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RECORD
OF THE
NAVAJO TRIBAL COUNCIL

November 6, 1975

The meeting of the Navajo Tribal Council was held in the Council Chamber at Window Rock, Arizona on Thursday, November 6, 1975 at 10:25 A.M.

Chairman Peter MacDonald, Presiding

Carl Beyal, Legislative Secretary-Interpreter
Ruth A. Gee, Reporter

THE CHAIRMAN: Members of the Tribal Council: The Council meeting will now come to order. We'll now have our roll call.

(Whereupon, roll was called by Carl Beyal and 42 Council members were present at the commencement of the morning session.)

THE CHAIRMAN: Members of the Council: We do have a quorum. I'd like to ask Councilman from Lake Valley, William Henry, to give us the invocation.

(Whereupon, Councilman William Henry delivered the invocation in the Navajo language.)

THE CHAIRMAN: Members of the Council: We will continue now with the proposed resolution that is before the Council pertaining to Approving the Navajo Version of the Contract for the Delivery of Water from the Navajo Indian Irrigation Project and Reaffirming the Navajo Position with respect to the Use of Project Lands. We had the reading of the resolution to be continued at the time we recessed yesterday afternoon but because of a lack of a quorum we didn't continue, so this morning we'll continue. Before we do that, I'd like to introduce to you some people here.

Members of the Council, for the last few days you've seen a member of the General Counsel, Larry Ruzow sitting here with a young lady and you're probably wondering who she is, whether she's his girlfriend or what, but really she is a lawyer and a member of the Vlassis, Ruzow and Linzer Firm, her name is Katherine Ott. Would you please stand?

(Whereupon, Katherine Ott stood for recognition.)

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THE CHAIRMAN: Mr. Beyal.

CARL BEYAL: Mr. Chairman, Members of the Council: For the record, we will re-identify the subject which is on the floor, it's a Proposed Resolution of the Navajo Tribal Council, the title: Approving the Navajo Version of the Contract for the Delivery of Water from the Navajo Indian Irrigation Project and Reaffirming the Navajo Position with Respect to the Use of Project Lands.

Now going back to the subject item, we're on Page 11 and we'll begin with the section which reads:

(Whereupon, the following was read by Carl Beyal and made a part of the record.)

COMPLIANCE WITH ACTS OF CONGRESS OF APRIL 11, 1956, AND JUNE 13, 1963

11. 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. 109), and the Act of Congress of June 13, 1963 (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.

WATER RIGHTS - WATER SUPPLY GENERAL

12. 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 beyond that required for operation of the project 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. Water Shortages - On account of drought 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 Nation 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,

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arising out of any such shortage, provided however, that the United States will be responsible for any damage arising out of a shortage of water occasioned by its entering into contracts for the delivery of more water than could have reasonably been anticipated to be available in times of shortage pursuant to 43 U.S.C.A., Section 15, Subsection (a), Paragraph 12.

c. Navajo Nation Project Water Rights - The Navajo Nation shall have the right to use its share of project water supply required for irrigation purposes and other directly related activities.

d. 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 which actually enters the San Juan River, provided however, that this subsection shall not constitute any waiver or limitation on the right of the Navajo Nation to waters of the San Juan River separate and apart from rights contained in the Act.

e. Priority Claims - The Navajo Nation hereby waives any claims it may have to project waters, including prior rights therein, based upon judicial construction of Navajo Nation rights through application of the principles of the case of Winters v. United States (207 U.S. 564) and agrees to the apportionment and distribution of available project water as provided in this contract, the operation of this project in no way satisfying, fulfilling, limiting or measuring Navajo Nation water rights in and to the waters of the San Juan River.

f. Water Sales and Distribution - The Contracting Officer may contract for the sale and distribution of water not committed by this contract to the Navajo Nation, provided however, that no contract may be entered into which impairs the rights of the Navajo Nation pursuant to the Act or this agreement.

QUALITY OF WATER

13. The operation and maintenance of project works shall be performed in such manner as is practicable to maintain the quality of raw water made available through such works at the highest level reasonably attainable as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment

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facilities to maintain or better the quality of water so long as no actions of the United States result in the degradation of the quality of water which would otherwise be available to the Navajo Nation through the project.

WATER AND AIR POLLUTION CONTROL

14. The Navajo Nation, shall in the operation of the project, within its legal authority, comply fully with all applicable Federal laws, orders, and regulations and the laws of the State of New Mexico, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, groundwater, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants, and concerning the pollution of the air with respect to radioactive materials or other pollutants.

BOOKS, RECORDS AND REPORTS (STD)

15. The Navajo Nation shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of project works, and to other matters as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each Party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this contract.

RULES, REGULATIONS, AND DETERMINATIONS (STD)

16. a. The Contracting Officer shall have the right to make, after an opportunity has been offered to the Navajo Tribe for consultation, rules and regulations consistent with the provisions of this contract, the laws of the United States and the State of New Mexico, to add or to modify them as may be deemed proper and necessary to carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Navajo Nation shall observe such rules and regulations.

b. Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to

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to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Navajo Nation questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Navajo Nation and shall be conclusive upon the parties.

NOTICES (STD)

17. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Southwest Region, Bureau of Reclamation, Amarillo, Texas 79101, on behalf of the United States and to the Chairman of the Navajo Tribal Council of the Navajo Tribe of Indians, Window Rock, Arizona 86515, on behalf of the Navajo Tribe. The designation of the addresses or the address may be changed by notice given in the same manner as provided in this article for other notices.

TERM OF CONTRACT

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

ENVIRONMENTAL STATEMENT

19. The Navajo Nation agrees that it will furnish data and information to the United States as may be required for preparation of an environmental statement pursuant to the National Environmental Policy Act of 1969 (Public Law 91-190), as it may be amended. No water will be delivered under this contract until an environmental statement has been prepared by the United States in compliance with said act and until the Secretary, in his sole discretion, finds the uses for which the water is to be delivered are consistent therewith. The United States shall take every action to expedite the preparation of an environmental statement such that delivery of project water beginning in 1976 is not delayed or impeded.

CONTINGENT FEE CLAUSE

20. The Navajo Nation warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding

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for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Navajo Nation 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.

CONTINGENT ON APPROPRIATION OF ALLOTMENT OF FUNDS (STD)

21 The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Navajo Tribe from any obligations 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 the United States in case such funds are not appropriate or allotted.

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED (STD)

22 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 Contracting Officer.

OFFICIALS NOT TO BENEFIT (STD)

23 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.

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 _____

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NAVAJO NATION

By _____

Attest:

Secretary
Navajo Nation

(SEAL)

* * * * *

THE CHAIRMAN: Members of the Council: That concludes the reading of the proposed resolution and also the Exhibit "A" which is the Contract itself between the United States and the Navajo Nation for water to be used on the Navajo Indian Irrigation Project. I know that the reading is quite lengthy and the language is quite long, but before we make any comments on it I'd like, perhaps, to have the General Counsel, Larry Ruzow, give you the background on this particular contract. And also give you some of the critical areas that the Navajo must protect, are that the United States possibly don't want to agree to and areas that we may find difficult with this contract and the reasons why we should go along with some of the provisions and the reasons why we shouldn't go along with other provisions and what means and terms of project success and also law and order and long-term acquisition of the Navajos' water rights in the area.

LARRY RUZOW: Thank you, Mr. Chairman, Members of the Navajo Tribal Council, Guests: There is probably only a handful of projects or endeavors that the Navajo Nation will be involved in in the next decade that are of the gravity and importance as the Navajo Indian Irrigation project. Those of you who are from the area who have served in the Council for many years or participated in the efforts that finally ended up with the law of 1962 of June 13 know what it took to get the Congress to approve the Navajo Indian Irrigation Project.

Now we are here in November of 1975, and we know that water was first promised to you and to your predecessors in 1970. We're told that the first block of land will be available in, I believe, April of 1976, the first 10,000 acres. We're faced, however, with a situation

RG/rg

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in which the Federal law which established the irrigation project requires that there be a contract between the Navajo Nation and the United States before there can be any delivery of water.

During the last eleven years anyway, maybe twelve, there have been contracts proposed by the Bureau of Reclamation and through them the Department of the Interior to provide for water delivery to the project lands. In fact, I'm told that in 1964 the Navajo Tribal Council or at least the then Chairman, Mr. Nakai, approved one version of the contract.

Because all the versions of contracts that have been presented by the Department of the Interior have presented severe problems with respect to the water rights of the Navajo Nation, our office in consultation with the Chairman and Vice Chairman was asked to take the law as it exists and to take the government proposals as they have been presented by the Bureau of Reclamation and to draft a Navajo version of the water contract.

The considerations which the Chairman and the Vice Chairman asked us to keep in mind in doing this work were principally the preservation of Navajo water rights in the San Juan River. We were also asked obviously to take into account what the law was, the Irrigation Project Act of 1962 and, of course, to consider what standard clauses or paragraphs would have to be in any agreement.

The second area that Chairman MacDonald asked be considered in this proposal had to do with what you, as the Navajo Tribal Council and as the Navajo Nation, would choose to do with the irrigation project. Some of you, I know, have been troubled as had the Chairman by reports and they're probably just rumors that the irrigation project might be leased or the lands might be leased to commercial ventures like Del Monte to run a farm or that the irrigation project might be -- or that the industry which runs the project might be involved in things in Farmington rather than on the project lands.

It is my understanding that this project has always been looked upon by the Navajo Tribal Council and by its Chairman as the people's farm and that the idea is to provide the Navajo people with an opportunity to engage in irrigated farming. At the same time, you have in your original plan of operation for the Agricultural Products Industry specifically provided that the businesses

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of the NAPI were to be within the Navajo Nation or on the project, and that part of the resolution in Sections 4 and 5 of the "Resolved" clause simply spell that out.

Now to go back to the agreement and to the proposal that is before you. There's essentially three matters that are subject of disputes between the Navajo Nation and the Department of the Interior, the Bureau of Reclamation. The first matter is how much water shall be provided to the project, the second is for what purposes may water provided to the project be used and the third is the relationship between the project and Navajo water rights in the San Juan River.

The initial law provided for a diversion, a use in the project of 508,000 acre feet of water. This is the figure which was promised to the Tribal Council at the time when you originally approved this legislation, we're talking now fifteen, seventeen, eighteen years ago. Because the sprinkler system of irrigation which is what is going into the project now is more efficient than the open ditch system which is for, an example, as in Many Farms or in the current Shiprock area projects, certain water will be saved from the original plans.

The question then is who can get the water which is saved? The Navajo Nation has contended, of course, that that water should be made available for agricultural related and other projects in the San Juan Basin for Navajo people and Navajo projects.

The Department of the Interior has said that the Navajo people should only be allowed to use that amount of water which is directly needed for irrigation purposes. And that means the water that flows through the canals and channels as well as the water which comes out of the sprinkler heads.

We have in this version that is before you provided in Section 1-c on Page 2 and in Section 1-d on Pages 2 and 3 a broader definition than that which the government offers and we're talking here -- in the government version it says that the irrigation water supply is to be used exclusively for the irrigation of irrigable and arable lands. And we have suggested that in order to increase the uses to which water may be put that we include "directly related domestic and industrial consumption necessary for the operation of the project." That means, for example, if Navajo families are to live on the

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project under the government version they might not be able to use the very water which is coming from the project for their homes and other uses. On the version that is before you today such uses will be permitted.

We have also included your Paragraph 1-d, Irrigation Related Water Supply. It is not enough simply to produce the agricultural commodities, the alfalfa, the vegetables or whatever that are grown on the project lands, that is a situation which you find yourselves with respect to mineral development which I know many of you have expressed a desire to change. You don't simply want the coal or the gas or the oil or the uranium taken from your land and processed elsewhere where the profit and employment and whatever shall be in Grants or Texas or California. Well, the same is true with agricultural commodities, if there are going to be feed, grain, wheat and whatever that are processed, you should want the opportunity to have agricultural processing done within the Navajo Nation and using the water made available by the project.

The third area, once we have talked about the 508,000 acre feet and the purposes to which water may be put, is the relationship between the irrigation project and this contract and Navajo water rights in the San Juan Basin. Let me briefly explain the two different types of water rights that are involved. Most of the members of the Council are familiar with the so-called Winters Doctrine and cases which have followed that.

That doctrine says that when an Indian Nation has either a reservation created or recognized it is assumed that in the recognition or creation of such a reservation or Indian Nation that the Federal Government reserve as much water as would be necessary for the agricultural and, perhaps, other activities of that Indian Nation for that Indian Reservation.

The argument has always been on behalf of Indian Nation that if we have an arid climate as we do here and the Federal Government had set aside or recognized lands on which Native American people, in this case the Navajos, are to be located or to reside that the Federal Government implicitly whether or not it says so in the Treaty of 1868, whether or not it says so in the Acts of Congress, and whether or not it says so in Executive Orders, the Federal Government along with the land reserves for the use of that Indian Nation, the Navajos in this case, enough water to meet their agricultural and other needs.

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Now that means, and that's the subject of litigation now up in -- it's in Albuquerque but it's for the San Juan River, is what that is saying is when the Navajo Nation was recognized, not created by the Treaty of 1868, and when the Executive Orders in New Mexico, the Boundary Act in Arizona and the Aneth Extension in Utah were approved, that not only did the Navajo Nation have the land but that you also have the water and that that water is yours and is not depended upon your putting that water to what is known as beneficial use. Beneficial use simply means using it to produce livestock, for crops, industries, domestic, recreational, anything other than San Juan River running down into the Colorado, that's not beneficial use.

Okay, there's a second broad area of water rights and those are water rights which people like myself or anyone else who does not have Indian water rights might have and that will be water rights arising out of use depending on the day that you first put water to use. For an example, if you had someone who is a settler around Farmington or Aztec, outside of the Navajo Nation, and they were to have gone into one of the creeks or into the San Juan River and had diverted water for their fields, we're talking fifty or sixty years ago; well, they would have put the water to use and under the law of the western states which is recognized by the Federal Government those people would have got a right to use the water simply by using it.

Now when the irrigation project became law, the question arose where was the water that would be used in the project to come from? Well, we all know where physically; it's from, you know, San Juan River, from the Navajo Dam, from the creeks, the Navajo Creek and Blanco and a couple of others that drains into the reservoir. Then the question was, what about the water rights itself and how does the 508,000 acre feet relate to existing uses in the Upper Colorado River Basin? And what the Congress said in 1962 and this is in the Act, Section 615-TT of the Act, is that none of the project works or structures, Navajo Indian Irrigation Project, shall be operated to create, implement or satisfy any preferential right in the United States for any Indian tribe to the waters impounded, diverted or used.

The next part of that section said that the water, the 508,000 acre feet, would count out of the allocation to New Mexico under what is called the Upper Colorado River Basin compact. So what we're talking about in the Irrigation Project, at least the position

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I strongly recommend we must take and it has been taken consistently by the Navajo Nation, we're talking about New Mexico State water, we're not talking about Navajo Nation Winters Doctrine rights. This is the same state water of the same kind that this Council authorized three years ago to be brought up in Utah for Padre Point recreational development, it's not Winters Doctrine water, it's state water.

And what this contract is all about in short is the Federal Government that spent the millions of dollars to build the project, they're going to use, hopefully, if we are appel, New Mexico water to run it and they want you, the Navajo Nation, through your Agricultural Products Industry, to agree to the terms under which the project is run and to pay the operating and maintenance expenses.

THE CHAIRMAN: Mr. Bitsie.

JOSEPH BITSIE: (The following remarks were interpreted by Carl Beyal.)

Mr. Chairman, this is something that these people have been bringing to the Council time after time, that's the same report that keeps coming to us for the last twelve years. Meanwhile, in talking about this 508,000 acre feet; therein, I should like to ask if there are ways or means, whereby, that could be changed? In other words, is there a strict limitation to that, can that allotted size be increased?

Then how about other regions like we're talking in the area of New Mexico, what about that in Arizona and in Utah, do you have a similiar compact with respect to these rights and the supply?

Meanwhile, I believe we had already have had these water uses perhaps provided portions to people like Peabody Coal Company, the WESCO, the El Paso Natural Gas Company and, therein, are they part of this or are they separate from what we're talking about here?

THE CHAIRMAN: Mr. Ruzow.

LARRY RUZOW: Thank you, Mr. Chairman and Members of the Navajo Tribal Council: The short answer to Mr. Bitsie's question, why we're bringing it to the Council, is because this is a governing body of the Navajo Nation and the governing body must approve any contract for water from the Navajo Indian Irrigation Project. And if there isn't any contract approved, there won't be any water.

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Now I'm hopeful, of course, that this Council as it has in the past will not say that any contract in order to get water is okay. We've seen in past years before 1970 an awful lot of situations in which the Navajo Nation was given some kind of threat like you mentioned about Arizona allocations for power plants and Peabody and the Navajo Nation said -- you know, they just say, someone came to the Navajo Nation and said unless you sign this, there'll be no tomorrow and for some reason the leadership in the 1960's signed.

Now you've asked what are the changes of increasing the 508,000 acre feet that's provided for in the Act and the answer is there isn't any likelihood of Congress increasing that now until the Irrigation Project itself is in operation and shows a need to be increased. We're only going to have, if everything works out right, the first 10,000 acres next year and it'll be nine more years until the 508,000 would be used, so it'd have to come at that later date and see, if then, if more were needed.

And it's again important to remember we're talking about 508,000 acre feet out of New Mexico's allocations. It must and it should and it really has to be the Navajo Nation's position that using your Winter's Doctrine rights for anything else you want in the San Juan, in New Mexico, in Utah, in Arizona or elsewhere, that's your rights, you don't have to go to Congress to get approval. You don't have to go to the State of New Mexico, the State of Arizona, the State of Utah or anyone else, those are your projects and we can, if the Council wishes later, to get into what the allocations are to the various states and how this works out of that.

Now as far as these other proposals for water usages from the San Juan River, it's my understanding that I believe El Paso already has a water contract with the Secretary or it's in the process of being approved, Utah International has a contract with the Secretary, the City of Farmington does, I understand Shiprock is supplied out of the City of Farmington contract, but those are all separate from the Navajo Nation contract that is proposed for the Irrigation Project. Those are something else and we don't really have to consider them, I think, today.

THE CHAIRMAN: We'll now recess until one-thirty.

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(Whereupon, at 12:00 Noon, Thursday, November 6, 1975, the Navajo Tribal Council recessed and reconvened on the same day at 2:00 P.M.)

Chairman Peter MacDonald, Presiding

Carl Beyal, Legislative Secretary-Interpreter
Ruth A. Gee, Reporter

THE CHAIRMAN: Members of the Council: The Council meeting will now come to order. We'll now have our roll call.

(Whereupon, roll was called by Carl Beyal and 51 Council members were present at the commencement of the afternoon session.)

THE CHAIRMAN: Members of the Council: We do have a quorum.

We'll now continue with our session on the proposed resolution that's before the Council.

Mr. Harry Tome.

HARRY TOME: (The following remarks were interpreted by Carl Beyal.)

Mr. Chairman, I would think that perhaps matters are in order, whereby, a motion could be made to act on this proposal, however, I do have a question here where I wish to get one title clarified as to what it refers to and that is throughout the contract there's this Contracting Officer being mentioned, for whom does he function, the Navajo Tribe, the Bureau of Indian Affairs or what role has he, meaning as to representing the office?

The other matter which should be explained is where according to explanation given that there was certain version that was approved by the previous Chairman which according to the explanation there was an approval made to a certain version of the contract, I wonder if that would be in conflict with this proposed contract or would that be made invalid if this one is approved?

THE CHAIRMAN: Mr. Ruzow.

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LARRY RUZOW: Thank you, Mr. Chairman, Members of the Navajo Tribal Council: The Contracting Officer is the representative of the Secretary of the Interior or the Secretary's designate on the project, it's a government official, presumably NAPI or whomever the Council designates as a corresponding person or group representing the Navajo Nation. I don't know whether NAPI has a specific person designated or not.

I do not have with me nor have I ever seen the 1964 version, my understanding is that it is hopefully buried away not to come out. I can tell you that I'm sure because it was to the best of my analogy a version approved by the Bureau of Reclamation one that is significantly different than that which is before you particularly with respect to the three matters we discussed this morning 508,000 acre feet allocation, use for other than strictly irrigation and protection of Navajo water rights in the San Juan River.

And yes, Mr. Tome, by approving a new version now you would be invalidating whatever the mistakes that were made eleven years ago.

THE CHAIRMAN: Mr. Ruzow, I think the question as I understand it relates to where there prior agreements or contract that was signed by an Advisory Committee's official action that needs to be cited in the proposed resolution to rescind that, so that there's no conflict in case the other one is in the works?

LARRY RUZOW: Thank you, Mr. Chairman, Members of the Navajo Tribal Council: That's a very good point and we will -- Katherine and I will take a look now while we're discussing the other parts of the resolution to see if there was formal Council or Advisory Committee action either in 1963 or 1964, and we'll have the answer later this afternoon during the discussion if that meets the Council's approval.

THE CHAIRMAN: Harry Brown.

HARRY BROWN: (The following remarks were interpreted by Carl Beyal)

Mr. Chairman, Council Members: One part of the contract refers to the repayment and, therein, I wonder what can be arranged if proper or an official request is made to perhaps make other arrangements. Then in having that requirement, I wonder if that's advisable or feasible?

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The other point is I think where we're talking about previous action of the Navajo Tribe should by all means be reexamined, there might be a resolution which is on the books that sets forth what the Council has decided, by all means this should be reexamined to see what it does say.

THE CHAIRMAN: Mr. Fred Johnson.

FRED JOHNSON: (The following remarks were interpreted by Carl Beyer.)

Mr. Chairman, I won't ask any lengthy questions. According to the 1962 Act we understand there is this project which was enacted and since then some of us have been reviewing what this was all about and have some understanding as to the purpose and so forth. But in reviewing this proposal I have been examining the contents throughout and wondering if there's any provision here which might hinder the Navajo Tribe in any way later on. But, basically, it would appear that if there's no water then there's no -- according to what we have since June 13, 1963, we've had this enactment which provides 508,000 acre feet of water to be made available.

Now at this point we have the new methods like the sprinkler system could be used, there's a savings of water and although the water is designated for irrigation, still under those guarantees the water is still ours rather than the earlier arrangements.

So I'd like to now move that we go ahead and adopt the resolution except that in Paragraph 3 we should redo this. Of course, the Legal Advisor points out that this is something that we have to be doing. In view of that, I'd like to have it amended to read "in the event that the Department of the Interior is unwilling to enter into a contract as set forth in Exhibit "A", the Navajo Tribal Council delegates to the Advisory Committee of the Navajo Tribal Council and the Resources Committee of the Navajo Tribal Council, shall provide an amended version of the water delivery contract for the approval of the Navajo Tribal Council." That would be the amendment there.

Other than that, I have a question regarding this and this is eleven years old, I think we need to have a better view of what we are proposing here like, for an example, in "b", in talking about water availability where if the 508,000 acre feet is specific, maybe that should be clearly written out.

Now there, too, you have the irrigation water supply, just what supply are we talking about, that is the amount? Thirdly, again, there's 2-a where you refer to the Act of April 11, 1956 as amended and it goes on to say, but not limited to Sections 4 (d) and 6 thereof. I'd like to call upon the Legal Advisor as to what these refer to, what they do mean? Not only that, but where it points out the project may serve municipal and industrial water use, as well as irrigation. We know that there are other municipalities like Farmington, we should make sure that if we are talking about a municipality, we're talking about those within our project.

Then on Page 4 where you're talking about diversion rights that there would be certain determination to be made. Well, how do you determine that, what method is used? This should be explained.

Then on Page 4 there is a paragraph written in single space which, apparently, is the provision as they have it in the law. Now I'm sure the Council is not very clear on the whole meaning of this. I, myself, wouldn't very well understand even if it's stated in Navajo other than in English. So this should be explained by the Legal Advisor point by point as to what this does in the event of shortages.

Now on Page 5 you also have a Paragraph 2 where, again, I ask the Legal Department to tell us or explain so the Council members can understand what this does, that is in the event of shortages.

And then Page 7 we refer to in talking about titles and so on this Upper Colorado River Basin Compact that this should be explained as to what it does mean, what it is? And this is to avoid anything like that which has been experienced in the Aneth area like surface lands and so on, so that should also be explained as to what this would do.

And then on Page 9 you are talking about title to any land or interest in land susceptible to irrigation as part of the project, et cetera; this should also be explained to us.

Then on Page 10 in "b", I think we should go down the line because in the translating of this not everyone of these have been covered so I think we should go through it completely.

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And on Page 11 you refer to this submission as stated within forty-five days that if there is a clause which says that if we don't make any comments and so forth that this would be happening. I think this should also be explained so we'd know why, in other words, why this forty-five days, so this should also be brought out.

And then on Page 13 in talking about return flow that I call for an explanation and all this and also the "e", the priority claims, the same way.

So with those requests my motion is to approve.

THE CHAIRMAN: Members of the Council: Motion has been made by Fred Johnson, seconded by Lewis Etsitty to approve this proposed resolution as read with the exception that in the "Now Therefore Be It Resolved" section, Paragraph 3 has been changed to reflect that there is an amendment for the Advisory Committee and the Resources Committee to provide an amended version of the water delivery contract for approval by the Tribal Council.

In addition to that there were several questions raised on Exhibit "A" itself; of course, that will probably be directed to the General Counsel and he'll answer those.

In the meantime, the floor is still open for questions if you have any questions or statements to make.

Mr. Ruzow.

LARRY RUZOW: Mr. Chairman, Members of the Navajo Tribal Council: If it meets your approval, I'll go through Mr. Johnson's questions page by page and have interpretation in between rather than go all the way through.

The first question that Mr. Johnson raised was on Page 2 of the attachment, Paragraph 1-b. I think Mr. Johnson was suggesting that it might make some sense to be more specific in where it says "Project Water - shall mean water available for use through the project works", Mr. Johnson was suggesting we might want to specify that that is the 508,000 feet to which there is a Navajo diversion right. I can't see any problem adding a couple of words to simply say that.

Irrigation water supply, what is that? Well, the supply means the water itself that's stored in the

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Navajo Lake and Dam and then released through the canals to the project lands.

The next questions related to Page 3 of the attachment. And the first question on that page is what is the Act of April 11, 1956? That's the Colorado River Storage Project Act which authorized certain funds to be appropriated for construction of reclamation projects within the Upper Colorado River Basin. The Colorado River Basin consist of the Colorado River mainstream as it is known together with all river streams that drain into the Colorado and San Juan River, of course, is one such river, the Green River in Utah is another and then the tributaries of those such as Navajo Creek and so forth. The Colorado River Basin is divided for water purposes, at least Anglo water purposes, at Lee Ferry which is on the road to House Rock Valley for those of you who've been there.

Now the question about Sections 4-d and 6 really are similiar to the questions raised by Mr. Harry Brown before about paying back and how does that work. The short answer is that with respect to an Indian reclamation project, the capital construction cost, what it cost to build the project is not repaid as long as the land remains in trust. The operating and maintenance expenses are paid on an annual basis if the Secretary determines that the Tribe in question has enough money to make the repayments. I have had conversations with NAPI people on that and they didn't have any trouble saying that they would be able to make those payments.

The last question on Page 3 had to do with municipal and industrial water use, if I can just take a moment, I can -- that is directly out of the Act, as Mr. Johnson said municipal means for domestic purposes, for drinking, cooking, whatever domestic use except in a broader sense. And industrial is, for an example, the current use being made at Four Corners Power Plant is an industrial use and that comes directly from the Act.

THE CHAIRMAN: Mr. Ruzow, I think before you go on, on Page 3 I think Mr. Johnson indicated that some clarification should be made on the last sentence of 2-a, the project will serve municipal and industrial water use as well as irrigation. If the language is left like that is it possible that perhaps, Farmington water flow and other non-Indian community could use that language to get water from the irrigation project? Therefore, really to our advantage to say the same thing to mean specifically for the project area.

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LARRY RUZOW: Thank you, Mr. Chairman, I think that's a good suggestion and, perhaps, the language which could be added would be -- leave the sentence as it reads to the end, the project may serve municipal and industrial water use as well as the irrigation within the Navajo Nation and that would make sure we're not talking about Farmington water flow or any other communities.

Now on Page 4, I believe Mr. Johnson's principal question was about this incredible government language that appears in single space for several hundred words. That comes, as Mr. Johnson said, that's directly out of Section 615 SS of the Act, this is what's known as the sharing of shortage provision. What it means is this, let us assume, this is strictly hypothetical, it has nothing to do with the actual figures, that the normal water available both above and below Navajo Dam is a million acre feet, and that one year we had a real bad drought and there's only half a million acre feet available. And normally half of the water was diverted above Navajo Dam and half below, 500,000 above and 500,000 below, and now we've only got a million that's going to be available. Well, what this says is that if there's fifty percent of the water available; well then, everybody only gets fifty percent, all the water users. It goes on and on in this language.

But that's -- they're talking about reapportioning the apportion. Well, let's assume that the normal diversion above the dam was the 500,000 and Mr. Webb got 300,000, for example, and the city of Aztec got another 100,000 and that the Shiprock waterline got 100,000, that is above -- I think that is above; well, that would be example. And now with the bad year and there isn't enough water, what this says is if there's half the water that's normally available, they're going to have to apportion that shortage, so Mr. Webb would only get 150,000 and the city of Aztec 50,000 and the Shiprock pipeline 50,000 and these are just examples.

The next question had to do with Paragraph 2 on Page 5, that's completely new and that's in order to protect Navajo water rights or Navajo use of water would be a better way of putting it. Because there is a sharing of shortage provision which includes the irrigation project water which comes from the Act, we would all want to be very concerned that there wasn't a shortage that was created by the Secretary, it's bad enough if it doesn't rain.

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But what happens if the Secretary is the person who's giving away the water and creates a shortage. You know it's sort of -- if you had a well in a community that could only serve certain number of people and you could only draw it down to a certain amount of water each day; well, you suddenly had a hundred or two hundred more people coming to that well, there'd be a shortage that had nothing to do with rain or anything else, there'd be a shortage because there was too much use and that's what Paragraph 2 says.

All right, the law says the Navajo Nation must share shortages with respect to the Irrigation Project, but the Navajo Nation should not be asked to share a shortage that the Secretary of the Interior creates by giving away water to Albuquerque or El Paso or someone else, that's what Paragraph 2 says. The Secretary creates the shortage and the Navajos should not be asked to share it.

On Page 7 of the proposed agreement, a question has been raised as to the meaning of Paragraphs "b" and "c" on that page together with the underlined question, what is this Upper Colorado River Basin Compact. Here, in the southwest there isn't enough water to go around as you people know only too well and what has happened is the various states and the Federal Government, the Mexican Government, as well as Indian Nations have had conflicts for years about how to share the water that exist.

So what happened in 1922 the Upper and Lower Colorado River Basin states, by that we mean all the states from Wyoming downstream, Wyoming, Colorado, Utah, New Mexico, Arizona, California and Nevada got together and they couldn't agree in 1922 on how to divide the water among themselves without getting into the question of the rights of Native American people

What they said is, whatever else happens, the states in the Upper Basin, Wyoming, Colorado, Utah and New Mexico and Arizona above Lee Ferry agreed that seven and a half million acre feet a year on the average, what they really promised is 75,000,000 over ten years, would be delivered at Lee Ferry by gauging station, however one measures water. They did not then decide among themselves how to apportion that seven and a half million. The estimate, and this can certainly be challenged these days, was that there be seven and a half million acre feet available for Lower Basin and seven and a half million acre feet available for the Upper Basin.

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The Lower Basin states, Arizona south of Lee Ferry, Nevada, California never were able to get together, and that led to a lawsuit known as Arizona against California in which there was an allocation as well as an allocation to the Colorado River tribes and they got quite a bit of water. We're more interested for today, of course, in the Upper Basin because we're talking about New Mexico. In 1948 the five Upper Basin states reached an agreement on how to divide their share of Upper Basin water, approximately seven and a half million acre feet each year, and I placed on the blackboard which can barely be seen, the allocations that they agreed upon.

And remember these are the five states, and there's not any Indian tribes and certainly not the Navajo Tribe. What they said is Arizona above Lee Ferry gets the first 50,000 acre feet each year and then the remaining, some 7,450,000 depending on the year, will get divided according to percentages listed on the board; New Mexico, 11.25%; Utah, 23%; Wyoming, 14% and Colorado a line share of 51.75%. That means we could say just in very, very round numbers that in any year New Mexico is entitled to some 800,000, give or take, acre feet per year.

Now turning back if we will to Page 7, Paragraph "b", the language in Section "b" is word-for-word except for the reference to the statutes Section 615 TTA out of the Navajo Indian Irrigation Project Act of 1962, Section "c" is the same as 615 TT Section "b", so we can explain what it means. But if we don't have any choice as long as we're going under the law and if we don't go under the law we don't have a project.

Now what it does mean is that the Irrigation Project is not being run as a Winters Doctrine project. Let me draw that distinction, we talked about Winters Doctrine this morning; we, at least as your attorneys, are of the opinion that you choose, the Navajo Nation, to build a water project with your own funds without having to ask Congress for the \$200,000,000 of this cost to establish a project, let's say, on San Juan River in Utah where the Navajo Nation is on both sides of the river or has been proposed on the Little Colorado River just after the Moencopi Wash. That kind of a project you wouldn't care about, Upper Basin, Lower Basin and Colorado River, those are Anglo Rivers that apportion Anglo water.

The Navajo Indian Irrigation Project, despite its name, is not a Navajo project, you're not building those dams and lakes, that's the Federal Government's

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Bureau of Reclamation doing that work, so it's a federal project. And the Federal Government has agreed that they will abide by the provisions of the Upper Colorado River Basin Compact. So what Sections "b" and "c" say is the project, just the irrigation project, has to be operated in conformity with this Upper Basin Compact.

Now Page 9, Paragraph "b" on the top of the page, that part of the original irrigation project plan was to put land both within and without the Navajo Nation as the Navajo Nation existed in 1962, originally the plan I think was to include mostly lands within the Navajo Nation. But I don't have to tell those people who are from that area, the land is so poor for growing crops that the government gave up and said, all right, go take the ranchers' lands outside but you're going to have to pay for it. And the Navajo Nation has, in fact, made arrangements to pay, I'll have to ask Mr. Holmes if the money has been paid yet. But what Section "b" says that the land is provided for in the project that's outside the Navajo Nation boundary was bought by the Navajo Nation and then transferred to the United States Government and then held in trust for the Navajo Nation.

Now going to Page 10, I refuse to read that whole page again and I think Mr. Beyal will shoot me if I tried. That's just the Navajo Nation agrees that within this land that's either within the Navajo Nation already or is added to the Navajo Nation by purchase and then transferred to the United States Government to be held in trust, Navajo Nation agrees that it authorizes the Federal Government to do everything they have to to build the irrigation project and we'll grant easements, rights or whatever in order to do that.

Then turning to the bottom of that if there are areas of special significance as Mr. Johnson indicated cemeteries or religious places, some of them you know were actually covered when the Navajo Dam itself was built, but if there are it's the duty of the Navajo Nation, hopefully, NAPI to provide that information and then the Contracting Officer from the government and whoever at NAPI is delegated would work together to solve that problem. And the United States will supply surveys to the Navajo Nation and I gather this has been on-going for the last five or six years with NAPI and its predecessors, and the Navajo Nation has forty-five days to comment.

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Well, the project as we all know has been delayed by the Federal Government for at least six years and if there needs to be some procedure, whereby, the Federal Government makes a proposal, let's say, Block 4, Block 5 or something shows a survey, gives it to NAPI and then NAPI has to come up with a response. We have never heard from NAPI, the forty-five days isn't long enough but if we're the people, the Navajo Nation, saying make it 180 days the Federal Government will say, sure, we'll delay the project another half a year. So that's the forty-five days.

Now on Page 13, Section "d" is a problem that has come up in -- I think it's principally come up in just the past year or so, it came up about the same time as this issue about the sprinkler arose. The Navajo Nation water rights do not only include the surface water rights but ground water rights as well. In some cases, and I'm the last one to talk knowledgeably about hydrology and the like, ground water is directly related to surface water and if you have a shallow well, that's something, and you're into the same water table that you're taking water from the surface source and it goes into the ground and now you're drilling the well into -- you're tapping the same return flow, that's one situation.

Another time you may be in a deep aquifer, a thousand or more feet below the surface, and you're not -- and your ground water return has nothing to do with the use of surface water, at least, in any reasonable period of years. But the project, particularly when the project was scheduled to be an open ditch type of irrigation system would require that much more water to be sent out into the fields then the plants would actually absorb and a good deal of water would just come back through the ground and presumably at some point into the San Juan River.

The sprinkler system as I understand it there's much less of that because you use less water to begin with and it goes on the surface of the plants, that's more than I know about that. But the return flow -- the question is how to count the return flow and who can use it, and the government -- if you're looking at that Paragraph "b", the government wanted to stop that after the word San Juan River which meant that they could take credit for the government or use the return flow and the addition beginning with "provided however" is an attempt to say, all right, if the government for some reason is going to use that return flow; well, okay, but in no way

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will the Navajo Nation waive or limit or restrict its right to San Juan River water.

Going on to "e", that's a similiar type of consideration, that's probably the single most difficult, controversial and questionable provision in the entire agreement and if we're going to be doing something for negotiation purposes where presumably the Resources Committee and, perhaps, NAPI people will be going back and meeting with Reclamation, perhaps that just simply ought to be stricken.

But let me explain what it means. As we've said all day the irrigation project is a Navajo named project but it's really a federal project being run with New Mexico's water. Now you, in addition, separate and apart long before there was an irrigation project, have and had Winters Doctrine rights in New Mexico and through the Navajo Nation. Let us say, for example, that you have the right to 2,000,000 acre feet in the San Juan Basin in New Mexico, or you might say you've got all that water and we know darn little of it is being used on the Navajo lands or Navajo industry. You might say why talk all this nonsense about shortages, let the Anglos split their shortages any way they want, you've got all this water, just take 508,000 or however many acre feet it takes. Okay, the Bureau of Reclamation comes and says, well, you're 200,000 acre feet short in 1983; you say, well, fine, just take it from our Winters Doctrine water and that's something that I would think you'd want to do.

The problem, however, is that this legislation like anything that goes through the Congress is a matter of compromise and the Federal Government because of the position of the State of New Mexico; Clinton Anderson, for those of you who go back a little way, extracted a promise that in return for building the project \$200,000,000 of Federal expenditures not to be repaid by the Navajo Nation that you wouldn't do that. Because you and I may discuss Navajo water or Anglo water and El Paso water, there's only -- you know, water is water and if the Navajo Nation takes its water would mean there isn't going to be any left. And that's, of course, the ultimate problem of the 1980's that we will have to all discuss at great length in the days and weeks ahead.

So what this priority claims means is that you agree that because the Federal Government put up the \$200,000,000 to build the project that you're not going to as a result of the operation of the project, and I'm

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not saying what you're going to do elsewhere, you're not going to show up everybody else's water in the San Juan. Now that is not saying and that's why the second -- the last part of this paragraph reads the operation of this project in no way satisfying, fulfilling, limiting or measuring Navajo water rights into the waters of the San Juan River.

You're saying, okay, as long as we're just talking about the irrigation project, you agree not to claim a priority over Anglo users. You will not say we want the project running full and Farmington can go thirty. However, what you aren't saying is that you won't have some other projects or other uses, certainly Navajo projects that may link Farmington and Albuquerque go thirsty. But as I said for negotiation purposes you might want to just leave this out and let the government suggest it again.

NOAH NOTAH: (The following remarks were interpreted by Carl Beyal.)

Here's a project which has been planned for years ago and that the Navajo Tribal leaders at the time decided that this was something that they would hope to have accomplished for the benefit of the Navajo people and at the same time I'm sure everybody understood that eventually this would lead into other matters, issues like this would be dealt with and things like this would be coming forth and I'm sure this is what we are engaged in now at the moment. This might be said for other major undertakings also.

But along with what Mr. Harry Tome has mentioned earlier, I would like to enlarge upon that. Of course, a reply has been made that by adopting this resolution that this would supersede any previous resolution that the Council may have with respect to all this. But we have a management board which is very closely concerned with these developments and if that management board had been given the opportunity to study up on this and review all the existing resolutions that the Navajo Tribe may have adopted to promote this? I'm sure if this was routed through them they would have the proposal showing what resolutions we are rescinding and so on. And, in that regard, I'd like to know if you have reviewed this with the management board and so on?

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LARRY RUZOW: Mr. Chairman, Members of the Navajo Tribal Council: We have located the resolution that you're referring to and Mr. Tome referred to before concerning the 1964 action of the Navajo Tribal Council, and the answer to the question that was raised earlier by Mr. Tome is yes, the Tribal Council by a unanimous vote on March 2, 1964 did approve a resolution that, first of all, requested an addition to the land that was to be available for the project outside the Navajo Nation. The recommendation that as I understand from reading the Act became law.

And, secondly, authorized a contract for the water to be signed by the Chairman. There is an attachment which I have reviewed and after the break we certainly can get copies available to the Council, it's very much similar to the government version of the contract, it does not contain any of the protection of Navajo water rights we've been discussing today. So we do now have a reference to that contract.

As far as reviewing things with the management board I, myself, have from time to time discussed things with Mr. Nunn on a repeated basis, presently Mr. Nunn is an attorney with NAPI, and have had extensive discussions with the Vice Chairman. Of course, ultimately the contract must be between the Navajo Nation and the United States and not between NAPI and the United States.

THE CHAIRMAN: Members of the Navajo Tribal Council: There is a resolution of the Navajo Tribal Council dated 1964 that deals with the same subject, but rather it's kind of broad in one section, in the "Resolved" clause, that request for additional land and other parts of the "Resolved" section deals with a specific contract, draft contract, that instructs the Chairman to go ahead and execute with the Secretary of the Interior. So if that is the case perhaps this proposed resolution should state that the '64 resolution is modified or amended, a specific portion of that resolution which will be amended so that it does not have any conflict with what's being talked about now.

George James.

GEORGE JAMES: (The following remarks were interpreted by Carl Beyal.)

Mr. Chairman, on Page 14 there is on the lower part of the page a provision which states something about applicable Federal law as well as the laws of the State of

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New Mexico and that, herein, we're talking about the Federal part of it, are we talking within the realm of activities of the Public Health Services? So, too, with the laws of New Mexico? We, as the Council, have established an Environmental Protection Commission or some such group who would function for matters such as this and I wonder if perhaps having no confidence in that new office that we have to have a paragraph such as that? This is my question.

And then in talking about this control you mention things like garbage and other type of matters here where we know that in cities, places like that they have such services which, of course, is for charge. And, therefore, just how much of these laws under the State of New Mexico are we incorporating or would be more or less approving by this action if we are to adopt this?

LARRY RUZOW: Mr. Chairman, Members of the Navajo Tribal Council: I think Mr. James has made a good point, you should be aware that in the original government draft, the latest one that they have suggested is even worse, it reads as follows, Paragraph 14, The Navajo Tribe shall within its legal authority comply fully with all applicable Federal laws, et cetera, in the State of New Mexico. They didn't even limit it to the operation of the irrigation project and that could mean almost anything. So we did change it to say we're only talking about the irrigation project.

But even so I think Mr. James' point is well taken and there is no reason unless the Council feels otherwise to have and the laws of the State of New Mexico, that could be stricken without any problem at all certainly from our standpoint.

As far as the Navajo Environmental Protection Commission, under one hand it looks a little funny for the Navajo Nation to agree to follow part of itself which is the Navajo Environmental Protection Commission. On the other hand one problem we've had which certainly does not reflect on the Board or the Commission members is that there are no Navajo Nation regulations, et cetera, which the Commission has put out yet. And so if we were to say to comply with Commission regulations the government would say, well, what are they and we'd say, we really don't know because there aren't any. But at least we could get rid of New Mexico without much trouble.

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And on the Chairman's suggestion about a reference to that 1964 resolution, as I said copies are now being runned off but the possibility would be that Paragraph 6 of the "Resolved" clause might say -- Paragraph 2 of the "Resolved" clause of the resolution CMA-14-64, March 2, 1964, is hereby rescinded, I think that would accomplish what the Chairman nas suggested.

BENJAMIN HOGUE: I'd like to refer to the second page of the proposed resolution, Paragraph 4 and 5 where it reads tne Navajo people shall be given every opportunity to use land within tne project for farming, I take this to mean that these are individual operators like we have in tne Sniprock area.

And then if you go down to the next paragraph where it says the Navajo Tribal Council disapproves of any attempt to lease, assign or otherwise transfer project lands to any entity of a commercial nature. I think there's a lot of interest on the part of some of these farmers to go into this and farm the land in this area. It seems like we're blocking this opportunity that's referred to in Paragraph 4 -- I mean 5 by the sentence I've read, the last part of Paragraph 5; if they want to sell their products then they cannot farm the lands. So it seems like there's no opportunity for any person that would like to farm in that area.

I'd like to request the person that made the motion that should he like go into farming it seems like there's no opportunity for him, so since he's an attorney, I'd like to ask him to correct this.

LARRY RUZOW: Thank you, Mr. Chairman, Members of tne Navajo Tribal Council: In response to Mr. Hogue's question, it's certainly true that Paragraph 4 of the "Resolved" clause of the proposed resolution is designed deliberately and specifically to mean that the land is available for the Navajo people for farming. Paragraph 5 is to prevent and, I'm in no way saying this is the intention of the Anglo Farm Manager or the NAPI Anglo Board members, and the rumors about Del Monte and the rest, and this Paragraph 5 says no, the project lands are not going to be transferred to Mayor Webb or Del Monte or anybody else.

Now if, as Mr. Hogue says, we want to also make clear that Navajo people either individually or in groups want, it should be -- of course, they're encouraged to do tne farming and sell their products to whoever they want, hopefully there'll be Navajo processing plants instead of

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of having to go up to the Anglos up in Cortez every week. But you might just say in Paragraph 5, assign or otherwise transfer project lands to any non-Navajo entity, insert the word "non-Navajos" between "any" and "entity" and I think that would do it.

FRED JOHNSON: Mr. Chairman, Members of the Tribal Council: In response to Mr. Hogue's suggestion, I think it was a mere suggestion, he didn't ask for an amendment but I will take that as an amendment on the part of the motion here. And the "Resolved" clause 5 will read "The Navajo Tribal Council for and on behalf of the Navajo Nation reaffirms its intention that the project be administered from within the Navajo Nation (including project lands) and disapproves of any attempt to lease, assign or otherwise transfer project lands to any non-Navajo entity of a commercial nature or one not part of the Navajo Nation."

And also after -- I guess this will be after the break, the "Resolved" clause 6 will be worked out in detail, that is if we have a break, and in that case I will go ahead and have a language as suggested rescinding the '64 resolution as "Resolved" clause 6.

Going back to Page 5 of the agreement under the Diversion I would like Mr. Ruzow's comments as to a subparagraph 3 to specifically define what diversion is meant as far as the Navajo Indian Irrigation Project goes. And I have a couple of sentences here which I think that will cover that, it goes as such: Diversion shall mean 508,000 acre feet of water, diversion through the project work above the reservoir and shall exclude hydro-electric water for generation of electricity below the reservoir. Any water for hydro-electric purposes below the reservoir shall not be charged to the 508,000 acre feet of water allocated to the Navajo Indian Irrigation Project. If he thinks that we can have this as part of the final agreement, then I would make this as a part of the contract. Thank you.

THE CHAIRMAN: Mr. Chairman, Members of the Council: I think that Mr. Johnson's suggestion is a good one as long as we all understand like everything else that we have all changed, it's for negotiation purposes and now it has -- now the easiest part is in here, the hard part will be dealing with the Bureau of Reclamation and what eventually comes back to this Council through the Advisory Committee and Resources Committee may or may not include that.

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THE CHAIRMAN: If there's no further questions, all
be in favor please stand; opposed.

CARL BEYAL: Mr. Chairman, the results: 43 in favor
and none opposing.

THE CHAIRMAN: Members of the Council: With that
vote, 43 in favor and none opposing, the proposed resolution
is hereby approved.

As I've stated and as have been stated by the
gentleman who made the motion in the proposed resolution
in the "Now Therefore Be It Resolved" section changes have
been made in Paragraph 3 to reflect that any revision of
this Exhibit "A" and the contract should come back to the
Navajo Tribal Council. In Paragraph 5 line four a word
"non-Navajo" has been added between "any" and "entity".
And also in Paragraph 6, a language should be inserted as
have been stated by the General Counsel that this resolu-
tion modifies all of Resolution '64 with respect to the
contract that was submitted for approval at that time.
Also in Exhibit "A" itself, Page 5, a third paragraph
will be added to specifically address itself to the
diversion of 508,000 acre feet of water not to be used
for any future proposal of hydro-electric purposes below
the reservoir itself, that language was read to us. So
that is the way the resolution has been approved.

We'll now recess until tomorrow at ten o'clock.

(Whereupon, at 4:05 P.M., Thursday, November 6,
1975, the Navajo Tribal Council recessed to reconvene the
following day, Friday, November 7, 1975 at 10:00 A.M.)