

Revised Appendix 2
April 2, 2012

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

STATE OF NEW MEXICO ex rel.)	
State Engineer,)	
)	
Plaintiff,)	
)	
v.)	No. CIV 75-184
)	
UNITED STATES OF AMERICA, et al.,)	SAN JUAN RIVER
)	ADJUDICATION SUIT
Defendants.)	
)	
)	
_____)	

**SUPPLEMENTAL PARTIAL FINAL JUDGMENT AND DECREE
OF THE WATER RIGHTS OF THE
NAVAJO NATION**

THIS CASE is a general adjudication filed pursuant to NMSA 1978, Sections 72-4-13 through -19 of the surface and underground water rights within the San Juan River Basin in New Mexico consistent with 43 U.S.C. Section 666. The Court entered the Partial Final Judgment and Decree of the Water Rights of the Navajo Nation (“Decree”), dated _____, which describes the rights of the Navajo Nation to divert, impound or use the surface waters within the San Juan River Basin, including the San Juan River and its tributaries, and the underground waters underlying the surface drainage of the San Juan River Basin in New Mexico, and which provides for a supplemental decree to further describe rights for uses determined by survey as per paragraphs 8 and 9 of the Decree. This Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo

Nation (“Supplemental Decree”) quantifies and decrees these additional water rights.

This matter comes before the Court on the Settlement Motion of United States, Navajo Nation and State of New Mexico for the Entry of Partial Final Decrees, filed January 3, 2011. The Court finds that the Supplemental Decree is the product of a negotiated settlement by the aforesaid parties. Notice of the deadline for filing and serving objections to the water rights described in this decree was served on the parties to this case and potential water right claimants pursuant to the expedited *inter se* procedures adopted by the Court. The Court, having considered the parties’ motion, the United States’ Hydrographic Survey of Navajo Lands in the San Juan River Basin in New Mexico dated December 2010 that identifies, among other things, water uses for which water rights are to be adjudicated in this decree (“US Survey”), the water rights described in this decree, the objections thereto, the evidence in support thereof, and for good cause shown:

FINDS that the motion should be granted; and

FINDS FURTHER that there is no just reason for delay in accordance with Rule 1-054(C) NMRA 2012 and directs the entry of this decree adjudicating water rights of the Navajo Nation within the San Juan River Basin.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. JURISDICTION.

The Court has jurisdiction over the subject matter and the parties in this case.

2. SUPPLEMENT TO PARTIAL FINAL JUDGMENT AND DECREE.

This Supplemental Decree is entered pursuant to paragraph 20 of the Decree and is hereby incorporated therein.

3. RESERVED RIGHTS.

The Navajo Nation has reserved rights, which are held in trust by the United States on behalf of the Navajo Nation, for historic and existing water uses on lands in the San Juan River Basin in New Mexico. Reserved rights are not subject to abandonment, forfeiture or loss for non-use. The reserved rights described in this paragraph have a priority date of June 1, 1868. The reserved rights for historic and existing irrigation uses and related purposes on the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project are included in the reserved right amounts specified by subparagraphs 3(a), 3(e) and 3(f), respectively, of the Decree.

Reserved rights for historic, existing and future municipal, industrial, commercial and domestic uses, including residential agricultural uses such as yard and stock watering, are included in the reserved right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a) of the Decree. The total annual quantities of water to which the Navajo Nation has a reserved right for historic and existing uses and which are not included in paragraph 3 or subparagraph 7(a) of the Decree shall not exceed an annual diversion of 26,872 acre-feet or an annual depletion at the places of use of 11,061 acre-feet for uses other than reservoir storage described in subparagraphs 3.A.1 and 3.B.2 below, or a net evaporation from stock ponds and irrigation reservoirs of 11,309 acre-feet. The term “depletion” refers to the depletion caused by a particular use of water including any depletion incident to the use.

The reserved water rights described below are subject to the conditions of use set forth in paragraph 5 of this Supplemental Decree and constitute the rights described in paragraph 8 of the Decree. The following descriptions are not intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's reserved rights under Federal law. The conditions under which the Navajo Nation may make such changes are specified in paragraph 12 of this

Supplemental Decree, and are subject to the Court's continuing jurisdiction to interpret and enforce this Supplemental Decree as provided in paragraph 14 of the Decree and paragraph 9 of this Supplemental Decree.

A. LIVESTOCK WATER USE

1. STOCK PONDS

The Navajo Nation has the following rights to fill and refill stock ponds on lands held by the United States in trust on behalf of the Navajo Nation that are supplied from water sources other than the San Juan River:

(a) STOCK PONDS IN DRAINAGES TRIBUTARY TO THE SAN JUAN RIVER ABOVE THE CHACO RIVER CONFLUENCE, storage of water at up to 193 stock ponds identified by the US Survey from existing surface, spring, or ground water sources at each identified location, with a total combined maximum annual net evaporation depletion of 956 acre-feet based on a total combined volume of 628 acre-feet;

(b) STOCK PONDS IN THE CHACO RIVER DRAINAGE, storage of water at up to 803 stock ponds identified by the US Survey, excluding stock ponds at locations labeled P-0039, P-0042, P-0257, P-1823 and P-5072, from existing surface, spring, or ground water sources at each identified location, with a total combined maximum annual net evaporation depletion of 6,446 acre-feet based on a total combined storage volume of 3,378 acre-feet;

(c) STOCK PONDS IN DRAINAGES TRIBUTARY TO THE SAN JUAN RIVER BETWEEN THE CHACO RIVER CONFLUENCE AND FOUR CORNERS, storage of water at up to 98 stock ponds identified by the US Survey from existing surface ,

spring, or ground water sources at each identified location, with a total combined maximum annual net evaporation depletion of 487 acre-feet based on a total combined storage volume of 264 acre-feet; and

(d) STOCK PONDS IN THE CHINLE WASH DRAINAGE, storage of water at up to 36 stock ponds identified by the US Survey, excluding the stock pond at the location labeled P-1092, from existing surface, spring, or ground water sources at each identified location, with a total combined maximum annual net evaporation depletion of 556 acre-feet based on a total combined storage volume of 365 acre-feet.

The locations and sources for each stock pond are described by Appendix B maps and Appendix M, table M-3, of the US Survey; except, that this Supplemental Decree does not recognize rights for the Navajo Nation to use water from sources other than the San Juan River to fill and refill ponds at locations labeled P-5346 and P-5350 in the US Survey. The Navajo Nation may store water up to the full capacity of any of the stock ponds referenced in subparagraphs (a) through (d).

2. STOCK USE

The Navajo Nation has the right to divert from existing water sources on lands held by the United States in trust on behalf of the Navajo Nation a total combined maximum annual amount of 482 acre-feet, or an annual depletion by stock watering use from all stock watering sources at the places of use of 482 acre-feet, based on livestock use for 40,900 animal units. Locations of existing stock wells and springs are described by Appendix B maps and Appendix M, table M-1 and table M-2, respectively, of the US Survey. This right includes all stock water consumption and incidental depletions from the stock wells on Navajo Nation trust lands listed in table M-1 of the US Survey, the springs on Navajo Nation trust lands listed in table M-2 of the US Survey, the stock ponds on

Navajo Nation trust lands that the Navajo Nation has the right to fill pursuant to subparagraph 3.A.1 of this Supplemental Decree, the irrigation wells on Navajo Nation trust lands listed in table F-1 of the US Survey, the springs on Navajo Nation trust lands listed in table F-2 of the US Survey, the irrigation reservoirs on Navajo Nation trust lands that the Navajo Nation has the right to fill pursuant to subparagraph 3.B.2 of this Supplemental Decree, the irrigation ditches on Navajo Nation trust lands that are associated with tributary irrigation rights described by subparagraph 3.B.1 of this Supplemental Decree, and the lakes, streams or other existing water sources on Navajo Nation trust lands within the San Juan River Basin in New Mexico. The foregoing diversion and associated depletion amounts do not include diversions made for livestock uses under the Navajo Nation's water rights pursuant to the Decree, or diversions made to fill and refill the stock ponds described by subparagraph 3.A.1 of this Supplemental Decree or the irrigation reservoirs described by subparagraph 3.B.2 of this Supplemental Decree.

B. IRRIGATION WATER USE

1. IRRIGATION DIVERSION AND DEPLETION

The Navajo Nation has the following rights to divert the waters of the San Juan River Basin in New Mexico for irrigation uses:

(a) IRRIGATION PROJECT USES IN THE CHACO RIVER DRAINAGE:

The total combined amount of diversion by the Navajo Nation from tributaries to the San Juan River or from ground water sources within the Chaco River drainage under the following irrigation rights shall not exceed a total combined annual diversion of 23,635 acre-feet per year, or a total combined annual depletion at the places of use of 9,032 acre-feet per year, on any or all of the 7,337.3 acres of land within the irrigation projects described below.

(1) SANOSTEE PROJECT, an annual diversion of 2,725 acre-feet, or an annual depletion at the place of use of 1,121 acre-feet, of surface water from Sanostee Wash at the diversion works for the project based upon irrigation of 581 acres within 1,286.9 acres of land that constitute the project area as described by the US Survey;

(2) TOCITO PROJECT, an annual diversion of 783 acre-feet, or an annual depletion at the place of use of 284 acre-feet, of surface water from Tocito Wash at the diversion works for the project based upon irrigation of 148 acres within 231.4 acres of land that constitute the project area as described by the US Survey;

(3) TOCITO SPRINGS PROJECT, an annual diversion of 105 acre-feet, or an annual depletion at the place of use of 59 acre-feet, of water from Tocito Springs at the diversion works for the project based upon irrigation of 30 acres within 46.5 acres of land that constitute the project area as described by the US Survey;

(4) TOH AL SISSY PROJECT, an annual diversion of 792 acre-feet, or an annual depletion at the place of use of 388 acre-feet, of surface water from Sanostee Wash at the diversion works for the project based upon irrigation of 197 acres within 276.2 acres of land that constitute the project area as described by the US Survey;

(5) TOCITO LAKE PROJECT, an annual diversion of 143 acre-feet, or an annual depletion at the place of use of 53 acre-feet, of surface water from a tributary to Tocito Wash at the diversion works for the project based upon irrigation of 38 acres within 42.9 acres of land that constitute the project area as described by

the US Survey;

(6) PORCUPINE CANYON PROJECT, an annual diversion of 10 acre-feet, or an annual depletion at the place of use of 6 acre-feet, of surface water from Porcupine Canyon at the diversion works for the project based upon irrigation of 3.3 acres within 4.3 acres of land that constitute the project area as described by the US Survey;

(7) STINKING WATER PROJECT, an annual diversion of 156 acre-feet, or an annual depletion at the place of use of 76 acre-feet, of surface water from a tributary to Pena Blanca Arroyo at the diversion works for the project based upon irrigation of 40 acres within 43.8 acres of land that constitute the project area as described by the US Survey;

(8) SHEEP DIP RESERVOIR PROJECT, an annual diversion of 152 acre-feet, or an annual depletion at the place of use of 76 acre-feet, of surface water from To-bilhask-idi Wash or Tse-yaa-tohi Wash at the diversion works for the project based upon irrigation of 40 acres within 70.2 acres of land that constitute the project area as described by the US Survey;

(9) RED ROCK CANYON PROJECTS, an annual diversion of 616 acre-feet, or an annual depletion at the place of use of 300 acre-feet, of surface water from Tse-nas-chii Wash or Tse-yaa-tohi Wash at the diversion works for the projects based upon irrigation of 158 acres within 229.5 acres of land that constitute the project areas as described by the US Survey;

(10) TOADLENA AND TOADLENA NE PROJECTS, a total annual

diversion of 1,180 acre-feet, or a total annual depletion at the place of use of 412 acre-feet, of surface water from To-dil-hil Wash at the diversion works for the projects for irrigation of 222.6 acres of land that constitute the project areas as described by the US Survey;

(11) SAND SPRINGS PROJECT, an annual diversion of 15 acre-feet, or an annual depletion at the place of use of 9 acre-feet, of ground water at the diversion works for the project based upon irrigation of 4.6 acres within 6.4 acres of land that constitute the project area as described by the US Survey;

(12) UPPER CAPTAIN TOM AND LOWER CAPTAIN TOM PROJECTS, a total annual diversion of 6,275 acre-feet to be measured below Captain Tom Reservoir, or a total annual depletion at the place of use of 2,250 acre-feet, of surface water from Captain Tom Wash or To-dil-hil Wash at the diversion works for the projects based upon irrigation of 1,184 acres within 2,008.8 acres of land that constitute the project areas as described by the US Survey;

(13) GREY MESA AND TWO GREY HILLS PROJECTS, a total annual diversion of 3,758 acre-feet, or a total annual depletion at the place of use of 1,305 acre-feet, of surface water from Captain Tom Wash or its tributaries at the diversion works for the projects based upon irrigation of 709 acres within 878.3 acres of land that constitute the project areas as described by the US Survey;

(14) SHEEP SPRINGS PROJECT, an annual diversion of 971 acre-feet, or an annual depletion at the place of use of 396 acre-feet, of surface water from Tuntsa Wash at the diversion works for the project for irrigation of 216.3 acres of land that

constitute the project area as described by the US Survey;

(15) NASCHITTI NORTHERN PROJECT, an annual diversion of 682 acre-feet, or an annual depletion at the place of use of 243 acre-feet, of surface water from a tributary to Coyote Wash at the diversion works for the project for irrigation of 136.3 acres of land that constitute the project area as described by the US Survey;

(16) NASCHITTI DROLET PROJECT, an annual diversion of 402 acre-feet, or an annual depletion at the place of use of 191 acre-feet, of surface water from Naschitti Wash at the diversion works for the project for irrigation of 108.6 acres of land that constitute the project area as described by the US Survey;

(17) NASCHITTI SOUTHERN PROJECT, an annual diversion of 123 acre-feet, or an annual depletion at the place of use of 58 acre-feet, of surface water from a tributary to Naschitti Wash at the diversion works for the project based upon irrigation of 33 acres within 142.4 acres of land that constitute the project area as described by the US Survey;

(18) LONG LAKE PROJECT, an annual diversion of 158 acre-feet, or an annual depletion at the place of use of 53 acre-feet, of surface water from Naschitti Wash in any one year at the diversion works for the project based upon irrigation of 30 acres within 43.0 acres of land that constitute the project area as described by the US Survey;

(19) CHOISKA (RED WILLOW) PROJECT, an annual diversion of 3,975 acre-feet measured below Chuska Lake, or an annual depletion at the place of use of 1,418 acre-feet, of surface water from Red Willow Wash or its tributaries at the

diversion works for the project based upon irrigation of 750 acres within 965.6 acres of land that constitute the project area as described by the US Survey;

(20) WELL 14MILE PROJECT, an annual diversion of 211 acre-feet, or an annual depletion at the place of use of 110 acre-feet, of ground water at the well for the project based upon irrigation of 59 acres within 110.0 acres of land that constitute the project area as described by the US Survey;

(21) WELL 14A-79 PROJECT, an annual diversion of 118 acre-feet, or an annual depletion at the place of use of 62 acre-feet, of ground water at the well for the project based upon irrigation of 34 acres within 79.9 acres of land that constitute the project area as described by the US Survey;

(22) WHITE ROCK PROJECT, an annual diversion of 69 acre-feet, or an annual depletion at the place of use of 36 acre-feet, of ground water from the well for the project based upon irrigation of 20 acres within 41.5 acres of land that constitute the project area as described by the US Survey;

(23) LAKE VALLEY PROJECT, an annual diversion of 116 acre-feet, or an annual depletion at the place of use of 70 acre-feet, of surface water from Kimme-ni-oli Wash at the diversion works for the project based upon irrigation of 40 acres within 75.0 acres of land that constitute the project area as described by the US Survey;

(24) STANDING ROCK PROJECT, an annual diversion of 47 acre-feet, or an annual depletion at the place of use of 27 acre-feet of surface water from Standing Rock Wash at the diversion works for the project based upon irrigation of

15 acres within 36.4 acres of land that constitute the project area as described by the US Survey;

(25) CROWNPOINT SCHOOL PROJECT, an annual diversion of 53 acre-feet, or an annual depletion at the place of use of 32 acre-feet, of ground water from the well for the project based upon irrigation of 18 acres within 34.5 acres of land that constitute the project area as described by the US Survey;

(b) IRRIGATION PROJECT USES IN THE SAN JUAN RIVER DRAINAGE BELOW THE CHACO RIVER CONFLUENCE AND FOUR CORNERS:

The total combined amount of diversion by the Navajo Nation from tributaries to the San Juan River within the San Juan River drainage between the Chaco River confluence and Four Corners under the following irrigation rights shall not exceed a total combined annual diversion of 322 acre-feet per year, or a total combined annual depletion at the places of use of 157 acre-feet per year, on any or all of the 84.3 acres of land within the irrigation projects described below.

(1) BECLABITO PROJECT, an annual diversion of 185 acre-feet, or an annual depletion at the place of use of 93 acre-feet, of surface water from Shoe Game Wash at the diversion works for the project for irrigation of 44.4 acres of land that constitute the project area as described by the US Survey;

(2) RED WASH PROJECT, an annual diversion of 137 acre-feet, or an annual depletion at the place of use of 64 acre-feet, of surface water from Red Wash at the diversion works for the project based upon irrigation of 30 acres within 39.9 acres of land that constitute the project area as described by the US Survey;

(c) IRRIGATION PROJECT USES IN THE CHINLE WASH DRAINAGE:

The total combined amount of diversion by the Navajo Nation from tributaries to the San Juan River within the Chinle Wash drainage under the following irrigation rights shall not exceed a total combined annual diversion of 910 acre-feet per year, or a total combined annual depletion at the places of use of 477 acre-feet per year, on any or all of the 597.6 acres of land within the irrigation projects described below.

(1) WHISKEY CREEK PROJECT, an annual diversion of 101 acre-feet, or an annual depletion at the place of use of 51 acre-feet, of surface water from Little Whiskey Creek at the diversion works for the project based upon irrigation of 36.9 acres of land that constitute the project area as described by the US Survey;

(2) CRYSTAL, LOWER CRYSTAL AND COYOTE WASH PROJECTS, an annual diversion of 809 acre-feet, or an annual depletion at the place of use of 426 acre-feet, of surface water from Crystal Creek or its tributaries at the diversion works for the projects based upon irrigation of 286 acres within 560.7 acres of land that constitute the project areas as described by the US Survey;

(d) MISCELLANEOUS IRRIGATION USES IN THE CHACO RIVER AND CHINLE WASH DRAINAGES:

The total combined amount of diversion by the Navajo Nation from tributaries to the San Juan River or from ground water sources within the San Juan River Basin under the following irrigation rights shall not exceed a total combined annual diversion of 1,523 acre-feet per year, or a total combined annual depletion at the places of use of 913 acre-feet per year, on any or all of the 1,384.6 acres of land within the irrigation areas described below.

(1) MISCELLANEOUS SURFACE WATER IRRIGATION USES IN THE CHACO RIVER DRAINAGE, a total combined diversion of 1,407 acre-feet, or a total combined depletion at the places of use of 843 acre-feet, of surface water from streams or springs at the places of use at the diversion works based on irrigation of 477 acres within 1,299.2 acres of land in the drainage identified by the US Survey as tributary non-project irrigation uses irrigated by diversions or springs, with the springs developed for irrigation identified in Appendix F, table F-2, of the US Survey;

(2) MISCELLANEOUS GROUND WATER IRRIGATION USES IN THE CHACO RIVER DRAINAGE, a total combined diversion of 105 acre-feet, or a total combined depletion at the places of use of 64 acre-feet, of ground water from sources at the places of use based on irrigation of 34 acres within 54.8 acres of land in the drainage identified by the US Survey as tributary non-project irrigation uses irrigated by wells;

(3) MISCELLANEOUS SURFACE WATER IRRIGATION USES IN THE CHINLE WASH DRAINAGE, a total combined diversion of 11 acre-feet, or a total combined annual depletion at the places of use of 7 acre-feet, of surface water from streams or springs local to the places of use at the diversion works based on irrigation of 5 acres within 30.6 acres of land in the drainage identified by the US Survey as tributary non-project irrigation uses irrigated by diversions or springs, with the springs developed for irrigation identified in Appendix F, table F-2, of the US Survey.

The foregoing annual depletion amounts in subparagraphs 3.B.1(a) through 3.B.1(d) above include the depletion at the places of use caused by the irrigation use of water and any depletion incident to the use. The depletions resulting from the storage of water in irrigation reservoirs are included in subparagraph 3.B.2 below and are excluded from the foregoing depletion amounts. The farm delivery requirements associated with the Navajo Nation's rights to divert water for the foregoing irrigation uses are: 3.00 acre-feet per acre per year for uses within the Chaco River drainage described by subparagraphs 3.B.1(a), 3.B.1(d)(1) and 3.B.1(d)(2); 3.65 acre-feet per acre per year for uses within the San Juan River drainage between the Chaco River confluence and Four Corners described by subparagraph 3.B.1(b); and 2.55 acre-feet per acre per year for uses within the Chinle Wash drainage described by subparagraphs 3.B.1(c) and 3.B.1(d)(3).

The lands with irrigation water rights described by subparagraphs 3.B.1(a) through 3.B.1(d) are shown in Appendix E, maps E-13 through E-64, and tabulated in Appendix I, table I-1, and Appendix J, table J-1, of the US Survey. The use of surface water under the irrigation rights described in these subparagraphs may be supplemented with existing local diversions from wells identified in Appendix F, table F-1, of the US Survey; provided, that the total combined annual amount of diversion from surface water and supplemental ground water to supply irrigation uses does not cause the diversion or depletion limits described herein to be exceeded. However, the Navajo Nation's diversions for the irrigation water uses described in subparagraphs 3.B.1(a) through 3.B.1(d) shall be subject to the annual diversion quantities specified therein only if the New Mexico State Engineer or the Court enforces annual diversion quantity limits on non-Navajo Nation irrigation diversions in the San Juan River Basin in New Mexico.

Notwithstanding provisions in subparagraph 12(b), the respective diversion and depletion

rights for the projects within each drainage area described in the respective subparagraphs 3.B.1(a) through 3.B.1(c) may be exercised within any of the irrigation project areas described within each drainage from the existing sources of supply for the projects; provided, that in no event shall the acres irrigated within any irrigation project exceed that project's total project area. Notwithstanding the provisions of subparagraph 17(c)(3) of the Decree, the Navajo Nation may change the source of supply and place or purpose of use from irrigation of up to 300 acres from the project areas identified in subparagraphs 3.B.1(a) through 3.B.1(c) to irrigation or livestock water uses on lands held in trust by the United States for the Navajo Nation within the San Juan River Basin in New Mexico from any water source other than from the San Juan River, the Animas River or the La Plata River, provided that any such change shall otherwise comply with the provisions of subparagraph 17(c) of the Decree. Also, notwithstanding the provisions of subparagraph 17(c)(3) of the Decree, the diversion and depletion rights for the miscellaneous irrigation uses described in subparagraph 3.B.1(d) may be exercised for irrigation or livestock water uses on lands held in trust by the United States for the Navajo Nation within the San Juan River Basin in New Mexico from any source of supply on those lands other than from the San Juan River, the Animas River or the La Plata River, provided that any change in the points of diversion or places of use of the irrigation rights described in subparagraph 3.B.1(d) shall otherwise comply with the provisions of paragraph 17(c) of the Decree and shall not cause the total combined uses under subparagraph 3.B.1(d) to exceed a total combined annual diversion of 1,523 acre-feet per year, or a total combined annual depletion at the places of use of 913 acre-feet per year.

2. IRRIGATION RESERVOIR STORAGE

The Navajo Nation has the following rights to fill and refill irrigation reservoirs on lands held

by the United States in trust on behalf of the Navajo Nation that are supplied from water sources other than the San Juan River:

(a) **IRRIGATION RESERVOIRS IN THE CHACO RIVER DRAINAGE**, storage of water at up to 78 irrigation reservoirs, including 73 irrigation reservoirs identified by the US Survey and the reservoirs designated therein as stock ponds at the locations labeled P-0039, P-0042, P-0257, P-1823 and P-5072, from existing surface water, spring, or ground water sources at each identified location, not to exceed a total combined maximum annual net evaporation depletion of 2,691 acre-feet based on a total combined storage volume of 6,196 acre-feet;

(b) **IRRIGATION RESERVOIRS IN DRAINAGES TRIBUTARY TO THE SAN JUAN RIVER BETWEEN THE CHACO RIVER CONFLUENCE AND FOUR CORNERS**, storage of water at up to 4 irrigation reservoirs identified by the US Survey from existing surface water, spring, or ground water sources at each identified location, not to exceed a total combined maximum annual net evaporation depletion of 51 acre-feet based on a total combined storage volume of 25 acre-feet; and

(c) **IRRIGATION RESERVOIRS IN THE CHINLE WASH DRAINAGE**, storage of water at up to 7 irrigation reservoirs, including 6 irrigation reservoirs identified by the US Survey and the reservoir designated therein as a stock pond at the location labeled P-1092, from existing surface water, spring, or ground water sources at each identified location, not to exceed a total combined maximum annual net evaporation depletion of 122 acre-feet based on a total combined storage volume of 87 acre-feet.

The locations and sources for each irrigation reservoir are described by Appendix B maps and

Appendix F, table F-3, or Appendix M, table M-3, of the US Survey. Water stored in these irrigation reservoirs may be used for stock watering purposes in addition to irrigation. The Navajo Nation may store water up to the full capacity of any of the irrigation reservoirs referenced in subparagraphs 3.B.2(a) through 3.B.2(c).

4. WATER RIGHTS ACQUIRED UNDER STATE LAW.

The Navajo Nation has water rights acquired under New Mexico state law pursuant to decreed rights or to permits or licenses issued by the New Mexico State Engineer, and for historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held in fee ownership by the Nation. Such rights are described in this Supplemental Decree, and exclude rights to the use of water historically made by non-Navajo entities on Navajo lands under permits issued by the New Mexico State Engineer that have not been acquired from said entities by the Navajo Nation.

Water rights for historic municipal, industrial, commercial or domestic uses, except for *de minimis* uses under paragraph 10 of the Decree, that have been made on lands which are held in fee ownership by the Navajo Nation and that have not been made pursuant to decreed rights, or to permits or licenses issued by the New Mexico State Engineer, are included in the total water right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a) of the Decree. The total annual quantities of water to which the Navajo Nation has a water right under state law as described by this Supplemental Decree shall not exceed an annual diversion of 2,197 acre-feet or an annual depletion at the places of use of 1,371 acre-feet for uses other than reservoir storage described in subparagraph 4.A.1 below, or a net evaporation from stock ponds of 1,404 acre-feet. The term “depletion” refers to the depletion caused by a particular use of water including any depletion incident to the use.

These water rights and the priority dates are described below and constitute rights described

in paragraph 9 of the Decree. The following descriptions are not intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's water rights under Federal and state law, nor are they intended to limit in any way the right and ability of the Navajo Nation to acquire and transfer additional water rights perfected under state law. The conditions under which the Navajo Nation may make such changes are specified in paragraph 12 of this Supplemental Decree and are subject to the Court's continuing jurisdiction to interpret and enforce this Supplemental Decree as provided in paragraph 14 of the Decree and paragraph 9 of this Supplemental Decree.

A. LIVESTOCK WATER USE

1. STOCK PONDS

The Navajo Nation has the following rights with a priority date of January 1, 1935, to fill and refill stock ponds on lands held by the Navajo Nation in fee that are supplied from water sources other than the San Juan River:

(a) STOCK PONDS IN DRAINAGES TRIBUTARY TO THE SAN JUAN RIVER ABOVE THE CHACO RIVER CONFLUENCE: storage of water at up to 53 stock ponds identified by the US Survey from existing surface, spring, or ground water sources at each identified location, with a total combined maximum annual net evaporation depletion of 216 acre-feet based on a total combined volume of 143 acre-feet; and

(b) STOCK PONDS IN THE CHACO RIVER DRAINAGE, storage of water at up to 248 stock ponds identified by the US Survey from existing surface, spring, or ground water sources at each identified location, with a total combined maximum annual net evaporation depletion of 1,188 acre-feet based on a total combined volume of 601 acre-feet.

The locations and sources for each stock pond are described by Appendix B maps and Appendix M, table M-3, of the US Survey. The Navajo Nation may store water up to the full capacity of any of the stock ponds referenced in subparagraphs (a) through (b).

2. STOCK USE

The Navajo Nation has the right with a priority date of January 1, 1935, to divert from existing water sources on lands held by the Navajo Nation in fee a total combined annual amount of 35 acre-feet, or an annual depletion by stock watering use from all stock watering sources at the places of use of 35 acre-feet, based on livestock use for 3,000 animal units. Locations of existing stock wells and springs are described by Appendix B maps and Appendix M, table M-1 and table M-2, respectively, of the US Survey. This right includes all stock water consumption and incidental depletions from the stock wells on Navajo Nation fee lands listed in table M-1 of the US Survey, the stock springs on Navajo Nation trust lands listed in table M-2 of the US Survey, the stock ponds on Navajo Nation fee lands that the Navajo Nation has the right to fill pursuant to subparagraph 4.A.1 of this Supplemental Decree, the irrigation well on Navajo Nation fee lands listed in table F-1 of the US Survey, the irrigation spring on Navajo Nation fee lands listed in table F-2 of the US Survey, irrigation ditches on Navajo Nation fee lands that are associated with tributary irrigation use rights described by subparagraph 4.B of this Supplemental Decree, and the lakes, streams or other existing water sources on Navajo Nation fee lands within the San Juan River Basin in New Mexico. The foregoing diversion and associated depletion amounts do not include diversions made for livestock uses under the Navajo Nation's water rights pursuant to the Decree, or diversions made to fill and refill the stock ponds described by subparagraph 4.A.1 of this Supplemental Decree.

B. IRRIGATION WATER USE

The Navajo Nation has the following rights to divert the waters of the San Juan River Basin in New Mexico for irrigation uses not to exceed:

(1) I.K. WESTBROOK-INDIAN CREEK PROJECT, with a priority date of March 3, 1934:

(a) an annual diversion of 386 acre-feet, or an annual depletion at the place of use of 232 acre-feet, of surface water from Seven Lakes Wash by the spreading of floodwaters as available at spreader dams on the project for irrigation of 140.9 acres of land held by the United States in trust on behalf of the Navajo Nation within the project area described at page 376 of the Judgment in *The Echo Ditch Company, et al., v. The McDermott Ditch Company, et al.*, New Mexico District Court, San Juan County, Cause No. 01690 (Echo Ditch Decree), and Map Sheets 85-87 of the 1938 San Juan River Hydrographic Survey prepared by the Office of the State Engineer, such rights being reserved rights which are held in trust by the United States on behalf of the Navajo Nation; and

(b) an annual diversion of 1,576 acre-feet, or an annual depletion at the place of use of 949 acre-feet, of surface water from Seven Lakes Wash by the spreading of floodwaters as available at spreader dams on the project for irrigation of 575.2 acres of land held by the Navajo Nation in fee within the project area described at page 376 of the Echo Ditch Decree, and Map Sheets 85-87 of the 1938 San Juan River Hydrographic Survey prepared by the Office of the State Engineer; and

(2) I.K. WESTBROOK-KIN KLIZHIN WASH PROJECT, with a priority date of July 27, 1931, an annual diversion of 114 acre-feet, or an annual depletion at the place of use

of 68 acre-feet, of surface water from Kin Klizhin Wash by the spreading of floodwaters as available at spreader dams on the project for irrigation of 40.5 acres of land held by the United States in trust on behalf of the Navajo Nation within the portion of the project area described at Map Sheets 85-87 of the 1938 San Juan River Hydrographic Survey prepared by the Office of the State Engineer, such rights being reserved rights which are held in trust by the United States on behalf of the Navajo Nation.

The foregoing annual depletion amounts in subparagraphs 4.B(1) and 4.B(2) include the depletions at the places of use caused by the irrigation use of water and any depletion incident to the use. The farm delivery requirement associated with the Navajo Nation's rights to divert water for the foregoing irrigation uses is 2.80 acre-feet per acre per year. The lands with irrigation water rights described by subparagraphs 4.B(1) and 4.B(2) are shown in Appendix E, maps E-32, E-40 and E-48, and tabulated in Appendix I, table I-1, of the US Survey.

Based upon total combined irrigation of 756.6 acres as described above, the total combined amount of diversion by the Navajo Nation from tributaries to the San Juan River within the Chaco River drainage for irrigation uses pursuant to rights acquired under state law shall not exceed a total combined annual diversion of 2,076 acre-feet, or a total combined annual depletion at the places of use of 1,250 acre-feet; except, that the Navajo Nation's diversions for the irrigation water uses described in subparagraph 4.B shall be subject to the annual diversion quantities specified therein only if the New Mexico State Engineer or the Court enforces annual diversion quantity limits on non-Navajo Nation irrigation diversions in the San Juan River Basin in New Mexico.

C. INDUSTRIAL AND DOMESTIC WATER USE

The Navajo Nation has the right pursuant to State Engineer File Nos. SJ-43, SJ-44 and SJ-58

to divert and deplete ground water in the NE ¼ of Section 9, Township 19N, Range 17W, N.M.P.M, for industrial and domestic uses with a priority date of March 1953 in a total combined maximum annual amount of 86 acre-feet.

5. DEPLETION LIMITS.

(a) The use of water by the Navajo Nation pursuant to the water rights described in paragraphs 3 and 4, not including subparagraphs 3.A.2 and 4.A.2, shall not exceed an average annual total combined depletion during any period of ten consecutive years at the places of use of 8,355 acre-feet, of which no more than 199 acre-feet of depletion per year may occur in the San Juan River drainage above the Chaco River confluence, no more than 7,576 acre-feet per year may occur in the Chaco River drainage, no more than 175 acre-feet per year may occur in the San Juan River drainage below the Chaco River confluence, and no more than 405 acre-feet per year may occur in the Chinle Wash drainage.

(b) The use of water by the Navajo Nation pursuant to the water rights described in paragraphs 3 and 4 shall not exceed an average annual total combined depletion during any period of ten consecutive years of flow of the San Juan River of 1,819 acre-feet. This depletion limit may be adjusted to reflect any change in methodology adopted by the State Engineer for calculating depletion effects on the flow of the San Juan River from the use of water pursuant to the water rights described in paragraphs 3 and 4; provided, that the average annual total combined depletion limit on the flow of the San Juan River shall not be reduced below 1,819 acre-feet or increased to an amount that is greater than 50 percent of the average annual total combined depletion limit described in subparagraph 5(a).

(c) The Navajo Nation's rights to divert and deplete water for irrigation uses

under subparagraphs 3.B.1 and 4.B may be recalculated if the technical methodology adopted by the Court to determine irrigation water requirements for non-Navajo water rights differs from the methodology utilized for the Echo Ditch Decree and would result in greater annual diversion and depletion quantities or annual farm delivery requirements for the Navajo Nation's water rights than those decreed herein. In that event, the State of New Mexico, the Navajo Nation and the United States shall prepare and submit to the Court a proposed addendum to this Supplemental Decree setting forth:

(1) the revised diversion and depletion amounts and farm delivery requirements for the Navajo Nation's irrigation rights under subparagraphs 3.B.1 and 4.B, recalculated in a manner consistent with the methodology adopted by the Court; and

(2) the State Engineer's revision of annual depletion limits for subparagraphs 5(a) and 5(b) recalculated based on the revised diversion and depletion amounts and farm delivery requirements.

6. ALLOTTEES.

Individual members of the Navajo Nation that have been allotted lands by the United States within the San Juan River Basin in New Mexico may have claims to reserved rights to the use of water. This decree does not quantify the nature, extent or priority of such rights. To the extent that water rights are adjudicated by the Court for such allotted lands in excess of historic and existing water uses on those lands as of the date of entry of this Supplemental Decree, such water rights for allotted lands shall be fulfilled or serviced by rights of the Navajo Nation quantified in the Decree or in this Supplemental Decree, or the depletions of flow of the San Juan River resulting from the use of water under such rights for allotted lands shall be fully offset by a forbearance of use of rights of

the Navajo Nation quantified in the Decree or in this Supplemental Decree. Nothing in this paragraph shall create a right of any Allottee to delivery of water by the Navajo Nation.

7. LIMITATIONS.

The Navajo Nation is hereby enjoined from the diversion or depletion of the surface or underground waters within the San Juan River Basin in New Mexico except in accordance with the rights described in the Decree and this Supplemental Decree (“the Decrees”), rights in any supplemental orders or decrees adjudicating water rights acquired by the Navajo Nation after entry of the Decrees, or rights under New Mexico State Engineer permits or licenses that are acquired after the date of entry of this Supplemental Decree; except, that to the extent the Navajo Nation prior to entry of this Supplemental Decree has acquired state-based water rights supplied by non-Navajo Nation ditches diverting water from the San Juan River or Animas River, which rights are claimed by the Navajo Nation but are not specifically described by the Decrees, those water right claims will be adjudicated at the time all rights served by these ditches are adjudicated. Beneficial use shall be the limit of the rights to use water adjudicated to the Navajo Nation by this Supplemental Decree. The Navajo Nation shall not be entitled to receive, nor shall the United States or the State of New Mexico be required to deliver, nor shall non-Navajo Nation water users be required to curtail water uses to provide to the Navajo Nation, any water not then necessary for beneficial use under the rights adjudicated herein or acquired hereafter.

This Supplemental Decree shall not be construed to prohibit the Navajo Nation or its members from engaging in the traditional agricultural practices of planting crops across the active channel of ephemeral streams in the San Juan River Basin so long as these practices do not divert and control water. These agricultural practices do not constitute the basis for a water right and may

continue without administration by the State of New Mexico.

This Supplemental Decree is binding upon political subdivisions, utilities, agencies and other entities of the Navajo Nation and the United States, and on successors and assigns.

8. DISCLAIMERS.

Except as explicitly provided herein, nothing in this Supplemental Decree confers jurisdiction on the New Mexico State Engineer to administer or regulate the use of federally reserved rights on lands held in trust by the United States on behalf of the Navajo Nation or lands allotted by the United States to members of the Navajo Nation. Because the description of the Navajo Nation's water rights adjudicated in this Supplemental Decree is based upon a negotiated settlement, the procedures and methods used to quantify and describe the Navajo Nation's water rights in this Supplemental Decree shall not be binding under the law of the case doctrine upon any other water right claimant, the State of New Mexico, or the United States in the adjudication of other water rights in this case and should not be relied upon as precedent under the *stare decisis* doctrine in any other water right adjudication suit.

9. JURISDICTION AFTER ENTRY OF DECREE.

This Supplemental Decree is a final order under Rule 1-054(C) NMRA 2012, and it may be modified only pursuant to Rule 1-060(B) NMRA 2012. This Court retains jurisdiction to interpret and enforce this Supplemental Decree. Subject to the provisions of the Decree and this Supplemental Decree, the State Engineer has authority under state law to administer water rights within, and to supervise the apportionment, diversion and use of the surface and underground waters of, the San Juan River Basin in New Mexico, including by appointment of watermasters, according to the orders and decrees of the Court in the Stream Adjudication and the licenses and permits issued

by the State Engineer in the Basin.

10. METERING OF WATER USES.

As part of the metering and monitoring of water uses in the San Juan River Basin in New Mexico, the Navajo Nation shall be responsible for metering and monitoring its uses of water under this Supplemental Decree as follows:

(a) The Navajo Nation within two years from the date of entry of this Supplemental Decree shall cause to be installed and maintained flumes, gages, stage recorders, totalizing meters or other flow measuring devices on surface water and ground water diversions within the physical drainage of the San Juan River Basin in New Mexico made pursuant to the rights adjudicated by this Supplemental Decree; except, that diversions may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons. The Navajo Nation shall be responsible for rating all gages and for collecting the data necessary to reasonably account diversions and depletions in the San Juan River Basin in New Mexico for administration by the State Engineer of this Supplemental Decree.

(b) The Navajo Nation within two years from the date of entry of this Supplemental Decree shall cause to be installed and maintained staff gages at Whiskey Lake, Chuska Lake, Long Lake and Captain Tom Reservoir, and shall thereafter make observations of the lake levels in these reservoirs each year near the beginning, middle and end of the irrigation season. The Navajo Nation also shall maintain elevation, area and capacity data for these reservoirs for the purpose of measuring the amounts of water in storage based on the observed lake levels. The amounts of water in storage at other reservoirs may be estimated

using technically sound methodologies where actual measurement of storage is not practical for technical or economic reasons.

(c) The New Mexico State Engineer shall be granted access to diversion and storage data, and shall be allowed to inspect flow and storage measurement facilities and gages upon reasonable request to the Navajo Nation, as may be necessary for the State Engineer to administer the diversion and use of water from the San Juan River stream system.

(d) The Navajo Nation beginning the year following the date of entry of this Supplemental Decree shall during June or July each year conduct a field inventory of irrigated acreage on Navajo lands in the San Juan River Basin in New Mexico for the irrigation uses made pursuant to this Supplemental Decree, and shall provide the results of the inventory to the New Mexico State Engineer within two weeks of completion of the inventory. The Navajo Nation shall allow the State Engineer to participate, in cooperation with the Navajo Nation, in conducting the acreage inventory. The Navajo Nation may use technically sound methodologies to estimate acreage and crops irrigated on lands that are the subject of this Supplemental Decree and that are not practical to field check every year for economic reasons. Aerial photographs, satellite imagery, or other records or documentation may be used in conjunction with field surveys to determine or verify lands irrigated in a particular year.

(e) The Navajo Nation shall meter or estimate farm deliveries for irrigation uses under the rights decreed herein using technically sound methods if the State Engineer or the Court determines such information to be necessary for the State Engineer to administer water

rights in the San Juan River Basin in New Mexico.

11. RECORDS OF WATER USE.

The Navajo Nation shall within two years from the date of entry of this Supplemental Decree, and annually thereafter, prepare and maintain detailed and accurate records of acres irrigated each year and the annual diversions and depletions of water on all Navajo Nation lands, including lands held in trust by the United States on behalf of the Navajo Nation and lands owned by the Navajo Nation in fee, in the San Juan River Basin in New Mexico from San Juan River tributaries or underground water sources pursuant to this Supplemental Decree, all stated separately as to each source of water as necessary to allow for administration of this Supplemental Decree. The Navajo Nation shall prepare and submit to the Secretary of the Interior and the New Mexico State Engineer on or before October 1 of each year a report of its records and calculations of actual acreage irrigated and diversions and depletions, by a methodology acceptable to the State Engineer, of San Juan River Basin waters for the previous calendar year. In addition, the Navajo Nation's annual report shall include, to the extent that it is available, information regarding stock ponds and irrigation reservoirs that were capable of storing water during the previous calendar year stated separately by the San Juan River drainage above the Chaco River confluence, the Chaco River drainage, the San Juan River drainage between the Chaco River confluence and Four Corners, and the Chinle Wash drainage. The records and calculations shall be segregated by each use specified in paragraphs 3 and 4 of this Supplemental Decree. Diversions and depletions for livestock water uses pursuant to subparagraphs 3.A and 4.A, and for other water uses to be reported under this paragraph, may be estimated using technically sound methodologies acceptable to the State Engineer where actual measurement of uses is not practical for technical or economic reasons. The reports of the Navajo Nation prepared

pursuant to this paragraph also shall include documentation as to which rights adjudicated by the Decree or by this Supplemental Decree are being used, if any, to offset depletions in excess of the depletions limits described in subparagraphs 5(a) and 5(b) pursuant to water replacement plans described in subparagraphs 12(d) or 12(e) of this Supplemental Decree.

12. ADMINISTRATION.

The authority of the Navajo Nation to administer the Nation's diversion, storage and use of water under the rights adjudicated by this Supplemental Decree shall be as specified by paragraph 17 of the Decree. In addition to any otherwise applicable requirements, any change of place or purpose of use or point of diversion of the uses described in paragraphs 3 and 4 of this Supplemental Decree shall be subject to the following requirements:

(a) Any change of place of use or point of diversion of the stock uses described in subparagraph 3.A.1 of this Supplemental Decree shall:

- (1) be limited to within 1,000 feet of the original place of use or point of diversion, respectively, as described in the US Survey;
- (2) not relocate a storage dam or diversion to a point below the confluence of the original water course with another water course;
- (3) not be subject to the notice provisions of subparagraph 17(c)(1) of the Decree;
- (4) not be subject to paragraph 18 of the Decree;
- (5) not be subject to paragraph 13 of this Supplemental Decree; and
- (6) not be subject to the requirement that the Navajo Nation in its administrative process described in paragraph 17(c) of the Decree consult with the

New Mexico State Engineer on proposed changes and potential impairment.

The Navajo Nation each year shall make a report to the State Engineer identifying changes of place of use or points of diversion for stock uses. In addition, the purpose of use of stock uses described in subparagraph 3.A.1 of this Supplemental Decree shall not be changed; and any change in point of diversion or place of use shall not result in any increase in depletion over and above the quantity of historic average annual depletion at the move-from location, and shall be supplied from the same tributary water course or ground water source.

(b) Except as otherwise provided in subparagraph 3.B, any change of place or purpose of use or point of diversion of the irrigation uses described in subparagraph 3.B of this Supplemental Decree shall:

- (1) comply with the provisions of paragraph 17(c) of the Decree;
- (2) not result in any increase in depletion over and above the quantity of historic average annual depletion at the move-from location; and
- (3) be supplied from the same tributary water course or ground water source.

(c) Any change of place or purpose of use or point of diversion of the uses described in paragraph 4 of this Supplemental Decree shall comply with the provisions of paragraph 17(e) of the Decree.

(d) If the average annual total combined at-site depletion in any of the drainages identified in subparagraph 5(a) of this Supplemental Decree, excluding stock uses described in subparagraphs 3.A.2 and 4.A.2 of this Supplemental Decree, exceeds in any period of ten consecutive years the respective depletion limit for that drainage described by subparagraph

5(a), the Navajo Nation may offset any excess depletion for the drainage in accordance with a replacement water plan approved by the New Mexico State Engineer. The replacement water plan shall specify and schedule how the Navajo Nation will satisfy this offset requirement annually by forbearing use of specific surface water rights in an amount equal to the amount of excess at-site depletions. Such replacement plan shall only be required when the State Engineer determines water is needed to meet the State of New Mexico's interstate compact obligations or when the State Engineer determines a replacement plan is necessary to protect existing water uses in New Mexico.

(e) If the average annual total combined depletion of San Juan River flow exceeds in any period of ten consecutive years the depletion limit described by subparagraph 5(b) of this Supplemental Decree, the Navajo Nation may offset any excess river flow depletion impact at the locations of impact in accordance with a replacement water plan approved by the New Mexico State Engineer. The replacement water plan shall specify and schedule how the Navajo Nation will satisfy this offset requirement annually by forbearing use of specific surface water rights in an amount necessary to offset the excess river flow depletions. Such replacement plan shall only be required when the State Engineer determines water is needed to meet the State of New Mexico's interstate compact obligations or when the State Engineer determines a replacement plan is necessary to protect existing water uses in New Mexico.

13. NOTICE.

In addition to any notice provisions under applicable law, at least 30 days prior to any change in the place or purpose of use or point of diversion in the exercise of the water rights identified

herein, the Navajo Nation, acting through its Department of Water Resources, shall complete notice of such change by publication in a newspaper of general circulation within the San Juan River Basin in New Mexico once per week for three consecutive weeks and by letter to the New Mexico State Engineer; except, that emergency replacement wells and emergency transfers for domestic and sanitary purposes may be made with less than 30 days notice. Both such forms of notice shall specify the proposed purpose and place of use, point of diversion, diversion rate, annual diversion and depletion amounts, and source of water.

DATED: _____
