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"There are three kinds of lies: lies, damned lies, and statistics." -- attributed to Benjamin Disraeli

"Therefore, to comply with the proposed Navajo settlement, New Mexico needs the Secretary to redo the hydrologic determination and, *magically*, find more water in the Upper Basin," Kuhn, General Manager of the Colorado River Water Conservation District, said. [emphasis added]

Groups: There's not enough water for Gallup

Water users challenge BOR study on water for Navajo-Gallup pipeline

By Kathy Helms
 Diné Bureau

<http://www.gallupindependent.com/gu/october11/1107/kh BORstudy.htm>

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WINDOW ROCK — Two San Juan River water user groups have filed a motion in the 11th Judicial District Court questioning a recent determination by the Bureau of Reclamation that enough water exists in the Upper Basin of the Colorado River to support the Navajo-Gallup Water Supply Project.

Albuquerque attorney Victor Marshall, representing the San Juan Agricultural Water Users Association and the Hammond Conservancy District, filed a motion Oct. 1 for limited discovery concerning BOR's 2007 hydrologic determination, saying it appears to be erroneous and the errors need to be identified and corrected before the pipeline settlement is implemented.

"It makes no sense to build a pipeline without wet water to put in it," Marshall said.

The 1962 Navajo Indian Irrigation Project Act requires the Secretary of the Interior conduct a water study, or "hydrologic determination," to ensure that enough water is likely to be available for use in the state of New Mexico before new contracts for storage permits in Navajo Reservoir are issued. The reservoir would supply the Navajo-Gallup pipeline.

Marshall said that by including this provision in the 1962 act, Congress recognized "the dire scarcity of water in the Colorado River" and its intent was to be absolutely sure there is enough "wet water" to satisfy the needs of existing users and any new project.

When the pipeline was proposed by the New Mexico State Engineer, he said, it was recognized by knowledgeable parties along the Colorado River that the proposed settlement was problematic due to lack of water.

Marshall cited an April 2006 memorandum from Eric Kuhn of the Colorado River Water Conservation District to the group's board of directors in which Kuhn stated that New Mexico has a problem because it already has allocated its full share of the water available under the 1988 hydrologic determination to other uses.

"Therefore, to comply with the proposed Navajo settlement, New Mexico needs the Secretary to redo the hydrologic determination and, magically, find more water in the Upper Basin," Kuhn said.

Because New Mexico is only entitled to an 11.5 percent pro rata share of Upper Basin water, the BOR determination must find that the water supply for the Upper Basin has somehow increased by 173,913 acre-feet, in order to increase New Mexico's supply by 20,000 acre-feet, Marshall said, to supply the pipeline.

On June 8, 2007, Secretary of the Interior Dirk Kempthorne signed a new hydrologic determination concerning the additional 20,000 acre feet of depletion proposed for the pipeline.

"On its face, the 2007 determination is difficult to explain. It seems to find that the supply of water in the Colorado River has increased since the last hydrologic determination in 1988. This is contrary to virtually all of the scientific studies since 1988," Marshall said.

"Those studies find that the amount of water in the Colorado River system is shrinking, or was overestimated to begin with. There is no scientific study or scientific peer review supporting the BOR's new determination."

Marshall argues that without additional information, it is impossible for anyone to evaluate the 2007 determination, because BOR has not revealed or explained the changes in its formula, the data fed into the formula, nor the scientific evidence to support the changes from the 1988 determination.

"It appears, although one cannot be certain, that the BOR has found additional water, on paper, by recalculating evaporation loss," reasoning that because there is less water in the reservoirs, there is less evaporation, therefore there is more water in the Colorado River system, he said.

"If the BOR 2007 determination is wrong, then the consequences are catastrophic ... and could create an environmental and economic disaster for all of New Mexico and the persons who depend on the San Juan River, and for the Colorado River Basin states as a whole."

Navajo Nation water rights attorney Stanley Pollack said Tuesday that though Marshall has filed the motion for limited discovery, "he's not entitled to take discovery because the hydrologic determination is not part of the (San Juan) general stream adjudication."

"He's trying to attack the settlement any way he can, but the settlement is not before the court, so it can't have an effect on the settlement. There's a zero percent chance that the court is going to grant these types of motions, not to mention this is the second time that he's tried this.

"Back when we were preparing the settlement, before we even had a settlement agreement, these same people came to court with a motion to enjoin the state from executing the settlement agreement. Of course, that was denied.

"As part of that they also said, 'We want to take discovery of what's in the settlement.' And we were saying, 'I'd like to take some discovery too, because we don't have a settlement, so I'd like to know what's going to be in it as well.'

"Basically, the court said the settlement is not in front of the court, you can't do discovery. So they've already tried this once and they lost. Now they're trying it again. This is what some judges might refer to as 'contemptuous behavior.' They're filing these things for political purposes."

Pollack said Navajo Reservoir, like NIIP and the Animas-La Plata Project, are federal projects and, thus, "water users." The reservoir is a water user with a priority date of 1955, the year the Secretary of the Interior acquired a permit from the New Mexico State Engineer to build the reservoir.

"That's a relatively junior right on the river, but it's for the purpose of storing water and actually provides the water supply for all these other federal projects like NIIP, Navajo-Gallup, Hammond Irrigation District, and a couple others.

"This idea about protecting existing water users has nothing to do with the hydro-determination. It's not a determination of the amount of water in the Colorado River, it's not a protection of the downstream users," he said. The downstream users who have a senior right to 1955 are protected because those rights are met prior to water

being placed into storage.

Hammond Conservancy District has run-of-the-river rights and storage rights, he said. "The San Juan Ag users is a collection of folks that use agricultural water in the San Juan. It's not real clear whether they have any water rights at all.

"We've been fighting with these guys forever, saying they don't really have standing. The water users that have water permits have standing, but an association doesn't have standing because they don't own water rights, per se. This whole thing is just really frustrating," Pollack said.

Water pipeline has one more small kink

By Bill Donovan
Staff writer

http://www.gallupindependent.com/2007/october/101007bd_wtrppelne.html

GALLUP — After more than three decades of discussion, officials for the city of Gallup and the Navajo Nation are at the brink of a historic memorandum of understanding in connection with the long-proposed Navajo-Gallup Water Pipeline.

It has been accepted by the tribe's powerful Intergovernmental Relations Committee and is now waiting for the signature of Navajo Nation President Joe Shirley Jr.

But it may have a hard time getting approved by the Gallup City Council, at least in its present form.

When it came up for discussion Tuesday during a work session of the council, Mayor Harry Mendoza said he had a number of questions about just how fair the MOU is to Gallup, and other members agreed that there needs to be more discussion until the city council can give its approval to the document.

The MOU sets forth a series of agreements between the tribe and the city on matters dealing with the pipeline. It's not a final agreement — that won't happen until such things as how much each side will pay of the proposed \$800 million project is set — but it does set forth certain areas of agreement in connection with the complex proposal.

The main problem that Mendoza and others on the council had were sections of the MOU that deals with the tribe's role in helping Gallup secure a water source.

The pipeline will bring water from the San Juan River to Gallup and various Navajo communities in New Mexico and eastern Arizona.

The MOU states that "the Navajo Nation is committed to working with the city of Gallup to find a surface water supply for the project."

The agreement also adds that the city's water most likely will come out of the Navajo Reservoir Supply Contract that the tribe and the Secretary of the Interior are now finalizing as part of the San Juan River Settlement. The Navajo Nation is anticipating getting 22,654 acre-feet of water as part of the settlement and the city would be allowed to get up to 7,500 acre-feet a year.

The provision in the agreement that Mendoza and others on the council are leery about says that the tribe and the city agree to negotiate a subcontract of the water from the tribe's contract for water supplies not to exceed 7,500 acre-feet per year for a term of 25 years "following completion of the project."

In other words, this agreement will not be signed until the project is completed and the water is ready to be delivered to the tribe and the city.

But this will put the city in a very precarious situation, Mendoza said.

The project will be done, the water will be ready to flow and at that point, he said, the tribe won't need the city's help any longer. What's to say that the tribe and the city can't reach an agreement, which will leave the tribe with a pipeline and the city without a water source.

"We need to negotiate that contract before the pipeline is built," Mendoza said.

Mendoza and others on the council said that before the city approves the MOU, a great deal more discussion needs to be done on this provision as well as other areas that the city has concerns about.

Councilor Bill Nechero urged the council to hold a special session in the near future and invite people who have been involved in the pipeline discussions to answer some of the council's concerns and Mendoza agreed that this was a good idea. No date has been set for the special session yet.