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7/26/16



## Let the Water Flow! Navajo in Utah Closer to Water Rights Settlement

At long last, the Navajo Nation may have reached a settlement over its water rights to the San Juan River in Utah.

Congress must still approve the deal, but the key players – the federal Bureau of Reclamation, the Navajo Nation and the state of Utah – are in agreement on a settlement they say is both fair and likely to calm uncertainty on a major tributary to the Colorado River. The San Juan, popular with river-runners, traverses 383 east-west miles in the Four Corners area before it empties into the Colorado near Glen Canyon.

Daniel Cordalis, Navajo, is an advising attorney hired by the Navajo Nation to analyze the settlement along with his wife and fellow attorney Amy Cordalis, Yurok. “That analysis led us to believe the settlement is fair and provides the Navajo Nation a favorable resolution of their Utah water rights claims,” he said.

Earlier this month, Navajo Nation president Russell Begaye issued a tentative stamp of approval.

“The Office of the President and Vice President commend the Utah chapters along with their respective delegates for working hard to draft the settlement,” Begaye said in a statement.

The Navajo Nation was established by treaty starting in 1868, long before many of the regional rivers’ current users began drawing water. By law, the reservation theoretically holds rights senior to most competing uses, according to the “first in time, first in right” bedrock principle of Western water law. But for the Navajo Nation, as with many tribes, quantifying those rights – and thereby turning them from “paper” to “wet” water – has meant decades-long slogs through political negotiations and, sometimes, the courts. The Navajo Nation Council first announced in January that it had reached an agreement with the state of Utah and other stakeholders, entitling it to 81,500 acre-feet of water for use on the relatively small part of the reservation in Utah. Based on average per capita water use, 81,500 acre-feet of water could support 300,000 people a year, or irrigate between 25,000 and 40,000 acres.

The settlement includes a waiver of any past legal claims by the Navajo Nation against the state of Utah and the United States within the state of Utah, which is standard in Indian water settlements. In addition, the Utah-Navajo settlement contains an agreement by the Navajo Nation that, if there is not enough water to fill its needs, it will not assert priority over pre-existing, non-Native water users.

This alarms some in the conservation community, who question the value of water rights that can’t be enforced. “It kind of tells me that the state of Utah understands that there’s no water left for the tribes,” said John Weisheit, conservation director for Living Rivers, a Utah-based water advocacy group. “They’re first in rights, but last in line for water.”

But Cordalis said while water supplies are questionable by some measures on the Colorado River as a whole, the situation on the San Juan is more nuanced. “The San Juan River is not burdened with downstream water rights such that those existing water rights present a significant detriment to Navajo’s 81,500 acre-feet a year (AFY) right,” he said. “In our opinion, there will be enough water in the San Juan River to achieve the full settlement value on a yearly basis.”

Wayne Pullen, the Bureau of Reclamation’s Provo area manager and chairman of the federal negotiating team, added that there are few pre-existing uses on the San Juan River. He said small towns like Mexican Hat draw modest supplies, as do some small wells and agricultural irrigators.

Cordalis pointed to state of Utah and Bureau of Reclamation figures indicating that in the Upper Colorado River Basin Compact, Utah was apportioned 23 percent of the water available to the Upper Basin, or roughly 1.37 million AFY of Colorado River water. The Upper Basin includes all or part of the states of Arizona, Colorado, New Mexico, Utah, and Wyoming that draw water from above Glen Canyon Dam, while the Lower Basin users draw their water downstream of the dam. In 2009, Utah used just over 1.07 million AFY, leaving about 300,000 AFY in Utah’s Upper Basin apportionment. Navajo’s allocation will be counted against that share.

“What the settlement does is provide that flexibility for tribal members to both use water now and have enough water for future development, which ultimately is most important,” Cordalis said.

Some grassroots activists complain that they have been left in the dark about the settlement's terms, a concern that harkens back to 2012, when a massive outcry among Navajo activists led to the defeat of the Navajo-Hopi Little Colorado River Water Settlement Act of 2012.

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"We want to be part of the decision-making, but we are not," said Anna Frazier, a long-time activist with the Navajo grassroots group Diné CARE. Still, there has not been public opposition to the Utah San Juan settlement as there was to the Little Colorado proposal in 2012.

Leonard Tsosie, a Navajo Nation Council delegate representing the Baca/Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreon, and Whitehorse Lake chapters, has been promoting the settlement among his colleagues and constituents, as a way to support existing and future Navajo communities in southeastern Utah. "We can dream all we want but if there is no water, there is no development," he said.

In addition to the water rights, the settlement calls for a Congressionally allocated, \$200 million Utah Navajo Water Development Fund for Utah Navajo water projects.

So far, all seven Navajo chapters in Utah have approved the settlement, and the Navajo Nation Council voted 13-7 to approve it. President Begaye's office pointed out that if the Navajo Nation is going to push for a legislative package, it must do so before the September Congressional lame duck session.

**Full Name:**

Anne Minard

**Source URL:** <http://indiancountrytodaymedianetwork.com/2016/07/26/let-water-flow-navajo-utah-closer-water-rights-settlement-165262>