



United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Region
Four Corners Construction Office
2200 Bloomfield Highway
Farmington, NM 87401-8110

IN REPLY REFER TO:

FCCO-110
ADM-13.00

NOV 28 2011

Honorable Ben Shelly
President Navajo Nation
P.O. Box 7440
Window Rock, AZ 86515

Subject: Memorandum of Understanding (MOU) Regarding Project Modifications – Navajo-Gallup Water Supply Project – New Mexico

Dear Honorable Shelly:

Enclosed, for your records, is fully executed original of the subject MOU. The MOU describes the process by which decisions will be made regarding modifications to the project. The terms and conditions identified in the MOU are now officially in effect.

Thank you all for your efforts in getting this MOU approved.

If you have any questions, please contact Pat Page at 505-324-5027.

Sincerely,

PAT PAGE

Barry Longwell
Construction Engineer

ACTING FOR

In Duplicate

Enclosures

Identical Letters Sent To:

Honorable Levi Pesata
President Jicarilla Apache Nation
P.O. Box 507
Dulce, NM 87528-0507

Honorable Jackie McKinney
Mayor of Gallup
P.O. Box 1270
Gallup, NM 87305

cc: See Next Page

cc: Mr. John Leeper
Navajo Nation Department of Water Resources
P.O. Box 678
Ft. Defiance, AZ 86504

Mr. Jason John
Navajo Nation Department of Water Resources
P.O. Box 678
Ft. Defiance, AZ 86504

Ms. Biddah N. Becker
Attorney
Water Rights Unit
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515

Mr. Darryl Vigil
Water Administrator
P.O. Box 507
Dulce, NM 87528

Ms. Judy Manwell
Executive Director of Natural Resources
Jicarilla Apache Nation
P.O. Box 507
Dulce, NM 87528

Mr. Herb Becker
Jicarilla Apache nation
JA Associates of NM, LLC
2309 Renard Place, SE, Suite 200
Albuquerque, NM 87106

Mr. Lance Allgood
Executive Director
Gallup Joint Utilities
P.O. Box 1270
Gallup, NM 87305-1270

Mr. George Kozeliski
City Attorney
P.O. Box 1270
Gallup, NM 87305-1270
(ea w/ encl)

bc: FCCO-100, FCCO-5000, WCG-DeAngelis
(w/o encl to ea)

WBR:PPage:bfox:11/18/11

V:\FCF Correspondence\Navajo Gallup Water Supply Project(NGWSP)-General Corresp\MOU
Submittal Letter Project Mods.doc

**MEMORANDUM OF UNDERSTANDING
AMONG
THE BUREAU OF RECLAMATION
AND
THE NAVAJO NATION
AND
JICARILLA APACHE NATION
AND
CITY OF GALLUP
CONCERNING
THE DESIGN AND CONSTRUCTION OF THE
NAVAJO GALLUP WATER SUPPLY PROJECT**

ARTICLE I - PURPOSE

- 1.1 This memorandum of understanding (MOU) among the Bureau of Reclamation, (Reclamation), the Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup (collectively referred to as “Parties” and individually as “Party”) is for the purpose of defining the means and dispensation of how decisions will be made pertaining to the adjustment of the project components and features from what is defined for the Navajo-Gallup Water Supply Project (Project) in the Planning Report/Final Supplement to the Environmental Impact Statement (PR/FEIS), specifically Appendix B to the PR/FEIS, titled Appraisal Level Designs and Cost Estimates, commonly referred to as the Construction Cost Estimate (CCE). The Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup may collectively be referred to as “Project Participants” and individually as a “Project Participant.”**

ARTICLE II – AUTHORITY

- 2.1 Public Law 111-11 – OMNIBUS PUBLIC LAND MANAGEMENT ACT of 2009 (Act) signed on March 30, 2009**
- 2.1.1 Section 10602 (a): “The Secretary, acting through the Commissioner of Reclamation, is authorized to design, construct, operate, and maintain the Project in substantial accordance with the preferred alternative in the Draft Impact Statement”. The Draft Impact Statement was completed in July of 2009, and is known as the PR/FEIS and the subsequent Record of Decision was signed by the Secretary of the Interior on October 1, 2009, which identified the selected alternative and established the commitments.**
- 2.1.2 Section 10609 (a) authorizes appropriations of \$870,000,000 in 2007 dollars for the period of fiscal years 2009 through 2024, subject to adjustments as indicated by engineering cost indices.**

2.1.3 Section 10604 (g) of the Act authorizes the formation of a Project Construction Committee (PCC):

2.1.3.1 To review cost factors and budgets for construction, operation and maintenance activities;

2.1.3.2 To improve construction management through enhanced communication; and

2.1.3.3 To seek additional ways to reduce overall Project costs.

ARTICLE III - RESPONSIBILITIES

3.1 In the context of this MOU, Reclamation will be responsible for the following activities:

3.1.1 Act as the Federal Action Agency. This involves NEPA and ESA oversight assuring that all PR/FEIS commitments are accounted for.

3.1.2 Provide overall Project accounting as compared to the CCE of all planned and actual expenditures. All reimbursable and non-reimbursable costs will be accounted for in all of the various components of the Project estimated costs and expenditures.

3.1.3 Approve cost share credit proposals from the State of New Mexico and approve expenditures from the cost share provided by the State of New Mexico. This includes accounting of these expenditures as they relate directly with the CCE.

3.1.4 Provide for consultation on all Project decisions with the Project Participants. Strive for consensus on all significant Project issues. If consensus cannot be obtained, and the circumstances dictate the need for a decision to be made, Reclamation will make the decision.

3.1.5 Provide for a flexible approach to Project design and construction decisions, within the legal framework described herein and in the PR/FEIS, from a strict interpretation of the Project components and features in the PR/FEIS to allow consideration for the delivery of water from Project transmission facilities near to existing or planned future supply points of distribution systems while maintaining costs within the overall CCE. All issues related to impacts to archeological compliance, environmental compliance, operation, maintenance, replacement, real estate, engineering, and construction will be considered during the decision making process.

3.1.5.1 The CCE will be updated for the following reasons; a) indexing, b) if design changes render the CCE substantially inaccurate c) if the prices change which render the CCE substantially inaccurate, and d) adjustments to reflect the State of New Mexico Cost Share credit. Maintaining costs within the overall CCE is a guiding principle and decisions will not be made on adjusting the alignment, storage facilities, pumping plants, capacities, or delivery points which violate this principle.

3.1.5.2 The term “near” means without leaving a significant expense to a Project Participant to bring Project water to existing or planned future distribution systems.

3.1.6 Provide support to the Project Participants, as appropriate, regarding decisions where tradeoffs are made involving reduction in scope to portions of the Project which must be implemented to avoid CCE overruns. Support may include providing information and/or justification to the State of New Mexico, constituents, the press, the public, boards, councils, chapters, the Commissioner of Reclamation, or others. This support may be provided by Reclamation in writing at the request of the Project Participants.

3.2 In the context of this MOU, the Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup will be responsible for the following activities:

3.2.1 Strive for consensus with the PCC on all issues. Should objections occur to Reclamation decisions, provide immediate notification in writing to all Project Participants within 30 days following written notification from Reclamation.

3.2.2 Provide input to all specific design and construction decisions relating to the adjustment of the alignment, storage facilities, pumping plants, capacities, and delivery points from what is specifically shown in the PR/FEIS and in the CCE.

3.2.3 Provide input regarding acceptable tradeoffs where both adjustments to alignment, storage facilities, pumping plants, capacities, and delivery points and maintaining the Project costs within the CCE are impossible or cause significant risk of overrun.

3.2.4 Provide supporting documentation which will be made available to the Project Participants, indicating the Parties’ position regarding decisions where tradeoffs are made which are implemented to avoid Project CCE overruns. Support may include providing information and/or justifications to the State of New Mexico, constituents, the press, the public, boards, councils, chapters, or the Commissioner of Reclamation. If requested by

Reclamation, the Project Participants agree to provide written support of these decisions within 30 days following the request.

3.2.4.1 The CCE will be updated for the following reasons; (a) indexing, (b) if design changes render the CCE substantially inaccurate (c) if the prices change which render the CCE substantially inaccurate, and (d) adjustments to reflect the State of New Mexico cost share credit.

3.2.4.2 Maintaining costs within the overall CCE is a guiding principle and decisions will not be made on adjusting alignment, storage facilities, pumping plants, capacities, and delivery points which violate this principle.

3.3 Attached as Exhibit A is a flow chart that demonstrates how decisions may be made under this MOU.

ARTICLE IV - ADMINISTRATIVE PROVISIONS

4.1 Non-Fund Obligation. Nothing in this agreement may be construed to obligate the Department of the Interior (Department) or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress.

4.2 Non-Exclusivity. This Agreement does not create any sort of exclusive arrangement between or among the Parties.

4.3 Unilateral Termination. Any Party may unilaterally terminate its participation in the agreement by providing written notice to the other Parties.

4.4 Review. This Agreement shall be reviewed by the Parties at least every five years to re-evaluate the terms of the Agreement to assure the purpose is being met. If it is determined that a modification of the Agreement is necessary, Paragraph 4.5 shall apply.

4.5 Amendment and Modification. This Agreement may be amended or modified with the agreement of all Parties. Any Party who proposes an amendment or modification shall provide a written proposal to other Parties. Any amendments or modifications shall be effective upon the date of signature of all Parties or the last party to execute the amendment or modification.

4.6 Effective Period and Expiration. This Agreement shall become effective on the date that the last Party executes the Agreement This Agreement shall expire on the date when the last section of the project is classified as plant in service or when it is no longer considered in construction status.

4.7 FACA Implications. The Parties will comply with the Federal Advisory Committee Act to the extent it applies.

4.8 Advance Review of Press Releases Mentioning Reclamation. Parties will obtain prior approval of all press releases, published advertisements, or other statements intended for the public that refer to this Agreement or to Reclamation, the Department, any Party, or the name or title of any employee of the Department or any Party, in connection with this Agreement.

4.9 Agency Representative or Contacts:

Reclamation

**Construction Engineer, Four Corners Construction Office.
2200 Bloomfield Highway
Farmington, NM 87401**

Jicarilla Apache Nation

**Director, Water Administration Office
P.O. Box 507
Dulce, NM 87528**

Navajo Nation

**Director, Department of Water Resources
P. O. Box 678
Fort Defiance, AZ 86504**

City of Gallup

**Executive Director, Gallup Joint Utility District
P.O. Box 1270
Gallup, NM 87305-1270**

4.10 Endorsements. Nothing in this Agreement may be interpreted to imply that the United States, the Department, or Reclamation endorses any product, service, or policy of the Parties. The Parties will not take any action or make any statement that suggests or implies such an endorsement. Nor shall anything in this Agreement be interpreted as the consent of the Project Participants that the total allowable cost of the Project is less than amounts authorized under P.L. 111-11 or any other act of Congress, nor shall anything in this agreement be interpreted as requiring all authorized funding be expended.

ARTICLE V – ACCEPTANCE AND APPROVAL

BUREAU OF RECLAMATION:


Larry Walkoviak, Regional Director, UC Region

Nov. 21, 2011
Date

ARTICLE V – ACCEPTANCE AND APPROVAL

NAVAJO NATION:

 9/21/2011
Ben Shelly, President of the Navajo Nation **Date**

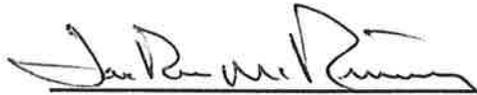
ARTICLE V – ACCEPTANCE AND APPROVAL

JICARILLA APACHE NATION:

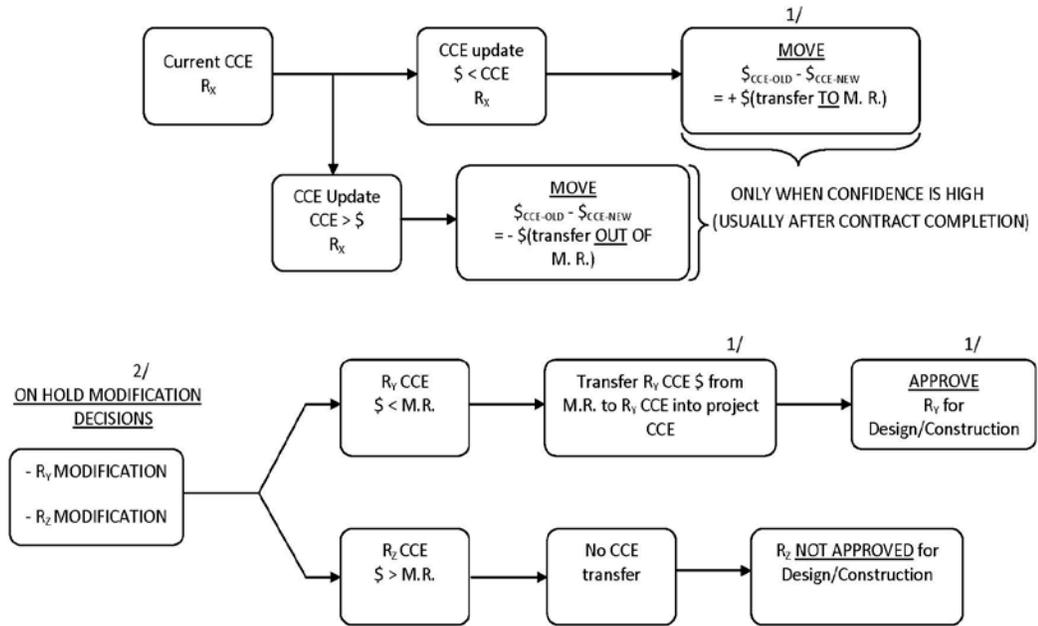

_____ 6/30/11
Levi Pesata, President of the Jicarilla Apache Nation Date

ARTICLE V - ACCEPTANCE AND APPROVAL

CITY OF GALLUP:

 06/29/11
Jackie McKinney, Mayor Date

HOW TO MANAGE MOU DECISIONS RE: MODIFYING PR/FEIS PROJECT COMPONENTS AND FEATURES



R_x = GENERIC REACH "X"
M.R. = MANAGEMENT RESERVE

- 1/ PCC DECISION DOCUMENTED
- 2/ INTERIM MODIFICATION RELATED DECISIONS AT RISK UNTIL M.R. IS TRANSFERRED.
INTERIM MODIFICATION RELATED DECISIONS ALSO DOCUMENTED BY PCC.