

ELEVENTH JUDICIAL DISTRICT  
COUNTY OF SAN JUAN  
STATE OF NEW MEXICO

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED  
2013 APR 15 AM 10:15

STATE OF NEW MEXICO ex rel.  
State Engineer,  
Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,  
Defendants.

v.

THE JICARILLA APACHE TRIBE and the  
NAVAJO NATION,  
Defendant-Intervenors.

No. CV 75-184  
SAN JUAN RIVER  
ADJUDICATION SUIT

Claims of the Navajo Nation  
Case No.: AB-07-1

**EXHIBITS - VOLUME 1 (of 2 Volumes)**  
**ASSOCIATED WITH, AND REFERRED TO IN:**  
**GARY L. HORNER'S BRIEF IN SUPPORT OF GARY L. HORNER'S MOTION FOR A**  
**DETERMINATION THAT FEDERAL LAW, PERMITS, OR CONTRACTS DO NOT**  
**DEFINE THE EXTENT OF THE WATER RIGHTS FOR THE NAVAJO NATION**

SUMMARY

1. Name of party filing the present document: **Gary L. Horner**
2. Title of the present document: **EXHIBITS - VOLUME 1 (of 2 Volumes)**  
**ASSOCIATED WITH, AND REFERRED TO IN: GARY L. HORNER'S BRIEF IN**  
**SUPPORT OF GARY L. HORNER'S MOTION FOR A DETERMINATION THAT**  
**FEDERAL LAW, PERMITS, OR CONTRACTS DO NOT DEFINE THE EXTENT OF**  
**THE WATER RIGHTS FOR THE NAVAJO NATION**
3. Descriptive summary of the relief sought: **This document contains a portion of the**  
**Exhibits associated with, and referred to in: GARY L. HORNER'S BRIEF IN**  
**SUPPORT OF GARY L. HORNER'S MOTION FOR A DETERMINATION THAT**  
**FEDERAL LAW, PERMITS, OR CONTRACTS DO NOT DEFINE THE EXTENT OF**  
**THE WATER RIGHTS FOR THE NAVAJO NATION**
- 4: Number of pages of the present document: **127 (6 + 121 pages of Exhibits)**

COMES NOW Gary L. Horner, Esq., *In Propria Persona* (hereinafter referred to in the first person), and hereby presents Exhibits 1 through 15, that were associated with or referred to

*Exhibits - Volume 1, associated with,*  
*Horner's Brief in support of Motion re*  
*federal law, permits and contracts*

D ✓

in, GARY L. HORNER'S BRIEF IN SUPPORT OF GARY L. HORNER'S MOTION FOR A DETERMINATION THAT FEDERAL LAW, PERMITS, OR CONTRACTS DO NOT DEFINE THE EXTENT OF THE WATER RIGHTS FOR THE NAVAJO NATION ("Horner's Brief re Permits and Contracts"), which is being filed concurrently herewith. Due to the voluminous nature of Horner's Brief re Permits and Contracts, and the Exhibits associated therewith, it was not possible to physically attach said Exhibits to said Brief (I had no staples long enough).

Accordingly, attached hereto (Volume 1) are Exhibits 1 through 15, of 32 total Exhibits. Exhibits 16 through 32 are included with Volume 2. For ease of reference a listing of all 32 Exhibits follows:

#### **TABLE OF EXHIBITS**

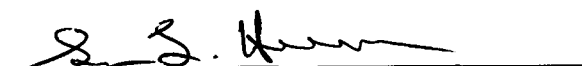
<b>EXHIBIT No.:</b>	<b>Description</b>
1 . . .	Contract No. 14-06-W-269; "Agreement Between the United States and the Navajo Tribe of Indians for Delivery of Water from Navajo Reservoir", April 10, 1976.
2 . . .	Contract No. 10-WC-40-384; "UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION CONTRACT BETWEEN THE UNITED STATES AND THE NAVAJO NATION", December 17, 2010.
3 . . .	"Summary of Significant Documents Filed with the State Engineer, Related to the United States, Department of the Interior, or the Bureau of Reclamation, Regarding the San Juan River Basin in New Mexico", Prepared by Gary L. Horner, Revised March 9, 2013.
4 . . .	Letter from the State Engineer S. E. Reynolds to Harold Ranquist (representing the City of Farmington), dated July 10, 1986.
5 . . .	OSE File No. 758, "State of New Mexico - Application for Permit", regarding the Hogback Canal, filed March 13, 1913.
6 . . .	OSE File No. 758, "Proof of Application of Water to Beneficial Use", filed January 16, 1918.
7 . . .	OSE File No. 758, State Engineer letter, dated August 11, 1917, indicating Permit 758 had lapsed.
8 . . .	OSE File No. 758, State Engineer letter, dated December 20, 1917, indicating Permit 758 would be cancelled in 30 days without further notice.
9 . . .	OSE File No. 758, January 4, 1918, State Engineer letter to Mr. Robinson, dated January 4, 1918, referencing an Attorney General's Opinion, dated April 20, 1910, which stated that the federal government must comply with territorial law with respect to the

*Exhibits - Volume 1, associated with,  
Horner's Brief in support of Motion re  
federal law, permits and contracts*

- acquisition of water rights, the same as any individual.
- 10 . . . OSE File No. 758, State Engineer letter to Mr. Robinson, dated May 23, 1922, informing him that if such inspections were not undertaken, Permit 758 would be cancelled in 30 days.
  - 11 . . . OSE File No. 758, Mr. Robinson letter to State Engineer, dated July 11, 1922, stating U.S. has paramount right to water.
  - 12 . . . OSE File No. 758, State Engineer letter to Mr. Robinson, dated July 17, 1922, stating records stand as composed.
  - 13 . . . OSE File No. 758; Attorney General Opinion, dated July 2, 1952, stating BOR is subject to State Engineer rules and regulations.
  - 14 . . . OSE File No. 2472, "Application for Permit to Appropriate the Public Surface Waters of the State of New Mexico", filed January 14, 1944, regarding a helium plant.
  - 15 . . . OSE File No. 2807, "Application for Permit to Appropriate the Public Surface Waters of the State of New Mexico", filed March 23, 1954, regarding a uranium mill.
  - 16 . . . OSE File No. 2875, "Application for Permit to Appropriate the Public Surface Waters of the State of New Mexico", filed February 2, 1956, regarding a uranium mill.
  - 17 . . . OSE File No. 2883, "NOTICE OF INTENTION TO MAKE FORMAL APPLICATION FOR PERMIT To Appropriate the Natural Public Surface Waters of the State of New Mexico", filed May 1, 1956, regarding the Animas-La Plata Project.
  - 18 . . . OSE File No. 2883, "Application for Permit to Appropriate the Public Surface Waters of the State of New Mexico", filed April 14, 1959, regarding the Animas-La Plata Project.
  - 19 . . . OSE File No. 2849, "NOTICE OF INTENTION TO MAKE FORMAL APPLICATION FOR PERMIT To Appropriate the Natural Public Surface Waters of the State of New Mexico", filed June 17, 1955, regarding the NIIP Project.
  - 20 . . . OSE File No. "2847, 2849, 2873, 2917 Comb.", "APPLICATION FOR PERMIT to Appropriate the Public Surface Waters of the State of New Mexico", filed March 6, 1958, for 1,118,800 acre-feet (delivered to the land) of unappropriated water.
  - 21 . . . OSE File No. 2917, "NOTICE OF INTENTION TO MAKE FORMAL APPLICATION FOR PERMIT To Appropriate the Natural Public Surface Waters of the State of New Mexico", filed September 16, 1957, regarding no stated purpose for 225,000 af/y.
  - 22 . . . OSE File No. 3215, "NOTICE OF INTENTION TO MAKE FORMAL APPLICATION FOR PERMIT To Appropriate the Natural Public Surface Waters of the State of New Mexico", filed August 28, 1967, regarding no stated purpose for 200 cfs of water (145,000 af/y).
  - 23 . . . OSE File No. 3215, "APPLICATION FOR PERMIT to Appropriate the Public Surface Waters of the State of New Mexico", filed December 16, 1968, regarding no stated purpose for 500 cfs of water (362,080 af/y).
  - 24 . . . San Juan-Chama Project flows.
  - 25 . . . Navajo Indian Irrigation Project Diversions.
  - 26 . . . Table Summary entitled "Colorado River System: Water Use by States, Basins and Tributaries", taken from the "Colorado River Basin Consumptive Uses and Losses Report 2001 - 2005", prepared by the U.S. Department of the Interior, Bureau of Reclamation, dated December 2011, and revised August 2012, p. iv.

- 27 . . . "1988 Hydrologic Determination", dated February 2, 1989.  
28 . . . "2007 Hydrologic Determination", dated May 23, 2007.  
29 . . . Draft of the "SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT DEPLETION SCHEDULE", dated December 5, 2003.  
30 . . . "STATE OF NEW MEXICO SCHEDULE OF ANTICIPATED UPPER BASIN DEPLETIONS", dated May 2006.  
31 . . . "STATE OF NEW MEXICO SCHEDULE OF ANTICIPATED UPPER BASIN DEPLETIONS", dated April 2005.  
32 . . . "Colorado River Basin Consumptive Use and Losses for the Years 2001 - 2005 - Upper Basin and Lower Basin Totals", prepared by Gary L. Horner, dated March, 30, 2013.

Respectfully, submitted by:



GARY L. HORNER, Esq.,  
*In Propria Persona*  
Post Office Box 2497  
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(505) 326-2378

April 15, 2013  
Date

**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

I HEREBY CERTIFY - in accordance with the ORDER MANDATING ALTERNATIVE METHOD FOR SERVICE OF ORDERS, MOTIONS, NOTICES AND OTHER COURT PAPERS, entered in the present matter on September 28, 2011 by the Honorable James Wechsler, Presiding Judge - that a true copy of the foregoing was served on the parties and Claimants in the present matter, by attaching a copy of said document to an email sent to the following email list server(s) maintained by the Court, this 15<sup>th</sup> day of April, 2013:

[wnavajointerse@nmcourts.gov](mailto:wnavajointerse@nmcourts.gov)

Further, pursuant to the Court's CORRECTED ORDER SUMMARIZING DISCOVERY ACTIVITIES DISCUSSED AT THE NOVEMBER 6, 2012 DISCOVERY CONFERENCE, entered in the present matter on November 19, 2012, that a true copy of the foregoing document was emailed to the following individuals, this 15<sup>th</sup> day of April, 2013.

*Exhibits - Volume 1, associated with,  
Horner's Brief in support of Motion re  
federal law, permits and contracts*

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GARY L. HORNER

# Exhibit 1

Associated with:

**GARY L. HORNER'S BRIEF IN SUPPORT OF GARY L. HORNER'S MOTION FOR A  
DETERMINATION THAT FEDERAL LAW, PERMITS, OR CONTRACTS DO NOT  
DEFINE THE EXTENT OF THE WATER RIGHTS FOR THE NAVAJO NATION**

Filed April 15, 2013

Contract No. 14-06-W-269

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Navajo Indian Irrigation Project, New Mexico

Agreement Between the United States and the Navajo Tribe of Indians  
for Delivery of Water from Navajo Reservoir.

THIS AGREEMENT entered into the 10th day of April, 1976, between the UNITED STATES OF AMERICA ("United States"), acting through the Secretary of the Interior, and the NAVAJO NATION ("Navajo Nation"), also known as the Navajo Tribe of Indians, pursuant to the Act of Congress of April 11, 1956 (70 Stat. 105); the Act of June 13, 1962 (76 Stat. 96) (hereinafter referred to as "the Act"); and the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385); all as amended or supplemented.

WITNESSETH:

WHEREAS, the United States is in the process of constructing the Navajo Indian Irrigation Project ("the project") for the principal purpose of furnishing irrigation water; and

WHEREAS, the Navajo Nation wishes to enter into a contract with the United States for the delivery of water from said project to Navajo lands.



NOW THEREFORE, it is mutually agreed as follows:

I. Definitions.

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

a. "Act" shall mean, unless otherwise specified, the Act of June 13, 1962, 76 Stat. 96.

b. "Project Works" shall mean those facilities of the Navajo Indian Irrigation Project constructed pursuant to the Act of June 13, 1962.

c. "Contracting Officer" shall mean the Commissioner of the Bureau of Reclamation, or his duly authorized representative.

II. Delivery of Water.

Section 2 of the Act provides that pursuant to the provisions of the Act of April 11, 1956 [Colorado River Storage Project Act], as amended, the Secretary of the Interior is authorized to construct, operate, and maintain the Navajo Indian Irrigation Project for the principal purpose of furnishing irrigation water to approximately one hundred and ten thousand six hundred and thirty acres of land, said project to have an average annual diversion of five hundred and eight thousand acre-feet of water and the repayment of the costs of construction thereof to be in accordance with the provisions of said

Act of April 11, 1956, as amended, including, but not limited to, section 4(d) thereof. The Contracting Officer shall deliver water to the Navajo Nation in accord with the foregoing sentence, such deliveries to be made through the main canal headworks at Navajo Dam for the Navajo Indian Irrigation Project.

III. Sharing of Shortages.

In any year in which the Secretary anticipates a shortage of water taking into account both prospective runoff originating above Navajo Reservoir and the available water in storage in Navajo Reservoir, he shall provide for a sharing of the available water in the following manner: The prospective runoff shall be apportioned between the contractors diverting above and those diverting at or below Navajo Reservoir in the proportion that the total normal diversion requirement of each group bears to the total of all normal diversion requirements. In the case of contractors diverting above Navajo Reservoir, each such contract shall provide for a sharing of the runoff apportioned to said group in the same proportion as the normal diversion requirement under said contract bears to the total normal diversion requirements of all such contracts that have been made hereunder: Provided, That for any year in which the foregoing sharing procedure either would apportion to any contractor diverting above Navajo Reservoir an amount in excess of the runoff anticipated to be physically available at the

point of his diversion, or would result in no water being available to one or more such contractors, the runoff apportioned to said group shall be reapportioned, as near as may be, among the contractors diverting above Navajo Reservoir in the proportion that the normal diversion requirements of each bears to the total normal diversion requirements of the group. In the case of contractors diverting from or below Navajo Reservoir, each such contract shall provide for a sharing of the remaining runoff together with the available storage in the same proportion as the normal diversion requirement under said contract bears to the total normal diversion requirements under all such contracts that have been made under the Act. The Secretary shall not enter into contracts for a total amount of water beyond that which, in his judgment, in the event of shortage, will result in a reasonable amount being available for the diversion requirements for the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama project as specified in sections 2 and 8 of the Act.

No long-term contract, except contracts for the benefit of the lands and for the purpose specified in sections 2 and 8 of the Act, shall be entered into for the delivery of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries, as aforesaid, until the Secretary has determined by hydrologic investigations that sufficient water to fulfill said contract is reasonably likely to be available for use in the State of New Mexico during the term thereof under the allocations made in

articles III and XIV of the Upper Colorado River Basin compact, and has submitted such determination to the Congress of the United States and the Congress has approved such contracts: Provided, That nothing contained in the foregoing shall be construed to forbid the Secretary from entering into temporary water supply contracts in the San Juan River Basin for any year in which he determines that water legally available for use in the upper basin of the Colorado River system would otherwise not be used there and is not needed to fulfill the obligations of the upper division States with respect to delivery of water at Lee Ferry.

#### IV. Compacts, Project Acts, and Treaty.

The use of water, including that diverted from the Colorado River system to the Rio Grande Basin, through works constructed under authority of the Act, shall be subject to and controlled by the Colorado River compact, the Upper Colorado River Basin compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act, and the Mexican Water Treaty (Treaty Series 994), 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 and limited under said compacts, statutes, and treaty.

V. Surplus Crops.

Delivery of water for production of surplus crops shall be in accordance with section 6 of the Act of June 13, 1962.

VI. Project Operation Information.

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.

VII. No Waiver.

The Navajo Nation does not waive any reserved Winters rights or consent that such rights have been or will be determined or limited by the Act of June 13, 1962, by execution of this agreement, or by delivery of water pursuant to this agreement; and the United States does not waive its right to assert a position on these issues which is neutral, in support of, or contrary to that of the Navajo Nation.

VIII. Term.

This agreement shall continue in effect for a 40-year period, and shall be subject to renewal at the option of the Navajo Nation for additional periods of 40 years.

IX. Notices.

Any notice, demand, or request authorized or required by this agreement shall be deemed to have been given when mailed, or delivered to the Commissioner of the Bureau of Reclamation, United States Department of the Interior, Washington, D.C. 20240, or his designated representative on behalf of the United States and to the Chairman, Navajo Tribal Council, Window Rock, Navajo Nation, Arizona 86515, on behalf of the Navajo Nation. The designation of the addressees or the addresses may be changed by written notice.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed the day and year first hereinabove written.

THE UNITED STATES OF AMERICA  
Department of the Interior

By /s/ G. G. Stamm  
Commissioner, Bureau of Reclamation

NAVAJO NATION

By /s/ Peter MacDonald  
Chairman, Navajo Tribal Council

## **Exhibit 2**

Associated with:

**GARY L. HORNER'S BRIEF IN SUPPORT OF GARY L. HORNER'S MOTION FOR A  
DETERMINATION THAT FEDERAL LAW, PERMITS, OR CONTRACTS DO NOT  
DEFINE THE EXTENT OF THE WATER RIGHTS FOR THE NAVAJO NATION**

Filed April 15, 2013

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND  
THE NAVAJO NATION

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND  
THE NAVAJO NATION

PART I. SETTLEMENT

1. PREAMBLE

This contract is entered into this 17<sup>th</sup> day of ~~December~~ 2010, between the United States of America, acting through the Secretary of the Interior pursuant to the Northwestern New Mexico Rural Water Projects Act of March 30, 2009 (123 Stat. 1367), the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws, specifically the Act of June 13, 1962 (76 Stat. 96), the Act of April 11, 1956 (CRSP) (70 Stat. 105; 43 U.S.C. 620 et seq.), 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.

2. EXPLANATORY RECITALS

WHEREAS, the United States, the State of New Mexico, and the Navajo Nation have negotiated a resolution of all water right claims of the Navajo 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

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

WHEREAS, 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

1 Agreement, as amended, pursuant to Section 10701 of the Northwestern New Mexico  
2 Rural Water Projects Act (123 Stat. 1367); and

3 WHEREAS, the Federal government is undertaking to construct additional water  
4 development facilities to fulfill the terms and conditions of the Northwestern New  
5 Mexico Rural Water Projects Act (123 Stat. 1367) and this Contract, as well as facilities  
6 to extend the current service area of the Navajo Indian Irrigation Project and facilities to  
7 convey municipal, industrial and domestic water supplies to Navajo Nation communities;  
8 and

9 WHEREAS, the Secretary of the Interior has determined in accordance with  
10 Section 11 of the Act of June 13, 1962 (76 Stat. 96), pursuant to the hydrologic  
11 determination recognized at Section 10604(a)(1) of the Northwestern New Mexico Rural  
12 Water Projects Act (123 Stat. 1367) that there is sufficient water reasonably likely to be  
13 available for use in the State of New Mexico to enable the United States to enter into this  
14 Contract:

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

17

18 3. GENERAL DEFINITIONS

19 For the purposes of this Contract only, unless otherwise distinctly expressed or  
20 manifestly incompatible with the intent hereof, the term:

21 (a) "Animas-La Plata Project", or "ALP", means the project of the same name  
22 authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-  
23 258; Public Law 106-554, Appendix D, Title III) including Ridges Basin Dam and Lake  
24 Nighthorse, the Durango Pumping Plant, the Ridges Basin Inlet Conduit, the Navajo  
25 Nation Municipal Pipeline and related facilities.

26 (b) "Association" means the Animas-La Plata Operations, Maintenance, and  
27 Replacement Association, established by the ALP Project sponsors who were signatory to  
28 the IGA, dated March 4, 2009, pursuant to the Colorado Uniform Unincorporated  
29 Nonprofit Association Act, 7-30-101 et seq., CRS (2006), to carry out the OM&R  
30 activities and responsibilities of the Project.

1 (c) "Consultation" or "Consult" refers to an ongoing obligation of both parties  
2 to implement the provisions of this Contract with a full exchange of information so as to  
3 assure that each party is provided full participation in the decision making process.  
4 Consultation shall be required of each party with respect to each section of the Contract  
5 regardless of whether the section itself sets forth a Consultation requirement. The  
6 Consultation required shall be reasonable under the circumstances, and except in exigent  
7 circumstances Consultation shall be undertaken in advance of decision making. In the  
8 event that agreement cannot be reached and the United States makes a decision, appeals  
9 are available to the extent allowed under applicable laws.

10 (d) "Contracting Officer" means the representative of the Secretary of the  
11 Interior authorized to administer this Contract.

12 (e) "Fixed OM&R costs" means costs of administration, overhead, labor,  
13 materials, and equipment required to maintain all pumps, storage tanks, pipelines,  
14 diversion facilities, reservoirs and inlet conduits, as may be appropriate. Fixed OM&R  
15 costs shall also include annual payments to an emergency reserve fund to meet costs  
16 incurred during periods of special stress caused by damaging droughts, storms,  
17 earthquakes, floods, or other emergencies threatening or causing interruption of water  
18 service, and annual payments to a replacement reserve fund to ensure adequate funds are  
19 available to replace equipment when needed.

20 (f) "Intergovernmental Agreement" or "IGA" means that agreement dated  
21 March 4, 2009 and entered into by the Colorado Water Resource and Power  
22 Development Authority, the La Plata Conservancy District, the Navajo Nation, the San  
23 Juan Water Commission, the Southern Ute Indian Tribe, and the Ute Mountain Ute  
24 Indian Tribe to establish the Animas-La Plata Operations, Maintenance, and Replacement  
25 Association (Association) and provide for the terms, conditions, and concepts under  
26 which OM&R of the transferred works of the ALP is to take place.

27 (g) "Lake Nighthorse", formerly Ridges Basin Reservoir, means the reservoir  
28 created by the impoundment on Basin Creek by Ridges Basin Dam, a facility of the ALP  
29 as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat.  
30 2763A-258).

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

5 (i) "Navajo-Gallup Water Supply Project", or "NGWSP", means the project of  
6 the same name authorized by Section 10602 of the Northwestern New Mexico Rural  
7 Water Projects Act (123 Stat. 1367).

8 (j) "Navajo Indian Irrigation Project", or "NIIP", means the project of the same  
9 name authorized by the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), as  
10 amended.

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

16 (l) "Navajo Nation" means a body politic and federally-recognized Indian  
17 nation as provided for in Section 101(2) of the Federally Recognized Indian Tribe List of  
18 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the "Navajo  
19 Tribe," the "Navajo Tribe of Arizona, New Mexico & Utah," and the "Navajo Tribe of  
20 Indians" and other similar names, and includes all bands of Navajo Indians and chapters  
21 of the Navajo Nation, acting through its authorized representative.

22 (m) "Navajo Nation Municipal Pipeline", or "NNMP", means the pipeline to  
23 convey the Navajo Nation's ALP water from the City of Farmington, New Mexico, to  
24 Navajo Nation communities along the San Juan River valley in New Mexico, including  
25 the City of Shiprock, as a facility of the ALP authorized by the Colorado Ute Settlement  
26 Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title  
27 III).

28 (n) "Navajo Settlement Act" means Subtitle B of Title X the Act of March 30,  
29 2009 (123 Stat. 1367; Public Law 111-11).

30 (o) "OM&R" means annual operation, maintenance and replacement.

- 1           (p) "Partial Final Decree" means a final and binding judgment and decree  
2 entered by the court in the stream adjudication, setting forth the rights of the Navajo  
3 Nation to use and administer waters of the San Juan River Basin in New Mexico, the  
4 form of which is attached as Appendix 1 of the Settlement Agreement.
- 5           (q) "Project Operator" means the entity that has been transferred the OM&R  
6 responsibilities for a specific project covered under this Contract.
- 7           (r) "Project Participant(s)" means participant(s) in the NGWSP, namely the  
8 Navajo Nation, the City of Gallup and, should it choose to participate, the Jicarilla  
9 Apache Nation.
- 10          (s) "San Juan River" means that river which originates in the State of Colorado  
11 and flows through or constitutes the boundary of the Navajo Indian Reservation in  
12 northwestern New Mexico and southeastern Utah, where it flows into Lake Powell.
- 13          (t) "Secretary" means the Secretary of the United States Department of the  
14 Interior or an authorized designee.
- 15          (u) "Settlement Agreement" means the agreement between the State of New  
16 Mexico, the Navajo Nation and the United States executed in 2010, pursuant to Section  
17 10701 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367).
- 18          (v) "Statutory Water Allocation" means the municipal and industrial (M&I)  
19 water allocation delivered to the Navajo Nation from the ALP pursuant to Section  
20 6(a)(1)(A)(ii)(III) of the Colorado Ute Settlement Act Amendments of 2000, Public Law  
21 106-554.
- 22          (w) "Subcontract" means a contract between the Navajo Nation and a third party,  
23 pursuant to this Contract and subject to the provisions of the Navajo Settlement Act, the  
24 Settlement Agreement, the Partial Final Decree, and approval of the Secretary or  
25 authorized representative, to supply water for beneficial use on or off Navajo Lands in  
26 the State of New Mexico, subject to and consistent with the same requirements and  
27 conditions of State law, and any applicable Federal law, interstate compact, and  
28 international treaty as they apply to the exercise of water rights held by non-federal, non-  
29 Indian entities.

1 (x) "Subcontractor" means any entity and/or persons entering into a subcontract  
2 with the Navajo Nation, subject to the approval of the Secretary or authorized  
3 representative.

4 (y) "Transferred Works" means facilities which are necessary to support the  
5 operation and maintenance of one of the three projects identified in this Contract, and for  
6 which the OM&R responsibility has been transferred to the Navajo Nation by the United  
7 States.

8 (z) "Variable OM&R costs" means the costs of power including power  
9 consumption and a proportional percentage of power demand costs for the pumping of  
10 water. In the case of the NGWSP, Variable OM&R costs also include costs associated  
11 with the treatment of water.

12  
13 4. CONDITIONS

14 This Contract will give rise to rights and obligations on the part of the Navajo  
15 Nation and the United States. The provisions of Part IV, and the provisions of Article 32  
16 Part V as they relate to Part II and Part IV, will become enforceable only after the Partial  
17 Final Decree is entered by the District Court of San Juan County, New Mexico, in the  
18 general stream adjudication of the San Juan River stream system, *New Mexico v. United*  
19 *States*, No. 75-184, which Partial Final Decree adjudicates water rights of the Navajo  
20 Nation in and from the San Juan River Basin in New Mexico per paragraph 3.0 of the  
21 Settlement Agreement and is of the form provided in Appendix 1 to the Settlement  
22 Agreement. All other provisions of the Contract will be enforceable upon execution of  
23 the Contract.

24  
25 5. PRELIMINARY UNDERSTANDINGS

26 (a) The Navajo Nation may purchase, receive and use ALP water in accordance  
27 with the relevant provisions of this Contract prior to the entry of the Partial Final Decree.

28 (b) The obligations of the parties under Contract No. 14-06-W-269 between the  
29 United States and the Navajo Nation for delivery of water from Navajo Reservoir for the  
30 principal purpose of furnishing irrigation water to the NIIP shall continue in force until

1 the entry of the Partial Final Decree after which Contract No. 14-06-W-269 shall be  
2 superseded by this Contract.

3 (c) Separate contracts for additional water, as available, may be negotiated  
4 between the Navajo Nation and the United States in the future pursuant to the provisions  
5 of paragraph 8.0 of the Settlement Agreement, but they do not constitute any part of the  
6 consideration for this Contract.

7 (d) Except as specifically provided in this Contract and as provided in the  
8 waivers and releases set forth in Section 10703 of the Navajo Settlement Act, nothing in  
9 this Contract should be construed to affect or alter other obligations that the United States  
10 may have under treaty, statute, or otherwise to provide or operate water project facilities  
11 and water distribution systems on Navajo Lands.

## 14 PART II. NIIP

### 15 6. WATER DELIVERY PROVISIONS

16 (a) The United States agrees to deliver, or make available for delivery, to the  
17 Navajo Nation an average diversion of not more than 508,000 acre-feet per year, or the  
18 quantity of water necessary to supply an average depletion of 270,000 acre-feet per year  
19 from the San Juan River, whichever is less, during any period of ten consecutive years,  
20 and not more than 584,200 acre-feet in any one year for delivery to the NIIP from:

21 (i) Navajo Reservoir from the following delivery points under State  
22 Engineer File No. 2849:

23 (A) the intake to the NIIP main canal; or

24 (B) the Navajo Dam outlet works; or

25 (ii) inflows below Navajo Dam under State Engineer File No. 3215 at  
26 Cutter Reservoir or at Gallegos Reservoir or suitable alternative; or

27 (iii) both (i) and (ii) in combination.

28 (b) Pursuant to Section 2(c) of the Act of June 13, 1962, as amended by Section  
29 10402(a) of the Navajo Settlement Act, water delivered pursuant to Part II Article 6(a)  
30 may be used within the area served by the NIIP facilities for irrigation and the following  
31 purposes:



- 1 (i) Aquaculture purposes, including the rearing of fish in support of the  
2 San Juan River Basin Recovery Implementation Program authorized by Public  
3 Law 106-392 (114 Stat. 1602).
- 4 (ii) Domestic, industrial, or commercial purposes relating to agricultural  
5 production and processing.
- 6 (iii) The generation of hydroelectric power as an incident to the diversion  
7 of water by the NIIP for authorized purposes.
- 8 (iv) The implementation of the alternate water source provisions described  
9 in subparagraph 9.2 of the Settlement Agreement executed under Section  
10 10701(a)(2) of the Navajo Settlement Act.
- 11 (c) Pursuant to Section 2(d) of the Act of June 13, 1962, as amended by Section  
12 10402(a) of the Navajo Settlement Act, water diverted by the NIIP may be transferred to  
13 areas located within or outside the area served by the NIIP facilities and on or off Navajo  
14 Lands for any beneficial use in accordance with:
- 15 (i) the agreement executed under section 10701(a)(2) of the Navajo  
16 Settlement Act;
- 17 (ii) this Contract; and
- 18 (iii) any other applicable law.
- 19 (d) If the Navajo Nation proposes to change the place or purpose of use or the  
20 point of diversion in the exercise of its rights to use water for the uses described in Part II  
21 Article 6(b) or 6(c) of this contract, in addition to providing notice to the New Mexico  
22 State Engineer as required by Paragraph 18 of the Partial Final Judgment and Decree of  
23 the Water Rights of the Navajo Nation, notice shall be provided to the United States  
24 pursuant to Part VI Article 56 of this contract.
- 25 (e) The Navajo Nation shall be solely responsible for the construction,  
26 operation, maintenance and replacement specific to all modifications and additions to  
27 NIIP facilities that are necessary to use NIIP water for the purposes provided in Part II  
28 Article 6(b)(i) through (iv) and 6(c) above. As long as title to NIIP facilities is held by  
29 the United States, the Navajo Nation shall obtain the approval of the United States prior  
30 to the construction of any modification or addition to the NIIP facilities.

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

5 (g) The Navajo Nation must notify the Contracting Officer and the Project  
6 Operator of its scheduled locations, amounts and timings of anticipated deliveries or  
7 diversions prior to any delivery of water from Navajo Reservoir under State Engineer  
8 File No. 2849. The requested delivery or change in delivery shall be made by the  
9 Contracting Officer or the Project Operator in a reasonable time within the ability to  
10 manage the operation of Navajo Dam or the NIIP intake, as appropriate, or as otherwise  
11 agreed to between the Navajo Nation and the Contracting Officer .

12 (h) Nothing in this Contract is intended to impose on the United States any  
13 obligation to maintain Navajo Dam and Reservoir or the NIIP beyond their useful lives,  
14 or to take extraordinary measures to keep these facilities operating.

15 (i) The points of delivery of water made available for use pursuant to this  
16 section from Navajo Reservoir and from inflows to the San Juan River arising below the  
17 reservoir shall be as specified in Part II Article 6(a) unless changed consistent with the  
18 Partial Final Decree and pursuant to agreement of the Contracting Officer and the Navajo  
19 Nation. Water made available at Navajo Dam to make the diversions and depletions  
20 described in subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree that are  
21 supplied under this Contract pursuant to the alternate water source provisions of  
22 subparagraph 9.2 of the Settlement Agreement shall be accounted under the contract  
23 rights for delivery of water under the NIIP described in Part II herein.

24 (j) To the extent that delivery of water is made through or from federal  
25 facilities, the Navajo Nation will reimburse costs associated with this delivery in  
26 accordance with the provisions of Part II Article 8 of this Contract.

27

28 7. WATER SUPPLY AND SHORTAGE

29 (a) Notwithstanding any other provisions of this Contract, in times of shortage  
30 in the Navajo Reservoir water supply to meet demands under contracts for delivery of  
31 water from said supply, taking into account water available from inflows below Navajo

1 Dam to help meet the demands, the Navajo Nation will share in the available water  
2 supply in the manner set forth in Section 11 of the Act of June 13, 1962 (76 Stat. 96) as  
3 amended by Section 10402(b) of the Navajo Settlement Act.

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

10

11 8.

#### COST PROVISIONS

12 Charges for water made available pursuant to Part II Article 6 will be as follows:

13

14 (a) The Navajo Nation's construction cost obligation for the NIIP within the  
15 ability of the land to repay shall be allocated and payment deferred under the provisions  
16 of the Leavitt Act (47 Stat. 564), as authorized in subsection 4(d) of the Colorado River  
17 Storage Project Act (70 Stat. 105). The Navajo Nation's construction cost obligation for  
18 the NIIP beyond the ability of the land to repay shall be non-reimbursable as authorized  
19 in subsection (6) of the Colorado River Storage Project Act (70 Stat. 105).

19

20 (b) The Navajo Nation's OM&R obligation for the NIIP for the delivery of  
21 water made available pursuant to Part II Article 6(b)(i) and (ii) will be based on the  
22 incremental increase in OM&R costs associated with the conveyance and delivery of that  
23 water. Provisions for payment of these costs shall be made in a future agreement  
24 between the Navajo Nation and the United States pursuant to Section 4 of the 1962 Act.

24

25 (c) The Navajo Nation shall pay the United States or its designee if some  
26 organization other than the United States is operating Navajo Dam and Reservoir, the  
27 Navajo Nation's proportionate share of the OM&R costs for Navajo Dam and Reservoir  
28 assignable to the amount of water made available pursuant to Section 10402(d) of the  
29 Navajo Settlement Act. The Navajo Nation's obligation for Navajo Dam and Reservoir  
30 OM&R costs shall be triggered by either a Subcontract or the notice provided by the  
31 Navajo Nation to the United States, as described in Part II Article 6(c) and (d),  
respectively. The Navajo Nation's obligation for Navajo Dam and Reservoir OM&R

1 costs shall be paid on the basis of annual cost estimates made by the United States, or its  
2 designee, based upon the quantity of the NIIP water that is made available under  
3 Subcontracts authorized by Section 10402(d). The estimates will be sent annually to the  
4 Navajo Nation on or before May 1 for the next Federal Fiscal year, which begins October  
5 1 of the same calendar year and ends September 30 of the next calendar year. The  
6 Navajo Nation shall advance its annual share of the Navajo Dam and Reservoir OM&R  
7 costs for the next Federal fiscal year on or before September 30. The first such billing  
8 will be issued based upon the effective date NIIP water is provided under Subcontracts  
9 and in the event this effective date shall be for costs of service of less than a full year,  
10 such costs shall be prorated for the period covered.

11

12 9. LIMITED RESPONSIBILITY FOR DISTRIBUTION

13 (a) Upon delivery, as specified under Part II Article 6(a) herein, the Navajo  
14 Nation shall hold the United States, its officers, agents, employees, and successors or  
15 assigns, harmless from every claim for damages to persons or property, direct or indirect,  
16 and of whatever nature, arising out of or in any manner connected with the control,  
17 carriage, handling, distribution or use of such water beyond the point of delivery; except  
18 to the extent that such responsibilities are placed on the United States by Act of Congress.

19

20

21 PART III. ALP

22 10. WATER DELIVERY PROVISIONS

23 (a) Pursuant to the Colorado Ute Settlement Act Amendments of 2000, the  
24 United States agrees to deliver or make available for delivery to the Navajo Nation a  
25 municipal and industrial water allocation with an average annual depletion not to exceed  
26 2,340 acre-feet from the ALP water supply under New Mexico State Engineer File No.  
27 2883, subject to the provisions of the Navajo Settlement Act, the Settlement Agreement,  
28 the Partial Final Decree and this Contract. Water delivered pursuant to this article shall  
29 be measured utilizing measuring facilities installed by the United States as a part of the  
30 ALP at the following points of delivery:

31 (i) The outlet works of Ridges Basin Dam; or

- 1           (ii) Bypassed at the Durango Pumping Plant; or
- 2           (iii) Both in combination.

3           (b) The Navajo Nation may divert its ALP water at the points of diversion for  
4 use by the Navajo Nation under its water rights for the ALP, consistent with the Navajo  
5 Settlement Act, the Settlement Agreement, the Partial Final Decree and this Contract.  
6 Sufficient water will be delivered from ALP water released from Lake Nighthorse or  
7 bypassed at the Durango Pumping Plant to meet the annual water allocation requirements  
8 of the Navajo Nation up to its Statutory Water Allocation.

9           (c) If the IGA is in effect, the Navajo Nation shall have the right to receive  
10 water from storage from Lake Nighthorse in accordance with the Joint Storage Pool as  
11 described in the IGA.

12           (d) If the IGA is voided or otherwise terminated, the Navajo Nation under this  
13 Contract shall have 869 acre-feet of storage capacity space allocated for its exclusive use  
14 in Lake Nighthorse to support use of the ALP water supply as described in Part III Article  
15 10(a). The United States, or the Project Operator, shall fill and refill the Navajo Nation's  
16 storage capacity space as often as direct flow is available from the Animas River to fill  
17 said space under the ALP diversion right issued in the State of Colorado and the Animas-  
18 La Plata Project Compact (82 Stat. 898). The Navajo Nation shall have holdover storage  
19 rights in Lake Nighthorse from year to year to the extent that water stored in the Navajo  
20 Nation's storage capacity space may be held for exclusive delivery to the Navajo Nation  
21 in future years as necessary to meet the delivery demands of the Navajo Nation in  
22 accordance with Part III Article 10(a) and 13(a). Nothing in this Contract shall prohibit  
23 the Navajo Nation from acquiring additional storage capacity space in Lake Nighthorse if  
24 additional space becomes available.

25           (e) The Navajo Nation must notify the Contracting Officer and the Project  
26 Operator of any requests for or changes in delivery of water from the ALP under State  
27 Engineer File No. 2883. The requested delivery or change in delivery shall be made by  
28 the Project Operator in a reasonable time within its ability to manage the operation of the  
29 project and in accordance with the IGA if the IGA is in effect, or as otherwise agreed to  
30 between the Navajo Nation, the Contracting Officer, and the Project Operator.

1 (f) Nothing in this section is intended to impose on the United States any  
2 obligation to maintain Ridges Basin Dam and Lake Nighthorse and related facilities or  
3 the NNMP beyond their useful lives, or to take extraordinary measures to keep these  
4 facilities operating

5 (g) The points of delivery of water made available for use pursuant to this  
6 section from the ALP shall be as specified in Part III Article 10(a) unless changed  
7 consistent with the Partial Final Decree and pursuant to written agreement of the  
8 Contracting Officer and the Navajo Nation.

9 (h) To the extent that delivery of water is made through or from federal  
10 facilities, the Navajo Nation will reimburse costs associated with this delivery in  
11 accordance with the provisions of Part III Article 15 of this Contract.

12  
13 11. ALP PROJECT WORKS

14 Subject to the terms and conditions of this and other applicable contracts related  
15 to the ALP, the United States has constructed the following ALP Project Works and  
16 appurtenant facilities, has acquired lands, and shall provide certain moveable property  
17 and equipment to the Project Operator needed for ALP operation and maintenance as, in  
18 the opinion of the United States in consultation with the Association, are necessary for  
19 ALP purposes, without being limited by enumeration and within the limit of funds made  
20 available by the Congress and the contracting parties.

21 (a) The Project Works consist of the following:

22 (i) Ridges Basin Dam and Lake Nighthorse and appurtenant facilities, the  
23 storage facility for the Project, are located on Basin Creek in Ridges Basin  
24 approximately 3 miles southwest of Durango, Colorado. The reservoir has a  
25 capacity of approximately 120,000 acre-feet.

26 (ii) Durango Pumping Plant and appurtenant facilities are located adjacent  
27 to the Animas River and pumps water from the Animas River for storage in  
28 Lake Nighthorse.

29 (iii) Ridges Basin Inlet Conduit and appurtenant facilities extend from the  
30 Durango Pumping Plant to Lake Nighthorse.

1 (iv) Operation and Maintenance Facilities will be constructed as  
2 determined necessary by the United States, after consultation with the Project  
3 Construction Coordinating Committee, for the required operation and  
4 maintenance of ALP Project Works.

5 (b) In addition to the ALP Project Works identified in Part III Article 11(a)  
6 above, the United States is constructing the Navajo Nation Municipal Pipeline to  
7 augment the existing system that conveys municipal water supplies, in an amount not less  
8 than 4,680 acre-feet per year, to the Navajo Indian Reservation at or near Shiprock, NM  
9 as a facility of the ALP authorized under Section 15(b) of the Colorado Ute Settlement  
10 Act Amendments of 2000.

11 (c) The United States, after consultation with the Navajo Nation, shall have the  
12 right at any time to increase the capacity of the ALP Project Works or any unit or feature  
13 thereof for other than currently authorized project purposes without additional capital or  
14 operation and maintenance cost to the Navajo Nation; provided, that the Navajo Nation's  
15 use of the Statutory Water Allocation shall not be impaired thereby. The right of use of  
16 such increased capacity is reserved to the United States.

17 (d) Any additions, changes to, or operation of ALP Project Works or changes in  
18 use of the water allocations pursuant to Sec. 6(a)(1)(A)(ii) of the Colorado Ute Settlement  
19 Act Amendments of 2000, as amended, from that stated in the Animas-La Plata Final  
20 Supplemental Environmental Impact Statement (FSEIS) dated July 2000 and subsequent  
21 Record of Decision dated September 25, 2000, shall, as required by law, be subject to  
22 further compliance with applicable environmental statutes, which shall include an  
23 analysis of potential impacts on other project Sponsors.

24 (e) Construction and operation of the ALP will be in accordance with the  
25 Environmental Commitments in Chapters 4 and 5 of the FSEIS, which are attached as  
26 Exhibit A to this Contract.

27  
28 12. CONSTRUCTION AND OPERATION OF FACILITIES

29 (a) Nothing in this Contract shall be construed to obligate the United States to  
30 construct, install, operate or maintain dams, pumps, pipelines, storage tanks, distribution  
31 lines or other facilities required to take, measure, convey or distribute water for use

1 beyond agreed upon points of delivery; except, that the United States shall have such  
2 obligations as conferred upon the Secretary by the authorities to construct, maintain and  
3 operate the ALP in accordance with the Colorado River Storage Project Act (70 Stat.  
4 105), the Act of June 13, 1962 (76 Stat. 96), and the Colorado Ute Settlement Act  
5 Amendments of 2000 (114 Stat. 2763A-258). The ALP shall be operated in a manner  
6 consistent with applicable law.

7 (b) Coordination of construction, operation and maintenance of the ALP shall be  
8 accomplished through the following two committees:

9 (i) The Project Construction Coordination Committee, which consists of  
10 representatives of the Bureau of Reclamation and Project contractors,  
11 including the Navajo Nation, provides coordination and consultation on the  
12 construction activities among all ALP sponsors, seeking common  
13 understanding and consensus on decisions associated with final plans,  
14 construction schedules and costs for ALP facilities, and shall dissolve upon  
15 completion of ALP construction.

16 (ii) The Association consists of representatives of those entities which  
17 have been identified by the Colorado Ute Settlement Act Amendments of  
18 2000, as amended, to receive a water allocation. This Association has  
19 contracted with Reclamation for the operation and maintenance of ALP  
20 multipurpose facilities and developed, among the ALP sponsors, a common  
21 understanding of the appropriate level of OM&R activities to be performed on  
22 the ALP multipurpose facilities to assure the long-term operational integrity of  
23 ALP and public safety. Ultimately, the Association will oversee the ongoing  
24 OM&R activities of ALP, providing consultation and coordination among the  
25 Association members and Reclamation on such items as annual OM&R  
26 funding, maintenance schedules, and public safety issues.

27 (iii) Failure of the committees to reach common understandings or to  
28 otherwise coordinate with the Bureau of Reclamation on construction,  
29 operation and maintenance of the ALP shall in no way nullify or reduce the  
30 obligation of the United States to construct, operate and maintain ALP  
31 facilities, including the NNMP, or to deliver water to the Navajo Nation as



1 authorized by the Colorado Ute Settlement Act Amendments of 2000 (114  
2 Stat. 2763A-258), the Navajo Settlement Act, the Settlement Agreement, and  
3 this Contract.  
4

5 13. WATER SUPPLY SHORTAGE

6 (a) With respect to water made available from the ALP under the terms of this  
7 Contract, during periods when the Contracting Officer, or the ALP Operator finds that the  
8 direct flow of the Animas River is insufficient to supply 100 percent of the water  
9 deliveries under contracts for ALP water, the Navajo Nation shall share in the available  
10 direct flow consistent with Article 1 of the Animas-La Plata Project Compact (82 Stat.  
11 898).

12 (b) In any year in which there may occur a shortage in the Statutory Water  
13 Allocation from any cause at the points of delivery, the ALP Operator reserves the right  
14 to make a conclusive determination of shortage and to apportion the available ALP water  
15 allocation among the ALP sponsors subject to the Colorado Ute Settlement Act  
16 Amendments of 2000, as amended, the IGA, and applicable laws, including the Animas-  
17 La Plata Project Compact.

18 (c) On account of drought or other causes outside the control of the United  
19 States, there may occur at times during any year a shortage in the quantity of water  
20 available for delivery to the Navajo Nation pursuant to this Contract. In no event shall  
21 any liability accrue against the United States or any of its officers, agents, or employees,  
22 for any damage, direct or indirect, arising out of any such shortage, and payments due the  
23 United States provided for herein shall not be reduced because of such shortage.  
24

25 14. BLOCK NOTICE FOR ALP WATER DELIVERY

26 (a) When the ALP Project Water becomes available for use by the Navajo  
27 Nation, the United States shall, after consultation, give the Navajo Nation written notice,  
28 referred to herein as the "ALP Block Notice". The ALP Block Notice shall contain: (1)  
29 the quantity of Project Water available to the Navajo Nation from the ALP, and (2) the  
30 effective date that water is available for delivery to the Navajo Nation.

1 (b) The ALP Block Notice and any amendments thereto shall become a part of  
2 this Contract.

3  
4 15. COST PROVISIONS

5 The Navajo Nation's cost obligations for the ALP will be as follows:

6 (a) Prior to water becoming available for use by the Navajo Nation, pursuant to  
7 Part III Article 14(a) above, the OM&R costs allocated to the Navajo Nation's ALP  
8 Project Water shall be paid by Reclamation. Upon water becoming available for use by  
9 the Navajo Nation, pursuant to Part III Article 14(a) above, the Contracting Officer will  
10 notify the Navajo Nation of the transfer of responsibility for the Navajo Nation's ALP  
11 OM&R costs at least sixty (60) days prior to the effective date of the transfer.

12 (b) The OM&R costs allocated to the Navajo Nation's Statutory Water  
13 Allocation will be comprised of:

14 (i) the Navajo Nation's share of Fixed OM&R costs of the multipurpose  
15 facilities as defined in the IGA. The Navajo Nation's share, as identified in  
16 the IGA is 2.5% of the total Fixed OM&R costs. If the IGA is voided or  
17 otherwise terminated, the Navajo Nation's share of Fixed OM&R costs will be  
18 defined by the final cost allocation;

19 (ii) the Navajo Nation's share of Variable OM&R costs of the  
20 multipurpose facilities, which are actual costs of replacing water released  
21 from storage in Lake Nighthorse by request of the Navajo Nation, as defined  
22 in the IGA, which contains provisions for a Variable OM&R fund, designed to  
23 pay all or part of the ALP Variable OM&R costs;

24 (iii) all OM&R costs associated with the NNMP during the period in which  
25 title to the pipeline is held by the United States. In addition, the Navajo  
26 Nation shall be responsible for providing OM&R of the NNMP and for  
27 funding the OM&R costs of the pipeline when title of the pipeline is  
28 transferred to the Navajo Nation. The Navajo Nation's OM&R  
29 responsibilities associated with the NNMP shall be further identified and  
30 provisions for payment made in the NNMP operations agreement identified in  
31 Section 10605(b) of the Navajo Settlement Act. If title is not conveyed, the

1 OM&R responsibilities and the Navajo Nation's share of OM&R costs  
2 associated with the NNMP shall be further identified and provisions for  
3 payment made in a separate OM&R contract that will be required between  
4 Reclamation and the NNMP operator.

5 (c) The Navajo Nation agrees to pay, in advance, its share of the ALP Fixed and  
6 Variable OM&R costs. Payment of the Navajo Nation's, or its assignee's, allocated  
7 OM&R costs shall be made annually in advance, within 60 days of receipt of the annual  
8 charge notice issued by the Project Operator based on the Association's annual estimate  
9 of ALP OM&R costs. If the Navajo Nation's allocated OM&R costs exceed the sum  
10 paid in advance, then a supplemental charge notice will be issued and the Navajo Nation  
11 will pay the sum required within 60 days of receipt. If the Navajo Nation's allocated  
12 OM&R costs are less than the sum advanced, then the Navajo Nation shall receive a  
13 credit for the overpayment upon its next annual charge notice.

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

21 (e) Billings from the Contracting Officer or the Project Operator, and payments  
22 by the Navajo Nation of the OM&R costs outlined under this section shall be made on the  
23 basis of Part III Articles 15(b) and 15(c). For project operation purposes, the Navajo  
24 Nation will provide an annual notice to the Contracting Officer, or the Project Operator,  
25 identifying the amount of water estimated to be used by the Navajo Nation, the estimated  
26 period and point of diversion for each intended purpose and a listing of all executed  
27 Subcontracts with third parties, including those Subcontracts anticipated to be executed  
28 during the year of applicability. The Navajo Nation shall send this notice on or before  
29 February 1 of the year preceding the year of use described in the notice. Upon receipt of  
30 such notice, the Contracting Officer, or the Project Operator, will bill the Navajo Nation  
31 for payment of costs as prescribed herein. Billing adjustments will be made to correct for

1 differences in the estimated and actual use of water, as well as, the estimated and actual  
2 costs during the preceding year.

3  
4 16. TITLE TRANSFER

5 Title to NNMP facilities shall remain in the name of the United States, until  
6 transferred to the Navajo Nation pursuant to Section 10605(b) of the Navajo Settlement  
7 Act.

8  
9 17. LIMITED RESPONSIBILITY FOR DISTRIBUTION

10 (a) Upon delivery, as specified under Part III Article 10(a) herein, the Navajo  
11 Nation shall hold the United States, its officers, agents, employees, and successors or  
12 assigns, harmless from every claim for damages to persons or property, direct or indirect,  
13 and of whatever nature, arising out of or in any manner connected with the control,  
14 carriage, handling, distribution or use of such water beyond the point of delivery. Section  
15 10605(b) of the Navajo Settlement Act acknowledges the City of Farmington's role for  
16 the diversion, treatment and conveyance of water made available under this Contract.

17  
18  
19 PART IV. NGWSP

20 18. WATER DELIVERY PROVISIONS

21 (a) The United States agrees to deliver, or make available for delivery, to the  
22 Navajo Nation a diversion of not more than 22,650 acre-feet, or the quantity of water  
23 necessary to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is  
24 less, in any one year, water allocated to the Navajo Nation under its water rights for the  
25 NGWSP uses in New Mexico from Navajo Reservoir or from the points of diversion  
26 from the San Juan River as authorized by Section 10603 of the Navajo Settlement Act,  
27 under State Engineer File Nos. 2849 and 3215, subject to the provisions of the Navajo  
28 Settlement Act, the Settlement Agreement, the Partial Final Decree, and this Contract.

29 (b) Nothing in this section is intended to impose on the United States any  
30 obligation to maintain the NGWSP beyond its useful life or to take extraordinary  
31 measures to keep the facilities operating.

1 (c) The points of delivery of water made available for use pursuant to this  
2 section from Navajo Reservoir and the San Juan River shall be as specified in Part IV  
3 Article 18(a) unless changed as allowed by the Partial Final Decree and pursuant to  
4 written agreement of the Contracting Officer and the Navajo Nation.

5 (d) To the extent that delivery of water is made through or from federal  
6 facilities, the Navajo Nation will reimburse costs associated with this delivery in  
7 accordance with the provisions of Part IV Article 26 of this Contract.

8 (e) The Navajo Nation must notify the Contracting Officer, the NIIP Project  
9 Operator, and the NGWSP Project Operator of its scheduled locations, amounts and  
10 timings of anticipated diversions prior to any delivery of water from the NGWSP under  
11 State Engineer File Nos. 2849 and 3215. The requested delivery or change in delivery  
12 shall be made by the Contracting Officer, the NIIP Project Operator, and the NGWSP  
13 Project Operator in a reasonable time within their abilities to manage the operation of  
14 Navajo Dam and the NIIP intake, as appropriate, or as otherwise agreed to between the  
15 Navajo Nation, the Contracting Officer, the NIIP Project Operator, the NGWSP Project  
16 Operator.

17  
18 19. NGWSP FACILITIES

19 Subject to the terms and conditions of this and other applicable contracts related  
20 to the NGWSP, the United States will construct the following NGWSP facilities and  
21 appurtenant facilities without being limited by enumeration and within the limit of funds  
22 made available pursuant to the Navajo Settlement Act.

23 (a) The NGWSP facilities consist of two laterals, the San Juan Lateral and the  
24 Cutter Lateral, as generally described in the Navajo-Gallup Water Supply Project Final  
25 Environmental Impact Statement (FEIS) dated July 2009 and subsequent Record of  
26 Decision dated October 1, 2009.

27 (b) Operation and maintenance facilities will be constructed as determined  
28 necessary by the United States, after Consultation with the Project Construction  
29 Committee, for the required operation and maintenance of NGWSP facilities.

30 (c) As a condition of construction of the facilities authorized under Section  
31 10602 (b) of the Navajo Settlement Act, the Project Participants shall provide all land or

1 interest in land, as appropriate, that the United States identifies as necessary for  
2 acquisition under Section 10602 (c) of the Navajo Settlement Act at no cost to the United  
3 States.

4 (d) Any additions, changes to, or operation of NGWSP facilities or changes in  
5 use of the water allocations pursuant to Section 10603(b)(1)(B) of the Settlement Act  
6 from that stated in the Navajo-Gallup Water Supply Project FEIS dated July 2009 and  
7 subsequent Record of Decision dated October 1, 2009, will, as required by law, be  
8 subject to further compliance with applicable environmental statutes, which shall include  
9 an analysis of potential impacts on other Project Participants.

10 (e) Construction and operation of the NGWSP will be in accordance with the  
11 Environmental Commitments in Chapter VI of the FEIS, which are attached as Exhibit B  
12 to this Contract.

13

14 20. CONSTRUCTION AND OPERATION OF FACILITIES

15 (a) Nothing in this Contract shall be construed to obligate the United States to  
16 construct, install, operate or maintain dams, pumps, pipelines, storage tanks, distribution  
17 lines or other facilities required to take, measure, convey or distribute water for use  
18 beyond agreed upon points of delivery; except, that the United States shall have such  
19 obligations as conferred upon the Secretary by the authorities to construct, maintain and  
20 operate Navajo Dam and Reservoir, the NIIP and the NGWSP in accordance with the  
21 Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96),  
22 and the Navajo Settlement Act

23 (b) Coordination of construction, operation and maintenance of the NGWSP  
24 shall be accomplished through the establishment of a Project Construction Committee  
25 which will consist of representatives of the Bureau of Reclamation and the Project  
26 Participants, and may include the State of New Mexico.

27 (i) The Project Construction Committee shall:

28 (A) review cost factors and budgets for construction and operation and  
29 maintenance activities; and

30 (B) improve construction management through enhanced communication;

31 and

1 (C) seek additional ways to reduce overall NGWSP costs.

2 (ii) Failure of the committee to reach common understandings or to  
3 otherwise coordinate with the Bureau of Reclamation on construction,  
4 operation and maintenance of the NGWSP shall in no way nullify or reduce  
5 the obligation of the United States to construct, operate and maintain NGWSP  
6 facilities or to deliver water to the Navajo Nation as authorized by the Navajo  
7 Settlement Act, the Settlement Agreement, and this Contract.

8  
9 21. WATER SUPPLY AND SHORTAGE

10 (a) Notwithstanding any other provisions of this Contract, during times of  
11 shortage in the Navajo Reservoir water supply to meet demands under contracts for  
12 delivery of water from said supply, taking into account water available from inflows  
13 below Navajo Dam to help meet the demands, the Navajo Nation will share in the  
14 available water supply in the manner set forth in Section 11 of the Act of June 13, 1962  
15 (76 Stat. 96), and Section 10402 (b) of the Navajo Settlement Act.

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

22  
23 22. NOTIFICATION OF SUBSTANTIAL COMPLETION

24 When features or reaches of the NGWSP have been declared to be substantially  
25 complete and water can be made available to the Navajo Nation, the United States shall,  
26 after consultation, give the Navajo Nation written notice, referred to herein as the "Notice  
27 of Substantial Completion". The Notice of Substantial Completion shall contain: (1) a  
28 description of the NGWSP facilities that have been determined to be substantially  
29 complete and can generate water delivery, (2) a list of the feature(s) or reach(es) which are  
30 completed, (3) the effective date of that substantial completion declaration, and (4) the

31

1 proportionate share of OM&R costs associated with the completed NGWSP facilities that  
2 are allocated to the Navajo Nation pursuant to Article 26 of this Contract.

3  
4 23. BLOCK NOTICE FOR NGWSP WATER AVAILABILITY

5 (a) When NGWSP water can be made available to the Navajo Nation, the  
6 United States shall, after consultation, give the Navajo Nation written notice, referred to  
7 herein as the "NGWSP Block Notice". The NGWSP Block Notice shall contain: (1) the  
8 effective date that NGWSP water is made available, (2) the quantity of NGWSP water  
9 available to the Navajo Nation from the block, (3) the designation of the lateral, either  
10 Cutter Lateral or San Juan Lateral, that will be used to convey the available block of  
11 NGWSP water under notice, and (4) a description of the feature(s) or reach(es) which can  
12 receive NGWSP water.

13 (b) The NGWSP Block Notice and any amendments thereto shall become a part  
14 of this Contract.

15  
16 24. CARRIAGE OF NON-PROJECT WATER

17 (a) During the period where Title to NGWSP facilities is held by the United  
18 States, the Secretary may enter into a contract for the treatment and carriage of non-  
19 Project water through the NGWSP if, after consultation with the Navajo Nation, it is  
20 determined that capacity is available without impairing delivery to a Project Participant.  
21 Any contract for treatment and carriage of non-Project water shall include the following  
22 terms:

23 (i) the beneficiary shall pay the OM&R costs associated with treatment  
24 and carriage of the non-Project water;

25 (ii) the beneficiary shall pay an appropriate fee that may be established by  
26 the Secretary to assist in the recovery of any capital cost allocable to that use;  
27 and

28 (iii) the contract for treatment and carriage of non-Project water shall  
29 terminate if delivery to a Project Participant is impaired.

30 (b) Following transfer of Title to an NGWSP facility to the Navajo Nation  
31 pursuant to Article 27, the Navajo Nation may enter into a contract for the treatment and



1 carriage of non-Project water through that NGWSP facility if capacity is available  
2 without impairing delivery to a Project Participant. Any contract for treatment and  
3 carriage of non-Project water shall include the following terms:

- 4 (i) the beneficiary shall pay the OM&R costs associated with treatment  
5 and carriage of the non-Project water;
- 6 (ii) the beneficiary shall pay an appropriate fee that may be established by  
7 the Secretary to assist in the recovery of any capital cost allocable to that use;  
8 and
- 9 (iii) the contract for treatment and carriage of non-Project water shall  
10 terminate if delivery to a Project Participant is impaired.

11  
12 25. ADDITIONAL CAPACITY

13 (a) During the period where Title to NGWSP facilities is held by the United  
14 States, the Navajo Nation may request of the Secretary the use of additional capacity in  
15 an NGWSP facility for treatment and carriage of water if capacity is available without  
16 impairing delivery to a Project Participant. The Secretary shall approve or disapprove the  
17 request within 180 days of receipt of the request. Prior to use of any additional capacity,  
18 the Navajo Nation must agree to the following terms:

- 19 (i) pay the OM&R costs associated with the additional capacity to be  
20 used;
- 21 (ii) pay any fee established by the Secretary to assist in recovering capital  
22 costs relating to the additional use; and
- 23 (iii) use of additional capacity shall be terminated if delivery to a Project  
24 Participant is impaired.

25 (b) Following transfer of Title to an NGWSP facility pursuant to Article 27, the  
26 Navajo Nation may request of the owner of the NGWSP reach or facility the use of  
27 additional capacity in an NGWSP facility for treatment and carriage of water if capacity  
28 is available without impairing delivery to a Project Participant. The owner of the NGWSP  
29 reach or facility shall approve or disapprove the request within 180 days of receipt of the  
30 request. Prior to use of any additional capacity, the Navajo Nation must agree to the  
31 following terms:

- 1 (i) pay the OM&R costs associated with the additional capacity to be  
2 used;
- 3 (ii) pay any fee established by the owner of the NGWSP reach or facility  
4 relating to the additional use; and
- 5 (iii) use of additional capacity shall be terminated if delivery to a Project  
6 Participant is impaired.
- 7

8 26. COST PROVISIONS

9 (a) The Navajo Nation shall pay the United States or its designee if some  
10 organization other than the United States is operating Navajo Dam and Reservoir, the  
11 Navajo Nation's proportionate share of the OM&R costs for Navajo Dam and Reservoir  
12 assignable to the amount of water made available to the Navajo Nation through Part IV  
13 Article 23 of this Contract. The Navajo Nation's proportionate share of Navajo Dam and  
14 Reservoir OM&R costs will be based upon 100 percent of the water supply available  
15 under NGWSP Block Notice and designated for the Cutter Lateral and 50 percent of the  
16 water supply available under NGWSP Block Notice and designated for the San Juan  
17 Lateral.

18 (b) The Navajo Nation shall pay the United States or its designee if some  
19 organization other than the United States is operating the NIIP, a proportionate share of  
20 OM&R costs for the NIIP facilities that are used to convey NGWSP water made  
21 available to the Navajo Nation through Part IV Article 23 of this Contract. The  
22 proportionate share of OM&R costs for the NIIP facilities used to convey NGWSP water  
23 shall be identified and provisions for payment made in the OM&R contract that will be  
24 required between Reclamation and the NGWSP operator. The Navajo Nation's  
25 construction cost obligation for the NGWSP shall be allocated, waived and declared non-  
26 reimbursable by the Secretary.

27 (c) The Navajo Nation's OM&R cost obligation for the NGWSP shall be paid to  
28 the United States, or its designee if some organization other than the United States is  
29 operating the NGWSP facilities, as follows:

- 30 (i) For any feature or reach of the NGWSP, declared substantially complete  
31 under Part IV Article 22, through or by which water can only be delivered to

1 the Navajo Nation, the Navajo Nation shall pay all OM&R costs associated  
2 with water delivery, until such time water can be delivered through or by that  
3 feature or reach to other Project Participants, at which time Part IV Article  
4 26(d)(ii) below shall apply.

5 (ii) For any feature or reach of the NGWSP through or by which water  
6 delivery is a benefit to the Navajo Nation and any other Project Participant,  
7 the Navajo Nation's OM&R cost obligation will be comprised of:

8 (A) the Navajo Nation's share of Fixed OM&R costs based upon its  
9 proportionate share of the design capacity for all NGWSP facilities, or  
10 reaches of those facilities, which have been declared substantially  
11 complete through Part IV Article 22 of this Contract.

12 (B) the Navajo Nation's share of Variable OM&R costs.

13 (d) Billing and payment for the Navajo Nation's OM&R cost obligations shall  
14 be conducted as follows:

15 (i) The Navajo Nation's obligation for Navajo Dam and Reservoir  
16 OM&R, as provided under Part IV Article 26(a) above, shall be paid on the  
17 basis of annual cost estimates made by the Contracting Officer, or its  
18 designee. An estimate from the Contracting Officer will be sent annually to  
19 the Navajo Nation on or before May 1 for the next Federal fiscal year, which  
20 begins October 1 of the same calendar year and ends September 30 of the next  
21 calendar year. The Navajo Nation shall advance its annual share of the  
22 Navajo Dam and Reservoir OM&R costs for the succeeding Federal fiscal  
23 year on or before September 30. The first such billing will be issued based  
24 upon the effective date stated in the NGWSP Block Notice and in the event  
25 this effective date shall be for costs of service of less than a full year, such  
26 costs shall be prorated for the period covered.

27 (ii) Fixed OM&R costs for the NGWSP shall be paid on the basis of  
28 annual cost estimates made by the Contracting Officer, or the NGWSP  
29 Operator, based upon the proportionate share of the design capacity for those  
30 NGWSP facilities which have been declared substantially complete through  
31 Part IV Article 22 of this Contract. An estimate from the Contracting Officer,

1 or the NGWSP Operator, will be sent to the Navajo Nation on or before May  
2 1 for the next Federal fiscal year, which begins October 1 of the same  
3 calendar year and ends September 30 of the next calendar year. The Navajo  
4 Nation shall advance its share of the OM&R costs for each Federal fiscal year  
5 in quarterly payments which will be due on September 30, December 31,  
6 March 31, and June 30 of the Federal fiscal year of applicability. The first  
7 such billing will be issued immediately following a notice of substantial  
8 completion as provided in Part IV Article 22 of this Contract. In the event the  
9 first notice shall be for costs of service of less than a full year, such costs shall  
10 be prorated for the period covered. An itemization of the estimated Fixed  
11 OM&R costs will accompany the billing.

12 (iii) Variable OM&R costs for the NGWSP shall be paid on the basis of an  
13 annual notice provided by the Navajo Nation to the Contracting Officer, or the  
14 NGWSP Operator, on or before May 1 for the next Federal fiscal year, which  
15 begins October 1 of the same calendar year and ends September 30 of the next  
16 calendar year. The annual notice will provide an estimate of the Navajo  
17 Nation's anticipated water delivery requirements on a quarterly basis. Based  
18 upon these anticipated water delivery requirements, the Contracting Officer,  
19 or the NGWSP Operator, will bill the Navajo Nation quarterly on September  
20 30, December 31, March 31, and June 30 of the Federal fiscal year of  
21 applicability. An itemization of the estimated Variable OM&R costs will  
22 accompany the billing.

23 (e) In the event either the OM&R cost estimates fall short of the actual costs in  
24 any period, or whenever it is anticipated by the Contracting Officer that a deficit will  
25 occur during the fiscal year, supplemental notices may be issued by the Contracting  
26 Officer requesting additional funds. OM&R funds not spent during one fiscal year will  
27 be carried over for use during the next fiscal year with funds required for that year being  
28 reduced accordingly. An itemized statement of actual costs incurred during each year  
29 shall be furnished to the Navajo Nation. Billing adjustments will be made to correct for  
30 differences in the estimated and actual costs at the beginning of the next fiscal year, and

1 in the case of Variable OM&R costs, for differences in the Navajo Nation's estimated  
2 water delivery requirements and the actual metered flow.

3 (f) The Fixed OM&R costs and Variable OM&R costs of the NGWSP allocated  
4 to the Navajo Nation for the NGWSP facilities that have been determined to be  
5 substantially complete for water delivery under Part IV Article 22 of this Contract, that  
6 the Secretary determines are in excess of the ability of the Navajo Nation to pay, may be  
7 waived and declared non-reimbursable by the Secretary for not more than ten (10) years  
8 from the effective date established by the notice of substantial completion, pursuant to  
9 Sec. 10604(f)(1) of the Navajo Settlement Act. This waiver authority shall terminate on  
10 the date on which title to a facility is transferred to the Navajo Nation pursuant to Sec.  
11 10604(f)(5).

12 (g) OM&R responsibilities and the Navajo Nation's share of OM&R costs  
13 associated with the NGWSP shall be further identified and provisions for payment made  
14 in the NGWSP operations agreement identified in Section 10602(f) of the Navajo  
15 Settlement Act. If title is not conveyed on a feature or reach, the OM&R responsibilities  
16 and the Navajo Nation's share of OM&R costs associated with NGWSP features and  
17 reaches shall be further identified and provisions for payment made in a separate OM&R  
18 contract that will be required between Reclamation and the NGWSP project operator.  
19

20 27. CONVEYANCE OF TITLE

21 Title to NGWSP facilities shall remain in the name of the United States, until  
22 conveyed pursuant to Section 10602(f) of the Navajo Settlement Act.  
23

24 28. LIMITED RESPONSIBILITY FOR DISTRIBUTION

25 (a) Upon delivery, as specified under Part IV Article 18(a) herein, the Navajo  
26 Nation shall hold the United States, its officers, agents, employees, and successors or  
27 assigns, harmless from every claim for damages to persons or property, direct or indirect,  
28 and of whatever nature, arising out of or in any manner connected with the control,  
29 carriage, handling, distribution or use of such water beyond the point of delivery. Section  
30 10602(f) of the Navajo Settlement Act acknowledges the City of Gallup's role for the  
31 conveyance and distribution of water made available under this Contract for the NGWSP.

1                                   **PART V.    GENERAL**

2  
3   29.                           **TERM OF CONTRACT**

4            The water delivery rights recognized by this Contract shall be perpetual unless  
5 limited by a term of years, canceled, terminated, or rescinded by an Act of Congress.  
6

7   30.                           **TRANSPORTATION LOSSES**

8            No conveyance losses beyond the points of delivery as specified in Part II Article  
9 6(a), Part III Article 10(a), and Part IV Article 18 shall be borne by the United States. In  
10 the event that points of delivery are changed, transportation of water from the original  
11 points of delivery to other points of delivery shall be the sole responsibility of the Navajo  
12 Nation, so that no conveyance losses, including channel losses, shall be borne by the  
13 United States.  
14

15 31.                           **UNCONTROLLABLE FORCES**

16            Neither party shall be considered to be in default in respect to any obligation  
17 hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces.  
18 The term uncontrollable forces shall mean, for the purposes of this Contract, any cause  
19 beyond the control of the party affected, including but not limited to, drought, failure of  
20 facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance,  
21 labor disturbance, sabotage, and restraint by court or public authority, which by exercise  
22 of due diligence and foresight, such party could not reasonably have been expected to  
23 avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable  
24 forces shall exercise due diligence to remove expeditiously such inability.  
25

26 32.                           **SUBCONTRACTS**

27            (a) When water made available under this Contract is not being used by the  
28 Navajo Nation, the Navajo Nation may subcontract with third parties, subject to the  
29 provisions of the Navajo Settlement Act, the Settlement Agreement, the Partial Final  
30 Decree, and approval of the Contracting Officer in accordance with this section, to supply  
31 water for beneficial use on or off Navajo Lands in the State of New Mexico, subject to

1 and consistent with the same requirements and conditions of State law, and any  
2 applicable Federal law, interstate compact, and international treaty as apply to the  
3 exercise of water rights held by non-federal, non-Indian entities. Such Subcontracts shall  
4 not be considered subcontracts for purposes of Articles 44 and 46 of this Contract.  
5 Nothing in this Contract shall be construed to establish, address, or prejudice whether, or  
6 to prevent any party from litigating whether, or to the extent to which, any of the  
7 aforementioned laws do or do not permit, govern, or apply to the use of the Navajo  
8 Nation's water outside the State.

9 (b) Water identified in this Contract that is transferred or otherwise made  
10 available to entities other than the Navajo Nation shall require a Subcontract.

11 (c) Subcontracts made by the Navajo Nation with third parties shall be subject  
12 to the provisions of the Navajo Settlement Act, the Settlement Agreement, the Partial  
13 Final Decree, and this Contract, and must include terms of use, purchase, measurement,  
14 operations and default. A copy of each proposed Subcontract shall be filed with the New  
15 Mexico Interstate Stream Commission at least 30 days prior to being executed by the  
16 Navajo Nation; provided, that proposed emergency Subcontracts may be filed with less  
17 than 30 days notice. A copy of each executed Subcontract shall be filed with the New  
18 Mexico Interstate Stream Commission.

19 (d) Prior to approving any Subcontract, the Contracting Officer shall comply  
20 with subsection 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42  
21 U.S.C. § 4332(2)(C). The Navajo Nation will furnish any data and information as may  
22 be required by the Contracting Officer for NEPA compliance documentation. The  
23 Contracting Officer has the authority under the Contributed Funds Act of 1921 (43 USC  
24 §395) to charge any Subcontractor for the costs associated with this compliance  
25 documentation. The Contracting Officer will coordinate with the Navajo Nation and the  
26 Subcontractor throughout the NEPA process, including furnishing copies of all related  
27 documentation.

28 (e) The Contracting Officer shall approve any Subcontract submitted by the  
29 Navajo Nation if the Contracting Officer determines that:

30 (i) the diversion and use of water under the Subcontract would comply  
31 with the Settlement Agreement, the Partial Final Decree, and other applicable

1 law, including any applicable permitting requirements and permit conditions  
2 of the New Mexico State Engineer, and the provisions of this Contract;

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

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

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

14 (v) the delivery obligations under the Subcontract are not inconsistent  
15 with other obligations of the Contracting Officer to deliver water under  
16 preexisting contracts.

17 (f) The annual OM&R assessments specified in Part III Article 15, and Part IV  
18 Article 26 above shall be charged to the Navajo Nation for all water contracted to third  
19 parties.

20 (g) The Secretary shall approve or disapprove a Subcontract submitted to the  
21 Secretary not later than the later of:

22 (i) the date that is 180 days after the date on which the Subcontract is  
23 submitted to the Secretary; and

24 (ii) the date that is 60 days after the date on which the Subcontractor  
25 complies with subsection 102(2)(C) of the National Environmental Policy Act  
26 (NEPA) of 1969, 42 U.S.C. § 4332(2)(C) and any other requirement of  
27 Federal law.

28

29 33. SEVERABILITY

30 If any provisions of this contract shall be held, by a court of competent  
31 jurisdiction, to be invalid, illegal, unenforceable or in conflict with the law of any



1 jurisdiction, the parties intend that the validity, legality and enforceability of the  
2 remaining provisions shall not in any way be affected or impaired thereby.

3

4 34. TERMINATION

5 In the event that the Settlement Agreement is terminated pursuant to Section  
6 10701(e)(2) of the Navajo Settlement Act, the parties agree that this Contract terminates  
7 and further agree to reinstate and continue in full force and effect those portions of the  
8 Contract for which separate authority is provided other than pursuant to the Navajo  
9 Settlement Act.

10

11 35. CONTRACT AMENDMENTS

12 Any modifications to this Contract necessitated by future negotiations between  
13 the parties can be accomplished by amending this Contract to the extent such  
14 amendments are consistent with the provisions of the Partial Final Decree and the Navajo  
15 Settlement Act, including any future amendments.

16

17 36. SAVINGS CLAUSES

18 (a) Nothing in this Contract shall be construed as an admission, or be used by  
19 any party as evidence, that the Navajo Nation is or is not legally entitled to reserved  
20 water rights in the San Juan River stream system.

21 (b) Nothing contained in this Contract shall be construed to alter, amend, repeal,  
22 construe, interpret, modify, or be in conflict with the provisions of: the Boulder Canyon  
23 Project Act (45 Stat. 1057); the Boulder Canyon Project Adjustment Act (54 Stat. 774);  
24 the Colorado River Compact, proclaimed on June 25, 1929 (46 Stat. 3000); the Upper  
25 Colorado River Basin Compact (63 Stat. 31); the 1944 Treaty with the United Mexican  
26 States, Treaty Series 994 (59 Stat. 1219); the Act of June 13, 1962 (76 Stat. 96); the  
27 Colorado River Basin Project Act (82 Stat. 885); the Colorado River Storage Project Act  
28 (70 Stat. 105); the Animas-La Plata Project Compact (82 Stat. 898); the Jicarilla Apache  
29 Tribe Water Rights Settlement Act (106 Stat. 2237); the Colorado Ute Settlement Act  
30 Amendments of 2000 (114 Stat. 2763A-258); or the Navajo Settlement Act.

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

12           (d) Nothing in this Contract shall be construed in any way to quantify or  
13 otherwise adversely affect the land and water rights, claims or entitlements to water of  
14 any Indian tribe or community other than those of the Navajo Nation in, to and from the  
15 San Juan River Basin in New Mexico; except, that the right of the Navajo Nation to use  
16 water under water rights it may have in other river basins in New Mexico shall be  
17 forborne only so long as and to the extent that the Navajo Nation supplies the uses for  
18 which said water rights may exist by diversions of water from the San Juan River Basin  
19 under this Contract consistent with subparagraph 9.11 of the Settlement Agreement.

20  
21           37.           ENVIRONMENTAL COMPLIANCE AND COORDINATION

22           (a) The Navajo Nation, the United States Fish and Wildlife Service, the Bureau  
23 of Reclamation and the Bureau of Indian Affairs agree to cooperate and coordinate in the  
24 planning and construction of projects, diversions and changes in water management  
25 associated with the water made available to the Navajo Nation under the terms of this  
26 agreement as required by federal law, including, but not limited to, the Bald and Golden  
27 Eagle Protection Act, the Fish and Wildlife Coordination Act, the Endangered Species  
28 Act, the Clean Water Act, and the National Environmental Policy Act.

29           (b) The Navajo Nation and the Department of the Interior agree to work with the  
30 State of New Mexico and affected water users to assure that Navajo Dam and Reservoir,

1 the NIIP, the ALP and the NGWSP are operated in compliance with applicable laws  
2 while meeting water delivery obligations.

3 (c) Any modifications to project works, changes in operation of project works,  
4 or changes in use of the water from that stated in the respective NEPA documents of the  
5 three projects identified in this Contract, as well as the Final Environmental Impact  
6 Statement for Navajo Reservoir Operations dated April, 2006 shall be subject to the  
7 review and approval of the Contracting Officer for the sole purpose of ensuring that such  
8 uses are consistent with the operational capacities of the respective projects and all  
9 applicable laws, including ensuring that appropriate environmental review has been  
10 conducted.

11  
12  
13 **PART VI. STANDARD ARTICLES**

14  
15 38. **AIR AND WATER POLLUTION CONTROL**

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

27  
28 39. **ADMINISTRATION OF FEDERAL PROJECT LANDS**

29 The lands and interests in lands acquired, withdrawn, or reserved and needed by  
30 the United States for the purposes of care, operation, and maintenance of Federal project  
31 works may be used by the Navajo Nation for such purposes. The Navajo Nation shall  
32 ensure that no unauthorized encroachment occurs on Federal project lands and rights-of-  
33 way needed for the care, operation, and maintenance of Federal project works that the  
34 Navajo Nation has responsibility for. The Nation does not have the authority to issue any  
35 land-use agreement or grant that conveys an interest in Federal real property, nor to lease  
36 or dispose of any interest of the United States.

37  
38 40. **BOOKS, ACCOUNTS AND RECORDS**

39 The Navajo Nation shall furnish to the Contracting Officer, as requested,  
40 information pertaining to land use and crop census, water supply, water use, changes in  
41 project works, and to other matters relating to the NIIP, the ALP, the NGWSP, and other

1 projects that may utilize the Navajo Nation's water rights supplied under this contract for  
2 miscellaneous municipal, industrial, commercial and domestic uses. The Secretary and  
3 the Navajo Nation shall jointly establish and maintain accounts and other books and  
4 records such as are necessary to enable the Secretary to operate the subject facilities.  
5 Reports thereon shall be furnished to the Contracting Officer in such form and on such  
6 date or dates as the Contracting Officer may require. Subject to applicable Federal laws  
7 and regulations, each party shall have the right during office hours to examine and make  
8 copies of the other party's books and records relating to matters covered by this contract.  
9 Records of diversions of water for use by the Navajo Nation pursuant to this contract  
10 shall be supplied to the New Mexico State Engineer.

11  
12 41. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

13 (a) The Navajo Nation shall not allow contamination or pollution of Federal  
14 project lands, project waters, or project works of the United States or administered by the  
15 United States and for which the Navajo Nation has the responsibility for care, operation,  
16 and maintenance by its employees or agents. The Navajo Nation shall also take  
17 reasonable precautions to prevent such contamination or pollution by third parties.

18 (b) The Navajo Nation shall comply with all applicable Federal laws and  
19 regulations and Reclamation policies and instructions existing, or hereafter enacted or  
20 promulgated, concerning any hazardous material that will be used, produced, transported,  
21 stored, released, or disposed of on or in Federal project lands, project waters, or project  
22 works.

23 (c) "Hazardous material" means (1) any substance defined as hazardous, a  
24 pollutant, or a contaminant under the Comprehensive Environmental Response,  
25 Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 (14) and (33); (2) oil as  
26 defined by the Clean Water Act, 33 U.S.C. § 1321 (a) and the Oil Pollution Act, 33  
27 U.S.C. § 2701 (23); (3) thermal pollution, refuse, garbage, sewage effluent, industrial  
28 waste, mine or mill tailings, mineral salts, pesticides, and other solid waste, and (4) any  
29 other substance regulated as hazardous or toxic under Federal or Navajo Nation law.

30 (d) Upon discovery of any event which may or does result in contamination or  
31 pollution of Federal project lands, project water, or project works, the Navajo Nation  
32 shall immediately undertake all measures necessary to protect public health and the  
33 environment, including measures necessary to contain or abate any such contamination or  
34 pollution and shall report such discovery with full details of the actions taken to the  
35 Contracting Officer. Reporting shall be within a reasonable time period but shall not  
36 exceed 24 hours from the time of discovery if it is an emergency and the first working  
37 day following discovery in the event of a non-emergency.

38 (e) If violation of the provisions of this Article occurs and the Navajo Nation  
39 does not take immediate corrective action as determined by the Contracting Officer, the  
40 Navajo Nation may be subject to remedies imposed by the Contracting Officer, which  
41 may include termination of this contract.

42 (f) The Navajo Nation shall be liable for any response action or corrective  
43 measure necessary to protect public health and the environment or to restore Federal  
44 project lands, project waters, or project works that are adversely affected as a result of  
45 such violation, and for all costs, penalties or other sanctions that are imposed for violation  
46 of any Federal or Tribal laws and regulations concerning hazardous material. At the

1 discretion of the Contracting Officer, the United States may also terminate this Contract  
2 as a result of such violation.

3 (g) The Navajo Nation shall defend, indemnify, protect and save the United  
4 States harmless from and against any costs, expenses, claims, damages, demands, or  
5 other liability arising from or relating to Navajo Nation's violation of this article.

6 (h) Reclamation agrees to provide information necessary for the Navajo Nation,  
7 using reasonable diligence, to comply with the provisions of this Article.

8  
9 42. CLEAN AIR AND WATER

10 (a) The Navajo Nation agrees as follows:

11 (i) To comply with all the requirements of Section 114 of the Clean Air  
12 Act, as amended (42 U.S.C. 7414), and Section 308 of the Federal Water  
13 Pollution Control Act, as amended by Public Law 92-500 (33 U.S.C. 1318),  
14 respectively, relating to inspection, monitoring, entry, reports, and  
15 information, as well as other requirements specified in Section 114 of the Air  
16 Act and Section 308 of the Water Act, respectively, and all regulations and  
17 guidelines issued thereunder before the execution of this contract.

18 (ii) That no portion of the work required by this contract will be performed  
19 in a facility listed on the Environmental Protection Agency List of Violating  
20 Facilities on the date when this contract was executed unless and until the  
21 Environmental Protection Agency eliminates the name of such facility or  
22 facilities from such listing.

23 (iii) To use its best efforts to comply with clean air standards and clean  
24 water standards at the facility where the contract work is being performed.

25 (iv) To insert the substance of the provisions of this article into any  
26 nonexempt subcontract, including this paragraph (a)(4).

27 (b) The terms used in this article have the following meanings:

28 (i) The term "Air Act" means the Clean Air Act, as amended  
29 (42 U.S.C. 7401 *et seq.*).

30 (ii) The term "Water Act" means the Federal Water Pollution Control Act,  
31 as amended (33 U.S.C. 1251 *et seq.*).

32 (iii) The term "clean air standards" means any enforceable rules,  
33 regulations, guidelines, standards, limitations, orders, controls, prohibitions, or  
34 other requirements which are contained in, issued under, or otherwise adopted  
35 pursuant to the Air Act or Executive Order 11738, an applicable  
36 implementation plan as described in Section 110 of the Air Act (42 U.S.C.  
37 7410), an approved implementation procedure or plan under Section 111(c) or  
38 Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or (d)), or an  
39 approved implementation procedure under Section 112(d) of the Air Act (42  
40 U.S.C. 7412(d)).

41 (iv) The term "clean water standards" means any enforceable limitation,  
42 control, condition, prohibition, standard, or other requirement which is  
43 promulgated pursuant to the Water Act or contained in a permit issued to a  
44 discharger by the Environmental Protection Agency or by a state under an  
45 approved program, as authorized by Section 402 of the Water Act  
46 (33 U.S.C. 1342), or by local government to ensure compliance with

1 pretreatment regulations as required by Section 307 of the Water Act  
2 (33 U.S.C. 1317).

3 (v) The term "comply" means compliance with clean air or water  
4 standards. Comply shall also mean compliance with a schedule or plan  
5 ordered or approved by a court of competent jurisdiction, the Environmental  
6 Protection Agency, or an air or water pollution control agency in accordance  
7 with the requirements of the Air Act or Water Act and regulations issued  
8 pursuant thereto.

9 (vi) The term "facility" means any building, plant, installation, structure,  
10 mine, vessel or other floating craft, location, or site of operations owned,  
11 leased, or supervised by a contractor or subcontractor to be utilized in the  
12 performance of a contract or subcontract. Where a location or site of  
13 operations contains or includes more than one building, plant, installation, or  
14 structure, the entire location or site shall be deemed to be a facility except  
15 where the Director, Office of Federal Activities, Environmental Protection  
16 Agency, determines that independent facilities are collocated in one  
17 geographical area.

18  
19 43. PEST MANAGEMENT

20 The Navajo Nation shall take appropriate steps to prevent the introduction and  
21 spread of, and to otherwise control undesirable plants and animals, as defined by the  
22 Contracting Officer, on Federal project lands, project waters, and project works for which  
23 the Navajo Nation has operation and maintenance responsibility. The Navajo Nation is  
24 responsible for inspecting its vehicles and equipment for reproductive and vegetative  
25 parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive  
26 species and other pests, and for removing such materials before moving its vehicles and  
27 equipment onto any Federal land or out of any area on Federal project land where work is  
28 performed. Where decontamination is required prior to entering Federal project land, it  
29 shall be performed at the point of prior use, or at an approved offsite facility able to  
30 process generated cleaning wastes. Upon the completion of work, decontamination shall  
31 be performed within the work area before the vehicles and equipment are removed from  
32 Federal project lands. Programs for the control of these undesirable plants and animals  
33 on Federal project lands, project waters, and project works for which the Navajo Nation  
34 has operation and maintenance responsibility will incorporate Integrated Pest  
35 Management (IPM) concepts and practices. IPM refers to a systematic and  
36 environmentally compatible program to maintain pest populations within economically  
37 and environmentally tolerable levels. In implementing an IPM program, the Navajo  
38 Nation will adhere to applicable Federal and State laws and regulations and Department  
39 of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals.

40  
41 44. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY

42 (a) In accordance with the provisions of Title 42 U.S.C. 2000-e-2(i), the Navajo  
43 Nation shall, during the performance of this contract, give preference in employment to  
44 Indian members of the Navajo Nation Indian Reservation. The Bureau of Indian Affairs  
45 Office of Employment Assistance shall be notified of employment opportunities 48 hours  
46 before any positions are advertised to the general public. Nothing in this section shall be

