

July 9, 2004, Revised Draft - Navajo Nation Water Rights Settlement

Disclaimer. It is expressly understood that the governing bodies or authorities of the proposed signatories have not approved the revised draft settlement agreement, including the revised draft partial final decree, revised draft settlement act and revised draft settlement contract. New Mexico Interstate Stream Commission staff also prepared the revised draft executive summary of the proposed settlement and the draft responses to public comments received on the December 5, 2003, discussion draft of the settlement.

APPENDIX 1

ELEVENTH JUDICIAL DISTRICT
COUNTY OF SAN JUAN
STATE OF NEW MEXICO

STATE OF NEW MEXICO ex rel.)
State Engineer,)
)
 Plaintiff,)
)
)
 v.)
)
UNITED STATES OF AMERICA, et al.,)
)
 Defendants.)
)
)
_____)

No. CIV 75-184

SAN JUAN RIVER
ADJUDICATION SUIT

**PARTIAL FINAL DECREE
OF THE WATER RIGHTS OF THE
NAVAJO NATION**

THIS CASE is a general adjudication filed pursuant to NMSA Sections 72-4-13 through -19 of the surface and underground water rights within the San Juan River Basin in New Mexico as authorized by 43 U.S.C. Section 666. All 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, are decreed herein.

This matter comes before the Court on a Joint Motion for the Entry of a Partial Final Decree (decree) filed by the United States, the State of New Mexico, and the Navajo Nation. The Court finds that the proposed 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 Joint Hydrographic Survey Report of the water rights to be adjudicated 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 1996 and directs the entry of this decree adjudicating all the 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. RESERVED RIGHTS TO THE USE OF WATER.

The Navajo Nation's reserved rights are described in paragraphs 3, 7(a), 8 and 10 of this decree, and these reserved rights have a priority date of June 1, 1868, consistent with the Treaty of 1868. The Navajo Nation's reserved rights are not subject to abandonment, forfeiture or loss for

non-use.

3. RESERVED RIGHTS FOR SPECIFIED SURFACE WATER DIVERSIONS.

The Navajo Nation has the right, subject to the limitations set forth in paragraph 5 of this decree, to divert the waters of the San Juan River Basin in New Mexico, with a priority date of June 1, 1868, in quantities for the following uses not to exceed:

(a) NAVAJO INDIAN IRRIGATION PROJECT, an average diversion of 508,000 acre-feet per year, or the quantity of water necessary to supply an average depletion of 270,000 acre-feet per year from the San Juan River, whichever is less, of surface water at Navajo Reservoir during any period of ten consecutive years for irrigation of no more than 110,630 acres of land on the Navajo Indian Irrigation Project generally located as described in the Act of June 13, 1962, Public Law 87-483 (76 Stat. 96), and for other purposes as authorized by section 203 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___) and subparagraph 5(e), with a maximum diversion flow rate of 1,800 cubic feet per second; provided, however, that the quantities of diversion and depletion in any one year shall not exceed the aforesaid ten-year average quantities, respectively, by more than 15 percent;

(b) NAVAJO-GALLUP WATER SUPPLY PROJECT, a diversion of 22,650 acre-feet, or the quantity of water necessary to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is less, of surface water from Navajo Reservoir and the San Juan River, in combination, in any one year at the points of diversion and for the purposes of the Navajo-Gallup Water Supply Project as authorized by section 104 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___) for municipal,

industrial, commercial and domestic uses, including residential outdoor uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 48.1 cubic feet per second;

(c) ANIMAS-LA PLATA PROJECT, a diversion of 4,680 acre-feet, or the quantity of water necessary to supply a depletion of 2,340 acre-feet from the San Juan River stream system, whichever is less, of surface water from the Animas River in any one year at the point of diversion for the Navajo Nation Municipal Pipeline and for purposes of the Animas-La Plata Project as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258) for municipal, industrial, commercial and domestic uses, including residential outdoor uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 12.9 cubic feet per second;

(d) MUNICIPAL AND DOMESTIC USES, a diversion of 2,000 acre-feet, or the quantity of water necessary to supply a depletion of 1,000 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at locations below the confluence of the San Juan and La Plata rivers for municipal, industrial, commercial and domestic purposes, including residential outdoor uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 2.8 cubic feet per second, provided

that a permit is obtained from the New Mexico State Engineer if diversion of this water is to be made off lands held in trust by the United States for the Navajo Nation or lands held in fee by the Navajo Nation;

(e) HOGBACK-CUDEI IRRIGATION PROJECT, a diversion of 48,550 acre-feet, or the quantity of water necessary to supply a depletion of 21,280 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at the diversion dam for the Hogback-Cudei Irrigation Project for irrigation of no more than 8,830 acres of land on the project generally located along the north and south sides of the San Juan River in the vicinity of the community of Shiprock, New Mexico, and between the diversion dam for the project and Four Corners, as described by the Bureau of Indian Affairs' Crop Utilization Study for the Hogback and Cudei irrigation projects dated September 1993, with a maximum diversion flow rate of 221 cubic feet per second, including any diversions from an alternate point of diversion at the historic Cudei ditch diversion heading; and

(f) FRUITLAND-CAMBRIDGE IRRIGATION PROJECT, a diversion of 18,180 acre-feet, or the quantity of water necessary to supply a depletion of 7,970 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at the diversion dam for the Fruitland-Cambridge Irrigation Project for irrigation of no more than 3,335 acres of land on the project generally located along the south side of the San Juan River in the vicinity of the community of Fruitland, New Mexico, and between the City of Farmington and the diversion dam for the Hogback-Cudei Irrigation Project, as described by the Bureau of Indian Affairs' Crop Utilization Study for the

Fruitland Irrigation Project dated 1993, with a maximum diversion flow rate of 100 cubic feet per second, including any diversions from an alternate point of diversion at the historic Cambridge ditch diversion heading.

The term “depletion” means the depletion caused by a particular use of water allowing for any depletion incident to the use.

4. SUPPLEMENTAL CARRIAGE WATER.

The Navajo Nation may divert the direct flow of the San Juan River to supplement diversions to provide additional carriage water for uses under the rights specified by subparagraphs 3(b) through 3(f) at such times and places that the New Mexico State Engineer determines there is direct flow available for such diversion without impairment to other water rights in New Mexico, including uses under paragraph 8.0 of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement, signed by the State of New Mexico and the Navajo Nation on _____ and executed by the Secretary of the Interior on _____ (Settlement Agreement). The Navajo Nation’s diversions under this paragraph:

- (a) do not constitute consumptive use rights;
- (b) may be made only to the extent that such additional amounts of carriage water are necessary to fully develop the depletion amounts for the uses specified under subparagraphs 3(b) through 3(f);
- (c) may not be made to result in a depletion for any one use under subparagraphs 3(b) through 3(f) that exceeds the Nation’s depletion rights described for that use; and
- (d) may be made only to the extent that the additional carriage water is returned to the San Juan River.

Any reduction in flow otherwise available for diversion by the Navajo Nation under this paragraph shall not be cause to deny approval of applications to transfer water rights in the San Juan River Basin in New Mexico, or to deny the allocation and use of water pursuant to paragraph 8.0 of the Settlement Agreement.

5. LIMITATIONS.

The Navajo Nation has the right to divert, impound or use the water rights described in paragraph 3; provided, that:

(a) The Navajo Nation shall not assert or exercise the reserved rights described in subparagraphs 3(a), 3(b) and 3(c) so long as the rights of the Nation to the delivery of 535,330 acre-feet of water per year for uses in New Mexico under the terms of the Contract dated _____ (the Settlement Contract) between the Secretary of the Interior and the Navajo Nation, authorized and approved by the United States Congress in section 303 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), are not irretrievably lost; provided, however, that nothing herein is intended to confer jurisdiction on this Court over any action to enforce or challenge the Settlement Contract or over any action for breach thereof, or to be in conflict with section 11 of the Act of June 13, 1962 (76 Stat. 96). The Navajo Nation may assert or exercise the reserved rights described in subparagraphs 3(a), 3(b) or 3(c) if and only if the Nation's respective rights to divert water under the Settlement Contract are irretrievably lost. The temporary loss of the use of part or all of the Navajo Nation's right to divert water under the Settlement Contract, including, but not limited to, loss resulting from a judicial determination that a particular use is speculative or constitutes waste and loss because a particular use is denied or prohibited by applicable

law, shall not constitute irretrievable loss. Also, forbearance or reduction of Navajo Nation uses pursuant to the provisions of this decree or the Settlement Agreement shall not constitute irretrievable loss.

(b) The Navajo Nation's rights pursuant to the Settlement Contract for the uses described in subparagraphs 3(a) and 3(b) are based on, and shall be fulfilled or serviced by the Secretary of the Interior under, New Mexico State Engineer File No. 2849 with a priority date of June 17, 1955, for water originating in the drainage of the San Juan River above Navajo Dam, and File No. 3215 with a priority date of December 16, 1968, for inflow to the San Juan River arising below Navajo Dam. The Nation's contract rights for the uses described in subparagraphs 3(a) and 3(b) are subject to the sharing of shortages as provided in section 11 of the Act of June 13, 1962 (76 Stat. 96), and section 403 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___). The Navajo Nation shall not have the right to recoup the quantities of water not delivered under the Settlement Contract due to shortages. The right under subparagraph 3(a) to divert water for the Navajo Indian Irrigation Project during any period of ten consecutive years shall be reduced by the amounts of any shortages allocated to the normal diversion requirement for the Project during said period of ten consecutive years.

(c) The Navajo Nation's rights pursuant to the Settlement Contract for the uses specified in subparagraph 3(c) are based on, and shall be fulfilled or serviced by the Secretary of the Interior under, New Mexico State Engineer File No. 2883 with a priority date of May 1, 1956, for water from the Animas River, and are subject to Article I of the Animas-La Plata Project Compact approved by subsection 501(c) of the Colorado River Basin Project Act (82

Stat. 898), and subsections 4(b), 4(i) and 8(b) of the Settlement Contract approved by subsection 303(c) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___).

(d) The Navajo Nation has the right to fill and refill re-regulation storage reservoirs on the Navajo Indian Irrigation Project distribution system as follows:

(1) The Navajo Nation may fill and refill as often as water is available under the rights described in subparagraphs 3(a) and 3(b):

(i) Cutter Reservoir, with an active storage capacity of 1,793 acre-feet; and

(ii) Gallegos Reservoir, with an active storage capacity of 8,455 acre-feet, substantially as described in the May 1995 Gallegos Reservoir Needs and Cost Assessment prepared for the United States Bureau of Indian Affairs and the Bureau of Reclamation, or suitable storage alternatives to Gallegos Reservoir of equal or lesser combined capacity.

(2) Cutter Dam and Reservoir and Gallegos Dam and Reservoir are Navajo Indian Irrigation Project facilities, and may be used also to regulate deliveries of water under the Navajo-Gallup Water Supply Project authorized by Title I of the San Juan River Basin in New Mexico Water Projects and Settlement Act, ___ Stat. ___.

(3) Water diverted from Navajo Reservoir into storage in Cutter Reservoir or Gallegos Reservoir, or suitable storage alternatives, for purposes of the Navajo Indian Irrigation Project or for Navajo Nation uses under the Navajo-Gallup Water Supply Project, and associated depletions caused by reservoir evaporation or seepage losses,

shall be accounted within the Navajo Nation's rights to divert and deplete water for the Navajo Indian Irrigation Project described in subparagraph 3(a) or for purposes of the Navajo-Gallup Water Supply Project described in subparagraph 3(b), respectively.

(4) The re-regulating reservoirs may retain and store water originating in the physical drainages above Cutter and Gallegos dams, or suitable storage alternatives, for use on the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project; provided, that the quantities of any such water retained and stored in Cutter Reservoir or Gallegos Reservoir, and the associated depletions of water, for Navajo Nation uses shall be accounted within the Navajo Nation's rights to divert and deplete water for the Navajo Indian Irrigation Project described in subparagraph 3(a) or for purposes of the Navajo-Gallup Water Supply Project described in subparagraph 3(b), respectively, and that such retention and storage of water shall be fulfilled or serviced by the Secretary of the Interior through the Settlement Contract as water is available under New Mexico State Engineer File No. 3215 with a priority date of December 16, 1968.

(5) The Navajo Nation's rights to store water in Cutter Reservoir and Gallegos Reservoir, or suitable storage alternatives, are not separable from the rights described in subparagraphs 3(a) and 3(b) or from the Navajo Indian Irrigation Project facilities.

(6) Sediment storage capacity may be provided in Gallegos Reservoir, or suitable storage alternatives; provided, that the reservoir, or suitable alternative, is

operated each year to maintain no more than 8,455 acre-feet of active conservation storage after consideration of the amount of sediment accumulated in the reservoir since completion of Gallegos Dam, or suitable alternative.

(e) The Navajo Nation's water rights described in subparagraph 3(a), which are to be serviced under the Settlement Contract as described in subparagraphs (a) and (b) of this paragraph, may be used for non-irrigation purposes or transferred to other places of use consistent with the provisions of subsection 203(a) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (__ Stat. __), paragraph 17 of this decree and the following conditions:

(1) The Navajo Nation, without approval of the New Mexico State Engineer or the Court, may change the purpose or place of use of any portion of the rights described in subparagraph 3(a); provided, that:

(i) notice is provided of any proposed change in purpose or place of use consistent with paragraph 18;

(ii) such changes do not involve transfers of places of use to locations outside the State of New Mexico, or to lands that are not held by the United States in trust for the Navajo Nation as of the date of entry of this decree, unless such lands have been declared by the Secretary of the Interior to be held in trust by the United States for the Navajo Nation pursuant to section 3 of the Act of June 13, 1962 (76 Stat. 96), as amended by the Act of September 25, 1970 (84 Stat. 867);

(iii) the point of diversion is not changed;

(iv) the depletion quantities specified in subparagraph 3(a) are not exceeded as a result of the changes;

(v) the average annual diversion during any period of ten consecutive years for all uses made under the rights provided in subparagraph 3(a), including uses provided under the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, in the aggregate does not exceed 353,000 acre-feet per year;

(vi) the total diversion for all uses made under the rights provided in subparagraph 3(a), including uses provided under the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, in the aggregate does not exceed 405,950 acre-feet in any one year; and

(vii) no showing is made to the Court that a change would or does impair other water rights in the San Juan River Basin in New Mexico.

Any change pursuant to this subsection in the purpose or place of use of a portion of the rights described in subparagraph 3(a) that would result in the total annual diversion or depletion amounts in the aggregate for all uses made under the rights described in subparagraph 3(a) exceeding the historic aggregate diversion or depletion amounts, respectively, under said rights shall not be presumed to impair other water rights solely because of the increase in annual use amounts.

(2) The Navajo Nation shall provide an administrative process for receiving from Navajo and non-Navajo water users protests of changes in purpose or place of use proposed to be made pursuant to subparagraph 5(e)(1), and for reviewing and

considering protests and impairment issues that may arise from such changes. The administrative process shall include consultation with the New Mexico State Engineer on proposed changes. The Navajo Nation shall not exercise its authority under subparagraph 5(e)(1) to implement a proposed change in purpose or place of use until it has consulted with the State Engineer and completed the administrative process for the proposed change.

(3) The uses of water to make the depletions and diversions described in subparagraphs 3(d), 3(e) and 3(f) that are supplied under the Settlement Contract pursuant to the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, and that are accounted under the rights described in subparagraph 3(a) of this decree for the Navajo Indian Irrigation Project in accordance with said provisions, are hereby approved by the Court.

(4) The Navajo Nation may divert more than an average of 353,000 acre-feet per year during any period of ten consecutive years, or more than 405,950 acre-feet in any one year, for the aggregate of all uses under the rights provided in subparagraph 3(a), including uses provided under the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, only pursuant to application with the New Mexico State Engineer and subject to non-impairment of other water rights in New Mexico in accordance with state law, unless the rights provided in subparagraph 3(a) are used solely for irrigation purposes on the Navajo Indian Irrigation Project and to implement subparagraph 9.2 of the Settlement Agreement.

(f) If the Navajo Nation in any period of ten consecutive years inadvertently diverts

or depletes water in excess of the ten-year average limitations described in subparagraph 3(a), the Nation, in the year following the subject period, shall forego the diversion and use under subparagraph 3(a) of amounts of water that are equal to the quantities of excess diversion and depletion, respectively, for the subject period. If the Navajo Nation in any year inadvertently diverts or depletes water in excess of the maximum allowable annual quantities described in subparagraphs 3(a), 3(b) or 3(c), the Nation in the following year shall forego the diversion and use under the applicable subparagraphs of amounts of water that are equal to the quantities of excess diversion and depletion.

(g) The Navajo Nation's rights to divert water for irrigation uses under subparagraphs 3(e) and 3(f) shall be subject to the maximum allowable annual diversion quantities specified in the subparagraphs only if the New Mexico State Engineer or the Court enforces annual diversion quantity limits on all non-Navajo Nation irrigation uses in the San Juan River Basin in New Mexico in accordance with such quantities as may be adjudicated by the Court, but shall at all times be subject to the annual depletion amounts for the specified uses. Those portions of the annual diversion and depletion quantities specified in subparagraphs 3(e) and 3(f) that are transferred to non-irrigation uses shall be administered and managed in the same manner as other direct flow diversions for non-irrigation uses in the San Juan River Basin in New Mexico.

(h) The Navajo Nation's right for the Fruitland-Cambridge Irrigation Project under subparagraph 3(f) to divert at a maximum diversion flow rate of 100 cubic feet per second shall not be fully exercised if the Court determines that rehabilitation and maintenance of the Project has resulted in a lesser flow rate being needed to supply the peak demand of the

Project; provided, that the Nation shall not be required by virtue of this subparagraph to forego exercise of said maximum diversion flow rate right for the Project to less than 83.4 cubic feet per second. Reductions in diversions by the Project may be required, however, if current beneficial uses require less water.

(i) The Navajo Nation's rights to divert and deplete water for irrigation uses under subparagraphs 3(e) and 3(f) may be increased using the approach or methodology that the Court adopts to determine irrigation water right amounts and diversion rates in this case if application of the approach or methodology adopted would result in different annual diversion and depletion quantities described herein. The Navajo Nation's rights under subparagraphs 3(e) and 3(f) shall not be recomputed if the approach or methodology adopted by the Court relies on, or results in, annual per acre consumptive irrigation requirements, farm duties and diversion and depletion quantities, and maximum per acre ditch diversion rates, for irrigation uses that are consistent with those given in the report of Hydrographic Survey approved by the decree entered April 8, 1948, by the First Judicial District Court of New Mexico within and for San Juan County in the matter of *The Echo Ditch Company, et al., v. The McDermott Ditch Company, et al.*, Cause No. 01690 (Echo Ditch Decree).

(j) The Navajo Nation has the right under the water rights described in paragraphs 3, 7 and 8 to re-use tail water and waste water as follows:

(1) The Navajo Nation may collect tail water from an irrigation use for re-use under the associated water right; provided, that the re-use is measured and the depletion of water associated with the re-use is accounted against the depletion quantity for the water right. For purposes of this decree, tail water shall include:

(i) any water collected that has not left Navajo Nation control and reached the underlying ground water table or discharged into a non-constructed or natural surface drainage channel; and

(ii) any water that through percolation from irrigation has reached the underlying ground water table and is pumped for the express purpose of maintaining the water table at a sufficient distance below the root zone to prevent subirrigation or waterlog damage to fields that otherwise would result from the initial irrigation use.

(2) The Navajo Nation may collect waste water from a non-irrigation use for re-use under the associated water right; provided, that the re-use is measured and the depletion of water associated with the re-use is accounted against the depletion quantity for the water right. For purposes of this decree, waste water shall include any water collected that has not left Navajo Nation control and reached the underlying ground water table or discharged into a natural surface drainage channel.

(3) Re-use of water by the Navajo Nation shall not increase the depletion rights or the diversion rights of the Navajo Nation.

6. DIVERSIONS FOR NAVAJO-GALLUP PROJECT USES IN ARIZONA.

The Navajo Nation may contract with the United States to divert up to 6,410 acre-feet in any one year of surface water from the San Juan River in New Mexico for uses on Navajo lands, including lands held by the United States in trust for the Navajo Nation or members of the Navajo Nation and lands held in fee ownership by the Navajo Nation, within the State of Arizona solely for purposes of the Navajo-Gallup Water Supply Project as authorized by section 104 of the San Juan

River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), with a maximum diversion flow rate of 17.7 cubic feet per second; provided, that the water delivery contract between the Navajo Nation and the United States is executed to provide such a contract right for the diversion of water in New Mexico for delivery to uses in Arizona consistent with section 104 of the Act. The diversion of water in New Mexico for Navajo-Gallup Water Supply Project uses in Arizona shall be serviced under New Mexico State Engineer File Nos. 2849 and 3215, and shall be administered consistent with the provisions of the Upper Colorado River Basin Compact and the San Juan River Basin in New Mexico Water Projects and Settlement Act. Also, the diversion of water in New Mexico for Project uses in Arizona shall continue only so long as the water delivery contract remains in effect, shall not be transferable to other uses, including uses in New Mexico, and shall not be leased or otherwise subcontracted to third parties. The contract right for the diversion of water in New Mexico for delivery to uses in Arizona shall not include carry-over storage in Navajo Reservoir from year to year.

7. GROUND WATER RIGHTS.

The Navajo Nation has the right to divert, pump or withdraw, and to consumptively use, ground water on Navajo lands in New Mexico, including lands held by the United States in trust for the Navajo Nation and lands held in fee ownership by the Navajo Nation, within the physical drainage of the San Juan River and its tributaries and in addition to rights to divert ground water for uses identified in paragraphs 8, 9 and 10, subject to the following conditions:

- (a) The Navajo Nation has a reserved right, with a priority date of June 1, 1868, to divert up to 2,000 acre-feet of ground water in any one year for beneficial use, including for municipal, industrial, commercial, domestic, agricultural and other purposes, on lands in

New Mexico that are held by the United States in trust for the Navajo Nation, or on other lands if approved by the New Mexico State Engineer or the Court.

(b) The Navajo Nation has the right to divert ground water for municipal, industrial, commercial, domestic or agricultural uses, in addition to the rights described in subparagraph (a) of this paragraph and any ground water uses included under paragraphs 8, 9 and 10, subject to the following conditions:

(1) The Navajo Nation has the authority to make additional diversions of ground water in the San Juan River Basin in New Mexico on lands held by the United States in trust for the Navajo Nation as of the date of entry of this decree; provided, that:

(i) the Navajo Nation shall give notice of intent to drill or pump wells to effectuate such additional diversions of ground water 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, both such forms of notice to be completed at least 30 days prior to drilling new wells or to increasing pumping from existing wells, and to specify the proposed purpose and place of use, point of diversion, annual diversion and depletion amounts, and sources of ground water;

(ii) the priority dates of the additional diversions of ground water under subparagraph 7(b)(1) shall be the respective dates of notice to the State Engineer; except, that replacement wells shall retain the priority dates associated with the wells replaced; and

(iii) such diversions of ground water are subject to the other provisions of paragraph 7, except for subparagraphs 7(a) and 7(b)(2).

The Navajo Nation shall provide an administrative process for receiving from Navajo and non-Navajo water users protests of additional diversions of ground water proposed to be made pursuant to this subparagraph, and for reviewing and considering protests and impairment issues that may arise from such additional diversions. The administrative process shall include the Navajo Nation consulting with the New Mexico State Engineer on proposed diversions, any necessary replacement water plans that may be required as per subparagraph 7(c), and impairment issues. The Navajo Nation shall not exercise its authority under this subparagraph to approve or implement a proposed additional diversion of ground water until it has consulted with the State Engineer and completed the administrative process for the proposed diversion.

(2) The Navajo Nation may appropriate ground water under state law for additional diversions of ground water in the San Juan River Basin in New Mexico on lands not held by the United States in trust for the Navajo Nation as of the date of entry of this decree.

(3) The additional diversions of ground water under subparagraph 7(b) shall not impair the exercise of other surface water and ground water rights either within the physical drainage of the San Juan River Basin or in other basins.

(4) The additional diversions of ground water under subparagraph 7(b) may supply uses on lands in New Mexico that are held by the United States in trust for the

Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, or on other lands if transferred in accordance with the provisions of paragraph 17; except, that diversions of ground water in the San Juan River Basin in New Mexico may be delivered for domestic and sanitary uses in the San Juan River Basin in Arizona in accordance with the provisions of subparagraph 7(g).

(5) No additional diversions of ground water under subparagraph 7(b) shall be made until a model of ground water flow for the physical area of the San Juan River Basin in New Mexico, plus any pertinent adjoining areas, has been approved by the New Mexico State Engineer or the Court to determine impacts of existing ground water rights and new diversions of ground water on flow of the San Juan River for the purpose of conjunctively administering surface and ground water sources. Once a model is approved, a proposed additional diversion of ground water is subject to New Mexico State Engineer approval of a replacement plan to offset the depletions of streamflow attributable to the additional diversion, if such a plan is required pursuant to subparagraph 7(c).

(c) The Navajo Nation each year shall offset the cumulative reduction in the flow of the San Juan River during the year that is caused by all diversions and uses of ground water by the Navajo Nation under the rights described in subparagraphs (a) and (b) of this paragraph in the aggregate, and that is in excess of 2,000 acre-feet per year of cumulative reduction, in accordance with a replacement water plan approved by the New Mexico State Engineer. The replacement water plan shall specify and schedule how the Nation will satisfy this offset requirement annually by forbearing use of specific surface water rights to flows of

the San Juan River stream system that are described by paragraph 3 in a total amount of depletion equal to the amount of cumulative flow reduction for each year that is in excess of 2,000 acre-feet per year, and in such a manner as to offset the river flow impacts at the locations of impact. In addition, if the offset requirement necessitates a transfer or dedication of Navajo Nation rights under the Settlement Contract to below Navajo Dam, the State Engineer may determine conditions for dam releases to effectuate the transfer or dedication. Such conditions may include exceptions for periods when replacement water, in the State Engineer's judgment, is not needed to avoid impairment to other water rights or interstate compact delivery requirements.

(d) Diversions and uses of ground water in New Mexico on lands that are held by the United States in trust for the Navajo Nation, or held in fee ownership by the Navajo Nation, by agencies of the United States, including the Bureau of Indian Affairs and Indian Health Service, for municipal, industrial, commercial and domestic purposes for the benefit of the Navajo Nation or its members shall be included within and accounted against the Navajo Nation's rights to divert and use ground water under subparagraphs (a) and (b) of this paragraph.

(e) Diversions and uses of ground water underlying the area of the Navajo Indian Irrigation Project shall be included within and accounted against the Navajo Nation's rights to divert and use ground water under subparagraphs (a) and (b) of this paragraph; except, that any re-use of irrigation tail water that through percolation from irrigation of Project lands had reached the underlying ground water table and is pumped for the purpose of maintaining the water table at a sufficient distance below the root zone to prevent waterlog damage to Project

fields that otherwise would result from the irrigation use may be included within the Navajo Nation's rights under subparagraph 5(j)(1) to re-use tail water so long as the depletion of water associated with the re-use is accounted against the depletion quantity for the Project described in subparagraph 3(a).

(f) The Navajo Nation may use ground water diverted or withdrawn from within the San Juan River Basin in New Mexico in areas of the State of New Mexico located outside the physical drainage of the San Juan River and its tributaries; provided, that such diversion and use shall:

(1) be accounted against the rights of the Navajo Nation to divert ground water described in subparagraphs 7(a) and 7(b); and

(2) comply with the other provisions of paragraph 7.

(g) The Navajo Nation may divert or withdraw ground water from the San Juan River Basin in New Mexico for use in the San Juan River Basin in Arizona, and may use in the San Juan River Basin in New Mexico ground water withdrawn from the San Juan River Basin in Arizona, for domestic and sanitary purposes on lands that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation; provided, that:

(1) the depletion of the flow of the Colorado River at Lee Ferry resulting from such uses made in the State of New Mexico is a part of the consumptive use apportionment made to the State of New Mexico by Article III of the Upper Colorado River Basin Compact, and the depletion of the flow of the Colorado River at Lee Ferry resulting from such uses made in the State of Arizona is a part of the

consumptive use apportionment made to the State of Arizona by Article III of the Upper Colorado River Basin Compact;

(2) such uses are not inconsistent with the rights of the Navajo Nation, or of the United States as trustee for the Navajo Nation, to make such diversions and uses of water within the State of Arizona;

(3) the total of such diversions made within the State of New Mexico and delivered for uses in Arizona, plus the total of diversions made within the State of Arizona and delivered for such uses in New Mexico, pursuant to subparagraph 7(g) does not exceed 400 acre-feet in the aggregate;

(4) such diversions and uses within the State of New Mexico shall be accounted against, and otherwise comply with, the rights of the Navajo Nation to divert and use ground water described in subparagraphs 7(a) and 7(b); and

(5) the rights of the Navajo Nation to make such diversions and uses shall not be leased, exchanged or otherwise transferred for use by other parties or for other purposes.

(h) The Court retains jurisdiction to review any matter arising from the provisions of paragraph 7; except, that another court may have competent jurisdiction over issues of impairment to water rights in basins other than the San Juan River Basin or in other states.

8. JOINT HYDROGRAPHIC SURVEY – RESERVED RIGHTS.

The Navajo Nation has reserved rights for the historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held by the United States in trust for the Navajo Nation, including lands allotted to individual members that are a part of such trust lands, as described

in this decree and in the Joint Hydrographic Survey Report, which rights have a priority date of June 1, 1868; except, that historic and existing uses that are included within the supplemental carriage water provisions described in paragraph 4 are not reserved rights. 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 rights amounts specified by subparagraphs 3(a), 3(e) and 3(f), respectively. 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 rights amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a). 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) shall not exceed an annual diversion of _____ acre-feet, or the quantity of water necessary to supply an annual depletion at the places of use of _____ acre-feet (including depletions caused by the particular uses of water and depletions that are incident to the uses of water), whichever is less, and a net evaporation from stockponds and reservoirs of _____ acre-feet. These water rights are described below. 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 17, and are subject to the Court's continuing jurisdiction to administer and enforce this decree as provided in paragraph 14.

SAN JUAN RIVER BASIN

A. LIVESTOCK WATER USE

1. STOCK PONDS

<u>PLACE OF USE</u>		<u>SURFACE AREA</u> <u>(acres)</u>	<u>VOLUME</u> <u>(acre-feet)</u>	<u>NET EVAPORATION</u> <u>(acre-feet)</u>
All stock ponds described in the U.S. Hydrographic Survey Report.	Totals:	_____	_____	_____

The location, source, surface area, volume and annual net evaporation of each stock pond are identified and described in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit __. The Navajo Nation has the right to fill and refill each identified stock pond to its full capacity as often as water is available.

2. STOCK USE

<u>PLACE OF USE</u>	<u>NO. OF ANIMAL UNITS</u>	<u>AMOUNT OF WATER</u>	
		<u>DIVERSION</u> <u>(acre-feet)</u>	<u>DEPLETION</u> <u>(acre-feet)</u>
At stock wells and springs described below and in stock ponds described in the U.S. Hydrographic Survey Report.	_____	_____	_____

The foregoing diversion and depletion amounts are the annual amounts of water consumed by stock from the stock wells and springs listed below and stock ponds identified and described in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit __.

(a) STOCK WELLS

<u>POINT OF DIVERSION</u>				<u>MAP</u>	<u>ID-NO.</u>	<u>SOURCE</u>
<u>T</u>	<u>R</u>	<u>SEC</u>	<u>1/4</u>			
___N ___W	___	___	___	___	___	___
___N ___W	___	___	___	___	___	___

(b) STOCK SPRINGS

POINT OF DIVERSION

T	R	SEC	1/4	MAP	ID-NO.	SOURCE
__	N	__	__	__	__	__
__	W	__	__	__	__	__
__	N	__	__	__	__	__
__	W	__	__	__	__	__

B. RECREATION WATER USE

1. RECREATION LAKES

LOCATION						SURFACE AREA	VOLUME	NET EVAPORATION
T	R	SEC	1/4	MAP	ID-NO.	(acres)	(acre-feet)	(acre-feet)
__	N	__	__	__	__	__	__	__
__	W	__	__	__	__	__	__	__
__	N	__	__	__	__	__	__	__
__	W	__	__	__	__	__	__	__
TOTALS								

The Navajo Nation has the right to fill and refill the lakes described above to their full capacity as often as water is available.

2. RECREATION USE

POINT OF DIVERSION					AMOUNT OF WATER	
T	R	SEC	SOURCE	MAP	DIVERSION	DEPLETION
					(acre-feet)	(acre-feet)
__	N	__	&	__	__	__
__	W	__	&	__	__	__
__	N	__	&	__	__	__
__	W	__	&	__	__	__
TOTALS						

The foregoing annual depletion amounts include the depletion at the places of use caused by the recreation use of water and any depletion incident to the use.

C. IRRIGATION WATER USE

1. IRRIGATION DIVERSION

AMOUNT OF WATER

POINT OF DIVERSION				SOURCE	MAP	ACRES	DIVERSION		DEPLETION
T	R	SEC	1/4				(acre-feet)	(cfs)	(acre-feet)
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

TOTALS

The foregoing annual depletion amounts include the depletion at the places of use caused by the irrigation use of water and any depletion incident to the use. No more than _____ acres may be irrigated in any one calendar year within the _____ acres with irrigation water rights from tributaries to the San Juan River or from underground water sources within said tributary drainage areas. The amounts of water for the irrigation of _____ acres from said tributary areas and underground water sources shall not exceed an annual diversion of _____ acre-feet per year, or the quantity of water necessary to supply an annual depletion at the places of use of _____ acre-feet per year, whichever is less. The Navajo Nation's diversion rights for the irrigation water uses described above shall be subject to the annual diversion quantities specified only if the Court adjudicates and requires enforcement of annual diversion quantities for all irrigation uses in the San Juan River Basin in New Mexico.

2. IRRIGATION RESERVOIR STORAGE

LOCATION				MAP	ID-NO.	SURFACE	VOLUME	NET
T	R	SEC	1/4			AREA		EVAPORATION
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

TOTALS

The Navajo Nation has the right to fill and refill the reservoirs described above to their full capacity

as often as water is available.

* * *

9. 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. These rights are described in this decree and in the Joint Hydrographic Survey Report, 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 minimus* uses under paragraph 10, 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). The total annual quantities of water to which the Navajo Nation has a water right under state law as of the date of enactment of this decree amounts to an annual diversion of _____ acre-feet, or the quantity of water necessary to supply an annual depletion at the places of use of _____ acre-feet (including depletions caused by the particular uses of water and depletions that are incident to the uses of water), whichever is less, and a net evaporation from stockponds of _____ acre-feet. These water rights and the priority dates are described below. 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 17, and are subject to the Court's continuing jurisdiction to administer and enforce this decree as provided in paragraph 14.

SAN JUAN RIVER BASIN

A. LIVESTOCK WATER USE

1. STOCK PONDS

<u>PLACE OF USE</u>		<u>SURFACE AREA (acres)</u>	<u>VOLUME (acre-feet)</u>	<u>NET EVAPORATION (acre-feet)</u>	<u>PRIORITY</u>
All stock ponds described in the U.S. Hydrographic Survey Report.	Totals:	_____	_____	_____	_____

The location, source, surface area, volume and annual net evaporation of each stock pond are identified and described in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit __. The Navajo Nation has the right to fill and refill each identified stock pond to its full capacity as often as water is available.

2. STOCK USE

<u>PLACE OF USE</u>	<u>NO. OF ANIMAL UNITS</u>	<u>AMOUNT OF WATER DIVERSION (acre-feet)</u>	<u>DEPLETION (acre-feet)</u>	<u>PRIORITY</u>
At stock wells and springs described below and in stock ponds described in the U.S. Hydrographic Survey Report.	_____	_____	_____	_____

The foregoing diversion and depletion amounts are the annual amounts of water consumed by stock

from the stock wells and springs listed below and stock ponds identified and described in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit _.

(a) STOCK WELLS

POINT OF DIVERSION				MAP	ID-NO.	SOURCE	PRIORITY
T	R	SEC	1/4				
__N	__W	__	__	__	__	__	__
__N	__W	__	__	__	__	__	__

(b) STOCK SPRINGS

POINT OF DIVERSION				MAP	ID-NO.	SOURCE	PRIORITY
T	R	SEC	1/4				
__N	__W	__	__	__	__	__	__
__N	__W	__	__	__	__	__	__

B. IRRIGATION WATER USE

POINT OF DIVERSION				SOURCE	MAP	AMOUNT OF WATER		PRIORITY	
T	R	SEC	1/4			ACRES (acre-feet)	DEPLETION (cfs)		
__N	__W	__	__	__	__	__	__	__	
__N	__W	__	__	__	__	__	__	__	
TOTALS									

The foregoing annual depletion amounts include the depletion at the places of use caused by the irrigation use of water and any depletion incident to the use. The Navajo Nation's diversion rights for the irrigation water uses described above shall be subject to the annual diversion quantities specified only if the Court adjudicates and requires enforcement of annual diversion quantities for all irrigation uses in the San Juan River Basin in New Mexico.

C. MUNICIPAL, INDUSTRIAL, COMMERCIAL AND DOMESTIC USE

POINT OF DIVERSION				SOURCE	PERMIT NO.	AMOUNT OF WATER		PRIORITY
T	R	SEC	1/4			DIVERSION (acre-feet)	DEPLETION (cfs)	
__N	__W	__	__	_____	_____	_____	_____	_____
__N	__W	__	__	_____	_____	_____	_____	_____
TOTALS								

The foregoing annual depletion amounts include the depletion at the places of use caused by the use of water and any depletion incident to the use.

* * *

10. DE MINIMUS USES.

The Navajo Nation shall have the right to allow individual members of the Navajo Nation to divert and use surface water from springs and ground water in the San Juan River Basin in New Mexico without regard to the limitations and quantities of water rights described in paragraphs 3 through 9 solely for residential domestic and stock tank uses, excluding irrigation uses and stockponds, on Navajo lands, including lands held by the United States in trust for the Navajo Nation and lands held in fee ownership by the Navajo Nation; provided, that such diversion and use of water does not involve the diversion and use of water under the water rights described in paragraphs 3 through 9, the diversion or conveyance of water by the project facilities authorized by the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___) and preceding Acts of Congress, or the diversion and delivery of water by public water supply systems. The right under this paragraph to *de minimus* uses is a reserved right of the Navajo Nation.

11. ALLOTTEES.

Individual members of the Navajo Nation that have been allotted lands, by the United States

by public land orders or otherwise, 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; however, historic and existing water uses on such allotted lands are described in the Joint Hydrographic Survey Report. Any rights for such allotted lands that are adjudicated by the Court that are in excess of the historic and existing uses on those lands that are described in the Joint Hydrographic Survey Report shall be fulfilled or serviced by rights of the Navajo Nation quantified in this decree or shall be offset by a corresponding and equivalent reduction of use of rights of the Navajo Nation quantified in this decree.

12. CONDITIONS.

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 this decree, rights in any supplemental decrees adjudicating water rights acquired by the Navajo Nation after entry of this decree, or rights under New Mexico State Engineer permits or licenses acquired after the date of entry of this decree. Beneficial use shall be the limit of the rights to use water adjudicated to the Navajo Nation by this 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 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 decree is binding upon political subdivisions, utilities, agencies and other entities of the Navajo Nation and the United States, and on successors and assigns.

13. DISCLAIMERS.

Except as explicitly provided herein, nothing in this decree confers jurisdiction on the New

Mexico State Engineer to administer or regulate the use of federally reserved rights on lands held by the United States in trust for the Navajo Nation or lands allotted by the United States to members of the Navajo Nation, nor does this decree limit the authority of the State Engineer to administer public waters of the San Juan River Basin on lands other than those held by the United States in trust for the Navajo Nation. Because the description of the Navajo Nation's water rights adjudicated in this decree is based upon a negotiated settlement, the procedures and methods used to quantify and describe the Navajo Nation's water rights in this 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. Nothing herein is intended to adjudicate or encumber water rights under New Mexico State Engineer File Nos. 2847, 2848, 2849, 2873, 2883, 2917 or 3215, or 2847, 2849, 2873, 2917 combined, except for the amounts and uses of water specifically adjudicated to the Navajo Nation in subparagraphs 3(a), 3(b) and 3(c) of this decree, subject to the limitations set forth in paragraph 5, and for the amount of diversion to supply the water delivery contract between the Navajo Nation and the United States for Navajo-Gallup Water Supply Project uses adjudicated in paragraph 6.

14. RETAINED JURISDICTION.

This decree is a final order under Rule 1-054(C) NMRA 200__, and it may be modified only pursuant to Rule 1-060(B) NMRA 200__. This Court retains jurisdiction for the administration and enforcement of the rights adjudicated in this decree, including entry of such supplemental orders as are necessary for the administration of this decree.

15. 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 decree as follows:

(a) The Navajo Nation within two years from the date of entry of this decree shall cause to be installed and maintained flumes, gages, stage recorders, totalizing meters or other flow measuring devices on all surface water and ground water diversions, including re-uses under subparagraph 5(j), within the physical drainage of the San Juan River Basin in New Mexico; except, that diversions for livestock water uses pursuant to subparagraphs 8.A and 9.A and for other water uses may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons. The Navajo Nation also shall cause to be installed and maintained remote sensing equipment on surface water diversion gages for diversions under its rights from the Animas River and from the San Juan River, including Navajo Reservoir. The Nation shall be responsible for rating all gages and for collecting the data necessary to accurately account diversions in the San Juan River Basin in New Mexico for administration of this decree.

(b) The Navajo Nation within two years from the date of entry of this decree shall cause to be installed and maintained storage or water surface gages at all re-regulation storage reservoirs on the Navajo Indian Irrigation Project and at all reservoirs of 10 acre-feet or more storage capacity that the Nation has a right to store water in the San Juan River Basin in New Mexico. In addition, the Navajo Nation shall cause to be installed and maintained recording or remote sensing equipment on reservoir storage gages at all re-regulation storage reservoirs on the Navajo Indian Irrigation Project, and shall maintain such records of inflows

to and releases from reservoir storage, as may be necessary to determine reservoir losses and the storage of tributary inflows to the reservoirs under subparagraph 5(d)(4). The Navajo Nation shall read at or near the end of each month the reservoir storage gages at all reservoirs of 100 acre-feet or more storage capacity that the Nation has a right to store water in the San Juan River Basin in New Mexico, and shall periodically, but not less than quarterly, read the reservoir storage gages at reservoirs of less than 100 acre-feet storage capacity. The Nation shall be responsible for updating and maintaining current elevation-area-capacity data for reservoirs with a storage capacity of 10 acre-feet or more.

(c) The New Mexico State Engineer shall be granted access to diversion data daily, and shall be allowed to inspect flow and storage measurement facilities and gages upon reasonable request to the Navajo Nation, as may be necessary 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 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, and shall provide the results of the inventory to the New Mexico State Engineer within two weeks of completion of the inventory. The Nation shall allow the State Engineer to participate, in cooperation with the Nation, in conducting the acreage inventory. The Navajo Nation may use technically sound methodologies to estimate acreage and crops irrigated outside the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project 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.

16. RECORDS OF WATER USE.

The Navajo Nation shall within two years from the date of entry of this decree, and annually thereafter, prepare and maintain detailed and accurate records of the acreages of all Navajo lands, including lands held by the United States in trust for the Navajo Nation and lands owned by the Navajo Nation in fee, in the San Juan River Basin in New Mexico irrigated each year from the San Juan River, its tributaries or underground water sources, and of the annual diversions and depletions of water, including re-uses, for its uses in the San Juan River Basin in New Mexico from the San Juan River, its tributaries and underground water sources, all stated separately as to each source of water. 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 of San Juan River Basin waters for the previous calendar year. The records and calculations shall be segregated by each use specified in paragraphs 3 through 11 of this decree. Diversions and depletions for livestock water uses pursuant to subparagraphs 8.A and 9.A, and for other water uses to be reported under this paragraph, may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons.

17. ADMINISTRATION.

The Navajo Nation shall have authority to administer the Nation's diversion and use of water under the rights adjudicated by this decree as follows:

- (a) The Navajo Nation shall within two years from the date of entry of this decree cause to be installed and maintained headgates on all surface water diversions from the San

Juan River stream system in New Mexico; except, that no headgate will be required for a diversion from a tributary to the San Juan River so long as the Nation and the State Engineer agree that there will not be sufficient benefit to justify the cost of a headgate. The State Engineer shall be allowed to inspect diversion headgates upon reasonable request to the Navajo Nation.

(b) The Navajo Nation shall have jurisdiction, authority and responsibility to measure, distribute, administer and regulate the use of water under the water rights that are adjudicated to the Nation by this decree beginning at the points of diversion, subject to the provisions of this decree and the Settlement Agreement. The New Mexico State Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the Navajo Nation's uses of water from the San Juan River stream system for compliance with this decree. The Court retains jurisdiction to resolve disputes, if any, between the Navajo Nation, the State Engineer or other parties to this case regarding whether the Nation is properly regulating use of water in compliance with the rights adjudicated by this decree or acquired after the date of entry of this decree, or in compliance with applicable conditions of a water rights transfer made in accordance with this decree.

(c) The Navajo Nation shall have authority to change the purpose and place of use of its reserved rights described by paragraphs 3, 7(a) and 8 and its ground water rights described by subparagraph 7(b)(1) on lands held by the United States in trust for the Navajo Nation in New Mexico, including such trust lands that are subject to lease or federally granted rights-of-way, subject to the conditions and limitations of subsection 104(h) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___) and subparagraphs

5(d)(5), 5(e), 7(c) and 7(g) of this decree; provided, that:

(1) notice is given of any proposed change in purpose or place of use consistent with paragraph 18;

(2) such changes do not involve transfers of places of use to locations outside the State of New Mexico, or to lands that are not held by the United States in trust for the Navajo Nation as of the date of entry of this decree, unless such lands have been declared by the Secretary of the Interior to be held in trust by the United States for the Navajo Nation pursuant to section 3 of the Act of June 13, 1962 (76 Stat. 96), as amended by the Act of September 25, 1970 (84 Stat. 867);

(3) the source of water supply is not changed;

(4) the point of diversion is not changed if the diversion is from the San Juan River or the Animas River;

(5) the diversion and depletion quantities specified in paragraphs 3, 7(a) and 8 for the subject reserved right are not exceeded as a result of such changes; and

(6) such changes would not impair other water rights.

The Navajo Nation shall provide an administrative process for receiving from Navajo and non-Navajo water users protests of changes in purpose or place of use proposed to be made pursuant to this subparagraph, and for reviewing and considering protests and impairment issues that may arise from such changes. The administrative process shall include the Navajo Nation consulting with the New Mexico State Engineer on proposed changes and impairment issues. The Navajo Nation shall not exercise its authority under this subparagraph to implement a proposed change in purpose or place of use until it has consulted with the State

Engineer and completed the administrative process for the proposed change. The Court retains jurisdiction to resolve disputes, if any, between the Navajo Nation, the New Mexico State Engineer or other parties to this case regarding whether changes allowed by the Navajo Nation in the purpose and place of use of its reserved rights comply with the above stated criteria. Other transfers of reserved rights or ground water rights adjudicated by this decree, including transfers that involve a change in the point of diversion on the San Juan River or Animas River or a change in the point of diversion or place of use to a location off lands that are held by the United States in trust for the Navajo Nation, may be made pursuant to application with the New Mexico State Engineer and in accordance with state law.

(d) The following standards of review shall be recognized by the Court in its review of any Navajo Nation decisions or actions made pursuant to subparagraphs 5(e), 7(b)(1) or 17(c), such that the Court may reverse a Navajo Nation decision only if:

- (1) the Nation acted fraudulently, arbitrarily or capriciously;
- (2) the decision of the Nation is not supported by substantial evidence based on the whole record on appeal;
- (3) the action of the Nation was outside the scope of its authority under the decree; or
- (4) the action of the Nation was otherwise not in accordance with this decree or applicable law.

(e) The Navajo Nation may acquire and transfer the use of water rights that are not included in this decree in accordance with state law; provided, that such rights retain the priority date and other elements of the decreed, licensed or permitted right so acquired. The

New Mexico State Engineer shall retain jurisdiction to administer and regulate the use and transfer of water rights that are acquired under state law, including the rights adjudicated under subparagraph 7(b)(2) and paragraph 9 of this decree.

(f) The Navajo Nation shall have authority to administer and regulate the leasing and contracting of the Nation's water rights adjudicated by this decree; provided, that:

(1) the transfer of any of the Nation's water rights shall comply with the provisions of paragraph 17;

(2) the provisions of section 305 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___) shall apply to any subcontract between the Navajo Nation and a third party of the Nation's rights to the delivery of water under the Settlement Contract between the United States and the Navajo Nation referred to in subparagraph 5(a), including the requirement that the Secretary of the Interior must approve such subcontracts;

(3) the provisions of section 306 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___) shall apply to leases, contracts or other agreements that the Navajo Nation may enter to provide water for use by other parties under the Nation's water rights that are not subject to the Settlement Contract; and

(4) the development and use of ground water by the Navajo Nation shall comply with the provisions of paragraph 7.

The non-use of the Navajo Nation's reserved rights by a leasee or contractor to the Nation shall in no event result in a forfeiture, abandonment, relinquishment or other loss of all or

any part of the reserved rights described in paragraphs 3, 7(a), 8 and 10 of this decree.

(g) The Navajo Nation's water rights adjudicated herein shall not be leased, contracted, exchanged, forborne or otherwise transferred for use directly or indirectly outside the boundaries of the State of New Mexico without the consent of the State of New Mexico, acting through the New Mexico Interstate Stream Commission, and unless in compliance with applicable law. The Navajo Nation, consistent with the Settlement Agreement and section 404 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), may forbear use of a portion of its rights described in subparagraphs 3(a) or 3(b) as necessary to allow Navajo Nation municipal and domestic uses to be made in Arizona under the Navajo-Gallup Water Supply Project during years that the Secretary of the Interior pursuant to section 403 of the Act allocates a shortage in the Navajo Reservoir water supply to the Nation's uses in Arizona under the Project. Except as provided in this paragraph, nothing in this decree shall be construed to establish, address, prejudice, or prevent any party from litigating, whether or to what extent any law or compact does or does not permit, govern, or apply to the lease, contract, exchange, forbearance or transfer of the Navajo Nation's water rights for use directly or indirectly in an area outside the State of New Mexico.

(h) The Navajo Nation shall have the jurisdiction, authority and responsibility to adjust its headgates and other diversion works to ensure that its diversions of water comply with the Nation's rights to divert as adjudicated by this decree or subsequently acquired. During times when the Secretary of the Interior has determined and allocated shortages pursuant to section 11(a) of the Act of June 13, 1962 (76 Stat. 96), and section 403 of the San

Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), or times when a priority call on the San Juan River or its tributaries is in effect or would have been in effect but for the provisions of subparagraph 9.2 of the Settlement Agreement, the New Mexico State Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the Navajo Nation's diversion and use of water from the San Juan River stream system to ensure that the waters are being beneficially used in compliance with this decree, and shall have authority to request the Navajo Nation to make any appropriate adjustments to its diversions as necessary to comply with the provisions of this decree and the proper administration of diversions in the San Juan River Basin in New Mexico. The Navajo Nation shall maintain its diversion, conveyance and storage facilities in good repair so as to prevent waste. The Court retains jurisdiction to resolve disputes, if any, between the Navajo Nation, the State Engineer or other parties to this case regarding whether diversions of water by the Navajo Nation are being made in compliance with the rights adjudicated by this decree or acquired after the date of entry of this decree, or in compliance with applicable conditions of a water rights transfer made in accordance with this decree, or are being administered properly.

(i) The Navajo Nation shall drill, maintain and abandon ground water diversion wells in a manner consistent with public health and safety and applicable laws and regulations. The Navajo Nation shall require that well completion logs be prepared for all newly drilled wells. Copies of well completion reports and well drilling logs shall be provided to the New Mexico State Engineer on a quarterly basis.

(j) The Navajo Nation shall construct and maintain, and breach if necessary, storage

dams and reservoirs in a manner consistent with public health and safety and applicable laws and regulations. The Navajo Nation shall require that as built drawings be prepared for all newly constructed or rehabilitated dams; except, that dams that are 10 feet or less in height as measured from the downstream toe to the dam crest and dams that impound 10 acre-feet or less of water as measured by the volume of water stored at the spillway crest are exempt from such requirement for purposes of this decree. Copies of as built drawings for dams, and copies of dam inspection reports on both newly constructed dams and existing dams, shall be provided to the New Mexico State Engineer on an annual basis.

18. 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 the 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 *de minimus* uses described in paragraph 10 are exempt from this notice requirement, and 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. Uses of water to make the depletions and diversions described in subparagraphs 3(d), 3(e) and 3(f) that are supplied under the Settlement Contract pursuant to the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, and that are accounted under the rights described in subparagraph 3(a) for the Navajo Indian Irrigation Project,

also shall be exempt from this notice requirement. Any use of water for non-irrigation purposes under the rights associated with the Navajo Indian Irrigation Project is subject to the notice provisions of this paragraph notwithstanding the authorized uses of Project water specified at section 203 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___); except, that no such notice shall be required to implement the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement to make the depletions and diversions described in subparagraphs 3(d), 3(e) and 3(f) regardless of whether part or all of the irrigation rights for the Hogback-Cudei and Fruitland-Cambridge irrigation projects have been transferred to non-irrigation uses.

19. SAN JUAN-CHAMA PROJECT.

Nothing in this decree shall be construed to prohibit the Navajo Nation from acquiring the use of water diverted to the Rio Grande Basin via the San Juan-Chama Project authorized by the Act of June 13, 1962 (76 Stat. 96); provided, that the acquisition of such water:

(a) is made by subcontract with existing contractors of said Project or by reallocation of Project water and subsequent contract with the Secretary of the Interior, subject to approval of the New Mexico Interstate Stream Commission; and

(b) does not result in an increase in the amount of water required to be diverted by the Project from the San Juan River Basin to supply a Project yield of 96,200 acre-feet per year at Heron Dam.

Nothing in this paragraph shall be construed to abrogate the Secretary of the Interior's obligations under existing water delivery and repayment contracts for the San Juan-Chama Project or under existing reservations or allocations of Project water.

20. SUPPLEMENTAL DECREES.

The Navajo Nation may petition this Court for supplemental decrees to adjudicate rights pursuant to appropriations it may acquire after entry of this decree or rights that may derive from additional allocations of water made to the Navajo Nation pursuant to paragraph 8.0 of the Settlement Agreement.

21. INCORPORATION OF SETTLEMENT AGREEMENT.

The terms and conditions of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement, signed by the State of New Mexico and the Navajo Nation on _____ and executed by the Secretary of the Interior on _____, excluding the Appendices thereto, are incorporated as though fully set forth herein. By this decree, the Court takes no action and makes no determination to approve or disapprove the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), the Settlement Contract, or the schedule of anticipated depletions from the Upper Basin prepared by the New Mexico Interstate Stream Commission and referred to in subparagraph 5.1 of the Settlement Agreement. Any amendments to the Settlement Agreement made pursuant to subparagraph 13.6 of that agreement and subsequent to entry of this decree shall be binding as between the parties to the Settlement Agreement, but shall not be binding on other parties unless approved by the Court.

22. REVOCABILITY.

Notwithstanding the provisions of paragraph 14, this decree may be revoked by the Court if the Settlement Agreement is terminated or upon a showing by the Navajo Nation that the conditions set forth at section 309 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___) have not been substantially satisfied or that deposits into the Navajo Nation

Water Resources Development Trust Fund have not been substantially made pursuant to paragraph 6.0 of the Settlement Agreement. If this decree is revoked, the parties shall not be bound by it or the Settlement Agreement, including any agreements of the Navajo Nation or the United States relating to the settlement of claims provided pursuant to this decree, the Settlement Agreement or the San Juan River Basin in New Mexico Water Projects and Settlement Act, and the Navajo Nation may petition the Court to proceed with the determination of its rights in this case. Nothing in this paragraph prohibits the Navajo Nation from seeking other remedies for performance or relief to accomplish the purposes of the Settlement Agreement and Settlement Act. The Navajo Nation's right to present to the Court cause to revoke this decree under this paragraph shall expire on December 31, 2025.

DATED: _____

Judge Pro Tempore