

Class "A" Resolution  
Washington Approval  
Required.

RESOLUTION OF THE  
NAVAJO TRIBAL COUNCIL

Approving the Navajo Version of the Contract for the  
Delivery of Water from the Navajo Indian Irrigation Project  
and Reaffirming the Navajo Position with Respect  
to the Use of Project Lands

WHEREAS:

1. The Navajo Indian Irrigation Project was authorized by the Act of Congress of June 13, 1962; and
2. Pursuant to that Act before water will be made available to project lands a contract between the United States and the Navajo Nation must be executed and approved; and
3. Since present plans call for water to be available to project lands in April 1976, it is important that a contract be approved as soon as possible; and
4. The contracts which have been proposed by the Bureau of Reclamation have not adequately protected Navajo water rights. It is therefore appropriate that the Navajo Nation develop and approve its own version of the water contract; and
5. As the Navajo Nation prepares to have the Navajo Indian Irrigation Project become operational it is important to restate the Navajo position with respect to the use of the project lands.

NOW THEREFORE BE IT RESOLVED THAT:

1. The proposed agreement between the United States and the Navajo Nation, attached hereto as Exhibit "A", is hereby approved for negotiation purposes with the Department of the Interior.
2. The Chairman, Navajo Tribal Council, is hereby authorized to execute this contract on behalf of the Navajo Nation.
3. In the event that the Department of the Interior is unwilling to enter into a contract as set forth in Exhibit "A", the Navajo Tribal Council delegates to the Advisory Committee of the Navajo Tribal Council and the Resources Committee of the Navajo Tribal Council shall provide an amended version of the water delivery contract for the approval of the Navajo Tribal Council.


4. The Navajo Tribal Council for and on behalf of the Navajo Nation reaffirms its position that the Navajo Indian Irrigation Project exists for the benefit of the Navajo people and that the Navajo people shall be given every opportunity to use land within the project for farming.

5. The Navajo Tribal Council for and on behalf of the Navajo Nation reaffirms its intention that the project be administered from within the Navajo Nation (including project lands) and disapproves of any attempt to lease, assign or otherwise transfer project lands to any non-Navajo entity of a commercial nature or one not part of the Navajo Nation.

6. Paragraph two of the Resolved clause of Resolution CMA-14-64 of March 2, 1964, is hereby rescinded.

#### CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 43 in favor and 0 opposed, this 6th day of November, 1975.



Chairman  
Navajo Tribal Council

AGREEMENT entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 1975, between the UNITED STATES OF AMERICA ("United States"), acting through the Secretary of the Interior, and the NAVAJO NATION ("Navajo Nation"), also known as the Navajo Tribe of Indians, pursuant to the Act of Congress of April 11, 1956 (70 Stat. 105); the Act of June 13, 1962 (76 Stat. 96); and the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385); all as amended or supplemented.

## W I T N E S S E T H:

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

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

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

as follows:

GENERAL DEFINITIONS

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

a. Project Works - shall mean all works or facilities constructed including the diversion works, reservoirs, dams, pipelines, conduits, and outlet works, together with land and rights-of-way for such works.

b. Project Water - shall mean water available for use through the project works.

c. Irrigation Water Supply - shall mean that portion of the project water supply to be used exclusively for the irrigation of irrigable and arable lands, including directly related domestic and industrial consumption necessary for the operation of the project.

d. Irrigation Related Water Supply - shall mean that portion of the project water supply to be used in processing of agricultural products (and related activities) grown on the project and domestic and other uses of water necessary to support individuals residing on the project lands or employed on the project lands, provided however, that all such Irrigation Related Water Supply water shall be used on the project lands.

PROJECT PLAN

2. a. This project is designed for the principal purpose of furnishing irrigation water to approximately 110,630 acres of land (said project to have an average annual diversion of 508,000 acre-feet of water) and the repayment of the costs of construction thereof to be in accordance

"The prospective runoff shall be apportioned between the contractors diverting above and those diverting at or below Navajo Reservoir in the proportion that the total normal diversion requirement of each group bears to the total of all normal diversion requirements. In the case of contractors diverting above Navajo Reservoir, each such contract shall provide for a sharing of the runoff apportioned to said group in the same proportion as the normal diversion requirement under said contract bears to the total normal diversion requirements of all such contracts that have been made hereunder: Provided, That for any year in which the foregoing sharing procedure either would apportion to any contractor diverting above Navajo Reservoir an amount in excess of the runoff anticipated to be physically available at the point of his diversion, or would result in no water being available to one or more such contractors, the runoff apportioned to said group shall be reapportioned, as near as may be, among the contractors diverting above Navajo Reservoir in the proportion that the normal diversion requirements of each bears to the total normal diversion requirements of the group. In the case of contractors diverting from or below Navajo Reservoir, each such contract shall provide for a sharing of the remaining runoff together with the available storage in the same proportion as then normal diversion requirement under said contract bears to the total normal diversion requirements under all such contracts that have been made hereunder."

(2) Inasmuch as the Act prohibits the Secretary from entering into contracts for the delivery of water beyond that which is reasonably expected to be available in the event of shortage, no contract in violation of that provision shall be considered in computing the apportionment of water in the event of shortage. Similarly, no diversion beginning after June 13, 1962 (unless previously authorized) shall be considered in computation of diversion for purposes of allocating shortage.

(3) Diversion shall mean 508,000 acre feet of water diverted thru the project works above the reservoir and shall exclude hydroelectric water for generation of electricity below the reservoir. Any water for hydroelectric purposes below the reservoir shall not be charged to the 508,000 acre feet of water allocated to Navajo

Indian Irrigation Project.

4. a. The Navajo Nation pursuant to the Act of July 1, 1932 (47 Stat. 564, 25 U.S.C.A. 386(a)) shall not be required to repay construction costs for any water used for irrigation and directly related purposes until such time as the Indian title to the land on which the project water is used has been extinguished.

b. The Navajo Nation shall notify the Contracting Officer annually of project land in which the Indian title shall have been extinguished. Upon receipt of such information or at any earlier period which in the opinion of the Contracting Officer shall be convenient for the purpose, the Contracting Officer shall determine the assessments to be made against such lands and the rules applicable to such assessments.

DISPOSITION OF REVENUE

5. All project revenues shall be disposed of or credited as determined by the Contracting Officer according to law.

TITLE TO PROJECT WORKS

6. Title to all project works and facilities shall remain in the United States until otherwise provided by the Congress.

OPERATION AND MAINTENANCE

7. a. Upon completion of construction, the United States, represented by the Bureau of Indian Affairs, shall care for, operate, and maintain all project works. Notice will be issued to the Navajo Nation on or before April 1 of each year showing the estimated cost for the care, operation, maintenance and replacement of the project works for the next succeeding fiscal year. Payment of operation and

maintenance costs of the irrigation features of the project shall be in accordance with the provisions of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385), as amended or supplemented, PROVIDED, that the Contracting Officer may transfer to the Navajo Nation after not less than 6 months' written notice the care, operation, and maintenance of all or any part of the project works, subject to such rules and regulations as he may prescribe and, in such event, the Secretary may transfer to the Navajo Nation title to movable property necessary to the operation and maintenance of those works.

b. None of the project works or structures shall be so operated as to create, implement, or satisfy any preferential right in the United States or any Indian Tribe to the waters impounded, diverted, or used by means of such project works or structures, other than contained in those rights to the uses of water granted to the States of New Mexico or Arizona pursuant to the provisions of the Upper Colorado River Basin Compact.

c. This project shall be so operated that no waters shall be diverted or used by means of the project works, which, together with all other waters used in or diverted from the San Juan River Basin in New Mexico, will exceed the water available to the State of New Mexico under the allocation contained in Article III of the Upper Colorado River Basin Compact for any water year.

PRODUCTION OF BASIC AGRICULTURAL COMMODITY RESTRICTED

8. For the period ending 10 years after completion of construction of the project, no water from the project shall be delivered to any water user for the production on newly irrigated lands of any basic

agricultural commodity, as defined in section 408(c) of the Agricultural Act of 1949 (63 Stat. 1056; 7 U.S.C. 1428), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b) (10) of the Agricultural Adjustment Act of 1938 (52 Stat. 41), as amended (7 U.S.C. 1281), unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

ACQUISITION AND RETENTION OF LANDS OUTSIDE NAVAJO TRIBE RESERVATION

9. a. The United States shall hold in trust for the Navajo Nation any legal subdivisions or unsurveyed tracts of federally owned land outside the present boundary of the reservation susceptible to irrigation as part of the project or necessary for location of any of the works or canals of the project: PROVIDED HOWEVER, that no such legal subdivision or unsurveyed tract shall be so declared to be held in trust by the United States for the Navajo Nation until the Navajo Nation shall have paid the United States the full appraised value thereof; AND PROVIDED FURTHER, that in making appraisals of such lands the Contracting Officer shall consider their values as of June 13, 1962, excluding therefrom the value of minerals subject to leasing under the Act of February 25, 1920, as amended (30 U.S.C. 181-286), and such leasable minerals shall not be held in trust for the Navajo Nation but shall continue to be subject to leasing under the Act of February 25, 1920, as amended, after the lands containing them have been declared to be held in trust by the United States for the Navajo Nation.

b. The Navajo Nation shall convey to the United States



and the Contracting Officer shall accept on behalf of the United States, title to any land or interest in land susceptible to irrigation as part of the project or necessary for location of any of the works or canals of such project, acquired in fee simple by the Navajo Nation, and after such conveyance said land or interest in land shall be held in trust by the United States for the Navajo Nation as a part of the project.

c. The Contracting Officer is authorized to acquire by purchase, exchange, or condemnation any other land or interest in land susceptible to irrigation as part of the project or necessary for location of any of the works or canals of such project. After such acquisition, said lands or interest in lands shall be held by the United States in trust for the Navajo Nation.

RIGHTS-OF-WAY - RESERVATION AND NAVAJO TRIBE CONTROLLED LANDS

10. a. The Navajo Nation hereby consents to entry by the United States, its officers, employees, contractors, agents, and all others concerned with construction, care, operation and maintenance of the project into and upon all lands owned or controlled by the Nation or over which they exercise administration, to the extent considered by the Contracting Officer to be necessary for the construction, care, operation, and maintenance of the project.

b. The Navajo Nation hereby grants and conveys to the United States subject, however, to submission by the United States of necessary surveys, plats, and related information showing definite location for acceptance by the Navajo Nation a perpetual right, privilege, and easement to construct, replace, relocate, operate, maintain, and remove dams, canals, laterals, ditches, bridges, roads, fences,

telephone and telegraph lines, pipelines, electric transmission lines, and any structures, facilities or crossings deemed necessary or desirable, and the right, privilege, and easement to remove from or place on earth and rock, including the right to remove and use sand, rock, and gravel and other building materials, together with the right of ingress and egress for men, materials, and equipment for the purposes of carrying out the easement hereby granted, and the right to trim, cut, fill, and remove underbrush and other vegetation, structures, and any other obstructions or obstacles in and upon reservation lands, controlled lands, or any lands under the administration of the Navajo Nation and required by the Contracting Officer for the construction, care, and operation of the project. The Navajo Nation will furnish information showing the location of religious and other areas of special significance to the Contracting Officer. The Contracting Officer will make every effort to minimize problems and will work closely with the Navajo Nation in resolving any problems in these areas. In the event the Nation does not comment in writing on the surveys, plats, and related information submitted to it by the United States within 45 days following receipt of that information by the Nation, such data shall be considered to be acceptable to the Nation.

c. The Navajo Nation shall procure without cost to the United States all assurances of title which the Navajo Tribe may be advised by the United States are necessary and proper to show in the Navajo Nation a sufficient interest in said property to permit construction, operation, and maintenance of the project.

d. The Navajo Nation shall execute in forms requested by the Contracting Officer, all deeds, easements, or conveyances as required

evidence of the conveyances herein provided, for recordation or other uses.

COMPLIANCE WITH ACTS OF CONGRESS OF APRIL 11, 1956, AND JUNE 13, 1962

11. Construction, care, operation, and maintenance of the project and project works, including the allocation, diversion and distribution of water as authorized by the Act of Congress of April 11, 1956 (70 Stat. 109), and the Act of Congress of June 13, 1962 (76 Stat. 96), shall be subject to and in conformance with the applicable conditions, limitations, and provisions of these acts, and the statutes, compacts, and treaties referenced in said 1956 and 1962 Acts.

WATER RIGHTS - WATER SUPPLY GENERAL

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

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

on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this contract.

RULES, REGULATIONS, AND DETERMINATIONS (STD)

16. a. The Contracting Officer shall have the right to make, after an opportunity has been offered to the Navajo Tribe for consultation, rules and regulations consistent with the provisions of this contract, the laws of the United States and the State of New Mexico, to add to or to modify them as may be deemed proper and necessary to carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Navajo Nation shall observe such rules and regulations.

b. Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Navajo Nation questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Navajo Nation and shall be conclusive upon the parties.

NOTICES (STD)

17. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Southwest Region, Bureau

for any damage arising out of a shortage of water occasioned by its entering into contracts for the delivery of more water than could have reasonably been anticipated to be available in times of shortage pursuant to 43 U.S.C.A. § 615 ss(a) (¶2).

c. Navajo Nation Project Water Rights - The Navajo Nation shall have the right to use its share of project water supply required for irrigation purposes and other directly related activities.

d. Return Flow - The United States reserves the right to use any of the seepage or return flow water attributable to the use of the project water supply which actually enters the San Juan River, provided however, that this subsection shall not constitute any waiver or limitation on the right of the Navajo Nation to waters of the San Juan River separate and apart from rights contained in the Act.

e. Priority Claims - The Navajo Nation hereby waives any claims it may have to project waters, including prior rights therein, based upon judicial construction of Navajo Nation rights through application of the principles of the case of Winters v. United States (207 U.S. 564), and agrees to the apportionment and distribution of available project water as provided in this contract, the operation of this project in no way satisfying, fulfilling, limiting or measuring Navajo Nation water rights in and to the waters of the San Juan River.

f. Water Sales and Distribution - The Contracting Officer may contract for the sale and distribution of water not committed by this contract to the Navajo Nation, provided however, that no contract may be entered into which impairs the rights of the Navajo Nation pursuant to the Act or this agreement.

### QUALITY OF WATER

13. The operation and maintenance of project works shall be performed in such manner as is practicable to maintain the quality of raw water made available through such works at the highest level reasonably attainable as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water, so long as no actions of the United States result in the degradation of the quality of water which would otherwise be available to the Navajo Nation through the project.

### WATER AND AIR POLLUTION CONTROL

14. The Navajo Nation shall, in the operation of the project, within its legal authority, comply fully with all applicable Federal laws, orders, and regulations, and the laws of the State of New Mexico, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, groundwater, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants, and concerning the pollution of the air with respect to radioactive materials or other pollutants.

### BOOKS, RECORDS AND REPORTS (STD)

15. The Navajo Nation shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of project works, and to other matters as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and

of Reclamation, Amarillo, Texas 79101, on behalf of the United States and to the Chairman of the Tribal Council of the Navajo Tribe of Indians, Window Rock, Arizona 86515, on behalf of the Navajo Tribe. The designation of the addresses or the address may be changed by notice given in the same manner as provided in this article for other notices.

#### TERM OF CONTRACT

18. This contract shall be effective on execution and shall remain in force until superseded or terminated by agreement between the parties hereto.

#### ENVIRONMENTAL STATEMENT

19. The Navajo Nation agrees that it will furnish data and information to the United States as may be required for preparation of an environmental statement pursuant to the National Environmental Policy Act of 1969 (Public Law 91-190), as it may be amended. No water will be delivered under this contract until an environmental statement has been prepared by the United States in compliance with said act and until the Secretary, in his sole discretion, finds the uses for which the water is to be delivered are consistent therewith. The United States shall take every action to expedite the preparation of an environmental statement such that delivery of project water beginning in 1976 is not delayed or impeded.

#### CONTINGENT FEE CLAUSE

20. The Navajo Nation warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide

established commercial or selling agencies maintained by the Navajo Nation for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to add to the contract repayment obligation or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS (STD)

21. The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Navajo Tribe from any obligations under this contract, nor give the Navajo Tribe the right to terminate this contract as to any of its executory features. No liability shall accrue the United States in case such funds are not appropriated or allotted.

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED (STD)

22. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any part or interest therein shall be valid until approved by the Contracting Officer.

OFFICIALS NOT TO BENEFIT (STD)

23. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.



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

THE UNITED STATES OF AMERICA

Department of the Interior

By \_\_\_\_\_

NAVAJO NATION

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary  
Navajo Nation

(SEAL)