



United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Regional Office
125 South State Street, Room 6107
Salt Lake City, UT 84138-1102

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IN REPLY REFER TO:

UC-446
WTR-4.00

NOV 22 2011

MEMORANDUM

To: Area Manager
Attn: WCD-BGriffin

From: Larry Walkoviak
Regional Director

for 

Subject: Approval and Transmittal of a Municipal and Industrial (M&I) Water Supply Subcontract Between the Jicarilla Apache Nation and the City of Gallup, New Mexico, Navajo Unit, Colorado River Storage Project (Your Memorandum of May 27, 2011)

Attached for your distribution are four signed originals of the subject subcontract between the Jicarilla Apache Nation and the City of Gallup for 7,500 acre-feet annually of Navajo Reservoir M&I supply for a term of 40 years. This subcontract will satisfy the condition under Subsection 10604(b)(7) of the Public Law 111-11, dated March 30, 2009, which required the City of Gallup to separately secure a water supply as a condition for its participation in the Navajo-Gallup Water Supply Project. Compliance with the National Environmental Policy Act of 1969 has been documented with the Categorical Exclusion Checklist No. DUR-NGWSP-CE-09-2011.

In accordance with Article 11 of the Jicarilla Apache Nation's Settlement Contract, dated December 8, 1992, we have reviewed and approved the subject subcontract. The subject contract has been reviewed by the Office of the Regional Solicitor for legal adequacy and the approval has been signed by this office on behalf of the United States. Please distribute the signed originals to the proper individuals. If you have any further questions or comments, please contact Mr. Michael Loring at 801-524-3691.

Attachments - 4

cc: WCG-CDeangelis (w/copy of att)

DDP
email



**WATER SUPPLY AGREEMENT
BETWEEN
THE CITY OF GALLUP
AND THE JICARILLA APACHE NATION**

THIS AGREEMENT ("Agreement") made this 22nd day of November, 2011, is between the CITY OF GALLUP, an incorporated municipality of the State of New Mexico, ("City") and the JICARILLA APACHE NATION, ("Nation") a federally recognized Indian Tribe with headquarters located at Dulce, New Mexico. The City and the Nation are collectively referred to as "Parties" and individually as "Party."

EXPLANATORY RECITALS

The Nation is the owner of certain water rights pursuant to the Jicarilla Apache Tribe Water Rights Settlement Act of October 23, 1992, 106 Stat. 2237, as amended (Settlement Act). Pursuant to the Settlement Act and the Contract between the Nation and the United States of America dated December 8, 1992 (Federal Contract), the Nation has the right to deplete up to 25,500 acre feet per year from the San Juan stream system.

Under the Settlement Act, the Federal Contract and the Nation's Water Code, the Nation has the right to subcontract such water to third parties, subject to the approval of the Secretary, for beneficial use outside of the Jicarilla Apache Indian Reservation when it is not being used by the Nation. The Legislative Council of the Nation has found that this Agreement is for a term and contains conditions that will ensure that the Nation will be able to retrieve all of this water supply for its purposes at the expiration of this Agreement if the Nation determines it has alternative uses; further the Legislative Council has determined that the terms and conditions of this Agreement will not jeopardize the ability of the Nation to utilize all or a portion of this water supply for on-Reservation development as needed upon expiration of this Agreement.

Also, the City is required, by Section 10604(b)(7) of the Northwestern New Mexico Rural Water Projects Act, Title X, Subtitle B of the Omnibus Public Land Management Act of March 30, 2009, P.L. 111-11, 23 Stat. 991, (Act), to obtain a water delivery contract for a period of not less than 40 years.

ACCORDINGLY, in consideration of the mutual covenants in this Agreement, the Parties agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 "AFY" means acre-feet per year.

- 1.2 “City” means the City of Gallup, an incorporated municipality of the State of New Mexico.
- 1.3 “Contracting Officer” means the representative of the Commissioner of the Bureau of Reclamation authorized to administer the Federal Contract and to administer the City’s contract under the Act.
- 1.4 “CPI-U” means the Consumer Price Index for all urban consumers, for all items, for the average of U.S. cities, compiled by the Department of Labor.
- 1.5 “Department of Labor” means the United States Department of Labor.
- 1.6 “ESA” means the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.
- 1.7 “Federal Contract” means the contract between the Nation and the United States dated December 8, 1992 that was authorized and adopted by Congress in the Jicarilla Apache Tribe Water Rights Settlement Act of October 23, 1992, 106 Stat. 2237.
- 1.8 “Nation” means the Jicarilla Apache Nation, a federally recognized Indian tribe with headquarters located at Dulce, New Mexico.
- 1.9 “NEPA” means the National Environment Policy Act, 42 U.S.C. §§ 4321, et seq.
- 1.10 “Notice” means proper notice provided pursuant to Article 22 of this Agreement.
- 1.11 “Prime Rate” means daily prime rate as published in the Wall Street Journal.
- 1.12 “Secretary” means the United States Secretary of the Interior, or the federal official acting under authority lawfully delegated by the Secretary.
- 1.13 “Settlement Act” means the Jicarilla Apache Tribe Water Rights Settlement Act of October 23, 1992, 106 Stat. 2237, as amended.
- 1.14 “Sublease” means any subcontract, sublease or arrangement of any kind made by the City to deliver or make available for delivery to a third party of all or a portion of the water made available for delivery under this Agreement, but excludes such a subcontract, sublease or arrangement for water delivered in the City’s Water Utility Service System.
- 1.15 “Subleasing” means any subcontracting, subleasing or arranging of any kind made by the City to deliver or make available for delivery to a third party all or a portion of the water made available for delivery under this Agreement, but excludes water delivered in the City’s Water Utility Service System.
- 1.16 “Uncontrollable Forces” means any cause beyond the control of the Party affected, including, but not limited to, drought, failure of facilities, flood, earthquake,

storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, or restraint by court or public authority, any of which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid.

1.17 “Valid Lease Transaction” means any arms-length non-purchase transaction for the delivery of ten (10) or more AFY of water, for a term of ten (10) or more years, for which the Office of the State Engineer has issued any required permit, and for which the purpose is a municipal water supply.

1.18 Valid Purchase Transactions exclude transactions used as the basis for a prior market price adjustment under this Agreement, and transactions for which neither the permit issuance date nor the purchase agreement execution date is within four (4) years preceding July 1st of the year of the market price determination analysis.

1.19 “Water Utility Service System” means the system operated by the City through which the City provides water utility service to residential, commercial, industrial, institutional, retail, wholesale or other customers. The Water Utility Service System shall be defined by the provision of such service through such system and not by any other measurement.

1.20 “Act” means the Northwestern New Mexico Rural Water Projects Act, Title X, Subtitle B of the Omnibus Public Land Management Act of March 30, 2009, P.L. 111-11, 23 Stat. 991.

1.21 “Project” means the Navajo Gallup Water Supply Project (NGWSP) as defined in the July 2009 Planning Report and Final Environmental Impact Statement (PR/FEIS) prepared by the U.S. Department of Interior Bureau of Reclamation as same is constructed.

ARTICLE 2 **TERM**

This Agreement shall commence on the date of the Secretary’s approval of this Agreement and shall terminate forty (40) years from the first date of water delivery to City.

ARTICLE 3 **WATER AVAILABILITY AND DELIVERY**

The Nation agrees to make available for delivery to the City up to 7,500 AFY of the Nation’s San Juan stream system water under the Federal Contract. This quantity of water, undiminished except as provided in this Agreement, shall be made available commencing upon the completion of the San Juan Lateral portion of the Project when same is capable of delivering water under this Agreement to the City, or upon approval of this Agreement by the Secretary, whichever is later, and ceasing upon termination of this Agreement.

Prior to each April 1st, or thirty (30) days before the City's first delivery for the year in question, whichever is earlier, the City shall notify the Bureau of Reclamation in writing of its anticipated annual delivery of the water made available under this Agreement. The City shall provide the Nation a copy of such Notice.

The City shall request and take deliveries of water made available under this Agreement in accordance with and subject to the Secretary's and the Bureau of Reclamation's directives, regulations, policies and procedures, and all applicable law.

For the purposes of this Article the point of delivery shall be Project's San Juan River intake to the Water Treatment Plant as finally designed and constructed.

The Nation shall have no obligation to deliver water not called for by the City by the end of each calendar year or by such other time as the Bureau of Reclamation may require.

ARTICLE 4 **WATER SHORTAGES**

The delivery of water during any calendar year is conditioned upon and subject to the following:

In the event that a shortage to the Nation's supply of San Juan stream system water under the Federal Contract is determined to exist by the Secretary for any reason, the shortage to the Nation's supply will be allocated pro rata between the supply made available to the City under this Agreement and the Nation's remaining San Juan stream system water supply under the Federal Contract.

In the event that the Nation and all other San Juan stream system contractors enter into an agreement to share a shortage or potential shortage, and the Secretary or the Bureau of Reclamation operate the San Juan stream system in accordance with such an agreement, and there is a shortage to the Nation's supply under the Federal Contract pursuant to such an agreement, then the shortage to the Nation's supply shall be allocated pro rata between the supply made available to the City under this Agreement and the Nation's remaining San Juan water supply under the Federal Contract.

In no event shall any liability accrue against the United States, the Nation or any officers, agents, or employees of either for any damage, direct or indirect, arising from a shortage for any cause.

In no event shall the Nation be obligated to provide an alternative supply of water to the City from the Nation's remaining San Juan stream system water rights, the Navajo Reservoir Supply, or otherwise to reduce or avoid a curtailment in the supply of water available to the City under this Agreement.

Nothing in this Agreement shall prevent the City from participating in any agreement to share a shortage to the extent that the City may supplement the water supply to the Project participants by utilizing its ground water to make deliveries through Project facilities.

ARTICLE 5
MEASUREMENT

The Project Operator shall measure the water delivered under this Agreement and report the usage to the Bureau of Reclamation and the Nation. Water delivered to the City shall be measured at the discharge of the pumping plant between Reaches 12 and 13 as finally designed and constructed, and shall be the sum of water delivered to City less deliveries to the Navajo Nation as measured at the Reach 14 delivery points as finally designed and constructed including water delivered to the Boardman Navajos. The City shall provide the Bureau of Reclamation, and copy to the Nation, such data as the Nation or the Bureau of Reclamation shall require for the measurement of the water delivered pursuant to this Agreement.

Nothing in this Agreement shall be construed to require the Nation to construct or maintain facilities of any kind to measure the water delivered.

ARTICLE 6
POST-DELIVERY RESPONSIBILITY AND LOSSES

Upon delivery the City shall be responsible for the diversion, control, carriage, transportation, storage, handling, use, disposal, and distribution of all water delivered under this Agreement in conformance with the Inter Governmental Agreement, Project Operations Agreement and other relevant Agreements. For the purposes of this Agreement neither the Nation nor the United States shall be responsible for the diversion, control, carriage, transportation, storage, handling, use, disposal, or distribution of water delivered to the City, and the City shall hold the Nation and the United States, their officers, agents, employees, and successors or assigns harmless from every claim for damages to persons or property direct or indirect, and of any nature, arising out of or in any manner connected with the diversion, control, carriage, transportation, storage, handling, use, disposal, or distribution of such water from the point of delivery.

Nothing in this Agreement shall be construed to obligate the Nation to bear post-delivery water losses, including but not limited to consumptive losses, and conveyance losses.

Nothing in this Agreement shall be construed to obligate the Nation to construct, install, operate or maintain pumps, pipelines, storage tanks, distribution lines, or other facilities required to take, convey, or distribute water made available under this Agreement.

ARTICLE 7
WATER USE

The City shall use the water made available under this Agreement within the City's Water Utility Service System or for meeting regulatory requirements associated with the City's

Water Utility Service System. The City shall use the water made available under this Agreement for any purpose that is authorized by the Act.

Pursuant to the Federal Contract, the use of water made available under this Agreement shall be subject to and controlled by the Boulder Canyon Project Act, 45 Stat. 1057, the Boulder Canyon Project Adjustment Act, 54 Stat. 774, the Colorado River Compact, 46 Stat. 3000, the Upper Colorado River Basin Compact, 63 Stat. 31, the 1944 Treaty with the United Mexican States, Treaty Series 994, 59 Stat. 1219, the Upper Colorado River Basin Compact, and the Colorado River Storage Project Act, 70 Stat. 105, and shall be included within and shall in no way increase the total quantity of water to which the State of New Mexico is entitled under said compacts, statutes, and treaty.

ARTICLE 8 **PAYMENT FOR LOST OPORTUNITY**

As compensation to the Nation for its lost opportunity to market its water prior to delivery to City, City shall pay the Nation an annual payment in the amount of \$30,000.00 payable in two (2) equal installments of \$15,000.00 for the years preceding completion of the project and delivery of water subject to this Agreement. For the purposes of this section a year is defined as beginning July 1st and ending June 30th.

The initial payment shall be made within thirty (30) days after the approval of this Agreement by the Secretary. In the event approval of the Secretary occurs prior to June 30st, the initial payment shall be prorated accordingly. Succeeding annual payments shall be made on July 1st and January 1st of each year.

The succeeding annual payments shall be adjusted for inflation and market value increases as provided below:

For the purposes of this Article beginning in the fifth year of this Agreement and every year thereafter, the annual payments shall be adjusted for inflation by the percentage change in the CPI-U over the most recent twelve (12) months for which the CPI-U is available. If the Department of Labor ceases to compile the CPI-U, then the index prepared by the Department of Labor that most closely resembles CPI-U shall be used. If the CPI-U adjustment in any year would result in decrease to the annual payment, then no CPI-U adjustment shall be made for that year. The CPI-U adjustment in any year shall be limited to five (5) percent regardless of the actual CPI-U.

Payments under this Section shall end upon delivery of water to the City. In the event delivery of water to the City occurs prior to June 30th the final payment shall be prorated accordingly.

ARTICLE 9 **PAYMENT FOR WATER DELIVERED**

Beginning upon delivery of water to City, City shall pay the Nation on a annual basis a Base Charge payable in two equal installments due on July 1st and January 1st of each year, City shall also pay the Nation for water delivered on a per unit bases. The Unit Price shall be based on deliveries in One Thousand (1,000) Gallon increments, each increment shall be considered as One Unit and shall be rounded to the nearest thousand.

The Base Charge shall be equal to the sum of the price for Three Thousand Two Hundred Sixty (3,260) (approximately One Thousand [1,000] acre-feet) Units as same may be adjusted from time to time, for example if the Unit Price is \$100 per 1,000 Gallons then the Base Fee would be \$100.00 i.e. \$100 per 1,000 Gallons x 3,260 Units = \$326,000.00.

City shall pay the Nation the Base Fee regardless of the amount of water delivered. In the event deliveries exceed Three Thousand Two Hundred Sixty (3,260) Units in any year the sum due the Nation for delivery on a per unit bases shall be reduced by an amount equal to the difference in the actual amounts delivered and the Base Charge. For example if the total water delivered to City was Ten Thousand (10,000) Units in any year the sum due the Nation would be based on Six Thousand Seven Hundred Forty (6,740) Units i.e. 10,000 Units - 3,260 Units = 6,740 Units. Upon the agreement of both parties the adjustment may be credited against the Base Charge.

The Unit Price per 1,000 Gallons for the first two (2) years shall be as determined in this Section.

The Unit Price shall be adjusted beginning July 1st of the third year of water deliveries and every two (2) years thereafter to reflect increases or decreases in the Fair Market Value. This market value adjustment shall be made by increasing or decreasing the Unit Price by the percentage, if any, in the Fair Market Value as determined pursuant to this Article.

The percent increase, if any, to the Fair Market Value for adjustment of the Unit Price in the third year of water deliveries shall be calculated based on the difference in the Fair Market Value price per acre-foot for the year in which water deliveries commence as determined pursuant to this Article and the Fair Market Value price per acre-foot for the third year of water deliveries as determined pursuant to this Article reduced to a percent difference, but shall in no event exceed ten (10) percent or be less than 2.5 percent.

The percent increase, if any, to the Fair Market Value for adjustment of the Unit Price in subsequent years shall be calculated based on the difference in the two (2) most recent Fair Market Value prices per acre-foot as determined pursuant to this Article reduced to a percent difference, but shall in no event exceed five (5) percent in any two-year period.

The market purchase price per acre-foot shall be calculated as the average price per acre-foot of all Valid Purchase Transactions for Municipal or Domestic uses and, for which the pertinent terms are available through diligent inquiry.

There shall be no market price adjustment if there are less than four (4) Valid Purchase Transactions, provided that if there is no market price adjustment for two (2) consecutive two-year adjustment cycles due to an insufficient number of Valid Purchase Transactions, and there

would otherwise be an insufficient number of Valid Purchase Transactions in the third consecutive cycle, then the Fair Market Value for the market price adjustment in the third cycle shall be calculated as the average of all Valid Lease Transaction prices and all Valid Purchase Transaction prices, for which the pertinent terms are available through diligent inquiry. In the event that there are no Valid Purchase Transactions in the third or subsequent cycles then the Unit Price shall be increased by the percentage change in the CPI-U as determined pursuant to Article 8, but in no event shall the increase exceed five (5) percent in any one cycle.

Two (2) years prior to the delivery of water under this Contract, the Parties shall have a water market price study performed to determine the market price that the City will pay the Nation for water. In addition to the Fair Market Price, the price the City shall pay will include 1) the pro rata share of the Nation's share of the Navajo Dam and Reservoir annual capital construction costs, if any, and 2) the annual costs of the operation and maintenance of the Navajo Dam and Reservoir and associated facilities that are assigned to the Nation by the Bureau of Reclamation through Section 10(a)(iii) of the Federal Contract that is applicable to this Contract.

Thereafter one (1) year prior to each two-year cycles, the Parties will jointly retain a Consultant to calculate the Fair Market Value pursuant to the formula set forth in this Article and to present the data and results in a detailed written report. The Consultant shall have experience and expertise in the pricing of water rights.

The Parties shall retain the Consultant by using the Consultant Selection Process and Criteria and the Scope of Work set forth in EXHIBIT A. The Parties may revise the Scope of Work or Consultant Selection Process and Criteria, provided that the revised Scope of Work or Consultant Selection Process and Criteria is adopted by written agreement by the Parties and is otherwise consistent with this Agreement and shall be subject to this Agreement. The Parties shall share equally the cost of the Consultant.

The Parties will be free to perform an independent review of the Consultant's report. Within fifteen (15) days after receipt of the Consultant's report, either Party may object to the Consultant's determination of the Fair Market Value determination on the ground that it is not consistent with this Article by written Notice to the other Party with a copy to the Consultant. Said Notice shall state in detail the particular respects in which the Consultant's determination is inconsistent with this Article. Within fifteen (15) days after receipt of a written objection by either Party, the Consultant shall be required to provide a written response to both Parties, including any revision to the Consultant's determination.

Within fifteen (15) days of receiving the Consultant's response to the objecting Party's objections, and any resulting revision to the Consultant's determination, either Party may object to the Consultant's revised or confirmed determination on the ground that it is not consistent with this Article by written Notice to the other Party with a copy to the Consultant. Said Notice shall state in detail the particular respects in which the Consultant's revised or confirmed determination is inconsistent with this Article.

Any revised or confirmed determination shall calculate market value pursuant to the formula set forth in this Article. If either Party so objects to the Consultant's determination or

revised or confirmed determination, then the objecting Party or the other Party may elect to resolve the matter through discussion and binding arbitration pursuant to Article 24.

If the price adjustment process extends beyond the July 1st payment due date, the City shall pay the Nation by July 1st the amount that would be due in the absence of the market value adjustment, together with the amount of an inflation adjustment. Within fifteen (15) days of the determination of the current market value through negotiation or arbitration, the difference between the payment made and the payment due under the determination shall be paid by the City to the Nation or refunded by the Nation to the City: Interest, at the Prime Rate plus two (2) percentage points compounded daily, shall also be paid or refunded on the difference at that time.

In the event of a shortage under Article 4 of this Agreement, the City may request by Notice to the Nation either a refund or a credit of a portion of the annual payment made for the year of the shortage pursuant to this paragraph. The City shall give such Notice within thirty (30) days after the final determination by the Bureau of Reclamation of the amount of the shortage to the water supply made available for delivery to the City under this Agreement. The amount of the refund or credit shall be calculated as the Bureau of Reclamation's final determination of the amount of the shortage to the water supply made available for delivery under this Agreement in AFY multiplied by the annual payment as adjusted for inflation and market value increases pursuant to this Article and divided by AF shorted.

The City shall pay the Nation as provided in this Agreement notwithstanding the default of individual water users or sublessees in their obligations to the City.

The payments described in this Article represent the total consideration due for the water provided under this Agreement.

ARTICLE 10 **BENEFITS CONDITIONED UPON PAYMENT**

The payment of charges becoming due under this Agreement is a condition precedent to receiving benefits under this Agreement. The City shall have no right to the delivery or use of water supplied pursuant to this Agreement during any period in which the City is in arrears in any payment due under this Agreement.

The City shall pay penalty charges on delinquent payments. When payment is not received by the due date, the City shall pay interest, at the Prime Rate plus two (2) points, compounded daily, for each day the payment is due beyond the due date. When a payment is delinquent ninety (90) days or more, the City shall pay an additional penalty charge at the annual rate of six (6) percent, compounded daily, for each day the payment is delinquent beyond the due date. Further, the City shall pay any fees incurred by the Nation for debt collection services associated with the delinquent payment.

ARTICLE 11 **APPROVALS, CITY ORDINANCE, AND REVIEW PROCESSES**

This Agreement is subject to approval by the Secretary pursuant to the Federal Contract and the Act. The Nation shall request this approval. The City shall bear the costs of obtaining all approvals, permits or licenses associated with this Agreement and of compliance with NEPA, the ESA, and other applicable state, federal and local laws, except as otherwise provided in this Article.

The Parties understand that the Bureau of Reclamation will conduct an Indian Trust Assets Review in conjunction with NEPA compliance.

The Nation shall prepare for submittal to the Bureau of Reclamation an Environmental Assessment/Biological Assessment on the delivery of water pursuant to this Agreement. If additional NEPA or ESA documentation is required for the Secretary's approval of this Agreement, the costs of such additional documentation shall be borne by the City. The Nation shall not be responsible for NEPA or ESA compliance costs associated with the City's diversion or distribution of the water delivered pursuant to this Agreement.

The Parties shall cooperate in all required approval processes, provided that the Nation shall have no obligation to obtain or defend such approvals, permits, licenses or compliance. The Nation represents, through a resolution, a copy of which is attached as EXHIBIT B, that it has obtained all requisite approvals by the Nation to enter into and perform this Agreement and has delegated the requisite authority to the signatory hereof to bind the Nation.

The City represents, through a resolution, a copy of which is attached as EXHIBIT C, that it has obtained all requisite City approvals to enter into and perform this Agreement, and has delegated the requisite authority to the signatory hereof to bind the City. The City represents that it has authority to enter into this Agreement pursuant to applicable law, including NMSA 1978, § 3-27-5 (1965).

ARTICLE 12 **WATER AND AIR POLLUTION CONTROL**

The City shall comply with all applicable water and air pollution control laws now or hereafter in force, and shall be responsible for obtaining all required licenses and permits associated with the use of this water. The City agrees to submit to the Secretary for her review and written comments the designs and plans for air and water pollution control facilities or equipment which are necessary parts of any design, facility, plant, or process which may utilize water delivered pursuant to this Agreement prior to contracting for said facilities, their installation or major modification thereof.

ARTICLE 13 **RECLAMATION LAW AND OTHER APPLICABLE LAW AND LIMITATIONS**

This Agreement incorporates by reference and is subject to and controlled by the terms and conditions of the Federal Contract, a true and correct copy of which is attached as EXHIBIT D.

Nothing in this Agreement shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of the Boulder Canyon Project Act, 45 Stat. 1057; the Boulder Canyon Project Adjustment Act, 54 Stat. 774; the Colorado River Compact, proclaimed on June 25, 1929, 46 Stat. 3000; the Upper Colorado River Basin Compact, 63 Stat. 31; the Rio Grande Compact of 1938, 53 Stat. 785, the 1944 Treaty with the United Mexican States, Treaty Series 994, 59 Stat. 1219; the Colorado River Basin Project Act, 82 Stat. 885; the Colorado River Storage Project Act 70 Stat. 105; or the Settlement Act.

The provisions of this Agreement shall apply to and bind the sublessees, the successors, and the assigns of the Parties.

ARTICLE 14 **WATER QUALITY**

The Nation does not warrant the quality of water made available under this Agreement and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

ARTICLE 15 **WATER CONSERVATION**

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

ARTICLE 16 **FISH AND WILDLIFE COORDINATION**

The City agrees to cooperate and coordinate with the Nation, the Fish and Wildlife Service, the Bureau of Reclamation and Bureau of Indian Affairs in the planning and construction of projects, diversions and changes in water management associated with the water made available to the Nation under the terms of this Agreement as required by federal law, including, but not limited to, the Bald and Golden Eagle Protection Act, the Fish and Wildlife Coordination Act, the ESA, the Clean Water Act, and NEPA.

The City agrees to work with the State of New Mexico and affected water users to assure that the City's water delivery system is operated in compliance with applicable laws while meeting water delivery obligations, so as to provide, to the maximum extent possible, quantities

and timing of deliveries to provide for downstream flows necessary to maintain and protect existing fisheries and other resources, with particular emphasis on endangered species.

ARTICLE 17
EQUAL OPPORTUNITY AND RELATED LAWS

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

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

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

ARTICLE 18
SUBLEASING BY THE CITY

The City shall provide ninety (90) days written Notice to the Nation of every proposed Sublease, regardless of duration. Such Notice shall include a copy of the proposed Sublease.

The City is prohibited from Subleasing for a term longer than one (1) year any water supplied under this Agreement to third parties unless specifically authorized by the Nation in writing prior to execution of the Sublease.

In the event the payment due under any Sublease exceeds the payment due under this Agreement for the amount of water made available under the Sublease, the Parties shall share equally in the amount of the exceedance.

Every Sublease shall incorporate and be subject to the terms and conditions of this Agreement, the Federal Contract and the Act.

The Nation shall request approval by the Secretary to the extent required by the Federal Contract for any Sublease for a term less than one (1) year and any Sublease of longer duration for which the Nation gives its prior written consent. The City shall be responsible for obtaining all approvals, permits or licenses required for such Subleases, including but not limited to the Secretary's approval and compliance with NEPA, the ESA, and other applicable state, federal and local laws. The City shall bear all costs associated with such approvals, permits, licenses

and compliance. The Nation shall have no obligation to obtain or defend such approvals, permits, licenses or compliance.

ARTICLE 19
ASSIGNMENT

This Agreement is not assignable by either Party except for an assignment by the City of this Agreement to a regional entity providing municipal service to the City of Gallup. The City shall provide one hundred eighty (180) days prior written Notice to the Nation of possible assignment to a regional water system. No such assignment shall be valid until approved in writing by the Nation and by the Secretary.

The City shall be responsible for obtaining all approvals, permits and licenses required for such assignment, including but not limited to the Secretary's approval and compliance with NEPA, the ESA, and other applicable state, federal and local laws. The City shall bear all costs associated with such approvals, permits, licenses and compliance. The Nation shall have no obligation to obtain or defend such approvals, permits, licenses or compliance.

ARTICLE 20
**NO RIGHT OF RENEWAL;
USE OR THIRD PARTY SUBCONTRACTING BY THE NATION**

Neither Party has a right of renewal under this Agreement.

Nothing in this Agreement shall preclude the Nation from using the water made available under this Agreement on the Jicarilla Apache Indian Reservation or subcontracting with a third party to deliver the water made available under this Agreement off-Reservation prior to date of first delivery to the City of Gallup or the Secretary's approval of this Agreement, whichever is later. Nothing in this Agreement shall preclude the Nation from using the water made available under this Agreement on the Jicarilla Apache Indian Reservation or from subcontracting with a third party for water delivery off-Reservation commencing upon the expiration or termination of this Agreement.

The Parties agree to engage in good faith negotiations commencing no later than December 31st of the 39th year of this Agreement on possible terms of a new subcontract, provided that the Nation shall retain the right to negotiate with third parties for the subcontracting of the water. The City shall maintain the first right of refusal.

ARTICLE 21
TERMINATION

The Nation may, in its sole discretion, terminate this Agreement if this Agreement or the City resolution authorizing and approving it is held by any court of competent jurisdiction to be in violation of the New Mexico Constitution or New Mexico law governing the City's power to contract a debt and the Nation provides the City sixty (60) days Notice of its intent to terminate.

ARTICLE 22
NOTICES

Any Notice, demand, or request authorized by this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered, or faxed as follows:

- To the City: Director of City of Gallup, Gallup Joint Utilities
P.O. Box 1270, Gallup, NM 87305
Or electronic media.
- With a copy to: City Attorney, City of Gallup's Attorney's Office
P.O. Box 1270, Gallup, NM 87305
Facsimile: (505) 726-2047
- To the Nation: President, Jicarilla Apache Nation
P.O. Box 507, Dulce, NM 87528
Facsimile: (505) 759-3005
- With copies to: Herbert A. Becker, Esq.
2309 Renard Place SE, Suite 200
Albuquerque, NM 87106
Facsimile: (505) 242-2236
- And: Director - Water Administration
P.O. Box 507, Dulce, NM 87528-0507
Facsimile: (575)-759-1223
- To the Bureau of Reclamation:
Regional Director, Upper Colorado Region, Attn: UC-400
125 South State Street, Room 6107
Salt Lake City, UT 84138-1102
Facsimile: (801) 524-5499

All Notices and demands given or required to be given by a Party to the other Party shall be deemed to have been properly given if and when delivered in person, sent by facsimile (with verification of receipt) or three (3) business days after having been deposited with the U.S. Postal Service and sent by registered or certified mail, postage prepaid.

If either Party delivers a Notice by facsimile, as set forth above, such Party agrees to deposit the originals of the Notice in a Post Office, or mail depository maintained by the U.S. Postal Service, postage prepaid, and addressed as set forth above. Such deposit in the U.S. Mail shall not affect the deemed delivery of the Notice by facsimile, provided that the procedures set above are fully complied with.

The designation of the addressee or the address may be changed by Notice given in the same manner as provided by this Article.

ARTICLE 23
FORCE MAJEURE

Neither Party shall be considered to be in default in respect to any obligation hereunder, if delays in or failure of performance shall be due to Uncontrollable Forces. The Party whose performance hereunder is so affected shall immediately notify the other Party of all pertinent facts and take all reasonable steps to promptly and diligently prevent such causes if feasible to do so, or to minimize or eliminate the effect thereof without delay.

ARTICLE 24
DEFAULT

If a Party is in default, which default continues for more than fifteen (15) days after Notice, either Party may seek to remedy the default under the Dispute Resolution provisions of this Agreement in Article 25.

ARTICLE 25
DISPUTE RESOLUTION

The Parties agree to meet and confer in order to resolve any disputes involving this Agreement.

Administrative Staff for the Parties shall try to resolve any disputes within fifteen (15) days of being notified in writing by the concerned Party of the nature of the dispute. Any resolution of a dispute shall be reduced to writing and exchanged by the Parties.

If Administrative Staff is unable to resolve a dispute, the Parties shall mutually select a professional independent Mediator who shall conduct a mediation session at an agreed upon site within thirty (30) days of their selection. Each Party shall be represented at the mediation by Senior Staff and an elected or appointed official of the Party with authority to consent to a mediated solution binding their Party. Any mediated resolution shall be reduced to writing and signed by the Parties.

If Mediation is unsuccessful, within thirty (30) days of said failure, the Parties shall mutually select from the Federal Mediation and Conciliation Service (FMCS) a professional Arbitrator. Binding arbitration shall be conducted within thirty (30) days of the selection of the Arbitrator at an agreed upon site. Each Party shall be represented at the arbitration by an elected or appointed official of the Party with authority to submit to arbitration and bind the Party. Arbitration shall be final and binding on the Parties. The arbitration decision shall be enforceable by either Party in the U.S. District Court for the District of New Mexico. Except for enforcement of the arbitration decision, neither Party waives or compromises their sovereign immunity rights.

The United States will not be bound by or directed through any outcome determined through dispute resolution under this Article.

ARTICLE 26
CONSTRUCTION AND ENTIRE AGREEMENT

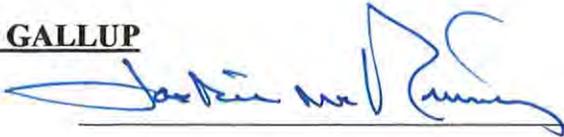
This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement. All prior discussions, negotiations, and writings are merged in this Agreement. Both Parties are relying on the advice of their own technical and legal experts in entering into this Agreement and there are no warranties or representations by either Party other than those expressly contained in this Agreement.

ARTICLE 27
AMENDMENT

This Agreement may be amended only by written instrument executed by the Parties with the same formalities and requisite approvals as this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives having the specific authority to execute this Agreement as of the date set forth below.

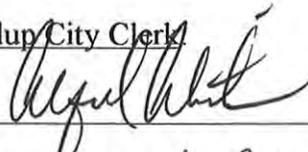
THE CITY OF GALLUP

By: 
Printed Name: Jackie McKinney
Title: Mayor
Date: 4-12-11

Approved by the City of Gallup Attorney as to Form:

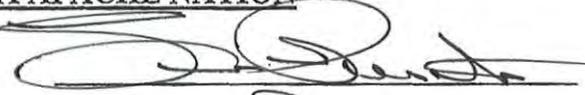
By: 
Printed Name: R. David Pederson
Title: City Manager
Date: 4-12-11

Approved by the City of Gallup City Clerk

By: 
Printed Name: Alfred Abaita

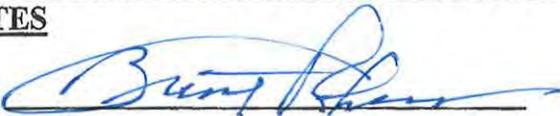
Title: City Clerk
Date: 4-12-11

THE JICARILLA APACHE NATION

By: 
Printed Name: Levi Pasata
Title: President
Date: 03/29/11

APPROVED AS REQUIRED BY THE FEDERAL CONTRACT:

UNITED STATES BUREAU OF RECLAMATION, AS THE DULY AUTHORIZED DELEGATEE OF THE SECRETARY OF THE DEPARTMENT OF THE INTERIOR OF THE UNITED STATES

By: 
Printed Name: Brent Rhees
Title: Deputy Regional Director
Date: 11/22/11

APPROVED BY REGIONAL SOLICITOR'S OFFICE

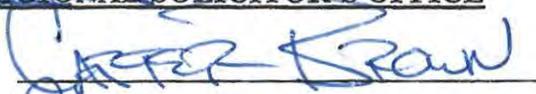
By: 
Printed Name: Carter Brown
Title: Attorney-Advisor
Date: 10/17/11

EXHIBIT A to
WATER SUPPLY AGREEMENT BETWEEN THE CITY OF GALLUP
AND THE JICARJLLA APACHE NATION

PART I
Consultant Selection Process and Criteria

A. Selection Process

By January 1st of each year preceding the year of a market price adjustment under the Water Supply Agreement (Agreement) between the City of Gallup and the Jicarilla Apache Nation, (collectively referred to as the Parties and individually as Party) the Parties shall exchange drafts of a Request for Proposals for a Consultant to determine the fair market value of the water made available under this Agreement pursuant to Article 9 of the Agreement, and shall agree upon the content of the Request for Proposals.

The Request for Proposals shall contain the Selection Criteria set forth in Part IB of this Exhibit, the Scope of Work, set forth in Part II of this Exhibit, the deadline for submission of proposals, the requirement that the proposal contain a firm fixed price for the completion of the work, the requirement that the Consultant submit monthly invoices, and any other information that the Parties agree is pertinent and necessary. The Request for Proposals shall require candidates to submit their proposals in duplicate to the issuing Party by February 15th.

After January 1st, either Party may, at its option and expense, publish a notice of availability of the Request for Proposals, provided that the Party notifies the other Party in advance of the content of the notice. After January 1st and prior to February 1st, the issuing Party shall provide a copy of the Request for Proposals to at least three (3) individuals or entities that it reasonably believes meet the Selection Criteria in Part IB of this Exhibit, and shall provide the other Party prompt written notice of the candidates to whom it provided the Request for Proposals.

By March 1st, the Parties shall meet to discuss the proposals received and to apply the selection criteria to the proposals, and each Party shall provide the other Party written notice of any and all work any Candidate has done for the Party within the past seven (7) years, unless the other Party waives this requirement in writing.

At either Party's option, one or more candidates may be interviewed, provided that the other Party has the option to participate in the interview.

By March 15th, each Party shall provide the other Party a ranking of candidates from among the proposals timely received. If both Parties identify the same candidate as their first choice, then the Parties shall endeavor to retain that first choice candidate as provided below. If the Parties identify different candidates as their first choice but the same candidate as their second choice, then the Parties shall endeavor to retain that second choice candidate as provided below. Otherwise, the Parties shall meet by March 25th to discuss the qualifications of the candidates on each Party's list, and shall make best efforts at that meeting to reach agreement on a mutually acceptable candidate. If the Parties do not reach agreement at that meeting, they shall meet again within ten (10) days and shall again make best efforts to reach agreement.

In creating their candidate lists and deliberating the candidates, the Parties shall apply the Selection Criteria set forth in Part IB of this Exhibit. Any candidate who does not meet the Selection Criteria shall

be automatically disqualified.

If the Parties fail to reach agreement on a candidate by April 10th, the Parties discussions up to that time shall be deemed to meet the discussion requirement under Article 25 of the Agreement and the issue shall be deemed ripe for arbitration under that Article. The Parties, or either of them, shall immediately request Arbitration under Article 25.

Upon agreement by the Parties on the candidate, or upon the decision of the arbitrator, the Parties shall retain the candidate by written agreement executed by both Parties and the candidate.

The Parties may, by written agreement between the Parties, retain the Consultant used for the previous market adjustment without undertaking the foregoing selection process.

B. Selection Criteria

As required by the Agreement, the Consultant shall have experience and expertise in the pricing of water rights and in the New Mexico water rights market.

At minimum, the Consultant shall have a professional degree in economics, finance, water resources, law, or a related field and a minimum of five (5) years experience in the actual pricing or professional analysis of the pricing of water purchases or leases.

Work for either Party within the preceding seven (7) years shall not automatically disqualify a candidate, but shall be grounds for disqualification of the candidate by the other Party in its sole discretion.

**PART II
Scope of Work**

The Consultant shall:

A. Gather Sufficient Water Transaction Data

The Consultant shall obtain through public records, interviews, or other inquiries the terms of all Valid Purchase Transactions and Valid Lease Transactions.

For each transaction, the Consultant shall obtain, to the extent possible, the quantity, price, date of agreement, duration, other terms, intended use, existing use, location of the “move from” point and the “move to” point, transaction costs, and any other circumstances of the transaction that may have affected the purchase or lease price.

B. Analyze the Data

The Consultant shall determine the fair market value pursuant to the formula set forth in Article 9 of the Agreement.

Fair market value shall be calculated as ten (10%) percent of the market purchase price, per acre-foot. The market purchase price per acre-foot shall be calculated as the average price per acre-foot of all Valid Purchase Transactions for which the pertinent terms are available through diligent inquiry.

If there are less than four (4) Valid Purchase Transactions, the Consultant shall not calculate a fair market

value. However, if there has been no market price adjustment under the Agreement for two (2) consecutive two-year adjustment cycles due to insufficient number of Valid Purchase Transactions, and there would otherwise be an insufficient number of Valid Purchase Transactions in the third consecutive cycle, then the fair market value for the market price adjustment in the third cycle shall be calculated as the average of all Valid Lease Transaction prices and all Valid Purchase Transaction prices, if any, after conversion to a lease price, for which the pertinent terms are available through diligent inquiry. Each purchase price shall be converted to a lease price by taking ten (10%) percent of the purchase price.

C. Report and Presentation

The Consultant shall prepare and submit to the Nation and to the City a written report containing the Consultant's fair market value appraisal by October 1st, give an oral presentation on the findings of the report to the Nation and the City in a joint meeting within fifteen (15) days following submission, and address questions raised by the City and the Nation regarding the data, analysis, and conclusions at the meeting.

The Consultant's report shall contain the market price calculation pursuant to Article 9 of the Agreement. The report shall explain in detail how the market price was calculated, including but not limited to the following:

1. for each transaction for which the Consultant obtained data, the quantity, price, date of agreement, parties, duration, other terms, intended use, existing use, location of the "move from" point and the "move to" point, transaction costs, and any other circumstances of the transaction that may have affected the purchase or lease price; and
2. for each transaction used, the reasons for the Consultant's finding that it was valid; and
3. for each transaction not used, the reasons for the Consultant's finding that it was not valid.

The report shall include an appendix which will include:

1. a description of the Consultant's efforts to obtain all transactions meeting the criteria for inclusion; and
2. the data and sources upon which the consultant's opinion is based, including but not limited to all contracts, agreements, term sheets or other written materials the Consultant obtained about the transactions used or reviewed but rejected in the determination of the market value.

D. Respond to Objections and Revise Determination

The Consultant shall respond in writing to any objections received from either Party pursuant to the objection process in the Agreement between the City and the Nation. The Consultant shall provide his response to both Parties within fifteen (15) days of receiving the objection. The Consultant's response shall address whether and why or why not in the Consultant's professional opinion the original determination should be revised. The Consultant's response shall also state whether he is revising his determination and if so, shall provide his new determination of-market value and explain in detail the basis for the new determination. Any revised determination shall calculate market value pursuant to the formula set forth in Article 9 of the Agreement and Paragraph C above.

E. Invoice the Nation and the City

The Consultant shall provide the City and the Nation a written monthly invoice describing in detail the work performed by the Consultant and the expenses incurred.

F. Ownership and Confidentiality

The Consultant shall acknowledge that all information related to the Consultant's work under this Scope of Work (the Work), and the associated Agreement between the City, the Nation and the Consultant including all findings, reports, and other information either provided directly or indirectly by the City and the Nation in connection with the Work or developed, compiled or created by the Consultant in performing the Work, is confidential and proprietary information owned by, and of great value to, the City and the Nation. The Consultant shall not disclose any such confidential information to any person without the prior, written authorization of both the Nation and the City of Gallup.

Within five (5) working days of completion of the Work, the Consultant shall deliver to the City and the Nation all copies (including but not limited to those on paper, computer disk, or other electronic medium) of all documents and other materials or information which were furnished directly or indirectly by the City and the Nation to the Consultant in connection with the Work or which were prepared or acquired by the Consultant in the performance of the Work.

The Consultant shall not use any of the proprietary information described in this section for anyone other than the Nation's and the City's benefit.

THE JICARILLA APACHE NATION

P.O. BOX 507 • DULCE, NEW MEXICO • 87528-0507



RESOLUTION OF THE LEGISLATIVE COUNCIL

NATURAL RESOURCES-WATER LEASE

RE: Approval of the City of Gallup Forty Year Water Lease.

RESOLUTION NO. 2011-R-151-03

WHEREAS, the Jicarilla Apache Nation ("Nation") is federally-recognized Indian Tribe organized under the Indian Reorganization Act of June 18, 1934 (25 USC 476) and under its Revised Constitution the Legislative Council has full power and authority to act for the Nation; **AND**

WHEREAS, the Nation has a right to deplete up to 25,500 acre feet of water per year from the San Juan and 6,500 acre feet per year from the Rio Chama under the Jicarilla Apache Nation Water Rights Settlement Act, 106 Stat. 2237, and the associated Contract that the Nation has with the United States dated December 8, 1992; **AND**

WHEREAS, the Nation is a participating party in the Navajo-Gallup Water Supply Project under P.L. 111-11; **AND**

WHEREAS, Section 10603 (b)(2)(B) of P.L. 111-11 requires the City of Gallup to acquire a forty year water lease for 7,500 acre feet of water before construction of the project can commence; **AND**

WHEREAS, the Nation is authorized by Section 10604 (b)(7)(b) of the P.L. 111-11 to enter into a forty year water lease with the City of Gallup; **AND**

WHEREAS, the Nation's negotiations team presented a forty year water lease contract with the City of Gallup to the Legislative Council; **AND**

WHEREAS, entering into the water lease contract with the City of Gallup is in the Nation's best interest; **AND**



NATURAL RESOURCES-WATER LEASE

RE: Approval of the City of Gallup Forty Year Water Lease.

RESOLUTION NO. 2011-R-151-03

Page Two

WHEREAS, the Nation has water available to for the water lease with the City;

NOW, THEREFORE, BE IT RESOLVED by the Legislative Council of the Jicarilla Apache Nation that it approves the lease of water with the City of Gallup.

FURTHER, the Legislative Council hereby authorizes the President to sign the lease on behalf of the Nation.



President

CERTIFICATION

The foregoing resolution was enacted by the Legislative Council of the Jicarilla Apache Nation on the **28th** day of **March 2011**, by a vote of **8 for, 0 against, 0 abstaining**, at a duly called meeting at which time a quorum of the Legislative Council members were present.

ATTEST:



Secretary

EXHIBIT C

CITY OF GALLUP RESOLUTION NO. R2011-19

**A RESOLUTION AUTHORIZING THE EXECUTION OF THE
WATER SUPPLY AGREEMENT (ATTACHED HERETO)**

BETWEEN THE CITY OF GALLUP AND THE JICARILLA APACHE NATION

WHEREAS, the Northwestern New Mexico Rural Water Projects Act of March 30, 2009, 123 Stat. 1367, (the act) named the City of Gallup, the Navajo Nation and the Jicarilla Apache Nation as project participants, see Section 10302 (24); and

WHEREAS, the act authorizes the United States Department of Interior's Bureau of Reclamation to construct the Navajo-Gallup Water supply Project ("Project"), a water diversion and distribution system to serve the Navajo Nation, the City of Gallup ("City") and the Jicarilla Apache Nation; and

WHEREAS, the Project would provide the City with up to Seventy Five Hundred (7,500) Acre Feet of renewable surface water from the San Juan River; and

WHEREAS, the Project is scheduled to begin construction as early as October 2011; and

WHEREAS, the Project has received Federal appropriations in the amount of One Hundred and Eighty Million (180,000,000) dollars to begin construction; and

WHEREAS, the act provides that the City must secure a water supply for its allocated Project capacity of up to Seventy five Hundred (7,500) Acre Feet per year for a period of not less than Forty (40) years as a prerequisite to the start of construction, see Section 10604 (b) (7); and

WHEREAS, the Act further provides that the City may enter into a water supply contract with the Jicarilla Apache Nation, see Section 1604 (b) (7); and

WHEREAS, the City and Jicarilla Apache Nation through their appointed representatives, negotiated in good faith, and have reached consensus on the terms and conditions of a water supply contract (attached hereto); and

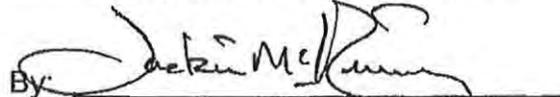
WHEREAS, this Agreement is now brought before the Mayor and Council for their review and approval; and

WHEREAS, having reviewed the Agreement Mayor and Council find the Agreement to be in the best interest of the City.

NOW THEREFORE, the City Council does hereby approve the Water Supply Agreement Between The City Of Gallup And The Jicarilla Apache Nation, and does hereby authorize the Mayor of Gallup to execute the Agreement on its behalf.

PASSED, APPROVED AND ADOPTED this 12th day of April, 2011.

CITY OF GALLUP, NEW MEXICO

By: 
Jackie McKinney, Mayor

ATTEST


Alfred Abeita, City Clerk

EXHIBIT D

CONTRACT BETWEEN THE UNITED STATES AND THE JICARILLA APACHE TRIBE

PREAMBLE

This contract is entered into this 8th day of December, 1992, between, the United States of America, acting through the Secretary of the Interior pursuant to the Jicarilla Apache Water Rights Settlement Act of October 23, 1992, 106 Stat. 2237, and the Act of June 13, 1962, 76 Stat. 96, and the Jicarilla Apache Tribe.

EXPLANATORY RECITALS

WITNESSETH, THAT:

WHEREAS, the United States and the Jicarilla Apache Tribe have negotiated a resolution of all water right claims of the Tribe, including tribal reserved rights claims which are the subject of general stream adjudications in state and federal courts in New Mexico and which claims, if unresolved, impair water resource development by the Tribe and the State of New Mexico; and,

WHEREAS, the settlement of these claims will secure to the Tribe a perpetual water supply; and

WHEREAS, in order to preserve opportunities for Indian reservation development while at the same time allowing for other economical water resource development, it is the intent of this contract that the Jicarilla Apache Tribe, if it does not or cannot put the water supply secured to it under this contract to use, may exercise the right to market such water; and,

WHEREAS, the Jicarilla Apache Tribe has never been the beneficiary of any public water resource development, though federal projects have diverted water upstream from the Jicarilla Apache Indian Reservation and have impounded water downstream from the reservation; and,

WHEREAS, the federal government is undertaking no obligation to construct any additional water resource development facility to fulfill the terms and conditions of this contract; rather, the Tribe will be free to determine both the use to which the water will be applied and the need to construct any facilities; and,

WHEREAS, the Secretary of the Interior has determined in accordance with Section 11 of the Act of June 13, 1962, 76 Stat. 96, 99-100, pursuant to the hydrologic determination submitted to Congress on February 2, 1989, that there is sufficient water reasonably likely to be available for use in the State of New Mexico to enable the United States to enter into this contract;

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

GENERAL DEFINITIONS

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

(a) "Secretary" means the Secretary of the Department of the Interior or a designee.

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

(c) "Tribe" means the Jicarilla Apache Tribe, acting through its authorized representative.

(d) "Navajo Reservoir" means the reservoir created by the impoundment of the San Juan River at the Navajo Dam as authorized by the Act of Congress of April 11, 1956, 70 Stat. 105, as amended.

(e) "Navajo Reservoir Supply" means the water that the Secretary of the Interior is entitled to use under the rights acquired pursuant to New Mexico State Engineer file Nos. 2343, 2849, 2873, 2917 combined, and 3215. The Secretary's water rights for the San Juan-Chama Project and for the New Mexico portion of the Animas-LaPlata Project are not a part of the Navajo Reservoir Supply.

(f) "San Juan-Chama Project" means the Project authorized by Section 8 of the Act of June 13, 1962, 76 Stat. 96, and the Act of April 11, 1956, 70 Stat. 105, as amended.

(g) "Navajo River" means the river of that name which flows across the Jicarilla Apache Indian Reservation in New Mexico, and all tributaries thereto.

(h) "Reservation" means the Jicarilla Apache Indian Reservation, as recognized by the Secretary of the Interior on the date of this contract.

CONDITIONS

2. (a) Except for the commitments made in section 3(a), this contract will give rise to rights and obligations on the part of the Jicarilla Apache Tribe and the United States only after the following events have occurred:

(i) the lawsuit styled Jicarilla Apache Tribe v. United States et al., Civ. No. 82-1327 JP (U.S. Dist. Ct., D.N.M.), has been dismissed with prejudice pursuant to a stipulation of the parties ;

(ii) claims 3 and 4 of the lawsuit styled Jicarilla Apache Tribe v. United States, Cl. Ct. No. 112-77, have been dismissed with prejudice pursuant to a stipulation of the parties;

(iii) a partial final decree is entered by the District Court of San Juan County, New Mexico, in the general stream adjudication of the San Juan River stream system, New Mexico v. United States, No. 75-184, which decree adjudicates all the water rights of the Jicarilla Apache Tribe in the following manner:

(A) the decree shall provide that the reserved water rights of the Tribe, when added to the Tribe's reserved water rights adjudicated in the Rio Chama stream system, authorize diversion not to exceed 40,000 acre-feet per year from the two stream systems, in addition, to the amounts referred to in subsections 2 (a) (iii) (C) and 2(a)(iv) (B); and

(B) the decree shall provide, that those reserved water rights referred to in subsection 2(a) (iii) (A) shall be subordinated to the rights of the Jicarilla Apache Tribe under this contract; and

(C) the decree shall adjudicate the water rights the Tribe has under state law, and, also any water rights the Tribe, has to groundwater, ponds and lakes which are within the Reservation which are recognized in addition to the rights which the Tribe acquires under this contract; provided, that nothing herein shall be construed to limit the right of the Tribe to withdraw and use groundwater which withdrawal and use does not deplete the San Juan-River stream system;

(iv) a partial final decree is entered by the U.S. District Court of the District of New Mexico in the general stream adjudication of the Rio Chama stream system, New Mexico v. Aragon, Civ. No. 7941 SC, which decree adjudicates all the water rights of the Jicarilla Apache Tribe in the following manner;

(A) the decree shall provide that the reserved water rights of the Tribe shall be subordinated to the rights of the Jicarilla Apache Tribe under this contract; and,

(B) the decree shall adjudicate the water rights which the Tribe has under state law, and also any water rights the Tribe has to groundwater, ponds or lakes which are within the Reservation, which are recognized in addition to the rights which the Tribe acquires under this contract; Provided, that nothing herein shall be construed to limit the right of the Tribe to withdraw and use groundwater which withdrawal and use does not deplete the Rio Chama stream system.

(b) A partial final decree ... which ... adjudicates all the water rights of the Jicarilla Apache Tribe, within the meaning of subsection (a)(iii) of this section, means a state district court decree which, after a stipulation of the United States, the Jicarilla Apache Tribe, the State of New Mexico, and BHP-Utah International, Inc., and after the hearing of any objections or opposition, adjudicates all the water rights of the Tribe in the stream system consistent with the terms and conditions of this contract. Within the meaning of subsection (a) (iv), such decree means a federal district court decree which, after a stipulation of the United States, the Jicarilla Apache Tribe, and the State of New Mexico, and after the hearing of any objections or opposition, adjudicates all the water rights of the Tribe in the stream system consistent with the terms and conditions of this contract. The possibility that future objections to these decrees may be raised in the context of the entire general stream adjudication of all water rights in the stream system does not render these partial final decrees anything other than "final" for purposes of this contract.

PRELIMINARY UNDERSTANDINGS

3. (a) Both the United States and the Jicarilla Apache Tribe will in good faith take all steps necessary to assure the fulfillment of the conditions of section 2.

(b) It is understood between the parties that all stipulated dismissals and partial final decrees referred to in section 2(a) constitute mutual consideration for the purchase and delivery of water under this contract, and that neither party will have any obligation under this contract to purchase water from or deliver water to the other party until all the conditions of section 2 have been met.

WATER DELIVERY PROVISIONS

4. (a) The United States agrees to deliver, or make available for delivery, to the Tribe up to a total of 40, 000 acre-feet of water per year from the Navajo Reservoir Supply, including any diversion from the Navajo River on the Reservation, and from the San Juan-Chama Project, in accordance with the provisions of this contract. To the extent that delivery of water is made through federal water resource facilities, the Tribe will reimburse for this service in accordance with the provisions of section 10 of this contract.

(b) Of the water to be made available under subsection 4(a), the Tribe may divert up to 33,500 acre-feet per year from the Navajo River on the Reservation. The Tribe must notify the Contracting Officer at least 30 days prior to any such diversion of the amount and timing of the diversion. Because water diverted from the Navajo River on the Reservation will not have been stored or diverted through federal water resource facilities, no cost shall be charged to the Tribe by the United States for the diversion of that water, notwithstanding the provisions of section 10 of this contract.

(c) Of the water to be made available under subsection 4(a), the Tribe may divert and the United States agrees to deliver up to 33,500 acre-feet per year from the Navajo Reservoir, supply; provided, that the total diversions under this contract from the Navajo Reservoir Supply do not exceed 33,500 acre-feet of water per year.

(d) Of the water to be made available under subsection 4(a), the United States agrees to deliver up to 6,500 acre-feet per year from the San Juan-Chama Project. The point of delivery for San Juan-Chama water shall be the existing outlet works at Heron Reservoir unless otherwise agreed by the Contracting Officer and the Tribe.

(e) Separate contracts for additional water, whether for temporary or permanent use, as available, may be negotiated by the Tribe with the Bureau of Reclamation in the future, but they do not constitute any part of the consideration for this contract.

(f) The water delivery rights recognized by this contract shall be perpetual, and the Tribe shall have the right to subcontract with others for use of said water supply as provided in section 11.

(g) The Tribe shall have no holdover storage rights in the Navajo or Heron Reservoirs from year to year. Any water subject to delivery hereunder not called for by the end of each calendar year shall become integrated with the water supply for all purposes of the reservoirs at that time.

(h) Nothing in this section is intended to impose on the United States any obligation to maintain the Navajo Reservoir and San Juan-Chama Project beyond their useful lives or to take extraordinary measures to keep these facilities operating.

(i) The United States agrees that it will make provision for the buy-out of private water rights, effective prior to the year 2040, aggregating 11,000 acre-feet depletion of the San Juan River stream system in order to reconcile total commitments of depletion from the system in New Mexico with the State's allocation of Upper Colorado River Basin water, as reflected on page 24 of the hydrologic determination sent to Congress on February 2, 1989, or make other satisfactory provision to reconcile those commitments with New Mexico's allocation. Either the Tribe or the State of New Mexico may specifically enforce this contractual obligation provided that this obligation may not be enforced prior to the year 2000. The Tribe's right to delivery of water prior to the year 2040 under the terms of this section is not dependent upon the United States fulfillment of this obligation.

TRANSPORTATION LOSSES

5. Transportation of water from the reservoir or other points of delivery shall be the sole responsibility of the Tribe, so that no conveyance losses, including channel losses, shall be borne by, the United States.

CONSTRUCTION AND OPERATION OF FACILITIES

6. Nothing herein shall be construed to obligate the United States to construct, install, operate, or maintain pumps, pipelines, storage tanks, distribution lines, or other facilities required to take, measure, convey, or distribute water for use beyond agreed upon points of delivery.

RESPONSIBILITY FOR DISTRIBUTION

7. Upon delivery the Tribe shall be responsible for the control, carriage, handling, distribution, measurement, and use of all water made available under this contract, and shall hold the United States, its officers, agents, employees, and successors or assigns, harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, carriage, handling, distribution or use of such water beyond the point of delivery.

WATER SUPPLY

8. (a) Notwithstanding any other provisions of this contract, in times of shortage the Tribe will share in the available water supply in the manner set forth in Section 11(a) of the Act of June 13, 1962, 76 Stat. 96, 99-100.

(b) With respect to water made available under the terms of this contract from the San Juan-Chama Project, during periods when the Contracting Officer finds that the actual available water supply is more or less than the estimated firm yield of the Project, the Tribe shall share in the available water supply in the ratio that its contract amount bears to the firm yield.

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

UNCONTROLLABLE FORCES

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

(b) If and only if the United States is unable to deliver all or part of the San Juan-Chama Project water to the Tribe pursuant to section 4(d) as a result of the physical failure of the project, the Tribe may take an equivalent amount of water out of the Navajo Reservoir Supply, notwithstanding the provisions of section 4(c).

COST PROVISIONS

10. (a) Charges for water from the Navajo Reservoir Supply will be as follows:

(i) Construction costs shall be charged at the annual amortization rate of \$52.60 per acre-foot ending at the year 2012. For water delivered for irrigation. Construction charges for water delivered for irrigation of Indian land shall be allocated and payment deferred under the provisions of the Leavitt Act, 47 Stat. 564, as authorized in section 4(d) of the Colorado River Storage Project Act.

(ii) Construction costs shall be charged to the Tribe at an annual amortization rate of \$2.60 per acre-foot ending at the year 2012 for Navajo Reservoir Supply water delivered for municipal and industrial uses.

(iii) The Tribe shall pay the United States, or its designee if some organization other than the United States is operating the project, its proportionate share of the annual operation, maintenance and replacement costs (OM&R) assignable to the amount of water made available from the Navajo Reservoir Supply to the Tribe through this contract.

(iv) The Contracting Officer or a designee will bill the Tribe for construction and OM&R costs for Navajo Reservoir on or before September 1 of the year preceding the year of use. The Tribe shall pay all accrued costs within 30 days after receipt of the bill.

(b) The Tribe's construction cost obligation for the San Juan-Chama Project is estimated to be \$1,056,250. Payment for the principal and interest due from 1972 through date of execution of this contract shall be treated as non-reimbursable. Construction costs shall be charged at an annual amortization rate of \$3.25 per acre-foot ending at the year 2021 for water delivered for irrigation. Construction charges for water delivered for irrigation on Indian land shall be allocated and payment deferred under the provisions of the Leavitt Act, 47 Stat. 564, as authorized in section 4(d) of the Colorado River Storage Project Act.

(i) Construction costs for irrigation water converted and designated as municipal and industrial water shall be charged to the Tribe at an annual amortization rate of \$29.40 per acre-foot ending at the year 2021, including the project interest rate of 3.046% on the unpaid balance. Payments made by the Tribe for municipal and industrial water pursuant to this subsection shall be applied according to Reclamation law. This amortization rate for the San Juan-Chama Project, as provided herein, shall be paid by the Tribe until the actual costs have been determined in the final cost allocation. Upon completion of the final cost allocation, the amortization rate payable by the Tribe shall be adjusted to provide payment on the basis of actual costs until its share of the project is paid off.

(ii) The Contracting Officer or a designee will bill the Tribe for construction costs associated with the San Juan-Chama Project on or before September 1 of the year preceding the year of use. The Tribe shall pay all accrued costs within 30 days after receipt of the bill.

(iii) The Tribe shall pay the United States, or its designee if some organization other than the United States is operating the project, its proportionate share of the annual operation, maintenance and replacement costs (OM&R) assignable to the amount of water made available from the San Juan-Chama Project to the Tribe through this contract.

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

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

(v) The Tribe shall pay its pro rata share of the annual OM&R costs of the San Juan-Chama Project, based upon the ratio of the number of acre-feet allocated to the Tribe to the total number of acre-feet under contract by all contractors for San Juan-Chama Project water.

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

(d) The annual amortization rates and annual OM&R assessments specified in section 10(a) and 10(h) above shall be charged to the Tribe for all water subcontracted to third parties.

(e) Billings from the Contracting Officer and payments by the Tribe of the construction and OM&R costs outlined under this section shall be made on the basis of section 10(a) and 10(b) as may be modified by section 10(f). For project operation purposes, the Tribe will provide an annual notice to the Contracting Officer listing the amount of water estimated to be used by the Tribe, the estimated period and point of diversion for each intended purpose and a listing of all executed subcontracts with third parties, including those subcontracts anticipated to be executed during the year of applicability. The Tribe shall send this notice on or before February 1 of the year preceding the year of use described in the notice. Upon receipt of such notice, the Contracting Officer will bill the Tribe for payment of costs as prescribed herein. Billing adjustments will be made to correct for differences in the estimated and actual use of water during the preceding year.

(f) All or part of the annual construction and OM&R costs may be waived on a project-specific basis if the Tribe demonstrates to the satisfaction of the Secretary that, practically speaking, no market exists for all or part of the water contracted from either Navajo Reservoir Supply or the San Juan-Chama Project. Such demonstration shall be in written form and shall accompany the February 1 notice provided for in section 10(e). With respect to the San Juan-Chama Project, these OM&R costs waived on an annual basis will be paid by the Secretary, and those construction costs waived annually will be treated as non-reimbursable.

SUBCONTRACTING

11. (a) When water made available under this contract is not being used by the Tribe, the Tribe may subcontract with third parties, subject to the approval of the Secretary in accordance with this section to supply water for beneficial use outside of the Reservation, subject to and not inconsistent with the same requirements and conditions of State law, and any applicable Federal law, interstate compact, and international law as apply to the exercise of water rights held by non-federal, non-Indian entities; provided, however, that nothing in this contract shall be construed to establish, address, prejudice, or to prevent any party from litigating whether or to what extent any of the aforementioned laws do or do not permit, govern, or apply to the use of the Tribe's water outside the State.

(b) Subcontracts made by the Tribe with third parties shall be subject to the provisions of this contract and must include terms of use, purchase, measurement, operations, and default. A copy of each proposed subcontract shall be filed with the Contracting Officer and the New Mexico Interstate Stream Commission prior to being executed by the Tribe, and two copies

of each executed subcontract shall be filed with the Contracting Officer and one copy with the New Mexico Interstate Stream Commission.

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

(d) The Secretary shall approve any subcontract submitted by the Tribe if he determines:

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

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

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

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

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

(vi) that the subcontract is in the best interests of the Tribe.

(e) the Tribe agrees to include the following equal opportunity language in any subcontract, for use of water off the Reservation:

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

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

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

Nothing in paragraphs (i) through (iii), above, shall be read as prohibiting the Tribe from requiring that subcontractors give preferential employment to members of the Jicarilla Apache Tribe.

FISH AND WILDLIFE COORDINATION

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

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

DOWNSTREAM FISHERY RESOURCE

13. Operation of the Navajo Reservoir has created a substantial stream fishery resource in the reach of the San Juan River below Navajo Dam. The Contracting Officer and the Tribe, subject to such water rights as have been heretofore and may be hereinafter granted or adjudicated upon the San Juan River or the tributaries thereof, agree to encourage water deliveries at points of diversion that would be compatible with maintaining the downstream fishery. The Tribe agrees to work closely with the United States Fish and Wildlife Service in all municipal and industrial water marketing and deliveries to protect this fishery resource insofar as practicable.

AIR AND WATER POLLUTION CONTROL

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

BOOKS, ACCOUNTS AND RECORDS

15. (a) The Tribe shall establish and maintain accounts and other books and records such as are necessary to enable the Secretary to operate the subject facilities. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

(b) Subsection (a) of this section shall not apply to water diverted directly from the Navajo River for use on the Jicarilla Apache Reservation. For such water the Tribe is required, only to notify the Contracting Officer, at least 30 days prior to any such

diversion, of reasonable estimates of the amount and timing of the diversion, and to provide the Contracting Officer, within 30 days after diversion of the water, with proof of actual amount of water diverted.

COMPLIANCE WITH RECLAMATION LAWS

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

RULES, REGULATIONS, AND DETERMINATIONS

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

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

GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

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

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. The Tribe shall have no right to the use of water supplied from any project facilities during any period in which the Tribe may be in arrears in the payment of any operation, maintenance, and replacement charges due the United States or in arrears for more than 12 months in the payment of any construction and interest installments due the United States

(c) The Tribe shall pay penalty charges on delinquent installments or payments. When payment is not received by the due date, the Tribe shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Tribe shall pay an administrative charge to cover additional costs of billings and processing the delinquent payment. When a payment is delinquent 90 days or more, the Tribe shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Tribe shall pay any fees incurred for debt collection services associated with the delinquent payment.

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

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

WATER QUALITY

19. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the United States. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

WATER CONSERVATION

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

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENT OF FUNDS

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

NOTICES

22. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given on behalf of the Tribe when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, P.O. Box 11563, Salt Lake City, Utah 84111, and on behalf of the United States when mailed, postage prepaid, or delivered to the Tribe. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

OFFICIALS NOT TO BENEFIT

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

SAVINGS CLAUSES

24. (a) Prior to the fulfillment of the conditions in section 2, nothing in this contract, shall be construed as an admission, or be used by any party as evidence, that the Tribe is or is not legally entitled to reserved water rights in the San Juan or the Rio Chama stream systems.

(b) Nothing contained in this contract shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of the Boulder Canyon Project Act, 45 Stat. 1057; the Boulder Canyon Project Adjustment Act, 54 Stat. 774; the Colorado River Compact, proclaimed on June 25, 1929, 46 Stat. 3000; the Upper Colorado River Basin Compact, 63 Stat. 31; the Rio Grande Compact of 1938, 53 Stat. 785; the 1944 Treaty with the United Mexican States, Treaty Series 994, 59 Stat. 1219; the Act of June 13, 1962, 76 Stat. 96; the Colorado River Basin Project Act, 82 Stat. 835; or the Colorado River Storage Project Act, 70 Stat. 105.

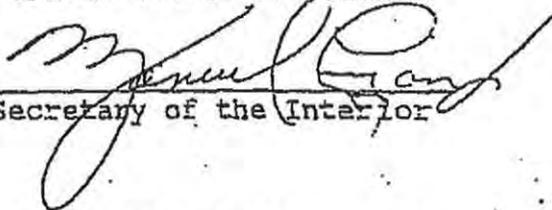
(c) The use of water, including that diverted from the Colorado River system to the Rio Grande Basin, through works constructed under the authority of the Act of June 13, 1962, 76 Stat. 96, shall be subject to and controlled by the Colorado River compact, the Upper Colorado River Basin compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act, and the Mexican Water Treaty (Treaty Series 994), and shall be included within and shall in no way increase the total quantity of water to the use of which the State of New Mexico is entitled and limited under said compacts, statutes, and treaty.

TERMINATION

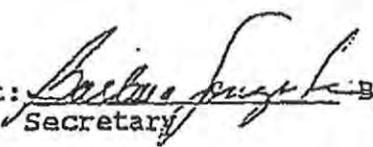
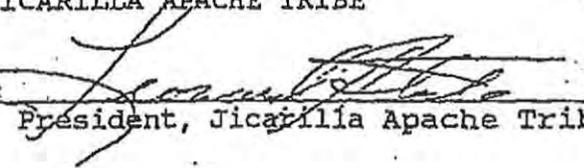
25. This contract may not be canceled, terminated, or rescinded by either party, except by act of Congress.

IN WITNESS WHEREOF, the parties hereto have executed this contract this day and year first above written.

THE UNITED STATES OF AMERICA

By: 
Secretary of the Interior

JICARILLA APACHE TRIBE

Attest:  Secretary BY:  President, Jicarilla Apache Tribe