

# Navajo Nation Water Rights in the New Mexico San Juan Basin: Settlement Stakeholders & Lessons for the Future

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ECL 290



<https://lintvkrqe.files.wordpress.com/2016/06/balloon-rally.jpg?w=650&h=366>

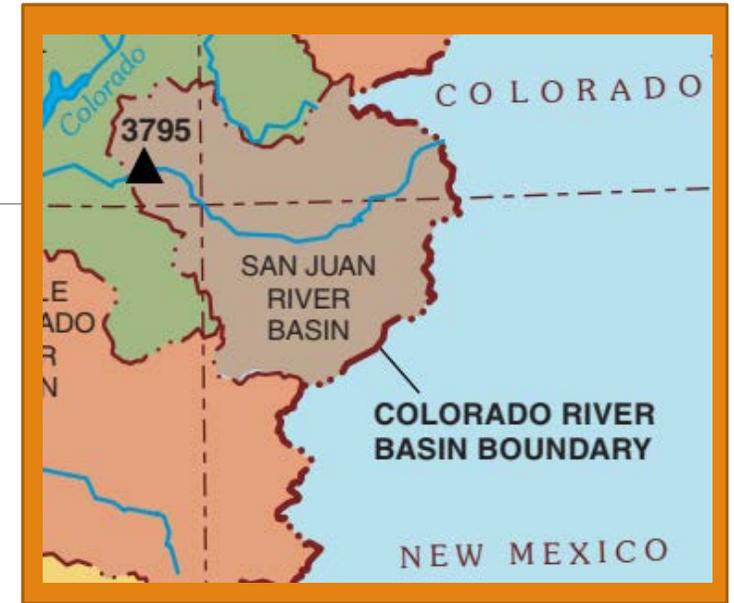
# Objectives

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- ❖ Review the San Juan River Basin Native American Water Rights Settlement
- ❖ Discuss stakeholders and outcomes of the settlement
- ❖ Examine the settlement's "downstream" effects
- ❖ Provide recommendations for future water rights settlement "best practice"

# The San Juan River Basin

- Part of Colorado River's Upper Basin
- 2<sup>nd</sup> largest tributary
- Meets Colorado River in Glen Canyon (UT)



- Case study examines the San Juan Basin in NM & “downstream” effects

(Chischilly, 1993; USGS, 2000)

# Settlement Timeline

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Congress authorizes the Navajo Indian Irrigation Project (NIIP)



- Not a complete adjudication of the Navajo Nation's rights to the San Juan River
  - Did not consider *Winters V. United States (1908)* → Priority date was 1957, not 1868
  - Pre-dated *Arizona V. California (1963)* → Created foundation for quantification

(Jacobsen, 1992)

# Settlement Timeline

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New Mexico's state engineer files San Juan adjudication



- General stream adjudication
  - Court proceeding
  - Allows *all* water users in a “system” to contest the rights of all other users
  - Leads to final judicial determination of all parties’ rights

(Jacobsen, 1992; Perramond, 2013)

# Settlement Timeline

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Navajo President Hale & New Mexico Governor Johnson Talk



- 20+ years later, Navajo Nation's water rights still unclear
  - Navajo Nation and the State of New Mexico agree to discuss settlement

(Chischilly, 1993; USGS, 2000)

# Settlement Timeline

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Navajo Nation & New Mexico sign settlement agreement



- After 9 years, document is ready for examination by federal government
  - “San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement”
  - Includes quantification for NIIP

(State of New Mexico, 1997)

# Settlement Timeline

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“Northwestern New Mexico Rural Water Projects Act”



- Congress approves the settlement & President Obama signs into legislature

# Settlement Timeline

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New Mexico Appeals Court upholds Navajo Water Rights



- Judge Wechlser signs final partial judgment and decree
  - Adjudication finalized via settlement
  - ~50 year-long process

(State of New Mexico V. The United States of America, NM. App. 11d 2013b)

# The Settlement: Key Stakeholders\*

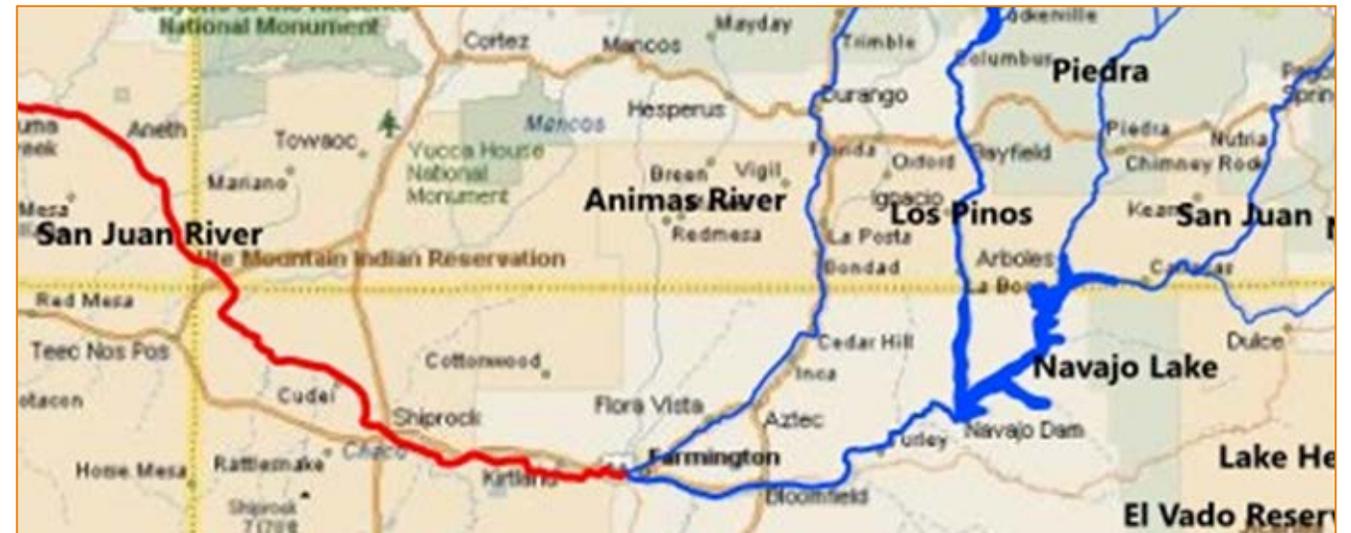


\*Not a complete list of stakeholders

(State of New Mexico V. The United States of America, NM. App. 11d 2009)

# The Settlement: Official Parties

- **Settling:** Navajo Nation, State of New Mexico, the United States
- **Non-Settling:** Community Ditch, B Square Ranch, Gary L. Horner, Robert E. Oxford
  - San Juan Agricultural Water Users Association
  - Hammond Conservancy District
  - Bloomfield Irrigation District
- Largely seen as a “victory”



(State of New Mexico V. The United States of America, NM. App. 11d 2013a)

# The Settlement: Quantification of Rights

Summary of the Water Rights of the Navajo Nation San Juan River in New Mexico Settlement			
Component	Diversion (afy)	Depletion (afy)	
Navajo Indian Irrigation Project (110,630 acres)	508,000*	270,000	
Hogback Irrigation Project (8,830 acres)	48,550	21,280	
Fruitland Irrigation Project (3,335 acres)	18,180	7,970	
Animas-La Plata Project	4,680	2,340	
Navajo-Gallup Water Supply Project	22,650	20,780	
Misc. Municipal Uses	2,600	1,300	
Tributary Groundwater	2,000	2,000	
Tributary Surface Water (Small Historic & Existing Uses)	26,872	11,309	
<b>TOTAL</b>	<b>633,532</b>	<b>336,979**</b>	
* NIIP average diversion limited to 353,000 afy		** Net San Juan River depletion 325,918 afy	

(Pollack, 2014)

# The Settlement: Major Project

## Summary of the Water Rights of the Navajo Nation San Juan River in New Mexico Settlement

“Wet Water”



Component	Diversion (afy)	Depletion (afy)
Navajo Indian Irrigation Project (110,630 acres)	508,000*	270,000
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(Pollack, 2014)

# “Downstream” Effects

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## The settlement and its language affect future settlements

- The Governor of New Mexico’s authority questionable
  - Governor Richardson signed the final settlement
  - State legislature did not enact agreement into law
- Legislative supreme court lawsuit → **Declined**, now in Appeals limbo
  - San Juan Agricultural Water Users Association
  - Rep. Paul Bandy (R), Rep. Carl Trujillo (D), and Sen. Steve Neville (R)
  - *Clark V. Johnson (1995)* - only state legislature has constitutional power to bind New Mexico to agreements with states or tribes

(State of New Mexico V. The United States of America V. San Juan Agricultural Water Users Association, et al. V. Navajo Nation, 2016)

# Other “Downstream” Effects

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## **The settlement and its language affect future settlements**

- Limits water rights in the neighboring water basins/states
  - “Navajo Nation water rights in the Little Colorado River Basin and the Rio Grande Basin shall not be exercised, transferred, leased or otherwise used to the extent that, and only so long as, the rights are being supplied by the delivery of water diverted from the San Juan River Basin” p.28

# Recommendations for Settlements

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- Be aware of governor vs. state legislature concordance
- Consider that settlements may end in litigation
- Other routes to explore for problem-solving:
  - Adaptive governance models (Rocky Boy's Reservation Settlement, Montana)
  - Allow Native water leasing (e.g. Jicarilla Apache Nation, New Mexico)

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# Thank you



<https://www.nature.org/cs/groups/webcontent/@web/@newmexico/documents/media/san-juan-river-and-mountains.jpg>

QUESTIONS?

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