

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

NAVAJO-GALLUP WATER SUPPLY PROJECT
COLORADO RIVER STORAGE PROJECT

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
THE JICARILLA APACHE NATION, NEW MEXICO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

PREAMBLE 3

EXPLANATORY RECITALS 3

1. GENERAL DEFINITIONS 4

2. PROJECT FACILITIES 6

3. PROJECT COORDINATION COMMITTEES 7

4. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF
DELIVERY CAPACITY ALLOCATION 8

5. ALLOTMENT AND USE OF DELIVERY CAPACITY ALLOCATION 9

6. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS 9

7. NOTIFICATION OF SUBSTANTIAL COMPLETION 15

8. PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS 16

9. USE AND DISPOSAL OF WATER DURING CONSTRUCTION 18

10. WATER SHORTAGES 18

11. LEVY OF ASSESSMENTS, TOLLS AND CHARGES 19

12. COVENANT AGAINST CONTINGENT FEES 19

13. TITLE TO PROJECT FACILITIES 19

14. SEVERABILITY 19

15. CHARGES FOR DELINQUENT PAYMENTS 20

16. GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT 20

17. NOTICES 21

18. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS 21

19. OFFICIALS NOT TO BENEFIT 21

1	20. CHANGES IN JICARILLA APACHE NATION’S ORGANIZATION.....	21
2	21. ASSIGNMENTS LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED.....	21
3	22. BOOKS, RECORDS AND REPORTS	21
4	23. RULES, REGULATIONS, AND DETERMINATIONS.....	22
5	24. PROTECTION OF WATER AND AIR QUALITY.....	22
6	25. WATER CONSERVATION	22
7	26. EQUAL EMPLOYMENT OPPORTUNITY	23
8	27. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS.....	25
9	28. MEDIUM FOR TRANSMITTING PAYMENTS.....	25
10	29. CONTRACT DRAFTING CONSIDERATIONS	26
11	30. CONSTRAINTS ON AVAILABILITY OF WATER	26
12		

1
2
3
4 UNITED STATES
5 DEPARTMENT OF THE INTERIOR
6 BUREAU OF RECLAMATION
7

8 NAVAJO-GALLUP WATER SUPPLY PROJECT
9 COLORADO RIVER STORAGE PROJECT
10

11 REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
12 THE JICARILLA APACHE NATION, NEW MEXICO
13

14 PREAMBLE

15 THIS REPAYMENT CONTRACT, made this 12th day of April, 20 12,
16 pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts
17 amendatory thereof or supplementary thereto, all of which acts are commonly known and
18 referred to as the Federal Reclamation Laws, between the UNITED STATES OF
19 AMERICA, hereinafter referred to as the United States, represented by the officer
20 executing this contract, and THE JICARILLA APACHE NATION.
21

22 EXPLANATORY RECITALS

23 WITNESSETH, That:

24 WHEREAS, the following statements are made in explanation:

25 The Act of Congress approved December 15, 1971 (85 Stat. 664), authorized the
26 planning and investigation of the Navajo-Gallup Water Supply Project (Project);
27 subsequently, the construction, operation, and maintenance of the Project was authorized
28 by the Northwestern New Mexico Rural Water Projects Act, Act of March 30, 2009 (123
29 Stat. 1367), and the United States has investigated, planned, and is preparing to construct
30 said Project for the diversion and distribution of the waters of the San Juan River, which
31 Project has among its authorized purposes the furnishing of water for municipal,
32 industrial, commercial, domestic, and stock watering purposes. The water rights
33 settlement purposes of the Project were authorized by the Northwest New Mexico Rural
34 Water Projects Act of 2009 (the Navajo Settlement).

1 Project Facilities, plus any appropriate IDC, as determined through the Final Cost
2 Allocation described in Article 6 below.

3 (e) "Fixed Operation, Maintenance, and Replacement" (OM&R) costs" means costs
4 of administration, overhead, labor, materials, and equipment required to maintain all
5 pumps, storage tanks, pipelines, and diversion facilities.

6 (f) "Jicarilla Apache Nation" means the Jicarilla Apache Nation, a body politic and
7 federally-recognized Indian nation in the Federally Recognized Indian Tribe List of 1994.

8 (g) "Jicarilla Apache Nation Water Supply" means the municipal and industrial
9 water supply that is part of the water rights of the Jicarilla Apache Nation, held in trust by
10 the Secretary and confirmed by the Jicarilla Apache Tribe Water Rights Settlement Act
11 (Public Law 102-441; 106 Stat. 2237).

12 (h) "Northwestern New Mexico Rural Water Projects Act", or "Navajo Settlement
13 Act", means Subtitle B of Title X of the Act of March 30, 2009 (123 Stat. 1367).

14 (i) "Navajo Nation" means the Navajo Nation, a body politic and federally-
15 recognized Indian nation in the Federally Recognized Indian Tribe List of 1994.

16 (j) "Operation and Maintenance Facilities" means those facilities necessary to
17 support operations and maintenance work, including, but not limited to operation and
18 maintenance headquarters, office space, shop for repair of equipment, storage place for
19 supplies, and equipment yard.

20 (k) "Project" means the Navajo-Gallup Water Supply Project, a participating project
21 of the Colorado River Storage Project, authorized by the Navajo Settlement Act.

22 (l) "Project Construction Committee" means the committee made up of
23 representatives of the Project Participants and the Bureau of Reclamation.
24 Representatives of the State of New Mexico may also participate in the committee if the
25 State so desires.

26 (m) "Project Facilities" means for the purpose of this contract, the portions of the
27 Project that are necessary to divert, treat, and deliver treated Project water to the Jicarilla
28 Apache Nation turnout.

29 (n) "Project Operator" means the entity operating the Project Facilities.

30 (o) "Project Participants" means the Navajo Nation, the City of Gallup, and the
31 Jicarilla Apache Nation.

1 (p) "Remaining Repayment Obligation" means the amount of the Final Repayment
2 Obligation as determined through the Final Cost Allocation described in Articles 6 below
3 that is in excess of any payments made by the Jicarilla Apache Nation toward its
4 Estimated Repayment Obligation.

5 (q) "San Juan River System" means the San Juan River and its tributaries.

6 (r) "United States" or "Contracting Officer" or "Secretary" or any of them means
7 the Secretary of the United States Department of the Interior or his/her duly authorized
8 representative.

9 (s) "Variable OM&R costs" mean the costs of power including power consumption
10 and a proportional percentage of power demand costs for the pumping of water and costs
11 associated with the treatment of water.

12
13 2. PROJECT FACILITIES

14 Subject to the terms and conditions of this and other applicable contracts related
15 to this Project, the United States will construct the following Project Facilities and
16 appurtenant facilities that, in the opinion of the United States in Consultation with the
17 Project Coordination Committees, are necessary for Project purposes, without being
18 limited by enumeration and within the limit of funds made available by the Congress and
19 the contracting parties. The features of the Project are generally described in Section
20 10602(b) of the Navajo Settlement Act, and are described in more detail in the Navajo-
21 Gallup Water Supply Project Planning Report and Final Environmental Impact Statement
22 (PR/FEIS) dated July 2009, and the subsequent Record of Decision dated October 1,
23 2009.

24 (a) For the purposes of the terms and conditions of this Contract, Project Facilities
25 are limited to the portions of the Cutter Lateral that are necessary to divert, treat and
26 deliver water from Cutter Reservoir to the Jicarilla Apache Nation turnout. Project
27 Facilities are shown on the map as Exhibit A, and are defined in the PR/FEIS as Reaches
28 21 through 24 of the Cutter Lateral, excluding all turnout facilities to Navajo Nation
29 communities which are solely constructed for the benefit of the Navajo Nation.

1 (b) Operation and Maintenance Facilities will be constructed as determined
2 necessary by the United States, after Consultation with the Project Construction
3 Committee, for the required operation and maintenance of Project Facilities.

4 (c) The United States, after Consultation with the Jicarilla Apache Nation, shall
5 have the right at any time to increase the capacity of the Project Facilities or any unit or
6 feature thereof for other than currently authorized project purposes without additional
7 capital or operation and maintenance cost to the Jicarilla Apache Nation; provided, that
8 the Jicarilla Apache Nation use of the Delivery Capacity Allocation shall not be impaired
9 thereby. The right of use of such increased capacity is reserved to the United States.

10 (d) Any additions, changes to, or operation of Project Facilities or changes in use of
11 the water allocations pursuant to Section 10603(b)(1)(E) of the Navajo Settlement Act
12 from that stated in the Navajo-Gallup Water Supply Project Final Environmental Impact
13 Statement (FEIS) dated July 2009 and subsequent Record of Decision dated October 1,
14 2009, will, as required by law, be subject to further compliance with applicable
15 environmental statutes, which shall include an analysis of potential impacts on other
16 Project Participants.

17 (e) Construction and operation of the Project will be in accordance with the
18 Environmental Commitments in Chapter VI of the FEIS, which is attached as Exhibit B
19 to this contract.

20

21 3. PROJECT COORDINATION COMMITTEES

22 Consultation concerning, and coordination of, Project construction, operations,
23 and maintenance activities will be accomplished through the establishment of two
24 committees: one to focus on those activities associated with the construction of the
25 Project Facilities, the other to oversee the operations and maintenance activities. The
26 committees will be made up of representatives of the Project Participants and the Bureau
27 of Reclamation. The State of New Mexico may also appoint a representative to the
28 Project Construction Committee.

29 (a) The Project Construction Committee will serve to review cost factors and
30 budgets for construction; improve construction management through enhanced
31 communication; and seek additional ways to reduce overall Project costs.

1 (b) The Project Operations Committee will determine the appropriate entity to
2 contract with Reclamation for the operation and maintenance of the Project Facilities;
3 will review cost factors and budgets for OM&R activities; and develop a common
4 understanding among the Project Participants of the appropriate level of annual OM&R
5 activities to be performed on the Project Facilities to assure the Project's long term
6 operational integrity and public safety.

7
8 4. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF
9 DELIVERY CAPACITY ALLOCATION

10 (a) This is not a water supply contract between the United States and the Jicarilla
11 Apache Nation. The terms and conditions of the delivery and conveyance of the Jicarilla
12 Apache Nation Water Supply through Project Facilities (and NIIP facilities including the
13 diversion from Navajo Reservoir, tunnels, canals, and siphons to and including Cutter
14 Reservoir) to the Jicarilla Apache Nation turnout near the community of Counselor, New
15 Mexico will be identified in a separate agreement(s) between the Jicarilla Apache Nation
16 and the Project Participants, and/or the Project Operator.

17 (b) The water diverted through Project Facilities for use by the Jicarilla Apache
18 Nation shall be measured at the intake to the NIIP main canal at Navajo Reservoir with
19 measuring facilities installed by the United States.

20 (c) The Jicarilla Apache Nation will hold the United States harmless on account of
21 damage or claim of damage of any nature whatsoever arising out of or connected with the
22 control, carriage, handling, treatment, use, disposal, or distribution of the Jicarilla Apache
23 Nation's Water Supply by the Jicarilla Apache Nation from the Jicarilla Apache Nation
24 turnout.

25 (d) All facilities required for taking the Jicarilla Apache Nation's Water Supply
26 from Project Facilities and putting it to use by the Jicarilla Apache Nation and its users
27 will be acquired, constructed or installed, and operated and maintained by the Jicarilla
28 Apache Nation or its users is not a part of the Project and not authorized for funding
29 through the Navajo Settlement Act.

30

1 5. DELIVERY CAPACITY ALLOCATION

2 (a) The Jicarilla Apache Nation's Delivery Capacity Allocation is based on the
3 Jicarilla Apache Nation's share of the design capacity of each project feature that is used
4 to deliver water to the Jicarilla Apache Nation. Facilities are designed to meet the 7-day
5 peak demand which is computed as 1.3 times the peak average monthly demand. The
6 Jicarilla Apache Nation's share of the design capacity of Project features changes as
7 deliveries are made to Navajo communities from the Cutter Lateral. The Jicarilla Apache
8 Nation's share of the capacity of each reach of the Cutter Lateral is shown in Volume II –
9 Technical Appendices for the Planning Report and Final Environmental Impact
10 Statement, Appendix D, Part I, Allocation of Capital and OM&R Costs Among Project
11 Participants, Table B2.

12 (b) Any use of the Delivery Capacity Allocation other than that contemplated in the
13 July 2009 Final Environmental Impact Statement and subsequent Record of Decision
14 dated October 1, 2009 for the Project shall be subject to compliance with applicable
15 environmental statutes.

16 (c) The Jicarilla Apache Nation's Delivery Capacity Allocation shall be used for
17 delivery of the Jicarilla Apache Nation Water Supply at the point of diversion of not
18 more than 1200 acre-feet in any one year.

19

20 6. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

21

22 (a) Reclamation has published the July 2009, Navajo-Gallup Water Supply Project
23 Planning Report and Final Environmental Impact Statement (July 2009 Planning Report).
24 Part I of Appendix D of Volume II of the July 2009 Planning Report, using January 2007
25 price levels which establishes the cost allocation that will be used to allocate Project
26 construction costs, IDC costs, and OM&R costs among the Project Participants. The Use
27 of Facilities Methodology employed in the July 2009 Planning Report to allocate Project
28 costs will not be changed for the administration of this Contract. The July 2009 Planning
29 Report allocation is based upon the proportionate share of Project Facilities used by the
30 Project Participants for delivery of water.

1 (b) Using January 2007 price levels, the July 2009 Planning Report estimated the
2 total Project construction costs to be \$865,000,000 and estimated the construction costs
3 allocable to the Jicarilla Apache Nation's Delivery Capacity Allocation to be
4 \$32,200,000. This amount included an estimated \$1,500,000 of cultural resources and
5 fish and wildlife mitigation costs allocated to the Jicarilla Apache Nation, which were
6 later deemed non-reimbursable pursuant to Sections 10609(e) and (f) of the Act.
7 Therefore, the July 2009 Planning Report estimated Project construction costs allocable
8 to the Jicarilla Apache Nation's Delivery Capacity Allocation, at the January 2007 price
9 level, to be \$30,700,000.

10 (c) As a refinement to the cost estimate used in the July 2009 Planning Report, the
11 Secretary has prepared a detailed Construction Cost Estimate (CCE) based upon the
12 summary Project cost estimates used in the July 2009 Planning Report at the same
13 January 2007 price levels. The total Project construction costs estimated by the January
14 2007 price level CCE is \$865,000,000 and the construction costs allocable to the Jicarilla
15 Apache Nation's Delivery Capacity Allocation are estimated from the CCE to be
16 \$30,568,000 rounded to the nearest thousand dollars.

17 (d) As provided in Section 10602(d)(1)(D) of the Navajo Settlement Act, the
18 Secretary of the Interior and the State of New Mexico are required to enter into an
19 agreement "... under which the State of New Mexico will provide a share of the Project
20 construction costs of not less than \$50,000,000, except that the State of New Mexico
21 shall receive credit for funds the State has contributed to construct water conveyance
22 facilities to the Project Participants to the extent that the facilities reduce the cost of the
23 Project as estimated in the Draft Impact Statement." The Jicarilla Apache Nation has
24 agreed on the methodology to be implemented regarding how to apply the New Mexico
25 cost-share funds to reduce the cost of the Project and how it subsequently affects their
26 respective repayment obligations. The document, signed by both the Jicarilla Apache
27 Nation and the City of Gallup, describing the methodology to be implemented is included
28 attached as Exhibit C. Exhibit C provides an attachment entitled, "Cost and Repayment
29 Summary", which presents the New Mexico cost-share methodology using October 2011
30 price levels and using current estimations of the amount of credit received by the State
31 toward its contribution to the construction of water conveyance facilities.

1 (e) The CCE was subsequently indexed for inflation to October 2011 price levels
2 making the total Project construction costs \$994,858,000. Based upon an estimate of the
3 amount of credit received by the State toward its contribution to the construction of water
4 conveyance facilities, as describe above in Article 6, and as presented in the Cost and
5 Repayment Summary attachment to Exhibit C, the remaining Federal construction costs
6 allocable to the Project Participants are estimated to be \$922,097,000 with the portion of
7 those costs allocable to the Jicarilla Apache Nation's Delivery Capacity Allocation
8 estimated to be \$29,990,000, rounded to the nearest thousand dollars.

9 (f) As provided in Section 10604(c)(3)(B) of the Navajo Settlement Act, the
10 Jicarilla Apache Nation may demonstrate, to the satisfaction of the Contracting Officer,
11 that the Jicarilla Apache Nation has an ability-to-pay of a lesser amount than the
12 maximum of 35 percent of allocated construction costs. The Contracting Officer may
13 reduce the Jicarilla Apache Nation's share of allocated construction costs, but such
14 reduction cannot be less than 25 percent of construction costs allocated to the Jicarilla
15 Apache Nation, plus accrued IDC. Adjustments made to the ability-to-pay analysis, as
16 provided in Article 7, will be included as a supplement to this Contract.

17 (g) The construction costs allocated to the Jicarilla Apache Nation, and determined
18 to be reimbursable, shall accrue IDC, and the unpaid balance of the Jicarilla Apache
19 Nation's repayment obligation shall accrue amortization interest, at the interest rate for
20 Federal water resource planning, pursuant to Section 10305 of the Navajo Settlement Act,
21 to be established as of the beginning of the fiscal year in which construction is initiated,
22 pursuant to the provision of Section 5(f) of the Act of April 11, 1956 (70 Stat. 105) as
23 amended by the Act of June 27, 1960 (74 Stat.255). IDC shall start when the first
24 disbursement is made to initiate construction on a reach/feature. IDC shall stop accruing
25 on a reach/feature when that reach/feature has been declared substantially complete, as
26 provided in Article 7 below.

27 (h) Based upon the October 2011 price level CCE prepared by the Secretary, the
28 construction costs allocated to the Jicarilla Apache Nation's Delivery Capacity Allocation
29 are estimated to be \$29,990,000. On March 15, 2012, the ability-to-pay analysis for the
30 Jicarilla Apache Nation was approved by the United States, attached as Exhibit D, and is
31 hereby incorporated as part of this Contract. Notwithstanding an appeal by the Jicarilla

1 Apache Nation, as described in Article 7(a) of this Contract, the ability-to-pay analysis
2 determined that the Jicarilla Apache Nation has the ability to pay 35 percent of the
3 allocable construction costs, taking into account the remaining balance of the New
4 Mexico cost-share funds allocated to the Jicarilla Apache Nation, is estimated to be
5 \$219,000. Based upon the planning interest rate for fiscal year 2011 of 4.125 percent and
6 an estimated construction completion by fiscal year 2025, the accrued IDC on the
7 reimbursable construction costs of \$10,278,000 is estimated to be \$6,997,000 for a total
8 Estimated Repayment Obligation of \$17,275,000. This figure does not include increases
9 to the cost as a result of inflation which the Jicarilla Apache Nation would be obligated to
10 pay. The Jicarilla Apache Nation's Final Repayment Obligation will be based upon the
11 final cost allocation described in Article 6.

12 (i) Pursuant to Section 10604(c)(2) of the Navajo Settlement Act, the Jicarilla
13 Apache Nation may elect to prepay all or a portion of their repayment obligation prior to
14 the initiation of construction. The prepayment will be based upon the most recent
15 reimbursable construction cost estimate available, currently estimated to be \$10,278,000
16 at October 2011 price levels. No IDC shall accrue on the construction costs that have
17 been prepaid.

18 (j) After the initiation of construction, the Jicarilla Apache Nation may at any time
19 elect to prepay their remaining repayment obligation on those features or reaches that
20 have yet to be constructed. No IDC shall accrue on the construction costs that have been
21 prepaid. However, IDC would accrue on any of the Jicarilla Apache Nation's allocable
22 construction costs that had been expended to date but not paid by the Jicarilla Apache
23 Nation, and IDC would continue to accrue on the principal until those costs were paid.
24 Prepayment would be used to reduce the amount of annual Federal appropriations
25 necessary to construct the Project.

26 (k) If the Jicarilla Apache Nation does not elect to prepay under Article 6, then upon
27 a Notification of Substantial Completion of each reach or feature, as provided in Article 8
28 of this contract, the Jicarilla Apache Nation will pay the portion of the Estimated
29 Repayment Obligation assigned to that Notification of Substantial Completion in not
30 more than 50 annual installments at the interest rate described under Article 6 herein.
31 The repayment schedule assigned to each Notification of Substantial Completion shall be

1 revised by the Contracting Officer at intervals of no longer than 5 years to conform to the
2 current cost estimates at that time or other changes that have occurred which justify
3 amendment to the notice.

4 (l) At the end of the construction period of the Project Facilities, the Secretary will
5 perform a final cost allocation, pursuant to Section 10604(d)(2) of the Navajo Settlement
6 Act, and, after consultation with the Jicarilla Apache Nation, shall give the Jicarilla
7 Apache Nation written notice of the Jicarilla Apache Nation's Final Repayment
8 Obligation as established by the final cost allocation. Once the Jicarilla Apache Nation's
9 Final Repayment Obligation has been established:

10 (1) If the Jicarilla Apache Nation did not elect to prepay the total reimbursable
11 construction cost estimate as provided in Article 6, then all Notice of Substantial
12 Completion repayment schedules will be amended to conform to the Final
13 Repayment Obligation, or;

14 (2) If the Jicarilla Apache Nation elected to prepay as provided in Article 6, then
15 it will have the option to prepay the reimbursable construction costs in excess of
16 the estimated prepayment amount (if any), plus the IDC accrued on any excess
17 construction costs, within 180 days from the date of written notice. After the 180-
18 day final payment option has expired, the reimbursable construction costs in
19 excess of the estimated prepayment amount, plus the IDC accrued on those excess
20 construction costs shall become a repayment obligation of the Jicarilla Apache
21 Nation to be repaid in not more than 50 annual installments, at the amortization
22 interest rate described in Article 6.

23 (m) During construction, the United States will consult annually with the Jicarilla
24 Apache Nation concerning the allocation of construction costs and any IDC to be payable
25 by the Jicarilla Apache Nation under this Contract. All payments required under this
26 Contract are due on the specified due date and will be made by electronic fund transfers.

27 (n) Pursuant to section 9(c)(1) of the Reclamation Project Act of 1939, 43 U.S.C. §
28 485h, following payment of the Final Repayment Obligation described herein, all other
29 contract terms will remain in full force and effect until mutually agreed upon by the
30 Jicarilla Apache Nation and the United States.

1 (o) Upon payment of the Jicarilla Apache Nation's Final Repayment Obligation as
2 defined in the final cost allocation, the Jicarilla Apache Nation's Delivery Capacity
3 Allocation shall not be subject to relinquishment to the Secretary for any reason, unless
4 otherwise provided for in applicable law.

5
6 **7. REASSESSMENT OF ABILITY TO PAY ANALYSIS**

7 (a) In the event that an appeal of the determination that the Jicarilla Apache Nation
8 has the ability to pay 35% of their allocable construction costs results in an adjustment of
9 the Jicarilla Apache Nation's ability to pay assessment, then Reclamation will notify the
10 Jicarilla Apache Nation, as provided in Article 18, of the adjusted ability to pay
11 percentage and will also include in the notification the change in the Estimated
12 Repayment Obligation as presented in Article 6.

13 (b) As provided in Section 10604(c)(3)(B) of the Navajo Settlement Act, the
14 Jicarilla Apache Nation may demonstrate, to the satisfaction of the Contracting Officer,
15 that the Jicarilla Apache Nation has an ability-to-pay of a lesser amount than the
16 maximum of 35 percent of allocated construction costs. The Contracting Officer may
17 adjust the Jicarilla Apache Nation's share of allocated construction costs, but such
18 reduction cannot be less than 25 percent of construction costs allocated to the Jicarilla
19 Apache Nation, plus accrued IDC. At intervals of not less than 5-years, starting the year
20 of contract execution, either the Jicarilla Apache Nation or the Contracting Officer may
21 elect to initiate the process for a reassessment of the Jicarilla Apache Nation's Ability to
22 Pay (ATP) analysis. Initiation of the reassessment process shall be by written notification
23 as provided in Article 18. The last and final reassessment of the ATP analysis shall be
24 conducted no later than the 40th year of the Jicarilla Apache Nation's repayment term.
25 On the year the Jicarilla Apache Nation has ten (10) annual payments remaining to fully
26 repay its capital obligation to the United States, the ATP analysis that is in effect at that
27 year shall be the final reassessment that determines the final percentage of reimbursable
28 allocated construction costs that will be the Jicarilla Apache Nation's obligation.

29 (c) Upon written notification by either party to initiate the reassessment process, the
30 Contracting Officer will be responsible for the reassessment analysis and will draft and
31 publish the final report, in consultation with the Jicarilla Apache Nation. All future

1 reassessments of the ATP analysis shall conform to the methodology employed in the
2 original analysis unless otherwise approved by the Commissioner. The cost of a
3 reassessment analysis will be borne by the party that initiated the reassessment through
4 formal written notification.

5 (d) If a reassessment of the ATP analysis confirms that the reimbursable percentage
6 of allocated construction costs has changed for the Jicarilla Apache Nation, then the
7 Contracting Officer will adjust and amend all repayment obligations and repayment
8 schedules to conform to that change in the reimbursable percentage, in accordance with
9 the Navajo Settlement Act. Upon implementing the change in the reimbursable
10 percentage of construction costs, the Contracting Officer shall also recalculate
11 reimbursable IDC based upon the new percentage and will adjust repayment obligations
12 and schedules accordingly. All adjustments to the Jicarilla Apache Nation's obligation
13 will be addressed through the repayment schedules at the project interest rate. No credit
14 because of an adjustment will ever be made to the Jicarilla Apache Nation's obligation to
15 account for alternative investment rates.

16
17 8. NOTIFICATION OF SUBSTANTIAL COMPLETION

18 (a) When features or reaches of the Project have been declared to be substantially
19 complete and water can be made available to the Jicarilla Apache Nation at the Jicarilla
20 Apache Nation turnout near the community of Counselor, NM, the United States shall,
21 after consultation, give the Jicarilla Apache Nation written notice, referred to herein as
22 the "Notice of Substantial Completion". The Notice of Substantial Completion shall
23 contain: (1) a list of the feature(s) or reach(es) of Project Facilities that have been
24 determined to be substantially complete for water delivery, (2) the effective date of that
25 substantial completion declaration, (3) a repayment schedule, as provided in Article 6
26 above, for the portion of the Jicarilla Apache Nation's Estimated Repayment Obligation
27 assigned to the Project Facilities declared substantially complete, and (4) the
28 proportionate share of OM&R costs associated with each completed Project facility
29 allocated to the Jicarilla Apache Nation. The OM&R responsibilities and cost provisions
30 associated with each completed Project facility where title is not transferred will be
31 identified in the OM&R Contract between Reclamation and the Project Operator.

1 (b) Each Notice of Substantial Completion shall become a part of this Contract.

2

3 9. PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

4 (a) The Jicarilla Apache Nation's OM&R cost obligation for those features or reaches
5 for which they have received a Notification of Substantial Completion pursuant to Article
6 8(a), shall be paid to the United States, or its designee if some organization other than the
7 United States is operating the Project Facilities.

8 (i) For any feature or reach of the Project through or by which water cannot
9 be delivered to the Jicarilla Apache Nation for its use, the Jicarilla Apache
10 Nation shall not pay any OM&R costs associated with that feature or reach.

11 (ii) For any feature or reach of the Project through or by which water can only
12 be delivered to the Jicarilla Apache Nation for its beneficial use, the Jicarilla
13 Apache Nation shall pay all OM&R costs associated with water delivery, until
14 such time water can be delivered through or by that feature or reach to other
15 Project Participants, at which time Article 9(b) (ii) below shall apply.

16 (iii) For any feature or reach of the Project through or by which water can be
17 delivered to the Jicarilla Apache Nation and other Project Participants, the
18 Jicarilla Apache Nation's OM&R cost obligation will be comprised of:

19 (A) The Jicarilla Apache Nation's share of Fixed OM&R costs shall be based
20 upon its proportionate share of the design capacity for all Project
21 Facilities, or reaches of those facilities, which have identified through a
22 Notice of Substantial Completion pursuant to Article 8 of this contract,
23 Fixed OM&R costs include costs of labor, materials, equipment and
24 replacements required to maintain all Project Facilities, as well as, the
25 administration and overhead costs of the Project.

26 (B) The Jicarilla Apache Nations' share of Variable OM&R costs shall be based
27 on actual costs of power including energy consumption and that share of
28 power demand costs for operation of the water treatment plants and
29 pumping plants based on the proportionate share of water treated and
30 delivered, as well as water treatment chemical costs.

- 1 b) Billing and payment for the Jicarilla Apache Nation's OM&R cost
2 obligations shall be conducted as follows:
- 3 (i) Fixed OM&R costs for the Project shall be paid on the basis of annual
4 cost estimates made by the Contracting Officer, or the Project Operator, based
5 upon the proportionate share of the design capacity for those Project Facilities
6 which have been identified in the Notice of Substantial Completion pursuant
7 to Article 8 of this contract. An estimate from the Contracting Officer, or the
8 Project Operator, will be sent to the Jicarilla Apache Nation on or before May
9 1 for the next Federal fiscal year, which begins October 1 of the same
10 calendar year and ends September 30 of the next calendar year. The Jicarilla
11 Apache Nation shall advance its share of the OM&R costs for each Federal
12 fiscal year in quarterly payments which will be due on September 30,
13 December 31, March 31, and June 30 of the Federal fiscal year of
14 applicability. The first such billing will be issued immediately following a
15 Notice of Substantial Completion as provided in Article 8 of this contract. In
16 the event the first notice shall be for costs of service of less than a full year,
17 such costs shall be prorated for the period covered. An itemization of the
18 estimated Fixed OM&R costs will accompany the billing.
- 19 (ii) Variable OM&R costs for the Project shall be paid on the basis of an
20 annual notice provided by the Jicarilla Apache Nation to the Contracting
21 Officer, or the Project Operator, on or before May 1 for the next Federal fiscal
22 year, which begins October 1 of the same calendar year and ends September
23 30 of the next calendar year. The annual notice will provide an estimate of the
24 Jicarilla Apache Nation's anticipated water delivery requirements on a
25 quarterly basis. Based upon these anticipated water delivery requirements, the
26 Contracting Officer, or the Project Operator, will bill the Jicarilla Apache
27 Nation quarterly on September 30, December 31, March 31, and June 30 of
28 the Federal fiscal year of applicability. An itemization of the estimated
29 Variable OM&R costs will accompany the billing.
- 30 c) In the event either the OM&R cost estimates fall short of the actual costs in
31 any period, or whenever it is anticipated by the Contracting Officer that a deficit will

1 occur during the fiscal year, supplemental notices may be issued by the Contracting
2 Officer requesting additional funds. OM&R funds not spent during one fiscal year will
3 be carried over for use during the next fiscal year with funds required for that year being
4 reduced accordingly. An itemized statement of actual costs incurred during each year
5 shall be furnished to the Jicarilla Apache Nation. Billing adjustments will be made to
6 correct for differences in the estimated and actual costs at the beginning of the next fiscal
7 year, and in the case of Variable OM&R costs, for differences in the Jicarilla Apache
8 Nation's estimated water delivery requirements and the actual metered flow.

9 d) OM&R responsibilities and the Jicarilla Apache Nation's share of OM&R
10 costs associated with the Project shall be further identified and provisions for payment
11 made in the Project operations agreement identified in Section 10602(f) of the Navajo
12 Settlement Act. If title is not conveyed on a feature or reach, the OM&R responsibilities
13 and the Jicarilla Apache Nation's share of OM&R costs associated with those Project
14 features and reaches shall be further identified and provisions for payment made in a
15 separate OM&R contract that will be required between Reclamation and the Project
16 Operator.

17
18 10. USE OF WATER DURING CONSTRUCTION

19 Prior to the completion of all of the Project Facilities as defined in Article 2(a),
20 the Jicarilla Apache Nation may use a completed portion of the Project for delivery of
21 water. Payment of OM&R costs for such use shall be made pursuant to Article 9, above.

22
23 11. WATER SHORTAGES

24 There may occur at times during any year a shortage in the quantity of water
25 available from the Jicarilla Apache Nation Water Supply for furnishing to the Jicarilla
26 Apache Nation through and by means of the Project, but in no event shall any liability
27 accrue against the United States or any of its officers, agents, or employees for any
28 damage, direct or indirect, arising from a shortage, on account of errors in operation,
29 drought, or any other causes.

30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

12. LEVY OF ASSESSMENTS, TOLLS AND CHARGES

The Jicarilla Apache Nation shall, to the extent allowed by law, cause to be levied and collected all necessary assessments, tolls, and other charges and will use all of the authority and resources of the Jicarilla Apache Nation to meet the obligations of the Jicarilla Apache Nation specified herein, to make in full all payments to be made pursuant to this contract on or before the date such payments become due, and to meet its other obligations under this contract.

13. COVENANT AGAINST CONTINGENT FEES

The Jicarilla Apache Nation warrants that it has not employed or retained any person or selling agency to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Jicarilla Apache Nation for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this contract without liability, or at its discretion, to add to the repayment obligation or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

14. TITLE TO PROJECT FACILITIES

Pursuant to Section 10602(f)(b)(6) of the Navajo Settlement Act and Article 8 of this Contract, the Jicarilla Apache Nation recognizes that the retention of title by the Navajo Nation or the conveyance of title to the Navajo Nation for any Project Facility will not reduce the Jicarilla Apache Nation's obligation to repay all allocated reimbursable costs, as established by the final cost allocation.

15. SEVERABILITY

If any provisions of the contract shall, for any reason be determined to be illegal or unenforceable, the parties, nevertheless, intend that the remainder of the contract shall remain in full force and effect. Furthermore, any adjustments or variations to this contract

1 necessitated by future negotiations with other Project Participants can be accomplished
2 by amending this contract.

3
4 **STANDARD ARTICLES**

5
6 16. **CHARGES FOR DELINQUENT PAYMENTS**

7
8 (a) The Jicarilla Apache Nation shall be subject to interest, administrative, and
9 penalty charges on delinquent payments. If a payment is not received by the due date, the
10 Jicarilla Apache Nation shall pay an interest charge on the delinquent payment for each
11 day the payment is delinquent beyond the due date. If a payment becomes 60 days
12 delinquent, the Jicarilla Apache Nation shall pay, in addition to the interest charge, an
13 administrative charge to cover additional costs of billing and processing the delinquent
14 payment. If a payment is delinquent 90 days or more, the Jicarilla Apache Nation shall
15 pay, in addition to the interest and administrative charges, a penalty charge for each day
16 the payment is delinquent beyond the due date, based on the remaining balance of the
17 payment due at the rate of 6 percent per year. The Jicarilla Apache Nation shall also pay
18 any fees incurred for debt collection services associated with a delinquent payment..

19 (b) The interest rate charged shall be the greater of either the rate prescribed
20 quarterly in the Federal Register by the Department of the Treasury for application to
21 overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged
22 will be determined as of the due date and remain fixed for the duration of the delinquent
23 period.

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

27
28 17. **GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT**

29
30 (a) The obligation of the Jicarilla Apache Nation to pay the United States as
31 provided in this contract is a general obligation of the Jicarilla Apache Nation
32 notwithstanding the manner in which the obligation may be distributed among the
33 Jicarilla Apache Nation's water users and notwithstanding the default of individual water
34 users in their obligations to the Jicarilla Apache Nation..

35 (b) The payment of charges becoming due pursuant to this contract is a condition
36 precedent to receiving benefits under this contract. The United States shall not make
37 water available to the Jicarilla Apache Nation through Project Facilities during any period
38 in which the Jicarilla Apache Nation is in arrears in the advance payment of any
39 operation and maintenance charges due the United States or is in arrears for more than 12
40 months in the payment of any construction charges due the United States. The Jicarilla
41 Apache Nation shall not deliver water under the terms and conditions of this contract for
42 lands or parties that are in arrears in the advance payment of water rates or operation and
43 maintenance charges as levied or established by the Jicarilla Apache Nation.
44

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

18.

NOTICES

Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Jicarilla Apache Nation, when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Jicarilla Apache Nation, Director, Water Administration, P.O. Box 507, Dulce, NM 87528. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

19. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Jicarilla Apache Nation from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

20. OFFICIALS NOT TO BENEFIT

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

21. CHANGES IN JICARILLA APACHE NATION'S ORGANIZATION

While this contract is in effect, no change may be made in the Jicarilla Apache Nation's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Jicarilla Apache Nation under this contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

22. ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

23. BOOKS, RECORDS, AND REPORTS

The Jicarilla Apache Nation shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the Jicarilla Apache Nation's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users', land-ownership, land-leasing, and water-use data; and other

1 matters that the Contracting Officer may require. Reports shall be furnished to the
2 Contracting Officer in such form and on such date or dates as the Contracting Officer
3 may require. Subject to applicable Federal laws and regulations, each party to this
4 contract shall have the right during office hours to examine and make copies of the other
5 party's books and records relating to matters covered by this contract.

6
7 24. RULES, REGULATIONS, AND DETERMINATIONS

8
9 (a) The parties agree that the delivery of water or the use of Federal facilities pursuant
10 to this contract is subject to Federal reclamation law, as amended and supplemented, and the
11 rules and regulations promulgated by the Secretary of the Interior under Federal reclamation
12 law.

13 (b) The Contracting Officer shall have the right to make determinations necessary to
14 administer this contract that are consistent with its provisions, the laws of the United States,
15 and the rules and regulations promulgated by the Secretary of the Interior. Such
16 determinations shall be made in consultation with the Jicarilla Apache Nation.

17
18 25. PROTECTION OF WATER AND AIR QUALITY

19
20 (a) Project facilities used to make available and deliver water to the Jicarilla Apache
21 Nation shall be operated and maintained in the most practical manner to maintain the
22 quality of the water at the highest level possible as determined by the Contracting
23 Officer: *Provided, That* the United States does not warrant the quality of the water
24 delivered to the Jicarilla Apache Nation and is under no obligation to furnish or construct
25 water treatment facilities to maintain or improve the quality of water delivered to the
26 Jicarilla Apache Nation.

27 (b) The Jicarilla Apache Nation shall comply with all applicable water and air
28 pollution laws and regulations of the United States; and shall obtain all required permits
29 or licenses from the appropriate Federal authorities necessary for the delivery of water by
30 the Jicarilla Apache Nation; and shall be responsible for compliance with all Federal[,
31 State, and local] water quality standards applicable to surface and subsurface drainage
32 and/or discharges generated through the use of Federal or Jicarilla Apache Nation
33 facilities or project water provided by the Jicarilla Apache Nation within the Jicarilla
34 Apache Nation's Project Water Service Area.

35 (c) This article shall not affect or alter any legal obligations of the Secretary to
36 provide drainage or other discharge services.

37
38 26. WATER CONSERVATION

39
40 Prior to the delivery of water to the Jicarilla Apache Nation provided from or
41 conveyed through federally constructed or federally financed facilities pursuant to this
42 contract, the Jicarilla Apache Nation shall develop an effective water conservation
43 program which shall contain definite water conservation objectives, appropriate
44 economically feasible water conservation measures, and time schedules for meeting those
45 objectives. At subsequent three-year intervals, the Jicarilla Apache Nation shall submit a
46 report on the results of the program to the Contracting Officer for review. Based on the
47 conclusions of the review, the Contracting Officer and the Jicarilla Apache Nation shall

1 consult and agree to continue or to revise the existing water conservation program. This
2 paragraph shall be included in all subcontracts, and such measures shall be required for
3 all water purchasers.
4

5 27. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY
6

7 (a) In accordance with the provisions of Title 42 U.S.C. 2000-e-2(i), the Jicarilla
8 Apache Nation shall, during the performance of this contract, give preference in
9 employment to Indian members of the Jicarilla Apache Nation Indian Reservation. The
10 Bureau of Indian Affairs Office of Employment Assistance shall be notified of
11 employment opportunities 48 hours before any positions are advertised to the general
12 public. Nothing in this section shall be read as prohibiting the Jicarilla Apache Nation
13 from giving preferential employment to members of the Jicarilla Apache Nation.

14 (b) Except as provided above, during the performance of this contract the Jicarilla
15 Apache Nation agrees as follows:

16 (1) The Jicarilla Apache Nation will not discriminate against any employee or applicant
17 for employment because of race, color, religion, sex, disability, or national origin. The
18 Jicarilla Apache Nation will take affirmative action to ensure that applicants are
19 employed, and that employees are treated during employment, without regard to their
20 race, color, religion, sex, disability, or national origin. Such action shall include, but not
21 be limited to, the following: employment, upgrading, demotion, or transfer; recruitment
22 or recruitment advertising; layoff or termination; rates of pay or other forms of
23 compensation; and selection for training, including apprenticeship. The Jicarilla Apache
24 Nation agrees to post in conspicuous places, available to employees and applicants for
25 employment, notices to be provided by the Contracting Officer setting forth the
26 provisions of this nondiscrimination clause.

27 (2) The Jicarilla Apache Nation will, in all solicitations or advertisements for employees
28 placed by or on behalf of the Jicarilla Apache Nation, state that all qualified applicants
29 will receive consideration for employment without regard to race, color, religion, sex,
30 disability, or national origin.

31 (3) The Jicarilla Apache Nation will send to each labor union or representative of workers
32 with which it has a collective bargaining agreement or other contract or understanding, a
33 notice, to be provided by the Contracting Officer, advising the labor union or workers'
34 representative of the Jicarilla Apache Nation's commitments under section 202 of
35 Executive Order 11246 of September 24, 1965, as amended (EO 11246), and shall post
36 copies of the notice in conspicuous places available to employees and applicants for
37 employment.

38 (4) The Jicarilla Apache Nation will comply with all provisions of EO 11246, and of the
39 rules, regulations, and relevant orders of the Secretary of Labor.

40 (5) The Jicarilla Apache Nation will furnish all information and reports required by
41 EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant
42 thereto, and will permit access to his books, records, and accounts by the Contracting
43 Agency and the Secretary of Labor for purposes of investigation to ascertain compliance
44 with such rules, regulations, and orders.

45 (6) In the event of the Jicarilla Apache Nation's noncompliance with the
46 nondiscrimination clauses of this contract or with any of such rules, regulations, or

1 orders, this contract may be canceled, terminated or suspended, in whole or in part, and
2 the Jicarilla Apache Nation may be declared ineligible for further Government contracts
3 in accordance with procedures authorized in EO 11246, and such other sanctions may be
4 imposed and remedies invoked as provided in EO 11246, or by rule, regulation, or order
5 of the Secretary of Labor, or as otherwise provided by law.

6 (7) The Jicarilla Apache Nation will include this clause (a), including all provisions of
7 paragraphs (1) through (7), in every subcontract or purchase order unless exempted by
8 the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204
9 of EO 11246, so that such provisions will be binding upon each subcontractor or vendor.
10 The Jicarilla Apache Nation will take such action with respect to any subcontract or
11 purchase order as may be directed by the Secretary of Labor as a means of enforcing such
12 provisions, including sanctions for noncompliance: *Provided, however*, that in the event
13 the Jicarilla Apache Nation becomes involved in, or is threatened with, litigation with a
14 subcontractor or vendor as a result of such direction, the Jicarilla Apache Nation may
15 request that the United States enter into such litigation to protect the interests of the
16 United States.

17 (b) The Jicarilla Apache Nation hereby agrees to incorporate, or cause to be incorporated,
18 clause (a) as it appears above, including paragraphs numbered (1) through (7), into any
19 contract for construction work, or modification thereof, as defined in the regulations of
20 the Secretary of Labor at 41 C.F.R., Chapter 60, which is paid for in whole or in part with
21 funds obtained from the Federal Government or borrowed on the credit of the Federal
22 Government pursuant to grant, contract, loan, insurance, or guarantee or undertaken
23 pursuant to any Federal program involving such grant, contract, loan, insurance, or
24 guarantee.

25 (c) The Jicarilla Apache Nation will be bound by clause (a) with respect to its own
26 employment practices when it *participates* in federally assisted construction work:
27 *Provided, That* if the Jicarilla Apache Nation so participating is a state or local
28 government, clause (a) is not applicable to any agency, instrumentality, or subdivision of
29 such government which does not participate in work on or under the contract.

30 (d) The Jicarilla Apache Nation will assist and cooperate actively with the Contracting
31 Officer and the Secretary of Labor in obtaining the compliance of contractors and
32 subcontractors with this article (Article 27) and the rules, regulations, and relevant orders
33 of the Secretary of Labor; that it will furnish the Contracting Officer and the Secretary of
34 Labor such information as they may require for the supervision of such compliance; and
35 that it will otherwise assist the Contracting Officer in the discharge of his or her primary
36 responsibility for securing compliance.

37 (e) The Jicarilla Apache Nation will refrain from entering into any contract or contract
38 modification subject to EO 11246 with a contractor debarred from, or who has not
39 demonstrated eligibility for, Government contracts and federally assisted construction
40 contracts pursuant to EO 11246 and will carry out such sanctions and penalties for
41 violation of this article (Article 27) as may be imposed upon contractors and
42 subcontractors by the Contracting Officer or the Secretary of Labor pursuant to Part II,
43 Subpart D, of EO 11246. In addition, the Jicarilla Apache Nation agrees that if it fails or
44 refuses to comply with these undertakings, the Contracting Officer may take any or all of
45 the following actions: cancel, terminate, or suspend, in whole or in part, this contract;
46 refrain from extending any further assistance to the Jicarilla Apache Nation under the

1 program with respect to which its failure or refusal occurred until satisfactory assurance
2 of future compliance has been received from the Jicarilla Apache Nation; refer the case to
3 the Department of Justice for appropriate legal proceedings.
4

5 28. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
6

7 (a) The Jicarilla Apache Nation shall comply with Title VI of the Civil Rights Act
8 of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-
9 112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975
10 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), and any other applicable civil rights
11 laws including the applicable portions of the Americans with Disabilities Act of 1990
12 (Pub. L. 101-336), and with the applicable implementing regulations and any guidelines
13 imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

14 (b) These statutes prohibit any person in the United States from being excluded
15 from participation in, being denied the benefits of, or being otherwise subjected to
16 discrimination under any program or activity receiving financial assistance from the
17 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.
18 By executing this contract, the Jicarilla Apache Nation agrees to immediately take any
19 measures necessary to implement this obligation, including permitting officials of the
20 United States to inspect premises, programs, and documents.

21 (c) The Jicarilla Apache Nation makes this agreement in consideration of and for
22 the purpose of obtaining any and all Federal grants, loans, contracts, property discounts,
23 or other Federal financial assistance extended after the date hereof to the Jicarilla Apache
24 Nation by the Bureau of Reclamation, including installment payments after such date on
25 account of arrangements for Federal financial assistance which were approved before
26 such date. The Jicarilla Apache Nation recognizes and agrees that such Federal assistance
27 will be extended in reliance on the representations and agreements made in this article
28 and that the United States reserves the right to seek judicial enforcement thereof.

29 (d) Complaints of discrimination against the Jicarilla Apache Nation shall be
30 investigated by the Contracting Officer's Office of Civil Rights.
31

32 29. MEDIUM FOR TRANSMITTING PAYMENTS
33

34 (a) All payments from the Jicarilla Apache Nation to the United States under this
35 contract shall be by the medium requested by the United States on or before the date
36 payment is due. The required method of payment may include checks, wire transfers, or
37 other types of payment specified by the United States.

38 (b) Upon execution of the contract, the Jicarilla Apache Nation shall furnish the
39 Contracting Officer with the Jicarilla Apache Nation's taxpayer's identification number
40 (TIN). The purpose for requiring the Jicarilla Apache Nation's TIN is for collecting and
41 reporting any delinquent amounts arising out of the Jicarilla Apache Nation's relationship
42 with the United States.
43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

30. CONTRACT DRAFTING CONSIDERATIONS

This Contract has been, negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 15 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

31. CONSTRAINTS ON THE AVAILABILITY OF WATER

(a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Jicarilla Apache Nation pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Jicarilla Apache Nation of said determination as soon as practicable.

(b) If there is a condition of shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

1 IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly
2 executed as of the day and year first above written.
3
4
5

6 Approved:

THE UNITED STATES OF AMERICA

7
8
9
10 
11 _____
12 Solicitor's Office
13

By: 
14 _____
15 Regional Director
16 Upper Colorado Region
17 Bureau of Reclamation

18 Attest:

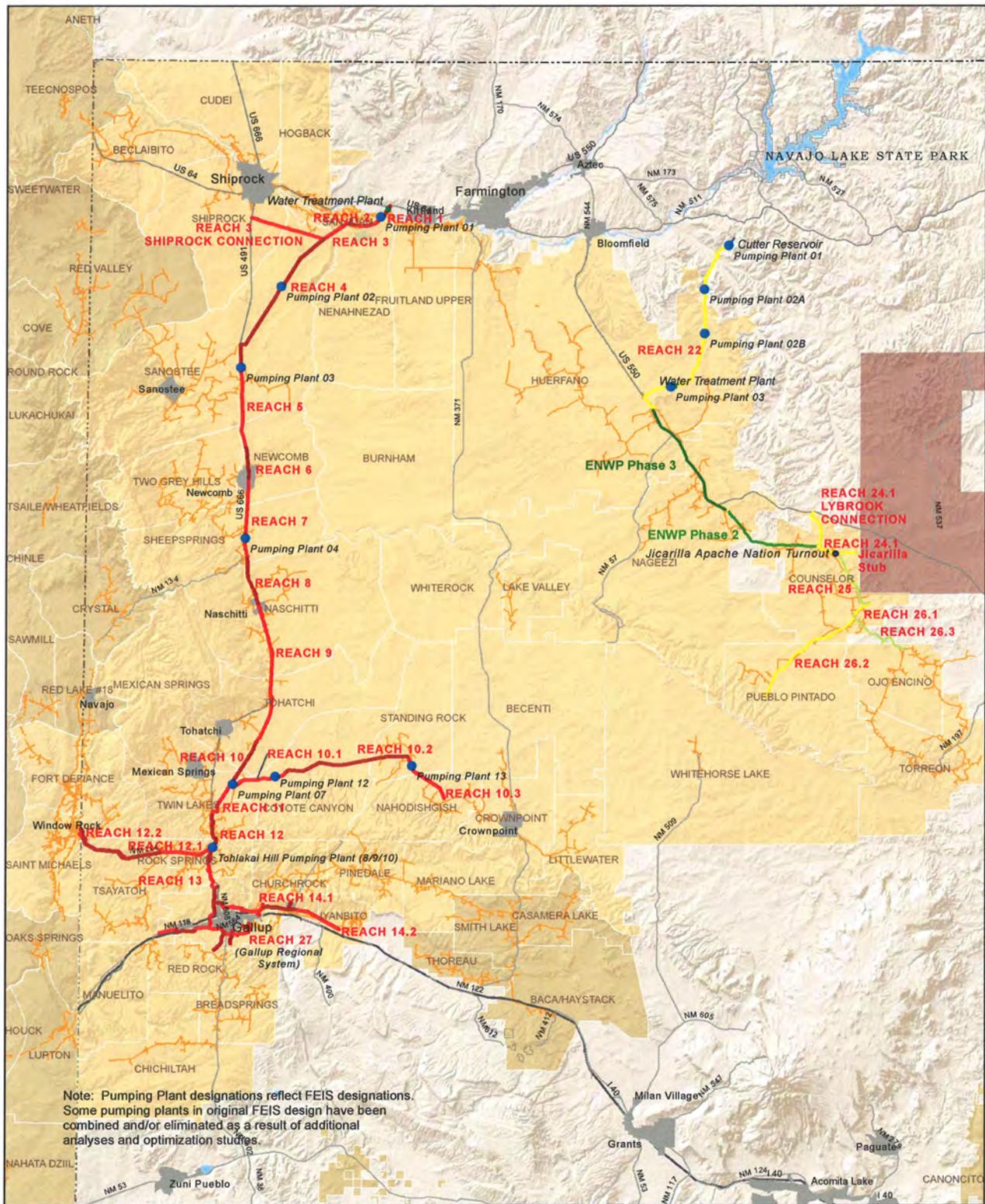
JICARILLA APACHE NATION

19 
20 _____
21 Secretary
22


23 _____
24 By: _____
25 President
26

- 27
28
29 List of Attachments: Exhibit A – Map
30 Exhibit B – Environmental Commitments
31 Exhibit C – Agreement on Methodology Regarding Application of
32 New Mexico Cost-Share to Cost Allocation and Repayment
33 Exhibit D – Ability to Pay Approval Letter

EXHIBIT A
NAVAJO-GALLUP WATER SUPPLY PROJECT
PROJECT MAP

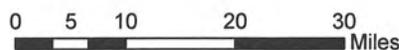


Navajo Gallup Water Supply Project

RECLAMATION
Managing Water for the West

Legend

- Pumping Plants
- Water Treatment Plant
- Cutter Lateral
- San Juan Lateral
- Interstate
- State Highway
- US Highway
- NTUA Line
- Navajo Nation Non-Served Chapters
- Navajo Nation Served Chapters
- Jicarilla Apache Nation



1695-529-537
Date: 12/6/2011

EXHIBIT B
NAVAJO-GALLUP WATER SUPPLY PROJECT
ENVIRONMENTAL COMMITMENTS



Chapter VI

ENVIRONMENTAL COMMITMENTS AND MITIGATION MEASURES

Introduction
General Commitments

INTRODUCTION

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

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

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

GENERAL COMMITMENTS

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

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

Navajo Reservoir Operations

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

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

Water Uses and Resources Commitments

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

Navajo Depletion Guarantee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Responsibilities.—

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

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

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

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

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

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

Indian Trust Assets Commitments

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

Water Quality Commitments

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

Vegetation Commitments

Reclamation would:

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

Wildlife Commitments

Reclamation would:

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

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

Aquatic Resources Commitments

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

Special Status Species Commitments

Reclamation would:

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

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

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

Recreation Commitments

No environmental commitments are made for recreation resources.

Land Use Commitments

Reclamation would:

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

Hazardous Materials Commitments

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

Soils Commitments

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

Geology Commitments

No environmental commitments are made for geologic resources.

Paleontologic Commitments

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

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

Air Quality and Noise Commitments

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

Socioeconomics Commitments

No environmental commitments are made for socioeconomic resources.

Environmental Justice Commitments

No environmental commitments are made for environmental justice.

Cultural Resources Commitments

Reclamation would:

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

EXHIBIT C

NAVAJO-GALLUP WATER SUPPLY PROJECT

**AGREEMENT ON METHODOLOGY REGARDING
APPLICATION OF NEW MEXICO COST-SHARE TO COST
ALLOCATION AND REPAYMENT**



United States Department of the Interior

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

IN REPLY REFER TO:

FCCO-110
WTR-4.00

DEC 01 2011

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

Subject: Agreement on Methodology Regarding Application of New Mexico Cost-Share to Cost Allocation and Repayment, Navajo-Gallup Water Supply Project

Dear Honorable Pesata:

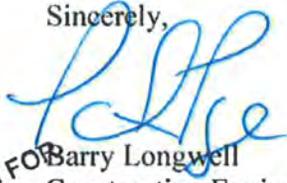
Enclosed for your records is a copy of the final signed subject agreement. The agreement acknowledges consultation occurred and allows the Bureau of Reclamation to begin implementation of the methodology described in the agreement for applying and allocating costs associated with the State of New Mexico's cost-share requirement.

To further memorialize this agreement, this letter, along with the enclosed signed agreement, will be included in your repayment contract as an exhibit.

We appreciate all of your efforts in approving this agreement.

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

Sincerely,


Barry Longwell
Construction Engineer

ACTING FOR

In Duplicate

Enclosure

Identical Letter Sent To:

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

cc: See Next Page

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

Mr. Herb Becker, Jicarilla Apache Nation
JA Associates of NM, LLC
2309 Renard Place, SE, Suite 200
Albuquerque, NM 87106
(w/encl to ea)



United States Department of the Interior

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

IN REPLY REFER TO:

FCCO-110
WTR-4.00

SEP 27 2011

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

Subject: Methodology Regarding Application of New Mexico Cost-Share to Cost Allocation and Repayment, Navajo-Gallup Water Supply Project (NGWSP), New Mexico

Dear President Mr. Pesata:

Public Law 111-11 authorized the Secretary of the Interior to design, construct, operate, and maintain the Navajo-Gallup Water Supply Project (NGWSP). In addition, the legislation (Section 10602 (d)(1)(D)) requires that the Secretary of the Interior and the State of New Mexico enter into an agreement "... *under which the State of New Mexico will provide a share of the Project construction costs of not less than \$50,000,000, except that the State of New Mexico shall receive credit for funds the State has contributed to construct water conveyance facilities to the Project Participants to the extent that the facilities reduce the cost of the Project as estimated in the Draft Impact Statement.*"

The purpose of this document is to record and acknowledge the decision made by the Bureau of Reclamation, after consultation with the Jicarilla Apache Nation and the City of Gallup, regarding the application of the State's cost-share contribution of not less than \$50,000,000 towards NGWSP costs and how the State's cost-share would be applied towards the repayment obligations of those NGWSP Participants who have a repayment obligation.

Application Methodology

- A. Cost-Share Obligated Amount (a.k.a. credit) which refers to monies provided directly to NGWSP Participants - Navajo Nation, Jicarilla Apache Nation, and City of Gallup)
- The determination of allowable credit shall be made pursuant to Paragraph 2 of the Cost-Share Agreement between the United States and the State of New Mexico, dated June 27, 2011 (CostShare Agreement). Once the determination of allowable credit has been made, the credit shall be applied to those reaches or features that were constructed and the corresponding costs of those applicable reaches or features in the NGWSP Construction Cost Estimate (CCE) shall be reduced by the amount of the approved credit. The remaining NGWSP costs (if any) of those reaches or features shall then be allocated to each NGWSP Participant following the Use of Facilities Methodology, and the repayment obligations on those allocated costs will take into account the repayment Participants' Ability to Pay percentage. If there are no remaining costs, then no costs would be allocated to the NGWSP Participants.

B. Cost-Share Balance (monies provided directly to Reclamation)

The balance of the cost-share obligation of the State of New Mexico (i.e., the total amount of cost-share provided by New Mexico minus the amount of credit allowed) shall be provided by the State pursuant to Paragraph 3 of the Cost-Share Agreement. The cost-share balance shall be applied to the remaining NGWSP costs (as is stated in Part A above) and be allocated to each NGWSP Participant following the Use of Facilities Methodology, and taking into account the repayment Participants' Ability to Pay percentage.

The Fiscal Year 2012 Interim Cost Allocation (October 2011 price level) incorporated the methodology described above using estimated New Mexico Cost-Share obligations. The Cost and Repayment Summary page from the Fiscal Year 2012 Interim Cost Allocation is enclosed.

Conclusion and Signature

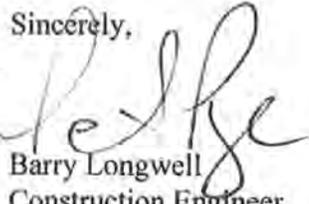
The repayment Participants' signatures on the enclosed signature sheets acknowledge that: 1) Reclamation has consulted with them regarding the substance of this memorandum, 2) Reclamation will implement the methodologies for applying the New Mexico Cost-Share contributions to the NGWSP CCE identified in this memorandum, and 3) without waiving any of their rights under statute or their repayment contracts, they will not object to Reclamation implementing the methodologies identified in this memorandum. Finally, the repaying Participants acknowledge that, pursuant to Section 10604 of Public Law 111-11, each entity's repayment obligation shall be subject to the final cost allocation.

If you concur, please sign the appropriate signature sheet and transmit the signed original to this office, Attention: Pat Page, Deputy Construction Engineer.

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

Sincerely,

ACTING FOR


Barry Longwell
Construction Engineer

In Duplicate

Enclosure

Identical Letter Sent To:

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

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

cc: See Next Page

cc: Continue From Previous Page

Mr. Herb Becker, Jicarilla Apache Nation
JA Associates of NM, LLC
2309 Renard Place, SE, Suite 200
Albuquerque, NM 87106
(w/encl to ea)

bc: UC-446, FCCD-5000 (Ehat), WCD-RChristianson
(w/encl to ea)

WBR:PPage:bfox:09/14/2011

V:\FCF Correspondence\Navajo Gallup Water Supply Project(NGWSP)-General Corresp\Memo
to Sponsors - NM CostShare Methodolgy_rvsd 6-6-2011.docx

**Navajo-Gallup Water Supply Project
Cost and Repayment Summary**

October 2011 Price Level (FY2012)

<u>Construction Cost Summary</u>	<u>Cultural Resources</u>	<u>Mitigation</u>	<u>San Juan Lateral</u>	<u>Cutter Lateral</u>	<u>Reach 27</u>	<u>Total</u>	<u>Allocation to Navajo Nation</u>	<u>Allocation to City of Gallup</u>	<u>Allocation to Jicarilla Nation</u>
Total Cost	35,766,032	6,202,202	723,159,538	172,005,955	57,723,831	994,857,558			
Less NM Cost Share - Obligated Amount 1/			3,981,569	18,423,494	8,387,518	30,792,581			
Remaining Federal Cost			719,177,969	153,582,461	49,336,313	922,096,743	736,904,338	155,202,322	29,990,083
Less NM Cost Share - Remaining Balance			14,980,589	3,199,147	1,027,683	19,207,419	15,341,684	3,241,037	624,698
Federal Cost			704,197,380	150,383,315	48,308,630	902,889,325	721,562,655	151,961,285	29,365,385
New Mexico Cost Share Totals			18,962,158	21,622,641	9,415,201	50,000,000			

<u>Repayment Summary</u>									
Allocation of Remaining Federal Cost			719,177,969	153,582,461	49,336,313	922,096,743	736,904,338	155,202,322	29,990,083
Allocated Cost to United States						857,279,401	736,904,338	100,881,509	19,493,554
Less NM Cost Share - Remaining Balance - US Allocation						17,854,412	15,341,684	2,106,674	406,054
Responsibility to the United States						839,424,990	721,562,655	98,774,835	19,087,500

Allocated Cost to be Repaid by Participant (35%) 2/								54,320,813	10,496,529
Less NM Cost Share - Remaining Balance - Participant Allocation								1,134,363	218,644
Participant Construction Cost Obligation								\$53,186,452	\$10,277,885
								+	+
Interest During Construction (IDC) 3/ 4/								\$21,113,482	\$6,997,176
Participant Investment Cost Obligation								\$74,299,934	\$17,275,061

1/ Based upon estimations from preliminary submittals from State; final amount dependent upon Reclamation approval.

2/ The actual percentage will be no less than 25% and no more than 35%, based upon ability to pay.

3/ All IDC estimates are based upon total project completion in the year 2025.

4/ IDC rate based on FY2010 Planning Rate.

**Methodology Regarding Application of New Mexico Cost-Share to Cost Allocation and
Repayment, Navajo-Gallup Water Supply Project**

Signature Sheet

A handwritten signature in black ink, appearing to be 'J. Garcia', written over a horizontal line.

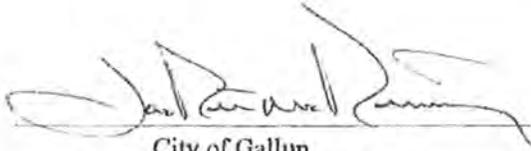
Jicarilla Apache Nation

10/14/11

Date

**Methodology Regarding Application of New Mexico Cost-Share to Cost Allocation and
Repayment, Navajo-Gallup Water Supply Project**

Signature Sheet



City of Gallup
Jackie McKinney, Mayor

11/28/11

Date

EXHIBIT D

NAVAJO-GALLUP WATER SUPPLY PROJECT

ABILITY TO PAY APPROVAL LETTER



United States Department of the Interior

BUREAU OF RECLAMATION
Washington, DC 20240

IN REPLY REFER TO

MAR 15 2012

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

Dear President Pesata:

I am writing in response to your letters, dated October 6, 2011 and November 30, 2011. The October 6th letter appeals the conclusion of the Ability-to-Pay (ATP) analysis performed by Reclamation's Technical Service Center on behalf of the Upper Colorado Region to determine the percentage of Navajo-Gallup Rural Water Project (Project) costs to be repaid by the Jicarilla Apache Nation (Nation). The November 30th letter included a request for the Solicitor's opinion regarding the negotiability of the ATP percentage. That opinion is provided as an attachment to this letter.

During our meeting in mid-December, the Nation agreed to provide financial information for Reclamation to review in order to help resolve the cost share issue. Prior to the review, Reclamation staff from the Commissioner's Office and Reclamation's Mid-Pacific Region met with representatives of the Nation in Dulce, NM, to discuss ATP concepts and methodologies, and to identify any relevant perspectives that should be considered during the review. Reclamation staff also communicated with the Nation's economic consultant to share information and discuss a reasonable and logical approach for the review.

The Commissioner's Office staff have independently reviewed the Nation's audited financial statements from 2003 to 2010. Revenues available from the Nation's financial assets, as well as revenues projected to be available from residential, commercial, and other sources, including the nation's water service contract with the City of Gallup, were evaluated against associated expenses. Taken together, it is Reclamation's conclusion that the Nation does have the financial capability to pay at least 35 percent of its allocated share of project costs. Therefore, I am upholding the conclusion of the Upper Colorado Region's original ATP analysis that the Nation should repay 35 percent of its allocated construction costs of the project, in accordance with the authorizing legislation.

If you have any questions, please contact me at dmurillo@usbr.gov or 202-513-0615.

Sincerely,



David G. Murillo
Deputy Commissioner – Operations

cc: 92-00000, 94-00000, 94-00010, 96-00000, 96-43000
84-50000, 84-55000 (Stock, Christopherson, Reading file),
UC-100, UC-101, UC- 110, UC-115, UC-446, WCG-CDeAngelis, WCG-EWarner,
WCG-RChristianson, FCCD 100, FCCD 110, FCCD 5000