

**SAN JUAN RIVER BASIN IN NEW MEXICO**

**NAVAJO NATION WATER RIGHTS SETTLEMENT**

**AGREEMENT**

**April 19, 2005**

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**NAVAJO NATION WATER RIGHTS SETTLEMENT AGREEMENT**

This Agreement is entered into as of the dates executed below, by and among the State of New Mexico, the Navajo Nation and the United States of America, acting through the Secretary of the Interior. The provisions of this Agreement, including its Appendices, and any other written or oral communications related thereto are covered by Rule 408 of the New Mexico Rules of Evidence.

**1.0 RECITALS**

- 1.1 Proceedings to determine the nature and extent of the rights to water of the Navajo Nation in the San Juan River Basin in New Mexico are pending in the San Juan River Adjudication.
- 1.2 Recognizing that final resolution of the proceedings in the San Juan River Adjudication may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all water users in the San Juan River Basin in New Mexico, the Parties to this Agreement desire to arrive at a settlement regarding the water rights of the Navajo Nation and to seek entry of a partial final decree of

those rights in the San Juan River Adjudication, setting forth the Navajo Nation's rights to use and administer waters of the San Juan River Basin in New Mexico.

- 1.3 In fulfillment of its trust responsibility to Indian tribes and to promote tribal sovereignty and economic self-sufficiency, it is the policy of the United States to settle water rights claims of Indian tribes without lengthy and costly litigation.
- 1.4 Recognizing the commitments made by the United States to the Navajo Nation inherent in the treaties of 1849 and 1868, including the commitment to create a permanent homeland for the Navajo people, this settlement will secure to the Navajo Nation a perpetual water supply from the San Juan River Basin of New Mexico.

**NOW, THEREFORE,** in consideration of mutual and dependent covenants and conditions contained herein that each Party acknowledges inures to its respective benefit, the State of New Mexico, the Navajo Nation and the United States agree as follows:

## **2.0 DEFINITIONS**

As used in this Agreement, the term:

- 2.1 "Act" or "Settlement Act" means the proposed San Juan River Basin in New Mexico Water Projects and Settlement Act, a copy of which is attached at Appendix 3;
- 2.2 "Agreement" or "Settlement Agreement" means this Agreement and the four Appendices hereto, which are incorporated herein by this reference;
- 2.3 "Allottees" means individual members of the Navajo Nation for whom the United States holds in trust title to lands allotted by public land orders or otherwise;

- 2.4 “Animas-La Plata Project” means the project of the same name authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III) and related facilities, including Ridges Basin Dam and Reservoir and the Navajo Nation Municipal Pipeline.
- 2.5 “Contract” or “Settlement Contract” means the proposed contract between the United States and the Navajo Nation setting forth certain commitments, rights, and obligations of the United States and the Navajo Nation, a copy of which is attached at Appendix 4;
- 2.6 “Echo Ditch Decree” means 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.
- 2.7 “Navajo Dam and Reservoir” means Navajo Dam and the reservoir created by the impoundment of the San Juan River at Navajo Dam as authorized by the Act of Congress of April 11, 1956, the Colorado River Storage Project Act (70 Stat. 105; Public Law 84-485), as amended;
- 2.8 “Navajo-Gallup Water Supply Project” means the project substantially described in the March 2001 technical memorandum for the project prepared by the Navajo Nation Department of Water Resources and the April 2002 appraisal report for the Project prepared by the United States Bureau of Reclamation, as conditioned, modified and limited by the Settlement Act;

- 2.9 “Navajo Indian Irrigation Project” means the project of the same name authorized by section 2 of the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), as amended by the Act of September 25, 1970 (84 Stat. 867; Public Law 91-416);
- 2.10 “Navajo Lands” means lands set aside as reservation lands for the Navajo People, whether by treaty, statute, executive order or public land order. Also included in this definition are lands that are held in trust for the Navajo Nation by the United States, held in trust for members of the Navajo Nation by the United States, or held in fee ownership by the Navajo Nation;
- 2.11 “Navajo Nation” means a body politic and federally-recognized Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe List of 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the “Navajo Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo Tribe of Indians” and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation;
- 2.12 “Partial Final Decree” means a final and binding judgment and decree entered by the Court in the San Juan River Adjudication setting forth the rights of the Navajo Nation to use and administer waters of the San Juan River Basin in New Mexico, the form of which is attached as Appendix 1;
- 2.13 “Parties” means the State of New Mexico, the Navajo Nation and the United States;
- 2.14 “Report” means the Joint Hydrographic Survey Report prepared by the United States and the State of New Mexico to determine certain reserved rights of the Navajo Nation and the Navajo Nation’s rights acquired under state law, as called

for by paragraphs 3 and 4 of the Supplemental Partial Final Decree, respectively, and to provide the information required to administer subparagraph 4.4 of this Agreement;

2.15 “San Juan River Adjudication” means the general stream adjudication of the San Juan River Basin in New Mexico being determined in *New Mexico v. United States*, No. 75-184, District Court of San Juan County;

2.16 “San Juan River Basin in New Mexico” means all areas located within the physical drainage of the San Juan River and its tributaries within the State of New Mexico;

2.17 “Supplemental Partial Final Decree” means a final and binding judgment and decree entered by the Court in the San Juan River Adjudication to supplement the Partial Final Decree by quantifying certain reserved rights of the Navajo Nation for historic and existing uses within the San Juan River Basin in New Mexico from tributaries to the San Juan River and ground water, and rights of the Navajo Nation to the use of water in the San Juan River Basin in New Mexico acquired pursuant to the laws of the State of New Mexico, the form of which is attached as Appendix 2; and

2.18 “Upper Basin States” means the States of Arizona, Colorado, New Mexico, Utah and Wyoming.

### **3.0 PARTIAL FINAL DECREE**

3.1 Terms and Conditions of the Partial Final Decree. The Parties have negotiated and agree to the terms and conditions contained in the Partial Final Decree.

3.2 Entry of the Partial Final Decree.

3.2.1 Once this Agreement is executed by the United States, the Parties shall file a joint motion with the Court in the San Juan River Adjudication for entry of the Partial Final Decree pursuant to expedited *inter se* procedures to be adopted by the Court; provided, that the Settlement Contract described in paragraph 6.0 must be executed by the Navajo Nation and the United States prior to entry of the Partial Final Decree.

3.2.2 To satisfy this Agreement, the Court in the San Juan River Adjudication must enter the Partial Final Decree in substantially the form of Appendix 1.

3.3 Relation of the Partial Final Decree to Allottees. Allottees, or the United States as trustee for Allottees, are not bound by the Partial Final Decree from making claims to water rights in the San Juan River Basin in New Mexico. Allottees, or the United States as trustee for Allottees, may make claims to, and may be adjudicated, individual water rights in the Basin. Notwithstanding the forgoing, this Agreement shall not diminish the Navajo Nation's authority to administer the use of water on lands held in trust by the United States for Allottees.

**4.0 SUPPLEMENTAL PARTIAL FINAL DECREE**

4.1 Terms and Conditions of the Supplemental Partial Final Decree. The Parties have negotiated and agree to the terms and conditions contained in paragraphs 1, 2 and 5 through 12 of the Supplemental Partial Final Decree. Furthermore, the Parties agree to the form of paragraphs 3 and 4 of the Supplemental Partial Final Decree and to the procedure described in subparagraphs 4.2 and 4.3.1 of this Agreement

for determining the quantification of the Navajo Nation's rights under the respective paragraphs.

4.2 Joint Hydrographic Survey Report.

4.2.1 Except as otherwise provided in subparagraph 4.3.1 of this Agreement, the basis for quantification of the Navajo Nation's rights under paragraphs 3 and 4 of the Supplemental Partial Final Decree shall be a Joint Hydrographic Survey Report describing historic and existing water uses on Navajo Lands, including on lands of Allottees, prepared in accordance with New Mexico State Engineer hydrographic survey standards and subparagraph 4.2.2. The Report shall be prepared cooperatively and jointly under the supervision of the United States and the State of New Mexico, and shall document the data and information called for by paragraphs 3 and 4 of the Supplemental Partial Final Decree and the data and information required to administer subparagraph 4.4 of this Agreement.

4.2.2 The quantification of water rights for irrigation uses identified under paragraphs 3 and 4 of the Supplemental Partial Final Decree shall be determined consistent with the approach or methodology adopted by the Court in the San Juan River Adjudication for determining rights for other irrigation uses in the San Juan River Basin.

4.2.3 The United States and the State of New Mexico shall act in good faith to complete the Report as described in subparagraphs 4.2.1 and 4.2.2 in a timely manner. If the State of New Mexico and the United States are



unable to agree on the method of preparation, contents or other aspects of the Report, the Parties agree to resolve the matter by submitting the dispute(s) to the Court in the San Juan River Adjudication or, by mutual agreement, to an alternative dispute resolution process.

4.2.4 The funds reasonably necessary to complete the Report shall be appropriated to the Bureau of Indian Affairs pursuant to subsection 308(b) of the Settlement Act.

4.3 Completion and Entry of the Supplemental Partial Final Decree.

4.3.1 Once the Report described in subparagraph 4.2 is complete, the Parties shall complete paragraphs 3 and 4 of the Supplemental Partial Final Decree based on the contents of the Report; except, that the permits and licenses for the diversion and use of water pursuant to New Mexico State Engineer File Nos. 758, 2472, 2807 and 2875 shall be cancelled, and no water rights shall be adjudicated for said permits and licenses.

4.3.2 Once paragraphs 3 and 4 of the Supplemental Partial Final Decree are complete, the Parties shall file a joint motion with the Court in the San Juan River Adjudication for entry of the Supplemental Partial Final Decree pursuant to expedited *inter se* procedures to be adopted by the Court.

4.3.3 To satisfy this Agreement, the Court in the San Juan River Adjudication must enter the Supplemental Partial Final Decree in substantially the form of Appendix 2.

4.4 Relation of the Supplemental Partial Final Decree to Allottees.

4.4.1 Allottees, or the United States as trustee for Allottees, are not bound by the Supplemental Partial Final Decree from making claims to water rights in the San Juan River Basin in New Mexico. Allottees, or the United States as trustee for Allottees, may make claims to, and may be adjudicated, individual water rights in the Basin for historic and existing uses as may be documented by the Joint Hydrographic Survey Report prepared pursuant to subparagraph 4.2.

4.4.2 To the extent that water rights are adjudicated for Allottees, or for the United States as trustee for Allottees, for uses in the San Juan River Basin in New Mexico that are in addition to the historic and existing uses identified for allotted lands by the Report and in addition to the rights provided for and adjudicated to the Navajo Nation by the Partial Final Decree and the Supplemental Partial Final Decree, such additional water rights shall be fulfilled or serviced by water rights adjudicated to the Navajo Nation by the Partial Final Decree or the Supplemental Partial Final Decree, or shall be offset by a corresponding and equivalent reduction of use of water rights adjudicated to the Navajo Nation by the Partial Final Decree or the Supplemental Partial Final Decree.

**5.0 SETTLEMENT ACT**

5.1 Proposed Legislation. Federal legislation is necessary to provide the authorizations, approvals, terms, restrictions, procedures and appropriations to carry out this Agreement.

5.2 Conditions. The Settlement Act must be enacted into law in substantially the form of Appendix 3 by December 31, 2006. This date shall be extended if reasonably necessary to provide Congress additional time to consider and act upon the Settlement Act. In addition, the milestones described in subsection 309(a) of the Settlement Act must be fulfilled in the manner provided therein.

## **6.0 SETTLEMENT CONTRACT**

6.1 Determination of Water Availability. Pursuant to the Act of June 13, 1962 (Public Law 87-483, 76 Stat. 100), approval of the Settlement Contract is subject to the Secretary of the Interior submitting a determination to the United States Congress declaring that sufficient water is reasonably likely to be available to New Mexico under the apportionment made by the Upper Colorado River Basin Compact (63 Stat. 31) for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project and for existing and authorized Navajo and non-Navajo uses from the San Juan River Basin in New Mexico. The State of New Mexico, acting through the New Mexico Interstate Stream Commission, has prepared a schedule of anticipated depletions from the Upper Basin under its apportionment that reflects the Settlement Agreement, and will submit the depletion schedule to the United States Bureau of Reclamation for its and the Secretary's consideration in this matter.

6.2 Contract between the United States and the Navajo Nation. In order to implement provisions of this Agreement and the Settlement Act, once enacted, the Navajo Nation and the United States must enter into the Settlement Contract in substantially the form of Appendix 4 no later than December 31, 2007. This date

shall be extended if reasonably necessary to provide the Secretary and the Navajo Nation additional time to consider and execute the Settlement Contract.

- 6.3 Ridges Basin Reservoir Storage Capacity Allocation. At the time of execution of the Settlement Contract, the Secretary of the Interior shall insert into the Settlement Contract at subsection 4(i) the numerical figure indicating the amount of storage capacity in Ridges Basin Reservoir allocated to the Navajo Nation for its use pursuant to the Animas-La Plata Project authorizations of the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258).

## **7.0 SETTLEMENT OF CLAIMS**

- 7.1 Claims by the Navajo Nation and the United States. In consideration of the benefits accruing under this water rights settlement, the Navajo Nation, on behalf of itself and its members, and the United States, acting in its capacity as Trustee for the Navajo Nation but not as Trustee for or on behalf of Allottees, agree that this settlement constitutes a full and final settlement of:

7.1.1 all claims for water rights in, or for waters of, the San Juan River Basin in New Mexico that the Navajo Nation, or the United States on behalf of the Navajo Nation, may have asserted or could assert in the San Juan River Adjudication or in any other court proceeding; and

7.1.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the San Juan River Basin in New Mexico that accrued at any time up to and including the date of entry of the Supplemental Partial Final Decree that the Navajo

Nation, or the United States on behalf of the Navajo Nation, may have asserted or could assert.

7.2 Claims by the Navajo Nation against the United States. In consideration of the benefits accruing under this water rights settlement, the Navajo Nation, on behalf of itself and its members, agrees that this settlement constitutes a full and final settlement of:

7.2.1 all causes of action against the United States, its agencies, or employees, arising out of claims for water rights in, or for waters of, the San Juan River Basin in New Mexico that the United States may have asserted or could assert in the San Juan River Adjudication or in any other court proceeding;

7.2.2 all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the San Juan River Basin in New Mexico that accrued against the United States, its agencies, agents or employees at any time up to and including the date of entry of the Supplemental Partial Final Decree that the Navajo Nation may have asserted or could assert; and

7.2.3 all claims arising out of or resulting from the negotiation or the adoption of this Agreement, appendices to this Agreement, or any specific terms and provisions thereof, against the United States, its agencies, agents or employees.

7.3 Effectiveness of Settlement of Claims.

7.3.1 Nothing herein acknowledges the existence or validity of any claims that are being settled pursuant to this Agreement.

7.3.2 The settlement of claims herein shall become effective upon entry of the Partial Final Decree with respect to the rights adjudicated to the Navajo Nation therein, and shall become fully effective upon entry of the Supplemental Partial Final Decree.

7.4 Reservation of Rights and Retention of Claims. Notwithstanding the settlement of claims described in subparagraphs 7.1 and 7.2, the Navajo Nation shall retain:

7.4.1 all claims for water rights or injuries to water rights arising out of activities occurring outside the San Juan River Basin in New Mexico, subject to subparagraphs 8.0, 9.3, 9.12, 9.13 and 13.9 of this Agreement;

7.4.2 all claims for enforcement of this Agreement, including its appendices, through such legal and equitable remedies as may be available in any court of competent jurisdiction;

7.4.3 all rights to use and protect water rights acquired pursuant to state law, to the extent not inconsistent with the Partial Final Decree, the Supplemental Partial Final Decree and this Agreement; and

7.4.4 all rights not settled, waived or released pursuant to this Agreement.

7.5 No Effect on Claims of Allottees. Nothing in this Agreement shall affect the rights or claims of Allottees, or the United States as trustee for or on behalf of

Allottees, for water rights or damages related to lands allotted by the United States to Allottees by public land orders or otherwise.

## 8.0 ADDITIONAL ALLOCATIONS

8.1 Animas-La Plata Project. If it is determined that an allocation to New Mexico water users can be made without impairment to existing water rights in New Mexico from the water supply associated with New Mexico State Engineer File No. 2883 that is in addition to the Animas-La Plata Project water allocations to users in New Mexico made by section 302 of the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258):

8.1.1 the Navajo Nation shall receive for its use an additional share of water to be supplied under File No. 2883 that is equal to 50 percent of the additional allocation that can be made; and

8.1.2 the remainder of the additional allocation shall be reserved for uses of water by member entities of the San Juan Water Commission, subject to approval of the State of New Mexico, acting through the Interstate Stream Commission.

8.2 Additional Uses under Upper Basin Apportionment. If the yield available to the Upper Basin States under the apportionment of water to the Upper Basin by Article III of the Colorado River Compact is determined to be greater than 6.0 million acre-feet of water annually at Lee Ferry:

8.2.1 the New Mexico Interstate Stream Commission will determine the additional allocation of water available for use within the State of New Mexico's Upper Colorado River Basin Compact apportionment;

8.2.2 the additional allocation, if any, shall be shared as follows:

- (1) the Navajo Nation shall receive for its use an additional share of water that is equal to 50 percent of the additional allocation; and
- (2) the remainder of the additional allocation shall be reserved for uses of water by entities other than the Navajo Nation, and the State of New Mexico, acting through the Interstate Stream Commission, shall determine the shares for the non-Navajo entities; and

8.2.3 the additional allocation, if any, shall be supplied by the Secretary of the Interior under New Mexico State Engineer File Nos. 2849, 2883, 2917 and 3215, subject to non-impairment of existing water rights in New Mexico and to the provisions of subparagraph 8.1.

## **9.0 WATER ADMINISTRATION**

9.1 Administration of Navajo Reservoir Releases. Whenever total storage in Navajo Reservoir is anticipated to exceed, or does exceed, a 1,000,000 acre-feet threshold at the end of May of the current year, excluding storage in any top water bank that may be established in Navajo Reservoir pursuant to section 405 of the Settlement Act, the Navajo Nation and the United States will not challenge the New Mexico State Engineer during the irrigation season making available to direct-flow water users on the San Juan River below Navajo Dam up to 225 cubic-feet-per-second (cfs) as measured at the San Juan River at Archuleta gauging station if inflow to the reservoir is determined to be less than 225 cfs. The reservoir storage threshold may be adjusted from time to time to maintain within the storage threshold a consistent amount of active storage that reflects sedimentation of the



reservoir determined by sediment surveys or any change in the minimum reservoir operating level for the Navajo Indian Irrigation Project diversion.

9.2 Alternate Water Source for San Juan River Uses.

9.2.1 When the direct flow of the San Juan River is insufficient to supply current beneficial uses under direct-flow water rights in New Mexico, the Navajo Nation agrees to make water available from the Settlement Contract to supply its uses under the reserved rights for Shiprock municipal uses and the Hogback-Cudei and Fruitland-Cambridge irrigation projects described in subparagraphs 3(d), 3(e) and 3(f), respectively, of the Partial Final Decree; provided, that:

- (1) the maximum amount of water to be made available from the Settlement Contract for this purpose during any one year is 12,000 acre-feet; and
- (2) the maximum amount described in (1) above is to be reduced in any year in which the Secretary of the Interior determines and allocates a shortage in the Navajo Reservoir water supply pursuant to subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96) and section 403 of the Settlement Act, such reduction to be a function of the percentage shortage in water supply to the diversion demand for the Navajo Indian Irrigation Project; whereby, the maximum amount shall decline linearly in proportionate parts from 12,000 acre-feet at no shortage to 0 acre-feet at 20 percent shortage.

The Navajo Nation at its sole discretion may increase the maximum amounts described in (1) and (2) above in any given year.

9.2.2 The amount of water made available from the Settlement Contract to supply Navajo Nation uses from the San Juan River pursuant to subparagraph 9.2.1 shall be determined as the releases from Navajo Dam made for this purpose, and shall be accounted against the Nation's rights to divert water under the Navajo Indian Irrigation Project described in subparagraph 3(a) of the Partial Final Decree. The depletions of the releases from Navajo Dam made for this purpose shall be accounted against the Nation's rights to deplete water under the Navajo Indian Irrigation Project described in subparagraph 3(a) of the Partial Final Decree. Depletions of releases for purposes of accounting under this subparagraph include consumptive uses, incidental depletions and incremental river carriage losses.

9.2.3 The State of New Mexico and the United States agree that the water to be supplied under the Settlement Contract to the Navajo Nation for use on the Navajo Indian Irrigation Project may be delivered pursuant to subparagraph 9.2.1 to service the Nation's reserved rights under subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree as alternate points of delivery and use. No further action of the Parties will be necessary to approve a water rights transfer for this purpose, and the Navajo Nation shall not be required to transfer in advance rights for a specific amount of irrigated acreage or water use. The Navajo Nation also

shall not be required to fallow irrigated acreage on the Navajo Indian Irrigation Project to effectuate the alternate delivery described in subparagraph 9.2.1.

9.2.4 Providing the alternate water supply under subparagraph 9.2.1 shall service, but shall not increase, the rights described in subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree, and shall not be affected by any transfers to non-irrigation uses of the irrigation rights described in subparagraphs 3(e) or 3(f) of the Partial Final Decree.

9.2.5 When the direct flow of the San Juan River is insufficient to supply current beneficial uses under direct-flow water rights in New Mexico and the amount of water to be made available, if any, from the Settlement Contract pursuant to subparagraph 9.2.1 to supply Navajo Nation uses under the reserved rights described in subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree is exhausted, the Navajo Nation may request a priority administration of water uses in the San Juan River Basin as necessary to fully or partially meet the current beneficial uses of the Nation under such rights.

9.2.6 The provisions of subparagraph 9.2 are conditioned upon enforcement of the provisions of section 11 of the Act of June 13, 1962, that no water user has an entitlement to water released from Navajo Reservoir storage into the San Juan River that is in excess of the direct flow determined to be available at Navajo Dam except under contract with the Secretary; except, that:

- (1) direct-flow water users may divert and use water released from reservoir storage and made available to them pursuant to the provisions of subparagraph 9.1 of this Agreement; and
- (2) water released for delivery from a top water bank in the reservoir established pursuant to section 405 of the Settlement Act is available only to the owners or assigns of the banked water.

9.3 Administration for Compact Compliance.

9.3.1 The Navajo Nation and the United States agree that the State of New Mexico may administer in priority water rights in the San Juan River Basin in New Mexico, including rights of the Navajo Nation, as may be necessary for New Mexico to comply with its obligations under interstate compacts and other applicable law.

9.3.2 If it is determined that the consumptive use of water in New Mexico from the San Juan River Basin exceeds the State of New Mexico's Upper Colorado River Basin Compact Article III(a) apportionment taking into account salvage of river losses by use and other relevant factors, the Navajo Nation agrees, subject to subparagraphs 9.3.4 and 9.3.5, to not exercise a portion of its depletion rights adjudicated to the Nation by the Partial Final Decree and the Supplemental Partial Final Decree in an amount, as measured on the San Juan River, not to exceed in any year the lesser of:

- (1) the amount of over-allocation;

- (2) a quantity equal to: (i) 67% of the sum of 13,520 acre-feet per year plus the New Mexico share of Ridges Basin Reservoir evaporation; plus (ii) an additional one acre-foot for each acre-foot of depletion for those water rights adjudicated as abandoned or forfeited by the Court in the San Juan River Adjudication or otherwise terminated by operation of law, or for those rights that may be permanently retired by the State of New Mexico, or for those permits or licenses cancelled by the New Mexico State Engineer, after the effective date of this Agreement; and
- (3) the sum of 13,520 acre-feet per year, plus the New Mexico share of Ridges Basin Reservoir evaporation, minus the same percentage shortage that is allocated, if any, to the Navajo Nation's water uses in New Mexico under the Navajo-Gallup Water Supply Project as a result of such over-allocation.

9.3.3 In the event that the Upper Colorado River Commission determines pursuant to Article IV of the Upper Colorado River Basin Compact that the State of New Mexico must curtail its consumptive uses of water for some period of time to allow the Upper Basin to comply with Article III of the Colorado River Compact, the Navajo Nation agrees, subject to subparagraphs 9.3.4 and 9.3.5, to not exercise for said period of time a portion of its depletion rights adjudicated to the Nation by the Partial Final Decree and the Supplemental Partial Final Decree in an amount, as measured on the San Juan River, not to exceed in any year the lesser of:

- (1) the amount of curtailment required of the State of New Mexico;
- (2) a quantity equal to: (i) 67% of the sum of 13,520 acre-feet per year plus the New Mexico share of Ridges Basin Reservoir evaporation; plus (ii) an additional one acre-foot for each acre-foot of depletion for those water rights adjudicated as abandoned or forfeited by the Court in the San Juan River Adjudication or otherwise terminated by operation of law, or for those rights that may be permanently retired by the State of New Mexico, or for those permits or licenses cancelled by the New Mexico State Engineer, after the effective date of this Agreement; and
- (3) the sum of 13,520 acre-feet per year, plus the New Mexico share of Ridges Basin Reservoir evaporation, minus the same percentage shortage that is allocated, if any, to the Navajo Nation's water uses in New Mexico under the Navajo-Gallup Water Supply Project as a result of such curtailment.

9.3.4 For the purpose of determining the quantity referenced in subparagraphs 9.3.2(2) and 9.3.3(2), depletion amounts for rights abandoned, forfeited, terminated or retired, or for permits or licenses cancelled, shall be as quantified by decree, permit or license, or if not so quantified shall be based on the consumptive use for municipal, industrial or commercial uses or on annual consumptive irrigation requirements that are consistent with those provided in the report of Hydrographic Survey approved by the Echo Ditch Decree for irrigation uses, as appropriate. Depletions

associated with permits or licenses pursuant to New Mexico State Engineer File Nos. 758, 2472, 2807 and 2875, all cancelled in accordance with subparagraph 4.3.1, shall not be accounted towards the quantity referenced in subparagraphs 9.3.2(2) and 9.3.3(2). Nothing in subparagraphs 9.3.2, 9.3.3 or 9.3.4 shall affect the adjudication of water rights in the San Juan River Adjudication.

9.3.5 Any reduction in depletion by the Navajo Nation under subparagraphs 9.3.2 or 9.3.3 shall be:

- (1) in addition to any reductions otherwise required of Navajo Nation water uses pursuant to this Agreement or as a result of water rights administration in New Mexico;
- (2) for the exclusive purpose to provide for depletions from the San Juan River stream system to be made by the Navajo Nation and non-Navajo Nation municipal and domestic water uses in New Mexico under the Animas-La Plata Project that are allocated by section 302 of the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258);
- (3) limited by the extent to which forbearance of the use of the Navajo Nation's depletion rights is necessary to permit the current beneficial use needs of the municipal and domestic uses described in (2) above to be served; and
- (4) further limited so as not to result in a greater percentage water supply being made available for depletion during any year by the

municipal and domestic uses described in (2) above than is available for depletion during the same year by the Navajo Nation's water uses in New Mexico under the Navajo-Gallup Water Supply Project pursuant to the Settlement Contract and to section 11 of the Act of June 13, 1962, and section 403 of the Settlement Act.

9.4 Cooperative Water Sharing Agreements. Nothing in this Agreement prohibits the Navajo Nation from participating with water users in cooperative agreements for the sharing of water supplies in the San Juan River Basin.

9.5 Watermaster. To facilitate the administration of diversions from the San Juan River, the Navajo Nation and the United States agree that the New Mexico State Engineer shall serve as watermaster for the purpose of administering water rights and the diversion of water within the San Juan River stream system in New Mexico, subject to the provisions of the Partial Final Decree, the Supplemental Partial Final Decree and this Agreement.

9.6 San Juan River Adjudication.

9.6.1 The Navajo Nation, and the United States as trustee for the Navajo Nation, agree to not challenge in the San Juan River Adjudication rights previously adjudicated by the Echo Ditch Decree so long as:

- (1) quantifications of irrigation water rights in the Adjudication are based on the consumptive irrigation requirements per acre described by the report of hydrographic survey approved by the



Echo Ditch Decree, and on the amounts of water allotted per acre by the decree;

- (2) quantifications of maximum ditch diversion rates for irrigation uses under ditches in the Adjudication are based on the diversion rates per acre approved by the Echo Ditch Decree; and
- (3) priority dates for irrigation and non-irrigation rights in the Adjudication are based on the priority dates adjudicated by the Echo Ditch Decree.

The Navajo Nation may challenge in the San Juan River Adjudication quantifications of both irrigation water right acreages and non-irrigation water rights for reasons of forfeiture or abandonment for non-use or unauthorized use since entry of the Echo Ditch Decree. If as a result of the Adjudication the Court finds that the amount of water right acreage served by a ditch is significantly less than the acreage adjudicated in the Echo Ditch Decree, and if as a consequence a ditch claims a need for reason of hydraulics for additional carriage water over and above the maximum ditch diversion rate for irrigation uses on the ditch quantified per (2) above in order to allow the ditch to make deliveries of water to irrigators in accordance with the rights described in (1) above, the Navajo Nation may challenge the amount of additional carriage water claimed but agrees not to challenge irrigation water rights on the ditch quantified in accordance with (1) above. Further, the Navajo Nation may challenge in the Adjudication quantifications of annual diversion requirements for

irrigation uses under ditches to the extent that the requirements would exceed the annual diversion requirements per acre described by the report of hydrographic survey approved by the Echo Ditch Decree.

9.6.2 For irrigation rights not previously adjudicated by the Echo Ditch Decree, the Navajo Nation, and the United States as trustee for the Navajo Nation, agree to not challenge in the San Juan River Adjudication quantifications of water rights or maximum ditch diversion rates for irrigation uses under ditches so long as:

- (1) quantifications of water rights in the Adjudication are based on the consumptive irrigation requirements and farm delivery requirements, or farm duties, stated or indicated, if any, in permits or licenses, or if not so stated or indicated in permits or licenses, based on a methodology that results in consumptive irrigation requirements and farm duties consistent with those described by the report of hydrographic survey approved by the Echo Ditch Decree; and
- (2) quantifications of maximum ditch diversion rates for irrigation uses under ditches in the Adjudication are based on the diversion rates stated or indicated, if any, in permits or licenses, or if not so stated or indicated in permits or licenses, based on a methodology that results in maximum diversion rates per acre consistent with those approved by the Echo Ditch Decree.

The Navajo Nation may challenge in the San Juan River Adjudication quantifications of both irrigation water right acreages and non-irrigation water rights for reasons of forfeiture or abandonment for non-use or unauthorized use since issuance of a permit or license not included in the Echo Ditch Decree, and may challenge priority dates that may conflict with law; provided, that the Navajo Nation, and the United States as trustee for the Navajo Nation, agree to not challenge in the Adjudication quantifications of water rights under the Bureau of Reclamation's Hammond Irrigation Project based on a total water right acreage for the Project of up to 3,900 acres. Further, the Navajo Nation may challenge in the Adjudication quantifications of annual diversion requirements for irrigation uses under ditches to the extent that the quantifications would exceed the annual amounts of diversion or the diversion requirements per acre described in permits or licenses, if any, or if not, the annual diversion requirements per acre described by the report of hydrographic survey approved by the Echo Ditch Decree.

- 9.7 Navajo Reservoir Water Supply Contracts. The Navajo Nation, and the United States as trustee for the Navajo Nation, do not object to the contracts and subcontracts with other entities that have been approved as of the date of this Agreement by the Secretary of the Interior pursuant to section 11 of the Act of June 13, 1962 (76 Stat. 96), and do not object to the permits approved as of the date of this Agreement by the State Engineer for the diversion and use by the

contractors or subcontractors, respectively, of the water delivered under said contracts and subcontracts.

9.8 Notice of Applications. The New Mexico State Engineer shall provide notices to the Navajo Nation Department of Water Resources of applications filed for new appropriations, or to change the point of diversion or the place or purpose of use of water, in the San Juan River Basin in New Mexico, said notices to be provided when the State Engineer provides the applicant with the notice to be published; except, that the State of New Mexico shall not be required to provide the Navajo Nation with notices of applications to appropriate ground water for stock, domestic, mineral or construction purposes of use filed pursuant to Section 72-12-1.1, 1.2, or 1.3, NMSA 1978 (2003).

9.9 Transfers of Water Rights. The New Mexico State Engineer will consider evidence of historic use or non-use in determining whether approval of an application filed under state law to change the purpose or place of use of an irrigation water right in the San Juan River Basin would be consistent with the provisions of section 72-5-23, NMSA 1978, as it may be amended.

9.10 Hydrologic Models. Hydrologic models shall be developed cooperatively by the United States, acting through its water management and research agencies, and the State of New Mexico, acting through the Office of the State Engineer and the Interstate Stream Commission, and in consultation with the Navajo Nation Department of Water Resources, to the extent that models are needed to:

9.10.1 administer or manage the surface waters of the San Juan River Basin, and manage federal and other water projects, for the conservation of water for uses in New Mexico consistent with applicable laws;

9.10.2 determine return flow and depletion amounts for the Navajo Indian Irrigation Project, the Fruitland-Cambridge and Hogback-Cudei irrigation projects, and other Navajo Nation water uses for the accounting and administration of the rights adjudicated to the Nation by the Partial Final Decree and the Supplemental Partial Final Decree; and

9.10.3 determine the hydrologic effects of diversions and uses of ground water in the San Juan River Basin in New Mexico on San Juan River flows and on ground water resources, including impacts on other wells, as necessary to effectively administer the provisions set forth in paragraph 7 of the Partial Final Decree.

9.11 Ground Water Consultations. The State of New Mexico, acting through the State Engineer, shall cooperate and consult with the Navajo Nation, as it would with other applicants, in the preparation of any proposed Navajo Nation application to appropriate ground water in accordance with state law and pursuant to subparagraph 7(b)(2) of the Partial Final Decree, including the development of any replacement water plan required pursuant to subparagraph 7(c) of the Partial Final Decree and issues of impairment to existing rights related to a proposed application.

9.12 Uses in Other States.

9.12.1 The San Juan River and its tributaries shall be administered consistent with the provisions of the Upper Colorado River Basin Compact (63 Stat. 31).

9.12.2 The United States under contract to the Navajo Nation may provide water for diversion in New Mexico for uses in the State of Arizona under the Navajo-Gallup Water Supply Project consistent with and limited to the authorizations provided by sections 104 and 404 of the Settlement Act, and pursuant to paragraph 6 of the Partial Final Decree. This Agreement shall continue in full force and effect independently of the status of the ability to divert water to the State of Arizona under this subparagraph.

9.12.3 The Navajo Nation may divert ground water from the San Juan River Basin in New Mexico for use in the San Juan River Basin in Arizona, or may use ground water diverted from the San Juan River Basin in Arizona in the San Juan River Basin in New Mexico, subject to, and consistent with, the provisions of subparagraph 7(g) of the Partial Final Decree. This Agreement shall continue in full force and effect independently of the status of the ability to divert or use ground water within the State of Arizona under this subparagraph.

9.13 Fulfillment of Rights in Other Basins with Water from San Juan River Basin.

9.13.1 To the extent that, and only so long as, water is diverted from the San Juan River Basin and delivered to supply a portion of the Navajo Nation uses in the Little Colorado River Basin in New Mexico or the Rio Grande Basin

in New Mexico, such deliveries shall be the water supply to fulfill or service the water requirements of any rights adjudicated to the Navajo Nation for such uses in either or both of the latter two basins.

9.13.2 Navajo Nation water rights in the Little Colorado River Basin and the Rio Grande Basin shall not be:

- (1) exercised, transferred, leased or otherwise used to the extent that, and only so long as, the rights are being supplied by the delivery of water diverted from the San Juan River Basin; or
- (2) subject to forfeiture, abandonment or irretrievable loss to the Navajo Nation for reason of being supplied water from the San Juan River Basin in lieu of using water diverted from the Little Colorado River or Rio Grande basins.

9.13.3 This Agreement shall not alter or affect the quantification of claims or rights of the Navajo Nation to the diversion and use of water outside the San Juan River Basin in New Mexico.

## **10.0 STATE FUNDING FOR DITCH IMPROVEMENTS**

10.1 Amount of Funds. The State of New Mexico agrees to make available for deposit into the State's Water Project Fund the amount of \$1 million in each of the first ten fiscal years which commence following the date of passage of the Settlement Act into law for the express purpose of providing cost-share funding for ditch improvement and water conservation projects in the San Juan River Basin in New Mexico, subject to the New Mexico State Legislature in each of the ten years appropriating funds for this purpose and to subparagraph 10.4.

- 10.2 Eligibility Criteria. The State of New Mexico, acting through the Interstate Stream Commission, will adopt specific criteria, including eligibility and cost-sharing requirements, for receiving applications for funding and determining which ditch improvement and water conservation projects will be funded.
- 10.3 Additional Contributions. Nothing herein prohibits the United States from providing cost-share funding for ditch improvement and water conservation projects in the San Juan River Basin, nor prohibits the State of New Mexico from making additional allocations of funds for ditch improvement and water conservation projects in the Basin.
- 10.4 Lack of Appropriations. This Agreement shall continue in full force and effect independently of the status of appropriations and funding for ditch improvement and water conservation projects pursuant to paragraph 10.0.

## 11.0 EFFECTIVENESS

- 11.1 Effective Date. This Agreement shall become effective upon the date of signature by the Secretary of the Interior.
- 11.2 Term. This Agreement shall be perpetual unless:
- 11.2.1 terminated pursuant to the conditions described by subsection 309(b) of the Settlement Act for revoking the settlement or by paragraph 22 of the Partial Final Decree for revoking the decree;
- 11.2.2 the Court in the San Juan River Adjudication does not approve this Agreement, excluding the Appendices hereto, in conjunction with the Partial Final Decree pursuant to subparagraph 3.2; or



11.2.3 terminated by the mutual consent of the Parties and with approval of the Court in the San Juan River Adjudication.

## **12.0 ENFORCEMENT**

12.1 Court Enforcement. The Court in the San Juan River Adjudication shall have jurisdiction pursuant to 43 U.S.C. Section 666 over the terms and conditions of this Agreement. The Parties may agree that another court may have jurisdiction over certain disputes regarding Navajo Nation rights to divert and use ground water in the State of Arizona referenced by subparagraph 9.12.3 or performance of the Navajo Nation under subparagraph 9.13.2 of this Agreement.

12.2 Interstate Compacts. Nothing in this Agreement shall be construed to confer or bestow upon the Court in the San Juan River Adjudication jurisdiction over the interpretation of, or determinations under, the provisions of the Mexican Water Treaty, the Colorado River Compact, the Upper Colorado River Basin Compact, the La Plata River Compact or the Animas-La Plata Project Compact.

## **13.0 OTHER PROVISIONS**

13.1 Entire Agreement. This Agreement, including its Appendices, constitutes the entire understanding among the Parties. This Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties to this Agreement agree that no information exchanged or offered, or compromises made, in the course of negotiating this Agreement may be used as either evidence or argument by any Party to this Agreement in any legal or administrative proceeding other than a proceeding for the approval of this Agreement.

13.2 Construction and Effect. This Agreement is to be construed fairly and reasonably in its entirety. The paragraph and subparagraph titles used in this Agreement are for convenience only and shall not be considered in the construction of this Agreement. Each of the Parties has been fully represented in connection with the preparation of this Agreement, and as such, this Agreement shall be neutrally interpreted and shall not be construed in favor of any Party or against any Party.

13.3 No Precedent. Nothing in this Agreement is intended to:

13.3.1 establish any precedent or standard for the quantification of Federal reserved rights, aboriginal claims, or any other Indian claims to water in any other judicial or administrative proceeding, including the Navajo Nation's water rights or claims in basins other than the San Juan River Basin in New Mexico;

13.3.2 establish any precedent concerning the applicability of interstate compacts to the quantification of Federal Indian reserved rights or rights pursuant to aboriginal claims to water, or to the administration or use of water under such rights; or

13.3.3 quantify or otherwise affect the water rights, claims or entitlements to water of any Indian tribe, band or community other than those of the Navajo Nation in, to and from the San Juan River Basin in New Mexico; except, for the rights of the Navajo Nation to divert and use water in other river basins in New Mexico to the extent provided in subparagraph 9.13.2.

13.4 Authority. By signing this Agreement each person represents that he or she has the authority to execute it.

- 13.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.
- 13.6 Amendments. No modification of this Agreement shall be effective unless it is in writing, signed by all Parties; provided, that appendices to this Agreement may be amended in accordance with their terms or applicable law.
- 13.7 Appropriations Contingency. The expenditure or advance of any money or the performance of any obligation by the United States, in any of its capacities, or by the State of New Mexico under this Agreement is contingent upon their respective appropriation of funds therefor. No liability shall accrue to the United States, in any of its capacities, or to the State of New Mexico in the event funds are not appropriated.
- 13.8 Waiver Limitation. No waiver of any breach of any of the terms or conditions of this Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Agreement.
- 13.9 Diversions in Other Basins Referenced in the Settlement Act. This Agreement shall continue in full force and effect regardless of, and is not conditioned upon, the Navajo Nation's ability or right to divert and use ground water in the Little Colorado River Basin and the Rio Grande Basin from wells constructed or rehabilitated pursuant to subsection 107(b) of the Settlement Act.

In witness whereof, the parties hereto have duly executed this Agreement.

**THE STATE OF NEW MEXICO**

By: Bill Richards  
Governor

Date: April 19, 2005

Rebecca H. Medved  
Attorney General

Date: Apr. 19, 2005

**THE NAVAJO NATION**

By: J. J. Sweeney  
President

Date: April 19, 2005

Louis Demetrowie  
Attorney General

Date: April 19, 2005

**THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_  
Secretary of the Interior

Date: \_\_\_\_\_

Witnessed by:

Name

Representing

John D. Stanton

N.M. State Engineer

Jim T. Dunlop

Ch. Interstate Streams Comm

A. Michelle Brown-Gessie

Deputy Secretary, NM Indian Affairs Dept.

Patricia Smith

State Representative Dist 9

Bob Rosebush

Mayor, City of Gallup

[Signature]

Chief Counsel, NM State Engineer

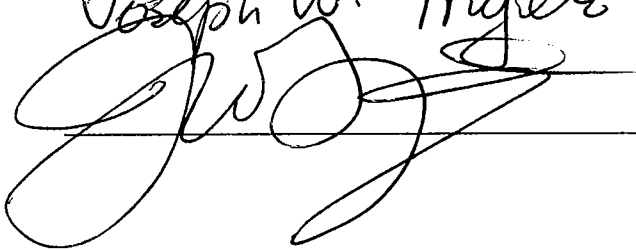
Est R. Doff

NM Interstate Stream Engineer


Witnessed by:

Name

Representing

Joseph W. Trujillo  


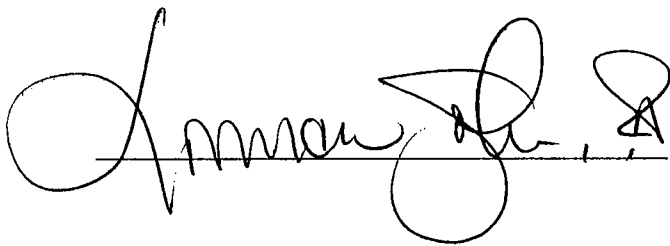
Senator Pete V. Domenici  
Albuquerque NM

R Berg  
  
Navajo Nation Council

Gallup, NM  
Nancy Wilson

Lester Wagner

Navajo Nation Council

Annmarie J. A  


Navajo Nation Council

Lester Lander, Senator

Gallup, NM

William Coche

City of Farmington

Witnessed by:

Name

Representing

Bernadette Tsosie

Navajo Nation Dept of Water Resources

[Signature]

Navajo Department of Water Resources

W. B. Holcheene

Suporok Chapter

Jy Sandy

Navajo Nation Dept of Water Resources

Chris ve

Navajo Water Right Commission

Annita Indachene

San Juan Ditch  
Water Users Assoc.

Wm C. Hume

Gov. Bill Richardson

Witnessed by:

Name

Representing

Eric Honeyfield

CITY OF BALTUSP

May Ann Armijo

City Council in Gallup

John W. Teepe

NAVAJO D.W. IC

John J. Whipple

NM ISC

[Signature]

OSE/ISC TRIBAL LIAISON

[Signature]

CITY OF SANTA FE

[Signature]

NMISC



**Witnessed by:**

**Name**

**Representing**

John W. Ulter

State of New Mexico

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**APPENDIX 1**

**PARTIAL FINAL DECREE**

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. 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, 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 State of New Mexico, the Navajo Nation and the United States. 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 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 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. 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 from

the San Juan River at the location of Navajo Reservoir during any period of ten consecutive years for irrigation of 110,630 acres of land on the Navajo Indian Irrigation Project generally located as described in Plate 1 of the Bureau of Indian Affairs' Biological Assessment for the Navajo Indian Irrigation Project dated June 11, 1999, 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

points of diversion for supplying water to 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 2,600 acre-feet, or the quantity of water necessary to supply a depletion of 1,300 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 5.0 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 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 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 September 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" refers to 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 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 water rights or 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;

(d) may not be made to result in farm deliveries exceeding the farm delivery requirement for the Fruitland-Cambridge and Hogback-Cudei irrigation projects described in subparagraph 5(g); and

(e) 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. CONDITIONS.

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 or its members as of the date of entry of this decree, unless such lands are subsequently 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 and accepted by the Court pursuant to subparagraph 5(e)(2) 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 the Navajo Nation has consulted with the State Engineer and completed the Nation's administrative process for the proposed change. Appeals of Navajo Nation decisions or actions made pursuant to the administrative process may be reviewed by the Court.

(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 non-Navajo Nation irrigation diversions from the San Juan River below Navajo Dam and the Animas River in accordance with such quantities as may be adjudicated by the Court, but shall at all times be subject to:

(1) supplying the annual depletion quantities specified in subparagraphs 3(e) and 3(f), respectively; and

(2) supplying a farm delivery requirement of 3.3 acre-feet per acre per year for irrigation uses under the Hogback-Cudei and Fruitland-Cambridge irrigation projects.

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 solely by virtue of the rehabilitation and maintenance 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 below 83.4 cubic feet per second at times 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 annual diversion and depletion quantities that exceed those described herein or in an annual farm delivery requirement for the Hogback-Cudei and Fruitland-Cambridge irrigation projects that exceeds the amount described in subparagraph 5(g). The Navajo Nation's rights under subparagraphs 3(e) and 3(f), the diversion rates described in subparagraph 5(h), and the farm delivery requirement described in subparagraph 5(g), shall not be recomputed if the approach or methodology adopted by the Court relies on, or results in, annual per acre farm delivery requirements 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), for those irrigation rights previously adjudicated by the 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 described by 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; except, that the Navajo Nation also may use ground water diverted pursuant to this subparagraph on lands that are held by the United States in trust for members of the Navajo Nation.

(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 described by 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. The Court shall have jurisdiction to review and resolve disputes, if any, between the Navajo Nation, the New Mexico State Engineer or other parties to this case regarding whether additional ground water diversions allowed by the Navajo Nation comply with the criteria stated in this paragraph.

(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 drainage 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 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, 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 right 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 reserved right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a). Pursuant to paragraph 20 of this decree and paragraph 4.0 of the Settlement Agreement, the

Navajo Nation may petition the Court for entry of a supplemental decree quantifying and adjudicating reserved rights of the Navajo Nation for historic and existing uses that are not included in paragraph 3 or subparagraph 7(a) upon completion by the State of New Mexico and the United States of a Joint Hydrographic Survey Report that describes such historic and existing uses. Entry of this decree or any such supplemental decree shall not be 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.

#### **9. WATER RIGHTS ACQUIRED UNDER STATE LAW.**

The Navajo Nation may have 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 would exclude any 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). Pursuant to paragraph 20 of this decree and paragraph 4.0 of the Settlement Agreement, the Navajo Nation may petition the Court for entry of a supplemental decree quantifying and adjudicating the

water rights of the Navajo Nation under state law. Entry of this decree or any such supplemental decree shall not be 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 shall they be 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.

#### **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 shall be determined by the Joint Hydrographic Survey Report to be completed by the State of New Mexico and the United States pursuant to paragraph 4.0 of the Settlement Agreement. Any rights for such allotted lands that are adjudicated by the Court and 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. 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 this decree, rights in any supplemental decrees that may be entered by the Court pursuant to paragraph 20, or either decreed rights or rights under New Mexico State Engineer permits or licenses that are acquired after the date of entry of this decree or any supplemental decrees. 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 a water delivery contract between the Navajo Nation and the United States for Navajo-Gallup Water Supply Project uses in Arizona 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) but excluding uses under rights that may be quantified and adjudicated in supplemental decrees pursuant to paragraphs 8 and 9, within the physical drainage of the San Juan River Basin in New Mexico; 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 also shall cause to be installed and maintained remote sensing equipment on surface water diversion gages for ditch diversions under its rights 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. 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 Nation shall be responsible for updating and maintaining current elevation-area-capacity data for the reservoirs.

(c) The New Mexico State Engineer shall be granted access to diversion 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 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 the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project, 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. 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) Depletions for the uses described in subparagraphs 3(b), 3(c) and 3(d) shall be computed as diversion less measured return flow. The Navajo Nation shall be responsible for measuring any return flows.

(f) The Navajo Nation shall meter farm deliveries for irrigation uses on the Hogback-



Cudei and Fruitland-Cambridge irrigation projects using technically sound methods if the State Engineer or the Court requires the metering of farm deliveries on ditches diverting from the San Juan River below Navajo Dam and the Animas River to administer water rights in the San Juan River Basin in New Mexico.

#### **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 10 of this decree; provided, that the Navajo Nation is not required to provide records of irrigated acreage, diversions or depletions for uses described by paragraphs 8 and 9 until such time the Court enters a supplemental decree quantifying and adjudicating rights for such uses. Diversions and depletions may be estimated using technically sound methodologies 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 herein are being used, if any, to service or offset water uses by Allottees pursuant to the provisions of paragraph 11 of this decree and subparagraph 4.4.2 of the Settlement Agreement.

**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 review and 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 by any supplemental decrees that may be entered by the Court pursuant to paragraph 20, or with any

rights acquired after the date of entry of this decree or any supplemental decrees, 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, 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 or its members as of the date of entry of this decree, unless such lands are subsequently 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 review and 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, the Animas River or to a location off lands that are held by the United States in trust for the Navajo Nation, or that involve a change in the place of use to a location off lands that are held by the United States in trust for the Navajo Nation or its members, 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 may subsequently change the point of diversion and purpose and place of 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 rights that may be adjudicated by supplemental decree pursuant to 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) any change in the purpose and place of use or a change in the point of diversion 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 any supplemental decrees that may be entered by the Court pursuant to paragraph 20, or as subsequently acquired. During times when the Secretary of the Interior has determined and allocated shortages pursuant to subsection 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 review and 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 any supplemental decrees entered by the Court pursuant to paragraph 20, or rights acquired after the date of entry of this decree or any supplemental decrees, 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:

(a) hydrographic surveys of historic and existing uses as provided by paragraphs 8 and 9 of this decree and paragraph 4.0 of the Settlement Agreement;

(b) appropriations it may acquire after entry of this decree; or

(c) rights that may derive from additional allocations of water made to the Navajo

Nation pursuant to paragraph 8.0 of the Settlement Agreement.

The Navajo Nation also may petition this Court to re-adjudicate the priority date for the reserved rights described in paragraphs 3, 7(a), 8 and 10 if the Court adjudicates a priority date earlier than June 1, 1868, to another party in this case.

## **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 6.1 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. 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

**APPENDIX 2**

**SUPPLEMENTAL PARTIAL FINAL DECREE**

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

**SUPPLEMENTAL 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. The Court entered a 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 hydrographic survey as per paragraphs 8 and 9 of the decree entered by the Court. 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, for uses determined by hydrographic survey are quantified and decreed herein.

This matter comes before the Court on a Joint Motion for the Entry of a Supplemental Partial Final Decree (decree) filed by the State of New Mexico, the Navajo Nation and the United States. 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 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 DECREE.**

This supplemental decree is entered pursuant to paragraph 20 of the Partial Final Decree dated \_\_\_\_\_, and is hereby incorporated therein.

**3. 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 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 of the Partial Final Decree dated \_\_\_\_\_ 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 right amounts specified by subparagraphs 3(a), 3(e) and 3(f), respectively, of the Partial Final Decree dated \_\_\_\_\_. 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 Partial Final Decree dated \_\_\_\_\_. 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 Partial Final Decree 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 and constitute the rights described in paragraph 8 of the Partial Final Decree dated \_\_\_\_\_. 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 of the Partial Final Decree dated \_\_\_\_\_,



and are subject to the Court's continuing jurisdiction to administer and enforce this decree as provided in paragraph 14 of the Partial Final Decree.

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 Joint 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</u> <u>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 Joint 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
T	R	SEC	1/4			
__	N	__	W	__	__	__
__	N	__	W	__	__	__

(b) STOCK SPRINGS

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

B. RECREATION WATER USE

1. RECREATION LAKES

LOCATION						SURFACE AREA (acres)	VOLUME (acre-feet)	NET EVAPORATION (acre-feet)
T	R	SEC	1/4	MAP	ID-NO.			
__	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				SOURCE	MAP	AMOUNT OF WATER	
T	R	SEC				DIVERSION (acre-feet)	DEPLETION (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

POINT OF DIVERSION				SOURCE	MAP	ACRES	AMOUNT OF WATER		DEPLETION (acre-feet)
T	R	SEC	1/4				DIVERSION (acre-feet)	(cfs)	
__	N	__	W	__	__	__	__	__	__
__	N	__	W	__	__	__	__	__	__
<hr/> <b>TOTALS</b>									

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 diversions for the irrigation water uses described above shall be subject to the annual diversion quantities specified 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 in accordance with such quantities as may be adjudicated by the Court. The farm delivery requirements for the irrigation water uses

described above are as provided in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit \_.

2. IRRIGATION RESERVOIR STORAGE

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

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

\* \* \*

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. 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 of the Partial Final Decree dated \_\_\_\_\_, 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 Partial Final Decree. The total annual quantities of water to which the Navajo Nation has a water right under state law as of the date of entry 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 and constitute the rights described in paragraph 9 of the Partial Final Decree dated \_\_\_\_\_. 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 of the Partial Final Decree dated \_\_\_\_\_, and are subject to the Court's continuing jurisdiction to administer and enforce this decree as provided in paragraph 14 of the Partial Final Decree.

A. LIVESTOCK WATER USE

1. STOCK PONDS

<u>PLACE OF USE</u>		SURFACE AREA (acres)	VOLUME (acre-feet)	NET EVAPORATION (acre-feet)	<u>PRIORITY</u>
All stock ponds described in the Joint 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>PRIORITY</u>
		<u>DIVERSION (acre-feet)</u>	<u>DEPLETION (acre-feet)</u>	
At stock wells and springs described below and in stock ponds described in the Joint 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>ID-NO.</u>	<u>SOURCE</u>	<u>PRIORITY</u>
<u>T</u>	<u>R</u>	<u>SEC</u>	<u>1/4</u>	<u>MAP</u>			
___N	___W	___	___	___	___	___	___
___N	___W	___	___	___	___	___	___

(b) STOCK SPRINGS

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

B. IRRIGATION WATER USE

POINT OF DIVERSION				SOURCE	MAP	ACRES	AMOUNT OF WATER		PRIORITY	
T	R	SEC	1/4				DIVERSION	DEPLETION		
							(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>	<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. The Navajo Nation's diversions for the irrigation water uses described above shall be subject to the annual diversion quantities specified 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 in accordance with such quantities as may be adjudicated by the Court. The farm delivery requirements for the irrigation water uses described above are as provided in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit   .

C. MUNICIPAL, INDUSTRIAL, COMMERCIAL AND DOMESTIC USE

POINT OF DIVERSION				SOURCE	FILE NO.	AMOUNT OF WATER		PRIORITY	
T	R	SEC	1/4			DIVERSION	DEPLETION		
						(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 use of water and any depletion incident to the use.

\* \* \*

## **5. 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 the Partial Final Decree dated \_\_\_\_\_ or in this decree, or shall be offset by a corresponding and equivalent reduction of use of rights of the Navajo Nation quantified in the Partial Final Decree or in this decree.

## **6. 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 Partial Final Decree dated \_\_\_\_\_ and this decree, rights in any supplemental decrees adjudicating water rights acquired by the Navajo Nation after entry of this decree, or decreed rights or rights under New Mexico State Engineer permits or licenses that are 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.

#### **7. 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.

#### **8. 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.

#### **9. 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 within the physical drainage of the San Juan River Basin in New Mexico made pursuant to the rights adjudicated by this decree; except, that diversions for livestock water uses pursuant to subparagraphs 3.A and 4.A of this decree 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 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 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 pursuant to this decree. 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, 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 for the irrigation uses made pursuant to this decree, 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.

(e) Depletions for the municipal, industrial, commercial and domestic uses that are described in paragraph 4.C shall be computed as diversion less measured return flow. The Navajo Nation shall be responsible for measuring any return flows.

(f) The Navajo Nation shall meter farm deliveries for irrigation uses under the rights decreed herein using technically sound methods if the State Engineer or the Court determines such metering to be necessary to administer water rights in the San Juan River Basin in New Mexico.

## **10. 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, pursuant to this decree, 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 and 4 of this 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 where actual measurement of uses is not practical for technical or economic reasons.

## **11. ADMINISTRATION.**

The authority of the Navajo Nation to administer the Nation's diversion and use of water under the rights adjudicated by this decree shall be as specified by paragraph 17 of the Partial Final Decree dated \_\_\_\_\_.

## **12. 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 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: \_\_\_\_\_

\_\_\_\_\_  
Judge Pro Tempore

**APPENDIX 3**

**SETTLEMENT ACT**

## A BILL

**To authorize the construction of the Navajo-Gallup Water Supply Project in New Mexico and Arizona, to provide for construction and rehabilitation of existing and authorized Navajo Nation water projects in New Mexico, to authorize the settlement of the water rights claims of the Navajo Nation in the San Juan River Basin in New Mexico, and to enhance management of the Navajo Reservoir water supply.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SEC. 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE. -- This Act may be cited as the "San Juan River Basin in New Mexico Water Projects and Settlement Act".

(b) TABLE OF CONTENTS. -- The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Compliance with applicable laws.

#### TITLE I – NAVAJO-GALLUP WATER SUPPLY PROJECT

- Sec. 101. Short title.
- Sec. 102. Findings and purposes.
- Sec. 103. Authorization of Navajo-Gallup Water Supply Project.
- Sec. 104. Delivery and use of project water.
- Sec. 105. Repayment requirements and contracts.
- Sec. 106. Water contracts.
- Sec. 107. Authorization of conjunctive use wells.
- Sec. 108. Authorization of appropriations.
- Sec. 109. Compliance with environmental laws.

## TITLE II – NAVAJO NATION WATER PROJECTS IN NEW MEXICO

- Sec. 201. Short title.
- Sec. 202. Findings and purposes.
- Sec. 203. Navajo Indian Irrigation Project.
- Sec. 204. San Juan River irrigation projects.
- Sec. 205. Animas-La Plata Project, Navajo Nation Portion.
- Sec. 206. Effective date.
- Sec. 207. Compliance with environmental laws.

## TITLE III – SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT

- Sec. 301. Short title.
- Sec. 302. Findings and purposes.
- Sec. 303. Settlement Agreement and Contract approval.
- Sec. 304. Water available under Settlement Contract.
- Sec. 305. Subcontracts.
- Sec. 306. Water leases not requiring subcontracts.
- Sec. 307. Authorization of Trust Fund.
- Sec. 308. Authorization of hydrographic survey.
- Sec. 309. Conditions.
- Sec. 310. Environmental compliance.

## TITLE IV – NAVAJO RESERVOIR WATER SUPPLY

- Sec. 401. Short title.
- Sec. 402. Findings and purposes.
- Sec. 403. Sharing of water shortages.
- Sec. 404. Protection of Navajo Nation domestic uses Arizona.
- Sec. 405. Authorization of Navajo Reservoir water bank.
- Sec. 406. Administration of Navajo Reservoir Releases.
- Sec. 407. Environmental compliance.

### **SEC. 2. DEFINITIONS.**

As used in this Act, the term:

(a) “Animas-La Plata Project” means the project of the same name authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III) and related facilities, including Ridges Basin Dam and Reservoir and the Navajo Nation Municipal Pipeline;

(b) “Depletion” means the depletion of the flow of the San Juan River stream system within New Mexico by a particular use of water, including any depletion incident to the use,



and represents the diversion from the stream system by the use less return flows to the stream system from the use;

(c) "Nation" means the Navajo Nation, a body politic and federally-recognized Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe List of 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the "Navajo Tribe," the "Navajo Tribe of Arizona, New Mexico & Utah," and the "Navajo Tribe of Indians" and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation;

(d) "Navajo-Gallup Water Supply Project" means the project substantially described in the March 2001 technical memorandum for the project prepared by the Navajo Nation Department of Water Resources and the April 2002 appraisal report for the project prepared by the United States Bureau of Reclamation, as conditioned, modified and limited by this Act;

(e) "Navajo Indian Irrigation Project" means the project of the same name authorized by section 2 of the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), as amended by the Act of September 25, 1970 (84 Stat. 867; Public Law 91-416);

(f) "Navajo Nation Municipal Pipeline" means the pipeline to convey the Navajo Nation's Animas-La Plata Project water from the City of Farmington, New Mexico, to Navajo Nation communities along the San Juan River valley in New Mexico, including the City of Shiprock, as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III);

(g) "Navajo Reservoir" means the reservoir created by the impoundment of the San

Juan River at Navajo Dam as authorized by the Act of April 11, 1956 (70 Stat. 105; Public Law 84-485);

(h) "Resolution" means the Resolution of the Upper Colorado River Commission Regarding the Use and Accounting of Upper Basin Water Supplied to the Lower Basin in New Mexico by the Proposed Navajo-Gallup Water Supply Project, dated June 17, 2003;

(i) "Secretary" means the Secretary of the Interior;

(j) "Settlement Agreement" means the agreement among the State of New Mexico, the Navajo Nation and the United States setting forth a stipulated and binding settlement agreement as to the rights of the Nation to use and administer waters of the San Juan River Basin in New Mexico, signed by the State of New Mexico and the Navajo Nation on \_\_\_\_\_; and

(k) "Settlement Contract" means the contract between the United States and the Navajo Nation setting forth certain commitments, rights and obligations of the United States and the Nation, as required by the Settlement Agreement.

### **SEC. 3. COMPLIANCE WITH APPLICABLE LAWS.**

(a) ENVIRONMENTAL COMPLIANCE. -- Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law. The Secretary shall comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable environmental laws and regulations in implementing this Act.

(b) COMPLIANCE WITH FEDERAL WATER LAWS. -- Nothing in this Act shall be construed to alter, amend, repeal, construe, interpret, modify, supersede, preempt or be in conflict with the provisions of the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774), the Colorado River Storage Project Act (70 Stat. 105), the Colorado River Basin Project Act (82 Stat. 885), the Act of June 13, 1962 (76 Stat. 96), the Treaty between the United States of America and the United Mexican States (59 Stat. 1219), the Colorado River Compact of 1922 made effective by Public Proclamation of the President of the United States on June 25, 1929 (46 Stat. 3000), the Upper Colorado River Basin Compact (63 Stat. 31), the Animas-La Plata Project Compact (82 Stat. 898), the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2237), or section 208 of Public Law 108-137 (117 Stat. 1827); except, that the Act of June 13, 1962, is amended as provided in this Act.

(c) RIGHTS OF INDIAN TRIBES. -- Nothing in the Settlement Agreement, the Settlement Contract, the hydrologic determination by the Secretary referenced in subsection 102(a)(5) of Title I of this Act, or this Act shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Indian tribe or community other than those of the Navajo Nation in, to and from the San Juan River Basin in New Mexico; except, that the right of the Navajo Nation to use water under water rights it may have in other river basins in New Mexico shall be forborne only so long as and to the extent that the Nation supplies the uses for which said water rights may exist by diversions of water from the San Juan River Basin under the Navajo-Gallup Water Supply Project consistent with subparagraph 9.13 of the Settlement Agreement.

(d) RESPONSIBILITIES OF UNITED STATES TO INDIAN TRIBES. -- Nothing in this Act shall affect the trust responsibilities of the United States to Indian tribes, or shall be construed in any way

to limit any responsibility the United States may have under treaty, statute or otherwise to provide or operate water distribution or wastewater systems on the lands of any Indian tribe.

## **TITLE I – NAVAJO-GALLUP WATER SUPPLY PROJECT**

### **SEC. 101. SHORT TITLE.**

This title may be cited as the "Navajo-Gallup Water Supply Project Act".

### **SEC. 102. FINDINGS AND PURPOSES.**

(a) FINDINGS. -- Congress hereby finds and declares that:

(1) Navajo communities in northwest New Mexico and northeast Arizona lack the infrastructure necessary to provide a permanent, reliable and renewable municipal water supply needed to sustain the Navajo Reservation as a permanent homeland;

(2) the City of Gallup, New Mexico, currently relies on the mining of non-renewable ground water as its source of municipal water supply, and its supplies of ground water continue to be exhausted and are inadequate to meet its future water needs;

(3) the Jicarilla Apache Nation, which has water rights from the San Juan River Basin in New Mexico pursuant to the settlement contract between the United States and the Jicarilla Apache Tribe authorized by the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441), lacks the infrastructure necessary to utilize its water rights for municipal, commercial, and domestic uses on its reservation;

(4) the Navajo-Gallup Water Supply Project would provide delivery of much needed renewable water supplies to the Navajo Nation, the City of Gallup and the Jicarilla Apache Nation, and other important benefits to water users in northwest New Mexico and northeast Arizona; and

(5) the Secretary of the Interior, in accordance with the requirements of section 11 of the Act of June 13, 1962 (76 Stat. 96, 99; Public Law 87-483), has determined by hydrologic investigations that sufficient water to provide for uses in New Mexico under the Navajo-Gallup Water Supply Project is reasonably likely to be available for use in the State of New Mexico from the Upper Colorado River Basin and has transmitted such determination to Congress by letter dated \_\_\_\_\_.

(b) PURPOSES. -- The purposes of this Act are:

- (1) to authorize the construction of the Navajo-Gallup Water Supply Project;
- (2) to allocate the water supply for the Navajo-Gallup Water Supply Project between the Navajo Nation, the City of Gallup, and the Jicarilla Apache Nation;
- (3) to authorize the Secretary of the Interior to execute Navajo-Gallup Water Supply Project repayment and water service contracts for the City of Gallup and the Jicarilla Apache Nation; and
- (4) to authorize the delivery of water by the Navajo-Gallup Water Supply Project to Navajo communities in Arizona, subject to a determination or resolution of how to account the use of Project water in Arizona within the apportionments of Colorado River System water made to the State of Arizona through compact, statute or court decree.

**SEC. 103. AUTHORIZATION OF NAVAJO-GALLUP WATER SUPPLY PROJECT.**

(a) GENERAL AUTHORIZATION. -- The Secretary is authorized to construct, operate and maintain the Navajo-Gallup Water Supply Project in general accordance with the March 2001 technical memorandum for the Project prepared by the Navajo Nation Department of Water Resources and the April 2002 appraisal report for the Project prepared by the Bureau of Reclamation,

subject to the terms, conditions and limitations of Titles I, III and IV of this Act.

(b) PARTICIPATING PROJECT. -- The Congress hereby authorizes the Navajo-Gallup Water Supply Project as a participating project of the Colorado River Storage Project under the Act of April 11, 1956, the Colorado River Storage Project Act (70 Stat. 105; Public Law 84-485).

(c) PROJECT FACILITIES. -- The Secretary is authorized to construct, operate and maintain the following facilities of the Navajo-Gallup Water Supply Project as described in the April 2002 appraisal report for the Project prepared by the Bureau of Reclamation for the delivery of San Juan River water to Project participants:

(1) a pumping plant on the San Juan River in the vicinity of Kirtland, New Mexico;

(2) a main pipeline from the San Juan River near Kirtland, New Mexico, to Shiprock, New Mexico, thence to Gallup, New Mexico, largely following US Highway 491 (formerly US Highway 666), and associated pumping plants;

(3) a main pipeline from Cutter Reservoir to Ojo Encino, New Mexico, largely following US Highway 550, and associated pumping plants;

(4) lateral pipelines from the main pipelines to Navajo Nation communities in the States of New Mexico and Arizona, and associated pumping plants; and

(5) related water regulation, storage and treatment facilities, service connections to existing public water supply systems, power distribution works, and other appurtenant works, including buildings and access roads.

(d) LAND ACQUISITION. -- The Secretary is authorized to acquire by purchase, exchange or condemnation, land or interests in land as necessary to construct, operate and maintain the Navajo-Gallup Water Supply Project facilities authorized by subsection (c) of this section; provided, that

nothing in this Act shall be construed to give authority to the Secretary to condemn water rights for purposes of the Project.

(e) CONDITIONS PRECEDENT TO CONSTRUCTION. -- Construction of the Navajo-Gallup Water Supply Project facilities authorized in this section shall not commence unless and until:

(1) the Settlement Agreement has been executed by the Secretary and the Settlement Contract has been executed by the Secretary and the Navajo Nation;

(2) the Bureau of Reclamation has completed an Environmental Impact Statement for the Navajo-Gallup Water Supply Project and the Secretary has issued a Record of Decision that provides for a preferred alternative substantially in accordance with the Project authorizations contained in this section;

(3) the Secretary certifies by report to the Congress that construction, operation, maintenance and replacement costs allocable to each water contractor or beneficiary of the Project have been determined by the Secretary; and

(4) arrangements satisfactory to the Secretary have been made for the State of New Mexico to contribute a cost share of \$25 million (in 2004 dollars) towards the construction costs of the Project in addition to any cost-share funding that is contributed by the State of New Mexico for planning and construction of regional facilities to distribute Project water to the City of Gallup and surrounding Navajo communities and that is included within the contributions made prior to the date of execution of a repayment contract by the City of Gallup pursuant to subsection 105(c) of this Act.

(f) TRANSFER OF OWNERSHIP. -- The Secretary is authorized to enter into separate agreements with the Navajo Nation and with the City of Gallup to transfer ownership of Navajo-

Gallup Water Supply Project facilities authorized by subsection (c) of this section to the Navajo Nation and the City after completion of construction of the Project and after execution of a Project operations agreement approved by the Secretary and the Project participants that shall set forth:

(1) terms and conditions that the Secretary determines are necessary to provide the benefits of the Project and fulfill the purposes of this Act;

(2) requirements acceptable to the Secretary and the Project participants for the distribution of water under the Project and for the allocation and payment of annual operation, maintenance and replacement costs of the Project based on the proportionate uses of Project facilities; and

(3) conditions and requirements acceptable to the Secretary and the Project participants for operating and maintaining the Project facilities once the transfer of ownership is complete, with responsibilities to the Navajo Nation and the City of Gallup to provide for the operation, maintenance and replacement of Project facilities, and to provide for the accounting and management of water conveyance and Project finances, as necessary to administer and fulfill the conditions of repayment and water service contracts executed pursuant to sections 105 and 106 of this Act.

In transferring ownership of Project facilities, the Secretary shall transfer to the Navajo Nation the ownership of both facilities and land or interests in land acquired by the United States for the construction, operation and maintenance of the Project that are situated outside the corporate boundaries of the City of Gallup and shall transfer to the City of Gallup ownership of both facilities and land or interests in land acquired by the United States for the construction, operation and maintenance of the Project that are situated within the corporate boundaries of the City. The



Secretary at least 45 days prior to the proposed date of transfer shall submit notice of the transfer of ownership of Project facilities to the Committee on Resources of the House of Representatives and to the Committees on Energy and Natural Resources and Indian Affairs of the United States Senate.

(g) COLORADO RIVER STORAGE PROJECT POWER. -- The Navajo-Gallup Water Supply Project facilities constructed pursuant to this section are authorized to use power produced by the Colorado River Storage Project and administered through the Western Area Power Administration. The transfer of ownership to the Navajo Nation of the Navajo-Gallup Water Supply Project facilities authorized by subsection (f) of this section shall not affect the availability to the Project of Colorado River Storage Project power.

(h) REGIONAL USE OF PROJECT FACILITIES. -- Navajo-Gallup Water Supply Project facilities constructed pursuant to the authorizations contained in subsection (c) of this section may be used to treat and convey water not allocated by subsection 104(b) of this Act, or non-Project water; provided, that:

(1) capacity is available and the beneficiary of the use of non-Project water has rights to the use of the water;

(2) the beneficiary of the use of non-Project water agrees to pay the operation, maintenance and replacement costs assignable to its use of Project works; and

(3) payments to the United States, or to the Navajo Nation after transfer of ownership of Project facilities, for such use of unused capacity or for water under any subcontracts with the Navajo Nation or the Jicarilla Apache Nation shall not alter the construction repayment requirements or the operation, maintenance and replacement payment requirements of the Project participants, including the Navajo Nation or the Jicarilla Apache Nation.

#### **SEC. 104. DELIVERY AND USE OF PROJECT WATER.**

(a) USES OF WATER. -- Water supply from the Navajo-Gallup Water Supply Project shall be delivered at Navajo Reservoir or the San Juan River below Navajo Dam as described in the April 2002 appraisal report for the Navajo-Gallup Water Supply Project prepared by the Bureau of Reclamation, and shall be used for municipal, industrial, commercial and domestic purposes, including residential outdoor uses such as yard and stock watering. The Navajo Nation may use its allocations of Project water on lands held by the United States in trust for the Navajo Nation and its members and on lands held in fee by the Navajo Nation; provided, that the Navajo Nation may transfer the purposes and places of use in accordance with the Settlement Agreement and applicable law. Hydroelectric power may be generated as an incident to the delivery of water by the Project for the foregoing uses. Water contracted for delivery that is not needed for current water demands or uses may be delivered by the Project for placement into underground storage in New Mexico only for future recovery and use if such delivery is approved by the State of New Mexico under applicable state law governing aquifer storage and recovery, subject also to the provisions of the Settlement Agreement and Titles I, III and IV of this Act.

(b) WATER ALLOCATIONS. -- The Navajo-Gallup Water Supply Project shall not divert from Navajo Reservoir and the San Juan River, in combination, more than 37,760 acre-feet, or the quantity of water necessary to supply a depletion from the San Juan River in New Mexico of 35,890 acre-feet, whichever is less, in any one year to be allocated to the Project participants as follows:

(1) delivery at the points of diversion from the San Juan River or at Navajo Reservoir, in combination, of an amount not to exceed 22,650 acre-feet, or the quantity of water necessary to supply a depletion from the San Juan River in New Mexico of 20,780

acre-feet, whichever is less, in any one year for use by Navajo Nation communities in the State of New Mexico pursuant to the Settlement Agreement and the Settlement Contract authorized by Title III of this Act;

(2) delivery at the point of diversion from the San Juan River of an amount not to exceed 6,410 acre-feet in any one year for use by Navajo Nation communities in the State of Arizona;

(3) delivery at the point of diversion from the San Juan River of an amount not to exceed 7,500 acre-feet in any one year for use by the City of Gallup, New Mexico; and

(4) delivery at Navajo Reservoir of an amount not to exceed 1,200 acre-feet in any one year for use by the Jicarilla Apache Nation in the southern portion of its Reservation in New Mexico to be made under its contract right to water available from Navajo Reservoir pursuant to the settlement contract between the United States and the Jicarilla Apache Tribe authorized by the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441).

(c) WATER LOSSES. -- Pipeline leakage and other water losses from the Navajo-Gallup Water Supply Project shall be charged to the Project participants and uses supplied through each main pipeline authorized in subsections 103(c)(2) and 103(c)(3) in proportions to the amounts of water delivery under the allocations made in this section and otherwise from the San Juan River through each respective pipeline and Navajo Indian Irrigation Project facilities; except, that pipeline leakage from each lateral pipeline of the Project constructed under the authorization provided in subsection 103(c)(4) shall be charged to the Project participant and use supplied by the lateral pipeline.

(d) SOURCES OF WATER. -- The sources of water for the Navajo-Gallup Water Supply Project allocated by subsection (b) of this section shall be water originating in the drainage of the San Juan River above Navajo Dam, to be supplied under New Mexico State Engineer File No. 2849, and inflow to the San Juan River arising below Navajo Dam, to be supplied under New Mexico State Engineer File No. 3215.

(e) ACCOUNTING OF USES IN NEW MEXICO. -- Pursuant to the Resolution, water diverted by the Navajo-Gallup Water Supply Project to the Lower Basin, as that term is defined in the Colorado River Compact, for use in the State of New Mexico shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III(a) of the Upper Colorado River Basin Compact, other provisions of existing law to the contrary notwithstanding.

(f) ACCOUNTING OF USES IN ARIZONA. -- The depletion of water from the San Juan River stream system in New Mexico resulting from the diversion of water by the Navajo-Gallup Water Supply Project for uses within the State of Arizona, including depletion that is incident to the diversion, impounding or conveyance of water in New Mexico for the uses in Arizona, shall be accounted as a part of the Colorado River System apportionments to the State of Arizona and shall in no way increase the total quantity of water to the use of which the State of Arizona is entitled and limited under any compact, statute or court decree.

(g) CONDITIONS PRECEDENT FOR USES IN ARIZONA. -- Delivery of water by the Navajo-Gallup Water Supply Project to Navajo Nation communities within the State of Arizona authorized by subsection (b)(2) of this section shall not commence unless and until the following conditions are met:

- (1) an accounting of the use of the water within the apportionments of Colorado

River System water made to the State of Arizona through compact, statute or court decree has been determined and resolved;

(2) the Secretary has determined by hydrologic investigations that sufficient water is reasonably likely to be available under the apportionments of Colorado River System water made to the State of Arizona to fulfill a contract for such delivery of water and has transmitted such determination to Congress; and

(3) Congress has approved a water delivery contract between the Navajo Nation and the United States to provide for such delivery of water via the Project.

(h) LIMITATIONS ON TRANSFER OF ALLOCATIONS. -- The authorizations in this section to divert or deliver water from Navajo Reservoir or the San Juan River in New Mexico for uses within the State of New Mexico via the Navajo-Gallup Water Supply Project and related facilities shall not be transferable to supply uses in the State of Arizona. However, during times when the Secretary determines and allocates a shortage in the Navajo Reservoir water supply pursuant to subsection 11(a) of the Act of June 13, 1962, and section 403 of Title IV of this Act, the Navajo Nation pursuant to and consistent with section 404 of Title IV of this Act temporarily may forbear the delivery of water for its Project uses in the State of New Mexico to allow the Nation's municipal and domestic uses under the Project in Arizona to be served during the period of shortage. The authorization in this section to divert water from the San Juan River in New Mexico for uses within the State of Arizona via the Project shall not be transferable to supply uses in the State of New Mexico. Also, the authorization in this section to divert water from the San Juan River in New Mexico for uses within the State of Arizona via the Navajo-Gallup Water Supply Project shall not be transferable to serve other uses in Arizona, including other uses by the Navajo Nation or by other entities, on either

Navajo or non-Navajo lands.

(i) CONSISTENCY WITH UPPER COLORADO RIVER BASIN COMPACT. -- Uses of water from Navajo Reservoir or the San Juan River by the Navajo-Gallup Water Supply Project pursuant to the Settlement Contract or other water delivery contracts, including subcontracts, shall be consistent with the Upper Colorado River Basin Compact.

(j) SHARING IN AVAILABLE WATER SUPPLY. -- Contract deliveries of water from the Navajo Reservoir water supply to the Navajo-Gallup Water Supply Project shall be subject to the provisions of section 11 of the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483) and section 403 of Title IV of this Act.

(k) RESPONSIBILITY FOR CARRIAGE OF WATER. -- The Secretary shall be responsible for the control, carriage, handling, and measurement of all water made available via the Navajo-Gallup Water Supply Project and conveyed through the facilities authorized by section 103 of this Act, including for carriage of water for the Jicarilla Apache Nation between the point of diversion at Navajo Reservoir and the Jicarilla Apache Nation's connection to the main pipeline authorized by subsection 103(c)(3), notwithstanding any provisions to the contrary in the settlement contract between the United States and the Jicarilla Apache Tribe authorized by the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441); except, that:

(1) the United States shall not bear any water conveyance losses associated with conveying water from Navajo Reservoir or the San Juan River to the end of the main pipelines or lateral pipelines;

(2) the Navajo Nation shall be responsible for the control, carriage, handling and measurement of water made available via the Project facilities that are transferred to Navajo

Nation ownership pursuant to subsection 103(f) of this Act upon the transfer of ownership of those Project facilities to the Nation; and

(3) the City of Gallup shall be responsible for the control, carriage, handling and measurement of water made available via the Project facilities located within the corporate limits of the City of Gallup upon the transfer of ownership of those Project facilities to the City pursuant to subsection 103(f) of this Act.

(l) CONDITIONS PRECEDENT FOR JICARILLA APACHE NATION USES. -- Delivery of water by the Navajo-Gallup Water Supply Project to the Jicarilla Apache Nation for its uses authorized by subsection (b)(4) of this section shall not commence unless and until the Jicarilla Apache Nation has entered into:

(1) a repayment contract with the United States to repay its share of the construction costs of the Project pursuant to subsection 105(b) of this Act; and

(2) a water service contract with the Secretary to pay the operation, maintenance and replacement costs of the Project allocable to such uses pursuant to subsection 106(b) of this Act.

(m) CONDITIONS PRECEDENT FOR CITY OF GALLUP USES. -- Delivery of water by the Navajo-Gallup Water Supply Project to the City of Gallup for its uses authorized by subsection (b)(3) of this section shall not commence unless and until the City of Gallup has entered into:

(1) a repayment contract with the United States to repay the City's share of the construction costs of the Project pursuant to subsection 105(c) of this Act;

(2) a water delivery subcontract with the Jicarilla Apache Nation, or an alternate water source arrangement acceptable to the Secretary and the State of New Mexico for the

amount of water to be delivered to the City of Gallup; and

(3) a water service contract with the Secretary to pay the operation, maintenance and replacement costs of the Project allocable to such uses pursuant to subsection 106(c) of this Act.

#### **SEC. 105. REPAYMENT REQUIREMENTS AND CONTRACTS.**

(a) CONSTRUCTION COSTS ALLOCABLE TO NAVAJO NATION NONREIMBURSABLE. -- The construction costs of the Navajo-Gallup Water Supply Project facilities authorized by subsection 103(c) of this Act that are allocable to the Navajo Nation for water deliveries to be made for purposes authorized by this title and pursuant to the allocations set forth in subsection 104(b) of this Act shall be paid from Federal appropriations and shall be nonreimbursable. The Navajo Nation shall have no obligation to repay any Navajo Indian Irrigation Project construction costs that might otherwise be allocable to the Nation for use of the Navajo Indian Irrigation Project facilities to convey water to Navajo communities under the Navajo-Gallup Water Supply Project.

(b) JICARILLA APACHE NATION REPAYMENT CONTRACT. -- The Secretary is authorized to enter into a repayment contract with the Jicarilla Apache Nation that shall require the Jicarilla Apache Nation to repay within a term of 50 years its share of the construction costs of the Navajo-Gallup Water Supply Project for providing capacity to deliver water to the Jicarilla Apache Nation consistent with the allocation made by subsection 104(b)(4) of this Act. In determining the repayment provisions of the repayment contract, the Secretary shall determine the Jicarilla Apache Nation's share of the construction costs based on the Jicarilla Apache Nation's ability to pay the construction costs of the Project facilities that are allocable to it, but in no event shall the Jicarilla Apache Nation's share be less than 25 percent of the construction costs of the Project that are



allocable to it. The construction costs of the Project that are allocable to providing capacity to deliver water to the Jicarilla Apache Nation and that are in excess of the Jicarilla Apache Nation's share of the construction costs of the Project that are allocable to it for repayment under this subsection shall be paid from Federal appropriations and shall be nonreimbursable. Grants from other Federal sources shall not be used or credited toward the Jicarilla Apache Nation's repayment requirement. The Jicarilla Apache Nation shall have no obligation to repay any Navajo Indian Irrigation Project construction costs that might otherwise be allocable to the Jicarilla Apache Nation for use of the Navajo Indian Irrigation Project facilities to convey water to the Jicarilla Apache Nation via the Navajo-Gallup Water Supply Project. The Jicarilla Apache Nation shall have no right to receive water from the Navajo-Gallup Water Supply Project unless the Jicarilla Apache Nation and the Secretary execute the repayment contract.

(c) CITY OF GALLUP REPAYMENT CONTRACT. -- The Secretary is authorized to enter into a repayment contract with the City of Gallup that shall require the City to repay within a term of 50 years its share of the construction costs of the Navajo-Gallup Water Supply Project for providing capacity to deliver water to the City consistent with the allocation made by subsection 104(b)(3) of this Act, notwithstanding any provisions of this Act or the Settlement Contract that may be contrary. In determining the repayment provisions of the repayment contract, the Secretary shall:

(1) determine the construction costs of the Project facilities that are assignable for repayment to the City of Gallup as the amount of construction costs of the Project that are allocable to providing capacity to deliver water to the City less the amount of cost-share funding contributed by the State of New Mexico and the City prior to the date of execution of the repayment contract for planning and construction of regional facilities to distribute

Project water to the City and surrounding Navajo communities; and

(2) determine the City of Gallup's share of the construction costs based on the City's ability to pay the construction costs of the Project that are assignable for repayment to the City, but in no event shall the City's share be less than 25 percent of the construction costs of the Project that are assignable for repayment to the City.

The construction costs of the Project that are allocable to providing capacity to deliver water to the City of Gallup and that are in excess of the City's share of the construction costs of the Project that are assignable to the City for repayment under this subsection shall be paid from Federal appropriations and shall be nonreimbursable. Grants from other Federal sources shall not be used or credited toward the City of Gallup's repayment requirement. The City of Gallup shall have no right to receive water from the Navajo-Gallup Water Supply Project unless the City and the Secretary execute the repayment contract.

(d) CAPITAL COST ALLOCATIONS. -- The Bureau of Reclamation in January 2004 prepared an allocation of capital construction costs for the Navajo-Gallup Water Supply Project. The Secretary of the Interior shall review the cost allocations and make any appropriate adjustments to reflect the authorizations of this title and to determine the capital repayment requirements of the Project participants.

#### **SEC. 106. WATER CONTRACTS.**

(a) NAVAJO NATION WATER DELIVERY. -- Water shall be delivered to the Navajo Nation via the Navajo-Gallup Water Supply Project consistent with section 104 of this Act and the Settlement Contract approved by subsection 303(c) of Title III of this Act.

(b) JICARILLA APACHE NATION WATER SERVICE CONTRACT. -- Water shall be delivered to

the Jicarilla Apache Nation pursuant to the Jicarilla Apache Nation's Settlement Contract with the Secretary executed pursuant to the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441). The Jicarilla Apache Nation shall pay the operation, maintenance and replacement costs for Navajo-Gallup Water Supply Project facilities and Navajo Indian Irrigation Project facilities that are allocable to the Jicarilla Apache Nation for treatment and transportation of water pursuant to the allocation set forth in subsection 104(b)(4) of this Act from Navajo Reservoir to the Jicarilla Apache Nation's connection to the main pipeline authorized in subsection 103(c)(3) of this Act. The Secretary is authorized to enter into a water service contract with the Jicarilla Apache Nation that would provide for payment of the operation, maintenance and replacement costs as required in this subsection.

(c) CITY OF GALLUP WATER DELIVERY AND SERVICE CONTRACTS. -- The Secretary is authorized to approve a water delivery subcontract between the City of Gallup and the Jicarilla Apache Nation under the terms of the Jicarilla Apache Nation's Settlement Contract with the Secretary executed pursuant to the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441) for the delivery of water for the Navajo-Gallup Water Supply Project uses by the City of Gallup consistent with section 104 of this Act; provided, that:

(1) the period for the subcontract shall be as mutually agreed upon by the City of Gallup and the Jicarilla Apache Nation and may exceed 40 years, but shall not be more than 99 years;

(2) the Secretary, as hereby authorized, enters into a water service contract with the City of Gallup that provides for the City of Gallup to pay the operation, maintenance and replacement costs for the Project facilities that are allocable to the City for treatment and

transportation of water pursuant to the allocation set forth in subsection 104(b)(3) of this Act from the San Juan River to the City of Gallup's connection to the main pipeline authorized in subsection 103(c)(2) of this Act; and

(3) no deliveries of water for use by the City of Gallup under the subcontract shall be made until the City and the Secretary execute a repayment contract as authorized by subsection 105(c) of this Act.

Nothing in this title shall be construed to prevent the City of Gallup from obtaining an alternate source of water for its portion of the Project, subject to approval of the Secretary and the State of New Mexico acting through the New Mexico Interstate Stream Commission and the New Mexico State Engineer; provided, that the City of Gallup shall enter into the repayment contract and also into the water service contract that provides for the City to pay the operation, maintenance and replacement costs of the Project facilities that are allocable to the City. Nor shall anything in this title be construed to obligate the Jicarilla Apache Nation to enter into a water delivery subcontract with the City of Gallup, to require particular terms in any such subcontract, or to prevent the Jicarilla Apache Nation from making alternative uses of its water if the Jicarilla Apache Nation and the City do not reach agreement or if the City finds an alternate water supply for part or all of its Project water demands.

(d) OPERATION, MAINTENANCE AND REPLACEMENT COST ALLOCATIONS. -- The Bureau of Reclamation in January 2004 prepared an allocation of operation, maintenance and replacement costs for the Navajo-Gallup Water Supply Project. The Secretary of the Interior shall review the cost allocations and make any appropriate adjustments to reflect the authorizations of this title and to determine the operation, maintenance and replacement payment requirements of the Project

participants.

(e) **WAIVERS OF PAYMENTS.** -- The Secretary is authorized to waive operation, maintenance and replacement costs of the Navajo-Gallup Water Supply Project that are allocable to the Navajo Nation or the Jicarilla Apache Nation and that the Secretary determines are in excess of a tribe's ability to pay. Operation, maintenance and replacement costs waived by the Secretary shall be paid by the United States. Failure of the Secretary to waive costs due to a lack of availability of federal funding to pay the costs shall not alter the obligations of the Navajo Nation, the Jicarilla Apache Nation or the United States under the contracts referenced in subsections (a) and (b) of this section. The authority granted the Secretary by this subsection to waive costs shall terminate upon transfer of ownership of the Project facilities to the Navajo Nation and the City of Gallup pursuant to subsection 103(f) of this Act.

(f) **SUCCESSORS AND ASSIGNS.** -- The water carriage, measurement, payment and maintenance provisions of the water service contracts approved or executed by the Secretary pursuant to this section shall be binding on the Navajo Nation and the City of Gallup, as appropriate, as successors and assigns of the United States if ownership of Navajo-Gallup Water Supply Project facilities is transferred to the Navajo Nation and the City of Gallup, and the Nation and the City subsequently assume responsibility for the operation and maintenance of the Project, pursuant to subsection 103(f) of this Act.

**SEC. 107. AUTHORIZATION OF CONJUNCTIVE USE WELLS.**

(a) **WELLS IN THE SAN JUAN RIVER BASIN.** -- The Secretary is authorized to construct or rehabilitate wells and related pipeline facilities to provide capacity for the diversion and distribution of up to 1,670 acre-feet in any one year of ground water in the San Juan River Basin in New Mexico

for municipal and domestic uses in general accordance with the Navajo-Gallup Water Supply Project and conjunctive ground water development plan for the Navajo Nation described in the March 2001 technical memorandum for the Navajo-Gallup Water Supply Project prepared by the Navajo Nation Department of Water Resources.

(b) WELLS IN THE LITTLE COLORADO AND RIO GRANDE BASINS. -- The Secretary is authorized to construct or rehabilitate wells and related pipeline facilities to provide capacity for the diversion and distribution of ground water in areas physically located outside the San Juan River Basin in New Mexico for municipal and domestic uses in general accordance with the conjunctive Navajo-Gallup Water Supply Project and ground water development plan for the Navajo Nation described in the March 2001 technical memorandum for the Navajo-Gallup Water Supply Project prepared by the Navajo Nation Department of Water Resources, such wells to provide capacity to divert ground water in amounts of up to 680 acre-feet in any one year of ground water in the Little Colorado River Basin in New Mexico, 80 acre-feet in any one year of ground water in the Rio Grande Basin in New Mexico, and 770 acre-feet in any one year of ground water in the Little Colorado River Basin in Arizona.

(c) LAND ACQUISITION. -- The Secretary is authorized to acquire by purchase, exchange or condemnation, land or interests in land as necessary to construct, operate and maintain the wells and related pipeline facilities authorized by subsections (a) and (b) of this section; provided, that nothing in this Act shall be construed to give authority to the Secretary to condemn water rights for these purposes.

(d) TRANSFER OF OWNERSHIP. -- The Secretary is authorized to enter into an agreement with the Navajo Nation to transfer to the Nation the ownership of wells and related pipeline facilities

constructed or rehabilitated pursuant to subsections (a) and (b) of this section after completion of the wells and related facilities. In transferring ownership of the wells and related facilities to the Navajo Nation, the Secretary also shall transfer to the Nation the ownership of land or interests in land acquired by the United States for the construction, operation and maintenance of the wells and related facilities. The Navajo Nation shall assume responsibility to provide for the operation, maintenance and replacement of the wells and related facilities after transfer of ownership is complete.

(e) USE OF NAVAJO-GALLUP WATER SUPPLY PROJECT FACILITIES. -- The capacities of the treatment facilities, main pipelines and lateral pipelines of the Navajo-Gallup Water Supply Project authorized by subsection 103(c) of this Act may be used to treat and convey ground water to Navajo Nation communities; provided, that the Navajo Nation provides for payment of the operation, maintenance and replacement costs associated with such use of the pipelines.

(f) LIMITATIONS. -- Diversions and uses of ground water by wells constructed or rehabilitated pursuant this section shall be made in a manner consistent with applicable federal and state law and the water rights of the Navajo Nation for the diversion and use of ground water in the San Juan River, Little Colorado River and Rio Grande basins in New Mexico and Arizona.

(g) DISCLAIMER. -- Nothing in this section shall be construed to establish or be a determination of rights of the Navajo Nation to divert and use ground water in any basin or state, and any lack of rights to divert at the capacities of wells constructed or rehabilitated pursuant to this section shall not nullify the Settlement Agreement.

#### **SEC. 108. AUTHORIZATION OF APPROPRIATIONS.**

(a) APPROPRIATIONS FOR NAVAJO-GALLUP WATER SUPPLY PROJECT. -- There is hereby

authorized to be appropriated to the Bureau of Reclamation through fiscal year 2020 such sums as may be required for construction of the Navajo-Gallup Water Supply Project, but not more than \$564,600,000, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein. These sums may be expended for activities to comply with environmental laws in addition to construction activities.

(b) APPROPRIATIONS FOR CONJUNCTIVE USE WELLS. -- There is hereby authorized to be appropriated to the Bureau of Reclamation through fiscal year 2022 such sums as may be required for construction or rehabilitation of conjunctive use wells authorized by section 107 of this Act, but not more than \$77,600,000, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein. Expenditures of Federal appropriations for the conjunctive use wells shall be nonreimbursable. These sums may be expended for activities to comply with environmental laws in addition to construction activities.

(c) CULTURAL RESOURCES. -- The Secretary is authorized to expend from funds appropriated pursuant to the authorizations contained in this section such sums as are necessary for the survey, recovery, protection, preservation and display of archeological resources in the areas of the locations of the Navajo-Gallup Water Supply Project facilities and conjunctive use wells; provided, that such expenditures shall not exceed 4 percent of the total amounts authorized to be appropriated for the Project and the wells, respectively, by subsections (a) and (b) of this section. All costs incurred pursuant to this activity shall be nonreimbursable and non-returnable.

(d) FISH AND WILDLIFE FACILITIES. -- In connection with the development of the Navajo-



Gallup Water Supply Project, the Secretary is authorized to purchase land and construct and maintain facilities to mitigate losses of and to improve conditions for the propagation of fish and wildlife; provided, that such expenditures shall not exceed 4 percent of the total amount authorized to be appropriated for the Project by subsection (a) of this section. All costs incurred pursuant to this activity shall be nonreimbursable and non-returnable.

(e) CONSTRUCTION OVERSIGHT. -- The Secretary shall establish a Navajo-Gallup Water Supply Project construction oversight board consisting of members appointed from the Bureau of Reclamation and members from each of the Project participants. In addition, the Bureau of Reclamation shall use appropriations authorized by subsection (a) of this section to acquire the services of consulting engineers to be selected by the construction oversight board for the purpose of providing peer review on planning, engineering and construction management activities for the Navajo-Gallup Water Supply Project. The consulting engineers shall report their review findings to the construction oversight board with recommendations for improving Project engineering and containing construction costs and operation and maintenance costs for the Project. The construction oversight board may make recommendations to the Bureau of Reclamation regarding construction of the Project. The Project participants shall not be paid or reimbursed for their participation on the construction oversight board.

**SEC. 109. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

(a) CONSTRUCTION AND OPERATION. -- The construction and operation of the Navajo-Gallup Water Supply Project and associated conjunctive use wells are subject to the requirements of Federal laws that are related to the protection of the environment and otherwise applicable to the construction and operation of the facilities authorized by this title, including the National

Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the Clean Water Act (42 U.S.C. 7401 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, including the outcome of the Environmental Impact Statement or the Record of Decision on the Navajo-Gallup Water Supply Project, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law.

(b) TRANSFER OF OWNERSHIP. -- Transfer of ownership to the Navajo Nation of certain Navajo-Gallup Water Supply Project facilities and associated conjunctive use wells, and transfer of ownership to the City of Gallup of certain Navajo-Gallup Water Supply Project facilities, shall not constitute major federal actions under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the use of the water associated with the Project.

## **TITLE II – NAVAJO NATION WATER PROJECTS IN NEW MEXICO**

### **SEC. 201. SHORT TITLE.**

This title may be cited as the "Navajo Nation Water Projects in New Mexico Act".

### **SEC. 202. FINDINGS AND PURPOSES.**

(a) FINDINGS. -- Congress hereby finds and declares that:

(1) activities to construct and operate the Navajo Indian Irrigation Project in compliance with the National Environmental Policy Act and the Endangered Species Act have been completed or are ongoing;

(2) maintenance of existing Navajo irrigation projects in the San Juan River valley in

New Mexico has not proceeded expeditiously and rehabilitation is needed to make full and efficient use of the projects;

(3) appropriations to construct the Navajo Nation Municipal Pipeline, including the Farmington replacement line, were authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III); and

(4) the Navajo Indian Irrigation Project, the Navajo Nation irrigation projects in the San Juan River valley in New Mexico, and the Navajo Nation Municipal Pipeline are to provide for water uses to sustain the Navajo Nation lands as a permanent homeland.

(b) PURPOSES. -- The purposes of this Act are:

(1) to authorize use of Navajo Indian Irrigation Project water and works for purposes other than irrigation, including for using Project works to carry water in association with the Navajo-Gallup Water Supply Project;

(2) to authorize appropriations to rehabilitate the Fruitland-Cambridge Irrigation Project and the Hogback-Cudei Irrigation Project; and

(3) to authorize transfer of ownership of the Navajo Nation Municipal Pipeline to the Navajo Nation.

### **SEC. 203. NAVAJO INDIAN IRRIGATION PROJECT.**

(a) AMENDMENTS TO ACT OF JUNE 13, 1962. -- The Secretary is authorized to continue to construct, operate and maintain the Navajo Indian Irrigation Project, with the following amendments to the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483):

(1) Irrigation works shall be constructed to serve no more than 110,630 acres of land

defining the total serviceable area of the Navajo Indian Irrigation Project.

(2) The average diversion by the Navajo Indian Irrigation Project from Navajo Reservoir shall not exceed 508,000 acre-feet per year, or the quantity of water necessary to supply an average depletion of 270,000 acre-feet per year, whichever is less, during any period of ten consecutive years for the principal purpose of irrigation of up to 110,630 acres of land; provided, that the quantities of diversion and depletion in any one year do not exceed the aforesaid ten-year average quantities, respectively, by more than 15 percent.

(3) The Navajo Indian Irrigation Project water supply described in subsection (a)(2) of this section and in Title III of this Act may be used for the following purposes, in addition to irrigation, within the area served by the Project facilities:

(A) aquaculture purposes, including rearing of fish in support of the San Juan River Basin Recovery Implementation Program authorized by the Act of October 30, 2000 (114 Stat. 1602, Public Law 106-392);

(B) domestic, industrial or commercial purposes relating to agricultural production and processing; and

(C) the generation of hydroelectric power as an incident to the diversion of water by the Project for the foregoing purposes.

(4) The Navajo Indian Irrigation Project water supply described in subsection (a)(2) of this section and in Title III of this Act also may be used to implement the alternate water source provisions described in subparagraph 9.2 of the Settlement Agreement, and may be used for other purposes, including but not limited to municipal and industrial uses, and transferred to other places of use either within or outside the area served by the Project

facilities in accordance with the Settlement Agreement, the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement, the Settlement Contract, and other applicable law.

(5) The Secretary is authorized to use capacity of the Navajo Indian Irrigation Project works to convey water supplies for purposes of the Navajo-Gallup Water Supply Project authorized by Title I of this Act and for purposes described in subsection (a)(4) of this section. Use of Navajo Indian Irrigation Project works to convey water for the Navajo-Gallup Water Supply Project or for other non-irrigation purposes consistent with subsection (a)(4) of this section shall not be cause for the Secretary to reallocate, or to require repayment of, construction costs of the Navajo Indian Irrigation Project.

(b) WAIVER OF CONSTRUCTION COSTS ALLOCABLE TO NAVAJO NATION. -- The Navajo Nation shall not be obligated to repay the United States for any Navajo Indian Irrigation Project construction costs authorized in prior authorizations.

(c) TRANSFER OF OWNERSHIP. -- The Secretary is authorized to enter into an agreement with the Navajo Nation to transfer ownership of the Navajo Indian Irrigation Project works and facilities to the Navajo Nation after completion of construction of the Project to a total serviceable acreage of 110,630 acres, or to a lesser acreage if agreed to by the Navajo Nation, under terms and conditions that the Secretary determines are necessary to provide the benefits of the Project and fulfill the purposes of this Act. The Secretary may transfer ownership of completed portions of the Project to the Navajo Nation prior to completion of the entire Project in accordance with terms, conditions and schedules that may be negotiated if mutually satisfactory to the Secretary and the Nation. In transferring ownership of the Project works and facilities to the Navajo Nation, the

Secretary also shall transfer to the Nation the ownership of land or interests in land acquired by the United States for the construction, operation and maintenance of the Project that is not declared by the Secretary 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 section 1 of the Act of September 25, 1970 (84 Stat. 867).

(d) OPERATION AND MAINTENANCE. -- The Navajo Nation shall provide for the operation, maintenance and replacement of Project works that are transferred to the Nation's ownership; except, that the Jicarilla Apache Nation shall pay its direct proportionate share of the operation, maintenance and replacement costs of the Project facilities used to deliver water to the Jicarilla Apache Nation pursuant to subsection 104(b)(4) of Title I of this Act, including the main Project canal reach from Navajo Reservoir to Cutter Reservoir and Cutter Dam.

(e) SHARING IN AVAILABLE WATER SUPPLY. -- Nothing in this Act shall be construed to modify section 11 of the Act of June 13, 1962 (76 Stat. 96).

#### **SEC. 204. SAN JUAN RIVER IRRIGATION PROJECTS.**

(a) IRRIGATION PROJECTS. -- The Secretary is authorized to rehabilitate existing San Juan River irrigation projects as follows:

(1) the Fruitland-Cambridge Irrigation Project shall be rehabilitated to serve no more than 3,335 acres of land defining the total serviceable area of the Project; and

(2) the Hogback-Cudei Irrigation Project shall be rehabilitated to serve no more than 8,830 acres of land defining the total serviceable area of the Project.

(b) CONDITIONS PRECEDENT TO REHABILITATION. -- Rehabilitation construction on the Fruitland-Cambridge Irrigation Project or the Hogback-Cudei Irrigation Project shall not commence

unless and until the Secretary and the Navajo Nation have executed cooperative agreements which provide that the Navajo Nation shall maintain the rehabilitated facilities.

(c) AUTHORIZATION OF APPROPRIATIONS. -- There is hereby authorized to be appropriated to the Secretary of the Interior:

(1) such sums as may be required through 2012 for rehabilitation of the Fruitland-Cambridge Irrigation Project, but not more than \$7,700,000, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein; and

(2) such sums as may be required through fiscal year 2015 for rehabilitation of the Hogback-Cudei Irrigation Project, but not more than \$15,400,000, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein.

Expenditures of Federal appropriations authorized by this subsection shall be nonreimbursable.

**SEC. 205. ANIMAS-LA PLATA PROJECT, NAVAJO NATION PORTION.**

(a) OWNERSHIP OF NAVAJO NATION MUNICIPAL PIPELINE. -- Upon completion of the Navajo Nation Municipal Pipeline authorized by the Act of December 21, 2000, the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III), to convey Animas-La Plata Project water from the City of Farmington, New Mexico, to Navajo Nation communities along the San Juan River valley in New Mexico, including the City of Shiprock, New Mexico:

(1) the Secretary is authorized to enter into an agreement with the Navajo Nation to transfer ownership of the Navajo Nation Municipal Pipeline, excluding the Farmington

replacement line portion of the Navajo Nation Municipal Pipeline project that is located within the corporate limits of the City of Farmington, to the Navajo Nation after completion of construction of the Pipeline, including land or interests in land outside the corporate limits of the City of Farmington acquired by the United States for construction, operation and maintenance of the Pipeline;

(2) the Secretary is authorized to enter into an agreement with the Navajo Nation and the City of Farmington to transfer ownership of the Farmington replacement line portion of the Navajo Nation Municipal Pipeline project to either the Nation or the City after completion of construction of the Pipeline, including land or interests in land within the corporate limits of the City of Farmington acquired by the United States for construction, operation and maintenance of the Pipeline; provided, that the Navajo Nation and the City of Farmington execute an agreement that shall set forth conditions and requirements acceptable to the Secretary, the Nation and the City for the ownership and the maintenance of the Pipeline facilities and for providing the intended benefits of the Pipeline to the Navajo Nation;

(3) the Navajo Nation shall assume responsibility for, and provide for, the operation, maintenance and replacement of the Pipeline facilities after transfer of ownership is complete; except, that the City of Farmington may assume such responsibilities for the Farmington replacement line portion of the Pipeline pursuant to subsection (a)(2) of this section;

(4) the Secretary at least 45 days prior to the proposed date of transfer shall submit notice of the transfer of ownership of Project facilities to the Committee on Resources of the



House of Representatives and to the Committees on Energy and Natural Resources and Indian Affairs of the United States Senate; and

(5) the Navajo Nation may convey its Animas-La Plata Project water or non-Project water through the Pipeline.

(b) PIPELINE AND TREATMENT DISCLAIMERS. -- Participation or cooperation of the City of Farmington with delivery of water to the Navajo Nation Municipal Pipeline may be accomplished under terms and conditions to be negotiated to the mutual satisfaction of the City and the Navajo Nation. Nothing in this Act shall be construed to require the City of Farmington to:

(1) provide or deliver treated potable water into the Navajo Nation Municipal Pipeline; or

(2) transfer to the United States or the Navajo Nation any property or other interest it may have associated with the Farmington replacement line portion of the Navajo Nation Municipal Pipeline project.

Nor shall anything in this Act be construed to prohibit the Navajo Nation from taking delivery of its Animas-La Plata Project water allocation at an alternate point of delivery, subject to the terms of the Settlement Agreement, the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement, the Settlement Contract, and other applicable law.

(c) USE OF NAVAJO NATION WATER ALLOCATION. -- Water supply delivered to the Navajo Nation under its Animas-La Plata Project water allocation through the Navajo Nation Municipal Pipeline, or any alternate point of delivery, shall be used for municipal, industrial, commercial and domestic purposes, including residential outdoor uses such as yard and stock watering. The Navajo Nation may use its allocation of Project water on lands held by the United States in trust for the

Navajo Nation and its members and lands held in fee by the Navajo Nation; provided, that the Navajo Nation may transfer the purposes and places of use in accordance with the Settlement Agreement, the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement, the Settlement Contract, and other applicable law.

**SEC. 206. EFFECTIVE DATE.**

This title shall become effective upon execution of the Settlement Agreement by the Secretary and upon execution of the Settlement Contract by the Secretary and the Navajo Nation.

**SEC. 207. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

(a) CONSTRUCTION AND OPERATION. -- The construction, rehabilitation and operation of the Navajo water projects described in this title are subject to the requirements of Federal laws that are related to the protection of the environment and otherwise applicable to the construction and operation of the facilities authorized by this title, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the Clean Water Act (42 U.S.C. 7401 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law.

(b) TRANSFERS OF OWNERSHIP. -- Transfers of Navajo Indian Irrigation Project works and facilities or the Navajo Nation Municipal Pipeline to the Navajo Nation shall not constitute major federal actions under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the

use of the water associated with the Project or the Pipeline, respectively.

**TITLE III – SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO  
NATION WATER RIGHTS SETTLEMENT**

**SEC. 301. SHORT TITLE.**

This title may be cited as the "San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Act".

**SEC. 302. FINDINGS AND PURPOSES.**

(a) FINDINGS. -- Congress hereby finds and declares that:

(1) in recognition of the commitments made by the United States to the Navajo Nation inherent in the treaties of 1849 and 1868, including the commitment to create a permanent homeland for the Navajo people, and in recognition of the United States' trust responsibility to the Navajo Nation, this Act will protect the water resources of the Navajo Nation and secure to the Nation a perpetual water supply from the San Juan River Basin in New Mexico;

(2) the Navajo Nation has substantial and multiple claims against the State of New Mexico, the United States, and other parties, related to water rights in the San Juan River Basin in New Mexico for lands held in trust for the Nation or its members by the United States and for lands held in fee by the Nation;

(3) a full and final settlement of the water rights claims of the Navajo Nation to the use of waters of the San Juan River Basin in and from the State of New Mexico will inure to the benefit of the Navajo Nation, the State of New Mexico, the United States and other parties;

(4) the Navajo Nation and the State of New Mexico have negotiated and approved a settlement of the water rights claims of the Navajo Nation to divert and use waters of the San Juan River Basin in New Mexico as expressed in the Settlement Agreement and this Act;

(5) this Act, together with the Settlement Agreement between the State of New Mexico, the Navajo Nation and the United States, the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement, the Supplemental Partial Final Decree described in paragraph 4.0 of the Settlement Agreement, and the Settlement Contract between the Navajo Nation and the United States, is intended to provide for the full, fair and final resolution of the water rights claims of the Navajo Nation to waters of the San Juan River Basin in the State of New Mexico, and to secure to the Navajo Nation a perpetual water supply and actual water uses for and on its lands in northwestern New Mexico;

(6) the Navajo Nation may use, transfer, contract, subcontract or lease the water supply provided by its water rights for beneficial uses on or off its lands consistent with applicable state law, applicable federal law, the terms of the Settlement Agreement between the State of New Mexico, the Navajo Nation and the United States, the terms of the Settlement Contract between the Navajo Nation and the United States, and the terms of the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement, as each of these may be applicable to the proposed use, transfer, contract, subcontract or lease; and

(7) the Secretary of the Interior, in accordance with the requirements of section 11 of the Act of June 13, 1962 (76 Stat. 96, 99; Public Law 87-483), has determined by hydrologic investigations that sufficient water to implement the Settlement Agreement and to provide for uses in New Mexico under the Navajo-Gallup Water Supply Project is reasonably likely

to be available for use in the State of New Mexico from the Upper Colorado River Basin and has transmitted such determination to Congress by letter dated \_\_\_\_\_.

(b) PURPOSES. -- The purposes of this Act are:

(1) to approve and incorporate by reference the Settlement Agreement;

(2) to approve and incorporate by reference the Settlement Contract;

(3) to authorize the lease and transfer by the Navajo Nation of decreed water rights for use by other parties on or off lands held by the United States in trust for the Navajo Nation and its members or held in fee by the Navajo Nation consistent with the Settlement Agreement and applicable law; and

(4) to authorize the actions and appropriations necessary for the United States to fulfill its obligations under the Settlement Contract and this Act.

### **SEC. 303. SETTLEMENT AGREEMENT AND CONTRACT APPROVAL.**

(a) SETTLEMENT AGREEMENT. -- The Secretary, acting on behalf of the United States, is authorized and directed to enter into the Settlement Agreement.

(b) SETTLEMENT CONTRACT. -- The Secretary, acting on behalf of the United States, is authorized and directed to enter into the Settlement Contract, but in no event shall such contract be limited by any term of years, or be canceled, terminated or rescinded by the action of any party, except by an Act of Congress hereafter enacted.

(c) APPROVAL OF SETTLEMENT AGREEMENT AND SETTLEMENT CONTRACT. -- The Congress approves, ratifies, and hereby incorporates by reference the Settlement Agreement and the Settlement Contract.

(d) AUTHORITY OF SECRETARY. -- The Secretary of the Interior is authorized to approve or

enter into such agreements and to take such measures as the Secretary may deem necessary or appropriate to fulfill the intent of the Settlement Agreement, the Settlement Contract and this Act. The Secretary shall comply with all aspects of the National Environmental Policy Act, the Endangered Species Act and other applicable federal and state laws and regulations in exercising this authority.

**SEC. 304. WATER AVAILABLE UNDER SETTLEMENT CONTRACT.**

(a) AMOUNTS OF WATER AVAILABLE. -- Water made available annually under the Settlement Contract approved by section 303 of this Act is in the following amounts for projects in New Mexico supplied from Navajo Reservoir and the San Juan River, including its tributaries, under New Mexico State Engineer File Nos. 2849, 2883 and 3215; provided, that the diversion to the Navajo Nation pursuant to the Settlement Contract under each of the below specified projects shall not exceed the quantity of water necessary to supply the specified amount of depletion for each project as stated in Titles I and II of this Act:

	Diversion (acre-feet/year)	Depletion (acre-feet/year)
Navajo Indian Irrigation Project .....	508,000	270,000
Navajo-Gallup Water Supply Project .....	22,650	20,780
Animas-La Plata Project .....	<u>4,680</u>	<u>2,340</u>
<b>Total .....</b>	<b>535,330</b>	<b>293,120</b>

The diversion and use of water pursuant to the Settlement Contract shall be subject to and consistent with the terms, conditions and limitations of the Settlement Agreement and this Act.

(b) AMENDMENTS TO SETTLEMENT CONTRACT. -- The Secretary may, with the consent of

the Navajo Nation, enter into amendments to the Settlement Contract which would in the Secretary's judgment be in the interest of conserving water or facilitating beneficial use by the Navajo Nation or its subcontractors, but the amounts of water made available for diversion and depletion under the Settlement Contract shall not exceed the amounts set forth in subsection (a) of this section.

(c) RIGHTS OF THE NAVAJO NATION. -- The Navajo Nation shall be entitled under the Settlement Contract to:

(1) use tail water, waste water and return flows attributable to uses of the water by the Nation or its subcontractors, as long as the depletions of water do not exceed the amounts set forth in subsection (a) of this section; provided, that the use of said tail water, waste water and return flows shall be subject to and consistent with the terms, conditions and limitations of the Settlement Agreement, the Resolution and applicable laws;

(2) change points of diversions, change purposes or places of uses, and transfer rights for depletions authorized by this Act, except for those for use in the State of Arizona authorized by Title I of this Act, to other uses or purposes in the State of New Mexico to meet water resource or economic needs of the Nation; provided, that:

(A) such changes or transfers are subject to and consistent with the terms of the Settlement Agreement, the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement, the Settlement Contract, and other applicable law; and

(B) any changes or transfers of water use by the Navajo Nation affecting one or more of the water development projects authorized by Titles I and II of this Act shall not alter the obligations of the United States, the Navajo Nation, or other parties to pay or repay project construction, operation, maintenance or replacement costs as

specified in Titles I and II of this Act and the Settlement Contract.

(d) **CONSISTENCY WITH UPPER COLORADO RIVER BASIN COMPACT.** -- The Secretary shall operate Federal water project facilities in New Mexico consistent with Article IX of the Upper Colorado River Basin Compact so that there shall be no injury or impairment to users of water within the State of New Mexico as to their rights to receive and use water, the use of which is within the apportionment made to the State of New Mexico by Article III of the Upper Colorado River Basin Compact. The Secretary shall require as a condition of transferring to the Navajo Nation the ownership of any Federal water project facilities that the Nation shall operate such facilities consistent with the Upper Colorado River Basin Compact and the Settlement Agreement.

**SEC. 305. SUBCONTRACTS.**

(a) **AUTHORITY OF NAVAJO NATION.** -- The Navajo Nation shall have the authority to enter into subcontracts with third parties for the delivery of its water under the Settlement Contract to supply water for beneficial uses in the State of New Mexico on or off lands held by the United States in trust for the Navajo Nation or its members or lands held in fee by the Navajo Nation, subject to:

(1) the approval of all subcontracts by the Secretary in accordance with this section and the Settlement Contract; and

(2) compliance with the Settlement Agreement, the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement, and other applicable law.

Nothing in this Act shall be construed to establish, address, prejudice or prevent any party from litigating whether or to what extent any law does or does not permit, govern, or apply to the use of the Nation's water designated in this Act for use in one state in an area located outside that state.

(b) **MAXIMUM TERM.** -- The Navajo Nation shall not permanently alienate any rights it has



under the Settlement Contract. The maximum term of any water use subcontract, including all renewals, shall not exceed 99 years in duration.

(c) APPROVAL OF SECRETARY. -- The Secretary shall approve or disapprove any subcontracts submitted to him for approval within 180 days after submission or 60 days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or any other requirement of Federal law, whichever is later. Any party to a subcontract may enforce the provision of this subsection pursuant to section 1361 of title 28, United State Code.

(d) PREEMPTION. -- The authorization provided for in this section and the approval authority of the Secretary provided for in this section shall not amend, construe, supersede or preempt any Federal law, interstate compact or international treaty that pertains to the waters of the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of those waters.

(e) NON-INTERCOURSE ACT COMPLIANCE. -- This section provides Congressional authorization for the subcontracting and transfer of Navajo Nation contract rights, and shall be deemed to fulfill any requirement that may be imposed by the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177).

(f) FORFEITURE. -- The nonuse of the water supply secured herein by a subcontractor of the Navajo Nation shall in no event result in a forfeiture, abandonment, relinquishment or other loss of all or any part of the rights exercised by the Nation under the Settlement Contract or as otherwise authorized by this Act.

(g) NO PER CAPITA PAYMENTS. -- No part of the revenue from any water use subcontract

shall be distributed to any member of the Navajo Nation on a per capita basis.

**SEC. 306. WATER LEASES NOT REQUIRING SUBCONTRACTS.**

(a) **AUTHORITY OF NAVAJO NATION.** -- The Navajo Nation shall have the authority, without approval of the Secretary, to lease, contract or otherwise transfer to other parties and to other purposes or places of use in the State of New Mexico, either on or off lands that are held by the United States in trust for the Navajo Nation or its members or held in fee by the Navajo Nation, water rights decreed to the Nation pursuant to the Settlement Agreement that are not subject to the Settlement Contract. The authority of the Navajo Nation under this subsection shall be subject to compliance with the Settlement Agreement, the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement, the Supplemental Partial Final Decree described in paragraph 4.0 of the Settlement Agreement, and other applicable law. Nothing in this Act shall be construed to establish, address, prejudice or prevent any party from litigating whether or to what extent any law does or does not permit, govern, or apply to the use of the Nation's water designated in this Act for use in one state in an area located outside that state.

(b) **MAXIMUM TERM.** -- The Navajo Nation shall not permanently alienate any rights decreed to the Nation pursuant to the Settlement Agreement. The maximum term of any water use lease, contract or other arrangement, including all renewals, shall not exceed 99 years in duration.

(c) **NON-INTERCOURSE ACT COMPLIANCE.** -- This section provides Congressional authorization for the lease, contracting and transfer of Navajo Nation decreed water rights, and shall be deemed to fulfill any requirement that may be imposed by the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177).

(d) **FORFEITURE.** -- The nonuse 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 rights decreed to the Nation pursuant to the Settlement Agreement.

**SEC. 307. AUTHORIZATION OF TRUST FUND.**

(a) ESTABLISHMENT OF TRUST FUND. -- There is hereby established in the Treasury a fund to be known as the Navajo Nation Water Resources Development Trust Fund (hereafter in this section referred to as the "Trust Fund").

(b) PURPOSE OF TRUST FUND. -- The Trust Fund is established for the purpose of providing funds to the Navajo Nation for its expenditure on the investigation, construction, operation, maintenance and replacement of capital works, and the investigation and implementation of water conservation measures and improvements, necessary for the Navajo Nation to make use of its water rights under the Settlement Agreement, including for metering and monitoring activities. The Navajo Nation also may utilize monies in the Trust Fund to provide for required operation, maintenance and replacement of water project works and facilities constructed or transferred to Navajo Nation ownership pursuant to the authorizations contained in Titles I and II of this Act, or transferred to the Nation pursuant to Public Law 86-121.

(c) AUTHORIZATION OF APPROPRIATIONS. -- There are authorized to be appropriated for deposit in the Trust Fund for expenditure by the Navajo Nation on costs associated with water resources projects authorized by this Act and for development of other water resources projects, including projects for water supply, flood control, sediment control, recreation, fish and wildlife or other beneficial purposes:

- (1) \$6 million per year in each of the first five fiscal years which commence following the date of the enactment of this Act; and

(2) \$4 million per year in the each of the five fiscal years next following the first five fiscal years referred to in this section.

(d) NO PER CAPITA PAYMENTS. -- No part of the principal of the Trust Fund, or of income accruing to such Trust Fund, shall be distributed to any member of the Navajo Nation on a per capita basis.

(e) CONDITIONS FOR EXPENDITURES. -- Amounts authorized to be appropriated to the Trust Fund under this section shall not be expended until both the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement and the Supplemental Partial Final Decree described in paragraph 4.0 of the Settlement Agreement, which together would quantify fully the Navajo Nation's reserved water right claims from the San Juan River Basin in New Mexico, have been entered in the general stream adjudication styled *New Mexico v. United States, et al.*, No. 75-184 (11th Jud. Dist., San Juan County, New Mexico), involving claims to waters of the San Juan River and its tributaries, said Partial Final Decree and Supplemental Partial Final Decree to adjudicate the rights of the Navajo Nation in the San Juan River Basin in New Mexico to divert and use water for historic, existing and future uses consistent with the Settlement Agreement and the authorizations for water projects provided by this Act.

### **SEC. 308. AUTHORIZATION OF HYDROGRAPHIC SURVEY.**

(a) PREPARATION OF HYDROGRAPHIC SURVEY. -- The Secretary is authorized, on behalf of the United States, to prepare a hydrographic survey cooperatively and jointly under the supervision of the Secretary and the State of New Mexico, acting through the New Mexico State Engineer, to identify and quantify historic and existing diversions and uses of water by the Navajo Nation or its members from the San Juan River Basin within the State of New Mexico, including from surface

water and underground water sources, as specified by subparagraph 4.2 of the Settlement Agreement.

(b) AUTHORIZATION OF APPROPRIATIONS. -- There is hereby authorized to be appropriated to the Bureau of Indian Affairs through fiscal year 2011 such sums as may be required to complete the hydrographic survey, but not more than \$5,000,000 (in 2004 prices). Such sums shall be adjusted for inflation and shall be treated as nonreimbursable Federal expenditures. Cost-share funding by non-Federal entities shall not be required.

**SEC. 309. CONDITIONS.**

(a) MILESTONES. -- After enactment of this Act, in order to settle the outstanding claims of the Navajo Nation to rights in waters in and from the San Juan River Basin in New Mexico, the following milestones shall be achieved in implementing the provisions of this Act:

(1) the Settlement Agreement must be executed by the Secretary no later than December 31, 2006;

(2) the Settlement Contract must be executed by the Secretary and the Navajo Nation no later than December 31, 2007;

(3) the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement must be entered by the Court in the San Juan River Adjudication no later than December 31, 2010;

(4) the hydrographic survey and report of historic and existing diversions and uses of water in and from the San Juan River Basin in New Mexico on Navajo lands, including on lands held by the United States in trust for the Navajo Nation or its members or held in fee ownership by the Navajo Nation, to provide all information called for under paragraphs 3 and 4 of the proposed Supplemental Partial Final Decree, which is Appendix 2 to the Settlement

Agreement, and all information required to administer subparagraph 4.4 of the Settlement Agreement and subparagraph 7(g) of the proposed Partial Final Decree, which is Appendix 1 to the Settlement Agreement, as described in subparagraph 4.2 of the Settlement Agreement, must be completed no later than December 31, 2011;

(5) rehabilitation construction of the Fruitland-Cambridge Irrigation Project to a service area of 3,335 acres of land pursuant to the authorization provided in Title II of this Act must be completed no later than December 31, 2012;

(6) the Supplemental Partial Final Decree described in subparagraph 4.0 of the Settlement Agreement must be entered by the Court in the San Juan River Adjudication no later than December 31, 2013;

(7) rehabilitation construction of the Hogback-Cudei Irrigation Project to a service area of 8,830 acres of land pursuant to the authorization provided in Title II of this Act must be completed no later than December 31, 2015;

(8) the United States must make deposits into the Navajo Nation Water Resources Development Trust Fund in the amounts and pursuant to the schedule specified in subsection 307(c) of this Act, to be completed no later than December 31, 2016;

(9) construction of the Navajo-Gallup Water Supply Project facilities authorized by Title I of this Act must be completed no later than December 31, 2020; and

(10) construction of conjunctive use wells authorized by Title I of this Act for developing ground water for use by Navajo Nation communities in the State of New Mexico must be completed no later than December 31, 2022.

The dates described in this subsection may be extended upon agreement of the Navajo Nation, the

United States, acting through the Secretary, and the State of New Mexico, acting through the New Mexico Interstate Stream Commission, if reasonably necessary to provide additional time to implement the provisions of this Act.

(b) REVOCABILITY OF SETTLEMENT AND AUTHORIZATIONS. -- If the milestones specified in subsection (a) of this section are not substantially met:

(1) the Navajo Nation Water Resources Development Trust Fund described in section 307 of this Act shall be terminated;

(2) the balance of the Trust Fund shall be deposited in the general fund of the Treasury;

(3) the authorizations for construction and rehabilitation of water projects provided in Titles I and II of this Act, excluding those described in section 205 of Title II of this Act, shall be revoked and Federal activities related to said construction and rehabilitation shall be suspended;

(4) the State of New Mexico, the Navajo Nation and the United States shall not be bound by the Settlement Agreement, and the Settlement Agreement and Settlement Contract shall be of no force or effect; and

(5) the provisions of Title IV of this Act shall be null and void.

(c) CONDITIONS NOT CAUSING NULLIFICATION OF SETTLEMENT. -- The Settlement Agreement and Settlement Contract shall not be nullified, and the Navajo Nation shall not otherwise have cause to assert past or future claims to the delivery or use of water in or from the San Juan River Basin in New Mexico, for the following conditions:

(1) the milestones specified in subsection (a) of this section are substantially met;

(2) any lack of rights to divert at the capacities of conjunctive use wells constructed or rehabilitated pursuant to Title I of this Act;

(3) any failure to determine or resolve an accounting of the use in the State of Arizona, to obtain any necessary water rights for the consumptive use of water in Arizona, to contract for the delivery of water for the use in Arizona, or to construct and operate lateral facilities to deliver water to Navajo Nation communities in Arizona, under the Navajo-Gallup Water Supply Project authorized by Title I of this Act; and

(4) any lack of rights in the State of Arizona for the diversion of ground water in Arizona for uses in New Mexico or for the use in Arizona of ground water diverted from New Mexico to provide for the uses described in subparagraph 7(g) of the proposed Partial Final Decree, which is Appendix 1 to the Settlement Agreement.

(d) RIGHTS INURE TO NAVAJO NATION. -- The tribal rights under the Settlement Contract approved by this Act, the water rights adjudicated consistent with such contract in the general stream adjudication by the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement, and other tribal water rights stipulated, adjudicated or decreed as described in the Settlement Agreement and this Act shall inure to the benefit of the Navajo Nation, and the Nation shall not be denied all or any part of such rights absent its consent unless such rights are explicitly abrogated by an Act of Congress hereafter enacted or unless the Settlement Agreement, Settlement Contract, authorizations contained in this Act and final decrees are revoked as per subsection (b) of this section.

#### **SEC. 310. ENVIRONMENTAL COMPLIANCE.**

(a) COMPLIANCE WITH ENVIRONMENTAL LAWS. -- The responsibilities of the Secretary described in this Act are subject to the requirements of Federal laws that are related to the protection



of the environment and otherwise applicable to the construction and operation of facilities authorized by this Act, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the Clean Water Act (42 U.S.C. 7401 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law. The Secretary shall comply with all aspects of the National Environmental Policy Act of 1969 and other applicable environmental laws and regulations in fulfilling the terms of the Settlement Contract.

(b) EXECUTION OF SETTLEMENT AGREEMENT AND SETTLEMENT CONTRACT. -- Execution of the Settlement Agreement and the Settlement Contract approved by this Act shall not constitute major Federal actions under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the uses of water to be supplied under the Settlement Contract.

## **TITLE IV – NAVAJO RESERVOIR WATER SUPPLY**

### **SEC. 401. SHORT TITLE.**

This title may be cited as the "Navajo Reservoir Water Supply Act".

### **SEC. 402. FINDINGS AND PURPOSES.**

(a) FINDINGS. -- Congress hereby finds and declares that:

(1) active management of the water resources of the San Juan River Basin in New Mexico, including the management of federal water storage and delivery facilities and the administration of water rights, will conserve water in the Basin to the benefit of the United

States, the State of New Mexico, Indian tribes and other parties;

(2) the Navajo Nation and the State of New Mexico have negotiated and approved a settlement of the water rights claims of the Navajo Nation to divert and use waters of the San Juan River Basin in New Mexico as expressed in this Act that relies on the administration of water rights in the Basin and the water made available from the Navajo Reservoir water supply;

(3) the United States participates in the management of the water resources of the San Juan River Basin in New Mexico in accordance with the authorizations and requirements of the Colorado River Storage Project Act (70 Stat. 105), the Colorado River Basin Project Act (82 Stat. 885), the Act of June 13, 1962 (76 Stat. 96), the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2237), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other federal and state laws; and

(4) providing certainty and enhancements to the management of the Navajo Reservoir water supply in compliance with federal and state law will facilitate implementation of the Settlement Agreement and benefit both Navajo and non-Navajo interests.

(b) PURPOSES. -- The purposes of this Act are:

(1) to specify quantitative criteria for the Secretary of the Interior to use in implementing the shortage sharing provisions of section 11(a) of the Act of June 13, 1962 (76 Stat. 96);

(2) to authorize the Navajo Nation to use its Navajo Reservoir water supply apportionments to meet critical municipal and domestic water demands during years of

shortage;

(3) to authorize the formation and operation of a top water bank in Navajo Reservoir;

and

(4) to otherwise effectuate water management and administration in New Mexico.

#### **SEC. 403. SHARING OF AVAILABLE WATER.**

(a) INFLOW BELOW NAVAJO DAM. -- Whenever water is available for diversion pursuant to New Mexico State Engineer File No. 3215, the water available shall be distributed, to the extent practical, in proportionate amounts to the diversion demands of all contractors and subcontractors of the Navajo Reservoir water supply diverting below Navajo Dam.

(b) RUNOFF ABOVE NAVAJO DAM. -- For the purpose of implementing the shortage sharing provisions of subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), the Secretary of the Interior shall determine amounts of shortage and apportionments of water using the normal diversion requirements on the flow of the San Juan River originating above Navajo Dam that are based on:

(1) the amounts of diversion or water delivery for the current year anticipated to be necessary to irrigate lands in accordance with cropping plans prepared by contractors;

(2) the annual diversion or water delivery demands for the current year anticipated for non-irrigation uses pursuant to water delivery contracts, including the demand for delivery for uses in Arizona under the Navajo-Gallup Water Supply Project as authorized by section 104 of Title I of this Act, but excluding any current demand for surface water for placement into aquifer storage for future recovery and use; and

(3) an annual normal diversion demand of 135,000 acre-feet for the San Juan-Chama

Project (initial stage) authorized by section 8 of the Act of June 13, 1962.

The Secretary shall not include in the normal diversion requirements the amounts of water that reliably can be anticipated to be diverted or delivered under contract from inflows to the San Juan River arising below Navajo Dam pursuant to New Mexico State Engineer File No. 3215, or the amounts of water anticipated to be supplied through re-use. In the event that the State of New Mexico determines that water uses under Navajo Reservoir water supply contracts or diversions by the San Juan-Chama Project must be reduced in any year for New Mexico to comply with the provisions of the Upper Colorado River Basin Compact (63 Stat. 31), including, but not limited to, Article III and Article IV of the Compact, the Secretary shall reduce the normal diversion requirements if necessary to reflect water use or diversion limitations imposed by the State of New Mexico.

(c) ALLOCATION OF SHORTAGES. -- In the event of shortage, the Secretary of the Interior shall first make an allocation of shortage to the demand on the Navajo Reservoir water supply for delivery for uses in Arizona under the Navajo-Gallup Water Supply Project, up to the full amount of demand and excluding the amounts of water anticipated to be diverted for such uses from inflows to the San Juan River arising below Navajo Dam pursuant to New Mexico State Engineer File No. 3215. Second, the Secretary shall make an allocation of shortage to the demand on the Navajo Reservoir water supply for delivery for uses allocated pursuant to subparagraph 8.2 of the Settlement Agreement, up to the full amount of demand and excluding any amounts of water anticipated to be diverted for such uses under State Engineer File No. 3215. The remaining amount of shortage, if any, shall be allocated to the normal diversion requirements for uses in New Mexico that are determined pursuant to subsection (b) of this section in accordance with the procedure for

apportioning the water supply available above Navajo Dam described in subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96). To determine the occurrence and amount of any shortage to contracts entered pursuant to section 11 of the Act of June 13, 1962, the Secretary shall not include as available storage any water stored in a top water bank in Navajo Reservoir established pursuant to section 405 of this Act. During years in which the Secretary determines and allocates a shortage in the Navajo Reservoir water supply, the Secretary shall not deliver, and contractors of the water supply shall not divert, any of the water supply for placement into aquifer storage for future recovery and use.

(d) APPLICATION OF SHORTAGES. -- The Secretary shall apply the sharing and apportionment of water determined pursuant to subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96), and subsections (b) and (c) of this section on an annual volume basis, and shall not otherwise apply or enforce a percentage or volumetric shortage to the amount of water available for diversion or delivery from the Navajo Reservoir water supply or for diversion by the San Juan-Chama Project on a day to day basis; provided, that this subsection shall not be construed to affect subsection 8(f) of the Act of June 13, 1962.

(e) REVISIONS TO SHORTAGE DETERMINATIONS. -- The Secretary may revise determinations of shortages and apportionments of water under subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96), and this section as water supply conditions materialize or change throughout the year.

(f) COOPERATIVE WATER SHARING AGREEMENTS. -- Nothing in the Act of June 13, 1962 (76 Stat. 96), or in this Act shall be construed to prohibit the Secretary from reallocating water, including in a year of shortage, in accordance with cooperative water agreements between water

users for a sharing of water supplies either between the San Juan-Chama Project and water contractors in the San Juan River Basin or among water contractors in the San Juan River Basin, subject to applicable laws.

**SEC. 404. PROTECTION OF NAVAJO NATION DOMESTIC USES IN ARIZONA.**

(a) FORBEARANCE TO COVER SHORTED NAVAJO NATION DOMESTIC USES. -- During years of shortage determined per section 403 of this Act, the Navajo Nation temporarily may forbear the delivery of Navajo Reservoir water supply for uses in the State of New Mexico under the apportionments of water to the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project normal diversion requirements, as determined pursuant to subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96), and section 403 of this Act, for the purpose of allowing an equivalent amount of delivery to be made from the Navajo Reservoir water supply to serve the Nation's municipal and domestic uses in the State of Arizona under the Navajo-Gallup Water Supply Project authorized by section 104 of Title I of this Act; provided, that the consequent delivery of water to the Navajo Nation for the municipal and domestic uses in Arizona does not exceed the amount of shortage in the Navajo Reservoir water supply allocated to the normal diversion requirement for such uses pursuant to section 403 of this Act.

(b) ACCOUNTING OF NAVAJO NATION DOMESTIC USES IN ARIZONA. -- The depletion of water from the San Juan River stream system in New Mexico resulting from the diversion of water by the Navajo-Gallup Water Supply Project for use within the State of Arizona made pursuant to subsection (a) of this section, including depletion that is incident to the diversion, impounding or conveyance of water in New Mexico for the use in Arizona, shall:

(1) be accounted as a part of the Colorado River System apportionments to the State

of Arizona and shall in no way increase the total quantity of water to the use of which the State of Arizona is entitled and limited under any compact, statute or court decree; and

(2) not be accounted against the apportionment made to the State of New Mexico by Article III(a) of the Upper Colorado River Basin Compact and shall in no way decrease the total quantity of water to the use of which the State of New Mexico is entitled under the Compact.

(c) **DISCLAIMER.** -- Nothing in this Act shall be construed or interpreted to authorize the marketing or leasing of, or to transfer water rights for, the water supplies made available to the Navajo Nation under the Settlement Contract approved by subsection 303(c) of Title III of this Act to non-Navajo water users in states other than New Mexico. Nor shall anything in this Act be construed or interpreted to authorize forbearance of water uses in New Mexico to allow uses to be made in states other than New Mexico that are in addition to the uses allowed pursuant to subsection (a) of this section.

#### **SEC. 405. AUTHORIZATION OF NAVAJO RESERVOIR WATER BANK.**

(a) **AUTHORIZATION OF WATER BANK.** -- The Secretary of the Interior, acting through the Bureau of Reclamation, is authorized to create and operate within the available capacity of Navajo Reservoir a top water bank. Water made available for the top water bank consistent with the provisions of subsections (b) and (c) of this section shall not be subject to the provisions of section 11 of the Act of June 13, 1962 (76 Stat. 96).

(b) **CONDITION.** -- The top water bank in Navajo Reservoir authorized by subsection (a) of this section shall be operated in a manner that is consistent with the United States' trust responsibilities to Indian tribes, and that does not impair the Secretary's ability to deliver water under

contracts entered pursuant to the Act of June 13, 1962 (76 Stat. 96), and under New Mexico State Engineer File Nos. 2847, 2848, 2849 and 2917.

(c) OPERATION PARAMETERS. -- The Secretary of the Interior, acting through the Bureau of Reclamation, shall develop, in cooperation with the State of New Mexico, acting through the Interstate Stream Commission, such terms and procedures governing the storage, accounting and release of water in the top water bank in Navajo Reservoir as are necessary to satisfy the condition of subsection (b) of this section. Such terms and procedures shall include, but shall not be limited to:

(1) storage of banked water must involve a transfer of water rights under New Mexico state law that effectively and measurably reduces releases or withdrawals of water from Navajo Reservoir that then may be banked without impairment to existing water rights, including storage of water under New Mexico State Engineer File No. 2849;

(2) water in the top water bank must be subject to evaporation and other losses when placed in storage and so long as it remains in storage;

(3) water in the top water bank must be released for delivery to the owner or assigns of the banked water upon call of the owner, subject to reasonable scheduling requirements for making the release; and

(4) water in the top water bank must be the first water spilled or released for flood control purposes in anticipation of spill.

(d) PAYMENT FOR SERVICES. -- The Secretary of the Interior is authorized to charge fees to water users that utilize the top water bank authorized by subsection (a) of this section in amounts sufficient to cover the costs of the United States to administer the water bank.



**SEC. 406. ADMINISTRATION OF NAVAJO RESERVOIR RELEASES.**

The State of New Mexico may administer releases of stored water from Navajo Reservoir in accordance with the provisions of subparagraph 9.1 of the Settlement Agreement.

**SEC. 407. ENVIRONMENTAL COMPLIANCE.**

(a) COMPLIANCE WITH ENVIRONMENTAL LAWS. -- The responsibilities of the Secretary described in this Act are subject to the requirements of Federal laws that are related to the protection of the environment and otherwise applicable to the construction and operation of facilities authorized by this Act, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the Clean Water Act (42 U.S.C. 7401 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law.

(b) IMPLEMENTATION OF SHORTAGE SHARING. -- Implementation of the shortage sharing provisions of sections 403 and 404 of this Act shall not constitute major Federal actions under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the diversion of water from the San Juan River stream system by the San Juan-Chama Project or the uses of water from Navajo Reservoir to be supplied under contract with the Secretary pursuant to section 11 of the Act of June 13, 1962 (76 Stat. 96).

**APPENDIX 4**

**SETTLEMENT CONTRACT**

Contract Between the United States and the  
Navajo Nation

Preamble

This contract is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the United States of America, acting through the Secretary of the Interior pursuant to the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_), the Act of June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385), and the Navajo Nation.

EXPLANATORY RECITALS

*Witnesseth, That:*

Whereas, the United States and the Navajo Nation have negotiated a resolution of all water right claims of the Nation to waters of the San Juan River Basin in New Mexico which are the subject of a general stream adjudication in New Mexico state court and which claims, if unresolved, impair water resources development by the Nation and the State of New Mexico; and

Whereas, the settlement of these claims will secure to the Navajo Nation a perpetual water supply; and

Whereas, to preserve opportunities for the Navajo Nation to develop while at the same time allowing for other economic development in New Mexico, it is the intent of this contract that the Navajo Nation may exercise the right to market the water supply secured to it under this contract subject to the provisions of this contract and the agreement between the State of New Mexico, the Navajo Nation and the United States setting forth a stipulated and binding settlement agreement as to the rights of the Nation to use and administer waters of the San Juan River Basin in New Mexico, signed by the State of New Mexico and the Navajo Nation on \_\_\_\_\_ and executed by the Secretary on \_\_\_\_\_; and

Whereas, the Federal government is undertaking to construct additional water development facilities to fulfill the terms and conditions of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_) and this contract, including facilities to extend the current service area of the Navajo Indian Irrigation Project and facilities to convey much needed municipal, industrial and domestic water supplies to Navajo Nation communities; and

Whereas, the Secretary of the Interior has determined in accordance with section 11 of the Act of June 13, 1962 (76 Stat. 96), pursuant to the hydrologic determination submitted to Congress on \_\_\_\_\_ that there is sufficient water reasonably likely to be available for use in the State of New Mexico to enable the United States to enter into this contract:

NOW, THEREFORE, in consideration of mutual and dependent covenants and conditions contained herein, the parties agree to the following:

## GENERAL DEFINITIONS

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

(a) “Animas-La Plata Project” means the project of the same name authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III) and related facilities, including Ridges Basin Dam and Reservoir and the Navajo Nation Municipal Pipeline.

(b) “Contracting Officer” means the representative of the Commissioner of Reclamation authorized to administer this contract.

(c) “Nation” means the Navajo Nation, a body politic and federally-recognized Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe List of 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the “Navajo Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo Tribe of Indians” and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation, acting through its authorized representative.

(d) “Navajo-Gallup Water Supply Project” means the project of the same name authorized by Title I of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_).

(e) “Navajo Indian Irrigation Project” means the project of the same name authorized by the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), as amended by the Act of September 25, 1970 (84 Stat. 867; Public Law 91-416).

(f) “Navajo Lands” means lands set aside as reservation lands for the Navajo People, whether by treaty, statute, executive order or public land order. Also included in this definition are lands that are held in trust for the Navajo Nation by the United States, held in trust for members of the Navajo Nation by the United States, or held in fee ownership by the Navajo Nation.

(g) “Navajo Nation Municipal Pipeline” means the pipeline to convey the Navajo Nation’s Animas-La Plata Project water from the City of Farmington, New Mexico, to Navajo Nation communities along the San Juan River valley in New Mexico, including the City of Shiprock, as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III).

(h) “Navajo Dam and Reservoir” means Navajo Dam and the reservoir created by the impoundment of the San Juan River at Navajo Dam as authorized by the Act of April 11, 1956, the Colorado River Storage Project Act (70 Stat. 105; Public Law 84-485), as amended.

(i) “OM&R” means annual operation, maintenance and replacement.

(j) “Ridges Basin Reservoir” means the reservoir created by the impoundment on Basin Creek as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258).

(k) “San Juan River” means that river which originates in the State of Colorado and flows through or constitutes the boundary of the Navajo Indian Reservation in northwestern New Mexico and southeastern Utah, where it flows into Lake Powell.

(l) “Secretary” means the Secretary of the Department of the Interior or a designee.

(m) "Settlement Agreement" means the agreement between the State of New Mexico, the Navajo Nation and the United States setting forth a stipulated and binding settlement agreement as to the rights of the Nation to use and administer waters of the San Juan River Basin in New Mexico, signed by the State of New Mexico and the Navajo Nation on \_\_\_\_\_ and executed by the Secretary on \_\_\_\_\_.

## CONDITIONS

2. This contract will give rise to rights and obligations on the part of the Navajo Nation and the United States only after a partial final decree is entered by the District Court of San Juan County, New Mexico, in the general stream adjudication of the San Juan River stream system, *New Mexico v. United States*, No. 75-184, which partial final decree adjudicates water rights of the Navajo Nation in and from the San Juan River Basin in New Mexico per paragraph 3.0 of the Settlement Agreement and is of the form provided in Appendix 1 to the Settlement Agreement.

## PRELIMINARY UNDERSTANDINGS

3. (a) The United States and the Navajo Nation will proceed in good faith to take all steps necessary to assure the entry of the partial final decree described in section 2.
- (b) The Navajo Nation may purchase, receive and use Animas-La Plata Project water or Navajo-Gallup Water Supply Project water in accordance with the relevant provisions of this contract prior to the entry of the partial final decree; except, that the obligation of the United States to deliver such water shall become null and void if the partial final

decree is not entered by the date specified in subsection 309(a)(3) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_). Neither party will have any obligation under this contract to purchase water from or deliver water to the other party for the Navajo Indian Irrigation Project until the entry of the partial final decree.

(c) The obligations of the parties under Contract No. 14-06-W-269 between the United States and the Navajo Nation for delivery of water from Navajo Reservoir for the principal purpose of furnishing irrigation water to the Navajo Indian Irrigation Project shall continue in force until the entry of the partial final decree referred to in section 2, after which Contract No. 14-06-W-269 shall be superceded by this contract.

#### WATER DELIVERY PROVISIONS

4. (a) The United States agrees to deliver, or make available for delivery, to the Navajo Nation water for diversion of up to 530,650 acre-feet of water per year, on average, during any period of ten consecutive years, and up to 606,850 acre-feet of water in any one year, from Navajo Reservoir under New Mexico State Engineer File No. 2849 and from inflow to the San Juan River below Navajo Dam under New Mexico State Engineer File No. 3215, in combination, subject to the provisions of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_), the Settlement Agreement, the partial final decree referred to in section 2, and this contract. Of the water to be made available under this subsection, the Nation may divert or receive:



(i) up to 508,000 acre-feet per year, on average, during any period of ten consecutive years, and up to 584,200 acre-feet in any one year, directly from Navajo Reservoir under State Engineer File No. 2849 at the intake to the Navajo Indian Irrigation Project main canal for delivery to the Navajo Indian Irrigation Project or at Navajo Dam, or from inflows below Navajo Dam under State Engineer File No. 3215 at Cutter Reservoir or at Gallegos Reservoir or suitable alternative for delivery to the Navajo Indian Irrigation Project; and

(ii) up to 22,650 acre-feet in any one year from either Navajo Reservoir under State Engineer File No. 2849 at the intake to the Navajo Indian Irrigation Project main canal, or from a Navajo-Gallup Water Supply Project diversion on the San Juan River under State Engineer File Nos. 2849 and 3215, or from inflows below Navajo Dam under State Engineer File No. 3215 at Cutter Reservoir, or all in combination, for delivery to communities, recipients or subcontractors allotted water by the Navajo Nation under its water rights for the Navajo-Gallup Water Supply Project uses in New Mexico.

(b) The United States agrees to deliver, or make available for delivery, to the Navajo Nation water for diversion of up to 4,680 acre-feet of water in any one year from the Animas-La Plata Project water supply under New Mexico State Engineer File No. 2883, subject to the provisions of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_), the Settlement Agreement, the partial final decree referred to in section 2, and this contract. The Nation may divert or receive this water from the Animas River at the points of diversion for supplying water to the Navajo Nation Municipal Pipeline for delivery to Navajo Nation communities, recipients or

subcontractors allotted water by the Navajo Nation under its water rights for the Animas-La Plata Project. When the direct flow of the Animas River is insufficient to provide for the diversion demand of the Nation for water under the Animas-La Plata Project, the Nation may request the Secretary, acting through the Bureau of Reclamation, to release water that the Nation may have in storage in Ridges Basin Reservoir as necessary to fulfill the diversion demand at the Pipeline up to 4,680 acre-feet in any one year. The diversion by the Bureau of Reclamation of water from the Animas River in Colorado into Ridges Basin Reservoir to store water on behalf of the Navajo Nation shall not constitute delivery to the Nation under this subsection.

(c) The Navajo Nation must notify the Contracting Officer of its scheduled locations, amounts and timings of anticipated diversions at least 30 days prior to any diversion of water from Navajo Reservoir, the San Juan River, or the Animas River under this contract; except, that uses of water to make the diversions and depletions described in subparagraphs 3(d), 3(e) and 3(f) of the partial final decree, referred to in section 2, 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 contract rights for delivery of water under the Navajo Indian Irrigation Project described in subsection 4(a)(i), shall not be required to have 30 days advance notice.

(d) The points of delivery of water made available for use pursuant to this section from Navajo Reservoir and the San Juan River, and from the Animas River, shall be as specified in subsections 4(a) and 4(b), respectively, unless changed consistent with the partial final decree referred to in section 2 and pursuant to agreement of the Contracting Officer and the Navajo Nation. Water made available at Navajo Dam for use to make the

diversions and depletions described in subparagraphs 3(d), 3(e) and 3(f) of the partial final decree, referred to in section 2, that are supplied under the Settlement Contract pursuant to the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement shall be accounted under the contract rights for delivery of water under the Navajo Indian Irrigation Project described in subsection 4(a)(i).

(e) To the extent that delivery of water is made through federal facilities, the Navajo Nation will reimburse for this service in accordance with the provisions of section 10 of this contract.

(f) Separate contracts for additional water, whether for temporary or permanent use, as available, may be negotiated between the Navajo Nation and the Bureau of Reclamation in the future, but they do not constitute any part of the consideration for this contract.

(g) The water delivery rights recognized by this contract shall be perpetual, and the Navajo Nation has the right to subcontract with third parties for the delivery and use of water made available under this contract as provided in section 11.

(h) The Navajo Nation under this contract shall have no holdover storage rights in Navajo Reservoir from year to year. Any water at Navajo Reservoir subject to delivery hereunder not called for by the end of each calendar year shall become integrated with the water supply for all purposes of the reservoir at that time.

(i) The Navajo Nation under this contract shall have \_\_\_\_\_ acre-feet of storage capacity space allocated for its exclusive use in Ridges Basin Reservoir. The United States shall fill and refill the Nation's storage capacity space as often as direct flow is available from the Animas River to fill said space under the Animas-La Plata Project

diversion right issued in the State of Colorado and the Animas-La Plata Project Compact (82 Stat. 898). The Nation shall have holdover storage rights in Ridges Basin Reservoir from year to year to the extent that water stored in the Nation's storage capacity space may be held for exclusive delivery to the Nation in future years as necessary to meet the delivery demands of the Nation in accordance with subsections 4(b) and 8(b). Nothing in this contract shall prohibit the Nation from acquiring additional storage capacity space in Ridges Basin Reservoir if additional space becomes available.

(j) Nothing in this section is intended to impose on the United States any obligation to maintain Navajo Dam and Reservoir, the Navajo Indian Irrigation Project, the Navajo-Gallup Water Supply Project, Ridges Basin Dam and Reservoir and related facilities, or the Navajo Nation Municipal Pipeline beyond their useful lives or to take extraordinary measures to keep these facilities operating.

#### TRANSPORTATION LOSSES

5. No conveyance losses beyond the points of delivery shall be borne by the United States. In the event that points of delivery are changed in accordance with subsection 4(d), transportation of water from the original points of delivery to other points of delivery shall be the sole responsibility of the Navajo Nation, so that no conveyance losses, including channel losses, shall be borne by the United States.

## CONSTRUCTION AND OPERATION OF FACILITIES

6. (a) Nothing herein shall be construed to obligate the United States to construct, install, operate or maintain dams, pumps, pipelines, storage tanks, distribution lines or other facilities required to take, measure, convey or distribute water for use beyond agreed upon points of delivery; except, that the United States shall have such obligations as conferred upon the Secretary by the authorities to construct, maintain and operate Navajo Dam and Reservoir, the Navajo Indian Irrigation Project, the Animas-La Plata Project and the Navajo-Gallup Water Supply Project in accordance with the Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_). Nor shall anything herein be construed to affect or alter obligations that the United States may have under treaty, statute or otherwise to provide or operate other water project facilities and water distribution systems on Navajo Lands.
- (b) Coordination of construction, operation and maintenance of the Animas-La Plata Project shall be accomplished through the establishment of the following two committees, both of which will consist of representatives of the Bureau of Reclamation and Project contractors, including the Navajo Nation:
- (i) The Project Construction Coordination Committee shall provide coordination and consultation on the construction activities among all Project contractors, seeking common understanding and consensus on decisions

associated with final plans, construction schedules and costs for Project facilities, and shall dissolve upon completion of Project construction.

(ii) The Project Operations Committee shall develop among the Project contractors a common understanding of the appropriate level of OM&R activities to be performed on the Project facilities to assure the long-term operational integrity of the Project and public safety, and a common understanding of the Project operations and related water rights administration and hydrology.

Failure of the committees to reach common understandings or to otherwise coordinate with the Bureau of Reclamation on construction, operation and maintenance of the Animas-La Plata Project shall in no way nullify or reduce the obligation of the United States to construct, operate and maintain Project facilities, including the Navajo Nation Municipal Pipeline, or to deliver water to the Navajo Nation as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_), the Settlement Agreement, and this contract.

#### RESPONSIBILITY FOR DISTRIBUTION

7. Upon delivery, the Navajo Nation shall be responsible for the control, carriage, handling, distribution, measurement and use of all water made available under this contract, and shall hold the United States, its officers, agents, employees, and successors or assigns, harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out

of or in any manner connected with the control, carriage, handling, distribution or use of such water beyond the point of delivery; except, that:

(a) the United States shall have such responsibilities for the conveyance and distribution of water made available under this contract as are conferred upon the Secretary by the authorities to operate Navajo Dam and Reservoir, the Navajo Indian Irrigation Project, the Animas-La Plata Project and the Navajo-Gallup Water Supply Project in accordance with the Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_);

(b) the City of Gallup may have certain binding responsibilities for the conveyance and distribution of water made available under this contract for the Navajo-Gallup Water Supply Project pursuant to the provisions of subsections 103(f) and 104(k) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_); and

(c) the City of Farmington may have certain responsibilities for the diversion, treatment and conveyance of water made available under this contract for the Animas-La Plata Project pursuant to the provisions of section 205 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_).

This section is not intended to waive any responsibility the United States may have under treaty, statute or otherwise, to provide or operate water distribution systems on Navajo Lands.

## WATER SUPPLY

8. (a) Notwithstanding any other provisions of this contract, in times of shortage in the Navajo Reservoir water supply to meet demands under contracts for delivery of water from said supply, taking into account water available from inflows below Navajo Dam to help meet the demands, the Navajo Nation will share in the available water supply in the manner set forth 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. \_\_\_).
- (b) With respect to water made available from the Animas-La Plata Project under the terms of this contract, during periods when the Contracting Officer finds that the direct flow of the Animas River physically available is insufficient to supply the water diversion demands under contracts for delivery of Project water and demands to fill or refill storage in Ridges Basin Reservoir, the Navajo Nation shall share in the available direct flow consistent with Article 1 of the Animas-La Plata Project Compact (82 Stat. 898). Pursuant to subsection 4(b) of this contract, the Nation may request and require of the United States the release of any and all water that the Nation may have stored in Ridges Basin Reservoir for delivery to its point of diversion of Animas-La Plata Project water in the State of New Mexico as necessary to meet the delivery demands of the Nation under the Project up to 4,680 acre-feet in any one year. Water stored in Ridges Basin Reservoir by or on behalf of the Navajo Nation shall be subject to loss by its proportionate share of reservoir evaporation and, upon release, channel conveyance loss, but shall not be subject to sharing with other Animas-La Plata Project water contractors.



Nor shall the evaporation loss on the Nation's stored water or the conveyance loss on Ridges Basin Reservoir releases of the Nation's stored water be charged against the diversion amount specified in subsection 4(b).

(c) On account of drought or other causes outside the control of the United States, there may occur at times during any year a shortage in the quantity of water available for use by the Nation pursuant to this contract. In no event shall any liability accrue against the United States, or any of its officers, agents, or employees, for any damage, direct or indirect, arising out of any such shortage, and payments due the United States provided for herein shall not be reduced because of such shortage.

#### UNCONTROLLABLE FORCES

9. Neither party shall be considered to be in default in respect to any obligation hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces. The term uncontrollable forces shall mean, for the purposes of this contract, any cause beyond the control of the party affected, including but not limited to, drought, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove expeditiously such inability.

## COST PROVISIONS

10. (a) Charges for water made available pursuant to subsection 4(a) will be as follows:
- (i) Construction costs of Navajo Dam and Reservoir that are assignable to water delivered for irrigation on the Navajo Indian Irrigation Project or other Navajo Lands shall be allocated and payment deferred under the provisions of the Leavitt Act (47 Stat. 564), as authorized in subsection 4(d) of the Colorado River Storage Project Act (70 Stat. 105). Construction costs of Navajo Dam and Reservoir shall be charged to the Nation at the annual amortization rate of \$2.60 per acre-foot ending at the year 2012 for Navajo Reservoir water delivered for non-irrigation purposes.
  - (ii) The Navajo Nation shall pay the United States, or its designee if some organization other than the United States is operating Navajo Dam and Reservoir, its proportionate share of the OM&R costs for Navajo Dam and Reservoir assignable to the amount of water made available to the Nation through subsection 4(a) of this contract; except, that the OM&R costs assignable to water delivered for irrigation on the Navajo Indian Irrigation Project or other Navajo Lands shall be allocated and waived by the Secretary.
  - (iii) The Contracting Officer or a designee will bill the Nation for construction and OM&R costs for Navajo Dam and Reservoir on or before September 1 of the year proceeding the year of use. The Navajo Nation shall pay all accrued costs within 30 days after receipt of the bill.

(b) The Navajo Nation's cost obligations for the Navajo Indian Irrigation Project, including for construction and refurbishing of project facilities and OM&R, shall be allocated and waived by the Secretary; except, that the Nation shall pay the United States, or its designee if some organization other than the United States is operating the Project facilities, the OM&R costs assignable to the amount of water, if any, delivered through Project facilities under subcontracts entered into pursuant to section 11 of this contract; and except further, that the Nation shall be responsible for providing OM&R on Project facilities and for funding its proportionate OM&R costs of Project facilities that are assignable to the Navajo Nation, excluding costs assignable to the Jicarilla Apache Nation for conveyance of its water under the Navajo-Gallup Water Supply Project, if ownership of the facilities is transferred to the Navajo Nation.

(c) The Navajo Nation's cost obligations for the Animas-La Plata Project will be as follows:

(i) The Navajo Nation's construction cost obligation for Animas-La Plata Project facilities, including Ridges Basin Dam and Reservoir, the Durango Pumping Plant, the Ridges Basin Inlet Conduit, the Navajo Nation Municipal Pipeline and appurtenant facilities, shall be allocated and waived by the Secretary.

(ii) The Navajo Nation shall pay the United States, or its designee if some organization other than the United States is operating the Animas-La Plata Project facilities, its proportionate share of the OM&R costs assignable to the amount of water made available from the Project to the Nation through this contract; said share to include the OM&R costs of the Navajo Nation Municipal Pipeline, an allocation of the fixed OM&R costs of Project facilities other than the Pipeline

that is based upon the ratio that the Nation's amount of storage capacity space bears to the total storage capacity of Ridges Basin Reservoir, and an allocation of the variable OM&R costs of Project facilities other than the Pipeline that is based upon the ratio that the amount of water pumped into storage in the Nation's storage capacity space bears to the total amount of water pumped into Ridges Basin Reservoir storage.

(iii) OM&R costs for the Animas-La Plata Project shall be paid on the basis of annual estimates made by the Secretary. A billing from the Secretary will be sent to the Navajo Nation on or before May 1 for the next year's annual reimbursable OM&R costs assessed to the Nation. The Nation shall advance its share of the OM&R costs for each calendar year in quarterly payments which will be due on December 31 of the same calendar year as the billing, and on March 10, May 10, and August 30 of the year of applicability. The first such billing will be issued immediately following execution of this contract. In the event this first notice shall be for costs of service of less than a full year, such costs shall be prorated for the period covered. Each billing shall show an itemization of the estimated reimbursable OM&R costs of the Animas-La Plata Project.

(iv) The Navajo Nation shall be responsible for providing OM&R on the Navajo Nation Municipal Pipeline and for funding OM&R costs of the Pipeline if ownership of the Pipeline is transferred to the Nation.

(d) The Navajo Nation's cost obligations for the Navajo-Gallup Water Supply Project will be as follows:

(i) The Navajo Nation's construction cost obligation for the Navajo-Gallup Water Supply Project shall be allocated and waived by the Secretary.

(ii) The Navajo Nation shall pay the United States, or its designee if some organization other than the United States is operating the Navajo-Gallup Water Supply Project facilities, its proportionate share of the OM&R costs assignable to the amount of water made available from the Project to the Nation through this contract; said share to include an allocation of the fixed OM&R costs of Project facilities that is based upon the ratio of the number of acre-feet contracted for delivery to the Nation and planned for delivery through each Project reach as described in the March 2001 technical memorandum for the Project prepared by the Navajo Nation Department of Water Resources and the April 2002 appraisal report for the Project prepared by the United States Bureau of Reclamation, as conditioned and modified by the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_), to the total number of acre-feet contracted for delivery to all contractors through each Project reach, and an allocation of the variable OM&R costs of Project facilities that is based upon the ratio of the number of acre-feet delivered to the Nation or its subcontractors through each Project reach to the total number of acre-feet of water delivered to all contractors through each Project reach.

(iii) OM&R costs for the Navajo-Gallup Water Supply Project shall be paid on the basis of annual estimates made by the Secretary. A billing from the Secretary will be sent to the Nation on or before May 1 for the next year's annual reimbursable OM&R costs assessed to the Nation. The Nation shall advance its

share of the OM&R costs for each calendar year in quarterly payments which will be due on December 31 of the same calendar year as the billing, and on March 10, May 10, and August 30 of the year of applicability. The first such billing will be issued immediately following execution of this contract. In the event this first notice shall be for costs of service of less than a full year, such costs shall be prorated for the period covered. Each billing shall show an itemization of the estimated reimbursable OM&R costs of the Navajo-Gallup Water Supply Project.

(iv) The Navajo Nation shall be responsible for providing OM&R on Project facilities and for funding its proportionate OM&R costs of Project facilities that are assignable to the Navajo Nation, excluding costs assignable to the Jicarilla Apache Nation and the City of Gallup for conveyance of their water under the Navajo-Gallup Water Supply Project, if ownership of the facilities is transferred to the Navajo Nation.

(e) In the event either the OM&R cost estimate falls short of the actual costs in any period, or whenever it is anticipated by the Contracting Officer that a deficit will occur during the year, supplemental notices may be issued by the Contracting Officer requesting additional funds. OM&R funds not spent during one calendar year will be carried over for use during the next calendar year with funds required for that year being reduced accordingly. An itemized statement of actual costs incurred during each year shall be furnished to the Navajo Nation.

(f) The annual amortization rates and annual OM&R assessments specified in subsections 10(a) through 10(d) above shall be charged to the Navajo Nation for all water subcontracted to third parties.

(g) Billings from the Contracting Officer and payments by the Navajo Nation of the construction and OM&R costs outlined under this section shall be made on the basis of subsections 10(a) through 10(d) as may be modified by subsection 10(h). For project operation purposes, the Nation will provide an annual notice to the Contracting Officer limiting the amount of water estimated to be used by the Nation, the estimated period and point of diversion for each intended purpose and a listing of all executed subcontracts with third parties, including those subcontracts anticipated to be executed during the year of applicability. The Nation shall send this notice on or before February 1 of the year preceding the year of use described in the notice. Upon receipt of such notice, the Contracting Officer will bill the Nation for payment of costs as prescribed herein. Billing adjustments will be made to correct for differences in the estimated and actual use of water during the preceding year.

(h) All or part of the annual construction and OM&R costs may be waived on a project-specific basis if the Navajo Nation demonstrates to the satisfaction of the Secretary that the Nation lacks the ability to pay the annual construction or OM&R costs in full. Such demonstration shall be in written form and shall accompany the February 1 notice provided for in subsection 10(g). With respect to the Navajo Indian Irrigation Project, the Animas-La Plata Project, and the Navajo-Gallup Water Supply Project, those OM&R costs waived on an annual basis will be paid by the Secretary, and those construction costs waived annually will be treated as non-reimbursable. Failure of the Secretary to waive costs due to a lack of availability of federal funding shall not alter the obligations of the Nation or the United States under this contract. OM&R costs for the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project shall be the

responsibility of the Navajo Nation if ownership of the projects is transferred to the Nation.

## SUBCONTRACTING

11. (a) The Navajo Nation may subcontract with third parties, subject to the provisions of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_), the Settlement Agreement, the partial final decree referred to in section 2, and approval of the Secretary in accordance with this section, to supply water for beneficial use on or off Navajo Lands in the State of New Mexico, subject to and consistent with the same requirements and conditions of State law, and any applicable Federal law, interstate compact, and international treaty as apply to the exercise of water rights held by non-federal, non-Indian entities. Nothing in this contract shall be construed to establish, address, or prejudice whether, or to prevent any party from litigating whether, or to the extent to which, any of the aforementioned laws do or do not permit, govern, or apply to the use of the Nation's water outside the State.
- (b) Subcontracts made by the Navajo Nation with third parties shall be subject to the provisions of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_), the Settlement Agreement, the partial final decree referred to in section 2, and this contract, and must include terms of use, purchase, measurement, operations and default. A copy of each proposed subcontract shall be filed with the Contracting Officer and the New Mexico Interstate Stream Commission at least 30 days prior to being executed by the Nation; provided, that proposed emergency subcontracts



may be filed with less than 30 days notice. Two copies of each executed subcontract shall be filed with the Contracting Officer and one copy with the New Mexico Interstate Stream Commission.

(c) Prior to approving any subcontract, the Secretary shall comply with subsection 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C).

(d) The Secretary shall approve any subcontract submitted by the Navajo Nation if the Secretary determines that:

(i) the diversion and use of water under the subcontract would comply with the Settlement Agreement, the partial final decree referred to in section 2, and other applicable law, including any applicable permitting requirements and permit conditions of the New Mexico State Engineer;

(ii) the sum of the term of the subcontract plus all renewals is no more than 99 years;

(iii) the use of water under the subcontract is not inconsistent with the provisions of the Endangered Species Act or other provisions of federal law designed to protect the environment;

(iv) the subcontract is sufficiently specific as to the amount of water and points of diversion to enable the Contracting Officer to account for the water as it is diverted; or, in the alternative, that the subcontract reserves the Contracting Officer's right to review and approve future diversions sought under the subcontract, such review and approval to be consistent with this contract;

(v) the delivery obligations under the subcontract are not inconsistent with other obligations of the Secretary to deliver water under preexisting contracts; and

- (vi) the subcontract is in the best interests of the Nation.
- (e) The Navajo Nation agrees to include the following equal opportunity language in any subcontract for use of water off Navajo Lands:
  - (i) The subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - (ii) The subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
  - (iii) The Nation will take such action with respect to any subcontractor as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, if the Nation becomes involved in, or is threatened with, litigation with a subcontractor as a result of such direction, the Nation may request the United States to enter into such litigation to protect the interest of the United States.

Nothing in this section shall be read as prohibiting the Nation from requiring that subcontractors give preferential employment to members of the Navajo Nation.

## FISH AND WILDLIFE COORDINATION

12. (a) The Navajo Nation, the Fish and Wildlife Service, the Bureau of Reclamation and the Bureau of Indian Affairs agree to cooperate and coordinate in the planning and construction of projects, diversions and changes in water management associated with the water made available to the Nation under the terms of this agreement as required by federal law, including, but not limited to, the Bald and Golden Eagle Protection Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, and the National Environmental Policy Act.
- (b) The Navajo Nation and the Department of the Interior agree to work with the State of New Mexico and affected water users to assure that Navajo Dam and Reservoir, the Navajo Indian Irrigation Project, the Animas-La Plata Project and the Navajo-Gallup Water Supply Project are operated in compliance with applicable laws while meeting water delivery obligations, so as to provide, to the maximum extent possible, quantities and timing of deliveries to provide for downstream flows necessary to maintain and protect existing fisheries and other resources, with particular emphasis on endangered species.

## DOWNSTREAM TROUT FISHERY RESOURCE

13. Operation of Navajo Dam and Reservoir has created a substantial trout fishery resource in the tailwater reach of the San Juan River immediately below Navajo Dam. The Contracting

Officer and the Navajo Nation, subject to such water rights as have been heretofore and may be hereinafter granted or adjudicated upon the San Juan River or the tributaries thereof, agree to schedule the timing and quantities of water deliveries under this contract in a manner that would be compatible with maintaining the downstream trout fishery only insofar as may be practicable without causing impairment of the Nation's ability to exercise its rights to the diversion and use of water under the Settlement Agreement.

#### AIR AND WATER POLLUTION CONTROL

14. The Navajo Nation agrees that in taking delivery of water under this contract, it will comply with federal air and water pollution control laws, now or hereafter in force, that may be applicable or relevant to the use being made of the water. Also, the Nation agrees that any subcontract it may enter into for the furnishing of water pursuant to this contract will contain similar air and water pollution control provisions including state and local requirements, where applicable. The Nation further agrees that any such subcontract it may enter into will require that its designs and plans for air and water pollution control facilities or equipment which are necessary parts of any design, facility, plant or process which utilizes water delivered pursuant to this contract will be submitted to the Secretary for his review and written comments prior to contracting for said facilities, their installation or major modification thereof.

## BOOKS, ACCOUNTS AND RECORDS

15. The Navajo Nation shall furnish to the Contracting Officer, as requested, information pertaining to land use and crop census, water supply, water use, changes in project works, and to other matters relating to the Navajo Indian Irrigation Project, the Animas-La Plata Project, the Navajo-Gallup Water Supply Project, and other projects that may utilize the Nation's water rights supplied under this contract for miscellaneous municipal, industrial, commercial and domestic uses. The Secretary and the Nation shall jointly establish and maintain accounts and other books and records such as are necessary to enable the Secretary to operate the subject facilities. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract. Records of diversions of water for use by the Nation pursuant to this contract shall be supplied to the New Mexico State Engineer.

## COMPLIANCE WITH RECLAMATION LAWS

16. The parties agree that the delivery of irrigation water or the use of federal facilities pursuant to this contract is governed by applicable Reclamation law, except that this delivery or use is not subject to the Reclamation Reform Act of 1982, as amended.

## RULES, REGULATIONS, AND DETERMINATIONS

17. (a) The United States or its assigns shall take all prudent and ordinary measures to operate and maintain all existing facilities necessary to this contract, but nothing in this section shall be construed to require the United States to operate such facilities beyond the useful life of the existing facilities. These facilities will be operated for multiple benefits of the project in accordance with project authorization and contracts, including this contract. The Contracting Officer, in consultation with the Navajo Nation, shall have the right to make determinations necessary to administer this contract that are consistent with the express and implicit conditions of this contract, the laws of the United States and rules and regulations promulgated by the Secretary of the Interior.
- (b) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicted upon arbitrary, capricious, or unreasonable opinions or determinations.

### GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

18. (a) The obligation of the Navajo Nation to pay the United States as provided in this contract is a general obligation of the Nation notwithstanding the manner in which the obligation may be distributed among the Nation's water users and notwithstanding the default of individual water users in their obligation to the Nation.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. The Navajo Nation shall not have the right to the use of water supplied from any project facilities during any period in which the Nation may be in arrears in the payment of any operation, maintenance, and replacement charges due the United States or in arrears for more than 12 months in the payment of any construction and interest installments due the United States.

(c) The Navajo Nation shall pay penalty charges on delinquent installments or payments. When payment is not received by the due date, the Nation shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Nation shall pay an administrative charge to cover additional costs of billings and processing the delinquent payment. When a payment is delinquent 90 days or more, the Nation shall pay an additional penalty charge of 6.0 percent per year for each day the payment is delinquent beyond the due date. Further, the Nation shall pay any fees incurred for debt collection services associated with the delinquent payment.

(d) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939, 53 Stat. 1191. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(e) When a partial payment for a delinquent account is received, the amount received shall be applied first to the penalty, second to the administrative charges, third to the accrued interest and finally to the overdue payment.

## WATER QUALITY

19. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the United States. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water; except, that the Secretary shall construct, operate and maintain treatment facilities for the Navajo-Gallup Water Supply Project as authorized by subsection 103(c)(5) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_).

## WATER CONSERVATION

20. Prior to the delivery of water to the Navajo Nation provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Navajo Nation shall develop an effective water conservation program which shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent three-year intervals, the Nation shall submit a report on the results of the program to the Contracting Officer for review. Based on the conclusions of the review, the Contracting Officer and the Nation shall consult and agree to continue or to revise the existing water conservation program. This paragraph shall be included in all subcontracts, and such measures shall be required for all water purchasers.



## CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

21. The expenditure of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriations or allotments of funds. Absence of appropriation or allotment of funds shall not relieve the Navajo Nation from any obligations under this contract. No liability shall accrue against the United States in case funds are not appropriated or allotted.

## NOTICES

22. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given on behalf of the Navajo Nation when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84111, and on behalf of the United States when mailed, postage prepaid, or delivered to the President, Navajo Nation, Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

## OFFICIALS NOT TO BENEFIT

23. No Member of or Delegate to Congress or Resident Commissioner or official of the Navajo Nation shall benefit from this contract or any subcontract other than as a water user or landowner in the same manner as other water users or landowners.

## SAVINGS CLAUSES

24. (a) Prior to the entry of the partial final decree described in section 2, nothing in this contract shall be construed as an admission, or be used by any party as evidence, that the Navajo Nation is or is not legally entitled to reserved water rights in the San Juan River stream system.

(b) Nothing contained in this contract shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of: the Boulder Canyon Project Act (45 Stat. 1057); the Boulder Canyon Project Adjustment Act (54 Stat. 774); the Colorado River Compact, proclaimed on June 25, 1929 (46 Stat. 3000); the Upper Colorado River Basin Compact (63 Stat. 31); the 1944 Treaty with the United Mexican States, Treaty Series 994 (59 Stat. 1219); the Act of June 13, 1962 (76 Stat. 96); the Colorado River Basin Project Act (82 Stat. 885); the Colorado River Storage Project Act (70 Stat. 105); the Animas-La Plata Project Compact (82 Stat. 898); the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2237); the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258); or the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_).

(c) The uses of water in the State of New Mexico through works constructed under the authority of the Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258) and the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_) shall be subject to and controlled by the Colorado River Compact, the Upper Colorado River Basin Compact, the Animas-La Plata Project Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act, the Colorado River Basin Project Act, the Mexican Water Treaty (Treaty Series 994), the Colorado Ute Settlement Act Amendments of 2000 and the San Juan River Basin in New Mexico Water Projects and Settlement Act, and shall be included within and shall in no way increase the total quantity of water to the use of which the State of New Mexico is entitled under said compacts, statutes, and treaty.

(d) Nothing in this contract shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Indian tribe or community other than those of the Navajo Nation in, to and from the San Juan River Basin in New Mexico; except, that the right of the Navajo Nation to use water under water rights it may have in other river basins in New Mexico shall be forborne only so long as and to the extent that the Nation supplies the uses for which said water rights may exist by diversions of water from the San Juan River Basin under this contract consistent with subparagraph 9.13 of the Settlement Agreement.

## TERMINATION

25. This contract may not be cancelled, terminated, or rescinded by either party, except by act of Congress; provided, that this contract, and the rights and obligations on the part of the Navajo Nation and the United States under this contract, will be terminated without further act of Congress if:

- (a) the Settlement Agreement is:
  - (i) terminated pursuant to the conditions described by subsection 309(b) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_);
  - (ii) not approved by the Court in the San Juan River adjudication in conjunction with the partial final decree referred to in section 2; or
  - (iii) terminated by the mutual consent of the State of New Mexico, the Navajo Nation and the United States, and with approval of the Court in the San Juan River adjudication; or
- (b) the partial final decree referred to in section 2 is revoked pursuant to provisions described by paragraph 22 of Appendix 1 to the Settlement Agreement.

In witness whereof, the parties hereto have duly executed this contract the day and year first above written.

THE UNITED STATES OF AMERICA

Department of the Interior

By: \_\_\_\_\_

Secretary of the Interior

THE NAVAJO NATION

By: \_\_\_\_\_

President

THE STATE OF NEW MEXICO

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Governor

\_\_\_\_\_  
Attorney General Date: \_\_\_\_\_

THE NAVAJO NATION

By:  \_\_\_\_\_ Date: **APR 13 2005**

\_\_\_\_\_  
Attorney General Date: \_\_\_\_\_

THE UNITED STATES OF AMERICA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Secretary of the Interior