



WATER-RIGHT DOCKET

Rainbow Bridge National Monument

Docket No: 1

FEDERAL RESERVED WATER RIGHTS

Preliminary Docket Information

02-04-2002: Note to the File re: RABR Docket #1

***NOTE TO THE FILE
DOCKET RABR-0001***

See the Adjudication File (General Determination of Rights to the Use of Water, both Surface and Underground, within the Drainage Area of the Colorado River in San Juan, Grand and Uintah Counties, Utah, and exclusive to the Green River Drainage (Civil No. 4477)), for the history of settlement discussions with Utah and resolution of issues with the Navajo Tribe.

**William R. Hansen
February 4, 2002**

**RAINBOW BRIDGE NATIONAL MONUMENT
WATER RIGHTS SETTLEMENT AGREEMENT**

This Agreement is made and entered into by the United States of America (United States) and the State of Utah (Utah).

RECITALS

A. Utah has initiated a statutory adjudication of water rights entitled, "In the Matter of the General Determination of Rights to the Use of Water, both Surface and Underground, within the Drainage Area of the Colorado River in San Juan, Grand and Uintah Counties, Utah, and exclusive to the Green River Drainage," filed as Civil No. 810704477 in the Seventh Judicial Court in Grand County, Utah. This adjudication is commonly referred to as the Southeastern Utah Colorado River Adjudication ("Adjudication") and encompasses the Rainbow Bridge National Monument within the San Juan River drainage (Area 09). The United States has not been served with a summons in this Adjudication and has not filed a Water User's Claim for the Monument. In order to remove causes of present and future controversy over use of water at Rainbow Bridge National Monument, the United States and Utah have conducted negotiations regarding inchoate reserved water rights claims for Rainbow Bridge National Monument, resulting in the present agreement.

B. These negotiations have resulted in the settlement of issues and recognition of the federal reserved water rights of the United States for Rainbow Bridge National Monument, subject to certain conditions, as set forth herein. No other reserved water rights issues of the United States are settled by this Agreement.

AGREEMENT

NOW, THEREFORE, based on the mutual promises contained herein, the parties agree to the following:

1. Rainbow Bridge National Monument was established by Presidential Proclamation No. 1043 [36 Stat. 2703], dated May 30, 1910, pursuant to the Antiquities Act of June 8, 1906, 59 Stat. 225. The purposes for which Rainbow Bridge National Monument was established are set forth in the Proclamation and the National Park Service Establishment Act of August 25, 1916, 64 Stat. 535, 16 U.S.C. § 1, those purposes being to preserve "an extraordinary natural bridge, having an arch which is in form and appearance much like a rainbow, and which is three hundred and nine feet high and two hundred and seventy-eight feet span, [and which] is of great scientific interest as an example of eccentric stream erosion" and to conserve "the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 U.S.C. § 1).

2. Subject to the provisions of paragraph 7 below, the United States has a federal reserved water right to all naturally occurring water underlying, originating within or flowing through Rainbow Bridge National Monument, including perennial, intermittent and ephemeral streams, springs, seeps, lakes, ponds, ground water, and other natural sources of water, pertaining or belonging to the reserved lands, that was unappropriated as of the dates of reservation of the lands now within the boundaries of the Monument, which water is to remain in a free flowing and natural condition.

3. The specific descriptions of the lands comprising Rainbow Bridge National Monument are set forth in the applicable proclamations and legislation identified above, and in Appendix A. The priority date of the federal reserved water rights shall be May 30, 1910. For its record-keeping and administrative purposes, Utah shall assign separate water right

numbers for the portions of the reserved rights for all naturally occurring water and administrative uses, respectively.

4. The water rights recognized hereby include all water rights of every nature and description derived from the federal reserved water rights doctrine, from all sources of water, both surface and underground, and include all types and kinds of uses whatsoever, and encompass all claims asserted by or through the United States for Rainbow Bridge National Monument as now constituted. The federal reserved water rights originate and are defined in federal law. Absent future Congressional or Presidential action, the federal reserved water rights for the lands now constituting Rainbow Bridge National Monument shall not be enlarged, expanded or re-quantified.

5. The National Park Service has a federal reserved water right for administrative purposes for Rainbow Bridge National Monument, which Utah hereby acknowledges and recognizes as valid. Under this water right, the National Park Service may deplete up to 2 acre-feet per annum from the Colorado River and its tributaries to satisfy future requirements for the operation, administration and protection of Rainbow Bridge National Monument, including but not limited to such uses as the operation of visitor facilities.

6. The United States agrees to provide at least 90 days prior written notice to the Utah State Engineer (State Engineer) before developing and/or using any new source of water for administrative purposes associated with the federal reserved water right provided for in paragraph 5 herein. Such notice will include the location and means of diversion, the source, quantity, and diversion rate of water, depth and diameter of well (if applicable), the nature of use, the anticipated date the water will be placed in use, and a map depicting the proposed development. This information will be publicly available.

7. Except for the portion of the federal reserved water right for administrative purposes, as set forth in paragraph 5, the United States hereby expressly subordinates that portion of its federal reserved water right for all naturally occurring water at Rainbow Bridge National Monument to all valid existing perfected water rights and all currently approved applications with priority dates prior to January 1, 2000.

8. The United States and Utah agree that this Agreement will define the United States' water rights for Rainbow Bridge National Monument in the Southeastern Utah Colorado River Adjudication. The United States has not been served with a summons in this Adjudication. Upon service of the United States in the Adjudication, Utah agrees to issue, within a reasonable time, a Proposed Determination that includes the water rights of Rainbow Bridge National Monument. The parties hereto will then cooperate to obtain an interlocutory decree on the Proposed Determination. If the parties are not successful in securing the interlocutory decree, this Agreement shall nevertheless remain binding as between the United States and Utah until a final decree is issued.

9. Upon a proper showing of necessity, the provisions of this Agreement may be modified only in writing and upon the mutual consent of the parties to this Agreement, which consent shall not be unreasonably withheld.

10. Because of the unique nature of Rainbow Bridge National Monument, nothing in this Agreement shall constitute an admission, waiver or precedent as to any party for any other federal reserved water right claim in Utah.

11. Nothing in this Agreement shall be construed or interpreted to:

- a. in any way affect the water rights of the United States for agencies and interests other than Rainbow Bridge National Monument, including the water rights of any Indian tribe;

- b. establish any precedent or standard to be used for the quantification of federal reserved water rights in any other judicial or administrative proceeding;
- c. limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;
- d. restrict the power of the United States to reserve water in the future, or to acquire additional rights to the use of water under the laws of Utah; or
- e. restrict the power of Utah or the State Engineer in allocating, administering or distributing the waters of the State.

12. The federal reserved water rights of the United States, as set forth and quantified herein, shall be protected under State law in the same manner as any water right originating under State law, without losing their character or the attributes of federal reserved water rights as provided under federal law.

13. The provisions of this Agreement and the reserved rights provided for herein shall be taken into consideration by the State Engineer in acting upon applications, under State law, for new appropriations or change applications located in reasonable proximity to Rainbow Bridge National Monument and shall be afforded the same consideration in such proceedings as state appropriative rights; however, the United States shall have the primary responsibility for protecting its own rights and for filing appropriate protests in any proceedings before the State Engineer.

14. Upon written request from the United States, the State Engineer will provide information regarding new applications for and/or diversions of water located in reasonable proximity to Rainbow Bridge National Monument.

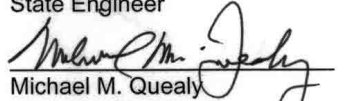
15. This Agreement is executed in duplicate. Each of the duplicate copies bearing original signatures shall be deemed an original.

It being resolved and agreed to as delineated above, the undersigned parties express their mutual agreement hereto this 16th day of January, 200².

For the State Utah:

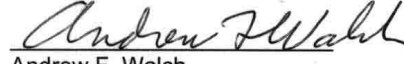

Kathleen B. Clarke
Executive Director, Department
of Natural Resources

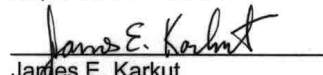

Robert L. Morgan
State Engineer


Michael M. Quealy
Assistant Attorney General
Chief, Natural Resources Division

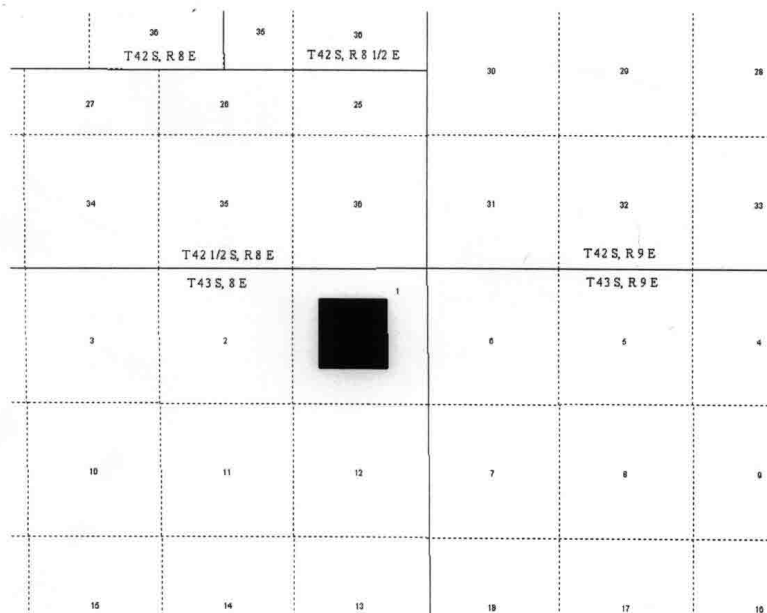
For the United States:


Kitty Roberts
Superintendent
Rainbow Bridge National Monument


Andrew F. Walch
Department of Justice


James E. Karkut
Office of the Field Solicitor

Appendix A
Rainbow Bridge National Monument
Date of Land Reservation



Legend

■ Federal Reserved Land -- Proclamation No. 1043: May 30, 1910 (36 Stat. 2703)



12/09/97 12:16 FAX 801 538 7467

DIV WATER RIGHTS

001/001



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
Robert L. Morgan
State Engineer

1594 West North Temple, Suite 220
Box 146300
Salt Lake City, Utah 84114-6300
801-538-7240
801-538-7467 (Fax)

FAX COVER SHEET

Date: December 9, 1997
Time: 11:00 a.m.

TO:
Name: Bill Hansen
Re: POD for Rainbow Bridge NM
Fax #: (970)225-9965

FROM:
Name: Jerry Olds
Agency: Division of Water Rights
Phone #: (801)538-7390
Fax #: (801)538-7467

Number of pages transmitted including cover sheet: 1

Comments:
Bill:

The point of diversion for the spring at Rainbow Bridge NM is located in unsurveyed area and thus the nears section corner is several miles away. For UTM coordinates E 503410, N 4103550, the section, township and range, metes and bounds is S 9571 feet and E 6006 feet from the SE Corner, Section 36, T42S, R8E, SLB&M.

Let me know if you have any questions.



[3] From: Kevin P Berghoff at NP-GLCA 11/21/97 3:14PM (644 bytes: 1 ln)
To: Chris Gable at NP-WASO-WR
Subject:

Chris,

----- Message Contents -----

This is what I got from our GIS guy for the location of the spring at RABR. It is located on the Rainbow Bridge, Utah 7.5 minute USGS quad.

Lat 37 4' 48.0"

Long 110 57' 32.4"

UTM E503410, N 4103550, Elev. 4200'

I will try to get to changing that to the section, township, range coords, but if you get to it first, have fun.

Kevin

*Faxed to Olds on 12/8/97
to convert to meters and bands.*

WRH

May 13, 1997

Land Status : All lands Reserved - Administered by GLCA

General information: Rainbow Bridge Creek is an ephemeral stream which headwaters from Navaho Mountain (Navaho Reservation) then into Lake Powell. There is a spring located on the lake side of the Bridge formation less than 100 yards from the trail. The best estimate of flow is around 3-5 gal /hour. There is no present consumptive use. Water is used to flush the floating dock vault toilets. This water is extracted from the Lake and may total 1,000 gallons a year in order to flush the toilets. Pre-flooding of the Canyon, there are quotes from Eddie Roosevelt stating pools, springs and hanging gardens near the base of the bridge, such that you float in a pool and look up at the bridge and the hanging gardens.

No present water supplies, people must carry in their own water.

There is grazing near and in the monument. But no grazing permits.

The bridge is considered a sacred - spiritual site. There is a cultural affiliation with a number of tribes:

Navaho
Hopi
San Juan Southern Paiute
Kaibab Paiute
White Mesa Ute

Future Development: None is planned. Concerns might have been the condition of the toilets. Going from vault to flush toilets but there is no way to handle the waste with the present technology. There are no plans to develop the spring for drinking consumption, they would have to treat the water. Essentially keeping a low key approach is taken at the Monument.

Contacts :

Kevin Berghoff	Hydrologist	520-608-6230
John Spence	Botanist	520-608-6267
Vic Knox	Maintenance	520-608-6332
Ken Earlywine	Maintenance	520-608-6335
Stephanie Dubois	Interpretative Ranger	520-608-6263
Char Oberg	Public Relations	520-608-6208

Other Supporting Information



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

LEVON B. HENRY
ATTORNEY GENERAL

BRITT E. CLAPHAM, II
DEPUTY ATTORNEY GENERAL

May 23, 2001

Bill Hansen
NPS - Water Rights Branch
1201 Oakridge Drive, Suite 250
Fort Collins, Colorado 80525

Re: Rainbow Bridge National Monument Water Rights Settlement Agreement

Dear Bill:

I am writing in response to Scott Loveless' letter of December 11, 2000 with respect to the proposed Rainbow Bridge National Monument Water Rights Settlement Agreement.

As we previously discussed, I was concerned that paragraph 7 subordinates the Monument's water rights only to those state-based water rights approved or perfected under state law prior to January 1, 2000. No subordination is made for any tribal uses which are not subject to state law. Similarly, paragraph 8 allows the United States to seek enforcement against future uses based on state law that may cause specific and significant adverse impacts to the Monument. These provisions are curious, because the Monument is surrounded by the Navajo Reservation; therefore, the only competing water uses would be tribal water uses not subject to or perfected under state law. However, as you and I have discussed, and as Scott's letter confirms, the proposed agreement is not intended affect the water rights of the Navajo Nation. The new language at paragraph 13a helps to clarify this.

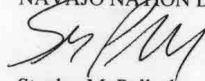
Scott's letter requests a letter of concurrence or non-objection from the Navajo Nation's appropriate governing body. As we discussed, a resolution from the Navajo Nation Council, or even from its standing committees, requires a substantial commitment of time and resources. Given that the Navajo Nation is not party to the agreement, I cannot recommend such a commitment. As Water Rights Counsel, the attorney representing the Navajo Nation on water rights matters, I can represent that the Navajo Nation will not object to the proposed agreement.

I hope this letter is sufficient for purposes of moving forward with the proposed agreement. Please do not hesitate to contact me if you have any questions concerning this matter.

Thank you for your continuing interest and anticipated cooperation.

Sincerely,

NAVAJO NATION DEPARTMENT OF JUSTICE


Stanley M. Pollack
Water Rights Counsel

xc: Levon B. Henry, Attorney General, Navajo Nation
James E. Karkut, Office of the Solicitor

P.O. Drawer 2010 • Window Rock, Navajo Nation (AZ) 86515 • (520) 871-6931 • Fax (520) 871-6177



United States Department of the Interior

OFFICE OF THE SOLICITOR

SUITE 6201, FEDERAL BUILDING
125 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84138

December 11, 2000

Stanley Pollock, Esq.
Navajo Nation Department of Justice
Natural Resources Unit
P.O. Drawer 2010
Window Rock, Navajo Nation (AZ) 86515

Dear Stan,

Thank you for your recent telephone call concerning my letter of November 29 and the National Park Service's proposed water rights agreement with the State of Utah for Rainbow Bridge National Monument. You expressed concern that there was no language explicitly setting out that the agreement would have no effect on tribal water right claims.

I forwarded your concerns to Bill Hansen at the NPS Water Rights Division and also discussed them with Michael Quealy in the Utah Attorney General's Office. Mr. Quealy affirmed that it was not the intent of the State to read anything inconsistent with tribal water claims into the agreement and that he had no objection to adding the specific language you proposed.

As a result of those discussions, paragraph 13a of the draft agreement has been changed to read, "Nothing in this Agreement shall be construed or interpreted to: a. in any way affect the water rights of the United States for agencies and interests other than Rainbow Bridge National Monument, including the water rights of any Indian tribe; . . ." A copy of the revised draft agreement is attached.

We hope that this takes care of your concerns about potential effects on the Navajo Nation's water interests. Please examine the enclosed draft, and if it meets with your approval, I request on behalf of the NPS a letter of concurrence or non-objection from the Nation's appropriate governing body. Please send that letter to the following address.

Bill Hansen
NPS - Water Rights Branch
1201 Oakridge Drive, Suite 250
Ft. Collins, Colorado 80525

Mr. Hansen can be reached, if necessary, at (970) 225-3532.

Thank you for your attention to this matter. It will greatly assist the NPS in moving forward its

water rights program within the State of Utah in a timely manner. Please call the undersigned at (801) 524-5677 ext. 225 if you have any further questions.

Sincerely,
JOHN W. STEIGER
Field Solicitor



A. Scott Loveless
Attorney-Advisor

cc: Bill Hansen

Attachment



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
Glen Canyon National Recreation Area
Box 1507
Page, Arizona 86040

NOV 3 1998

Bill

L54 GLCA-R
Water Rights

Memorandum

To: National Park Service-Water Rights Branch (NPS-WRB)
From: Superintendent, Glen Canyon National Recreation Area (NRA)
Subject: Rainbow Bridge National Monument (NM) Water Rights

On January 23, 1998, Glen Canyon NRA sent a letter to the Native American Consultation Committee (NACC) members and the NPS-WRB regarding water rights settlement discussions to be conducted with the State of Utah for Rainbow Bridge NM. We have since received a response from the Navajo Mountain Chapter of the Navajo Nation expressing concern over the unnamed spring located in the immediate vicinity of Rainbow Bridge.

Glen Canyon NRA recognizes the stated concerns and realizes this particular site has a significant spiritual and cultural importance to all tribes involved in the NACC. In 1995, Glen Canyon NRA entered into a Programmatic Agreement with the five Native American Indian tribes with a special interest in Rainbow Bridge NM: Kaibab Paiute Tribe, San Juan Southern Paiute Tribe, Navajo Nation, Hopi Tribe, and White Mesa Ute Tribe. Through the Programmatic Agreement, we have agreed to consult with all the signatories before any action is taken that may affect Rainbow Bridge NM, as the National Park Service (NPS) has determined the Monument to be eligible for the National Register of Historic Places as a Traditional Cultural Property. To solicit input from the tribes and not address their concerns would go against the spirit of the Programmatic Agreement. We feel it is imperative that the current trust between the tribes and the NPS is not undermined in any way.

Glen Canyon NRA also recognizes that the NPS is compelled to participate in the Colorado River adjudication process that is presently occurring in Utah, realizing that failure to do so may forfeit any Federal reserve water right for Rainbow Bridge NM. Ultimately, we feel the NPS and the members of the NACC are striving for the same end, that is, protection of the natural and cultural properties associated with Rainbow Bridge NM. In addition, Glen Canyon NRA wishes to reserve a small quantity of water for administrative purposes at the Monument. Therefore, it is the position of Glen Canyon NRA that the following be pursued in the settlement discussions:

- 1) Secure water rights for the unnamed spring and any naturally occurring flows within Rainbow Bridge NM for the protection of natural and cultural resources. Specifying a

water right for the protection of natural and cultural resource properties will ensure these sources will not be developed for consumptive use.

- 2) Secure a water right for 2 acre-feet to be drawn specifically from Lake Powell for any future consumptive use. We recognize that a minimal amount of water should be reserved for administrative purposes at the Monument and that limiting the source of this water to Lake Powell will sufficiently meet this need.

Glen Canyon NRA feels that water rights established in this manner would protect the natural and cultural resources of the Monument, allow a small quantity of water available for administrative uses, and maintain the ability of any tribe to secure Federal reserve water rights for their own interests. If you have any questions, please contact Kevin Berghoff, Hydrologist, Glen Canyon NRA, at 520-608-6230 or email at kevin_p_berghoff@nps.gov.

Stephan R Dubois

for Joseph F. Alston

cc:
Native American Consultation Committee members (see attached list)

CONSULTATION COMMITTEE LIST

REV. 10/14/98 :LABELS\CONSULT.LST

White Mesa Ute Council
Mary Jane Yazzie, Chairman
P.O. Box 340
Blanding, Utah 84511

Richard Begay
Navajo Traditional Cultural Program
Manager
P.O. Box 4950
Window Rock, Arizona 86515

Max Evans, Director
Utah SHPO
300 Rio Grande
Salt Lake City, Utah 84101-1182

Eddie Dutchie, Jr.
P.O. Box 340
Blanding, Utah 84511

Navajo Mountain Chapter
P.O. Box 10070
Tonalea, Arizona 86044

John Fowler
Executive Director
Council on Historic Preservation
12136 W. Bayaud
Lakewood, Colorado 80401

The San Juan Southern Paiute Tribe
Evelyn James, Tribal President
P.O. Box 1169
Tuba City, Arizona 86045

Willie Greyeyes
P.O. Box 762
Page, Arizona 86040

Regional Director
Intermountain Region
National Park Service
Denver, Colorado

Johnny Lehi
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Tuba City, Arizona 86045

Inscription House Chapter
HCR 70, Box 3
Tonalea, Arizona 86044

Alan Downer
Historic Preservation Officer
Navajo Nation
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Window Rock, AZ 86515

The Hopi Tribe
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Kykotsmovi, Arizona 86039

David Laughter
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Tonalea, Arizona 86044

Leigh Kuwanwisiwma
Cultural Preservation
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Kykotsmovi, Arizona 86039

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Shonto, Arizona 86054

Kaibab Paiute Tribe
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Fredonia, Arizona 86022

Hurbert Laughter
P.O. Box 7340
Shonto, Arizona 86054

Brenda Drye
HC65, Box 2
Fredonia, Arizona 86022

Oljato Chapter
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Monument Valley, Utah 84536

The Navajo Nation
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Window Rock, Arizona 86515

Jim Fatt
P.O. Box 360455
Monument Valley, Utah 84536

Docket Information

Number of Documents in Docket 17

Documents Dated from to

Docket Compiled: 6/14/2011