

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 APR 15 PM 1:04

STATE OF NEW MEXICO, *ex rel.*,
STATE ENGINEER,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA et al.,

Defendants.

D-1116-CV-75-184
Honorable James J. Wechsler
Presiding Judge

San Juan River Adjudication

Cause No. AB-07-1
Claims of the Navajo Nation

DESCRIPTIVE SUMMARY: Defendants B Square Ranch, LLC et al.'s Motion that Settling Party Navajo Nation Waived and Relinquished Its Winter Rights when Navajo Indian Irrigation Project was Built

NAME OF PARTY: Defendants B Square Ranch, LLC et al.

NUMBER OF PAGES: 10 (Motion) plus 15 (Exhibits)

DATE OF FILING: April 15, 2013 by electronic service and April 15, 2013 with Court Clerk.

DEFENDANTS B SQUARE RANCH, LLC ET AL.'s
MOTION THAT SETTLING PARTY NAVAJO NATION
WAIVED AND RELINQUISHED ITS WINTER RIGHTS WHEN
NAVAJO INDIAN IRRIGATION PROJECT WAS BUILT

Pursuant to the Third Amended Order Granting Motions to Extend Deadlines and Setting Schedule Governing Discovery and Remaining Proceedings filed March 15, 2013 ("Third Amended Order") and Rule 1-056 NMRA 2013, "Summary Judgment", Defendants B Square Ranch, LLC et al. move for entry of an order and judgment in the above-styled action that the Settling Party Navajo Nation (formerly known as the Navajo Tribe) waived and relinquished its rights under the "Winter Rights Doctrine" (as

hereinafter defined) as consideration for the building of the Navajo Indian Irrigation Project ("NIIP").

STATEMENT OF POINTS AND AUTHORITIES

The Third Amended Order and Rule 1-056 NMRA 2013, "Summary Judgment", provide a method whereby the Court can determine whether a genuine claim for relief exists and whether there is a genuine issue of fact warranting the submission of the case to the fact finder. Meeker v. Walker, 80 N.M. 280, 454 P.2d 762 (1969). The Third Amended Order and Rule 1-056 NMRA 2013 allow a court to bring litigation to an end at an early stage when it clearly appears that one of the parties is entitled to a judgment as made out by the pleadings and clear and undisputed evidence. Buffington v. Continental Casualty Co., 69 N.M. 365, 367 P.2d 539 (1961). The purpose of the Third Amended Order and Rule 1-056 NMRA 2013 is to expedite litigation to determine whether a party possesses competent evidence to support that party's pleadings so as to raise genuine issues of material fact. One of the principal purposes of the Third Amended Order and Rule 1-056 NMRA 2012 proceeding is to isolate and dispose of factually unsupported claims or defenses. Goradia v. Hahn Co., 111 N.M. 779, 810 P.2d 798 (1991).

Plaintiffs are filing this Motion for the Court to determine that the Settlement Agreement between the State of New Mexico ex rel. State Engineer, the United States of America and the Navajo Nation was not the product of good faith, arms-length negotiations between these Settling Parties. Further, and more specifically, (i) the provisions of the Settlement Agreement do not describe Navajo Nation water rights that are less than those that could be secured on behalf of the Navajo Nation at trial, and (ii) the Settlement Agreement is not consistent with public policy and applicable law.

The written memorandum providing short and concise statements of the reasons, the authorities relied upon, and the undisputed facts in support of this Motion are included in this Motion rather than in a separate memorandum, pleading or document.

WINTERS DOCTRINE

Henry Winters et al. vs. United States, 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340 (1908) concerned: (i) the claims to water in the Milk River located in the State of Montana by persons (collectively "Winters") who had constructed or maintained dams or reservoirs, and (ii) the competing claims to water in the Milk River by the United States on behalf of Indians located on the Fort Belknap Reservation ("Indians").

Winters claimed that Indians did not reserve any water in the Milk River because Indians had transferred and conveyed all of their lands to the United States except for the lands in the Fort Belknap Indian Reservation, and that the lands that were not part of the Reservation became public domain and these lands were thrown open to settlement. Winters, and their predecessors, acquired title to these lands under the homestead and desert land laws of the United States through patents, and these persons expended in excess of \$100,000 (in 1908 dollars) in constructing dams, ditches and reservoirs; improving lands; building fences, houses and other structures; establishing schools; constructing highways and other improvements usually had and enjoyed in a civilized community. Winters claimed that if the Court deprived them of waters from the Milk River, their lands would become useless and their homes could not be maintained.

Indians claimed they reserved water in the Milk River; they had previously diverted 10,000 miner's inches of water for irrigation; they needed all of the water in the

Milk River for farming, cultivation and the pursuit of agriculture because their lands were dry, and arid in character; and they required large quantities of water to irrigate these lands.

The United States Supreme Court found that the May, 1888 agreement resulting in the creation of the Fort Belknap Indian Reservation left Indians with lands that were arid and would be practically valueless without irrigation. The Supreme Court found that if Indians did not expressly reserve the water, then they impliedly reserved the water for their reservation. The Court thus affirmed the lower appellate court and found that Winters was enjoined from interfering with the use by the Fort Belknap Indian Reservation of 5,000 miner's inches of the water of the Milk River (1/2 of the water the Indians claimed). Thus, the United States Supreme Court granted 5,000 miner's inches of water from the Milk River to benefit Indians, but the Court also protected Winters by granting the remaining water from the Milks River to keep Winters from losing all of their substantial investments in the construction of dams, ditches, reservoirs, fences, houses, schools and highways.

The decision rendered by the United States Supreme Court that, if the treaty or agreement establishing an Indian reservation did not expressly reserve water to Indians when the lands in the reservation were practically valueless, then there was an implied reservation of water to the Indians for the purposes of irrigation. This decision is now known as the "Winters Doctrine".

The United States Supreme Court in the case of State of Arizona vs. State of California et al., 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542 (1963), reaffirmed the

Winters Doctrine stating that the United States, when it created Indian reservations intended to deal fairly with the Indians by reserving for them the waters without which their lands would be worthless, and the water rights so reserved were effective as of the date the Indian reservations were created.

The Supreme Court in the Arizona case also found that the water intended to be reserved by the Indians was to satisfy the present needs of the Indian Reservation as well as the future needs of the Indian Reservation, and the only feasible and fair way by which the Reservation's reserved water can be measured is irrigable acreage.

BACKGROUND OF NIIP

The construction of the Navajo Dam in Northwest New Mexico was completed in the early 1960's, and it was one of the participating projects in the Colorado River storage project. NIIP was originally discussed in the federal statute known as the Colorado River Storage Project Act of 1956-Public Law 84-485. NIIP was authorized in 1962 in the Navajo Indian Irrigation Project-Public Law 87-483, and approved by the President June 13, 1962 ("NIIP Act"). Under the NIIP Act, the Navajo Dam was to provide water to irrigate 110,630 acres of Navajo Indian lands located in Northwest New Mexico with a diversion of 508,000 acre-feet annually to irrigate these acres.

There was significant testimony at committee hearings before the United States Congress in the 1950's and prior to the approval of the NIIP Act in 1962 concerning the appropriation of millions of dollars by the United States to build the Navajo Dam and NIIP. This testimony included the economic feasibility of NIIP, the soil characteristics of the land to be irrigated, the acquisition/exchange of lands to be irrigated, the water rights of the Navajo Nation, the agricultural training and education of the members of

the Navajo Nation, the non-reimbursement by the Navajo Nation for the costs of constructing Navajo Dam and NIIP, and the charging of the water for NIIP against the allocation of water to New Mexico under the Upper Colorado River Basin Compact, Act of April 6, 1949.

See records of (a) the Hearings of the Navajo Irrigation-San Juan Chama Diversion before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States Senate, on July 9 and 10, 1958, (b) the Hearing of the San Juan-Chama Reclamation Project and Navajo Indian Project before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States House of Representatives, on May 10, 1960, and (c) the Hearings of the San Juan-Chama Reclamation Project and Navajo Indian Project before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States House of Representatives, on April 24, 25, 26 and June 1, 1961.

Copies of the complete hearings before the above-described Subcommittees are in the possession of the Settling Parties and are not attached to this Motion.

When the building of Navajo Dam and NIIP were being discussed, the Navajo Nation was aware of and asserted its implied water rights that it had under the Winters Doctrine. Representatives of the Navajo Nation had conferences and meetings with different agencies of the United States as well as the State Engineer's Office of New Mexico. During these discussions, the Navajo Nation realized that in order for NIIP to be constructed, the Navajo Nation would need to waive and relinquish its water rights under the Winters Doctrine for water in the San Juan River.

UNDISPUTED FACTS

The following are statements or representations by the Navajo Nation, through its authorized representatives, in which the Navajo Nation waived and relinquished its water rights under the Winters Doctrine in exchange for NIIP to be constructed:

1. "... All water uses from Navajo Dam would have equal priority. The Navajo Tribe has consented to this, and relinquished its rights under the Winters doctrine for the water necessary to irrigate the Navajo Indian irrigation project, in order to provide a practicable plan for comprehensive development of the resources and industrial potential of the San Juan Basin of New Mexico. We have taken this important and far-reaching step because such development is necessary for our very survival."

...

" Mr. Aspinall. Do you know of any further demands by the Navajo Tribe on the waters of the Colorado within the State of New Mexico?

Mr. Jones: Other than for municipal use as I read in the report.

Mr. Aspinall: In other words, at the present time you think the tribe will be satisfied as far as reclamation and irrigation development with this particular area.

Mr. Jones: Yes.

Mr. Aspinall: Has the Navajo Tribe itself ever claimed any waters in the Animas or the La Plata Rivers other than those waters presently being used along the San Juan River Basin by Indians?

Mr. Jones: I do not recall. I do not believe so.

...

"Mr. Morris: I would like to commend Mr. Jones for his fine statement, for the cooperation that he and the Navajo people have given the State of New Mexico in bringing this project before Congress.

... I would like to have you state for the record-have you and the Navajo people been informed, met, and discussed this project from its inception with the officials of the State of New Mexico.

Mr. Jones: Yes.

Mr. Morris: You fully understand the project and you are fully aware of what it does, and the Navajo Indian Tribe is satisfied with the terms of the legislation as presently proposed?

Mr. Jones: Yes, sir.

Statements of Paul Jones, Chairman, Navajo Tribal Council, New Mexico
(accompanied by Charles Alexander, the Tribe's local legal representative) before the
Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular

Affairs of the House of Representatives, May 20, 1960 concerning the San Juan-Chama Reclamation Project and Navajo Indian Irrigation Project. The relevant portions of the Hearing before the above-described Subcommittee containing the quoted statements are attached hereto as Exhibit "A" and incorporated herein by reference.

2. "... All water uses from Navajo Dam would have equal priority. The Navajo Tribe has consented to this, and relinquished its rights under the Winters doctrine for the water necessary to irrigate the Navajo Indian irrigation project, in order to provide a practicable plan for comprehensive development of the resources and industrial potential of the San Juan Basin of New Mexico. We have taken this important and far-reaching step because such development is necessary for our very survival."

Statements of J. Maurice McCabe, Executive Secretary, Navajo Tribe before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs of the House of Representatives, April 24-26 and June 1, 1961 concerning the San Juan-Chama Reclamation Project and Navajo Indian Irrigation Project. The relevant portions of the Hearing before the above-described Subcommittee containing the quoted statements are attached hereto as Exhibit "B" and incorporated herein by reference.

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

Section 10 (g) of Exhibit A, "Contract between the United States of America and the Navajo Tribe of Indians", attached to the Resolution of the Navajo Tribal Council, CMA-14-64, dated March 2, 1964 authorizing the Chairman of the Navajo Tribal Council to sign a contract with the United States as called for in the NIIP Act, and to approve further changes in the contract as may be necessary or desirable in the best

interest of the Navajo Tribe with the approval of the Advisory Committee. Copies of the relevant portions of foregoing Resolution and Contract are attached hereto as Exhibit "C" and incorporated herein by reference.

CONCLUSIONS

The Navajo Nation, the State of New Mexico and the United States negotiated and approved the subject Settlement Agreement without any significant review of the negotiations, legislative history, documents, agreements and laws for the Upper Colorado River Project and the Navajo Indian Irrigation Project.


The Navajo Nation, the State of New Mexico and the United States did not take into consideration while negotiating and approving the Settlement Agreement and submitting the Proposed Decrees to this Court for approval of the Navajo Nation's previous voluntarily and knowing waiver and relinquishment of the Navajo Nation's reserved water rights under the Winters Doctrine in exchange for the Navajo Indian Irrigation Project.

There was a significant lack of due diligence by the Navajo Nation, the State of New Mexico and the United States in reviewing the status and history of the water rights of the Navajo Nation when the Settling Parties negotiated and approved the Settlement Agreement and submitted the Proposed Decrees to this Court for approval.

Rule 1-007.1 NMRA 2013, "Motions; How Presented", provides that it is not necessary for Defendants B Square Ranch, LLC et al. to secure the concurrence of Settling Parties to this Motion since it is considered a motion to dismiss, a motion for judgment as a matter of law, or a motion for summary judgment.

WHEREFORE, Defendants B Square Ranch, LLC et al. pray for the entry of an appropriate order and judgment granting their Motion that Settling Party Navajo Nation waived and relinquished its Winter Rights when the Navajo Indian Irrigation Project was approved, and for such other relief as the Court deems just and proper.

TULLY LAW FIRM, P.A.



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**SAN JUAN-CHAMA RECLAMATION PROJECT
and
NAVAJO INDIAN IRRIGATION PROJECT**

**HEARING
BEFORE THE
SUBCOMMITTEE ON
IRRIGATION AND RECLAMATION
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES
EIGHTY-SIXTH CONGRESS
SECOND SESSION**

**H.O.S.E.
ON
H.R. 2352, H.R. 2494, and S. 72**

**BILLS TO AUTHORIZE THE SECRETARY OF THE INTERIOR
TO CONSTRUCT, OPERATE, AND MAINTAIN THE NAVAJO
INDIAN IRRIGATION PROJECT AND THE INITIAL STAGE
OF THE SAN JUAN-CHAMA PROJECT AS PARTICIPATING
PROJECTS OF THE COLORADO RIVER STORAGE PROJECT,
AND FOR OTHER PURPOSES**

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MAY 20, 1960
—

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SIDNEY L. MCFARLAND, *Engineering Consultant*
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Mr. JONES. Mr. Chairman, I have with me Mr. Charles Alexander, our local legal representative.

Mr. ROGERS. We welcome you, Mr. Alexander. You may sit at the witness table with Mr. Jones.

Mr. JONES. Mr. Chairman and members of the committee my name is Paul Jones. I reside at Window Rock, Ariz., and am appearing on behalf of the Navajo Tribe of Indians, of which I am the chief executive. I am appearing to urge early authorization of the Navajo Indian irrigation project in the State of New Mexico.

The Navajo Indian irrigation project, as described in the supplemental feasibility report, would consist of 110,630 acres of irrigated land for exclusive Navajo Indian use in San Juan County, N. Mex. All of the project except 19,640 acres will be on the present Navajo Indian Reservation. The additional acreage will be placed in reservation status, and the Navajo Tribe will pay the land acquisition costs. The purpose of adding this acreage to the reservation is to make the most compact and economical project feasible for Indian use.

The plan also calls for providing additional canal capacity for delivering water for industrial and municipal use from Navajo Dam, over and above the diversion requirement of the irrigation project. Such additional capacity would be paid for by the industrial and municipal water users with interest. All water uses from Navajo Dam would have equal priority. The Navajo Tribe has consented to this, and relinquished its rights under the Winters doctrine for the water necessary to irrigate the Navajo Indian irrigation project, in order to provide a practicable plan for comprehensive development of the resources and industrial potential of the San Juan Basin. We have done so because such development is necessary for our very survival.

The Navajo Tribe is the largest Indian tribe in the United States. Our population is now more than 85,000. We inhabit a reservation of approximately 25,000 square miles area—about the size of West Virginia—and adjacent submarginal lands in the State of New Mexico. ~~It was estimated in 1947 that our reservation could support only who should desire to commence farming on the Navajo reservation.~~ Already at that time there were about 10,000 Navajo Indians. Obviously, if the treaty obligation is to have significance, irrigation is the most practicable solution.

The wealth and well-being of the Navajo people, based on our vast flocks of sheep, are mentioned in Spanish and American documents of the early 19th century. Yet, in 1868 we were forced to cede all but 3,500,000 acres of our original country of more than 30 million acres. At the same time we agreed to perpetual peace with the white man, and the Government agreed to make farmland available to our

**SAN JUAN-CHAMA RECLAMATION PROJECT
AND NAVAJO INDIAN IRRIGATION PROJECT**

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
IRRIGATION AND RECLAMATION
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COMMITTEE ON
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HOUSE OF REPRESENTATIVES
EIGHTY-SEVENTH CONGRESS
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ON
H.R. 2552, H.R. 6541, and S. 107

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APRIL 24, 25, 26, AND JUNE 1, 1961

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STATEMENT OF J. MAURICE McCABE, EXECUTIVE SECRETARY,
NAVAJO TRIBE

Mr. McCABE. Mr. Chairman and members of the committee, my name is J. Maurice McCabe, I reside at Window Rock, Ariz., and am appearing here today on behalf of the Navajo Tribe of Indians of which I am executive secretary.

The Navajo Tribe of Indians urges favorable consideration of legislation which would authorize the Navajo Indian irrigation project. Legislation to accomplish the authorization of the Navajo Indian irrigation project is presently before the House in H.R. 2506 and H.R. 2552, introduced by the New Mexico congressional delegation, Representatives Montoya and Morris.

I would like to state in this hearing that the Navajo Tribe sincerely appreciates the efforts of Congressmen Montoya and Morris to see this irrigation project authorized. Their concern for the Indian peoples of their State and the whole Nation has been inspiring.

The Navajo Indian irrigation project, as described in the supplemental feasibility report, would consist of 110,680 acres of irrigated land for exclusive Navajo Indian use in San Juan County, N. Mex. All of the project except 8,915 acres will be on the present Navajo Indian Reservation. The additional acreage will be placed in reservation status, and the Navajo Tribe will pay the land acquisition costs. The purpose of adding this acreage to the reservation is to make the most compact and economical project feasible for Indian use.

The plan also calls for providing additional canal capacity for delivering water for industrial and municipal use from Navajo Dam, over and above the diversion requirement of the irrigation project. Such additional capacity would be paid for by the industrial and municipal water users with interest. All water uses from Navajo Dam would have equal priority. The Navajo Tribe has consented to this, and relinquished its rights under the Winters doctrine for the water necessary to irrigate the Navajo Indian irrigation project, in order to provide a practicable plan for comprehensive development of the resources and industrial potential of the San Juan Basin of New Mexico. We have taken this important and far-reaching step because such development is necessary for our very survival.

In 1868 the United States, by treaty, promised 160 acres to any Navajo Indian head of a family and 80 acres to any other Navajo Indian over 18 years old who should desire to commence farming on the Navajo Reservation. Already at that time there were about 10,000 Navajo Indians. Obviously, if the treaty obligation is to have significance, irrigation is the most practicable solution.

Since 1868, our population has grown to over 85,000 and is currently increasing at the rate of about $2\frac{1}{4}$ percent per year. Our reservation has been increased in area to 25,000 square miles, or about 16 million acres, but the added areas, consisting largely of desert land, have not kept pace with the minimum needs of our increased population.

Federal assistance to the Navajo Indians has been invariably too little and too late. Navajo country is a seriously depressed area and in its present state cannot be reasonably expected to improve. Whatever improvement is effected must result from increasing the agricultural potential and industrialization.

RESOLUTION OF THE
NAVAJO TRIBAL COUNCILRecommending Amendment of the Act of June 13, 1962, relating
to the Navajo Indian Irrigation Project

WHEREAS:

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

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

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

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

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

NOW THEREFORE BE IT RESOLVED THAT:

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

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

CERTIFICATION

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

Nelson Karno
Nelson Karno
Vice Chairman
Navajo Tribal Council

FST011664)

EXHIBIT A

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

Contract No. _____

CONTRACT BETWEEN THE UNITED STATES OF AMERICA

AND THE

NAVAJO TRIBE OF INDIANS

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NAVAJO INDIAN IRRIGATION PROJECT
NEW MEXICO

CONTRACT

Between the

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS
and
BUREAU OF RECLAMATION

and the

NAVAJO TRIBE OF INDIANS

for

An Irrigation Water Supply

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

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

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

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

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

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

WATER RIGHTS - WATER SUPPLY GENERAL

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

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

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

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

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

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

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

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