

Summary of Navajo Nation and City of Gallup Water Supply Contract Principles May ____, 2010

For the construction of the Navajo-Gallup Water Supply Project (NGWSP) to begin, the Jicarilla Apache Nation and the City of Gallup (City) will need to execute repayment contracts with the Bureau of Reclamation. In addition, a water supply contract (Contract) with a forty year delivery period for the City must be executed. Based on the current NGWSP construction schedule, the NGWSP will initially deliver San Juan River water to the City in 2024. If the Navajo Nation and the City enter into the Contract, the Contract should adhere to the following principles:

1. The Contract will be in substantial conformance with the Navajo Nation and City Memoranda of Understanding executed April 17, 1998 and October 30, 2007, the G22 Stipulations, and the NTUA - City of Gallup Water Treatment and Conveyance Contract executed on _____.
2. The Contract shall be for a delivery period of not less than forty years with water delivery beginning on the date that the construction of any facility of the Project serving the City with San Juan River water is completed. It is anticipated that such a facility will be completed before the end of 2025. If initial San Juan River water delivery to the City is delayed past 2025, the delivery period will be delayed accordingly. The Contract will have renewal clauses.
3. The Contract will be for up to 7,500 acre-feet per year. This water supply will be subject to the same water shortages as other NGWSP water users in New Mexico. During periods of shortage, reserve ground water from City wells may be utilized to augment the water supply and mitigate possible shortages among the Gallup Area water users.
4. The Navajo Nation anticipates that a water use permit will be issued to the Navajo Tribal Utility Authority (NTUA) for the use of NGWSP water. The water use permit will include authorization for NTUA to deliver water to the City by modification of the existing NTUA-City Water Conveyance and Treatment Contract. (Reference)
5. For the purposes of the Contract a base rate will be agreed upon. This base rate is a fee for ensuring the availability of 7,500 acre-feet of water for municipal purposes for the duration of the Contract. This fee will be paid by the City upon execution of the water supply contract whether or not the City receives any Project water. This fee will be paid to NTUA for an account described in Paragraph 10.
6. For purposes of this contract a volumetric rate will be agreed upon. This volumetric rate is a fee for the actual volume of water delivered by NTUA to the City for municipal purposes for the duration of the Contract. This fee will be paid to NTUA for an account described in Paragraph 11.
7. NTUA will charge a fee for its expenses for treating and conveying water to the City. This fee will be paid to NTUA for its operation and maintenance of the NGWSP.
8. The Navajo Nation and the City will establish a floor and a ceiling for the base rate and for the volumetric rate. The ceilings will be based on the reasonable fair market value of the water.

9. The Navajo Nation and the City will consider future benchmarks to adjust the rates. These adjustments will be based on the actual impact that the specific benchmark has on the water supplied to the City. These benchmarks, or others, may be: (a) triggering of the Navajo Nation NGWSP Depletion Guarantee, (b) the State of New Mexico's consumptive use and losses exceeding 90 percent of the State's compact allocation, (c) the Navajo Nation putting to beneficial use more than 22,000 acre-feet of its NGWSP contract water within the NGWSP service area in New Mexico., (d) the Lower Basin States initiating a compact call, or (e) the frequency of utilizing the ground water reserve.
10. The parties will establish an operation, maintenance and replacement escrow account for any revenue collected prior to delivery of water.
11. The parties will establish a replacement reserve and emergency fund for the revenue collected for the volumetric fee or for the delivery of water.
12. The Navajo Nation will retain flexibility to utilize any water not delivered to the City, so long as that water is not committed to a different uninterruptable use that would impair the City's ability to take the water.
13. To create incentives for the City to acquire water, if the City acquires water the volumetric rate may decline by a prorated amount to be determined. For instance, if the City acquires water to meet a percentage of its 7,500 acre-feet demand, the volumetric unit rate will decline by a percentage.