

July 9, 2004, Revised Draft - Navajo Nation Water Rights Settlement

Disclaimer. It is expressly understood that the governing bodies or authorities of the proposed signatories have not approved the revised draft settlement agreement, including the revised draft partial final decree, revised draft settlement act and revised draft settlement contract. New Mexico Interstate Stream Commission staff also prepared the revised draft executive summary of the proposed settlement and the draft responses to public comments received on the December 5, 2003, discussion draft of the settlement.

APPENDIX 3

Contract Between the United States and the

Navajo Nation

Preamble

This contract is entered into this ____ day of _____, _____, between the United States of America, acting through the Secretary of the Interior pursuant to the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), the Act of June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385), and the Navajo Nation.

EXPLANATORY RECITALS

Witnesseth, That:

Whereas, the United States and the Navajo Nation have negotiated a resolution of all water right claims of the Nation to waters of the San Juan River Basin in New Mexico which are the subject of a general stream adjudication in New Mexico state court and which claims, if unresolved, impair water resources development by the Nation and the State of New Mexico; and

Whereas, the settlement of these claims will secure to the Nation a perpetual water supply; and

Whereas, to preserve opportunities for the Navajo Nation to develop while at the same time allowing for other economic development in New Mexico, it is the intent of this contract that the Navajo Nation may exercise the right to market the water supply secured to it under this contract subject to the provisions of this contract and the agreement between the Navajo Nation and the State of New Mexico setting forth a stipulated and binding settlement agreement as to the rights of the Nation to use and administer waters of the San Juan River Basin in New Mexico, signed by the State of New Mexico and the Navajo Nation on _____ and executed by the Secretary on _____; and

Whereas, although the Navajo Nation currently is a beneficiary of public water resource development, construction on the Navajo Indian Irrigation Project, now approximately 70 percent complete, has lagged markedly compared to the construction that was contemplated for the projects that were authorized for construction by the Act of June 13, 1962; and

Whereas, the Federal government is undertaking to construct additional water development facilities to fulfill the terms and conditions of the San Juan River Basin in New Mexico Water Projects and Settlement Act and this contract, including facilities to extend the

current service area of the Navajo Indian Irrigation Project and facilities to convey much needed municipal, industrial and domestic water supplies to Navajo Nation communities; and

Whereas, the Secretary of the Interior has determined in accordance with section 11 of the Act of June 13, 1962 (76 Stat. 96), pursuant to the hydrologic determination submitted to Congress on _____ that there is sufficient water reasonably likely to be available for use in the State of New Mexico to enable the United States to enter into this contract:

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

GENERAL DEFINITIONS

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

(a) “Animas-La Plata Project” means the project of the same name authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III) and related facilities, including Ridges Basin Dam and Reservoir and the Navajo Nation Municipal Pipeline.

(b) “Contracting Officer” means the representative of the Commissioner of Reclamation authorized to administer this contract.

(c) “Nation” means the Navajo Nation, a body politic and federally-recognized Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe List of 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the

“Navajo Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo Tribe of Indians” and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation, acting through its authorized representative.

(d) “Navajo-Gallup Water Supply Project” means the project of the same name authorized by Title I of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___).

(e) “Navajo Indian Irrigation Project” means the project of the same name authorized by the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), as amended by the Act of September 25, 1970 (84 Stat. 867; Public Law 91-416).

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

(g) “Navajo Nation Municipal Pipeline” means the pipeline to convey the Navajo Nation’s Animas-La Plata Project water from the City of Farmington, New Mexico, to Navajo Nation communities along the San Juan River valley in New Mexico, including the City of Shiprock, as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III).

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

- (i) "OM&R" means annual operation, maintenance and replacement.
- (j) "Ridges Basin Reservoir" means the reservoir created by the impoundment on Basin Creek as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258).
- (k) "San Juan River" means that river which originates in the State of Colorado and flows through or constitutes the boundary of the Navajo Indian Reservation in northwestern New Mexico and southeastern Utah, where it flows into Lake Powell.
- (l) "Secretary" means the Secretary of the Department of the Interior or a designee.
- (m) "Settlement Agreement" means the agreement between the Navajo Nation and the State of New Mexico setting forth a stipulated and binding settlement agreement as to the rights of the Nation to use and administer waters of the San Juan River Basin in New Mexico, signed by the State of New Mexico and the Navajo Nation on _____ and executed by the Secretary on _____.

CONDITIONS

2. This contract will give rise to rights and obligations on the part of the Navajo Nation and the United States only after a partial final decree is entered by the District Court of San Juan County, New Mexico, in the general stream adjudication of the San Juan River stream system, *New Mexico v. United States*, No. 75-184, which partial final decree adjudicates all of the water rights of the Navajo Nation in and from the San Juan River Basin in New Mexico per paragraph 3.0 of the Settlement Agreement and is of the form provided in Appendix 1 to the Settlement Agreement.

PRELIMINARY UNDERSTANDINGS

3. (a) The United States and the Navajo Nation will proceed in good faith to take all steps necessary to assure the entry of the partial final decree described in section 2.
- (b) The Navajo Nation may purchase, receive and use Animas-La Plata Project water or Navajo-Gallup Water Supply Project water in accordance with the relevant provisions of this contract prior to the entry of the partial final decree; except, that the obligation of the United States to deliver such water shall become null and void if the partial final decree is not entered by the date specified in subsection 309(a)(5) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___). Neither party will have any obligation under this contract to purchase water from or deliver water to the other party for the Navajo Indian Irrigation Project until the entry of the partial final decree.
- (c) The obligations of the parties under Contract No. 14-06-W-269 between the United States and the Navajo Nation for delivery of water from Navajo Reservoir for the principal purpose of furnishing irrigation water to the Navajo Indian Irrigation Project shall continue in force until the entry of the partial final decree referred to in section 2, after which Contract No. 14-06-W-269 shall be superceded by this contract.

WATER DELIVERY PROVISIONS

4. (a) The United States agrees to deliver, or make available for delivery, to the Navajo Nation water for diversion of up to 530,650 acre-feet of water per year, on average, during any period of ten consecutive years, and up to 606,850 acre-feet of water in any one year, from Navajo Reservoir under New Mexico State Engineer File No. 2849 and from inflow to the San Juan River below Navajo Dam under New Mexico State Engineer File No. 3215, in combination, subject to the provisions of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), the Settlement Agreement, the partial final decree referred to in section 2, and this contract. Of the water to be made available under this subsection, the Nation may divert or receive:

(i) up to 508,000 acre-feet per year, on average, during any period of ten consecutive years, and up to 584,200 acre-feet in any one year, directly from Navajo Reservoir under State Engineer File No. 2849 at the intake to the Navajo Indian Irrigation Project main canal for delivery to the Navajo Indian Irrigation Project or at Navajo Dam, or from inflows below Navajo Dam under State Engineer File No. 3215 at Cutter Reservoir or at Gallegos Reservoir or suitable alternative for delivery to the Navajo Indian Irrigation Project; and

(ii) up to 22,650 acre-feet in any one year from either Navajo Reservoir under State Engineer File No. 2849 at the intake to the Navajo Indian Irrigation Project main canal, or from a Navajo-Gallup Water Supply Project diversion on the San Juan River under State Engineer File Nos. 2849 and 3215, or from inflows below Navajo Dam under State Engineer File No. 3215 at Cutter Reservoir, or all in combination, for delivery to communities, recipients or subcontractors allotted

water by the Navajo Nation under its water rights for the Navajo-Gallup Water Supply Project uses in New Mexico.

(b) The United States agrees to deliver, or make available for delivery, to the Navajo Nation water for diversion of up to 4,680 acre-feet of water in any one year from the Animas-La Plata Project water supply under New Mexico State Engineer File No. 2883, subject to the provisions of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), the Settlement Agreement, the partial final decree referred to in section 2, and this contract. The Nation may divert or receive this water from the Animas River at the diversion point for the Navajo Nation Municipal Pipeline for delivery to Navajo Nation communities, recipients or subcontractors allotted water by the Navajo Nation under its water rights for the Animas-La Plata Project. When the direct flow of the Animas River is insufficient to provide for the diversion demand of the Nation for water under the Animas-La Plata Project, the Nation may request the Secretary, acting through the Bureau of Reclamation, to release water that the Nation may have in storage in Ridges Basin Reservoir as necessary to fulfill the diversion demand at the Pipeline up to 4,680 acre-feet in any one year. The diversion by the Bureau of Reclamation of water from the Animas River in Colorado into Ridges Basin Reservoir to store water on behalf of the Navajo Nation shall not constitute delivery to the Nation under this subsection.

(c) The Navajo Nation must notify the Contracting Officer of its scheduled locations, amounts and timings of anticipated diversions at least 30 days prior to any diversion of water from Navajo Reservoir, the San Juan River, or the Animas River under this contract; except, that uses of water to make diversions and depletions described in

subparagraphs 3(d), 3(e) and 3(f) of the partial final decree, referred to in section 2, 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 contract rights for delivery of water under the Navajo Indian Irrigation Project described in subsection 4(a)(i), shall not be required to have 30 days advance notice.

(d) The points of delivery of water made available for use pursuant to this section from Navajo Reservoir and the San Juan River, and from the Animas River, shall be as specified in subsections 4(a) and 4(b), respectively, unless changed consistent with the partial final decree referred to in section 2 and pursuant to agreement of the Contracting Officer and the Navajo Nation. Water made available at Navajo Dam for use to make diversions and depletions described in subparagraphs 3(d), 3(e) and 3(f) of the partial final decree, referred to in section 2, that are supplied under the Settlement Contract pursuant to the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement shall be accounted under the contract rights for delivery of water under the Navajo Indian Irrigation Project described in subsection 4(a)(i).

(e) To the extent that delivery of water is made through federal facilities, the Navajo Nation will reimburse for this service in accordance with the provisions of section 10 of this contract.

(f) Separate contracts for additional water, whether for temporary or permanent use, as available, may be negotiated between the Navajo Nation and the Bureau of Reclamation in the future, but they do not constitute any part of the consideration for this contract.

(g) The water delivery rights recognized by this contract shall be perpetual, and the Navajo Nation has the right to subcontract with third parties for the delivery and use of water made available under this contract as provided in section 11.

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

(i) The Navajo Nation under this contract shall have _____ acre-feet of storage capacity space allocated for its exclusive use in Ridges Basin Reservoir. The United States shall fill and refill the Nation's storage capacity space as often as direct flow is available from the Animas River to fill said space under the Animas-La Plata Project diversion right issued in the State of Colorado and the Animas-La Plata Project Compact (82 Stat. 898). The Nation shall have holdover storage rights in Ridges Basin Reservoir from year to year to the extent that water stored in the Nation's storage capacity space may be held for exclusive delivery to the Nation in future years as necessary to meet the delivery demands of the Nation in accordance with subsections 4(b) and 8(b). Nothing in this contract shall prohibit the Nation from acquiring additional storage capacity space in Ridges Basin Reservoir if additional space becomes available.

(j) Nothing in this section is intended to impose on the United States any obligation to maintain Navajo Dam and Reservoir, the Navajo Indian Irrigation Project, the Navajo-Gallup Water Supply Project, Ridges Basin Dam and Reservoir and related facilities, or the Navajo Nation Municipal Pipeline beyond their useful lives or to take extraordinary measures to keep these facilities operating.

TRANSPORTATION LOSSES

5. No conveyance losses beyond the points of delivery shall be borne by the United States. In the event that points of delivery are changed in accordance with subsection 4(d), transportation of water from the original points of delivery to other points of delivery shall be the sole responsibility of the Navajo Nation, so that no conveyance losses, including channel losses, shall be borne by the United States.

CONSTRUCTION AND OPERATION OF FACILITIES

6. (a) Nothing herein shall be construed to obligate the United States to construct, install, operate or maintain dams, pumps, pipelines, storage tanks, distribution lines or other facilities required to take, measure, convey or distribute water for use beyond agreed upon points of delivery; except, that the United States shall have such obligations as conferred upon the Secretary by the authorities to construct, maintain and operate Navajo Dam and Reservoir, the Navajo Indian Irrigation Project, the Animas-La Plata Project and the Navajo-Gallup Water Supply Project in accordance with the Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___). Nor shall anything herein be construed to affect or alter obligations that the United States may

have under treaty, statute or otherwise to provide or operate other water project facilities and water distribution systems on Navajo Lands.

(b) Coordination of construction, operation and maintenance of the Animas-La Plata Project shall be accomplished through the establishment of the following two committees, both of which will consist of representatives of the Bureau of Reclamation and Project contractors, including the Navajo Nation:

(i) The Project Construction Coordination Committee shall provide coordination and consultation on the construction activities among all Project contractors, seeking common understanding and consensus on decisions associated with final plans, construction schedules and costs for Project facilities, and shall dissolve upon completion of Project construction.

(ii) The Project Operations Committee shall develop among the Project contractors a common understanding of the appropriate level of OM&R activities to be performed on the Project facilities to assure the long-term operational integrity of the Project and public safety, and a common understanding of the Project operations and related water rights administration and hydrology.

Failure of the committees to reach common understandings or to otherwise coordinate with the Bureau of Reclamation on construction, operation and maintenance of the Animas-La Plata Project shall in no way nullify or reduce the obligation of the United States to construct, operate and maintain Project facilities, including the Navajo Nation Municipal Pipeline, or to deliver water to the Navajo Nation as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), the San Juan

River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), the Settlement Agreement, and this contract.

RESPONSIBILITY FOR DISTRIBUTION

7. Upon delivery, the Navajo Nation shall be responsible for the control, carriage, handling, distribution, measurement and use of all water made available under this contract, and shall hold the United States, its officers, agents, employees, and successors or assigns, harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, carriage, handling, distribution or use of such water beyond the point of delivery; except, that the United States shall have such responsibilities for the conveyance and distribution of water made available under this contract as are conferred upon the Secretary by the authorities to operate Navajo Dam and Reservoir, the Navajo Indian Irrigation Project, the Animas-La Plata Project and the Navajo-Gallup Water Supply Project in accordance with the Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___). This section is not intended to waive any responsibility the United States may have under treaty, statute or otherwise, to provide or operate water distribution systems on Navajo Lands.

WATER SUPPLY

8. (a) Notwithstanding any other provisions of this contract, in times of shortage in the Navajo Reservoir water supply to meet demands under contracts for delivery of water from said supply, taking into account water available from inflows below Navajo Dam to help meet the demands, the Navajo Nation will share in the available water supply in the manner set forth in section 11 of the Act of June 13, 1962 (76 Stat. 96), and section 403 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___).

(b) With respect to water made available from the Animas-La Plata Project under the terms of this contract, during periods when the Contracting Officer finds that the direct flow of the Animas River physically available is insufficient to supply the water diversion demands under contracts for delivery of Project water and demands to fill or refill storage in Ridges Basin Reservoir, the Navajo Nation shall share in the available direct flow consistent with Article 1 of the Animas-La Plata Project Compact (82 Stat. 898). Pursuant to subsection 4(b) of this contract, the Nation may request and require of the United States the release of any and all water that the Nation may have stored in Ridges Basin Reservoir for delivery to its point of diversion of Animas-La Plata Project water in the State of New Mexico as necessary to meet the delivery demands of the Nation under the Project up to 4,680 acre-feet in any one year. Water stored in Ridges Basin Reservoir by or on behalf of the Navajo Nation shall be subject to loss by its proportionate share of reservoir evaporation and, upon release, channel conveyance loss, but shall not be subject to sharing with other Animas-La Plata Project water contractors. Nor shall the evaporation loss on the Nation's stored water or the conveyance loss on

Ridges Basin Reservoir releases of the Nation's stored water be charged against the diversion amount specified in subsection 4(b).

(c) On account of drought or other causes outside the 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 Nation pursuant to this contract. In no event shall any liability accrue against the United States, or any of its officers, agents, or employees, for any damage, direct or indirect, arising out of any such shortage, and payments due the United States provided for herein shall not be reduced because of such shortage.

UNCONTROLLABLE FORCES

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

COST PROVISIONS

10. (a) Charges for water made available pursuant to subsection 4(a) will be as follows:
- (i) Construction costs of Navajo Dam and Reservoir that are assignable to water delivered for irrigation on the Navajo Indian Irrigation Project or other Navajo Lands shall be allocated and payment deferred under the provisions of the Leavitt Act (47 Stat. 564), as authorized in subsection 4(d) of the Colorado River Storage Project Act (70 Stat. 105). Construction costs of Navajo Dam and Reservoir shall be charged to the Nation at the annual amortization rate of \$2.60 per acre-foot ending at the year 2012 for Navajo Reservoir water delivered for non-irrigation purposes.
 - (ii) The Navajo Nation shall pay the United States, or its designee if some organization other than the United States is operating Navajo Dam and Reservoir, its proportionate share of the OM&R costs assignable to the amount of water made available to the Nation through subsection 4(a) of this contract; except, that the OM&R costs assignable to water delivered for irrigation on the Navajo Indian Irrigation Project or other Navajo Lands shall be allocated and waived by the Secretary.
 - (iii) The Contracting Officer or a designee will bill the Nation for construction and OM&R costs for Navajo Dam and Reservoir on or before September 1 of the year proceeding the year of use. The Navajo Nation shall pay all accrued costs within 30 days after receipt of the bill.
- (b) The Navajo Nation's cost obligations for the Navajo Indian Irrigation Project, including for construction and refurbishing of project facilities and OM&R, shall be allocated and waived by the Secretary; except, that the Nation shall pay the United States,

or its designee if some organization other than the United States is operating the Project facilities, the OM&R costs assignable to the amount of water, if any, delivered through Project facilities under subcontracts entered into pursuant to section 11 of this contract; and except further, that the Nation shall be responsible for providing OM&R on Project facilities and for funding its proportionate OM&R costs of Project facilities that are assignable to the Navajo Nation, excluding costs assignable to the Jicarilla Apache Nation for conveyance of its water under the Navajo-Gallup Water Supply Project, if ownership of the facilities is transferred to the Navajo Nation.

(c) The Navajo Nation's cost obligations for the Animas-La Plata Project will be as follows:

(i) The Navajo Nation's construction cost obligation for Animas-La Plata Project facilities, including Ridges Basin Dam and Reservoir, the Durango Pumping Plant, the Ridges Basin Inlet Conduit, the Navajo Nation Municipal Pipeline and appurtenant facilities, shall be allocated and waived by the Secretary.

(ii) The Navajo Nation shall pay the United States, or its designee if some organization other than the United States is operating the Animas-La Plata Project facilities, its proportionate share of the OM&R costs assignable to the amount of water made available from the Project to the Nation through this contract; said share to include the OM&R costs of the Navajo Nation Municipal Pipeline, an allocation of the fixed OM&R costs of Project facilities other than the Pipeline that is based upon the ratio that the Nation's amount of storage capacity space bears to the total storage capacity of Ridges Basin Reservoir, and an allocation of the variable OM&R costs of Project facilities other than the Pipeline that is based

upon the ratio that the amount of water pumped into storage in the Nation's storage capacity space bears to the total amount of water pumped into Ridges Basin Reservoir storage.

(iii) OM&R costs for the Animas-La Plata Project shall be paid on the basis of annual estimates made by the Secretary. A billing from the Secretary will be sent to the Navajo Nation on or before May 1 for the next year's annual reimbursable OM&R costs assessed to the Nation. The Nation shall advance its share of the OM&R costs for each calendar year in quarterly payments which will be due on December 31 of the same calendar year as the billing, and on March 10, May 10, and August 30 of the year of applicability. The first such billing will be issued immediately following execution of this contract. In the event this first notice shall be for costs of service of less than a full year, such costs shall be prorated for the period covered. Each billing shall show an itemization of the estimated reimbursable OM&R costs of the Animas-La Plata Project.

(iv) The Navajo Nation shall be responsible for providing OM&R on the Navajo Nation Municipal Pipeline and for funding OM&R costs of the Pipeline if ownership of the Pipeline is transferred to the Nation.

(d) The Navajo Nation's cost obligations for the Navajo-Gallup Water Supply Project will be as follows:

(i) The Navajo Nation's construction cost obligation for the Navajo-Gallup Water Supply Project shall be allocated and waived by the Secretary.

(ii) The Navajo Nation shall pay the United States, or its designee if some organization other than the United States is operating the Navajo-Gallup Water

Supply Project facilities, its proportionate share of the OM&R costs assignable to the amount of water made available from the Project to the Nation through this contract; said share to include an allocation of the fixed OM&R costs of Project facilities that is based upon the ratio of the number of acre-feet contracted for delivery to the Nation and planned for delivery through each Project reach as described in the March 2001 technical memorandum for the Project prepared by the Navajo Nation Department of Water Resources and the April 2002 appraisal report for the Project prepared by the United States Bureau of Reclamation, as conditioned and modified by the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), to the total number of acre-feet contracted for delivery to all contractors through each Project reach, and an allocation of the variable OM&R costs of Project facilities that is based upon the ratio of the number of acre-feet delivered to the Nation or its subcontractors through each Project reach to the total number of acre-feet of water delivered to all contractors through each Project reach.

(iii) OM&R costs for the Navajo-Gallup Water Supply Project shall be paid on the basis of annual estimates made by the Secretary. A billing from the Secretary will be sent to the Nation on or before May 1 for the next year's annual reimbursable OM&R costs assessed to the Nation. The Nation shall advance its share of the OM&R costs for each calendar year in quarterly payments which will be due on December 31 of the same calendar year as the billing, and on March 10, May 10, and August 30 of the year of applicability. The first such billing will be issued immediately following execution of this contract. In the event this first

notice shall be for costs of service of less than a full year, such costs shall be prorated for the period covered. Each billing shall show an itemization of the estimated reimbursable OM&R costs of the Navajo-Gallup Water Supply Project.

(iv) The Navajo Nation shall be responsible for providing OM&R on Project facilities and for funding its proportionate OM&R costs of Project facilities that are assignable to the Navajo Nation, excluding costs assignable to the Jicarilla Apache Nation and the City of Gallup for conveyance of their water under the Navajo-Gallup Water Supply Project, if ownership of the facilities is transferred to the Navajo Nation.

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

(f) The annual amortization rates and annual OM&R assessments specified in subsections 10(a) through 10(d) above shall be charged to the Navajo Nation for all water subcontracted to third parties.

(g) Billings from the Contracting Officer and payments by the Navajo Nation of the construction and OM&R costs outlined under this section shall be made on the basis of subsections 10(a) through 10(d) as may be modified by subsection 10(h). For project operation purposes, the Nation will provide an annual notice to the Contracting Officer

limiting the amount of water estimated to be used by the Nation, the estimated period and point of diversion for each intended purpose and a listing of all executed subcontracts with third parties, including those subcontracts anticipated to be executed during the year of applicability. The Nation shall send this notice on or before February 1 of the year preceding the year of use described in the notice. Upon receipt of such notice, the Contracting Officer will bill the Nation for payment of costs as prescribed herein. Billing adjustments will be made to correct for differences in the estimated and actual use of water during the preceding year.

(h) All or part of the annual construction and OM&R costs may be waived on a project-specific basis if the Navajo Nation demonstrates to the satisfaction of the Secretary that the Nation lacks the ability to pay the annual construction or OM&R costs in full. Such demonstration shall be in written form and shall accompany the February 1 notice provided for in subsection 10(g). With respect to the Navajo Indian Irrigation Project, the Animas-La Plata Project, and the Navajo-Gallup Water Supply Project, those OM&R costs waived on an annual basis will be paid by the Secretary, and those construction costs waived annually will be treated as non-reimbursable. Failure of the Secretary to waive costs due to a lack of availability of federal funding shall not alter the obligations of the Nation or the United States under this contract. OM&R costs for the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project shall be the responsibility of the Navajo Nation if ownership of the projects is transferred to the Nation.

SUBCONTRACTING

11. (a) The Navajo Nation may subcontract with third parties, subject to the provisions of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), the Settlement Agreement, the partial final decree referred to in section 2, and approval of the Secretary in accordance with this section, to supply water for beneficial use on or off Navajo Lands in the State of New Mexico, subject to and consistent with the same requirements and conditions of State law, and any applicable Federal law, interstate compact, and international treaty as apply to the exercise of water rights held by non-federal, non-Indian entities. Nothing in this contract shall be construed to establish, address, or prejudice whether, or to prevent any party from litigating whether, or to the extent to which, any of the aforementioned laws do or do not permit, govern, or apply to the use of the Nation's water outside the State.

(b) Subcontracts made by the Navajo Nation with third parties shall be subject to the provisions of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___), the Settlement Agreement, the partial final decree referred to in section 2, and this contract, and must include terms of use, purchase, measurement, operations and default. A copy of each proposed subcontract shall be filed with the Contracting Officer and the New Mexico Interstate Stream Commission at least 30 days prior to being executed by the Nation; provided, that proposed emergency subcontracts may be filed with less than 30 days notice. Two copies of each executed subcontract shall be filed with the Contracting Officer and one copy with the New Mexico Interstate Stream Commission.

(c) Prior to approving any subcontract, the Secretary shall comply with subsection 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C).

(d) The Secretary shall approve any subcontract submitted by the Navajo Nation if the Secretary determines that:

(i) the diversion and use of water under the subcontract would comply with applicable state law, including applicable permitting and reporting requirements of the New Mexico State Engineer;

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

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

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

(v) the delivery obligations under the subcontract are not inconsistent with other obligations of the Secretary to deliver water under preexisting contracts; and

(vi) the subcontract is in the best interests of the Nation.

(e) The Navajo Nation agrees to include the following equal opportunity language in any subcontract for use of water off Navajo Lands:

(i) The subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(ii) The subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(iii) The Nation will take such action with respect to any subcontractor as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, if the Nation becomes involved in, or is threatened with, litigation with a subcontractor as a result of such direction, the Nation may request the United States to enter into such litigation to protect the interest of the United States.

Nothing in this section shall be read as prohibiting the Nation from requiring that subcontractors give preferential employment to members of the Navajo Nation.

FISH AND WILDLIFE COORDINATION

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

(b) The Navajo Nation and the Department of the Interior agree to work with the State of New Mexico and affected water users to assure that Navajo Dam and Reservoir, the Navajo Indian Irrigation Project, the Animas-La Plata Project and the Navajo-Gallup Water Supply Project are operated in compliance with applicable laws while meeting water delivery obligations, so as to provide, to the maximum extent possible, quantities and timing of deliveries to provide for downstream flows necessary to maintain and protect existing fisheries and other resources, with particular emphasis on endangered species.

DOWNSTREAM TROUT FISHERY RESOURCE

13. Operation of Navajo Dam and Reservoir has created a substantial trout fishery resource in the tailwater reach of the San Juan River immediately below Navajo Dam. The Contracting Officer and the Navajo Nation, subject to such water rights as have been heretofore and may be hereinafter granted or adjudicated upon the San Juan River or the tributaries thereof, agree to schedule the timing and quantities of water deliveries under this contract in a manner that would

be compatible with maintaining the downstream trout fishery only insofar as may be practicable without causing impairment of the Nation's ability to exercise its rights to the diversion and use of water under the Settlement Agreement.

AIR AND WATER POLLUTION CONTROL

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

BOOKS, ACCOUNTS AND RECORDS

15. The Navajo Nation shall furnish to the Contracting Officer, as requested, information pertaining to land use and crop census, water supply, water use, changes in project works, and to other matters relating to the Navajo Indian Irrigation Project, the Animas-La Plata Project, the Navajo-Gallup Water Supply Project, and other projects that may utilize the Nation's water

rights supplied under this contract for miscellaneous municipal, industrial, commercial and domestic uses. The Secretary and the Nation shall jointly establish and maintain accounts and other books and records such as are necessary to enable the Secretary to operate the subject facilities. Reports thereon shall be furnished to the Contracting Officer in such form and 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 the other party's books and records relating to matters covered by this contract. Records of diversions of water for use by the Nation pursuant to this contract shall be supplied to the New Mexico State Engineer.

COMPLIANCE WITH RECLAMATION LAWS

16. The parties agree that the delivery of irrigation water or the use of federal facilities pursuant to this contract is governed by applicable Reclamation law, except that this delivery or use is not subject to the Reclamation Reform Act of 1982, as amended.

RULES, REGULATIONS, AND DETERMINATIONS

17. (a) The United States or its assigns shall take all prudent and ordinary measures to operate and maintain all existing facilities necessary to this contract, but nothing in this section shall be construed to require the United States to operate such facilities beyond the useful life of the existing facilities. These facilities will be operated for multiple benefits of the project in accordance with project authorization and contracts, including this contract. The Contracting Officer, in consultation with the Navajo Nation, shall have

the right to make determinations necessary to administer this contract that are consistent with the express and implicit conditions of this contract, the laws of the United States and rules and regulations promulgated by the Secretary of the Interior.

(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 predicted upon arbitrary, capricious, or unreasonable opinions or determinations.

GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

18. (a) The obligation of the Navajo Nation to pay the United States as provided in this contract is a general obligation of the Nation notwithstanding the manner in which the obligation may be distributed among the Nation's water users and notwithstanding the default of individual water users in their obligation to the Nation.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. The Navajo Nation shall not have the right to the use of water supplied from any project facilities during any period in which the Nation may be in arrears in the payment of any operation, maintenance, and replacement charges due the United States or in arrears for more than 12 months in the payment of any construction and interest installments due the United States.

(c) The Navajo Nation shall pay penalty charges on delinquent installments or payments. When payment is not received by the due date, the Nation shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment

becomes 60 days delinquent, the Nation shall pay an administrative charge to cover additional costs of billings and processing the delinquent payment. When a payment is delinquent 90 days or more, the Nation shall pay an additional penalty charge of 6.0 percent per year for each day the payment is delinquent beyond the due date. Further, the Nation shall pay any fees incurred for debt collection services associated with the delinquent payment.

(d) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939, 53 Stat. 1191. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(e) When a partial payment for a delinquent account is received, the amount received shall be applied first to the penalty, second to the administrative charges, third to the accrued interest and finally to the overdue payment.

WATER QUALITY

19. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the United States. 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; except, that the Secretary shall construct, operate and maintain treatment facilities for the Navajo-Gallup Water Supply Project as

authorized by subsection 103(c)(5) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___).

WATER CONSERVATION

20. Prior to the delivery of water to the Navajo Nation provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Navajo Nation shall develop an effective water conservation program which shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent three-year intervals, the Nation shall submit a report on the results of the program to the Contracting Officer for review. Based on the conclusions of the review, the Contracting Officer and the Nation shall consult and agree to continue or to revise the existing water conservation program. This paragraph shall be included in all subcontracts, and such measures shall be required for all water purchasers.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

21. The expenditure of any money or the performance of any obligation by the United States under this contract shall be contingent upon appropriations or allotments of funds. Absence of appropriation or allotment of funds shall not relieve the Navajo Nation from any obligations under this contract. No liability shall accrue against the United States in case funds are not appropriated or allotted.

NOTICES

22. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given on behalf of the Navajo Nation when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84111, and on behalf of the United States when mailed, postage prepaid, or delivered to the President, Navajo Nation, Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

OFFICIALS NOT TO BENEFIT

23. No Member of or Delegate to Congress or Resident Commissioner or official of the Navajo Nation shall benefit from this contract or any subcontract other than as a water user or landowner in the same manner as other water users or landowners.

SAVINGS CLAUSES

24. (a) Prior to the entry of the partial final decree described in section 2, nothing in this contract shall be construed as an admission, or be used by any party as evidence, that the Navajo Nation is or is not legally entitled to reserved water rights in the San Juan River stream system.

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

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

(d) Nothing in this contract shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Indian tribe or community other than those of the Navajo Nation in, to and from the San Juan River Basin in New Mexico; except, that the right of the Navajo Nation to use water under water rights it may have in other river basins in New Mexico shall be forborne only so long as and to the extent that the Nation supplies the uses for which said water rights may exist by diversions of water from the San Juan River Basin under this contract consistent with subparagraph 9.13 of the Settlement Agreement.

TERMINATION

25. This contract may not be cancelled, terminated, or rescinded by either party, except by act of Congress; provided, that this contract, and the rights and obligations on the part of the Navajo Nation and the United States under this contract, will be terminated without further act of Congress if:

- (a) the Settlement Agreement is:
 - (i) terminated pursuant to the conditions described by subsection 309(b) of the San Juan River Basin in New Mexico Water Projects and Settlement Act (___ Stat. ___);
 - (ii) not approved by the Court in the San Juan River Adjudication in conjunction with the partial final decree referred to in section 2; or
 - (iii) terminated by the mutual consent of the State of New Mexico, the United States and the Navajo Nation; or

(b) the partial final decree referred to in section 2 is revoked pursuant to provisions described by paragraph 22 of Appendix 1 to the Settlement Agreement.

In witness whereof, the parties hereto have duly executed this contract the day and year first above written.

THE UNITED STATES OF AMERICA

Department of the Interior

By: _____

Secretary of the Interior

THE NAVAJO NATION

By: _____

President