

IGRAP-74-03

**RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL**

**Endorsing the Recommendations For the San Juan River Operations and
Administration For 2003**

WHEREAS:

1. Pursuant to 2 N.N.C §824 (b)(6), the Intergovernmental Relations Committee of the Navajo Nation Council is empowered to authorize, review, approve and accept agreements, including contracts and grants, between the Navajo Nation and any federal, state, or regional authority upon the recommendation of the standing committee which has oversight of the division, department or program which has applied for the agreement; and
2. Pursuant to 2 N.N.C. §695 (B)(14), the Resources Committee of the Navajo Nation Council is the legislative oversight authority for the Division of Natural Resources, including the Department of Water Resources, which has worked with the major water users in the San Juan River Basin to develop the proposed Recommendations for the San Juan River Operations and Administration for 2003, attached hereto as Exhibit "A"; and
3. The Navajo Nation Council has declared, pursuant to Section 101 of the Navajo Nation Water Code, 22 N.N.C. §1301 (7), that the water resources of the Navajo Nation are essential to provide a permanent homeland for the Navajo people; and protection of such water resources is essential in order to protect the health, the welfare and economic security of the citizens of the Navajo Nation; and
4. Congress approved the Navajo Indian Irrigation Project Act of June 13, 1962, Public Law 87-483, which authorized the construction of the Navajo Indian Irrigation Project; and
5. Pursuant to Section 11 of Public Law 87-483, contracts for water from Navajo Reservoir include provisions that require the sharing of shortages during water short years; and
6. On April 10, 1976, G.G. Stamm, Commissioner, Bureau of Reclamation and Peter MacDonald, Chairman, Navajo Tribal Council entered into the Agreement Between the United States and the Navajo Tribe of Indians for Delivery of Water from Navajo Reservoir, Contract Number 14-06-W-269 for the delivery of water for the Navajo Indian Irrigation Project; and

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7. Article III of that Contract requires that whenever the Secretary of the Interior anticipates a shortage of the available water in storage at Navajo Reservoir, the contractors must share in the available water in proportion to the other contractors based on the "normal division requirement" of each contractor; and

8. Due to extreme drought conditions during the 2002 irrigation season, the President of the Navajo Nation sent a letter dated September 5, 2002 (attached within Exhibit "B") to the Regional Director, Upper Colorado Region, Bureau of Reclamation requesting that a shortage condition be declared at Navajo Reservoir and that Reclamation should implement four (4) steps to reduce the risk of shortage at Navajo Reservoir:

- a. Work with the San Juan River recovery Implementation Program and other parties to reduce the target flows at Bluff necessary to protect endangered fish to 350 cubic feet per second through the Winter of 2002 and to forego the Spring 2003 high flow releases,
- b. Modify the stipulation of October 29, 1996 in San Juan Fly Fishing Federation, et al. v. United States, et al., CIV 956-1476 JP U.S. Dist. Ct., New Mexico that requires Reclamation to make minimum releases of 500 cfs from Navajo Dam,
- c. Work with the New Mexico State engineer to ensure that releases from Navajo Reservoir storage made for the protection of the endangered fish are not utilized by water users that do not have a right to water stored behind the reservoir, and
- d. Establish shortage sharing criteria for the Navajo Reservoir contractors that provides protection for the Navajo Indian Irrigation Project; and

9. The Secretary of the Interior declined to declare a shortage; however, the Navajo Nation has taken the following action to ensure that the four (4) steps to reduce the risk of shortage for the Navajo Indian Irrigation Project are implemented:

- a. At the September 25, 2002 meeting of the Coordination Committee for the San Juan River Recovery Implementation Program, the Navajo Nation obtained the consent of the Program to reduce the Winter flow releases from a minimum of 500 to 350 cubic feet per second,

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- b. **At the urging of the Navajo Nation, in October 2002, the Bureau of Reclamation obtained the consent of the fly-fishing groups to reduce the minimum level of releases from Navajo reservoir required by the stipulation to 350 cubic feet per second thus reducing reservoir releases prior to the 2003 irrigation season by more than 50,000 acre-feet,**
 - c. **At the urging of the Navajo Nation, the State Engineer began to install flumes and other water metering devices on the major diversions from the San Juan River in New Mexico; however, the State engineer is currently ill-equipped to administer diversions from the San Juan River during periods of shortage because: (a) not all of the diversions from the river have measuring devices to precisely determine if appropriators are exceeding their water rights, and (b) the water rights of all of the parties in the San Juan River basin have not been fully and finally adjudicated,**
 - d. **The Navajo Nation took the lead in working with the major water users on the San Juan River, the New Mexico Interstate Stream Commission, and the Bureau of Reclamation to develop a shortage sharing criteria for the Navajo Reservoir contractors that provides protection for the Navajo Indian Irrigation project; and**
10. **The proposed Recommendations for San Juan River Operations and Administration for 2003 (Shortage Recommendations, attached as Exhibit "A") were developed with input from the Navajo Nation, the Jicarilla Apache Nation, the City of Farmington, Public Service Company of New Mexico, Arizona Public Service Company, BHP Billiton, Hammond Conservancy District, Bloomfield Irrigation district, Farmer's Mutual Ditch, Jewett Valley Ditch, the New Mexico Interstate Stream commission and the Bureau of Reclamation; and**
 11. **The proposed Shortage Recommendations establish a cooperative approach to the distribution of water supplies among the major users of water from the San Juan river in New Mexico, only for 2003, in order to avoid counterproductive litigation and chaos among the water users if shortages occur; and**
 12. **The Navajo Nation may be seeking the support of the major water users in the near future for a San Juan River water rights settlement; and**
 13. **The proposed Shortage Recommendations include a shortage criteria that are beneficial to NIIP because:**

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- a. It utilizes the Minimum Probably Water Supply as a basis for shortage determination by the Secretary, a much more conservative standard for determining conditions that could trigger a shortage, than the Most Probably Water Supply which is ordinarily used by the Bureau of Reclamation,
 - b. It designates the 5,990 foot elevation at Navajo Reservoir as the threshold for calculating the active storage in Navajo Reservoir, and prohibits any depletions that would cause the level of the reservoir from falling below the 5,990 foot mark during the irrigation season, and
 - c. The major diverters would voluntarily reduce their diversions providing additional protection for NIIP's water supply without litigation; and
14. The Shortage Recommendations provide an appropriate mechanism for all water users with Secretarial contracts for Navajo Reservoir storage water, including NIIP, to share water as required by federal law; and
15. The Shortage Recommendations are beneficial to NIIP because it provides a mechanism to administer the flows in the San Juan River, which was a required component of NIIP's successful 1999 Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service; and
16. The Shortage Recommendations are beneficial to Navajo farmers at the Hogback, Cudeii and Fruitland Irrigation Projects because it provides for the limited use of Navajo Reservoir storage water for use by the direct flow diverters, and the Shortage Recommendations create limits on the non-Indian irrigation diversions upstream; and
17. On February 20, 2003, the permittees attending the annual meeting of the San Juan River Dine Water Users Association voted to support a resolution endorsing the Shortage Recommendations; and
18. On February 23, 2003, the Shiprock Chapter voted to support a resolution endorsing the Shortage Recommendations; and
19. On February 25, 2003, the San Juan River Farmboard voted to support a resolution endorsing the Shortage Recommendations; and

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20. By Resolution RCMA-32-03, attached here as Exhibit "B", the Resources Committee made a finding in that the execution of the proposed Shortage Recommendations by the Navajo Nation is consistent with "insuring the optimum utilization of all resources of the Navajo Nation and People" and recommended that the Intergovernmental Relations Committee endorse the Shortage Recommendations.

21. By Resolution BDMA-06-03, attached hereto as Exhibit "C", the NAPI Board stated NAPI's position on the proposed recommendations for operations and administration of the San Juan River for 2003; by Resolution BFMA-07-03, attached hereto as Exhibit "D", the NAPI Board requested the appropriate committees and officials of the Navajo Nation: to ensure the federal agencies begin to fulfill the government's trust, statutory, contractual and treaty-based duties to the Navajo Nation concerning Navajo water resources of the San Juan River; to administer and operate the Navajo Dam consistent with those duties and with the interests of NAPI; to restore federal funding for NIIP construction to at least \$26 million; and to issue a letter of intent for the Navajo Nation to contract additional federal functions related to the Navajo Indian Irrigation Project; and by Resolution EDCAP-31-03, attached hereto as Exhibit "E", the Economic Development Committee of the Navajo Nation Council recommended to the Intergovernmental Relations Committee of the Navajo Nation Council the endorsement of the recommendations for the San Juan River operation and administration for 2003; and

22. The Intergovernmental Relations Committee concerns with the findings of the Resources Committee and determines that execution of the Shortage Recommendations is in the best interests of the Navajo Nation.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Intergovernmental Relations Committee of the Navajo Nation Council hereby approves the February 20, 2003 Recommendations for San Juan River Operation and Administration for 2003, attached hereto as Exhibit "A", with the directive to delete the paragraph beginning on page five and continuing on page six (related to making additional water available to other entities "from within the Navajo Indian Irrigation Project's diversion amounts").

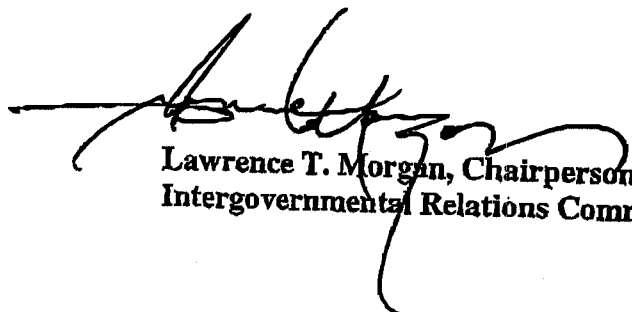
2. The Intergovernmental Relations Committee and the Resources Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute the proposed Recommendations for San Juan River Operation and Administration for 2003 and to take such other action necessary to implement this resolution.

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3. The Intergovernmental Relations Committee of the Navajo Nation Council directs that the other parties reaffirm their commitment to the recommendations approved herein within five working days; that Reclamation provide assurance that traditional Navajo farmers have access to storage made available by the contractors; and that in the event compensation is made available, the traditional Navajo farmers are to be included.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 3 opposed, and 0 abstained, this 17th day of April, 2003.



Lawrence T. Morgan, Chairperson
Intergovernmental Relations Committee

Motion: Larry Anderson
Second: Leonard Chee