

Contract No. 10-WC-40-384

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND  
THE NAVAJO NATION

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UNITED STATES  
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CONTRACT BETWEEN THE UNITED STATES AND  
THE NAVAJO NATION

PART I. SETTLEMENT

1. PREAMBLE

This contract is entered into this 17<sup>TH</sup> day of DECEMBER, 2010, between the United States of America, acting through the Secretary of the Interior pursuant to the Northwestern New Mexico Rural Water Projects Act of March 30, 2009 (123 Stat. 1367), the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws, specifically the Act of June 13, 1962 (76 Stat. 96), the Act of April 11, 1956 (CRSP) (70 Stat. 105; 43 U.S.C. 620 et seq.), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385), and the Navajo Nation.

2. EXPLANATORY RECITALS

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

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

WHEREAS, it is the intent of this Contract that the Navajo Nation may exercise the right to market the water supply secured to it under this Contract subject to the provisions of this Contract and the agreement between the State of New Mexico, the Navajo Nation and the United States setting forth a stipulated and binding Settlement

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

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

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

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

17

18 3. GENERAL DEFINITIONS

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

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

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

1 (c) "Consultation" or "Consult" refers to an ongoing obligation of both parties  
2 to implement the provisions of this Contract with a full exchange of information so as to  
3 assure that each party is provided full participation in the decision making process.

4 Consultation shall be required of each party with respect to each section of the Contract  
5 regardless of whether the section itself sets forth a Consultation requirement. The  
6 Consultation required shall be reasonable under the circumstances, and except in exigent  
7 circumstances Consultation shall be undertaken in advance of decision making. In the  
8 event that agreement cannot be reached and the United States makes a decision, appeals  
9 are available to the extent allowed under applicable laws.

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

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

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

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

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

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

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

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

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

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

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

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

1 (p) "Partial Final Decree" means a final and binding judgment and decree  
2 entered by the court in the stream adjudication, setting forth the rights of the Navajo  
3 Nation to use and administer waters of the San Juan River Basin in New Mexico, the  
4 form of which is attached as Appendix 1 of the Settlement Agreement.

5 (q) "Project Operator" means the entity that has been transferred the OM&R  
6 responsibilities for a specific project covered under this Contract.

7 (r) "Project Participant(s)" means participant(s) in the NGWSP, namely the  
8 Navajo Nation, the City of Gallup and, should it choose to participate, the Jicarilla  
9 Apache Nation.

10 (s) "San Juan River" means that river which originates in the State of Colorado  
11 and flows through or constitutes the boundary of the Navajo Indian Reservation in  
12 northwestern New Mexico and southeastern Utah, where it flows into Lake Powell.

13 (t) "Secretary" means the Secretary of the United States Department of the  
14 Interior or an authorized designee.

15 (u) "Settlement Agreement" means the agreement between the State of New  
16 Mexico, the Navajo Nation and the United States executed in 2010, pursuant to Section  
17 10701 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367).

18 (v) "Statutory Water Allocation" means the municipal and industrial (M&I)  
19 water allocation delivered to the Navajo Nation from the ALP pursuant to Section  
20 6(a)(1)(A)(ii)(III) of the Colorado Ute Settlement Act Amendments of 2000, Public Law  
21 106-554.

22 (w) "Subcontract" means a contract between the Navajo Nation and a third party,  
23 pursuant to this Contract and subject to the provisions of the Navajo Settlement Act, the  
24 Settlement Agreement, the Partial Final Decree, and approval of the Secretary or  
25 authorized representative, to supply water for beneficial use on or off Navajo Lands in  
26 the State of New Mexico, subject to and consistent with the same requirements and  
27 conditions of State law, and any applicable Federal law, interstate compact, and  
28 international treaty as they apply to the exercise of water rights held by non-federal, non-  
29 Indian entities.

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

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

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

12  
13 4. CONDITIONS

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

24  
25 5. PRELIMINARY UNDERSTANDINGS

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

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



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

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

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

## 14 PART II. NIIP

### 15 6. WATER DELIVERY PROVISIONS

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

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

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

24 (B) the Navajo Dam outlet works; or

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

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

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

1 (i) Aquaculture purposes, including the rearing of fish in support of the  
2 San Juan River Basin Recovery Implementation Program authorized by Public  
3 Law 106-392 (114 Stat. 1602).

4 (ii) Domestic, industrial, or commercial purposes relating to agricultural  
5 production and processing.

6 (iii) The generation of hydroelectric power as an incident to the diversion  
7 of water by the NIIP for authorized purposes.

8 (iv) The implementation of the alternate water source provisions described  
9 in subparagraph 9.2 of the Settlement Agreement executed under Section  
10 10701(a)(2) of the Navajo Settlement Act.

11 (c) Pursuant to Section 2(d) of the Act of June 13, 1962, as amended by Section  
12 10402(a) of the Navajo Settlement Act, water diverted by the NIIP may be transferred to  
13 areas located within or outside the area served by the NIIP facilities and on or off Navajo  
14 Lands for any beneficial use in accordance with:

15 (i) the agreement executed under section 10701(a)(2) of the Navajo  
16 Settlement Act;

17 (ii) this Contract; and

18 (iii) any other applicable law.

19 (d) If the Navajo Nation proposes to change the place or purpose of use or the  
20 point of diversion in the exercise of its rights to use water for the uses described in Part II  
21 Article 6(b) or 6(c) of this contract, in addition to providing notice to the New Mexico  
22 State Engineer as required by Paragraph 18 of the Partial Final Judgment and Decree of  
23 the Water Rights of the Navajo Nation, notice shall be provided to the United States  
24 pursuant to Part VI Article 56 of this contract.

25 (e) The Navajo Nation shall be solely responsible for the construction,  
26 operation, maintenance and replacement specific to all modifications and additions to  
27 NIIP facilities that are necessary to use NIIP water for the purposes provided in Part II  
28 Article 6(b)(i) through (iv) and 6(c) above. As long as title to NIIP facilities is held by  
29 the United States, the Navajo Nation shall obtain the approval of the United States prior  
30 to the construction of any modification or addition to the NIIP facilities.

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

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

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

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

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

27

28 7. WATER SUPPLY AND SHORTAGE

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

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

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

10  
11 8. COST PROVISIONS

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

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

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

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

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

11

12 9. LIMITED RESPONSIBILITY FOR DISTRIBUTION

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

19

20

21 PART III. ALP

22 10. WATER DELIVERY PROVISIONS

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

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

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

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

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

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

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

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

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

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

12  
13 11. ALP PROJECT WORKS

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

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

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

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

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

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

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

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

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

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

27

28 12. CONSTRUCTION AND OPERATION OF FACILITIES

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



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

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

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

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

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

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

5 13. WATER SUPPLY SHORTAGE

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

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

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

25 14. BLOCK NOTICE FOR ALP WATER DELIVERY

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

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

3  
4 15. COST PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

3  
4 16. TITLE TRANSFER

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

8  
9 17. LIMITED RESPONSIBILITY FOR DISTRIBUTION

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

17  
18  
19 PART IV. NGWSP

20 18. WATER DELIVERY PROVISIONS

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

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

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

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

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

17  
18 19. **NGWSP FACILITIES**

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

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

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

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

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

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

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

13  
14 20. CONSTRUCTION AND OPERATION OF FACILITIES

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

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

- 27 (i) The Project Construction Committee shall:
- 28 (A) review cost factors and budgets for construction and operation and
  - 29 maintenance activities; and
  - 30 (B) improve construction management through enhanced communication;
  - 31 and

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

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

8  
9 21. WATER SUPPLY AND SHORTAGE

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

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

22  
23 22. NOTIFICATION OF SUBSTANTIAL COMPLETION

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

31



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

3  
4 23. BLOCK NOTICE FOR NGWSP WATER AVAILABILITY

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

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

15  
16 24. CARRIAGE OF NON-PROJECT WATER

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

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

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

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

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

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

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

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

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

11  
12 25. ADDITIONAL CAPACITY

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

19 (i) pay the OM&R costs associated with the additional capacity to be  
20 used;

21 (ii) pay any fee established by the Secretary to assist in recovering capital  
22 costs relating to the additional use; and

23 (iii) use of additional capacity shall be terminated if delivery to a Project  
24 Participant is impaired.

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

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

7

8 26. COST PROVISIONS

9 (a) The Navajo Nation shall pay the United States or its designee if some

10 organization other than the United States is operating Navajo Dam and Reservoir, the

11 Navajo Nation's proportionate share of the OM&R costs for Navajo Dam and Reservoir

12 assignable to the amount of water made available to the Navajo Nation through Part IV

13 Article 23 of this Contract. The Navajo Nation's proportionate share of Navajo Dam and

14 Reservoir OM&R costs will be based upon 100 percent of the water supply available

15 under NGWSP Block Notice and designated for the Cutter Lateral and 50 percent of the

16 water supply available under NGWSP Block Notice and designated for the San Juan

17 Lateral.

18 (b) The Navajo Nation shall pay the United States or its designee if some

19 organization other than the United States is operating the NIIP, a proportionate share of

20 OM&R costs for the NIIP facilities that are used to convey NGWSP water made

21 available to the Navajo Nation through Part IV Article 23 of this Contract. The

22 proportionate share of OM&R costs for the NIIP facilities used to convey NGWSP water

23 shall be identified and provisions for payment made in the OM&R contract that will be

24 required between Reclamation and the NGWSP operator. The Navajo Nation's

25 construction cost obligation for the NGWSP shall be allocated, waived and declared non-

26 reimbursable by the Secretary.

27 (c) The Navajo Nation's OM&R cost obligation for the NGWSP shall be paid to

28 the United States, or its designee if some organization other than the United States is

29 operating the NGWSP facilities, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19  
20 27. **CONVEYANCE OF TITLE**

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

23  
24 28. **LIMITED RESPONSIBILITY FOR DISTRIBUTION**

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

1 **PART V. GENERAL**

2  
3 29. **TERM OF CONTRACT**

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

7 30. **TRANSPORTATION LOSSES**

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

15 31. **UNCONTROLLABLE FORCES**

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

26 32. **SUBCONTRACTS**

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

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

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

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

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

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

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



- 1 law, including any applicable permitting requirements and permit conditions
- 2 of the New Mexico State Engineer, and the provisions of this Contract;
- 3 (ii) the sum of the term of the Subcontractor plus all renewals is no more
- 4 than 99 years;
- 5 (iii) the use of water under the Subcontract is not inconsistent with the
- 6 provisions of the Endangered Species Act or other provisions of federal law
- 7 designed to protect the environment;
- 8 (iv) the Subcontract is sufficiently specific as to the amount of water and
- 9 points of diversion to enable the Contracting Officer to account for the water
- 10 as it is diverted; or, in the alternative, that the Subcontract reserves the
- 11 Contracting Officer's right to review and approve future diversions sought
- 12 under the Subcontract, such review and approval to be consistent with this
- 13 Contract;
- 14 (v) the delivery obligations under the Subcontract are not inconsistent
- 15 with other obligations of the Contracting Officer to deliver water under
- 16 preexisting contracts.

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

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

- 22 (i) the date that is 180 days after the date on which the Subcontract is
- 23 submitted to the Secretary; and
- 24 (ii) the date that is 60 days after the date on which the Subcontractor
- 25 complies with subsection 102(2)(C) of the National Environmental Policy Act
- 26 (NEPA) of 1969, 42 U.S.C. § 4332(2)(C) and any other requirement of
- 27 Federal law.

28  
29 33. SEVERABILITY

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

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

3

4 34. **TERMINATION**

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

10

11 35. **CONTRACT AMENDMENTS**

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

16

17 36. **SAVINGS CLAUSES**

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

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

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

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

20  
21 37. ENVIRONMENTAL COMPLIANCE AND COORDINATION

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

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

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

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

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

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

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

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

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

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

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

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

#### 11 12 41. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

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

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

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

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

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

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

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

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

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

8  
9 42. CLEAN AIR AND WATER

10 (a) The Navajo Nation agrees as follows:

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

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

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

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

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

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

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

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

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

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

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

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

18  
19 43. PEST MANAGEMENT

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

40  
41 44. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY

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

1 read as prohibiting the Navajo Nation from giving preferential employment to members  
2 of the Navajo Nation.

3 (b) Except as provided above, during the performance of this contract the  
4 Navajo Nation agrees as follows:

5 (i) The Navajo Nation will not discriminate against any employee or  
6 applicant for employment because of race, color, religion, sex, disability, or  
7 national origin. The Navajo Nation will take affirmative action to ensure that  
8 applicants are employed, and that employees are treated during employment,  
9 without regard to their race, color, religion, sex, disability, or national origin.  
10 Such action shall include, but not be limited to the following: employment,  
11 upgrading, demotion, or transfer; recruitment or recruitment advertising;  
12 layoff or termination; rates of pay or other forms of compensation; and  
13 selection for training, including apprenticeship. The Navajo Nation agrees to  
14 post in conspicuous places, available to employees and applicants for  
15 employment, notices to be provided by the Contracting Officer setting forth  
16 the provisions of this nondiscrimination clause.

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

21 (iii) The Navajo Nation will send to each labor union or representative of  
22 workers with which it has a collective bargaining agreement or other contract  
23 or understanding, a notice, to be provided by the Contracting Officer, advising  
24 the labor union or workers' representative of the Navajo Nation's  
25 commitments under Section 202 of Executive Order 11246 of September 24,  
26 1965, and shall post copies of the notice in conspicuous places available to  
27 employees and applicants for employment.

28 (iv) The Navajo Nation will comply with all provisions of Executive Order  
29 No. 11246 of September 24, 1965, and of the rules, regulations, and relevant  
30 orders of the Secretary of Labor.

31 (v) The Navajo Nation will furnish all information and reports required by  
32 Executive Order 11246 of September 24, 1965, and by the rules, regulations,  
33 and orders of the Secretary of Labor, or pursuant thereto, and will permit  
34 access to his books, records, and accounts by the Contracting Agency and the  
35 Secretary of Labor for purposes of investigation to ascertain compliance with  
36 such rules, regulations, and orders.

37 (vi) In the event of the Navajo Nation's noncompliance with the  
38 nondiscrimination clauses of this contract or with any of such rules,  
39 regulations, or orders, this contract may be canceled, terminated or suspended  
40 in whole or in part and the Navajo Nation may be declared ineligible for  
41 further Government contracts in accordance with procedures authorized in  
42 Executive Order 11246 of September 24, 1965, and such other sanctions may  
43 be imposed and remedies invoked as provided in Executive Order 11246 of  
44 September 24, 1965 or by rule, regulation, or order of the Secretary of Labor,  
45 or as otherwise provided by law.



1 (vii) The Navajo Nation will include the provisions of paragraphs (i)  
2 through (vii), modified to refer to the party to be bound, in every subcontract  
3 or purchase order unless exempted by the rules, regulations, or orders of the  
4 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246  
5 of September 24, 1965, so that such provisions will be binding upon each  
6 subcontractor or vendor. The Navajo Nation will take such action with  
7 respect to any subcontract or purchase order as may be directed by the  
8 Secretary of Labor as a means of enforcing such provisions, including  
9 sanctions for noncompliance: *Provided, however*, that in the event the Navajo  
10 Nation becomes involved in, or is threatened with, litigation with a  
11 subcontractor or vendor as a result of such direction, the Navajo Nation may  
12 request the United States to enter into such litigation to protect the interests of  
13 the United States.  
14

#### 15 45. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

16 (a) The Navajo Nation shall comply with Title VI of the Civil Rights Act of  
17 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as  
18 amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Americans with  
19 Disabilities Act of 1990, as applicable, and any other applicable civil rights laws, as well  
20 as with its respective implementing regulations and guidelines imposed by the U.S.  
21 Department of the Interior and/or Bureau of Reclamation.

22 (b) These statutes require that no person in the United States shall be excluded  
23 from participation in, be denied the benefits of, or be otherwise subjected to  
24 discrimination under any program or activity receiving financial assistance from the  
25 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.  
26 By executing this contract, the Navajo Nation agrees to immediately take any measures  
27 necessary to implement this obligation, including permitting officials of the United States  
28 to inspect premises, programs, and documents.

29 (c) The Navajo Nation makes this agreement in consideration of and for the  
30 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or  
31 other Federal financial assistance extended after the date hereof to the Navajo Nation by  
32 the Bureau of Reclamation, including installment payments after such date on account of  
33 arrangements for Federal financial assistance which were approved before such date.  
34 The Navajo Nation recognizes and agrees that such Federal assistance will be extended in  
35 reliance on the representations and agreements made in this article and that the  
36 United States reserves the right to seek judicial enforcement thereof.

37 (d) Complaints of discrimination against the Navajo Nation shall be investigated  
38 by the Contracting Officer's Office of Civil Rights.  
39

#### 40 46. CERTIFICATION OF NONSEGREGATED FACILITIES

41 The Navajo Nation hereby certifies that it does not maintain or provide for its  
42 employees any segregated facilities at any of its establishments and that it does not permit  
43 its employees to perform their services at any location under its control where segregated  
44 facilities are maintained. It certifies further that it will not maintain or provide for its  
45 employees any segregated facilities at any of its establishments and that it will not permit  
46 its employees to perform their services at any location under its control where segregated

1 facilities are maintained. The Navajo Nation agrees that a breach of this certification is a  
2 violation of the Equal Employment Opportunity clause in this contract. As used in this  
3 certification, the term "segregated facilities" means any waiting rooms, work areas, rest  
4 rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and  
5 other storage or dressing areas, parking lots, drinking fountains, recreation or  
6 entertainment areas, transportation, and housing facilities provided for employees which  
7 are segregated by explicit directive or are in fact segregated on the basis of race, creed,  
8 color, or national origin, because of habit, local custom, disability, or otherwise. The  
9 Navajo Nation further agrees that (except where it has obtained identical certifications  
10 from proposed subcontractors for specific time periods) it will obtain identical  
11 certifications from proposed subcontractors prior to the award of subcontracts exceeding  
12 \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity  
13 clause; that it will retain such certifications in its files; and that it will forward the  
14 following notice to such proposed subcontractors (except where the proposed  
15 subcontractors have submitted identical certifications for specific time periods):  
16

17 **47. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR**  
18 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

19 A Certification of Nonsegregated Facilities must be submitted prior to the award  
20 of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal  
21 Employment Opportunity clause. The certification may be submitted either for each  
22 subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or  
23 annually). Note: The penalty for making false statements in offers is prescribed in  
24 18 U.S.C. 1001.  
25

26 **48. COMPLIANCE WITH RECLAMATION LAWS**

27 The parties agree that the delivery of irrigation water or the use of federal  
28 facilities pursuant to this contract is governed by applicable Reclamation law, except that  
29 this delivery or use is not subject to the Reclamation Reform Act of 1982, as amended.  
30

31 **49. RULES, REGULATIONS, AND DETERMINATIONS**

32 (a) The United States or its assigns shall take all prudent and ordinary measures  
33 to operate and maintain all existing facilities necessary to this contract, but nothing in this  
34 section shall be construed to require the United States to operate such facilities beyond  
35 the useful life of the existing facilities. These facilities will be operated for multiple  
36 benefits of the project in accordance with project authorization and contracts, including  
37 this contract. The Contracting Officer, in consultation with the Navajo Nation, shall have  
38 the right to make determinations necessary to administer this contract that are consistent  
39 with the express and implicit conditions of this contract, the laws of the United States and  
40 rules and regulations promulgated by the Secretary of the Interior.

41 (b) Where the terms of this contract provide for action to be based upon the  
42 opinion or determination of either party to this contract, whether or not stated to be  
43 conclusive, said terms shall not be construed as permitting such action to be predicted  
44 upon arbitrary, capricious, or unreasonable opinions or determinations.  
45  
46

1 50. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

7 (b) The payment of charges becoming due hereunder is a condition precedent to  
8 receiving benefits under this contract. The Navajo Nation shall not have the right to the  
9 use of water supplied from any project facilities during any period in which the Navajo  
10 Nation may be in arrears in the payment of any operation, maintenance, and replacement  
11 charges due the United States or in arrears for more than 12 months in the payment of  
12 any construction and interest installments due the United States. The Navajo Nation shall  
13 not deliver water under the terms and conditions of this contract for lands or parties that  
14 are in arrears in the advance payment of water rates or OM&R charges or in arrears more  
15 than 12 months in the payment of construction charges as levied or established by the  
16 Navajo Nation.

17  
18 51. MEDIUM FOR TRANSMITTING PAYMENTS

19 All payments from the Navajo Nation to the United States under this contract  
20 shall be by the medium requested by the United States on or before the date payment is  
21 due. The required method of payment may include checks, wire transfers, or other types  
22 of payment specified by the United States.

23  
24 52. CHARGES FOR DELINQUENT PAYMENTS

25 (a) The Navajo Nation shall pay penalty charges on delinquent installments or  
26 payments. When payment is not received by the due date, the Navajo Nation shall pay an  
27 interest charge for each day the payment is delinquent beyond the due date. When a  
28 payment becomes 60 days delinquent, the Navajo Nation shall pay an administrative  
29 charge to cover additional costs of billings and processing the delinquent payment. When  
30 a payment is delinquent 90 days or more, the Navajo Nation shall pay an additional  
31 penalty charge of 6.0 percent per year for each day the payment is delinquent beyond the  
32 due date. Further, the Navajo Nation shall pay any fees incurred for debt collection  
33 services associated with the delinquent payment.

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

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

42  
43 53. WATER QUALITY

44 The operation and maintenance of project facilities shall be performed in such  
45 manner as is practicable to maintain the quality of raw water made available through such  
46 facilities at the highest level reasonably attainable, as determined by the United States.

1 The United States does not warrant the quality of water and is under no obligation to  
2 construct or furnish water treatment facilities to maintain or better the quality of water;  
3 except as provided for by Section 10602 of the Navajo Settlement Act.  
4

5 54. WATER CONSERVATION

6 Prior to the delivery of water to the Navajo Nation provided from or conveyed  
7 through federally constructed or federally financed facilities pursuant to this contract, the  
8 Navajo Nation shall develop an effective water conservation program which shall contain  
9 definite water conservation objectives, appropriate economically feasible water  
10 conservation measures, and time schedules for meeting those objectives. At subsequent  
11 three-year intervals, the Navajo Nation shall submit a report on the results of the program  
12 to the Contracting Officer for review. Based on the conclusions of the review, the  
13 Contracting Officer and the Navajo Nation shall consult and agree to continue or to revise  
14 the existing water conservation program. This paragraph shall be included in all  
15 subcontracts, and such measures shall be required for all water purchasers.  
16

17 55. CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

18 The expenditure of any money or the performance of any obligation by the United  
19 States under this contract shall be contingent upon appropriations or allotments of funds.  
20 Absence of appropriation or allotment of funds shall not relieve the Navajo Nation from  
21 any obligations under this contract. No liability shall accrue against the United States in  
22 case funds are not appropriated or allotted.  
23

24 56. NOTICES

25 Any notice, demand, or request authorized or required by this contract shall be  
26 deemed to have been given on behalf of the Navajo Nation when mailed, postage prepaid,  
27 or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation,  
28 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84111, and on behalf of the  
29 United States when mailed, postage prepaid, or delivered to the President, Navajo Nation,  
30 Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and the Director  
31 of Water Resources, Navajo Nation, Post Office Box 678, Fort Defiance, Arizona 86504.  
32 The designation of the addressee or the address may be changed by notice given in the  
33 same manner as provided in this section for other notices.  
34

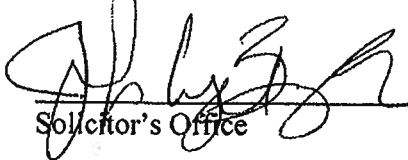
35 57. OFFICIALS NOT TO BENEFIT

36 No Member of or Delegate to Congress or Resident Commissioner or official of  
37 the Navajo Nation shall benefit from this contract or any subcontract other than as a  
38 water user or landowner in the same manner as other water users or landowners.  
39

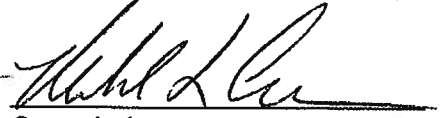
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In witness whereof, the parties hereto have duly executed this contract the day and year first above written.

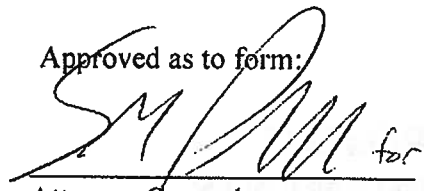
Approved:

  
Solicitor's Office

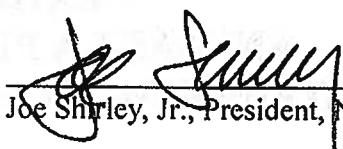
UNITED STATES OF AMERICA

  
Commissioner  
Bureau of Reclamation

Approved as to form:

 for  
Attorney General

THE NAVAJO NATION

  
Joe Shirley, Jr., President, Navajo Nation

**EXHIBIT A**  
**ANIMAS-LA PLATA PROJECT**  
**ENVIRONMENTAL COMMITMENTS**

## 5.4 ENVIRONMENTAL COMMITMENTS

This section discusses the environmental commitments that have been made by Interior or Reclamation during the development of Refined Alternative 4 (Reclamation's Preferred Alternative). Reclamation would share responsibility for implementing measures that would avoid or reduce potential environmental impacts of the ALP Project. This responsibility would be shared with other federal agencies, the Colorado Ute Tribes, and other ALP Project beneficiaries, as well as third-party entities which could include Colorado and New Mexico state agencies, local governments, and private developers.

The commitments in this chapter summarize commitments made during the planning process and incorporated into ALP Project plan as discussed in Chapter 2 of this Final Supplemental Environmental Impact State (FSEIS), and mitigation measures proposed in Chapter 3 to reduce or avoid impacts that would otherwise occur as a result of the implementation of the Preferred Alternative. These commitments supersede commitments made by Reclamation in previous ALP Project National Environmental Policy Act (NEPA) documents.

As discussed below, the commitments described herein would be implemented by Interior, or Interior would require their implementation by construction contractors, management authorities, or third-party developers. Commitments for pre-construction activities would generally be completed by Reclamation or by contractors during the final design process and prior to construction activities. Wildlife, wetland, cultural resources and other mitigation would be completed by Reclamation as described in the following paragraphs. Some commitments, such as monitoring or additional studies, would continue beyond completion of construction of structural facilities.

The non-structural component of the Preferred Alternative (i.e., the \$40 million water acquisition fund) would be administered by Interior through the Bureau of Indian Affairs (BIA). It was assumed that the use of this fund would be for acquisition of irrigated agricultural lands and that these lands would remain in irrigated production. In the event that the Colorado Ute Tribes were to elect to fund alternative activities with the water acquisition fund or were to apply for water rights transfers, it would be the responsibility of the water acquisition fund's administering agency to determine appropriate environmental protection measures. It is possible that additional NEPA compliance may be required for such alternative uses.

The use of ALP Project water by either the Colorado Ute Tribes or other ALP Project beneficiaries would result in environmental impacts that would require the implementation of avoidance design specifications and mitigation measures. To the extent that Reclamation can require developers of ALP Project water end uses to implement environmental protection elements into design, Reclamation commits to requiring certain measures as discussed in the following sections. However, all compliance responsibilities and costs associated with end use development would be the responsibility of the third-party developers. As discussed previously, additional NEPA compliance would likely be required for the development of end use facilities to occur. At such time, the lead agency would be responsible for identifying additional environmental commitments specific to the proposed end uses.

### 5.4.1 General Commitments

Throughout the planning process for the project, efforts have been made to avoid impacts where practicable. If avoidance was not possible, then mitigation measures have been developed to reduce the

level of impact. The mitigation measures for each resource impact were discussed in Chapter 3. In addition to the specific mitigation measures identified in Chapter 3, other management practices will be employed during construction activities to minimize environmental effects and will be included in construction specifications. Many of these measures are required in order to comply with federal, state, or local laws and regulations, regardless of whether they are specifically identified in the report. Reclamation will comply with all relevant federal, state and local laws, ordinances, regulations, and standards during the implementation of the Preferred Alternative. Reclamation will prepare and implement an Environmental Commitment Plan for the project to document and track the completion of the environmental commitments.

#### **5.4.2 Water Resources and Hydrology Commitments**

Reclamation will develop an operations plan for the Ridges Basin Pumping Plant that will schedule pumping from the Animas River in a manner to limit impacts to non-Colorado Ute Tribal entities' ability to obtain water from the San Juan River as described under Mitigation for the Refined Alternative 4 Hydrology Impact 2 in Section 3.2.

Reclamation will work with all appropriate state and federal agencies to pursue a method to protect ALP Project water return flows in the La Plata River drainage as a water supply for endangered fish as described under Mitigation for Refined Alternative 4 Hydrology Impact 3 in Section 3.2.

Reclamation will design and develop Ridges Basin Reservoir with a minimum pool of 30,000 af.

#### **5.4.3 Water Quality Commitments**

Reclamation will develop and implement a program to reduce, minimize or eliminate temporary, short-term increases in suspended sediment loading or other water quality constituents, potentially caused by project construction, through the incorporation of permits, Best Management Practices (BMPs), and sediment control structures as described under Mitigation for Refined Alternative 4 Water Quality Impacts 1-3 in Section 3.3.

Reclamation will develop and implement a program designed to reduce, minimize or eliminate the temporary, short-term increases in suspended sediment loading that may potentially occur during construction of the non-binding end uses and water conveyance systems through requiring developers and construction contractors to incorporate BMPs and sediment control devices as described under Mitigation for Refined Alternative 4 Water Quality Impact 6 in Section 3.3.

Reclamation will develop, with the Southern Ute Indian Tribe and the States of Colorado and New Mexico, and implement a program to monitor water quality in the Animas River from the Durango Pumping Plant to the confluence with the San Juan River for five years after the Durango Pumping Plant begins operation. The program will be developed to monitor compliance with Tribal and state water quality standards and criteria. The plan should include: objectives, quality assurance and control plans, and noncompliance measures.

#### **5.4.4 Vegetation Commitments**

Reclamation will ensure that construction contractors limit ground disturbance to the smallest feasible areas, and will ensure that construction contractors implement BMPs, along with the planting or re-



seeding disturbed areas using native plant species to assist in the re-establishment of native vegetation as described under Mitigation for Refined Alternative 4 Vegetation Impact 5 in Section 3.4. Where feasible, directional borings will be used for river pipeline crossings.

Reclamation will compensate the loss of approximately 1,645 acres of upland vegetation resulting from the construction of the Ridges Basin Reservoir, the Durango Pumping Plant, and other features as described under Mitigation for Refined Alternative 4 Vegetation Impacts 1 and 2 in Section 3.4 as part of the wildlife mitigation plan. The compensation will be part of the total estimated 2,700-2,900 acres of wildlife habitat to be acquired and enhanced to compensate the loss of wildlife habitat in Ridges Basin. The mitigation land acquisition will be completed prior to initiation of ground-breaking construction activities at the reservoir and pumping plant sites. Reclamation will attempt to acquire large contiguous acreage and will attempt to acquire these lands first in the river basins that will be affected by the ALP Project, and then outside of those basins, with the final decision made in consultation with state and federal wildlife agencies.

Reclamation will compensate the loss of 134 acres of wetland/riparian habitat at a mitigation ratio sufficient to replace or exceed the habitat value of wetland/riparian habitat lost as described under Mitigation for Refined Alternative 4 Vegetation Impacts 3 and 4 in Section 3.4. Reclamation will replace lost wetland/riparian areas at a planned ratio of 1.5:1, thus creating approximately 200 acres of replacement wetlands. Mitigation will involve a program of land acquisition, wetland development, and long-term management. To the extent possible, this program will be integrated into the wildlife habitat mitigation program to expand benefits and provide large blocks of contiguous wildlife habitat. For purposes of this FSEIS, it is assumed 600 acres will be necessary for the wetland program. Because of limited water supplies for new wetland creation in the region, restoration of degraded wetlands will be an important component of any wetland plan. As with wildlife habitat mitigation, the La Plata River Basin will be given first priority for wetland development. Lands for wetland mitigation will be acquired prior to initiation of construction of Ridges Basin Dam and overall wetland mitigation physical features will be at least 95 percent completed prior to beginning reservoir filling.

Reclamation will also monitor the Animas River riparian corridor to help determine any effects of the pumping regime on these downstream resources. The monitoring will also include Basin Creek wetlands. Reclamation will also limit ground disturbing activities due to construction of the NNMP and other pipelines and will replace in a 2:1 ratio, riparian trees (cottonwoods) lost due to construction.

Reclamation will require that development of non-binding end uses avoids or minimizes construction impacts to wetland and riparian vegetation located within corridor alignments of the non-binding water conveyance pipelines. Reclamation will require that construction zones be kept to the minimum size needed to meet project objectives. If avoidance is not possible, a riparian/wetland mitigation and monitoring plan will be developed to compensate for the loss of vegetation cover as described under Mitigation for Refined Alternative 4 Vegetation Impact 8 in Section 3.4.

#### **5.4.5 Wildlife Commitments**

Reclamation will mitigate the direct and indirect loss of approximately 2,700-2,900 acres of wildlife habitat through the purchase, enhancement, and management of approximately 2,700-2,900 acres of suitable land as described under Mitigation for Refined Alternative 4 Wildlife Impact 1 in Section 3.5. The actual amount of land that will be acquired to obtain this level of mitigation will depend on the potential wildlife value of the lands acquired. All reasonable attempts will be made to acquire interests in lands on a willing seller basis, using fee simple purchases, conservation easements, purchase options,

or life estates, to name a few. However, this does not preclude the use of other authorities available to acquire such land interests. Priority will be given to lands in the La Plata River drainage, as well as in the vicinity of Ridges Basin, to provide replacement habitat for displaced deer, elk, and other wildlife that utilize Ridges Basin and adjacent areas that will be affected. Large, contiguous parcels will be given priority to create unfragmented habitat and to facilitate management. Lands will be managed for wildlife and other uses will not be allowed if it is determined that they will interfere with the wildlife habitat benefits. Acquisition, enhancement, and management plans will be coordinated with the U.S. Fish and Wildlife Service (Service), Colorado Division of Wildlife (CDOW), and possibly the Southern Ute Indian Tribe. Because of the preference to acquire interests in lands on a willing seller basis, it is recognized that the specific parcel location is difficult to establish at this time. If La Plata or Ridges Basin areas are unavailable, lands in other areas of the San Juan River Basin will be sought. Based on similar past programs, it will be feasible to acquire the lands; however, it should be noted that they may not be in the immediate project impact area. Wildlife mitigation land will be acquired prior to award of the contract for construction of Ridges Basin Dam, and development will occur concurrently with the construction of the dam.

Reclamation will develop construction specifications to include noise, traffic, and human use restrictions to minimize disturbance to wildlife near the construction zone of Ridges Basin as described under Mitigation for Refined Alternative 4 Wildlife Impact 2 in Section 3.5. The Carbon Mountain gas pipeline route, which could significantly impact golden eagle nesting, will not be considered. Reclamation will make efforts to avoid construction during the May-July period in the vicinity of elk calving areas to minimize impacts to elk.

Reclamation will ensure that recreational facilities and the new alignment for County Road (CR) 211 are sited or restricted in such a way to minimize the disruption of deer and elk habitat utilization and behavior as described under Mitigation for Refined Alternative 4 Wildlife Impact 3 in Section 3.5. Designs of road crossings, particularly in the vicinity of Wildcat Creek, will contain special provisions to minimize wetland/riparian resources as described in Section 3.4, Mitigation for Refined Alternative 4 Impacts 1 and 2. Habitat impacts discussed previously include indirect impacts. Indirect impacts will be managed through a plan that will support the minimization or elimination of those conflicts/impacts. Recreation facilities will not be permitted on the west or south sides of the reservoir to reduce impacts to big game migration corridors. Trails will be restricted to foot traffic. Wildlife-related activities will be encouraged. Future use of Reclamation lands for cabin sites or similar uses will not be allowed. Sufficient land will be acquired at the time reservoir right-of-way is acquired at the upper (western) end of the reservoir (at least one-quarter mile) and along the southern shore to maintain a wildlife migration corridor around the reservoir and to winter ranges to the south.

Reclamation will collaborate with raptor specialists from the Service and CDOW on road realignment and construction activities at Ridges Basin Dam to identify and implement measures minimizing effects on existing golden eagles and their nests on Carbon Mountain as described under Mitigation for Refined Alternative 4 Wildlife Impact 4. All reasonable means to preclude human activity on Carbon Mountain will be pursued. All power lines will be designed raptor-proof.

Reclamation will require that a 0.25-mile buffer around the existing golden eagle nests be identified and that all reasonable measures are pursued to preclude human activity on Carbon Mountain during the nesting period of golden eagles (December 1 through July 15), as described under Mitigation for Refined Alternative 4 Wildlife Impact 5 in Section 3.5.

Reclamation will ensure that development of non-binding end uses and conveyance systems avoid or minimize construction impacts to wetland and riparian vegetation wildlife habitat located within the potential corridor alignments of the non-binding water conveyance pipelines and that construction zones are the minimum necessary to meet project objectives as described under Mitigation for Refined Alternative 4 Wildlife Impact 7 in Section 3.5. If avoidance is not possible, Reclamation will require that a riparian/wetland habitat mitigation and a monitoring plan is developed to compensate for the loss of habitat value.

#### 5.4.6 Aquatic Resources Commitments

The Service recommended that water pumped to Ridges Basin Reservoir from the Animas River be delivered into the reservoir at an elevation below the thermocline. This could lessen the likelihood of periodically having reservoir water temperatures becoming too warm to support trout and could increase oxygen levels in the reservoir. Reclamation does not believe there is sufficient information to adopt this measure at this time. Reclamation will, therefore, fund a more further detailed evaluation of Ridges Basin Reservoir's expected limnological conditions to better determine whether or not there is a significant concern to include this recommendation in the project plan. This commitment is described under Mitigation for Refined Alternative 4 Aquatic Resources Impact 2 in Section 3.6. The evaluation will be completed in coordination with the Service as part of the design data collection activities.

Reclamation will develop and implement a monitoring program at Ridges Basin Reservoir to determine the extent of bioaccumulation of trace elements in fish within the reservoir. The reservoir basin's vegetation will be largely cleared in order to reduce the magnitude of productivity and reduction potential. This, in turn, will limit mercury becoming methylated, the form in which it is available to bioaccumulate within the food chain. Trout will be the only fish stocked. Trout are not at the top of the fish food chain; therefore, they will not be expected to accumulate significant levels of bioaccumulated trace elements. The program will last two consecutive years and be initiated two years after the reservoir is filled. If significant bioaccumulation effects are identified, Reclamation will work with the appropriate local, state or federal agencies to either minimize the impact or otherwise offer protection to potentially impacted fish and wildlife species and to possibly post human fish consumption advisories at the reservoir. This commitment is also described under mitigation for Refined Alternative 4 Aquatic Resources Impact 3 in Section 3.6

To minimize downstream stranding of fish due to the operation of the pumping plant, changes in the pumping will be staged in the following manner: An increase in pumping not to exceed 50 cfs per hour (hr) stage decrease and a decrease in pumping not to exceed 100 cfs/hr (stage increase) when natural river flows are above 500 cfs. At lower flow, these ramping rates could substantially change river stage. Therefore, when river flows are at or below 500 cfs, increases in pumping will not exceed 25 cfs/hr and decreases in pumping will not exceed 50 cfs/hr. This commitment is also described under Mitigation for Refined Alternative 4 Aquatic Resources Impact 6 in Section 3.6. Seasonal bypass flows will be met (ranging from 125 - 225 cfs) as described under mitigation for Refined Alternative 4 Aquatic Resources Impact 1.

Monitoring studies of project-affected waters on the Animas River will be implemented both prior to and continuing for at least four years after project operations begin (project pumping). These studies will be designed to better define the native fishery, to include better understanding apparent problems with native sucker recruitment, and to monitor trout populations. If it is concluded that the operation of the project is having significant adverse impacts to the downstream aquatic ecosystem, Reclamation will make every reasonable effort to modify project operations to either reduce or eliminate these impacts.

The potential impact to native fishes in the Animas River, especially the effects of chronic habitat reduction, may not be directly mitigatable on the Animas River. Investigations should be initiated to determine whether or not fish barriers exist, whether small fish/young-of-the-year fish are significantly lost through entrainment in canals, and whether any significant loss to the trout fishery occurs. The monitoring program will be initiated in 2000 that will incorporate these additional elements into a monitoring study currently being conducted on the Animas River. A firm recommendation for mitigation due to the effects on native fishes will be made by no later than 2005, at least two years prior to project pumping from the Animas River. Once this mitigation recommendation is approved and agreed to by the Service, CDOW, New Mexico Department of Game and Fish (NMDGF), and perhaps the Southern Ute Indian Tribe, its implementation will immediately begin. This commitment is also described under mitigation for Refined Alternative 4 Aquatic Resources Impact 4 in Section 4.6.

Reclamation will review and adopt established guidelines for screening facilities to minimize fish entrainment and impingement at the Ridges Basin Pumping Plant. Reclamation will also ensure that design specifications include Best Available Technologies as described under Mitigation for Refined Alternative 4 Aquatic Resources Impact 5 in Section 3.6.

Reclamation will either screen or implement other physical structures to prevent live fish from being released from Ridges Basin Reservoir. The reservoir outlet system will be designed and fitted with devices to eliminate survival of fish escaping the reservoir. Reclamation will monitor escapement from the reservoir and Basin Creek as described under mitigation for Refined Alternative 4 Aquatic Resources Impact 7 in Section 3.6.

Reclamation will fund the acquisition and stocking of wild strains of trout annually in the Animas River within the boundaries of the Southern Ute Indian Reservation to compensate for fish loss due to the reduction in usable trout habitat. Individual stocks of trout will be marked in such a manner that age groups could be monitored over time. This monitoring plan will be developed in consultation with the Service, CDOW, NMDGF, and the Tribe. The relative success of this effort will be assessed after four years. If it is deemed a success—that is, if the trout biomass within the stocked reaches of the river is elevated to a point of supporting a recreational fishery—the stocking program will continue. For the acquisition of trout stock, Reclamation will consider the development of a new hatchery in cooperation with the Southern Ute Indian Tribe and others. This same hatchery could very well be utilized for providing for fish stocking for Ridges Basin Reservoir.

Reclamation will commit to providing trout to be stocked at Ridges Basin Reservoir to provide a recreational fishery. The source of fish could be from an existing Colorado River Storage Project (CRSP) hatchery facility or from the acquisition and/or construction of a new hatchery facility. This commitment is for the purposes of enhancing the fishery at Ridges Basin Reservoir.

As described in Section 5.4.11, Reclamation will acquire at least two new public access points on the Animas River for fishing and other recreational use.

#### **5.4.7 Special Status Species Commitments**

Reclamation will implement conservation measures found in the latest Biological Opinion on the project (see Attachment G for complete list). These measures address the Colorado pikeminnow and razorback sucker that are found in the San Juan River and the bald eagle that is found throughout the project area.

The conservation measures include Reclamation's commitment to operate Navajo Reservoir and the Durango Pumping Plant to mimic the natural hydrograph of the San Juan River to benefit the endangered fish and their habitat. Also, Ridges Basin outlet facilities will be designed to prevent escapement of nonnative fish, that might compete with native fish, into the Animas or other area waterways.

Reclamation will develop and implement a monitoring program for potential adverse bioaccumulation of trace elements in bald eagle food items in Ridges Basin Reservoir. If the program identifies a problem with trace elements, Reclamation will develop and implement an action plan to minimize impacts to bald eagles. Bypass flows compatible with the endangered fish recovery efforts will be incorporated into the project plan to promote natural recruitment of cottonwood trees. This should avoid impacts to future bald eagle habitat. Also, electrical transmission lines associated with the project will be designed to avoid injury to raptors, including bald eagles.

Project wildlife and wetland mitigation areas should provide high quality, protected habitats for species such as the southwestern willow flycatcher and bald eagle in the area.

#### **5.4.8 Geology and Soils Commitments**

Reclamation will reduce or eliminate the potential for earthquake damage to the Ridges Basin Dam site through specific design specifications. Dam specifications will require design performance to withstand a maximum credible earthquake for seismic sources in the vicinity of Ridges Basin Dam site as described under Mitigation for Refined Alternative 4 Geology Impact 1 in Section 3.8.

Reclamation will develop and implement a controlled program for filling Ridges Basin Reservoir to reduce the potential for induced seismic impacts as described under Mitigation for Refined Alternative 4 Geology Impact 2 in Section 3.8.

Reclamation will develop and implement a facilities operation program that includes monitoring the reservoir shoreline and slopes for landslide and slumping. Reclamation will also provide for public notification and control public access in areas where high landslide and slumping potential exists as described under Mitigation for Refined Alternative 4 Geology Impact 3 in Section 3.8.

Reclamation will develop an engineered process plan to limit, control, and manage dam site methane gas releases during construction. Reclamation will also monitor the area for methane gas releases during operations as described under Mitigation for Refined Alternative 4 Geology Impact 4 in Section 3.8.

Reclamation will investigate the potential of gas release due to man-made intrusions within Ridges Basin and the proposed dam site. Specifically, construction investigations will study the integrity of abandoned exploration wells and the Gates Coal Mine as described under Mitigation for Refined Alternative 4 Geology Impact 5 in Section 3.8.

Reclamation will mandate that construction contractors use and implement measures contained in erosion control guidelines and BMPs to control soil erosion from construction areas as described under Mitigation for Refined Alternative 4 Soils Impact 1 in Section 3.8.

Reclamation will develop and implement a program to control reservoir filling and drawdown at rates sufficient to reduce significant erosion and sedimentation potential as described under Mitigation for Refined Alternative 4 Soils Impact 2 in Section 3.8.

#### **5.4.9 Cultural and Paleontologic Resources Commitments**

Reclamation will ensure compliance with historic/archaeological treatment measures and disseminate results pursuant to the Programmatic Agreement executed to meet Section 106 requirements for Refined Alternative 4 Cultural Impacts 1-3 in Section 3.9. Attachment H contains a Draft Amended Programmatic Agreement for the ALP Project. Reclamation will also finalize a Historic Preservation Management Plan which puts the Programmatic Agreement into operation.

Reclamation will ensure compliance with mitigation measures developed in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) and Executive Order 13007 as described under Mitigation for Refined Alternative 4 Cultural Impact 4 in Section 3.9. Appendix H contains a draft NAGPRA Plan for the ALP Project.

Reclamation will ensure that areas to be disturbed are field surveyed prior to construction disturbance and will ensure that construction monitoring is conducted where deemed appropriate as described under Mitigation for Refined Alternative 4 Paleontologic Impact 1 in Section 3.9.

Reclamation will ensure that periodic shoreline monitoring is conducted as part of the facilities operations plan as described under Mitigation for Refined Alternative 4 Paleontologic Impact 2 in Section 3.9.

#### **5.4.10 Agriculture Commitments**

Location, design, and construction timing of the NNMP would protect agricultural lands as described under Mitigation for Refined Alternative 4 Agriculture Impact 2 in Section 3.10.

#### **5.4.11 Recreation Commitments**

Reclamation will pursue pumping regimes that reduce adverse flow effects on boating opportunities within the Animas River when possible and will take steps to improve public access to the river as described under Mitigation for Refined Alternative 4 Recreation Impacts 1 and 2 in Section 3.11.

Reclamation will alter pumping regimes during periods of competitive events as described under Mitigation for Refined Alternative 4 Impact 3 in Section 3.11.

Reclamation, as part of both the fishery and recreation mitigation program, will acquire or provide funding (not to exceed \$500,000) for the acquisition of public access at a minimum of two points on the Animas River between the High Bridge and Basin Creek to reduce effects to anglers on the Animas River as described under Mitigation for Refined Alternative 4 Recreation Impact 4 in Section 3.11.

#### **5.4.12 Socioeconomics Commitments**

No environmental commitments are made for socioeconomic resources.

#### **5.4.13 Land Use Commitments**

No environmental commitments are made for land use resources.

#### **5.4.14 Hazardous Materials Commitments**

Reclamation will ensure that the Durango Pumping Plant is designed to minimize the disturbance of contaminated materials. Reclamation will also ensure that procedures will be developed for radiological monitoring of excavated soils and groundwater encountered and that remedial procedures are planned in advance to counteract the potential for human exposure and for the prevention of contaminated groundwater release from the construction site as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 1 in Section 3.14.

Reclamation will ensure that all federal and state requirements pertaining to the management and handling of hazardous materials, mixed wastes and radioactive waste are followed and will include those requirements within construction contract language inclusive of construction safety and environmental compliance as described under mitigation for Refined Alternative 4 Hazardous Materials Impact 2 in Section 3.14.

Reclamation will require that construction specifications for Ridges Basin Dam and Reservoir, the Ridges Basin Inlet Conduit, road relocation, and related work prohibit contractors from disturbing the disposal cell. Reclamation will take steps to ensure that the disposal cell has appropriate signage to make the public aware of its presence and any personal hazards that it could present, as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 3 in Section 3.14.

Reclamation will confer with DOE and their Long-Term Surveillance and Maintenance Program to understand the current operational scheme and parameters for the Bodo Canyon disposal cell. As well, Reclamation will reactivate sampling and monitoring of wells DH-228 and DH-229 for indicator parameters including but not limited to Molybdenum, Selenium, and Uranium, as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 5 in Section 3.14.

Reclamation will require that preconstruction surveys are conducted for non-binding water end use facilities and conveyance system development and that hazardous material standards relating to construction are adhered to as described under Mitigation for Refined Alternative 4 Hazardous Materials Impact 6 in Section 3.14.

#### **5.4.15 Transportation Commitments**

Reclamation will conduct a transportation survey prior to construction of Ridges Basin Dam and Reservoir and will implement methods to reduce traffic-related impacts as described under Mitigation for Refined Alternative 4 Transportation Impacts 1 and 2 in Section 3.15.

Reclamation will ensure to maintain CR 211 roadway, shoulder, drainage, and roadside to standards adequate to avoid noticeable degradation as described under Mitigation for Refined Alternative 4 Transportation Impact 3 in Section 3.15.

Reclamation will require third-party developers of recreation facilities at Ridges Basin Reservoir to conduct traffic engineering impacts analysis studies and to mitigate recreation facility impacts according

to state and county standards. Associated costs will be the responsibility of the developing entity as described under Mitigation for Refined Alternative 4 Transportation Impact 7 in Section 3.15.

#### **5.4.16 Air Quality Commitments**

Reclamation will require that construction contractors implement measures to control fugitive dust and exhaust emissions during construction as described under Mitigation for Refined Alternative 4 Air Quality Impact 1 in Section 3.16.

Reclamation, or other responsible federal agency, will require third-party developers to implement measures to control fugitive dust and other emissions during construction and operation of non-binding end uses.

#### **5.4.17 Noise Commitments**

Reclamation will require that the Durango Pumping Plant construction contractor restrict operation of heavy equipment during the nighttime hours as described under Mitigation for Refined Alternative 4 Noise Impact 1 in Section 3.17.

Reclamation will ensure that construction contractors provide blasting notification to residents, sound pre-blast alarms, and follow the construction safety plan as described under Mitigation for Refined Alternative 4 Noise Impact 2 in Section 3.17.

Construction and operation of the Durango Pumping Plant will be carried out to reduce noise impacts as described under Mitigation for Refined Alternative 4 Noise Impacts 3 and 4 in Section 3.17.4.1. Noise reduction will be provided in the form of sound insulation within the pumping plant and vegetation screening designed as part of site landscaping. Ridges Basin specifications will provide for noise control, particularly relating to golden eagle nesting.

Reclamation will ensure that construction contractors schedule construction activities to avoid or minimize loud activities in the vicinity of golden eagle nesting areas during the nesting season and that nesting areas are "off limits" to construction forces and visitors as described under Mitigation for Refined Alternative 4 Noise Impact 4 in Section 3.17.

Reclamation will require that third-party developers of recreation facilities at Ridges Basin Reservoir incorporate in a recreation development/management plan the requirement to prohibit particularly loud forms of watercraft and to include signing to advise people of eagle nesting sensitivity to human presence and noise as described under Mitigation for Refined Alternative 4 Noise Impact 5 in Section 3.17.

Reclamation will ensure that developers and contractors associated with construction and operation of the non-binding end uses incorporate methods to minimize noise disturbances as described under Mitigation for Refined Alternative 4 Noise Impact 6 in Section 3.17.

#### **5.4.18 Public Health and Safety Commitments**

Reclamation will ensure that public access to structural component construction areas will be controlled by signage and by fencing around construction areas as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 1 in Section 3.18.



Reclamation will ensure that contractors configure haul routes and access roads to prevent or discourage public vehicular entry, including placement of signs warning against entry as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 2 in Section 3.18.

Reclamation will ensure that all the potentially affected gas companies will be contacted prior to construction crossings of gas pipelines which will be precisely located and appropriately marked in the field and on the specifications as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 3 in Section 3.18.

Reclamation will ensure that public access to end use and delivery system construction areas is controlled by signage and by fencing around construction areas as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 4 in Section 3.18.

Reclamation will investigate the potential for gas release due to man-made intrusions, prior to construction, and will monitor excavations for the presence of coal bed methane gas, as described under Mitigation for Refined Alternative 4, Public Health and Safety Impact 5 in Section 3.18.

Reclamation will control public access to operation areas that could pose a threat to public safety as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 6.

Reclamation will ensure that recreation area planning, final design of facilities, and reservoir access points are developed to promote safety and use of accident management techniques as described under Mitigation for Refined Alternative 4 Public Health and Safety Impact 7 in Section 3.18.

#### **5.4.19 Public Services and Utilities Commitments**

Reclamation will ensure that construction contractors adequately secure and patrol their work sites and will coordinate with city or county law enforcement agencies as described under Mitigation for Refined Alternative 4 Public Services and Utilities Impact 1 in Section 3.19.

Reclamation will ensure that contractors will mark the locations of existing buried utilities and develop a notification system for coordination with affected utilities during construction as described under Mitigation for Refined Alternative 4 Public Services Utilities Impact 4 in Section 3.19.

#### **5.4.20 Visual Resources Commitments**

Reclamation will ensure that as part of construction design, the Durango Pumping Plant blends into the natural landform and that, following construction, the site is adequately revegetated as described under Mitigation for Refined Alternative 4 Visual Impact 1 in Section 3.20.

Reclamation will ensure that the design of structural facilities incorporates, to the extent practicable, non-intrusive design elements and that restoration of disturbed areas be conducted as described under Mitigation for Refined Alternative 4 Visual Impact 2 in Section 3.20.

#### **5.4.21 Indian Trust Assets and Environmental Justice Commitments**

Interior will support the modification of the Settlement Agreement, through legislated amendments to the Settlement Act, to recognize the new limits placed on the use and amount of water provided to the Colorado Ute Tribes and establishment of the water acquisition fund.

Interior will pursue the development of operation plans for Ridges Basin and Navajo Reservoirs that will optimize more efficient delivery of the flow recommendations for endangered fish in the San Juan River and limit certain project pumping to allow for making additional depletions and developable water available for other Indian tribes' present and future water needs.

Interior will facilitate discussions between the Jicarilla Apache Tribe and other parties with interest in the San Juan River Basin to develop options of obtaining 25,500 afy depletion as authorized under the Jicarilla Apache Tribe Water Rights Settlement Act.

Chapter 1  
ENVIRONMENTAL COMMITMENTS  
AND MITIGATION MEASURES



**EXHIBIT B**  
**NAVAJO-GALLUP WATER SUPPLY PROJECT**  
**ENVIRONMENTAL COMMITMENTS**

The Navajo-Gallup Water Supply Project (NGWSP) is a major infrastructure project designed to provide a reliable water supply to the Navajo Nation. The project includes the construction of a new water treatment plant, a transmission pipeline, and distribution mains. The Navajo Nation is committed to ensuring that the project is developed and operated in a manner that is consistent with its environmental and cultural values. This document outlines the environmental commitments and mitigation measures that will be implemented throughout the project lifecycle.

The Navajo Nation is committed to the following environmental commitments:

- Protect and enhance the quality of the environment, including air, water, and land resources.
- Minimize the adverse impacts of the project on the environment and cultural resources.
- Implement mitigation measures to avoid, minimize, and compensate for any adverse impacts.
- Monitor and report on the project's environmental performance.
- Engage the community in the project's development and implementation.

The Navajo Nation will implement the following mitigation measures:

- Conduct thorough environmental impact assessments (EIS) and cultural resource surveys.
- Develop and implement an environmental management plan (EMP) and a cultural resource management plan (CRMP).
- Implement best management practices (BMPs) to prevent soil erosion, sedimentation, and water pollution.
- Protect and restore riparian and wetland areas.
- Implement measures to protect and enhance cultural resources, including archaeological sites and traditional knowledge.
- Monitor and report on the project's environmental performance.
- Engage the community in the project's development and implementation.

NAVJO ENVIRONMENTAL COMMITMENTS

Approved by the Navajo Council on 10/15/2010



## Chapter VI

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# ENVIRONMENTAL COMMITMENTS AND MITIGATION MEASURES

*Introduction*  
*General Commitments*

## INTRODUCTION

This chapter discusses the environmental and related commitments that have been made by the Bureau of Reclamation (Reclamation) during the development of the San Juan River Public Service Company of New Mexico (SJRPNM) Alternative (Reclamation's preferred alternative). Reclamation would share responsibility of implementing measures that would avoid or reduce potential environmental impacts of the Navajo-Gallup Water Supply Project (proposed project). This responsibility would be shared with other Federal agencies, the Navajo and Jicarilla Apache Nations, and the city of Gallup, as well as third-party entities that could include New Mexico and Arizona State agencies and local governments.

This chapter summarizes the commitments made during the planning process and incorporated into the proposed project plan. Commitments are discussed in chapter IV, and mitigation measures are proposed in chapter V to reduce or avoid impacts that would otherwise occur as a result of the implementation of the preferred alternative.

As described below, the commitments would be implemented by Reclamation, or Reclamation would require their implementation by construction contractors or management authorities. Commitments for pre-construction activities would generally be completed by Reclamation or by the contractors during the final design process and prior to construction activities. Wildlife, wetland, cultural resource, and other mitigation would be completed by Reclamation as described in the following paragraphs. Some commitments, such as monitoring, would continue beyond completion of construction of structural facilities.

## GENERAL COMMITMENTS

Throughout the planning process for the proposed project, efforts have been made to avoid impacts where practicable. If avoidance was not possible, then mitigation

measures have been developed to reduce the level of impact. The proposed mitigation measures for each resource, if appropriate, were discussed in chapter V, and key measures are summarized here. In addition to specific mitigation measures identified in chapter V, other management practices would be employed during construction activities to minimize environmental effects and would be included in construction specifications. Many of these measures are required in order to comply with Federal, State, or local laws and regulations, regardless of whether they are specifically identified in this document. Reclamation would comply with all relevant Federal, State, and local laws, ordinances, regulations, and standards during the implementation of the preferred alternative. Reclamation would prepare and implement an environmental commitments plan for the proposed project to document and track the completion of the environmental commitments.

## **Navajo Reservoir Operations**

Reclamation would be able to issue water service contracts to meet project demands from Navajo Reservoir now that a successful hydrologic determination was signed. At full San Juan River Basin (Basin) development, depletions would increase by 5,270 acre-feet from the Basin over the baseline presented in chapter V, table V-3.

Releases would be similar to those described in the *Navajo Reservoir Operations Final Environmental Impact Statement, Navajo Unit – San Juan River, New Mexico, Colorado, Utah* (Reclamation, 2006) to meet the San Juan River Flow Recommendations; however, additional flows would be released from Navajo Reservoir downstream when needed to meet project demands at the SJRPNM intake structure. The demands for the Cutter Lateral portion of the proposed project would be delivered from Navajo Reservoir through the existing Navajo Indian Irrigation Project (NIIP) intake structure in Navajo Reservoir.

## **Water Uses and Resources Commitments**

Until depletions in the Basin reach the baseline depletion in table V-3 plus the 5,270 acre-feet added to the baseline for this project, the San Juan River Basin Recovery Implementation Program (SJRBRIP) Flow Recommendations can be met or only missed less than 0.01 percent of the time for only one category. When the total depletions reached this new baseline depletion, the Navajo Nation would reduce an amount from one or more projects that are presently in the baseline to ensure that the total depletions in the Basin remain below the baseline depletions (Navajo Depletion Guarantee).

### **Navajo Depletion Guarantee**

The Navajo Depletion Guarantee is a commitment by the Navajo Nation which ensures that depletions for its uses under the proposed project will be offset by unused Navajo Nation depletions included in the San Juan River Basin, including forbearance of Navajo Nation uses on NIIP and/or Hogback and Fruitland Irrigation Projects as necessary, if and when required to keep the total depletions in the Basin from exceeding the following threshold (referred to as the depletion threshold):

The sum of the actual annual depletions from all uses listed in the hydrologic baseline shown in table V-3 (excluding San Juan-Chama Project exportation) and all Navajo-Gallup Water Supply Project uses equals a total depletion amount of 752,127 acre-feet per year (AFY).<sup>1</sup>

Full proposed project depletions of 35,893 AFY would be made without requiring any forbearance of uses in excess of the 6,740 acre-feet of change in use baseline depletions shown in tables V-5 and VI-1. The city of Gallup may subcontract with either the Jicarilla Apache Nation or the Navajo Nation, or both in combination, for the diversion of up to 7,500 acre-feet of water per year from the Navajo Reservoir supply for its proposed project uses (depicted in table VI-1 as scenario 1 and scenario 2).

Depletions by the San Juan-Chama Project and other projects that may be added to the hydrologic baseline (table V-3) after the U.S. Fish and Wildlife Service's (Service) issuance of the Final Biological Opinion for the Navajo-Gallup Water Supply Project (volume II, appendix C, part III) would not be used when comparing actual future depletions against the 752,127 AFY depletion threshold.

If the threshold depletion is reached in the future, the Navajo Nation would reduce its total depletion in the Basin so that its consumptive uses under the proposed project do not cause the total actual depletions in the Basin to exceed the threshold depletions. The Navajo Nation could accomplish the required reductions in use by changes in the operation of any of the Navajo Nation's projects that deplete water from the San Juan River. The maximum Navajo Depletion Guarantee requirement in any year is a reduction in Navajo Nation depletions of 20,782 acre-feet.

When the depletion threshold condition is reached and the Navajo Depletion Guarantee must be implemented, the quantification of the threshold depletion amount will be recalculated using the baseline uses identified in table V-3 that are estimated in the most recent San Juan Hydrology Model. Changes in the Flow Recommendations for the San Juan River or the status of listed species may result in reduction or removal of the

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<sup>1</sup> The total includes 854,370 AFY for all depletions in the hydrologic baseline, less 107,514 AFY average depletion by the San Juan-Chama Project, plus 5,271 AFY of new depletions included in the proposed project.

Table VI-1.—Summary depletions for full proposed project development

Water provider	Change in use of baseline depletion (changed used) (acre-feet)	New depletions (approved in excess of baseline) (acre-feet)	Met within total threshold depletion for Navajo Depletion Guarantee (acre-feet)	Total (acre-feet)
<b>Scenario 1 – City of Gallup subcontract with the Jicarilla Apache Nation</b>				
Jicarilla Apache Nation	<sup>1</sup> 6,740	<sup>2</sup> 1,960	0	8,700
Navajo Nation	0	6,411	20,782	27,193
Proposed project total	6,740	8,371	20,782	35,893
Total reduced for 3,100 acre-feet NIIP returns		<sup>3</sup> 5,271		
<b>Scenario 2 – City of Gallup subcontract with the Navajo Nation</b>				
Jicarilla Apache Nation	<sup>4</sup> 1,200	0	0	1,200
Navajo Nation	<sup>5</sup> 5,540	8,371	20,782	34,693
Proposed project total	6,470	8,371	20,782	35,893
Total reduced for 3,100 acre-feet NIIP returns		<sup>3</sup> 5,271		

<sup>1</sup> Includes forbearance by the Jicarilla Apache Nation of 6,750 AFY of consumptive use on the Jicarilla Apache Nation Navajo River Water Supply Project (JANNRWSP) and 170 acre-feet of consumptive use under Jicarilla water rights for historic uses.

<sup>2</sup> The Final Biological Opinion for the Navajo-Gallup Water Supply Project does not establish any right in the Jicarilla Apache Nation to retain approval for 1,960 AFY of new depletions in excess of the baseline depletions listed in table V-3 should this amount of Jicarilla water rights, over and above the change in use of 6,750 acre-feet of baseline depletion, not be required for the proposed project due to the city of Gallup subcontracting with the Navajo Nation, as shown in scenario 2.

<sup>3</sup> By the time the Navajo Nation's water demands under the proposed project reach the full 27,193 acre-feet of depletion, the return flows from the NIIP to the San Juan River are anticipated to have increased by approximately 3,100 AFY, on average, over and above the current rate of return flow from the NIIP. This increase in return flows from the NIIP offsets an equivalent amount of new depletion by the proposed project and reduces the net new depletion from the river in the proposed project's biological opinion from 8,371 AFY to 5,271 AFY.

<sup>4</sup> Includes a forbearance by the Jicarilla Apache Nation of 1,200 AFY of consumptive use on the JANNRWSP.

<sup>5</sup> Includes forbearance by the Navajo Nation of 5,540 AFY of consumptive use on the NIIP or other Navajo projects for which depletions are in the baseline.

Navajo Depletion Guarantee based upon reconsultation. Additional information regarding the Navajo Depletion Guarantee is included in volume II, appendix C, part III (final biological opinion).

*Monitoring Requirements.*—No specific, detailed accounting of depletions will be required unless the sum of NIIP and Animas-La Plata Project (ALP) depletions reaches 290,000 acre-feet (table V-5). Since these projects are more easily tracked than depletions in the entire Basin, it will limit monitoring requirements. If this condition is met, all the depletions listed in the baseline for the proposed project will be monitored and reported on a 5-year cycle to coincide with the Reclamation Consumptive Use and Loss report. Depletions will be reported by the categories listed in the hydrologic baseline shown in table V-5 and the total computed. As discussed above, San Juan-Chama Project depletions will be removed for comparison to the Navajo Depletion Guarantee threshold depletion.

If the sum of these depletions reaches the depletion guarantee threshold, the elements of the Navajo Depletion Guarantee will be implemented. At that point, modeling will be completed for the limits the Navajo Nation proposes putting in place to meet flow conditions specified in the biological assessment.

*Responsibilities.*—

*San Juan River Basin Recovery Implementation Program.*—The SJRBRIP Hydrology Committee will be responsible for reviewing the accounting of depletions. The committee will also ensure that the San Juan River Basin Hydrology Model is implemented for compliance with the Flow Recommendations as specified in the proposed project's biological assessment. The biological assessment contains limits identified by the Navajo Nation at the time the Navajo Depletion Guarantee is implemented.

*Reclamation.*—Reclamation will identify the point at which ALP and NIIP annual depletions reach 290,000 acre-feet. If that target depletion is reached, Reclamation will initiate reporting of depletions for the categories listed in the hydrologic baseline for the proposed project (table V-5) on a 5-year cycle as a part of the consumptive use and loss reporting procedure. As a result of the monitoring, Reclamation will identify the point at which the sum of actual uses reaches the Navajo Depletion Guarantee threshold. If this level of depletion is reached, Reclamation will limit deliveries to Navajo projects, as directed by the Navajo Nation, to levels required by implementation of the Navajo Depletion Guarantee. In the event that the SJRBRIP terminates, Reclamation will assume the responsibilities listed above for the SJRBRIP.



*Navajo Nation.*—The Navajo Nation will limit uses as specified in the Navajo Depletion Guarantee if the conditions stated above are reached and provide to the SJRBRIP and Reclamation the projects it wishes limited.

*Conditions.*—None of the actions and conditions listed herein shall limit the ability of Reclamation to reinitiate consultation on the proposed project to increase its baseline depletion or alter the requirements of the Navajo Depletion Guarantee.

Reclamation will notify the SJRBRIP and the States of New Mexico and Colorado of any such requests to reinitiate consultation on the proposed project. Any reconsultations on the proposed project will be performed in conformance with the SJRBRIP's Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin that is described in the SJRBRIP's Program Document, Appendix C, dated September 7, 2006, as may be modified by the SJRBRIP and the Service.

The depletion levels discussed are conditioned upon current estimates of natural flow and baseline depletions for 1929–93 and are subject to change as hydrology or models are updated. If such updates occur, a newly computed Navajo Depletion Guarantee shall be computed and utilized based upon the same depletion categories as described herein.

## **Indian Trust Assets Commitments**

There are no mitigation measures proposed for Indian Trust Assets. One of the goals of the SJRBRIP is to “. . . proceed with water development in the Basin in compliance with federal and state water law, interstate compacts, Supreme Court decrees, and federal trust responsibilities to the Southern Utes, Ute Mountain Utes, Jicarillas, and the Navajos.” (SJRBRIP, 1995).

## **Water Quality Commitments**

Reclamation would develop and implement a program to reduce, minimize, or eliminate temporary, short-term increases in suspended sediment loading or other water quality constituents potentially caused by project construction through the incorporation of permits, Best Management Practices (BMPs), and sediment control structures as described under mitigation measures for water quality in chapter V.

## **Vegetation Commitments**

Reclamation would:

- Ensure that construction contractors limit ground disturbance to the smallest feasible areas and that they implement BMPs along with the planting or reseeded of disturbed areas using native plants to assist in the re-establishment of native vegetation as described under mitigation measures for vegetation resources in chapter V.
- Use accepted erosion control measures during construction, supplement grass seeding with native shrub seed in upland areas where shrub cover is diminished due to pipeline disturbance, monitor planting to ensure establishment, and control noxious weeds in disturbed areas.
- Replace riparian and wetland habitat with the creation of acre-per-acre replacement or enhancement of 3 acres for each acre lost to mitigate for impacts to riparian and wetland habitat. This includes revegetation of 17 acres of non-native riparian (Russian olive and tamarisk) and 3.6 acres of wetland temporarily removed during pipeline construction. Approximately 0.9 acre of non-native riparian and 1.1 acres of wetlands would be permanently removed for project features.

## **Wildlife Commitments**

Reclamation would:

- Ensure that construction contractors limit ground disturbance to the smallest feasible areas and that they implement BMPs along with the planning or reseeded of disturbed areas using native plant species to assist in the re-establishment of native vegetation as described under mitigation measures for vegetation resources in chapter V.
- To minimize disturbance to raptors, major construction activities along the Nutria and Defiance Monoclines, Cutter Canyon, Blanco Canyon, and the corridor from Cutter to Largo Canyons should be restricted during the nesting season (January 15 to August 15). If that is not possible, extensive nest searches should be made up to three-quarters of a mile of proposed activities immediately prior to construction and active nests avoided.

- Conduct extensive nest searches within one-quarter mile of proposed activities immediately prior to construction and avoid active nests if construction activities could not be scheduled outside the January 15 to July 15 timeframe.
- Incorporate raptor perch guards or raptor safe configurations on all new transmission structures.
- Avoid removal of riparian and wetland vegetation between March 15 and August 15 to avoid potential impacts to migratory bird nesting.
- Trench and bury pipeline concurrently to minimize trapping of small wildlife as possible. Reclamation would construct escape ramps for trenches left open overnight.

## **Aquatic Resources Commitments**

The SJRBRIP would monitor and report total depletions in the Basin as described previously in the “Water Uses and Resources Commitments” section. The Navajo Nation would implement a Navajo Depletion Guarantee when needed to keep the Navajo Nation’s depletions within the Endangered Species Act depletion baseline. Reclamation would also incorporate BMPs, as previously described in the “Water Quality Commitments” section, to avoid or minimize project impacts to aquatic resources.

## **Special Status Species Commitments**

Reclamation would:

- Implement conservation measures found in the final biological opinion on the proposed project (see appendix C, part III). These measures address the Colorado pikeminnow, razorback sucker, Southwestern willow flycatcher, and Mesa Verde cactus.
- Implement conservation measures for Navajo Nation listed species as described under “Special Status Species – Mitigation Measures” in chapter V.
- Conduct surveys for ferruginous hawk and bald eagle in proposed construction areas 1 year in advance of construction for pipeline routes and construction sites not adjacent to highways, well-traveled roads, or areas of regular human activity.

- Implement appropriate protective measures to avoid or minimize nest disturbance if active nests were found.
- Conduct surveys for Southwestern willow flycatcher in riparian and wetland habitat prior to construction within one-quarter mile of disturbed areas and avoid construction activities during the nesting season (March 15 to August 15) if active nesting is found.
- Delineate and avoid beautiful gila plants where possible.
- Refine the pipeline alignment to avoid individual Mesa Verde cactus and suitable habitat where possible.

Reasonable and prudent measures (RPMs) for Colorado pikeminnow and razorback sucker included in the final biological opinion are not included as environmental commitments. RPMs are measures to reduce incidental take of threatened or endangered species and are described as terms and conditions. The terms and conditions are nondiscretionary actions required by the action agency and are not included as mitigation measures.

## **Recreation Commitments**

No environmental commitments are made for recreation resources.

## **Land Use Commitments**

Reclamation would:

- Ensure that construction contractors limited ground disturbance to the smallest feasible area and that they implemented BMPs along with the planting or reseeded of disturbed areas to minimize impacts to existing land uses as previously described in the “Vegetation Commitments” section.
- Ensure that construction contractors fenced revegetated areas to prevent grazing activities until disturbed areas became re-established.
- Work with the Navajo Nation to provide temporary relocation assistance to affected livestock owners along the pipeline corridor.
- Provide relocation assistance to affected residences displaced by construction of the San Juan River water treatment facility.

## **Hazardous Materials Commitments**

Reclamation would contact pipeline and gas well companies prior to construction activities to identify and avoid existing hazards. Pipeline alignments would be adjusted, as needed, to avoid impacts to pipelines and wells.

## **Soils Commitments**

Reclamation would mandate that construction contractors use and implement measures contained in erosion control guidelines and BMPs to control soil erosion from construction areas as described under mitigation measures for soils in chapter V.

## **Geology Commitments**

No environmental commitments are made for geologic resources.

## **Paleontologic Commitments**

During construction activities, Reclamation would monitor areas with exposure of geological units or settings that indicated a high likelihood of yielding vertebrate fossils or noteworthy occurrences of invertebrate or plant fossils. In the event of discovery, Reclamation would evaluate the significance before construction could continue.

Reclamation would manage, on a case-by-case basis, construction activities adjacent to the Lynbrook and Betonnie Tsosie Fossil Areas. Reclamation would conduct paleontologic clearances prior to any surface-disturbing activities along the pipeline corridor in the Lynbrook and Betonnie Tsosie Fossil Areas.

## **Air Quality and Noise Commitments**

Reclamation would require that construction contractors implement measures to control fugitive dust during construction as described under mitigation measures for air quality and noise in chapter V. No environmental commitments are made for noise abatement.

## **Socioeconomics Commitments**

No environmental commitments are made for socioeconomic resources.

## **Environmental Justice Commitments**

No environmental commitments are made for environmental justice.

## **Cultural Resources Commitments**

Reclamation would:

- Implement a program to compensate for losses of archaeological sites that would occur as a result of construction and operation of the proposed project and the construction of conveyances as defined in the mitigation measures for cultural resources in chapter V.
- Coordinate the program with the New Mexico State Historic Preservation Officer, Navajo Nation Tribal Historic Preservation Officer, Bureau of Land Management, Bureau of Indian Affairs, city of Gallup, and the Advisory Council on Historic Preservation.
- Ensure compliance with mitigation measures developed in accordance with the Native American Graves Protection and Repatriation Act and Executive Order 13007 as described under “Cultural Resources – Mitigation Measures” in chapter V.