

Navajo Settlement

Jim Dunlap, ISC Chairman, delivered this timeline to the San Juan County Fair and Livestock Bureau at its annual meeting on October 24, 2007.

Timeline of the San Juan Agricultural Water Users Association's Participation in Activities Relating to the Navajo Nation Water Rights Settlement

Introduction: Settlement discussions have been ongoing between the State and the Navajo Nation regarding the Navajo Nation's water rights claims for approximately 10 years. The settlement discussions occurred between the Navajo Nation and the State because the only water rights being discussed were the Navajo Nation's water rights. The following timeline provides a summary of the San Juan Agricultural Water Users Association's participation in events relating to the Navajo Settlement. In addition to the SJAWUA, other non-Indian parties have been involved such as Bloomfield Irrigation District and Hammond Conservancy District, the cities of Bloomfield, Aztec, Farmington, and Gallup, BHP, PNM, and San Juan-Chama contract holders such as the cities of Santa Fe and Albuquerque. All parties with standing in the adjudication court will have an opportunity to object to the Navajo Settlement when it is presented to the Court for approval through entry of the Partial Final Decree.

The San Juan Agricultural Water Users and other non-Indian participants have had an opportunity to be involved in the Navajo Settlement activities from a legal perspective (filing motions and otherwise participating in Court proceedings), an administrative perspective (providing input to the State and receiving information from the State regarding settlement terms), a political perspective (correspondence and meetings with federal and state legislators and through congressional testimony), and a public perspective (submitting newspaper editorials and participation in public forums). Certain input from the Association has been incorporated into the terms of the settlement, and the Association has acknowledged that certain of its members' concerns have been met. Other suggestions from the Association have not been accepted, and the Association, or the members who own water rights, may raise objections to the settlement when it is presented to the adjudication court for approval.

Timeline:

October 23, 2003 – The Association filed a motion with the San Juan River Adjudication court for limited discovery of the status and approval process for a water rights settlement agreement, and requested any documents containing agreements reached and proposed resolutions or legislation to approve the settlement. The Court denied the motion.

December 5, 2003 – Initial draft settlement documents, including a draft settlement agreement, a draft proposed decree to be submitted to the Adjudication court for its consideration, and draft legislation for Congress to approve the settlement, were completed and released for public review and comment.

December 15, 2003 – The State Engineer and ISC held a public meeting on the draft settlement at the Farmington Civic Center, and made a presentation describing the main elements of the draft settlement documents and terms. The public asked questions and made comments on the draft settlement, and agricultural interests, including the Association, expressed concerns regarding depletion schedules, priority dates, and the Echo Ditch Decree. The Association stated that it was pleased with the Navajo Nation's willingness to settle their claims without litigation, but that it needed time to review the draft settlement documents.

- January 5, 2004 – ISC representatives met with the Association’s directors to discuss the December 5, 2003, draft settlement terms and documents. Concerns raised by the Association and discussed included: (1) consistency with State law; (2) the basis for irrigation depletion calculations, including irrigated acres; (3) consistency between quantifying Navajo and non-Navajo irrigation rights; (4) State Engineer control over transfers of Navajo water rights; (5) protection of the Hammond Conservancy District’s water rights; (6) the subordination of NIIP and Navajo-Gallup Project contract rights to a 1955 priority for water rights administration purposes; and (7) concerns regarding the size of the NIIP.
- January 13, 2004 – ISC representatives attended the annual meeting of the Association to make a presentation on the December 5, 2003, draft settlement, and to answer questions and engage in discussions regarding the draft settlement. The Association opined that: (1) irrigation uses should be quantified using the same approach for Navajo and non-Navajo ditches; (2) the State should retain jurisdiction for water rights administration; (3) the Hogback project acreage should not include acres not historically irrigated; and (4) the non-Indian irrigation depletions used in New Mexico’s schedule of anticipated future depletions is not correct and should not be a basis for quantifying the rights of Association constituents.
- January 14, 2004 – The Association submitted written comments to the ISC regarding the December 5, 2003, draft settlement. The Association’s comments raised concerns relating to the description of certain State Engineer permits, ten-year averaging of the NIIP right, irrigation depletion calculations, maintenance of state control of transfers of use off reservation, split-priority request for the Hogback project.
- March 9, 2004 – The Navajo Nation and ISC representatives held a public meeting at the Bloomfield Cultural Center to discuss the December 5, 2003, draft settlement with non-Navajo stakeholders, including the Association. The Association stated opinions about: (1) the Hogback farmland acreage and priority date; (2) the Fruitland project diversion rights; (3) consistency in how depletion rights are handled between Navajo and non-Navajo ditches, and over 10-year averaging of diversions for the NIIP; (4) State jurisdiction for water rights administration; and (5) the Navajo-Gallup Project priority date.
- March 17, 2004 – The ISC held a regular meeting at the Farmington Civic Center and heard public comments on the draft Navajo Nation water rights settlement. Mike Sullivan made remarks to the ISC on behalf of the Association.
- April 1, 2004 – ISC representatives met with invited stakeholders at the City of Farmington Municipal Building to discuss the status of negotiations on the proposed settlement, including whether or not certain of their comments could be effectively addressed through further negotiation and including proposals for changes to the settlement documents to address some of the concerns of the non-Navajo interests. Michael Sullivan and James Rogers attended the meeting on behalf of the Association.
- July 9, 2004 – Revised draft settlement documents, including a revised draft settlement agreement, a revised draft proposed decree to be submitted to the Adjudication court for its consideration, and revised draft legislation for Congress to approve the settlement, were released for public review and comment. Also released by the ISC to the public was a document of written responses to all

issues raised by the public comments that the ISC had received relating to the initial December 5, 2003, draft settlement.

July 21, 2004 – The Association filed motions with the San Juan River Adjudication court for discovery relating to Practically Irrigable Acreage (PIA) for the Navajo Nation for consideration in the water rights settlement process, for postponement of the settlement process, and seeking information on irrigation uses under the Hogback and Fruitland projects. The Court denied the motions through order dated August 30, 2004. The Partial Final Decree will be subject to an inter-se process that all parties will be entitled to participate in.

August 2, 2004 – The State Engineer, ISC representatives and the Navajo Nation held a public meeting regarding the July 9, 2004, revised draft of the settlement at the Farmington Civic Center, and made a presentation describing the main elements of the revised draft settlement documents. The presentation described changes made to the December 5, 2003, initial draft settlement documents, including changes to address some of the concerns of the Association. The public asked questions and made comments on the revised draft settlement.

August 9, 2004 – A memorandum from John Whipple, ISC staff, to the Association's Board was distributed to and discussed with the board members. The memorandum describes how certain changes to the draft settlement documents addressed concerns raised by the Association regarding the proposed settlement. The memorandum notes that: (1) the Navajo Nation agreed to waive objections to the priority dates and quantifications of water rights adjudicated by the Echo Ditch Decree, and may challenge previously decreed rights only on the basis of forfeiture or abandonment since the decree was entered, as was requested by the Association; (2) the Navajo Nation would not agree to the Association's request for a split priority for the Hogback project diversion rights, but the Navajos did agree to add provisions to the settlement documents to reduce the frequency of possible priority calls to the benefit of irrigation and non-irrigation users by requiring the Navajo Nation to use some of its NIIP water at Hogback without cost to non-Navajo users, which partially addresses the Association's concerns; and (3) the Navajo Nation would not agree to the Association's request for a 1955 priority for its uses under the Navajo-Gallup Project, but agreed that the Navajo-Gallup Project right will be administered with a 1955 priority.

August 18, 2004 – The ISC held a regular meeting at the Farmington Civic Center, and received public comments regarding the July 9, 2004, revised draft Navajo Nation water rights settlement. Questions and comments related to the Echo Ditch Decree water rights, administration of NIIP diversion rights, PIA and other reserved rights claims, and contractual protections against exporting uses out of state in addition to legal compact and state law impediments. Mike Sullivan presented comments on behalf of the Association relating to: (1) State Engineer administration of diversion rights of non-Indian ditches; (2) the use of NIIP water at Hogback; (3) the priority for the Hogback project; (4) hydrographic survey issues; (5) and a complaint that the Association was not a party at the negotiation table, although it had been active in asserting its positions regarding the settlement. Mike Sullivan and Jim Rogers answered questions from the ISC commissioners regarding the Association's positions.

December 10, 2004 – Final draft settlement documents, including a final draft settlement agreement, a final draft proposed decree to be submitted to the Adjudication court for its consideration, and final draft legislation for Congress to approve the settlement, were released for public inspection.

The ISC also released responses to all issues raised by the public comments that the ISC had received on both the December 5, 2003, initial draft settlement and the July 9, 2004, revised draft settlement, including the issues raised by the Association.

January 12, 2005 – The ISC held a regular meeting at the Farmington Civic Center and received comments on the final draft settlement documents. ISC staff made a presentation and answered questions posed by ISC commissioners regarding changes to the July 9, 2004, draft settlement documents, and highlighted issues raised by non-Navajo interests that were addressed, either in whole or in part, through the settlement negotiation process. Mike Sullivan made remarks to the ISC on behalf of the Association noting that: (1) the Association met with the ISC in various meetings, but was not involved in the negotiation sessions between the State and the Navajo Nation; (2) the Association was effective in causing some changes to the settlement, but did not get the split priority that it requested for the Hogback project. The ISC passed a resolution approving the terms and provisions of the December 10, 2004, final draft settlement agreement.

April 19, 2005 – New Mexico Governor Richardson and Navajo Nation President Shirley signed the final settlement agreement.

October 20, 2006 – Senator Bingaman sent letters to interested parties, including the Association, asking for comments regarding a draft of the settlement legislation.

December 7, 2006 – Senator Bingaman (S. 4108) and Representative Udall (HR 6436) introduced the Northwestern New Mexico Rural Water Projects Act to authorize and fund the settlement.

January 29, 2007 – The Association sent a letter to Senator Bingaman with comments on the settlement legislation and the settlement. Senator Bingaman met with representatives of the Association and discussed their concerns, which were: (1) the settlement takes water away from existing water uses; (2) would result in damage to the Colorado River ecosystem; (3) threatens the San Juan-Chama Project; (4) competes with Indian rights settlements in the Rio Grande Basin for water and funding; (5) does not fund extensions of existing regional water distribution systems; (6) incorrectly applies federal reserved water rights doctrine and is not supported by a PIA analysis; (7) does not resolve water rights for the State Land Office or the Ute Mountain Ute Tribe; (8) does not resolve the Association's Hogback and Fruitland project diversion right concerns; (9) does not equitably distribute the State's surface water on a per-capita basis; (10) does not settle the Navajo Nation's water rights in Arizona and Utah; (11) the United States should first implement its commitment under the Jicarilla settlement to buy-out and retire 11,000 acre-feet of private depletion rights in the San Juan Basin before settling the Navajos claims; and (12) that the Navajo-Gallup Project is uneconomical and will never be fully funded.

March 25, 2007 – Mike Sullivan, Chairman of the Association, writes an op-ed piece in the Albuquerque Journal claiming that: (1) there is not enough water in the San Juan River for the settlement; (2) the Navajo Nation under the settlement would control too much of the State's surface water to the detriment of citizens throughout New Mexico who then could not access it; (3) the Navajo Nation will sell New Mexico's water for uses in Arizona, California or Nevada; (4) NIIP wastes water because NAPI is a financial failure; and (5) the Navajo Nation and everyone else in the State should share the State's surface water in equal proportions.

- March 28, 2007 – ISC staff met with representatives of the Association, the La Plata Conservancy District and New Mexico's Congressional delegation at San Juan Community College to discuss the Association's concerns regarding the settlement and answer questions regarding the settlement and the draft hydrologic determination.
- March 30, 2007 – UNM adjunct professor on Indian water law, Tim Vollman submits an op-ed article in response to Mike Sullivan's March 25 editorial.
- April 8, 2007 – State Engineer, John D'Antonio, Jr. submits an op-ed article in response to Mike Sullivan's March 25 editorial.
- April 19, 2007 – Legislation to authorize the Navajo-Gallup Project and approve the settlement agreement is introduced by Senators Bingaman and Domenici (S. 1171) and Representative Udall (HR 1970).
- May 2, 2007 – ISC staff participated in the Four Corners Irrigation Workshop at the Farmington Civic Center and responded to questions regarding the settlement and the draft Hydrologic Determination.
- June 12, 2007 – Victor Marshall, attorney, submitted a public records request relating to the Water Haulers documentary. On June 15, 2007, the OSE/ISC produced responsive records. Additional documents requested were produced on October 5, 2007.
- June 27, 2007 – The Senate Energy and Natural Resources Committee held a hearing regarding the settlement legislation (S.1171). The Association submitted testimony to the committee for the record reiterating many of the claims made in the January 29, 2007 letter to Senator Bingaman and in Mike Sullivan's March 25, 2007 opinion piece.
- August 28, 2007 – The Association and Steve Cone file a lawsuit relating to the documents produced in response to the documentary the Water Haulers. The OSE/ISC have moved to dismiss the lawsuit.
- August 31, 2007 – Steve Cone submitted a public records request relating to the Water Haulers documentary. The ISC/OSE responded to the request on September 6 producing all requested documents.
- September 29, 2007 – Steve Cone submitted a public records request relating to the 2007 Hydrologic Determination. The ISC/OSE responded to the request on October 4 and 15 producing all requested documents.
- August 29, 2007 – Victor Marshall, attorney, made a presentation to the Interim Committee on Water and Natural Resources Committee of the New Mexico legislature raising concerns similar to those raised in the letter to Senator Bingaman and in Mike Sullivan's March 25 editorial.
- October 1, 2007 – The Association filed a motion with the San Juan River Adjudication court for discovery relating to the 2007 Hydrologic Determination approved by the Secretary of the Interior. As of October 22, 2007, the Court has not ruled on the motion.