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Navajo-Gallup Water Supply Project

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Navajo-Gallup Water Supply Project

In March of 2009, the Congress passed and President Obama signed into law the “Omnibus Public Land Management Act of 2009.” Several New Mexico projects are authorized in the law, notably the authorization of the Navajo-Gallup Water Supply Project (Project), a part of the Navajo Nation water rights settlement for claims in the San Juan River Basin within New Mexico.

The Project is a major endeavor for northwestern New Mexico. In one sense, authorization of the project culminates years of work. In another sense, it means the beginning of many additional years of effort. There is much to be done to construct and carry the project forward to reality, including work for the federal government, the State of New Mexico, the Navajo Nation, and the city of Gallup.

When complete, the project will provide 37,376 acre-feet of water annually from the San Juan River Basin in New Mexico to the city of Gallup (Gallup); more than 43 Navajo chapters, including Fort Defiance service area in Arizona; and the Teepee Junction area of the Jicarilla Apache Nation. These areas rely on rapidly depleting groundwater of poor quality. Projections have this water supply supporting a future population of about 250,000 people by the year 2040.

In view of the Project’s magnitude, this article reviews only its major aspects.

Need for the Project

Navajo communities and Gallup rely on a disappearing groundwater supply. Many Navajo families must truck their water for many miles. Other water sources are needed to meet both current and future domestic, municipal, and industrial requirements within the service area. The Project will bring a reliable supply of water to these areas by means of diversions and pipelines from the San Juan River.

“It’s hard to believe that in this country at this time in our history we still have people having to haul water every day, but that’s the unfortunate reality in parts of our state.”

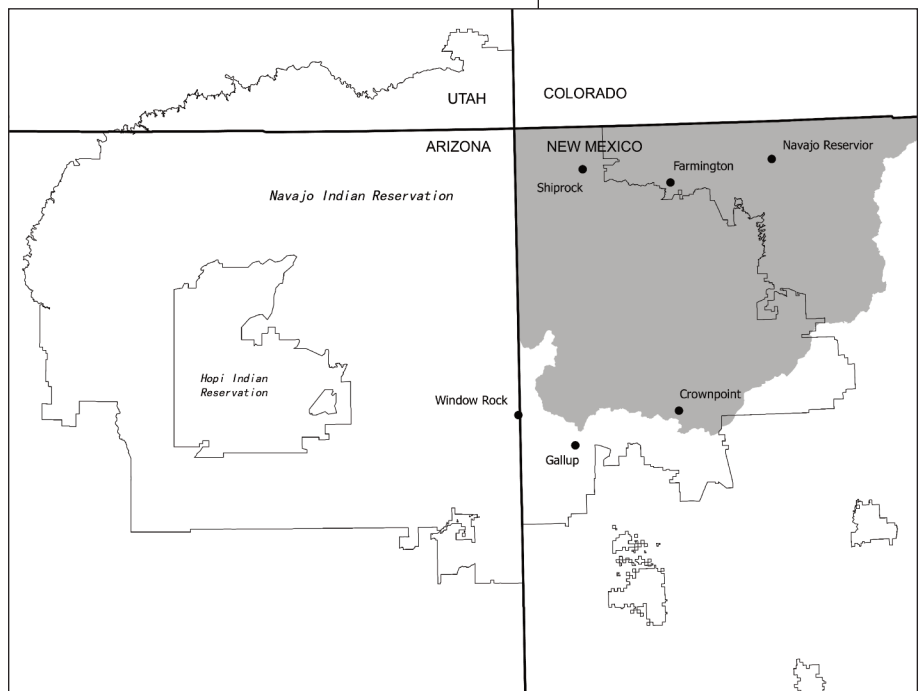
Senator Jeff Bingaman,
Albuquerque Journal,
December 9, 2010

“Our underground water is being used up. It is not replaced from natural sources. City water shortages in the not-too-distant future are predicted by experts.”

City of Gallup
2012 Annual Water
Quality Report

Navajo Nation and San Juan Basin in New Mexico

Navajo Nation Department
of Water Resources



The United States, for the Navajo Nation, has asserted a substantial claim to water in the San Juan, with a priority date of June 1868 under the *Winters* doctrine.

In the Navajo Nation a growing population, inadequate infrastructure, and widely dispersed communities and households have created an urgent need for an accessible, adequate water supply. Between 30 and 40 percent of households on the Navajo Reservation do not have direct access to public water systems, and the tribal population is expected to increase to nearly 500,000 by 2040.

Meanwhile, the city of Gallup's groundwater is being mined; that is, it is being depleted faster than it is being recharged. In addition, other water available for city use does not meet secondary drinking water quality standards. Severe water shortages are anticipated within the next decade. Although Gallup stands atop geologic formations that contain water, only a tiny fraction of that water can affordably be accessed for municipal needs. The city has a well field several miles to the north, at Ya-Ta-Hey, where the water table is declining by twenty feet per year and water quality is worsening. Local efforts are being made to protect the supply and improve the system, but Gallup's citizens have become painfully aware that if something is not done soon, their water source is likely to go dry in the next ten to fifteen years.

The Jicarilla Apache Nation also needs a reliable, high-quality water supply in areas outside Dulce, in north-central New Mexico, so that tribal members can continue to diversify their on-reservation economy and live in a more dispersed manner—as they did traditionally.

San Juan River Water Rights

The San Juan River, an “Upper Basin” tributary of the Colorado River, drains nearly 16 million acres in the Four Corners area before flowing into Lake Powell. Under the Upper Colorado River Compact of 1948,

New Mexico received 11.25 percent of the Upper Colorado River Basin's yield. On average, this percentage amounts to 669,000 acre-feet available for consumptive use annually. In times of drought, however, the amount available is less. This allocation is a relatively large share of the river supply, when compared to the allocations of other states on the Colorado, inasmuch as only 3.25 percent of the river's flow originates in New Mexico. The state's allocation is intended, in part, to fulfill the water rights of the Navajos and other Native Americans in the region.

Many of the non-Indian surface water claims in the San Juan River basin in New Mexico were adjudicated in the Echo Ditch decree of 1948. On behalf of the Navajo Nation, the United States filed a Statement of Claims in January 2011 based on a substantial *Winters* doctrine claim to water in the San Juan River—over 900,000 acre feet annually with an immemorial priority date. The right and claim are based in federal law. The amount claimed was based on “practicably irrigated acreage” (PIA) and the priority date was the date of the Navajo Reservation's creation. Because the Navajo Nation was not a party to the Colorado River Compact of 1922, its claim remained unquantified although its rights are clearly senior to all other rights on the river. This lack of quantification has cast a shadow of uncertainty over all water rights in the San Juan system. In 1995, however, the Navajo Nation and the State began to negotiate a settlement rather than litigate to resolve the issues among the various water users in the region. For more information, please see the chapter “American Indian Water Rights” in this edition of *Water Matters!*.

Settlement Agreement

The Navajo Nation and New Mexico entered into negotiations in 1995 and reached the Navajo Nation Water Rights Settlement Agreement for the Nation’s water rights in the New Mexico portion of the San Juan River in April of 2005. The United States Congress ratified the Settlement Agreement in the 2009 Northwestern New Mexico Rural Water Projects. The settlement agreement was subsequently reconciled with the Act and signed by all the settlement parties in December of 2010. The adjudication court entered the final decree on November 1, 2013. It has since been appealed.

The Settlement’s centerpiece is the Project which involves the construction of pipelines and treatment plants for water from the San Juan River. The Nation also negotiated for tribal water development projects. In exchange, it released claims to water that might otherwise displace non-Indian users in the San Juan stream system. The Settlement was meant to resolve the Navajo Nation’s water rights without litigation while supplying water to Gallup and the Teepee Junction area of the Jicarilla Apache Nation.

Amount of Water

The San Juan River Settlement allocates water from the San Juan River to the Navajo Nation for its lands in New Mexico. The settlement includes many uses already allocated to the Nation. The only major new water use is the amount designated for the Project. The Project will deplete approximately 23,120 acre-feet of surface-water annually from the San Juan. Gallup does not hold water rights in the San Juan River system and must lease or buy its water from others, possibly the Jicarilla Apache or Navajo Nations.

The Authorized Project

The Navajo-Gallup pipeline project will divert water from the San Juan River at two points and deliver it southward through two lengthy pipelines (see map on the next page).

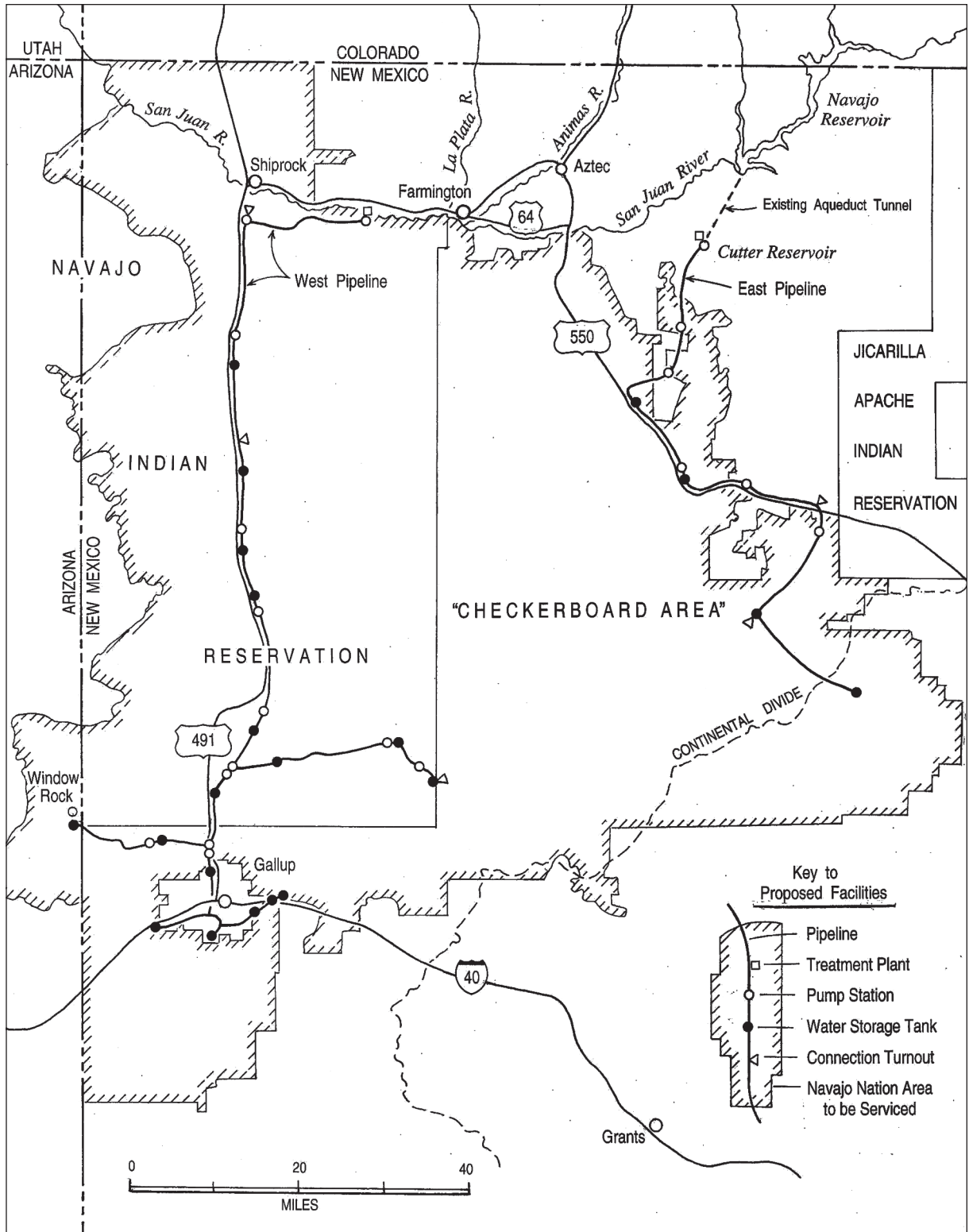
The eastern pipeline will begin at the existing Cutter Reservoir, an adjunct of Navajo Reservoir, and will convey water southward, partly alongside Highway 550, to serve nearby Navajo communities and the southern part of the Jicarilla Apache Nation. The western pipeline will divert water from the San Juan River at the existing Public Service Company of New Mexico San Juan Generating Station Diversion and will convey water alongside Highway 491 south toward Gallup. Here, too, Navajo communities will be served, as well as the city. A water purification plant will be built at the head of each pipeline.

A spur pipeline will serve Window Rock, Arizona, which is the capital and one of the larger communities of the Navajo Nation. The water delivered to Window Rock, however, will be accounted for as Lower Colorado River Basin water reserved for the Navajos by the 2004 Arizona Water Settlements Act, or as water of Arizona’s Upper Basin allocation, not New Mexico’s.

Costs

In 2008, the cost of the pipeline project was estimated at \$870 million. The Omnibus Act authorized that amount for appropriation and expenditure by the U.S. Bureau of Reclamation (Reclamation) as the project is constructed. The project is expected to have an indexed cost of around \$1 billion— based on October 2011 prices—when it is completed in 2024. Gallup and the Jicarilla Nation are obligated to repay portions of the construction cost over time. The State’s cost share is \$50 million, most of which has already been contributed.

The Navajo-Gallup pipeline project will divert water from the San Juan River at two points and deliver it southward through two lengthy pipelines.



Navajo-Gallup Water Supply Project

By Jerold Widdison for the Utton Transboundary Resources Center.

Adjudication

In 2013, the adjudication court considered objections to the Settlement Agreement and proposed decrees. The objections addressed the quantity of water allocated to the Navajos, the hydrological determinations regarding the water availability in the stream system, and the ability of the Nation to market water outside of New Mexico. In response to the initial objection regarding water availability, the New Mexico Interstate Stream Commission (ISC) clarified the hydrologic analysis and indicated that there is a 1-in-20 chance of a shortage that would necessitate a priority call. With regard to the objection about possible marketing strategies, the 2009 Omnibus Act forbids such transactions without approval from the New Mexico State Engineer and ISC water master. On November 1, 2013, the adjudication court entered the decrees adjudicating Navajo Nation's water rights in the San Juan River Basin in New Mexico, rejecting the objections to the Settlement Agreement and proposed decrees. In the first half of 2014, several parties filed appeals to the adjudication court's decision.

Legislation and Funding

Early on, New Mexico's senators had difficulty finding funding for the pipeline project. For several years, Senators Bingaman and Domenici (both now retired) worked to shepherd legislation through Congress to fund the Navajo, *Aamodt* and Taos (*Abeyta*) water right settlements. In 2007, Senator Domenici introduced the Reclamation Water Settlement Fund that would authorize a ten-year funding schedule to generate an estimated \$1.37 billion to pay for the three settlements after they were signed into law. In 2009, Senator Bingaman included this funding mechanism in the Omnibus Public Land Management Act of 2009. When the Act became law it established the Fund that will be used to implement American Indian water right settlements; approved the Navajo New Mexico San Juan Basin settlement; and authorized the Navajo-Gallup Water Supply Project in the Northwestern New Mexico

Survey work began in 2010 and construction must be substantially completed by 2024.

Rural Water Supply Project Act. The Reclamation Water Settlement Fund monies will be available, if needed, for the Navajo-Gallup project in 2020.

The Omnibus legislation authorized \$870 million to be appropriated from FY2009 through FY2024 (subject to indexing for inflation). The Claims Resolution Act of 2010 authorized the transfer of funds from the Treasury to the Secretary of the Interior for deposit into the Reclamation Water Settlements Fund. From FY2010 through FY2013, Reclamation received \$72.8 million in appropriated funds for the Project. In FY2014, it received \$60.5 million. The FY2015 President's budget request to Congress includes a request for \$81 million. Other funding will come from Gallup, the Jicarilla Apache Nation, and the State of New Mexico. The United States has entered into cost-sharing agreements with each of these entities

State Funding: The federal legislation requires a cost-share or contribution of \$50 million from New Mexico. The State may also elect to contribute an additional \$10 million for non-Indian ditch rehabilitation.

In 2005, the state legislature created the Indian Water Rights Settlement Fund to provide funding for the State's contribution to present and future Indian water right settlements. In 2007, the legislature appropriated \$10 million for the Fund, but in 2009, withdrew the funds and authorized Severance Tax Bonds in the same amount. The ISC certified the sale of the \$10 million in bonds to the Board of Finance in June of 2011. In 2011, the legislature appropriated \$15 million and, in 2013, another \$10 million. Any amount remaining unappropriated by the State in 2017 for this Settlement will be indexed for inflation.

Survey work began in 2010 and construction must be substantially completed by 2024.

As of 2014, the State has provided \$13.6 million in cash contributions which it has requested that Reclamation credit toward its cost-share requirement. In addition, Reclamation is reviewing the State's request for credits of \$15.8 million it has expended for completed work that reduces the cost of the Project. These credits represent State appropriations made previously for clean water supplies for Navajos and non-Indians in the "checkerboard" area.

Implementation and Construction

It is said that once Congress approves and the President signs a settlement, the real work begins. To implement the settlement, the agreement must be conformed to the federal legislation; many agreements must be executed; construction must be completed; and the state adjudication court must enter final decrees.

As of 2014, all the pre-construction work has been completed. Department of the Interior Secretary Ken Salazar signed the Environmental Impact Statement in 2009. The final Settlement Agreement, conformed to the requirements of the 2009 Omnibus Act, was signed by the settlement parties in 2010. Many of the required agreements were executed in 2011, including the cost-share agreement between the state and the United States. The state adjudication court completed the inter se phase of the adjudication of the Nation's rights and entered the partial final decree and supplemental decree on November 1, 2013.

Reclamation is overseeing the Project construction. It began survey work in 2010 and Reclamation-funded construction will be in progress by the end of 2014 on the Cutter Lateral and the San Juan Lateral. The project includes approximately 280 miles of pipeline, two water treatment plants, several pumping plants, and several storage tanks. It

is being built in sections that will be connected later. By choosing this course of action, water can be delivered to people more quickly than if the system were built as one continuous line. In October 2013, President Obama announced that the Navajo Gallup Water Supply Project will be expedited through the permitting and environmental review process. The status of the project can be monitored on the Federal Infrastructure Projects Dashboard. Construction must be substantially completed by 2024.

Cutter Lateral: The Cutter Lateral will run along Highway 550 to the south of Farmington. The Nation will receive \$43 million in a financial assistance agreement to design, construct, and oversee 43.4 miles of the Cutter Lateral lower section. This work will extend from near the community of Counselor to existing distribution systems in Ojo Encino, Torreon, and Pueblo Pintado. It includes a pipeline, a pumping station, and four storage tanks. Design work has begun, the first construction contract under the financial assistance agreement will be awarded in the fall of 2014, and this part of the project could be delivering treated surface water by 2018. Reclamation will be responsible for constructing the upper reaches of the Cutter Lateral and the treatment plant.

San Juan Lateral: The first construction contract for work on the San Juan Lateral was awarded in April 2012 for a four-mile stretch of pipeline and a facility near Tohlakai Hill, about eight miles north of Gallup. Ground-breaking occurred on June 2, 2012. The plans include tapping into an interim groundwater supply as the project moves north to the San Juan River so that the completed system can begin deliveries to communities along the way by 2015 or 2016.

Navajo Water Rights Settlement and Navajo-Gallup Water Supply Project – What the Omnibus Act Says

NAVAJO NATION (“NATION”) WATER RIGHTS

Sec. 10701

- Congress approves, ratifies, and confirms San Juan River Settlement Agreement in 2009.
- Secretary and Nation execute contract in 2010.
- Court to enter Partial Final Decree on Nov. 1, 2013.

Sec. 10702

- Establishes trust fund for Nation’s water resources development, but funds are not available to Nation until 2020. This is not the same fund as the settlements fund noted below.

Sec. 10703

- Nation waives all claims to other San Juan Basin water rights.

RECLAMATION WATER SETTLEMENTS FUND

Sec. 10501

- Establishes a fund within the U.S. Treasury, to consist of \$120 million plus interest, to be deposited in each of FYs 2020–2029 (from revenues that would otherwise be deposited in the Reclamation Fund). The same amount may be expended in each of those years for the following projects (pending to be in priority order 1 through 4):

1. Navajo-Gallup (\$500 million total for 2020–2029).
2. *Aamodt and Abeyta* (in each year, sufficient amounts to pay federal share of implementing settlements if annual appropriations are not otherwise available, if settlements are approved by Congress).
3. Montana Indian settlements (not detailed here).
4. Arizona-Navajo Lower Colorado River settlements (not detailed here).

NAVAJO-GALLUP WATER SUPPLY PROJECT

Sec. 10602

- Authorizes the Secretary of the Interior (through Reclamation) to design, construct, operate, and maintain the project.
- Requires environmental compliance.
- Requires the State of New Mexico to provide a \$50 million share of construction cost.
- Authorizes conveyance of facilities to Gallup and Nation, under several conditions.

Sec. 10603

- Allows incidental generation of hydropower, with proceeds going to the Nation.
- Authorizes diversions from San Juan River and Navajo Reservoir: 37,760 acre-feet per year, or river depletion of 35,890 acre-feet per year.
- Authorizes diversion of 6,411 afy for use by Nation in Arizona (at Window Rock).
- Diversions are to be used in New Mexico and charged against the New Mexico consumptive use apportionment made in the Colorado River Compact.

Sec. 10604

- Authorizes a contract between the United States and the Nation. Construction costs applicable to the Nation are not to be reimbursed by the Nation. Operations and maintenance costs are to be paid by the Nation but may be waived for ten years.
- Authorizes a contract between the United States and Gallup. The city is required to pay its share of construction and operations and maintenance costs, within a fifty-year period, except Gallup is not required to pay more than 35 percent of allocable share of construction costs. The city is to obtain rights to use the water it receives.
- Authorizes a contract between the United States and the Jicarilla Apache Nation. Payment terms are similar to Gallup’s listed above.

Section 10609

- Authorizes appropriation of \$870 million for 2009 thru 2024 (subject to inflation index adjustment) to plan, design, and construct facilities. Additional sums for operations and maintenance are authorized for ten years following completion.
- Participants’ construction committee is to be formed.

Section 10606

- Reclamation is to assist the Nation with construction/rehab of conjunctive use wells; \$30 million authorized.

Section 10607

- Reclamation is to assist the Nation with rehabilitation of existing on-reservation San Juan irrigation projects; \$23.1 million authorized.

The San Juan Basin Adjudication

As a condition of the Settlement Agreement and the 2009 Omnibus Act, the New Mexico state court in the San Juan adjudication must enter one or more final decrees determining the Navajo Nation's water rights. Prior to the launching of the inter *se* proceedings, the settling parties held five public meetings in a variety of communities in the basin to explain the

Settlement. After the parties briefed the issues, the court entered the Navajo Nation decrees on November 1, 2013. These decrees have been appealed.

By Jerold Widdison, (2007)

Latest Update by Pat Page P.E., Deputy Construction Engineer, Four Corners Construction Office Bureau of Reclamation (2014)

Sources and Contributors

Statutes

Arizona Water Settlements Act, Pub. L. No. 108-451, 118 Stat. 3478 (2004).

Omnibus Public Land Management Act, Pub. L. No. 111-11, 123 Stat. 991 (2009).

Claims Resolution Act, Pub. L. No. 111-291, 124 Stat. 3062, Title X, Subtitle B (2010).

NMSA 1978, § 72-1-11(B) (2005), Indian Water Rights Settlement Fund Act.

Cases

State of New Mexico v. United States of America, CV-75-184, 11th District, N.M., Navajo Nation AB-07-1:

Water Right Claims, http://www.ose.state.nm.us/LAP/NNWRS/legal_nnwrs.html

Partial Final Judgment & Decree of the Water Rights of the Navajo Nation, CV-75-184, 11th District, N.M., Navajo Nation AB-07-1 (Nov. 1, 2013), http://uttoncenter.unm.edu/pdfs/2013-11-01_NN-PFD.pdf; Native American Water Rights Settlement Repository, <http://repository.unm.edu/handle/1928/21781>

Supplemental Partial Final Judgment & Decree of the Water Rights of the Navajo Nation, CV-75-184, 11th District, N.M., Navajo Nation AB-07-1 (Nov. 1, 2013), http://uttoncenter.unm.edu/pdfs/2013-11-01_NN-Supplemental-PFD.pdf; Native American Water Rights Settlement Repository, <http://repository.unm.edu/handle/1928/21781>

State of New Mexico v. United States of America v. Navajo Nation v. B Square Ranch LLC, et al., No. 33,439, Court of Appeals, N.M. (2014).

State of New Mexico v. United States of America v. Navajo Nation v. Gary Horner, No. 33437, Court of Appeals, N.M. (2014).

State of New Mexico v. United States of America v. Navajo Nation v. McCarty Trust, et al., No. 33,534, Court of Appeals, N.M. (2014).

State of New Mexico v. United States of America v. Navajo Nation v. San Juan Agricultural Water Users Ass'n, et al., No. 33,535, Court of Appeals, N.M. (2014).

Other

Ryan Clark, *Ground Broken on Navajo-Gallup Pipeline*, Tucson Sentinel.com (Jun. 2, 2012).

Ryan Clark, *Feds, Tribal Officials to Break Ground on Massive Navajo-Gallup Pipeline*, Cronkite News (Jun. 1, 2012)

Pete Domenici, N.M. Sen., *Press Release* (Jun. 18, 2007).

Navajo Nation,

Report & Statement of Gil Arviso, Navajo Nation Water Rights Commissioner (presented to Legislative Interim Water & Natural Resources Committee, Jul. 2008).

San Juan River Settlement Agreement, Native American Water Rights Settlement

Repository, <http://repository.unm.edu/handle/1928/21781>

Executive Summary (Apr. 19, 2005), <http://www.ose.state.nm.us/water-info/NavajoSettlement/NavajoExecutiveSummary.pdf>.

Executive Summary (2010).

N.M. Legislative Interim Water & Natural Resources Committee, Report (2004).

N.M. Office of the State Engineer/N.M. Interstate Stream Commission,

Settlements, Navajo, *N.M. v. U.S., et al.* (San Juan Adjudication), CV-75-184, 11th District, N.M., Navajo Nation AB-07-1.

2011 Indian Water Rights Settlement Fund Report, (presented to Interim Indian Affairs Committee, Jul. 2011).

2012 Indian Water Rights Settlement Fund Report (presented to Legislative Finance Committee, Interim Indian Affairs Committee & Interim Water & Natural Resources Committee, Oct. 2012).

Technical Assessment of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement prepared by John Whipple, consultant to N.M. Office of the State Engineer (2012), http://uttoncenter.unm.edu/ombudsman/san-juan-discovery/NSD-099_0212-09-06_NMTech%20AssessSJRb.pdf

Ben Shelly, President, Navajo Nation Executive Order No. 03-2012, *Navajo-Gallup Water Supply Project is a Navajo Nation Priority Project; The Success of This High-Profile Project Will Showcase the Navajo Nation and Its Divisions and Programs; and Will Provide the Opportunity for Accessible Water to the Eastern Navajo Nation* (Jan. 3, 2012).

Mike Sullivan, Chairman, San Juan Agricultural Water Users Ass'n, *Opinion*, Albuquerque Journal (Mar. 25, 2007).

U.S. Bureau of Reclamation,

Upper Colorado Water Supply Project, Navajo-Gallup Water Supply (Jul. 16,

2013). www.usbr.gov/uc/rm/navajo/nav-gallup/index.html

Interior Announces First Navajo-Gallup Supply Construction Contract (Apr. 16, 2012), www.usbr.gov/newsroom/newsrelease/detail.cfm?recordid=39825

Executive Summary, Filing No. DES 07-09.

Federal Infrastructure Projects, Navajo Gallup Water Supply Project Dashboard, <http://www.permits.performance.gov/projects/navajo-gallup-water-supply-project>

Project Website:

<http://www.usbr.gov/uc/rm/navajo/nav-gallup/index.html>

Utton Transboundary Resources Center, *Water Matters!*

Darcy S. Bushnell, Esq., *American Indian Water Right Settlements*, http://uttoncenter.unm.edu/pdfs/american_indian_water_right_settlements.pdf

The San Juan Adjudication website, Stell Water Ombudsman Program, <http://uttoncenter.unm.edu/ombudsman/san-juan.php>

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