

Navajo-Gallup Water Supply Project

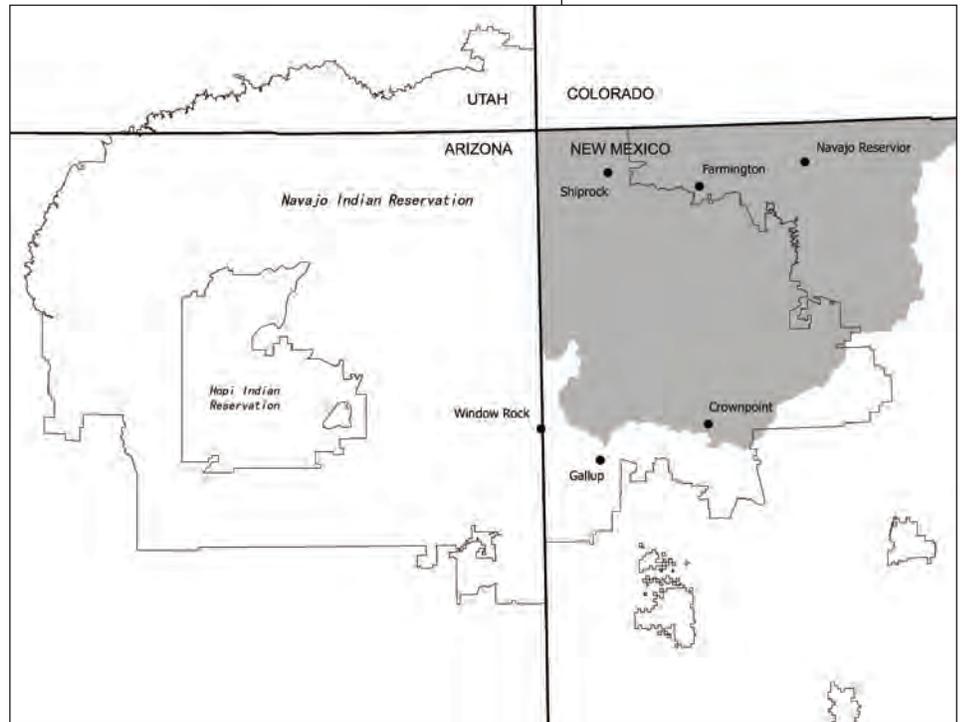
In March 2009, the Congress passed and President Obama signed into law the “Omnibus Public Land Management Act of 2009”. This thousand-page law consolidates and authorizes 152 natural resource initiatives, actions, and projects, some of which have been under consideration for several years. Several New Mexico matters are included in the law, notably the authorization of the Navajo-Gallup Water Supply Project, a part of the Navajo Nation water rights settlement for claims in the San Juan River basin within New Mexico.

“Navajo-Gallup” 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 start-up of 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.

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

“ I think the bill will matter a lot to many people. . . . 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



Navajo Nation and San Juan Basin in New Mexico

Navajo Nation Department of Water Resources

Navajo communities and the city of Gallup rely on a rapidly depleting and inadequate groundwater supply.

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.

Need for the Project

Navajo communities and the City of Gallup rely on a rapidly depleting and inadequate 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 of more than 43 Navajo chapters, including the Navajo communities of Window Rock and Fort Defiance in Arizona, the City of Gallup, and the Teepee Junction area of the Jicarilla Apache Nation. The approved project will convey a reliable supply of water to these areas by means of diversions and pipelines from the San Juan River.

Many believe that the need for additional water is great. In the Navajo Nation, a poverty rate greater than 50 percent and a growing population – combined with inadequate infrastructure and widely dispersed communities and households – has created an urgent need for adequate water. Between 30 and 40 percent of households on the Navajo Reservation do not have direct access to public water systems, and tribal population is expected to increase to nearly 500,000 by 2040. It has been asserted that economic development, needed to break the cycle of chronic poverty, is largely dependent upon a reliable water supply and water infrastructure.

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 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 economically be made available 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 20 feet per year and water quality is worsening. Local efforts are being made to increase 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 so that tribal members can continue to diversify their economy for on-reservation employment and to 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 number of acre-feet will be less. This allocation is a relatively large share inasmuch as only 3.25 percent of the river's flow originates in New Mexico. The state's allocation is intended, in part, to address the needs of the Navajos and other Native Americans in the region.

On behalf of the Navajo tribal government, the United States filed a preliminary Statement of Claims based on a substantial *Winters* doctrine claim to water in the San Juan: over 900,000 acre feet annually with a priority date of June 1868. The amount is based on practicably irrigated acreage (PIA) and the priority date is the date of the Navajo Reservation's creation (see Indian Water Rights article this issue). Because the Navajo Nation was not a party to the Colorado River Compact of 1922, its claim has remained unquantified while 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 recent years, however, the

Navajo Nation encouraged the State of New Mexico to negotiate a settlement rather than to litigate to resolve the issues among the various water users in the region.

Settlement Agreement

The Navajo Nation and New Mexico first signed the Navajo Nation Water Rights Settlement Agreement for the Nation’s water rights in the New Mexico portion of the San Juan Basin on April 19, 2005. The United States signed in 2010. Congress passed the Omnibus Public Land Management Act in 2009 which, in pertinent part, ratified the Settlement Agreement in Title X–Water Settlements, Subtitle B–Northwestern New Mexico Rural Water Projects. The settlement agreement was subsequently reconciled with the Act and signed in December 2010.

The settlement’s center piece is the Navajo-Gallup Water Supply 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 basin. The settlement is meant not only to resolve the Navajo Nation’s water rights without litigation, but also to supply water to the City of Gallup, and the Teepee Junction area of the Jicarilla Apache Nation.

Amount of Water

The San Juan River settlement allocates approximately 55 percent of the water available for use in New Mexico from the San Juan River to the Navajo Nation. However, the settlement clarifies that much of the Navajo share of the 669,000 acre-feet diverted from the San Juan is already in use by the Nation. The Navajo Indian Irrigation Project (NIIP) uses a considerable amount of water. The only major new water use is the amount designated for the Navajo-Gallup Water Supply Project. This project is to deplete approximately 35,890 acre-feet of surface water annually from the San Juan. The water is to be allocated between the

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Navajo Nation in New Mexico, Window Rock, and between the Navajo communities in Arizona. The City of Gallup does not hold water rights in the San Juan system and must obtain its water from others, possibly the Jicarilla or Apache and Navajo Nations. The City’s allocation is to be charged to city water rights.

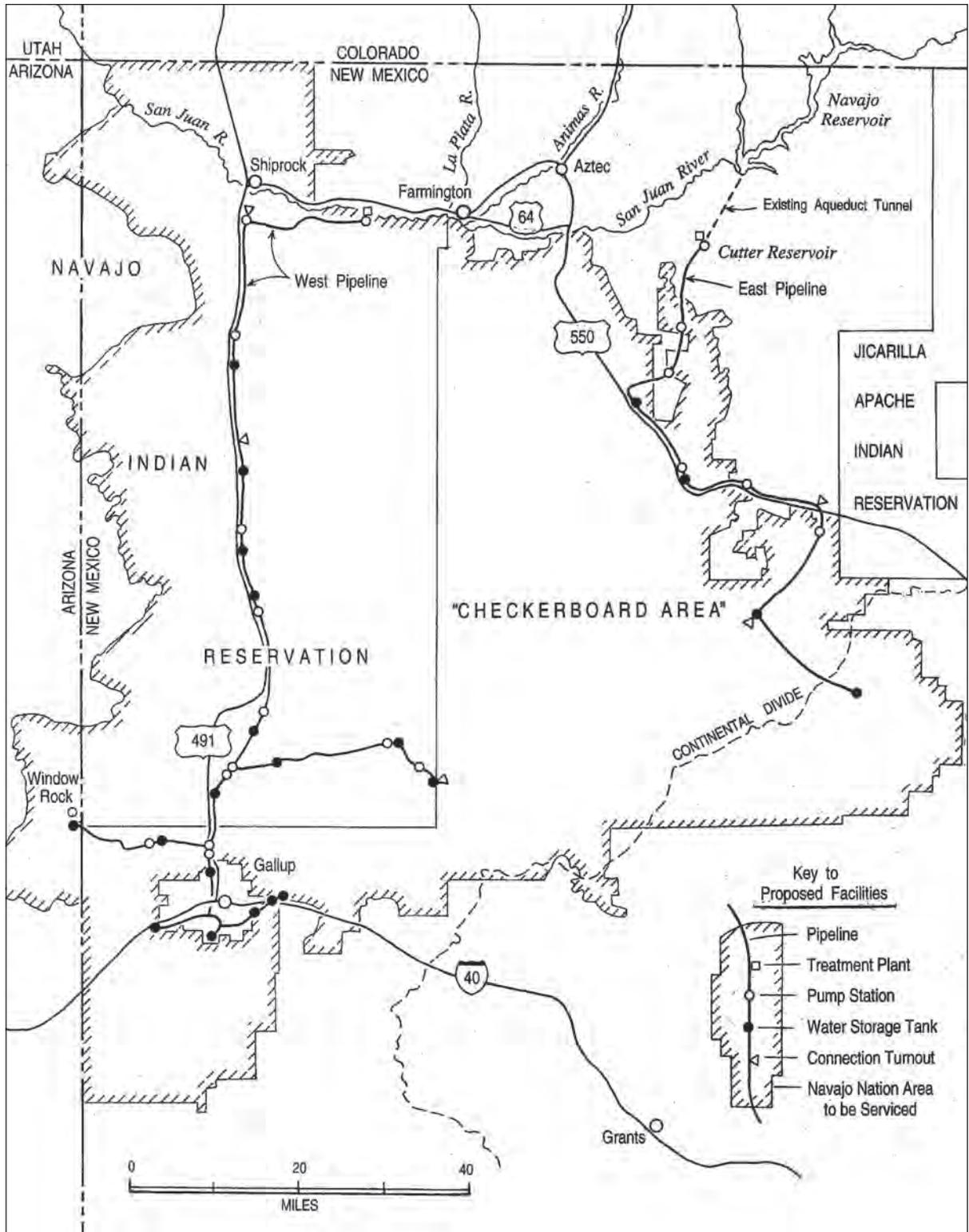
The Authorized Project

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).

The eastern pipeline will begin at the existing Cutter Reservoir, an adjunct of Navajo Reservoir, and it will convey water southward, partly alongside U.S. 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 PNM 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

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.

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. That amount was authorized in the Omnibus Act for appropriation and expenditure by the federal Bureau of Reclamation. 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 of New Mexico is to pay \$50 million, some of which has already been contributed.

Concerns

Not everyone in the Four Corners area favors the settlement. Concerns have been voiced about the quantity of water allocated to the Navajos in the settlement. Also, several "non-signers" to the settlement have expressed some remaining concerns. They question the settlement's hydrological determination, believing instead that there is insufficient water from the settlement. In response, 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. The non-signers are also interested in water-banking storage possibilities in the Navajo Reservoir. Further, the San Juan Agricultural Water Users Association argues that the Nation will market its water downstream to Arizona, Las Vegas and California. However, the Omnibus Act forbids such transactions without approval from the New Mexico State Engineer.

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 water right

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

settlements. In 2007, Sen. Domenici introduced the Reclamation Water Settlement Fund (S. 1643) which would authorize a 10-year funding schedule to generate an estimated \$1.37 billion to pay for the three settlements after they were signed into law. In 2009, Sen. Bingaman included this funding mechanism in the Omnibus Public Land Management Act of 2009. When the Act became law, it established the Fund which 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 Rural Water Supply Project Act. The Reclamation Water Settlement Fund offers some potential for the Navajo-Gallup project in 2020.

The Omnibus legislation authorized \$87 million for an initial appropriation for the project. The Claims Resolution Act of 2010 appropriated to \$60 million for the project in each of fiscal years 2012, 2013, and 2014 for a total of \$180 million. In fiscal year 2010, the Energy and Water Appropriations Bill appropriated \$3 million for the planning, design and construction of the first phases of the project. In federal fiscal year 2012, the federal executive budget recommendation for the project was \$35,188,000.

Related funding includes a November 2009 award of \$5.7 million from stimulus funding for the Animas-La Plata Project's "Navajo Nation Municipal Pipeline." This pipeline will run about 28 miles and will convey 4,680 acre-feet of treated water from Farmington to the Navajo Nation near Shiprock, New Mexico. In 2012, this pipeline is nearing completion. Other funding will come from the city of 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.

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

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 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 \$10 million in bonds to the Board of Finance in June of 2011. Of the amount, at least 8.6 million is to be used for the Navajo Settlement implementation. Thus far, the State has made \$13.6 million in cash contributions. In addition, it is expected that the Bureau of Reclamation will credit the State with about \$24.5 million, that is, 75% of appropriations already made for clean water supplies for Navajos and non-Indians in the 'checkerboard' area. In 2011, the Legislature appropriated an additional \$15 million for the Fund. The Legislature needs to appropriate an additional \$10 million to complete the State's contribution for the Navajo project. Any amount remaining unappropriated by the State in 2017 will be indexed for inflation.

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 New Mexico state adjudication court must enter final decrees.

Much of the work required before a shovel enters the ground has been completed. Department of 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 in 2010. The agreement includes the proposed decrees upon which the state adjudication court must act. Many of the required agreements were executed in 2011, including the cost-share agreement between the state and the United States.

The Bureau of Reclamation began survey work in 2010 and pipe is now being laid on two legs of the system: 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. The Bureau of Reclamation is overseeing the project. Construction must be substantially completed by 2024. Officials expect that by 2040, the completed project will provide more than 37,000 acre-feet of water to as many as 250,000 people each year: that is, around 203,000 people in the Navajo Nation, 1,300 people in the Jicarilla Apache Nation, and 47,000 people in the City of Gallup.

Cutter Lateral: The Cutter Lateral will run along US 550 to 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 about the community of Counselor to existing distribution system 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 is expected to be awarded in the spring of 2013 and this part of the project could be delivering water in 2015. The Bureau of Reclamation will be responsible 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.

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 Agreement; to be executed by Secretary of Interior by Dec. 31, 2010.
- Secretary and Nation to execute contract by Dec. 31, 2010.
- Court to enter Partial Final Decree by Dec. 31, 2013.

Sec. 10702

- Establishes trust fund for Nation’s water resources development, but fund 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 U.S. Treasury, to consist of \$120 million plus interest, to be deposited in each of FYs 2020 thru 2029 (from revenues that would otherwise be deposited in Reclamation Fund). Same amounts may be expended in each of those years for the following projects in toto (spending to be in priority order 1 thru 4):
 1. Navajo-Gallup (\$500 million total for 2020-2029).
 2. *Aamodt & Abeyta* (in each year, sufficient amount to pay federal share of implementing settlements if annual appropriations 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 Secretary (through Bureau of Reclamation) to design, construct, operate, and maintain the project.
- Requires environmental compliance.
- Requires State of New Mexico to provide \$50 million share of construction cost.
- Authorizes conveyance of facilities to Gallup and Nation, under several conditions.

Sec. 10603

- Allows incidental generation of hydro power, with proceeds to Nation.
- Authorizes diversion from San Juan River and Navajo Reservoir: 37,760 a-f, or river depletion of 35,890 a-f annually.
- Authorizes diversion of 6,411 a-f for use by Nation in Arizona [at Window Rock].
- Diversions are to be used in NM and charged against the NM consumptive use apportionment made by Colorado River Compact.

Sec. 10604

- Authorizes a contract between U.S. and Nation. Construction costs applicable to Nation are not to be reimbursed by Nation. O&M costs to be paid by Nation, but may be waived for 10 years.
- Authorizes a contract between U.S. and Gallup. City required to pay allocable share of construction and O&M costs, within 50 year period, except City not required to pay more than 35 percent of allocable share of construction costs. City to provide rights to water received.
- Authorizes a contract between U.S. and Jicarilla Apache Nation. Payment terms similar to Gallup, above.

Section 10609

- Authorizes appropriation of \$870 million for FYs 2009 thru 2024 (subject to adjustment) to plan, design, and construct facilities. Additional sums for O&M authorized for ten years following completion.
- Participants’ construction committee to be formed.

Section 10606

- Bureau of Reclamation to assist Nation with construction/rehab of conjunctive use wells; \$30 M authorized.

Section 10607

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

Groundbreaking 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.

The San Juan Basin Adjudication

As a condition of the settlement agreement and the 2009 Omnibus Act, the New Mexico state adjudication court in the San Juan case must enter one or more final decrees for the Navajo Nation's water rights. The claims filed by the United States for the Navajo Nation may be viewed at the link provided below. The adjudication court is currently

conducting an *inter se* proceeding to take objections and evidence on the agreement. 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. The court will make its decision on whether to approve the settlement and enter the decree(s) by December 31, 2013. If the court does not approve the settlement, it will proceed with litigation.

By Jerold Widdison,
revised through Nov. 2009, Updated by
Darcy Bushnell, Esq. (2011-2012).

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