



23RD NAVAJO NATION COUNCIL OFFICE OF THE SPEAKER

FOR IMMEDIATE RELEASE

January 27, 2016

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Navajo Nation Council approves the Utah Navajo Water Rights Agreement

Agreement subject to Congressional approval and ratification

WINDOW ROCK – Following several lengthy discussions that included two work sessions, members of the 23rd Navajo Nation Council voted 13-7 to approve the proposed Utah Navajo Water Rights Settlement agreement.

Legislation No. 0412-15, sponsored by Council Delegate Davis Filfred (Mexican Water, Aneth, Teecnospos, Tólikan, Red Mesa) previously stated that each of the Navajo Nation's seven Utah chapters approved resolutions supporting the proposed agreement and that the agreement would lead to funding for much needed water infrastructure development.

Delegate Filfred also noted that the Navajo Nation's three-branches of government identified water rights as a top priority in the "One Nation, One Voice" agreement in July of 2015.

The proposed agreement developed after years of negotiations resulting from a Memorandum of Agreement between the Navajo Nation and the state of Utah in 2003 that allowed the two sides to formally enter into discussions to determine the water rights of the Nation.

In December of 2015, representatives from the Navajo Nation Department of Water Resources and Department of Justice, along with the Navajo Nation Water Rights Commission, and the State of Utah reached an agreement as to the quantification and settlement of water rights claims.

During a Jan. 14 Naabik'iyáti' Committee meeting, Council members called on President Russell Begaye to address the proposed settlement. On Jan. 20, a letter was sent to President Begaye requesting him to provide his input on the proposed settlement. The Council did not receive a response from President Begaye.

During consideration of the legislation by the Naabik'iyáti' Committee, several Council members including Council Delegate Dwight Witherspoon (Black Mesa, Forest Lake, Hardrock, Pinon, Whippoorwill), raised concerns over language in the proposed agreement that outlines the quantifications of the Nation's water rights.

Under the proposed agreement, the quantifications of the Navajo Nation's water rights include:

- The right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation
- The right to divert and store up to 435 cubic feet per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded
- The right to unlimited diversions from groundwater and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded

- The right to market or lease these water rights to the same extent as other water rights holders in Utah
- When there is not enough water in the San Juan River to satisfy Navajo water uses developed after the effective date of the settlement, the Navajo Nation agrees it will not assert a priority call against non-Navajo water uses in existence as of the date of the settlement. However, new non-Navajo uses developed after the date of the settlement receive no protection, and the Nation can assert priority calls against such new uses.
- When there is not enough water in the tributaries north of the San Juan River, primarily Montezuma Creek, to satisfy Navajo water uses developed after the effective date of the settlement, the Navajo Nation agrees it will not assert a priority call against non-Navajo water uses in existence as of the date the new Navajo uses are developed, but may assert priority calls against uses developed after the new Navajo uses. Most of the historic Navajo irrigation in Utah was developed on Montezuma Creek. All historically developed Navajo irrigation can be rehabilitated and can assert calls against all upstream non-Navajo water uses with a priority junior to the Navajo uses, which most have a priority of 1884

Council Delegate Jonathan Perry (Becenti, Crownpoint, Huerfano, Lake Valley, Nageezi, Nahodishgish, Tse'ii'ahi, Whiterock), who voted against the legislation on Tuesday, said the Council needed clarification on the proposed water quantifications and urged their colleagues to hold the work sessions that occurred on Jan. 22 and again on Jan. 25.

Council Delegate Leonard Tsosie (Baca/Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreón, Whitehorse Lake) asked his colleagues to support the settlement to provide the capacity to build communities and provide economic opportunities.

“We can dream all we want but if there is no water, there is no development,” said Delegate Tsosie, who also pointed out the benefits of the 2010 San Juan Navajo Water Rights Settlement for Navajo communities and cautioned that timing as well as the political landscape on the federal level will impact the outcome of the proposed Utah water settlement agreement.

The proposal also describes the obligation of the federal government to create the Utah Navajo Water Development Fund to provide approximately \$198 million to create a trust fund for the construction of water projects for Navajo communities in Utah.

According to the proposed agreement, obligations of the United States under the agreement are contingent on the availability of funds; however, if Congress does not appropriate funds the agreement is not enforceable. The legislation further states that in the event that the proposed agreement changes substantially due to actions taken by Congress, the Nation will have the authority to approve the revised agreement.

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