

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT
NAVAJO NATION MUNICIPAL PIPELINE
COLORADO RIVER STORAGE PROJECT

AGREEMENT BETWEEN THE UNITED STATES AND THE NAVAJO NATION TO
TRANSFER TITLE TO CERTAIN FEDERALLY OWNED FACILITIES AND REACHES OF
THE NAVAJO NATION MUNICIPAL PIPELINE, WITH CERTAIN PROPERTY RIGHTS,
TITLE, AND INTEREST TO THE NAVAJO NATION

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1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION

4
5 ANIMAS-LA PLATA PROJECT
6 NAVAJO NATION MUNICIPAL PIPELINE
7

8 AGREEMENT BETWEEN THE UNITED STATES AND THE NAVAJO NATION
9 TO TRANSFER TITLE TO CERTAIN FEDERALLY OWNED FACILITY
10 OR REACH OF THE NAVAJO NATION MUNICIPAL PIPELINE, WITH CERTAIN
11 PROPERTY RIGHTS,
12 TITLE, AND INTEREST, TO THE NAVAJO NATION
13
14
15
16

17 This TITLE TRANSFER AGREEMENT (hereafter referred to as "Agreement")
18 is made this _____ day of _____, 2013, in pursuance generally of the Act of
19 Congress approved June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary
20 thereto, and particularly pursuant to the Colorado River Storage Project Act of April 11, 1956 (70
21 Stat. 105), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 896), the
22 Colorado Ute Indian Water Rights Settlement Act of 1988 (P.L. 100-585), as amended by the
23 Colorado Ute Settlement Act Amendment of 2000 (P.L. 106-554), which authorized the
24 construction of the Animas-La Plata Project (A-LP Project), and Section 10605(b) of Public Law
25 111-11 (Omnibus Public Land Management Act of 2009); among the UNITED STATES OF
26 AMERICA, hereinafter referred to as the United States, acting through the Secretary of the
27 Department of the Interior (Secretary), Bureau of Reclamation (Reclamation), and the NAVAJO
28 NATION, a Federally recognized Indian Tribe; (individually, "Party" and collectively, "the
29 Parties" to this Agreement) acting through their representatives.
30

EXPLANATORY RECITALS

WITNESSETH that:

WHEREAS, the Navajo Nation Municipal Pipeline (NNMP) is a feature of the A-LP Project; and

WHEREAS, United States has constructed all facilities and reaches of the NNMP downstream of the City-Nation Boundary Point; and

WHEREAS, Facilities and Reaches to be Transferred includes facilities and reaches of the NNMP downstream of the City-Nation Boundary Point which are located outside the corporate boundaries of the City of Farmington; and

WHEREAS, The Navajo Nation has established the Navajo Tribal Utility Authority (NTUA) as an enterprise of the Navajo Nation, with authority to acquire and perform Operations, Maintenance, and Replacement (OM&R) of utility systems throughout the Navajo Nation, including the performance of OM&R of a water supply distribution system for water users within, and in the vicinity of, the community of Shiprock, New Mexico; and

WHEREAS, by Public Law 111-11, Section 10605(b), on completion of the NNMP, the Secretary may enter into separate agreements with the City of Farmington, New Mexico (City), and the Navajo Nation to convey title to each portion of the NNMP facility or section of the NNMP to the City and the Navajo Nation after execution of a A-LP Project operations agreement (Operations Agreement) approved by the Secretary, the City, and the Navajo Nation that sets forth any terms and conditions that the Secretary determines are necessary; and

WHEREAS, by Public Law 111-11, Section 10605(b)(2)(B), the Secretary shall convey to the Navajo Nation, the facilities and any land or interest in land acquired by the United States

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1 for the construction, operation, and maintenance of the NNMP that are located outside the
2 corporate boundaries of the City of Farmington; and

3 WHEREAS, the United States has determined that Title Transfer of facilities and reaches
4 of the NNMP downstream of the City-Nation Boundary Point to the Navajo Nation will not
5 interfere with the Navajo Nation's capability to continue to OM&R other Navajo Nation owned
6 facilities; and

7 WHEREAS, within the terms and conditions of the Operations Agreement, executed
8 _____, 2013, the Navajo Nation has assumed responsibility to perform OM&R of
9 the Facilities and Reaches to be Transferred; and

10 WHEREAS, construction of all facilities and reaches of the NNMP have been completed.

Comment [BG1]: CB & BB
Need to decide if deferred storage
needs to be addressed in another
WHEREAS and what language it should
include

11 NOW, THEREFORE, it is mutually agreed that the United States will transfer all of its right,
12 title, and interest in and to certain facilities and reaches, and certain associated property, property
13 rights, title, or interest as more specifically described herein as all facilities and reaches of the
14 NNMP downstream of the City-Nation Boundary Point, to the Navajo Nation pursuant to the
15 terms and conditions set forth below and in the Operations Agreement of _____,
16 2013, and which is hereby incorporated herein by reference: Provided, that the Navajo Nation
17 passes a resolution approving this Agreement, and accepting title via quitclaim deed.
18

19
20 GENERAL DEFINITIONS
21

22 1. When used in this Agreement, unless otherwise distinctly expressed or manifestly
23 incompatible with the intent hereof, the following definitions shall apply in this Agreement:

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1
2 **City-Nation Boundary Point** – The point where the centerline of the NNMP crosses the
3 boundary between the City and the Navajo Nation in the approximate vicinity of 36° 43'
4 56.2" N, 108° 15' 8.58" W, San Juan County, New Mexico, also referred to as Sta.
5 10+00.

6
7 **Facilities and Reaches to be Transferred shall mean:**

- 8 a) Fruitland Reach – 24-inch Polyvinyl Chloride (PVC) pipe Sta. 10+00 to
9 402+50 per Reclamation Contract 08NA408075.
10 b) Nenahnezad Reach – 24-inch PVC pipe Sta. 402+50 to 671+86.
11 c) Nenahnezad Hill Horizontal Direction Drill (HDD) – 24-inch High-Density
12 Polyethylene (HDPE) pipe Sta. 671+86 to 701+90.
13 d) Nenahnezad Tank – One million gallon storage tank Sta. 703+00.
14 e) San Juan Reach – 24-inch PVC pipe Sta. 703+60 to 950+10.
15 f) Crossing Section No. 2 HDD – 24-inch HDPE pipe Sta. 950+10 to 960+80.
16 g) Hogback Reach – 24-inch PVC pipe Sta. 960+80 to 1239+00.
17 h) Shiprock Reach – 24-inch PVC pipe Sta. 1239+00 to 1497+93.
18 i) South Shiprock Tank – One million gallon storage tank.
19 j) All permits, licenses, rights-of-way, easements, leases and other real property
20 interests allowing access to and/or use of (a) through (i) above.
21 k) All additions, replacements, betterments, and appurtenances to any of the
22 Facilities and Reaches to be Transferred, including any or electrical and
23 plumbing systems, tanks, and other improvements.
24

25
26
27 **NNMP** – The Navajo Nation Municipal Pipeline means the pipeline used to convey
28 municipal and industrial water supplies from the City of Farmington, New Mexico, to
29 communities of the Navajo Nation located at or near Shiprock, New Mexico, as
30 authorized by Section 15(b) of the 2000 Amendments.
31

32
33
34 TRANSFER OF RIGHT, TITLE, AND INTEREST
35 FROM THE UNITED STATES TO THE NAVAJO NATION
36

37 2. (a) After the terms and conditions of the Operations Agreement are satisfied
38 and within one hundred eighty (180) days of the effective date of this Agreement, the Secretary
39 shall quitclaim to the Navajo Nation, by means of execution, delivery, and recordation of a
40 document in the form substantially set forth in Appendix A, hereby incorporated by reference, all

Comment [BG2]: 032813
BW to verify stationing

041513:

Email fr Brett Grubbs NECA to
BWagner 041113:

Brian,
The river tie in #1 is at station 10+21.97. 11.14' left
of the design centerline. This is the actual station of
the flange connection between the miter bend and
the HDPE. If you need anything else please let me
know.
Have a good day,

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1 right, title, and interest of the United States in and to the Facilities and Reaches to be
2 Transferred, subject to the terms and conditions in this Agreement. This act of quitclaim is
3 hereafter referred to as "Title Transfer".

4 (b) If prior to Title Transfer, a material defect is found by the Navajo Nation
5 in the Facilities and Reaches to be Transferred that was unknown at the time that this Agreement
6 was ratified, the Navajo Nation may elect not to proceed with the Title Transfer if the defect is
7 not remedied by the United States. The United States is only obligated to remedy defect(s)
8 identified within the Transfer Inspection Report as set forth in Appendix B.

9 PAYMENT

10
11 3. (a) At the time of Title Transfer, it is anticipated that no payment from the
12 Navajo Nation to the United States shall be due for the actual costs of Facilities and Reaches to
13 be Transferred, subject to any obligations or deductions that may be agreed upon by the Parties.

14 (b) The Navajo Nation shall be subject to costs incurred by the United States
15 for duplication of documents beyond those provided by the United States, under Article 8 of this
16 Agreement.

17 (c) Responsibilities for compliance with the National Environmental Policy
18 Act (NEPA), have been completed within Environmental Assessment # _____ dated
19 00/00/2013.

20 RESPONSIBILITIES FOLLOWING TITLE TRANSFER

21
22 4. (a) The NTUA shall assume responsibility for all duties and costs associated
23 with the OM&R, enhancement, and betterment of the Facilities and Reaches to be Transferred

Comment [BG3]:
CB to look at drafted language.
NN is good with this language.

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1 following Title Transfer. The Navajo Nation shall not be eligible for any Federal funding
2 appropriated for the A-LP Project to assist with the activities above.

3 (b) Notwithstanding the requirements of 4 (a) above, Title Transfer does not
4 impact the Navajo Nation's right to request and/or receive Federal assistance under Federal
5 programs, (i.e., Federal Emergency Management Act or United States Department of Agriculture
6 programs) or other Bureau of Reclamation programs such as competitive grants where state,
7 regional, or local authorities, Indian tribes or tribal organizations, or other qualifying entities
8 such as water conservation districts, or water conservancy districts are eligible to participate.

9 OFFICIALS NOT TO BENEFIT
10

11 5. No Member of or Delegate to the Congress, Resident Commissioner, or official of
12 the Navajo Nation, shall benefit from this Agreement other than as a water user or landowner in
13 the same manner as other water users or landowners.

14 CONDITION OF FACILITIES AND REACHES TO BE TRANSFERRED
15

16 6. (a) The Parties agree that this Agreement and its appendices accurately
17 describe(s) the Facilities and Reaches to be Transferred.

18 (b) The Parties agree that the document (s) listed in Appendix B, hereby
19 incorporated by reference, of this Agreement accurately describe(s) the conditions of the
20 Facilities and Reaches to be Transferred at the time of execution of this Agreement.

21 (c) The Parties agree that the Phase I environmental site assessment
22 (Appendix C) evidences Reclamation's compliance with the Comprehensive Environmental
23 Response, Compensation and Liability Act (CERLCA) as amended, 42 U.S.C. § 9601 et seq.

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1 section 120(h)(1) and (3) and in accordance with regulations set forth at 40 CFR Part 373 and
2 that it documents any hazardous substance activity which took place and provides the results of
3 an inquiry by an environmental professional into the hazardous substances released, disposed of,
4 or stored for a year or more on the site. Furthermore, the Navajo Nation agrees that any and all
5 remedial action has been completed and the United States has no further requirement to correct
6 any hazardous condition discovered after the transfer.

7 (d) The Parties agree that the documents attached as Appendix D, hereby
8 incorporated by reference, accurately describe all appropriate environmental documentation
9 pursuant to the National Environmental Policy Act (NEPA), the National Historic Preservation
10 Act (NHPA), the Endangered Species Act (ESA), the Fish and Wildlife Coordination Act,
11 (FWCA), and Indian Trust Assets (ITA), if applicable.

12 SUCCESSORS AND ASSIGNS OBLIGATED
13

14 7. Following Title Transfer, the provisions of this Agreement shall apply to and bind
15 the successors and assignees of the Navajo Nation. It is the intent of the Navajo Nation to assign
16 Facilities and Reaches to be Transferred to the NTUA.

17 DOCUMENTS TO BE TRANSFERRED
18

19 8. Within ninety (90) days following the effective date of this Agreement,
20 Reclamation shall provide a complete written list of any design manuals, leases, licenses,
21 easements, cost of plant, and contracts with third parties (collectively referred to as "third-party
22 agreements") related to the Facilities and Reaches to be Transferred. Within sixty (60) days
23 following the effective date of this Agreement, Reclamation shall provide the Navajo Nation

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1 reasonable access to all non-privileged United States records pertaining to the design,
2 construction, operation, and maintenance of, and specification for the Facilities and Reaches to
3 be Transferred. The Navajo Nation shall notify Reclamation in writing of the specific records it
4 wishes to have copied. Reclamation shall provide one copy each of all identified records within
5 forty-five (45) days of the receipt of said request from the Navajo Nation.

6 THIRD-PARTY AGREEMENTS
7

8 9. The United States shall assign to the Navajo Nation all of its rights, and delegate
9 all of its duties, obligations, and responsibilities which exist as a result of third-party agreements
10 relating to the Facilities and Reaches to be Transferred, including the granting of any right to use,
11 cross, or occupy any of the Facilities and Reaches to be Transferred. The Navajo Nation shall
12 honor third-party agreements for the length of those agreements.

13 COMPLIANCE WITH LAWS AND REGULATIONS
14

15 10. The Navajo Nation shall comply with all applicable Federal, State, Navajo
16 Nation, and local laws and regulations.

17 APPLICABILITY OF FEDERAL RECLAMATION LAWS AND CONTRACTS

18 FOLLOWING TITLE TRANSFER
19

20 11. Following Title Transfer, all provisions of the Federal Reclamation laws and
21 regulations as amended and supplemented shall continue to be applicable. In addition, except as
22 modified or discharged herein, all of the Parties' contracts and amendments shall remain
23 unaffected by this Agreement.

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LIABILITY

Comment [BG4]:

032813 CB to review (new language)

1
2
3 12. Title to Project facilities shall be held by the United States, or conveyed to the
4 Navajo Nation as authorized under Section 10602(f) of Public Law 111-11. Any claims
5 regarding liability of the federal government or its agents arising from the activities associated
6 with this agreement will be processed according to the provisions of the Federal Tort Claims Act.
7 Any claims regarding liability of the Navajo Nation or its agents arising from the activities
8 associated with this agreement will be processed according to the provisions of the Navajo
9 Nation's Sovereign Immunity Act.

10 STIPULATIONS AND REMEDIES TO FACILITATES AND REACHES TO BE
11 TRANSFERRED

12
13 13. Any incomplete outstanding issues identified in the Transfer Inspection
14 Report, shall be corrected as agreed upon by the Parties.

15 CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS

16
17 14. The expenditure or advance of any money or the performance of any obligation of
18 the United States under this contract shall be contingent upon appropriation or allotment of
19 funds. Absence of appropriation or allotment of funds shall not relieve the Navajo Nation from
20 any obligations under this Agreement. No liability shall accrue to the United States in case funds
21 are not appropriated or allotted.

22 ADD BLOCK NOTICE ARTICLE HERE

Comment [BG5]:

032813
BG to draft block notice language.

23 NOTICES

24
25 15. Any notice, demand, or request authorized or required by this Agreement shall be
26 deemed to have been given, on behalf of the Navajo Nation, when mailed, certified postage

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1 prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation,
2 125 South State Street, Room 6107, Salt Lake City, UT 84138-1102, and on behalf of the United
3 States, when mailed, certified postage prepaid, or delivered to the Director of the Navajo
4 Department of Water Resources, P.O. Box 678, Ft. Defiance, AZ 86504; and the Navajo Tribal
5 Utility Authority, PO Box 170, Fort Defiance, AZ 86504. The designation of the addressee or
6 the address may be changed by notice given in the same manner as provided in this article for
7 other notices.

8

9 |

DRAFT

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1
2 IN WITNESS THEREOF, the Parties have executed this Agreement to be duly
3 executed on the date first above written.
4
5
6
7

8 ATTEST: THE NAVAJO NATION
9

10
11
12 By: _____ By: _____
13 Ben Shelly
14 President
15 Navajo Nation
16
17
18
19

20 ATTEST: UNITED STATES OF AMERICA, BUREAU OF RECLAMATION
21
22
23

24 As to legal sufficiency:
25
26

27 _____ By: _____
28 Office of the Solicitor Larry Walkoviak
29 Regional Director, Upper Colorado Region

For Technical Discussion Contract No. _____

APPENDIX A

1. **Document displaying form of Quitclaim deed:** This document accurately presents the format for a quitclaim deed to describe the lands held as rights of way, easements, or in fee title for the Facilities and Reaches to be Transferred, to be prepared, in consultation with the Navajo Nation, by Reclamation.

APPENDIX B

2. **Transfer Inspection Report:** The Transfer Inspection Report, Navajo Nation Municipal Pipeline, Animas-La Plata Project, Colorado and New Mexico, accurately describes the results of the most recent inspection for complete and incomplete items of the Facilities and Reaches to be Transferred.

APPENDIX C

3. **Phase I Environmental Site Assessment:** Environmental Site Assessment for Transfer of Facilities and Reaches between the Bureau of Reclamation and the Navajo Nation, Bureau of Reclamation, Upper Colorado Region, Western Colorado Area Office, dated _____ 2013.

APPENDIX D

4. **Environmental Assessment – Finding of No Significant Impact:** Reclamation has prepared, and the Navajo Nation has reviewed and approved all appropriate environmental documentation pursuant to the National Environmental Policy Act.