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CMA-14-64

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Recommending Amendment of the Act of June 13, 1962, relating
to the Navajo Indian Irrigation Project

WHEREAS:

1. Pursuant to the Navajo Indian Irrigation Project Act; the Bureau of Indian Affairs and the Bureau of Reclamation have begun detailed planning for construction of the Navajo Indian Irrigation Project. The detailed field surveys and investigations indicate that change in location of the project lands from that proposed in the 1957 Feasibility Report will be required, in order that the 110,630-acre irrigated area be obtained as authorized in the Act of June 13, 1962 (76 Stat. 96).

2. Some of the land areas originally proposed to be included in the project located on the present Navajo Indian Reservation have been determined to be of such low quality that they would not properly support sustained irrigated farming, and therefore, other suitable lands will have to be located to provide the project area of 110,630 acres as authorized.

3. Other suitable lands investigated are located in an area east of and adjoining the Reservation and adjacent to lands proposed in the 1957 Report. However, in order to include these new lands in the Navajo Indian Irrigation Project, it is necessary to amend the authorization act.

4. The Bureau of Indian Affairs has recommended that the Project Act be amended to include the additional land in the Project area.

5. The Project Act also requires the Navajo Tribe to enter into a contract with the United States for delivery of water and other operational provisions. A form of contract has been proposed by the United States, and has been reviewed by the Navajo legal staff. It is now appropriate for the Council to authorize execution of the contract on behalf of the Navajo Tribe.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby requests the Congress of the United States to amend the Act of June 13, 1962, in order to expand the provisions of Section 3 to include Township 26 North, Ranges 11, 12 and 13 West, and Township 27 North, Range 11 West, N.M.P.M.

2. The Chairman of the Navajo Tribal Council is hereby authorized to execute on behalf of the Navajo Tribe a contract with the United States as called for in the Act of June 13, 1962, substantially in the form of the draft of January 25, 1964, attached hereto and marked Exhibit A. The Chairman, with the approval of the Advisory Committee, is hereby authorized to approve such further changes in the contract as may be necessary or desirable in the best interest of the Navajo Tribe.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of 48 in favor and 0 opposed this 2nd day of March, 1964.

Nelson Karnou

Vice Chairman
Navajo Tribal Council

FSTO11664)

EXHIBIT A

C O N T R A C T
between the
UNITED STATES OF AMERICA
and the
NAVAJO TRIBE OF INDIANS.

Contract No. _____

(FST011664)

CONTRACT BETWEEN THE UNITED STATES OF AMERICA

AND THE

NAVAJO TRIBE OF INDIANS

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(FST011664)

Contract No. _____

NAVAJO INDIAN IRRIGATION PROJECT
NEW MEXICO

CONTRACT

Between the

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS
and
BUREAU OF RECLAMATION

and the

NAVAJO TRIBE OF INDIANS

for

An Irrigation Water Supply

THIS CONTRACT, made this _____ day of _____ 19____, between the UNITED STATES OF AMERICA, hereinafter styled the United States, acting through the Secretary of the Interior, and pursuant to the Act of Congress of April 11, 1956 (70 Stat. 105); the Act of June 13, 1962 (76 Stat. 96); and the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385); all as amended or supplemented, and the NAVAJO TRIBE OF INDIANS, herein styled the Navajo Tribe, with headquarters at Window Rock, Arizona.

WHEREAS, the Act of Congress approved June 13, 1962 (76 Stat. 96), authorizes the Secretary of the Interior to construct, operate, and maintain the Navajo Indian Irrigation Project for furnishing irrigation water and for other purposes as a participating project of the Colorado River Storage Project (Act of April 11, 1956); and

WHEREAS, the Navajo Tribe desires to contract with the United States for the construction, operation, and maintenance of an irrigation project for furnishing irrigation water to approximately 110,630 acres of land, and is vested with all necessary powers for accomplishment of the purposes of this contract;

NOW THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

1. When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the term:

a. Contracting Officer - shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.

b. Project - shall mean the Navajo Indian Irrigation Project, New Mexico, as authorized by the Act of Congress dated June 13, 1962 (76 Stat. 96).

c. Project Works - shall mean all works or facilities constructed including the diversion works, reservoirs, dams, pipelines, conduits, and outlet works, together with land and rights-of-way for such works.

d. Project Water - shall mean water available for use through the project works.

e. Irrigation Water Supply - shall mean that portion of the project water supply to be used exclusively for the irrigation of irrigable and arable lands.

PROJECT PLAN

2. a. This project is designed for the principal purpose of furnishing irrigation water to approximately 110,630 acres of land, said project to have an average annual diversion of 508,000 acre-feet of water and the repayment of the costs of construction thereof to be in accordance with the provisions of the Act of April 11, 1956, as amended, including, but not limited to Sections 4(d) and 6 thereof. The area will include some off-reservation lands, the acquisition of which is provided for in the legislation. Project works will consist of a main canal, pumping plants, and a small seasonally operated power-plant and such additional related facilities as may be required. Water will be diverted from the Navajo Reservoir. The project may serve municipal and industrial water use, as well as irrigation.

b. The exclusive right to use project works in any manner which will not interfere with rights established by this contract, is reserved to the United States, including the right to increase the capacity of the project works or any unit or feature thereof without cost to the Navajo Tribe.

REPAYMENT OBLIGATION - TERMS

3. a. In consideration of the Navajo Tribe's right upon completion of construction to utilize that portion of the project water supply allocated to it for irrigation water supply purposes, and with reference to Indian lands within, under, or served by the project, the Navajo Tribe shall make payment of construction costs within the capability of the land to repay, all as determined by the Contracting Officer. Such repayment shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a). Under the provisions of that legislation, the collection of all construction costs from any Indian-owned lands within any government irrigation project is deferred, and no assessment may be made on behalf of construction charges against such lands until the Indian title thereto shall have been extinguished.

b. The Navajo Tribe shall notify the Contracting Officer annually of project land in which the Indian title shall have been extinguished. Upon receipt of such information or at any earlier period which in the opinion of the Contracting Officer shall be convenient for the purpose, the Contracting Officer shall determine the assessments to be made against such lands and the rules applicable to such assessments.

OPERATION AND MAINTENANCE

4. a. Upon completion of construction, the United States represented by the Bureau of Indian Affairs shall care for, operate and maintain all project works. Notice will be issued to the Navajo Tribe on or before April 1 of each year showing the estimated cost for the care, operation, maintenance, and replacement of the project works for the next succeeding fiscal year. Payment of operation and maintenance costs of the irrigation features of the project shall be in accordance with the provisions of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385, as amended or supplemented); PROVIDED, that the Contracting Officer may transfer to the Navajo Tribe after not less than 6 months' written notice the care, operation, and maintenance of all or any part of the project works, subject to such rules and regulations as he may prescribe and, in such event, the Secretary may transfer to the Navajo Tribe title to movable property necessary to the operation and maintenance of those works.

b. None of the project works or structures shall be so operated as to create, implement, or satisfy any preferential right in the United States or any Indian Tribe to the waters impounded, diverted, or used by means of such project works or structures, other than contained in those rights to the uses of water granted to the States of New Mexico or Arizona pursuant to the provisions of the Upper Colorado River Basin Compact.

c. This project shall be so operated that no waters shall be diverted or used by means of the project works, which,

together with all other waters used in or diverted from the San Juan River Basin in New Mexico, will exceed the water available to the State of New Mexico under the allocation contained in Article III of the Upper Colorado River Basin Compact for any water year.

DISPOSITION OF REVENUES

5. All project revenues shall be disposed of or credited as determined by the Contracting Officer.

TITLE TO PROJECT WORKS

6. Title to all project works and facilities shall remain in the United States until otherwise provided by the Congress.

PRODUCTION OF BASIC AGRICULTURAL COMMODITY RESTRICTED

7. For the period ending 10 years after completion of construction of the project, no water from the project shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in section 408(c) of the Agricultural Act of 1949 (63 Stat. 1056; 7 U.S.C. 1428) or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b), (10) of the Agricultural Adjustment Act of 1938 (52 Stat. 41), as amended (7 U.S.C. 1281), unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

ACQUISITION AND RETENTION OF LANDS OUTSIDE NAVAJO TRIBE RESERVATION

8. a. The United States shall hold in trust for the Navajo Tribe any legal subdivisions or unsurveyed tracts of federally owned land outside the present boundary of the reservation susceptible to irrigation as part of the project or necessary for location of any of the works or canals of the project: PROVIDED HOWEVER, that no such legal subdivision or unsurveyed tract shall be so declared to be held in trust by the United States for the Navajo Tribe until the Navajo Tribe shall have paid the United States the full appraised value thereof; AND PROVIDED FURTHER, that in making appraisals of such lands the Contracting Officer shall consider their values as of June 13, 1962, excluding therefrom the value of minerals subject to leasing under the Act of February 25, 1920, as amended (30 U.S.C. 181-286), and such leasable minerals shall not be held in trust for the Navajo Tribe but shall continue to be subject to leasing under the Act of February 25, 1920, as amended, after the lands containing them have been declared to be held in trust by the United States for the Navajo Tribe.

b. The Navajo Tribe shall convey to the United States and the Contracting Officer shall accept on behalf of the United States, title to any land or interest in land susceptible to irrigation as part of the project or necessary for location of any of the works or canals of such project, acquired in fee simple by the Navajo Tribe, and after such conveyance said land or interest in land shall be held in trust by the United States for the Navajo Tribe as a part of the project.

c. The Contracting Officer is authorized to acquire by purchase, exchange, or condemnation any other land or interest in land susceptible to irrigation as part of the project or necessary for location of any of the works or canals of such project. After such acquisition, said lands or interest in lands shall be held by the United States in trust for the Navajo Tribe.

RIGHTS-OF-WAY - RESERVATION AND NAVAJO TRIBE CONTROLLED LANDS

9. a. The Navajo Tribe hereby consents to entry by the United States, its officers, employees, contractors, agents, and all others concerned with construction, care, operation, and maintenance of the project into and upon all lands owned or controlled by the Tribe, or over which they exercise administration, to the extent considered by the Contracting Officer to be necessary for the construction, care, operation, and maintenance of the project.

b. The Navajo Tribe hereby grants and conveys to the United States subject, however, to submission by the United States of necessary surveys, plats, and related information showing definite location for acceptance by the Navajo Tribe, a perpetual right, privilege, and easement to construct, replace, relocate, operate, maintain, and remove dams, canals, laterals, ditches, bridges, roads, fences, telephone and telegraph lines, pipelines, electric transmission lines, and any structures, facilities or crossings deemed necessary or desirable, and the right, privilege, and easement to remove from or place on earth and rock, including the right to remove and use sand, rock, and gravel and other building materials, together with the right of ingress and egress for men, materials, and equipment for the purposes of carrying out the easement hereby granted, and the right to trim, cut, fill, and remove underbrush and other vegetation, structures, and any other obstructions or obstacles in and upon reservation lands, controlled lands, or any lands under the administration of the Navajo Tribe and required by the Contracting Officer for the construction, care, and operation of the project. The Navajo Tribe will furnish information showing the location of religious and other areas of special significance to the Contracting Officer. The Contracting Officer will make every effort to minimize problems and will work closely with the Navajo Tribe in resolving any problems in these areas. In the event the Tribe does not comment in writing on the surveys, plats, and related information submitted to it by the United States within 45 days following receipt of that information by the Tribe, such data shall be considered to be acceptable to the Tribe.

c. The Navajo Tribe shall procure without cost to the United States all assurances of title which the Navajo Tribe may be advised by the United States are necessary and proper to show in

the Navajo Tribe a sufficient interest in said property to permit construction, operation, and maintenance of the project.

d. The Navajo Tribe shall execute in forms requested by the Contracting Officer, all deeds, easements, or conveyances as required evidence of the conveyances herein provided, for recordation or other uses.

WATER RIGHTS - WATER SUPPLY GENERAL

10. a. Disposal of Water by United States - During construction of the project and in any subsequent year for which the Contracting Officer determines that water is legally available for use, any water which may become available and usable may be disposed of by the United States through temporary water supply contracts at such rates as the Contracting Officer may determine and establish. The places of measurement and delivery shall be established by the Contracting Officer.

b. Beneficial Use of Water - Beneficial use shall be the basis, the measure, and the limit of the right to the use of project water.

c. Water Shortages - On account of drouth or other causes beyond the reasonable control of the United States, there may occur at times during any year a shortage in the quantity of water available for use by the Navajo Tribe pursuant to this contract. In no event shall any liability accrue against the United States or any of its officers or employees for any damage, direct or indirect, arising out of any such shortage.

d. Quality of Water - The United States makes no warranty as to the quality of the water available to the Navajo Tribe under this contract.

e. Navajo Tribe Water Rights - The Navajo Tribe shall have the right to use its share of project water supply required for irrigation purposes.

f. Return Flow - The United States reserves the right to use any of the seepage or return flow water attributable to the use of the project water supply.

g. Priority Claims - The Navajo Tribe hereby waives any claims it may have to project waters, including prior rights therein, based upon judicial construction of Navajo Tribe rights through application of the principles of the case of Winters vs. United States (207 U.S. 564) and agrees to the apportionment and distribution of available project water as provided in this contract.

h. Water Sales and Distribution - The Contracting Officer may contract for the sale and distribution of water not committed by this contract to the Navajo Tribe.

STATUTORY DIRECTIVES ON WATER ALLOCATIONS

11. a. This project is designed to provide for an average annual diversion of 508,000 acre-feet of water for irrigation purposes. In any year in which the Contracting Officer anticipates a shortage, taking into account both prospective runoff originating above Navajo Reservoir and the available water in storage in Navajo Reservoir, available water shall be shared in the following manner: The prospective runoff shall be apportioned between the contractors diverting above and those diverting at or below Navajo Reservoir in the proportion that the total normal diversion requirements of each group bears to the total of all normal diversion requirements. The Contracting Officer shall notify the Navajo Tribe of anticipated shortages, and shall determine the allocation of available water to the Navajo Tribe and to other authorized users.

b. In the case of contractors diverting above Navajo Reservoir, each such contract shall provide for a sharing of the runoff apportioned to said group in the same proportion as the normal diversion requirement under said contract bears to the total normal diversion requirements of all such contracts that have been made hereunder; PROVIDED that for any year in which the foregoing sharing procedure either would apportion to any contractor diverting above Navajo Reservoir an amount in excess of the runoff anticipated to be physically available at the point of his diversion, or would result in no water being available to one or more such contractors, the runoff apportioned to said group shall be reapportioned, as near as may be, among the contractors diverting above Navajo Reservoir in the proportion that the normal diversion requirements of each bears to the total normal diversion requirements of the group. Contractors diverting from or below Navajo Reservoir, including specifically the Navajo Tribe, shall share the remaining runoff together with the available storage in the same proportion as the normal diversion requirements under said contract bears to the total normal diversion requirements under all such contracts that have been made under the Act of June 13, 1962.

c. This contract shall not entitle the Navajo Tribe to receive a total amount of water beyond that which in the judgment of the Contracting Officer, in the event of shortage, will result in a reasonable amount being available for the diversion requirements of this project and for the diversion requirements of the initial stage of the San Juan-Chama Project.

COMPLIANCE WITH ACTS OF CONGRESS OF APRIL 11, 1956 and JUNE 13, 1962

12. Construction, care, operation, and maintenance of the project and project works, including the allocation, diversion, and distribution of water as authorized by the Act of Congress of April 11, 1956 (70 Stat. 105), and the Act of Congress of June 13, 1962 (76 Stat. 96), shall be subject to and in conformance with the applicable conditions, limitations, and provisions of these acts, and the statutes, compacts, and treaties referenced in said 1956 and 1962 Acts.

RULES AND REGULATIONS

13. There is reserved to the Contracting Officer the right, so far as the purport thereof may be consistent with the provisions of this contract and applicable laws, to make reasonable rules and regulations and to add to and modify them as may be deemed proper and necessary to carry out this contract and to supply necessary details of its administration, and the Navajo Tribe agrees to observe such rules and regulations.

ACCESS TO BOOKS AND RECORDS

14. Duly authorized representatives of each party shall have the right, during office hours, to inspect and to make copies of the other party's books and official records relating to matters covered by this contract.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

15. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriation or allotments being made. The failure of Congress to appropriate funds or the failure of any allotment of funds shall not, however, relieve the Navajo Tribe from any obligations theretofore accrued under this contract, nor give the Navajo Tribe the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case of such funds not being appropriated or allotted.

NOTICES

16. Any notice authorized or required to be given to the United States shall be delivered or mailed, postage prepaid, to the Secretary, Department of Interior, Interior Building, Washington 25, D. C. Any notice authorized or required to be given to the Navajo Tribe shall be delivered or mailed, postage prepaid to the Chairman of the Tribal Council of the Navajo Tribe of Indians, Window Rock, Arizona. The designation of the addresses or the addresses given above may be changed by notice given in the same manner as provided in this article for other notices.

TERM OF CONTRACT

17. This contract shall be effective on execution and shall remain in force until superseded or terminated by agreement between the parties hereto.

CONTINGENT FEE CLAUSE

18. The Navajo Tribe warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Navajo Tribe for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to add to the contract repayment obligation or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

OFFICIALS NOT TO BENEFIT

19. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

20. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any part or interest therein shall be valid until approved by the Contracting Officer.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed the day and year first hereinabove written.

THE UNITED STATES OF AMERICA

Department of the Interior

By _____
Secretary

NAVAJO TRIBE OF INDIANS

By _____