

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2013 AUG 23 PM 4: 42

STATE OF NEW MEXICO
SAN JUAN COUNTY
THE ELEVENTH JUDICIAL DISTRICT COURT

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

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants,

THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,

Defendant-Intervenors.

CV-75-184

HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

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

NAME OF PARTY: United States of America, the Navajo Nation, and the State of New Mexico ("Settling Parties").

DESCRIPTIVE SUMMARY: Settling Parties' Notice of Filing of Proposed Decrees.

NUMBER OF PAGES: 1 + 75 Exhibits.

DATE OF FILING: Filed on August 23, 2013.

SETTLING PARTIES' NOTICE OF FILING OF PROPOSED DECREES

Pursuant to the *Order Granting the Settlement Motion for Entry of Partial Final Decrees Describing the Water Rights of the Navajo Nation*, entered on August 16, 2013, the Settling Parties hereby submit the *Partial Final Judgment and Decree of the Water Rights of the Navajo Nation* and the *Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation* ("Decrees") in final format for entry by the Court. The Decrees are attached as Exhibits A and B to this Notice.

NAVAJO NATION



Stanley M. Pollack
M. Kathryn Hoover
Navajo Nation Department of Justice
Post Office Drawer 2010
Window Rock, Navajo Nation (AZ) 86515
(928) 871-7510

Samuel D. Gollis
Samuel D. Gollis, Attorney at Law, P.C.
901 Rio Grande Boulevard, Suite F-144
Albuquerque, New Mexico 87104
(505) 883-4696

Attorneys for the Navajo Nation

CERTIFICATE OF SERVICE

I certify that on this 23rd day of August 2013, at approximately 4:30, an electronic copy of this Notice of Filing of Decrees was served by attaching an electronic copy to an email sent to: wnavajointerse@nmcourts.gov and aoccaj@nmcourts.gov and to the February 25, 2013 Amended Service List.



Arienne Singer

**STATE OF NEW MEXICO
SAN JUAN COUNTY
THE ELEVENTH JUDICIAL DISTRICT COURT**

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

vs.

**THE UNITED STATES OF AMERICA, *et al.*,
Defendants,**

**THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,
Defendant-Intervenors.**

**CV-75-184
HON. JAMES J. WECHSLER
Presiding Judge**

**SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION**

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

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

THIS CASE is a general adjudication filed pursuant to NMSA 1978, Sections 72-4-13 through -19 of the surface and underground water rights within the San Juan River Basin in New Mexico as authorized by 43 U.S.C. Section 666. The rights of the Navajo Nation to divert, impound, or use the surface waters within the San Juan River Basin, including the San Juan River and its tributaries, and the underground waters underlying the surface drainage of the San Juan River Basin in New Mexico, are decreed herein.

This matter comes before the Court on a Joint Motion for the Entry of a Partial Final Judgment and Decree filed by the State of New Mexico, the Navajo Nation and the United States. The Court finds that the proposed Partial Final Judgment and Decree ("Decree") is the product of a negotiated settlement by the aforesaid parties. Notice of the deadline for filing and serving

EXHIBIT A

objections to the water rights described in this Decree was served on the parties to this case and potential water right claimants pursuant to the expedited *inter se* procedures adopted by the Court. The Court, having considered the parties' motion, the objections thereto, the evidence in support thereof, and for good cause shown:

FINDS that the motion should be granted; and

FINDS FURTHER that there is no just reason for delay in accordance with Rule 1-054(C) NMRA 201 and directs the entry of this Decree adjudicating the water rights of the Navajo Nation within the San Juan River Basin.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. JURISDICTION.

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

2. RESERVED RIGHTS TO THE USE OF WATER.

The Navajo Nation's reserved rights, which are held in trust by the United States on behalf of the Navajo Nation, are described in paragraphs 3, 7(a), 8 and 10 of this Decree. These reserved rights have a priority date of June 1, 1868 and are not subject to abandonment, forfeiture or loss for non-use.

3. RESERVED RIGHTS FOR SPECIFIED SURFACE WATER DIVERSIONS.

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

(a) NAVAJO INDIAN IRRIGATION PROJECT, an average diversion of 508,000 acre-feet per year, or the quantity of water necessary to supply an average depletion of 270,000 acre-feet per year from the San Juan River, whichever is less, of surface water from the San Juan River at the location of Navajo Reservoir during any period of ten consecutive years for irrigation of 110,630 acres of land on the Navajo Indian Irrigation Project generally located as described in Plate 1 of the Bureau of Indian Affairs' Biological Assessment for the Navajo Indian Irrigation Project dated June 11, 1999, and for other purposes as authorized by section 10402 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) and subparagraph 5(e) of this Decree, with a maximum diversion flow rate of 1,800 cubic feet per second; provided, however, that the quantities of diversion and depletion in any one year shall not exceed the aforesaid ten-year average quantities, respectively, by more than 15 percent;

(b) NAVAJO-GALLUP WATER SUPPLY PROJECT, a diversion of 22,650 acre-feet, or the quantity of water necessary to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is less, of surface water from Navajo Reservoir and the San Juan River, in combination, in any one year at the points of diversion and for the purposes of the Navajo-Gallup Water Supply Project as authorized by section 10603 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) for municipal, industrial, commercial and domestic uses, including residential outdoor uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 41 cubic feet per second;

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

(d) MUNICIPAL AND DOMESTIC USES, a diversion of 2,600 acre-feet, or the quantity of water necessary to supply a depletion of 1,300 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at locations below the confluence of the San Juan and La Plata rivers for municipal, industrial, commercial and domestic purposes, including residential outdoor uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 5.0 cubic feet per second, provided that a permit is obtained from the New Mexico State Engineer if diversion of this water is to be made off lands held in trust by the United States for the Navajo Nation or lands held in fee by the Navajo Nation;

(e) HOGBACK-CUDEI IRRIGATION PROJECT, a diversion of 48,550 acre-feet, or the quantity of water necessary to supply a depletion of 21,280 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at the diversion dam for the Hogback-Cudei Irrigation Project for irrigation of 8,830 acres of land on the project generally located along the north and south sides of the San Juan River in the vicinity of the community of Shiprock, New Mexico, and between the diversion dam for the project and Four Corners, as described by the Bureau of Indian Affairs' Crop Utilization Study for the Hogback and Cudei irrigation projects dated September 1993, with a maximum diversion flow rate of 221 cubic feet per second, including any diversions from an alternate point of diversion at the historic Cudei ditch diversion heading; and

(f) FRUITLAND-CAMBRIDGE IRRIGATION PROJECT, a diversion of 18,180 acre-feet, or the quantity of water necessary to supply a depletion of 7,970 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at the diversion dam for the Fruitland-Cambridge Irrigation Project for irrigation of 3,335 acres of land on the project generally located along the south side of the San Juan River in the vicinity of the community of Fruitland, New Mexico, and between the City of Farmington and the diversion dam for the Hogback-Cudei Irrigation Project, as described by the Bureau of Indian Affairs' Crop Utilization Study for the Fruitland Irrigation Project dated September 1993, with a maximum diversion flow rate of 100 cubic feet per second, including any diversions from an alternate point of diversion at the historic Cambridge ditch diversion heading.

The term "depletion" refers to the depletion caused by a particular use of water allowing for any

depletion incident to the use.

4. SUPPLEMENTAL CARRIAGE WATER.

The Navajo Nation may divert the direct flow of the San Juan River to supplement diversions to provide additional carriage water for uses under the rights specified by subparagraphs 3(b) through 3(f) at such times and places that the New Mexico State Engineer determines there is direct flow available for such diversion without impairment to water rights in New Mexico, including uses under paragraph 8.0 of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Settlement Agreement), signed by the State of New Mexico, the Navajo Nation, and the Secretary of the Interior on December 17, 2010. The Navajo Nation's diversions under this paragraph:

- (a) do not constitute water rights or consumptive use rights;
- (b) may be made only to the extent that such additional amounts of carriage water are necessary to fully develop the depletion amounts for the uses specified under subparagraphs 3(b) through 3(f);
- (c) may not be made to result in a depletion for any one use under subparagraphs 3(b) through 3(f) that exceeds the Navajo Nation's depletion rights described for that use;
- (d) may not be made to result in farm deliveries exceeding the farm delivery requirement for the Fruitland-Cambridge and Hogback-Cudei irrigation projects described in subparagraph 5(g); and
- (e) may be made only to the extent that the additional carriage water is returned to the San Juan River.

Any reduction in flow otherwise available for diversion by the Navajo Nation under this paragraph

shall not be cause to deny approval of applications to transfer water rights in the San Juan River Basin in New Mexico, or to deny the allocation and use of water pursuant to paragraph 8.0 of the Settlement Agreement.

5. CONDITIONS.

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

(a) The Navajo Nation shall not assert or exercise the reserved rights described in subparagraphs 3(a), 3(b) and 3(c) so long as the rights of the Navajo Nation to the delivery of 535,330 acre-feet of water per year for uses in New Mexico under the terms of the Reclamation Contract No. 10-WC-40-384 (the Settlement Contract) between the Secretary of the Interior and the Navajo Nation, authorized and approved by the United States Congress in section 10701 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), are not irretrievably lost; provided, however, that nothing herein is intended to confer jurisdiction on this Court over any action to enforce or challenge the Settlement Contract or over any action for breach thereof, or to be in conflict with section 11 of the Act of June 13, 1962 (76 Stat. 96). The Navajo Nation may assert or exercise the reserved rights described in subparagraphs 3(a), 3(b) or 3(c) if and only if the Navajo Nation's respective rights to divert water under the Settlement Contract are irretrievably lost. The temporary loss of the use of part or all of the Navajo Nation's right to divert water under the Settlement Contract, including, but not limited to, loss resulting from a judicial determination that a particular use is speculative or constitutes waste and loss because a particular use is denied or prohibited by applicable law, shall not constitute irretrievable loss. Also, forbearance or reduction of

Navajo Nation uses pursuant to the provisions of this Decree or the Settlement Agreement shall not constitute irretrievable loss.

(b) The Navajo Nation's rights pursuant to the Settlement Contract for the uses described in subparagraphs 3(a) and 3(b) are based on, and shall be fulfilled or serviced by the Secretary of the Interior under, New Mexico State Engineer File No. 2849 with a priority date of June 17, 1955, for water originating in the drainage of the San Juan River above Navajo Dam, and File No. 3215 with a priority date of December 16, 1968, for inflow to the San Juan River arising below Navajo Dam. The Navajo Nation's contract rights for the uses described in subparagraphs 3(a) and 3(b) are subject to the sharing of shortages as provided in section 11 of the Act of June 13, 1962 (76 Stat. 96), and section 10402 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367). The Navajo Nation shall not have the right to recoup the quantities of water not delivered under the Settlement Contract due to shortages. The right under subparagraph 3(a) to divert water for the Navajo Indian Irrigation Project during any period of ten consecutive years shall be reduced by the amounts of any shortages allocated to the normal diversion requirement for the Project during said period of ten consecutive years.

(c) The Navajo Nation's rights pursuant to the Settlement Contract for the uses specified in subparagraph 3(c) are based on, and shall be fulfilled or serviced by the Secretary of the Interior under, New Mexico State Engineer File No. 2883 with a priority date of May 1, 1956, for water from the Animas River, and are subject to Article I of the Animas-La Plata Project Compact approved by subsection 501(c) of the Colorado River Basin Project Act (82 Stat. 898), and the Settlement Contract approved by subsection 10604(a)(2)(A)(i) of the

Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367).

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

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

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

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

(2) Cutter Dam and Reservoir and Gallegos Dam and Reservoir are Navajo Indian Irrigation Project facilities, and may be used also to regulate deliveries of water under the Navajo-Gallup Water Supply Project authorized by Part III of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367).

(3) Water diverted from Navajo Reservoir into storage in Cutter Reservoir or Gallegos Reservoir, or suitable storage alternatives, for purposes of the Navajo Indian Irrigation Project or for Navajo Nation uses under the Navajo-Gallup Water Supply Project, and associated depletions caused by reservoir evaporation or seepage losses, shall be accounted within the Navajo Nation's rights to divert and deplete water for the Navajo Indian Irrigation Project described in subparagraph 3(a) or for purposes of

the Navajo-Gallup Water Supply Project described in subparagraph 3(b), respectively.

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

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

(6) Sediment storage capacity may be provided in Gallegos Reservoir, or suitable storage alternatives; provided, that the reservoir, or suitable alternative, is operated each year to maintain no more than 8,455 acre-feet of active conservation storage after consideration of the amount of sediment accumulated in the reservoir

since completion of Gallegos Dam, or suitable alternative.

(e) The Navajo Nation's water rights, described in subparagraph 3(a), which are to be serviced under the Settlement Contract as described in subparagraphs (a) and (b) of this paragraph, may be used for non-irrigation purposes or transferred to other places of use consistent with the provisions of subsection 10402(a) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), paragraph 17 of this Decree and the following conditions:

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

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

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

(iii) the point of diversion is not changed;

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

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

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

(vii) no showing is made to and accepted by the Court pursuant to subparagraph 5(e)(2) that a change would or does impair other water rights in the San Juan River Basin in New Mexico.

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

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

administrative process shall include consultation with the New Mexico State Engineer on proposed changes. The Navajo Nation shall not exercise its authority under subparagraph 5(e)(1) to implement a proposed change in purpose or place of use until the Navajo Nation has consulted with the State Engineer and completed the Navajo Nation's administrative process for the proposed change. Appeals of Navajo Nation decisions or actions made pursuant to the administrative process may be reviewed by the Court.

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

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

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

(g) The Navajo Nation's rights to divert water for irrigation uses under subparagraphs 3(e) and 3(f) shall be subject to the maximum allowable annual diversion quantities specified in the subparagraphs only if the New Mexico State Engineer or the Court enforces annual diversion quantity limits on non-Navajo Nation irrigation diversions from the San Juan River below Navajo Dam and the Animas River in accordance with such quantities as may be adjudicated by the Court, but shall at all times be subject to:

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

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

Those portions of the annual diversion and depletion quantities specified in subparagraphs 3(e) and 3(f) that are transferred to non-irrigation uses shall be administered and managed in

the same manner as other direct flow diversions for non-irrigation uses in the San Juan River Basin in New Mexico.

(h) The Navajo Nation's right for the Fruitland-Cambridge Irrigation Project under subparagraph 3(f) to divert at a maximum diversion flow rate of 100 cubic feet per second shall not be fully exercised if the Court determines that rehabilitation and maintenance of the Project has resulted in a lesser flow rate being needed to supply the peak demand of the Project; provided, that the Navajo Nation shall not be required solely by virtue of the rehabilitation and maintenance to forego exercise of said maximum diversion flow rate right for the Project to less than 83.4 cubic feet per second. Reductions in diversions by the Project below 83.4 cubic feet per second at times may be required, however, if current beneficial uses require less water.

(i) The Navajo Nation's rights to divert and deplete water for irrigation uses under subparagraphs 3(e) and 3(f) may be increased using the approach or methodology that the Court adopts to determine irrigation water right amounts and diversion rates in this case if application of the approach or methodology adopted would result in annual diversion and depletion quantities that exceed those described herein or in an annual farm delivery requirement for the Hogback-Cudei and Fruitland-Cambridge irrigation projects that exceeds the amount described in subparagraph 5(g). The Navajo Nation's rights under subparagraphs 3(e) and 3(f), the diversion rates described in subparagraph 5(h), and the farm delivery requirement described in subparagraph 5(g), shall not be recomputed if the approach or methodology adopted by the Court relies on, or results in, annual per acre farm delivery requirements and diversion and depletion quantities, and maximum per acre ditch diversion

rates, for irrigation uses that are consistent with those given in the report of Hydrographic Survey approved by the decree entered April 8, 1948, by the First Judicial District Court of New Mexico within and for San Juan County in the matter of *The Echo Ditch Company, et al., v. The McDermott Ditch Company, et al.*, Cause No. 01690 (Echo Ditch Decree), for those irrigation rights previously adjudicated by the Echo Ditch Decree.

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

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

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

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

(2) The Navajo Nation may collect waste water from a non-irrigation use for re-use under the associated water right; provided, that the re-use is measured and the depletion of water associated with the re-use is accounted against the depletion

quantity for the water right. For purposes of this Decree, waste water shall include any water collected that has not left Navajo Nation control and reached the underlying ground water table or discharged into a natural surface drainage channel.

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

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

The Navajo Nation may contract with the United States to divert up to 6,411 acre-feet in any one year of surface water from the San Juan River in New Mexico for uses on Navajo lands, including lands held by the United States in trust for the Navajo Nation or members of the Navajo Nation and lands held in fee ownership by the Navajo Nation, within the State of Arizona solely for purposes of the Navajo-Gallup Water Supply Project as authorized by section 10603 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), with a maximum diversion flow rate of 12 cubic feet per second; provided, that the water delivery contract between the Navajo Nation and the United States is executed to provide such a contract right for the diversion of water in New Mexico for delivery to uses in Arizona consistent with section 10603 of the Act. The diversion of water in New Mexico for Navajo-Gallup Water Supply Project uses in Arizona shall be serviced under New Mexico State Engineer File Nos. 2849 and 3215, and shall be administered consistent with the provisions of the Upper Colorado River Basin Compact (63 Stat. 31, chapter 48) and the Northwestern New Mexico Rural Water Projects Act. Also, the diversion of water in New Mexico for Project uses in Arizona shall continue only so long as the water delivery contract remains in effect, shall not be transferable to other uses, including uses in New Mexico, and shall not be leased or otherwise subcontracted to third parties. The contract right for the diversion of water in New

Mexico for delivery to uses in Arizona shall not include carry-over storage in Navajo Reservoir from year to year.

7. GROUND WATER RIGHTS.

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

(a) The Navajo Nation has a reserved right, with a priority date of June 1, 1868, to divert up to 2,000 acre-feet of ground water in any one year for beneficial use, including for municipal, industrial, commercial, domestic, agricultural and other purposes, on lands in New Mexico that are held by the United States in trust for the Navajo Nation, or on other lands if approved by the New Mexico State Engineer or the Court; except, that the Navajo Nation also may use ground water diverted pursuant to this subparagraph on lands that are held by the United States in trust for members of the Navajo Nation.

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

(1) The Navajo Nation has the right to make additional diversions of ground water in the San Juan River Basin in New Mexico on lands held by the United States in trust for the Navajo Nation as of the date of entry of this Decree and such rights

shall be held in trust by the United States on behalf of the Navajo Nation, provided that:

(i) The Navajo Nation shall give notice of intent to drill or pump wells to effectuate such additional diversions of ground water by publication in a newspaper of general circulation within the San Juan River Basin in New Mexico once per week for three consecutive weeks and by letter to the New Mexico State Engineer, both such forms of notice to be completed at least 30 days prior to drilling new wells or to increasing pumping from existing wells, and to specify the proposed purpose and place of use, point of diversion, annual diversion and depletion amounts, and sources of ground water;

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

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

The Navajo Nation shall provide an administrative process for receiving from Navajo and non-Navajo water users protests of additional diversions of ground water proposed to be made pursuant to this subparagraph, and for reviewing and considering protests and impairment issues that may arise from such additional diversions. The administrative process shall include the Navajo Nation consulting with the New Mexico State Engineer on proposed diversions, any necessary

replacement water plans that may be required as per subparagraph 7(c), and impairment issues. The Navajo Nation shall not exercise its authority under this subparagraph to approve or implement a proposed additional diversion of ground water until it has consulted with the State Engineer and completed the administrative process for the proposed diversion. The Court shall have jurisdiction to review and resolve disputes, if any, between the Navajo Nation, the New Mexico State Engineer or other parties to this case regarding whether additional ground water diversions allowed by the Navajo Nation comply with the criteria stated in this paragraph.

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

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

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

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

(c) The Navajo Nation each year shall offset the cumulative reduction in the flow of the San Juan River during the year that is caused by all diversions and uses of ground water by the Navajo Nation under the rights described in subparagraphs (a) and (b) of this paragraph in the aggregate, and that is in excess of 2,000 acre-feet per year of cumulative reduction, in accordance with a replacement water plan approved by the New Mexico State Engineer. The replacement water plan shall specify and schedule how the Navajo Nation will satisfy this offset requirement annually by forbearing use of specific surface water rights to flows of the San Juan River stream system that are described by paragraph 3 in a total amount of depletion equal to the amount of cumulative flow reduction for each year that is in excess of 2,000 acre-feet per year, and in such a manner as to offset the river flow impacts at the locations of impact. In addition, if the offset requirement necessitates a transfer or dedication of Navajo Nation rights under the Settlement Contract to below Navajo Dam, the

State Engineer may determine conditions for dam releases to effectuate the transfer or dedication. Such conditions may include exceptions for periods when replacement water, in the State Engineer's judgment, is not needed to avoid impairment to other water rights or interstate compact delivery requirements.

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

(e) Diversions and uses of ground water underlying the area of the Navajo Indian Irrigation Project shall be included within and accounted against the Navajo Nation's rights to divert and use ground water under subparagraphs (a) and (b) of this paragraph; except, that any re-use of irrigation tail water that through percolation from irrigation of Project lands had reached the underlying ground water table and is pumped for the purpose of maintaining the water table at a sufficient distance below the root zone to prevent waterlog damage to Project fields that otherwise would result from the irrigation use may be included within the Navajo Nation's rights under subparagraph 5(j)(1) to re-use tail water so long as the depletion of water associated with the re-use is accounted against the depletion quantity for the Project described in subparagraph 3(a).

(f) The Navajo Nation may use ground water diverted or withdrawn from within the

San Juan River Basin in New Mexico in areas of the State of New Mexico located outside the physical drainage of the San Juan River and its tributaries; provided, that such diversion and use shall:

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

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

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

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

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

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

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

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

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

8. HYDROGRAPHIC SURVEY – RESERVED RIGHTS.

The Navajo Nation has reserved rights for historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held in trust by the United States on behalf of the Navajo Nation, which rights have a priority date of June 1, 1868; except, that historic and existing uses that are included within the supplemental carriage water provisions described in paragraph 4 are not reserved rights. The reserved rights for historic and existing irrigation uses and related purposes on the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project are included in the reserved right amounts specified by subparagraphs 3(a), 3(e) and 3(f), respectively. Reserved rights for historic, existing and future municipal,

industrial, commercial and domestic uses, including residential agricultural uses such as yard and stock watering, are included in the reserved right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a). Pursuant to paragraph 20 of this Decree and paragraph 4.0 of the Settlement Agreement, the Navajo Nation and the United States, acting in its capacity as Trustee for the Navajo Nation, may petition the Court for entry of a supplemental decree quantifying and adjudicating reserved rights of the Navajo Nation for historic and existing uses that are not included in paragraph 3 or subparagraph 7(a) upon completion by the United States of a Hydrographic Survey Report accepted by the State of New Mexico that describes such historic and existing uses. Entry of this Decree or any such supplemental decree shall not be intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's reserved rights under Federal law. Except as otherwise provided, the conditions under which the Navajo Nation may make such changes are specified in paragraph 17, and are subject to the Court's continuing jurisdiction to interpret and enforce this Decree as provided in paragraph 14.

9. WATER RIGHTS ACQUIRED UNDER STATE LAW.

The Navajo Nation may have water rights acquired under New Mexico state law pursuant to decreed rights or to permits or licenses issued by the New Mexico State Engineer, and for historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held in fee ownership by the Navajo Nation. Such rights would exclude any rights to the use of water historically made by non-Navajo entities on Navajo lands under permits issued by the New Mexico State Engineer that have not been acquired from said entities by the Navajo Nation. Water rights for historic municipal, industrial, commercial or domestic uses, except for *de minimus* uses under paragraph 10, that have been made on lands which are held in fee ownership by the Navajo Nation

and that have not been made pursuant to decreed rights, or to permits or licenses issued by the New Mexico State Engineer, are included in the total water right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a). Pursuant to paragraph 20 of this Decree and paragraph 4.0 of the Settlement Agreement, the Navajo Nation may petition the Court for entry of a supplemental decree quantifying and adjudicating the water rights of the Navajo Nation under state law. Entry of this Decree or any such supplemental decree shall not be intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's water rights under Federal and state law, nor shall they be intended to limit in any way the right and ability of the Navajo Nation to acquire and transfer additional water rights perfected under state law. Except as otherwise provided, the conditions under which the Navajo Nation may make such changes are specified in paragraph 17, and are subject to the Court's continuing jurisdiction to interpret and enforce this Decree as provided in paragraph 14.

10. *DE MINIMUS* USES.

The Navajo Nation shall have the right to allow individual members of the Navajo Nation to divert and use surface water from springs and ground water in the San Juan River Basin in New Mexico without regard to the limitations and quantities of water rights described in paragraphs 3 through 9 solely for residential domestic and stock tank uses, excluding irrigation uses and stockponds, on Navajo lands, including lands held by the United States in trust for the Navajo Nation and lands held in fee ownership by the Navajo Nation; provided, that such diversion and use of water does not involve the diversion and use of water under the water rights described in paragraphs 3 through 9, the diversion or conveyance of water by the project facilities authorized by the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) and preceding Acts of

Congress, or the diversion and delivery of water by public water supply systems. The right under this paragraph to *de minimus* uses is a reserved right of the Navajo Nation.

11. ALLOTTEES.

Individual members of the Navajo Nation that have been allotted lands by the United States, by public land orders or otherwise, within the San Juan River Basin in New Mexico may have claims to reserved rights to the use of water. This Decree does not quantify the nature, extent or priority of such rights; however, historic and existing water uses on such allotted lands shall be determined by the Hydrographic Survey Report to be completed by the United States and accepted by the State of New Mexico pursuant to paragraph 4.0 of the Settlement Agreement. To the extent that water rights are adjudicated by the Court for such allotted lands that are in excess of the historic and existing water uses on those lands as described in the Hydrographic Survey Report, such water rights for allotted lands shall be fulfilled or serviced by rights of the Navajo Nation quantified in this Decree, or the depletions of flow of the San Juan River resulting from the use of water under such rights for allotted lands shall be fully offset by a forbearance of use of rights of the Navajo Nation quantified in this Decree. Nothing in this paragraph shall create a right of any Allottee to delivery of water by the Navajo Nation.

12. LIMITATIONS.

The Navajo Nation is hereby enjoined from the diversion or depletion of the surface or underground waters within the San Juan River Basin in New Mexico except in accordance with the rights described in this Decree, rights in any supplemental decrees that may be entered by the Court pursuant to paragraph 20, or either decreed rights or rights under New Mexico State Engineer permits or licenses that are acquired after the date of entry of this Decree or any supplemental

decrees. Beneficial use shall be the limit of the rights to use water adjudicated to the Navajo Nation by this Decree. The Navajo Nation shall not be entitled to receive, nor shall the United States or the State of New Mexico be required to deliver, nor shall non-Navajo water users be required to curtail water uses to provide to the Navajo Nation, any water not then necessary for beneficial use under the rights adjudicated herein or acquired hereafter. This Decree is binding upon political subdivisions, utilities, agencies and other entities of the Navajo Nation and the United States, and on successors and assigns.

13. DISCLAIMERS.

Except as explicitly provided herein, nothing in this Decree confers jurisdiction on the New Mexico State Engineer to administer or regulate the use of federally reserved rights on lands held by the United States in trust for the Navajo Nation or lands allotted by the United States to members of the Navajo Nation. Because the description of the Navajo Nation's water rights adjudicated in this Decree is based upon a negotiated settlement, the procedures and methods used to quantify and describe the Navajo Nation's water rights in this Decree shall not be binding under the law of the case doctrine upon any other water right claimant, the State of New Mexico or the United States in the adjudication of other water rights in this case and should not be relied upon as precedent under the *stare decisis* doctrine in any other water right adjudication suit. Nothing herein is intended to adjudicate or encumber water rights under New Mexico State Engineer File Nos. 2847, 2848, 2849, 2873, 2883, 2917 or 3215, or under Permit No. 2847, 2849, 2873, 2917 combined, except for the amounts and uses of water specifically adjudicated to the Navajo Nation in subparagraphs 3(a), 3(b) and 3(c) of this Decree, subject to the limitations set forth in paragraph 5, and for the amount of diversion to supply a water delivery contract between the Navajo Nation and the United States for

Navajo-Gallup Water Supply Project uses in Arizona adjudicated in paragraph 6.

14. JURISDICTION AFTER ENTRY OF DECREE.

This Decree is a final order under Rule 1-054(C) NMRA 201 __, and it may be modified only pursuant to Rule 1-060(B) NMRA 201 __. This Court retains jurisdiction to interpret and enforce this Decree. Subject to the provisions of this Decree, the State Engineer has authority under state law to administer water rights within, and to supervise the apportionment, diversion and use of the waters of, the San Juan River Basin in New Mexico, including by appointment of watermasters, according to the orders and decrees of the Court in this adjudication suit and the licenses and permits issued by the State Engineer in the Basin.

15. METERING OF WATER USES.

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

(a) The Navajo Nation within two years from the date of entry of this Decree shall cause to be installed and maintained flumes, gages, stage recorders, totalizing meters or other flow measuring devices on all surface water and ground water diversions, including re-uses under subparagraph 5(j) but excluding uses under rights that may be quantified and adjudicated in supplemental decrees pursuant to paragraphs 8 and 9, within the physical drainage of the San Juan River Basin in New Mexico; except, that diversions may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons. The Navajo Nation also shall cause to be installed and maintained remote sensing equipment on surface water diversion gages for

ditch diversions under its rights from the San Juan River, including Navajo Reservoir. The Navajo Nation shall be responsible for rating all gages and for collecting the data necessary to accurately account diversions in the San Juan River Basin in New Mexico for administration by the State Engineer of this Decree.

(b) The Navajo Nation within two years from the date of entry of this Decree shall cause to be installed and maintained storage or water surface gages at all re-regulation storage reservoirs on the Navajo Indian Irrigation Project. In addition, the Navajo Nation shall cause to be installed and maintained recording or remote sensing equipment on reservoir storage gages at all re-regulation storage reservoirs on the Navajo Indian Irrigation Project, and shall maintain such records of inflows to and releases from reservoir storage, as may be necessary to determine reservoir losses and the storage of tributary inflows to the reservoirs under subparagraph 5(d)(4). The Navajo Nation shall be responsible for updating and maintaining current elevation-area-capacity data for the reservoirs.

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

(d) The Navajo Nation beginning the year following the date of entry of this Decree shall during June or July each year conduct a field inventory of irrigated acreage on the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project, and shall provide the results of the inventory to the New Mexico State Engineer within two weeks of completion of the inventory. The Navajo Nation

shall allow the State Engineer to participate, in cooperation with the Navajo Nation, in conducting the acreage inventory. Aerial photographs, satellite imagery or other records or documentation may be used in conjunction with field surveys to determine or verify lands irrigated in a particular year.

(e) Depletions for the uses described in subparagraphs 3(b), 3(c) and 3(d) shall be computed as diversion less measured return flow. The Navajo Nation shall be responsible for measuring any return flows.

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

16. RECORDS OF WATER USE.

The Navajo Nation shall within two years from the date of entry of this Decree, and annually thereafter, prepare and maintain detailed and accurate records of the acreages of all Navajo lands, including lands held by the United States in trust for the Navajo Nation and lands owned by the Navajo Nation in fee, in the San Juan River Basin in New Mexico irrigated each year from the San Juan River, its tributaries or underground water sources, and of the annual diversions and depletions of water, including re-uses, for its uses in the San Juan River Basin in New Mexico from the San Juan River, its tributaries and underground water sources, all stated separately as to each source of water. The Navajo Nation shall prepare and submit to the Secretary of the Interior and the New Mexico State Engineer on or before October 1 of each year a report of its records and calculations of

actual acreage irrigated and diversions and depletions, by a methodology acceptable to the State Engineer, of San Juan River Basin waters for the previous calendar year. The records and calculations shall be segregated by each use specified in paragraphs 3 through 10 of this Decree; provided, that the Navajo Nation is not required to provide records of irrigated acreage, diversions or depletions for uses described by paragraphs 8 and 9 until such time the Court enters a supplemental decree quantifying and adjudicating rights for such uses. Diversions and depletions may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons. The reports of the Navajo Nation prepared pursuant to this paragraph also shall include documentation as to which rights adjudicated herein are being used, if any, to service or offset water uses by Allottees pursuant to the provisions of paragraph 11 of this Decree and subparagraph 12.3.2 of the Settlement Agreement.

17. ADMINISTRATION.

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

(a) The Navajo Nation shall within two years from the date of entry of this Decree cause to be installed and maintained headgates on all surface water diversions from the San Juan River stream system in New Mexico; except, that no headgate will be required for a diversion from a tributary to the San Juan River so long as the Navajo Nation and the State Engineer agree that there will not be sufficient benefit to justify the cost of a headgate. The State Engineer shall be allowed to inspect diversion headgates upon reasonable request to the Navajo Nation.

(b) The Navajo Nation shall have jurisdiction, authority and responsibility to

measure, distribute, administer and regulate the use of water under the water rights that are adjudicated to the Navajo Nation by this Decree beginning at the points of diversion, subject to the provisions of this Decree and the Settlement Agreement. The New Mexico State Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the Navajo Nation's uses of water from the San Juan River stream system for compliance with this Decree. The Court retains jurisdiction to review and resolve disputes, if any, between the Navajo Nation, the State Engineer or other parties to this case regarding whether the Navajo Nation is properly regulating use of water in compliance with the rights adjudicated by this Decree or by any supplemental decrees that may be entered by the Court pursuant to paragraph 20, or with any rights acquired after the date of entry of this Decree or any supplemental Decrees, or in compliance with applicable conditions of a water rights transfer made in accordance with this Decree.

(c) The Navajo Nation shall have authority to change the purpose and place of use of its reserved rights described by paragraphs 3, 7(a) and 8 and its ground water rights described by subparagraph 7(b)(1) on lands held by the United States in trust for the Navajo Nation in New Mexico, subject to the conditions and limitations of subsection 10603(h) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) and subparagraphs 5(d)(5), 5(e), 7(c) and 7(g) of this Decree; provided, that:

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

(2) such changes do not involve transfers of places of use to locations outside the State of New Mexico, or to lands that are not held by the United States in trust for

the Navajo Nation or its members as of the date of entry of this Decree, unless such lands are subsequently declared by the Secretary of the Interior to be held in trust by the United States for the Navajo Nation pursuant to section 3 of the Act of June 13, 1962 (76 Stat. 96), as amended by the Act of September 25, 1970 (84 Stat. 867);

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

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

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

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

The Navajo Nation shall provide an administrative process for receiving from Navajo and non-Navajo water users protests of changes in purpose or place of use proposed to be made pursuant to this subparagraph, and for reviewing and considering protests and impairment issues that may arise from such changes. The administrative process shall include the Navajo Nation consulting with the New Mexico State Engineer on proposed changes and potential impairment. The Navajo Nation shall not exercise its authority under this subparagraph to implement a proposed change in purpose or place of use until it has consulted with the State Engineer and completed the administrative process for the proposed change. The Court retains jurisdiction to review and resolve disputes, if any, between the Navajo Nation, the New Mexico State Engineer or other parties to this case regarding whether changes allowed by the Navajo Nation in the purpose and place of use of its reserved rights comply with the above stated criteria. Other transfers of reserved rights or ground water rights adjudicated by

this Decree, including transfers that involve a change in the point of diversion on the San Juan River, the Animas River or to a location off lands that are held by the United States in trust for the Navajo Nation, or that involve a change in the place of use to a location off lands that are held by the United States in trust for the Navajo Nation or its members, may be made pursuant to application with the New Mexico State Engineer and in accordance with state law.

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

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

(e) The Navajo Nation may acquire, and may subsequently change the point of diversion and purpose and place of use of, water rights that are not included in this Decree in accordance with state law; provided, that such rights retain the priority date and other elements of the decreed, licensed or permitted right so acquired. The New Mexico State Engineer shall retain jurisdiction to administer and regulate the use and transfer of water rights that are acquired under state law, including the rights adjudicated under subparagraph

7(b)(2) and rights that may be adjudicated by supplemental decree pursuant to paragraph 9 of this Decree.

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

(1) any change in the purpose and place of use or a change in the point of diversion of any of the Navajo Nation's water rights shall comply with the provisions of paragraph 17;

(2) the provisions of section 10701(c) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) shall apply to any subcontract between the Navajo Nation and a third party of the Navajo Nation's rights to the delivery of water under the Settlement Contract between the United States and the Navajo Nation referred to in subparagraph 5(a), including the requirement that the Secretary of the Interior must approve such subcontracts;

(3) the provisions of section 10701(d) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) shall apply to leases, contracts or other agreements that the Navajo Nation may enter to provide water for use by other parties under the Navajo Nation's water rights that are not subject to the Settlement Contract; and

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

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

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

(g) The Navajo Nation's water rights adjudicated herein shall not be leased, contracted, exchanged, forborne or otherwise transferred for use directly or indirectly outside the boundaries of the State of New Mexico without the consent of the State of New Mexico, acting through the New Mexico Interstate Stream Commission, and unless in compliance with applicable law. The Navajo Nation, consistent with the Settlement Agreement and section 10603(d) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), may forbear use of a portion of its rights described in subparagraphs 3(a) or 3(b) as necessary to allow Navajo Nation municipal and domestic uses to be made in Arizona under the Navajo-Gallup Water Supply Project during years that the Secretary of the Interior pursuant to section 10402 of the Act allocates a shortage in the Navajo Reservoir water supply to the Navajo Nation's uses in Arizona under the Project. Except as provided in this paragraph, nothing in this Decree shall be construed to establish, address, prejudice, or prevent any party from litigating, whether or to what extent any law or compact does or does not permit, govern, or apply to the lease, contract, exchange, forbearance or transfer of the Navajo Nation's water rights for use directly or indirectly in an area outside the State of New Mexico.

(h) The Navajo Nation shall have the jurisdiction, authority and responsibility to adjust its headgates and other diversion works to ensure that its diversions of water comply with the Navajo Nation's rights to divert as adjudicated by this Decree or any supplemental decrees that may be entered by the Court pursuant to paragraph 20, or as subsequently

acquired. During times when the Secretary of the Interior has determined and allocated shortages pursuant to subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96), and section 10402 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), or times when a priority call on the San Juan River or its tributaries is in effect or would have been in effect but for the provisions of subparagraph 9.2 of the Settlement Agreement, the New Mexico State Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the Navajo Nation's diversion and use of water from the San Juan River stream system to ensure that the waters are being beneficially used in compliance with this Decree, and shall have authority to request the Navajo Nation to make any appropriate adjustments to its diversions as necessary to comply with the provisions of this Decree and the proper administration of diversions in the San Juan River Basin in New Mexico. The Navajo Nation shall maintain its diversion, conveyance and storage facilities in good repair so as to prevent waste.

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

(j) The Navajo Nation shall construct and maintain, and breach if necessary, storage dams and reservoirs in a manner consistent with public health and safety and applicable laws and regulations. The Navajo Nation shall require that as built drawings be prepared for all newly constructed or rehabilitated dams; except, that dams that are 10 feet or less in height as

measured from the downstream toe to the dam crest and dams that impound 10 acre-feet or less of water as measured by the volume of water stored at the spillway crest are exempt from such requirement for purposes of this Decree. Copies of as built drawings for dams, and copies of dam inspection reports on both newly constructed dams and existing dams, shall be provided to the New Mexico State Engineer on an annual basis.

18. NOTICE.

In addition to any notice provisions under applicable law, at least 30 days prior to any change in the place or purpose of use or point of diversion in the exercise of the water rights identified herein, the Navajo Nation, acting through the Department of Water Resources, shall complete notice of such change by publication in a newspaper of general circulation within the San Juan River Basin in New Mexico once per week for three consecutive weeks and by letter to the New Mexico State Engineer; except, that *de minimus* uses described in paragraph 10 are exempt from this notice requirement, and emergency replacement wells and emergency transfers for domestic and sanitary purposes may be made with less than 30 days notice. Both such forms of notice shall specify the proposed purpose and place of use, point of diversion, diversion rate, annual diversion and depletion amounts, and source of water. Uses of water to make the depletions and diversions described in subparagraphs 3(d), 3(e) and 3(f) that are supplied under the Settlement Contract pursuant to the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, and that are accounted under the rights described in subparagraph 3(a) for the Navajo Indian Irrigation Project, also shall be exempt from this notice requirement. Any use of water for non-irrigation purposes under the rights associated with the Navajo Indian Irrigation Project is subject to the notice provisions of this paragraph notwithstanding the authorized uses of Project water specified at section

10402(a) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367); except, that no such notice shall be required to implement the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement to make the depletions and diversions described in subparagraphs 3(d), 3(e) and 3(f) regardless of whether part or all of the irrigation rights for the Hogback-Cudei and Fruitland-Cambridge irrigation projects have been transferred to non-irrigation uses.

19. SAN JUAN-CHAMA PROJECT.

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

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

(b) does not result in an increase in the amount of water required to be diverted by the Project from the San Juan River Basin.

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

20. SUPPLEMENTAL DECREES.

The Navajo Nation and the United States, acting in its capacity as Trustee for the Navajo Nation, may petition this Court for supplemental decrees to adjudicate rights pursuant to:

(a) hydrographic surveys of historic and existing uses as provided by paragraphs 8

and 9 of this Decree and paragraph 4.0 of the Settlement Agreement;

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

(c) rights that may derive from additional allocations of water made to the Navajo Nation pursuant to paragraph 8.0 of the Settlement Agreement.

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

21. INCORPORATION OF SETTLEMENT AGREEMENT.

The terms and conditions of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement, signed by the State of New Mexico, the Navajo Nation, and the Secretary of the Interior on December 17, 2010, excluding Appendices 1 and 2 thereto, are incorporated as though fully set forth herein. By this Decree, the Court takes no action and makes no determination to approve or disapprove the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) or the Settlement Contract. Any amendments to the Settlement Agreement made pursuant to subparagraph 14.7 of that agreement and subsequent to entry of this Decree shall be binding as between the parties to the Settlement Agreement, but shall not be binding on other parties unless approved by the Court.

22. REVOCABILITY.

Notwithstanding the provisions of paragraph 14, this Decree may be revoked by the Court if the Settlement Agreement is terminated or upon a showing by the Navajo Nation that the conditions set forth at section 10701(e)(1) of the Northwestern New Mexico Rural Water Projects Act (123

Stat.1367) have not been substantially satisfied. If this Decree is revoked, the parties shall not be bound by it or the Settlement Agreement, including any agreements of the Navajo Nation or the United States relating to the settlement of claims provided pursuant to this Decree, the Settlement Agreement or the Northwestern New Mexico Rural Water Projects Act, and the Navajo Nation may petition the Court to proceed with the determination of its rights in this case. Nothing in this paragraph prohibits the Navajo Nation from seeking other remedies for performance or relief to accomplish the purposes of the Settlement Agreement and the Act. The Navajo Nation's right to present to the Court cause to revoke this Partial Final Decree and any supplemental decree under this paragraph shall expire on December 31, 2025, unless the deadlines set forth in paragraph 5.2 of the Settlement Agreement are extended, in which case, this right shall expire one year following the date of the last deadline, including extensions pursuant to paragraph 5.2.2 of the Settlement Agreement.

DATED: _____

James J. Wechsler
Presiding Judge

**STATE OF NEW MEXICO
SAN JUAN COUNTY
THE ELEVENTH JUDICIAL DISTRICT COURT**

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

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, *et al.*,

Defendants,

**THE JICARILLA APACHE TRIBE AND THE
NAVAJO NATION,**

Defendant-Intervenors.

CV-75-184

**HON. JAMES J. WECHSLER
Presiding Judge**

**SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION**

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

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

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

EXHIBIT B

("Supplemental Decree") quantifies and decrees these additional water rights.

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

FINDS that the motion should be granted; and

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. JURISDICTION.

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

2. SUPPLEMENT TO PARTIAL FINAL JUDGMENT AND DECREE.

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

EXHIBIT B

3. RESERVED RIGHTS.

The Navajo Nation has reserved rights, which are held in trust by the United States on behalf of the Navajo Nation, for historic and existing water uses on lands in the San Juan River Basin in New Mexico. Reserved rights are not subject to abandonment, forfeiture or loss for non-use. The reserved rights described in this paragraph have a priority date of June 1, 1868. The reserved rights for historic and existing irrigation uses and related purposes on the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project are included in the reserved right amounts specified by subparagraphs 3(a), 3(e) and 3(f), respectively, of the Decree. Reserved rights for historic, existing and future municipal, industrial, commercial and domestic uses, including residential agricultural uses such as yard and stock watering, are included in the reserved right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a) of the Decree. The total annual quantities of water to which the Navajo Nation has a reserved right for historic and existing uses and which are not included in paragraph 3 or subparagraph 7(a) of the Decree shall not exceed an annual diversion of 26,872 acre-feet or an annual depletion at the places of use of 11,061 acre-feet for uses other than reservoir storage described in subparagraphs 3.A.1 and 3.B.2 below, or a net evaporation from stock ponds and irrigation reservoirs of 11,309 acre-feet. The term "depletion" refers to the depletion caused by a particular use of water including any depletion incident to the use.

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

EXHIBIT B

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

A. LIVESTOCK WATER USE

1. STOCK PONDS

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

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

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

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

EXHIBIT B

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

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

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

2. STOCK USE

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

EXHIBIT B

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

B. IRRIGATION WATER USE

1. IRRIGATION DIVERSION AND DEPLETION

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

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

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

EXHIBIT B

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

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

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

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

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

EXHIBIT B

the US Survey;

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

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

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

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

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

EXHIBIT B

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

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

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

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

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

EXHIBIT B

constitute the project area as described by the US Survey;

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

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

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

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

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

EXHIBIT B

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

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

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

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

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

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

EXHIBIT B

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

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

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

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

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

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

EXHIBIT B

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

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

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

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

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

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

EXHIBIT B

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

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

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

EXHIBIT B

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

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

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

EXHIBIT B

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

2. IRRIGATION RESERVOIR STORAGE

EXHIBIT B

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

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

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

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

EXHIBIT B

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

4. WATER RIGHTS ACQUIRED UNDER STATE LAW.

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

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

EXHIBIT B

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

A. LIVESTOCK WATER USE

1. STOCK PONDS

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

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

(b) STOCK PONDS IN THE CHACO RIVER DRAINAGE, storage of water at up to 248 stock ponds identified by the US Survey from existing surface, spring, or ground water sources at each identified location, with a total combined maximum annual net

EXHIBIT B

evaporation depletion of 1,188 acre-feet based on a total combined volume of 601 acre-feet.

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

2. STOCK USE

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

EXHIBIT B

B. IRRIGATION WATER USE

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

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

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

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

(2) I.K. WESTBROOK-KIN KLIZHIN WASH PROJECT, with a priority date of

EXHIBIT B

July 27, 1931, an annual diversion of 114 acre-feet, or an annual depletion at the place of use of 68 acre-feet, of surface water from Kin Klizhin Wash by the spreading of floodwaters as available at spreader dams on the project for irrigation of 40.5 acres of land held by the United States in trust on behalf of the Navajo Nation within the portion of the project area described at Map Sheets 85-87 of the 1938 San Juan River Hydrographic Survey prepared by the Office of the State Engineer, such rights being reserved rights which are held in trust by the United States on behalf of the Navajo Nation.

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

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

C. INDUSTRIAL AND DOMESTIC WATER USE

EXHIBIT B

The Navajo Nation has the right pursuant to State Engineer File Nos. SJ-43, SJ-44 and SJ-58 to divert and deplete ground water in the NE ¼ of Section 9, Township 19N, Range 17W, N.M.P.M, for industrial and domestic uses with a priority date of March 1953 in a total combined maximum annual amount of 86 acre-feet.

5. DEPLETION LIMITS.

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

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

EXHIBIT B

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

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

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

6. ALLOTTEES.

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

EXHIBIT B

of water under such rights for allotted lands shall be fully offset by a forbearance of use of rights of the Navajo Nation quantified in the Decree or in this Supplemental Decree. Nothing in this paragraph shall create a right of any Allottee to delivery of water by the Navajo Nation.

7. LIMITATIONS.

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

This Supplemental Decree shall not be construed to prohibit the Navajo Nation or its members from engaging in the traditional agricultural practices of planting crops across the active channel of ephemeral streams in the San Juan River Basin so long as these practices do not divert

EXHIBIT B

and control water. These agricultural practices do not constitute the basis for a water right and may continue without administration by the State of New Mexico.

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

8. DISCLAIMERS.

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

9. JURISDICTION AFTER ENTRY OF DECREE.

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

EXHIBIT B

to the orders and decrees of the Court in the Stream Adjudication and the licenses and permits issued by the State Engineer in the Basin.

10. METERING OF WATER USES.

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

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

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

EXHIBIT B

observed lake levels. The amounts of water in storage at other reservoirs may be estimated using technically sound methodologies where actual measurement of storage is not practical for technical or economic reasons.

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

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

(e) The Navajo Nation shall meter or estimate farm deliveries for irrigation uses under the rights decreed herein using technically sound methods if the State Engineer or the

EXHIBIT B

Court determines such information to be necessary for the State Engineer to administer water rights in the San Juan River Basin in New Mexico.

11. RECORDS OF WATER USE.

The Navajo Nation shall within two years from the date of entry of this Supplemental Decree, and annually thereafter, prepare and maintain detailed and accurate records of acres irrigated each year and the annual diversions and depletions of water on all Navajo Nation lands, including lands held in trust by the United States on behalf of the Navajo Nation and lands owned by the Navajo Nation in fee, in the San Juan River Basin in New Mexico from San Juan River tributaries or underground water sources pursuant to this Supplemental Decree, all stated separately as to each source of water as necessary to allow for administration of this Supplemental Decree. The Navajo Nation shall prepare and submit to the Secretary of the Interior and the New Mexico State Engineer on or before October 1 of each year a report of its records and calculations of actual acreage irrigated and diversions and depletions, by a methodology acceptable to the State Engineer, of San Juan River Basin waters for the previous calendar year. In addition, the Navajo Nation's annual report shall include, to the extent that it is available, information regarding stock ponds and irrigation reservoirs that were capable of storing water during the previous calendar year stated separately by the San Juan River drainage above the Chaco River confluence, the Chaco River drainage, the San Juan River drainage between the Chaco River confluence and Four Corners, and the Chinle Wash drainage. The records and calculations shall be segregated by each use specified in paragraphs 3 and 4 of this Supplemental Decree. Diversions and depletions for livestock water uses pursuant to subparagraphs 3.A and 4.A, and for other water uses to be reported under this paragraph, may be estimated using technically sound methodologies acceptable to the State Engineer where actual measurement of uses

EXHIBIT B

is not practical for technical or economic reasons. The reports of the Navajo Nation prepared pursuant to this paragraph also shall include documentation as to which rights adjudicated by the Decree or by this Supplemental Decree are being used, if any, to offset depletions in excess of the depletions limits described in subparagraphs 5(a) and 5(b) pursuant to water replacement plans described in subparagraphs 12(d) or 12(e) of this Supplemental Decree.

12. ADMINISTRATION.

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

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

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

EXHIBIT B

administrative process described in paragraph 17(c) of the Decree consult with the New Mexico State Engineer on proposed changes and potential impairment.

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

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

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

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

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

EXHIBIT B

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

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

13. NOTICE.

EXHIBIT B

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

DATED: _____

James J. Wechsler
Presiding Judge

EXHIBIT B