Navajo in New Mexico would only get 4.97% as much water as the average Navajo.

Under the Winters doctrine, tribal members are only entitled to the minimum water necessary to make it feasible for them to live on the reservation.

Does the average Navajo need 20 times as much water as the average non-Navajo ?

One metric for judging Indian settlements, though not the only one, should be to calculate and compare the average water share given to each member of a tribe, compared to all the other people in the state.

Victor R. Marshall 11/26/07