

**John Whipple**

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**From:** Tom Turney  
**Sent:** Friday, October 05, 2001 8:37 AM  
**To:** dlsanders; ecoriz; jstroud; jwhipple; ngaume; pmutz  
**Subject:** FW: Navajo Water Rights

-----Original Message-----

From: scone  
Sent: Wednesday, October 03, 2001 10:46 PM  
To: alp  
Cc: bstandley; mfischer; troberts; jburnham; pmartin; whall; rassam; markl; barryh; keithh; tsluis; editor; tsoussan; mobmascik; tturney  
Subject: Navajo Water Rights

4 October 2001  
Gallup Independent

Fed's aid thwarted on Dine water

Editor's note: This is the third in an occasional series of Independent articles focusing on the Navajo Nation's track record in securing water rights.

By Larry Di Giovanni  
Staff Writer

WINDOW ROCK -- A federal negotiating team could be helping secure a San Juan River water rights settlement for the Navajo Nation. Instead the tribe has opted for a less-active federal assessment team on the advice of its lone water rights lawyer, records show.

A policy established by former President George Bush and inserted into the Federal Register on March 12, 1990, states that tribes are entitled to have the United States bargain for water settlements on their behalf, which is part of the federal government's responsibility as trustee to tribes. Most water rights settlements approved by Congress for tribes involve federal negotiating teams, which include U.S. Department of Justice attorneys.

The Navajo Nation would much prefer to have an active federal negotiating team working on its behalf over a more observation-minded assessment team, said Arvin trujillo, director of Navajo Nation Department of Natural Resources. It hasn't happened, not yet. The navajo nation is involved in settlement negotiations with the State of New Meixico in an attempt to gain the tribe's fair share of unused portions of the San Juan River.

"The reason why I would prefer a federal negotiating team is that it

lays  
the groundwork and begins to initiate settlement discussions," said  
Trujillo, Navajo President Kelsey Begaye's main point man on water  
issues.  
It shows the commitment of the federal government for resolution of a  
tribal  
claim."

A former water rights official in the Interior Department, who wished to  
remain anonymous said the Navajos and their lone water rights attorney,  
Stanley Pollack, capitulated with state Engineer Tom Turney's demand  
that  
the Navajos accept an assessment team, at least for the foreseeable  
future.  
records from the Navajo Nation and the state Engineer's Office back  
those  
statements.

Steve Cone of Farmington spent two years securing documents related to  
San  
Juan River settlement issues. The records were requested through the  
New  
Mexico Public Records Act, and Cone agreed to share them with the  
Independent.

Cone, a member of the grassroots Electors Concerned About Animas (River)  
Water, said he is concerned that the Navajos have been cheated and  
coerced  
out of a formal federal negotiating team, despite the fact that the  
Federal  
Register policy states nothing about both parties having to agree on the  
issue.

"It's more the norm that these settlement negotiations begin with a  
formal  
negotiating team (for tribes), not an assessment team," he said. The  
assessment team working on the issue was formed last December and  
maintains  
a low profile, he added.

Bowing to the state

Two letters with identical dates, September 14, 1999, were sent by  
Pollack  
and Turney to David J. Hayes, former acting deputy secretary for the  
Interior Department in the Clinton administration. Pollack acknowledged  
in  
his letter that the tribe had made requests to Interior in preceding  
years  
for funding to support settlement negotiations -- and was turned down  
because a federal negotiating team was not involved.

"The Navajo Nation has not requested a formal (negotiating) team in  
deference to the request of the state that we proceed informally to make  
an  
initial determination as to whether full blown settlement negotiations  
would  
be productive ... We understand that the (Interior) department could  
provide  
such assistance to the Navajo Nation through the auspices of an  
assessment  
team to evaluate the potential for a settlement in the San Juan Basin,"

Pollack wrote Hayes.

Pollack said that Michael Connor, former deputy director of the Interior Secretary's Water Rights Office, was "encouraged" concerning the utility of an assessment team in this situation." Connor now works as a staff member in the office of New Mexico Sen. Jeff Bingaman.

"On behalf of the Navajo Nation, I respectfully request both the appointment of an assessment team, and an appropriate level of financial and technical support to pursue negotiations with the State of New Mexico," Pollack said.

In his letter, Turney said any negotiations with the Navajo Nation that would "mature into a definite settlement plan" on San Juan River water were contingent on the formation of an assessment or "sub-negotiating team."

"I am aware that it is difficult to obtain Department of Interior support for Indian water rights negotiations without the formal appointment of a federal negotiating team," Turney said. "However, both the unique context of our discussions to date and the unique history of this basin makes this a truly special case."

A specially appointed judge has made the San Juan river adjudication case an active one. Cone says he fears that the mammoth Animas-La Plata reservoir project slated for construction near Durango, Colo., could deplete the San Juan River system to the point where the Navajos' hitherto unquantified San Juan claim will become a moot issue. The usurping of Navajo water rights in deference to a prior settlement won by two Colorado Ute tribes "is one of the hot-button issues," he said.

Pollack has not returned calls from the Independent since last December. That month he testified before two tribal committees that any assertions alleging he has helped cheat the tribe out of its water rights were libelous and reckless." D.L. Sanders, chief legal counsel for the state Engineer's Office, was also unavailable for comment.

Tribal records show that Pollack, representing the Navajo nation, and Turney were supposed to have started San Juan settlement negotiations in 1997, when the tribe was under the Alber Hale administration. However, a more recent tribal resolution showed that the negotiations started in April of this year, a span of four years with unknown results. During April's San Juan adjudication meeting in Aztec, Turney described the state's negotiations

with the Navajos as being in the "infancy" stage.

Commission snubbed

Trujillo, a member of the Navajo Nation's water rights negotiating team, said President Begaye still favors the creation of an independent tribal Water Commission to examine and assess the tribe's water rights issues, and with the ability to make recommendations.

"I think what the president has been looking at is a separate group with not only the expertise, but with the ability to make their determinations without some of the political fallout that may happen," trujillo said.

During final budget deliberations last month, Resources Committee Chairman George Arthur (San Juan Nenahnezad) and Vice Chairman Robert Billie Whitehorse (Aneth/Red Mesa/Mexican Water) effectively killed an effort to appropriate \$600,000 for the creation of the independent commission. The commission would have had a full-time staff, a Board of Directors and an operating budget. Arthur said the commission would add an extra and unnecessary layer of government to the tribe, and would not have any additional authority over what the Resources Committe now has.

Arthur and Whitehorse have placed their support for tribal water rights in the hands of Pollack, which some critics have called clinging to the "status quo" that will end up costing the tribe any chance for a "wet water" settlement on either the San Juan or Colorado rivers. The tribe currently has no quantified rights on either river, save for irrigation water to be used only for the tribal farm, the Navajo Agricultural Products Industry.

Two Navajo lawyers, who did not wish to be identified, were said by sources in Window Rock to offer Pollack assistance on water claims, and were told to "back off."

Politics aside, Trujillo said that water rights is obviously a huge and growing issue with the Navajo people, ranking in importance with the likes of a controversial plan for a tribally sanctioned entity to take over management of the Navajo Area Indian Health Service. He said it's clear that lack of water for residentail and industrial uses contiues to affect Navajos each day -- about two of every five of whom are forced to haul their water needs on a daily basis.

"You know as well as I do, if you don't have any water, you can only build so many homes," Trujillo said.

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WATER RIGHTS MEETING SET  
Staff Report

The Navajo Nation Resources Committee will meet at 10 a.m. Thursday inside the Hogback Chapter House near Shiprock to discuss with chapter officials and the public the tribe's ongoing water settlement issues on the San Juan river. Expected to attend and meet with the committee is Stanley Pollack, the tribe's lone water rights lawyer.

A similar meeting was held Tuesday at the Bodaway/Gap Chapter in the tribe's Western Agency, concerning the tribe's lack of Colorado River water rights.