

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND
THE NAVAJO NATION

15	PART I. SETTLEMENT	3
16	1. PREAMBLE	3
17	2. EXPLANATORY RECITALS	3
18	3. GENERAL DEFINITIONS	4
19	4. CONDITIONS	8
20	5. PRELIMINARY UNDERSTANDINGS	8
21	PART II. NIIP	9
22	6. WATER DELIVERY PROVISIONS	9
23	7. WATER SUPPLY AND SHORTAGE	11
24	8. COST PROVISIONS	11
25	9. LIMITED RESPONSIBILITY FOR DISTRIBUTION	14
26	PART III. ALP	14
27	10. WATER DELIVERY PROVISIONS	14
28	11. ALP PROJECT WORKS	16
29	12. CONSTRUCTION AND OPERATION OF FACILITIES	18
30	13. WATER SUPPLY AND SHORTAGE	19
31	14. BLOCK NOTICE FOR ALP WATER DELIVERY	20
32	15. COST PROVISIONS	20
33	16. TITLE TRANSFER	22
34	17. LIMITED RESPONSIBILITY FOR DISTRIBUTION	22
35	PART IV. NGWSP	22
36	18. WATER DELIVERY PROVISIONS	22
37	19. NGWSP FACILITIES	23
38	20. CONSTRUCTION AND OPERATION OF FACILITIES	25
39	21. WATER SUPPLY AND SHORTAGE	26
40	22. NOTIFICATION OF SUBSTANTIAL COMPLETION	26
41	23. WATER AVAILABILITY BLOCK NOTICE FOR NGWSP	27
42	24. CARRIAGE OF NON-PROJECT WATER	27
43	25. ADDITIONAL CAPACITY	28
44	26. COST PROVISIONS	29
45	27. TITLE TRANSFER	33
46	28. LIMITED RESPONSIBILITY FOR DISTRIBUTION	33

1	PART V. GENERAL	33
2	29. TERM OF CONTRACT	33
3	30. TRANSPORTATION LOSSES	33
4	31. UNCONTROLLABLE FORCES	34
5	32. SUBCONTRACTING	34
6	33. SEVERABILITY	37
7	34. CONTRACT AMENDMENTS	37
8	35. SAVINGS CLAUSES	38
9	36. ENVIRONMENTAL COMPLIANCE AND COORDINATION	39
10	PART VI. STANDARD ARTICLES	39
11	37. AIR AND WATER POLLUTION CONTROL	40
12	38. OPERATION AND MAINTENANCE OF TRANSFERRED WORKS--	
13	PAYMENT OF MISCELLANEOUS COSTS	40
14	39. EMERGENCY RESERVE FUND	41
15	40. ADMINISTRATION OF FEDERAL PROJECT LANDS	42
16	41. EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS,	
17	RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION	
18	AND MAINTENANCE	43
19	42. BOOKS, ACCOUNTS AND RECORDS	44
20	43. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY	44
21	44. CLEAN AIR AND WATER	45
22	45. PEST MANAGEMENT	46
23	46. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY	47
24	47. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS	48
25	48. CERTIFICATION OF NONSEGREGATED FACILITIES	49
26	49. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR	
27	CERTIFICATIONS OF NONSEGREGATED FACILITIES	49
28	50. COMPLIANCE WITH RECLAMATION LAWS	50
29	51. RULES, REGULATIONS, AND DETERMINATIONS	50
30	52. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT	50
31	53. MEDIUM FOR TRANSMITTING PAYMENTS	51
32	54. CHARGES FOR DELINQUENT PAYMENTS	51
33	55. WATER QUALITY	51
34	56. WATER CONSERVATION	51
35	57. CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS	52
36	58. NOTICES	52
37	59. OFFICIALS NOT TO BENEFIT	52
38		
39		

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND
THE NAVAJO NATION

PART I. SETTLEMENT

1. PREAMBLE

This contract is entered into this ____ day of _____, 20__, between the United States of America, acting through the Secretary of the Interior pursuant to the Northwestern New Mexico Rural Water Projects Act of March 30, 2009 (123 Stat. 1367), the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws, specifically the Act of June 13, 1962 (76 Stat. 96), the Act of April 11, 1956 (CRSP) (70 Stat. 105; 43 U.S.C. 620 et seq.), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385), and the Navajo Nation.

2. EXPLANATORY RECITALS

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

1 258; Public Law 106-554, Appendix D, Title III) including Ridges Basin Dam and Lake
2 Nighthorse, the Durango Pumping Plant, the Ridges Basin Inlet Conduit, the Navajo
3 Nation Municipal Pipeline and related facilities.

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

9 (a)(c) “Consultation” or “Consult” refers to an ongoing obligation of both parties
10 to implement the provisions of this Contract with a full exchange of information so as to
11 assure that each party is provided full participation in the decision making process.
12 Consultation shall be required of each party with respect to each section of the Contract
13 regardless of whether the section itself sets forth a Consultation requirement. The
14 Consultation required shall be reasonable under the circumstances, and except in exigent
15 circumstances Consultation shall be undertaken in advance of decision making. In the
16 event that agreement cannot be reached and the United States makes a decision appeals
17 are available to the extent allowed under applicable laws.

18 (d) “Contracting Officer” means the representative of the Secretary of the
19 Interior authorized to administer this Contract.

20 (b)(e) “Fixed OM&R costs” means costs of administration, overhead, labor,
21 materials, and equipment required to maintain all pumps, storage tanks, pipelines,
22 diversion facilities, reservoirs and inlet conduits, as may be appropriate.

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

30 (d)(g) “Lake Nighthorse”, formerly Ridges Basin Reservoir, means the reservoir
31 created by the impoundment on Basin Creek by Ridges Basin Dam, a facility of the ALP

1 as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat.
2 2763A-258).

3 | ~~(e)~~(h) “Navajo Nation” means a body politic and federally-recognized Indian
4 nation as provided for in Section 101(2) of the Federally Recognized Indian Tribe List of
5 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the “Navajo
6 Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo Tribe of
7 Indians” and other similar names, and includes all bands of Navajo Indians and chapters
8 of the Navajo Nation, acting through its authorized representative.

9 | ~~(f)~~(i) “Navajo-Gallup Water Supply Project”, or “NGWSP”, means the project of
10 the same name authorized by Section 10602 of the Northwestern New Mexico Rural
11 Water Projects Act (123 Stat. 1367).

12 | ~~(g)~~(j) “Navajo Indian Irrigation Project”, or “NIIP”, means the project of the
13 same name authorized by the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), as
14 amended.

15 | ~~(h)~~(k) “Navajo Lands” means lands set aside as reservation lands for the Navajo
16 People, whether by treaty, statute, executive order or public land order. Also included in
17 this definition are lands that are held in trust for the Navajo Nation by the United States,
18 held in trust for members of the Navajo Nation by the United States, or held in fee
19 ownership by the Navajo Nation.

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

26 | ~~(j)~~(m) “Navajo Dam and Reservoir” means Navajo Dam and the reservoir
27 created by the impoundment of the San Juan River at Navajo Dam as authorized by the
28 Act of April 11, 1956, the Colorado River Storage Project Act (70 Stat. 105; Public Law
29 84-485), as amended.

30 | ~~(k)~~(n) “Northwestern New Mexico Rural Water Projects Act”, or “Navajo
31 Settlement Act”, means Subtitle B of Title X the Act of March 30, 2009 (123 Stat. 1367).

1 | ~~(h)~~(o) “OM&R” means annual operation, maintenance and replacement.

2 | ~~(m)~~(p) “Partial Final Decree” means a final and binding judgment and decree
3 | entered by the court in the stream adjudication, setting forth the rights of the Navajo
4 | Nation to use and administer waters of the San Juan River Basin in New Mexico, as set
5 | forth in Appendix 1 of the Settlement Agreement.

6 | ~~(n)~~(q) “Project Operator” means the entity that has been transferred the OM&R
7 | responsibilities for a specific project covered under this Contract.

8 | ~~(o)~~(r) “Project Participants” means the Navajo Nation, the City of Gallup and,
9 | should it choose to participate, the Jicarilla Apache Nation.

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

13 | ~~(q)~~(t) “Secretary” means the Secretary of the United States Department of the
14 | Interior or an authorized designee.

15 | ~~(r)~~(u) “Settlement Agreement” means the agreement between the State of New
16 | Mexico, the Navajo Nation and the United States setting forth a stipulated and binding
17 | settlement agreement as to the rights of the Navajo Nation to use and administer waters
18 | of the San Juan River Basin in New Mexico, signed by the State of New Mexico and the
19 | Navajo Nation on _____ and executed by the Secretary on

20 | _____.

21 | ~~(s)~~(v) “Statutory Water Allocation” means the municipal and industrial (M&I)
22 | water allocation delivered to the Navajo Nation from the ALP pursuant to Section
23 | 6(a)(1)(A)(ii)(III) of the Colorado Ute Indians Water Rights Settlement Act of 1988
24 | (Public Law 100-585) as amended.

25 | (w) “Transferred Works” means facilities which are necessary to support the
26 | operation and maintenance of a project, and for which the OM&R responsibility has been
27 | transferred to the Navajo Nation by the United States.

28 | ~~(t)~~(x) “Variable OM&R costs” means the costs of power including power
29 | consumption and a proportional percentage of power demand costs for the pumping of
30 | water. In the case of the NGWSP, Variable OM&R costs ~~are to also include additional~~
31 | costs associated with the treatment of water.

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

4. CONDITIONS

This Contract will give rise to rights and obligations on the part of the Navajo Nation and the United States and the provisions of Part IV will become enforceable only after the Partial Final Decree is entered by the District Court of San Juan County, New Mexico, in the general stream adjudication of the San Juan River stream system, *New Mexico v. United States*, No. 75-184, which Partial Final Decree adjudicates water rights of the Navajo Nation in and from the San Juan River Basin in New Mexico per paragraph 3.0 of the Settlement Agreement and is of the form provided in Appendix 1 to the Settlement Agreement. All other provisions of the Contract will be enforceable upon execution of the Contract.

5. PRELIMINARY UNDERSTANDINGS

(a) The United States and the Navajo Nation will proceed in good faith to take all steps necessary to assure the entry of the Partial Final Decree.

(b) The Navajo Nation may purchase, receive and use ALP water or [NGWSP](#) [NIIP](#) water in accordance with the relevant provisions of this Contract prior to the entry of the Partial Final Decree; except, that the obligation of the United States to deliver such water shall become null and void if the Contract is terminated by court order pursuant to subsection 10701(e)(2)(A) of the Navajo Settlement Act. Neither party will have any obligation under this Contract to purchase [NGWSP](#) water from or deliver [NGWSP](#) water to the other party for the [NIIP-NGWSP](#) until the entry of the Partial Final Decree.

(c) The obligations of the parties under Contract No. 14-06-W-269 between the United States and the Navajo Nation for delivery of water from Navajo Reservoir for the principal purpose of furnishing irrigation water to the NIIP shall continue in force until the entry of the Partial Final Decree after which Contract No. 14-06-W-269 shall be superseded by this Contract.

(d) Separate contracts for additional water, whether for temporary or permanent use, as available, may be negotiated between the Navajo Nation and the United States in the future, but they do not constitute any part of the consideration for this Contract.

1 **PART II. NIIP**

2 6. **WATER DELIVERY PROVISIONS**

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

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

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

11 (B) the Navajo Dam outlet works; or

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

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

15 (b) Pursuant to the Act of June 13, 1962, as amended by Section 10402 of the
16 Navajo Settlement Act, water diverted by the NIIP may be used within the area served by
17 the NIIP facilities for the following purposes:

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

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

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

25 (iv) The implementation of the alternate water source provisions described
26 in subparagraph 9.2 of the Settlement Agreement executed under Section
27 10701(a)(2) of the Navajo Settlement Act.

28 (c) The Navajo Nation shall be solely responsible for the construction,
29 operation, maintenance and replacement specific to all modifications and additions to
30 NIIP facilities that are necessary to use NIIP water for the purposes provided in Part II
31 **Article 6(b)** above. Prior to the construction of any modification and addition to the NIIP

1 facilities, the Navajo Nation shall obtain the review and approval of the United States of
2 the proposed construction and the proposed use of NIIP water.

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

7 (e) The Navajo Nation must notify the Contracting Officer or the appropriate
8 Project Operator of any changes to its scheduled locations, amounts and timings of
9 anticipated diversions at least 30 days prior to any requested change of delivery of water
10 from Navajo Dam and Reservoir under State Engineer File No. 2849.

11 (f) Uses of water to make the diversions and depletions described in
12 subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree that are supplied under this
13 Contract pursuant to the alternate water source provisions of subparagraph 9.2 of the
14 Settlement Agreement, and that are accounted under the contract rights for delivery of
15 water under the NIIP described in Part II herein, shall not be required to have 30 days
16 advance notice.

17 (g) Nothing in this section is intended to impose on the United States any
18 obligation to maintain Navajo Dam and Reservoir, or the NIIP beyond their useful lives
19 or to take extraordinary measures to keep these facilities operating.

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

29 (i) To the extent that delivery of water is made through or from federal
30 facilities, the Navajo Nation will reimburse costs associated with this delivery in
31 accordance with the provisions of Part II **Article** 8 of this Contract.

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

7. WATER SUPPLY AND SHORTAGE

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

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

8. COST PROVISIONS

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

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

~~(b)~~—The Navajo Nation’s OM&R obligation for water made available pursuant to Part II Article 6~~(b)~~ will be identified and provisions for payment shall be made in a future agreement between the Navajo Nation and the United States, as follows:

~~(a)~~—The Navajo Nation shall pay the United States, or its designee if some organization other than the United States is operating Navajo Dam and Reservoir, the Navajo Nation’s proportionate share of the OM&R costs for Navajo Dam and Reservoir assignable to the amount of water made available under third party agreements executed by the , and approved by the United States, for those purposes provided through Part II

1 ~~Articles 6(b)(i) and 6(b)(ii) of this contract~~ The Nation shall pay the United States, or its
2 designee if some organization other than the United States is operating Navajo Dam and
3 Reservoir, the Nation's proportionate share of the OM&R costs for Navajo Dam and
4 Reservoir assignable to the amount of water made available to the Nation through Part II
5 ~~Article 1~~ of this contract; except, that the OM&R costs assignable to water delivered for
6 irrigation on the NIIP or other Navajo Lands shall be waived by the Secretary. The
7 Nation's cost obligations for the NIIP will be as follows:

8 (e) ~~The Nation's construction cost obligation for the NIIP shall be waived and~~
9 ~~declared non-reimbursable by the Secretary.~~

10 ~~The Navajo Nation's obligation for Navajo Dam and Reservoir OM&R costs shall~~
11 ~~be paid on the basis of annual cost estimates made by the United States, or its designee,~~
12 ~~based upon the quantity of NIIP water that is made available to the Navajo Nation under~~
13 ~~third party agreements executed by the , and approved by the United States, for those~~
14 ~~purposes provided through Part II Articles 6(b)(i) and 6(b)(ii) of this contract. The~~
15 ~~estimates will be sent annually to the Navajo Nation on or before May 1 for the next~~
16 ~~Federal fiscal year, which begins October 1 of the same calendar year and ends~~
17 ~~September 30 of the next calendar year. The Navajo Nation shall advance its annual~~
18 ~~share of the Navajo Dam and Reservoir OM&R costs for the next Federal fiscal year on~~
19 ~~or before September 30. The first such billing will be issued based upon the effective~~
20 ~~date NIIP water is provided under third party agreements and in the event this effective~~
21 ~~date shall be for costs of service of less than a full year, such costs shall be prorated for~~
22 ~~the period covered.~~

23 (e) ~~The Navajo Nation's obligation for off irrigation season NIIP OM&R costs,~~
24 ~~and incremental NIIP OM&R costs shall be paid on the basis of annual cost estimates~~
25 ~~made by the United States, or the NIIP Operator, based upon the delivery schedules and~~
26 ~~quantities of NIIP water provided by the Navajo Nation for the purposes stated in Part II~~
27 ~~Article 6(b). The Navajo Nation will provide on or before February 1 to the United~~
28 ~~States, or the NIIP Operator, an annual estimate of the delivery schedules and quantities~~
29 ~~of NIIP water provided for the purposes stated in Part II Article 6(b) for the next Federal~~
30 ~~fiscal year. Off irrigation season and incremental NIIP OM&R cost estimates from the~~
31 ~~United States, or the NIIP Operator, based upon the Navajo Nation's estimated delivery~~

1 ~~schedules and quantities of NIIP water, will then be sent annually to the Navajo Nation~~
2 ~~on or before May 1 for the next Federal fiscal year, which begins October 1 of the same~~
3 ~~calendar year and ends September 30 of the next calendar year. The Navajo Nation shall~~
4 ~~advance its off irrigation season and incremental NIIP OM&R costs for the next Federal~~
5 ~~fiscal year on or before September 30~~ OM&R costs for the NIIP shall be paid on the basis
6 of annual estimates made by the Contracting Officer, or the NIIP Operator based upon
7 water use estimates provided by the Nation pursuant to Part II **Article 3(b)(iv)**. An
8 estimate from the Contracting Officer, or NIIP Operator, will be sent to the Nation on or
9 before May 1 for the next year's annual reimbursable OM&R costs for each calendar year
10 in quarterly payments which will be due on December 31 of the same calendar year as the
11 billing, and on March 31, June 30, and September 30 of the year of applicability. The
12 first such billing will be issued immediately following execution of this contract. In the
13 event this first notice shall be for costs of service of less than a full year, such costs shall
14 be prorated for the period covered. An itemization of the OM&R costs will accompany
15 each billing.

16 (e) ~~In the event either the off irrigation season and incremental NIIP OM&R~~
17 ~~cost estimates fall short of the actual costs in any period, or whenever it is anticipated by~~
18 ~~the United States that a deficit will occur during the year, supplemental notices may be~~
19 ~~issued by the United States requesting additional funds. OM&R funds not spent during~~
20 ~~one fiscal year will be carried over for use during the next fiscal year with funds required~~
21 ~~for that year being reduced accordingly. An itemized statement of actual costs incurred~~
22 ~~during each year shall be furnished to the Navajo Nation. Billing adjustments will be~~
23 ~~made to correct for differences in the estimated and actual use of water, as well as, the~~
24 ~~estimated and actual costs during the preceding year~~ In the event either the OM&R cost
25 estimate falls short of the actual costs in any period, or whenever it is anticipated by the
26 Contracting Officer that a deficit will occur during the year, supplemental notices may be
27 issued by the Contracting Officer requesting additional funds. OM&R funds not spent
28 during one calendar year will be carried over for use during the next calendar year with
29 funds required for that year being reduced accordingly. An itemized statement of actual
30 costs incurred during each year shall be furnished to the Nation.

1 ~~(e)(b) Billings from the Contracting Officer, or the any Project Operator of a~~
2 ~~specific project, and payments by the Navajo Nation of the construction and OM&R costs~~
3 ~~outlined under this section shall be made on the basis of Part II Article 38(ba). For~~
4 ~~project operation purposes, the Navajo Nation will provide an annual notice to the~~
5 ~~Contracting Officer, or the Project Operator of a specific project, identifying limiting the~~
6 ~~amount of water estimated to be used by the Navajo Nation, the estimated period and~~
7 ~~point of diversion for each intended purpose and a listing of all executed subcontracts~~
8 ~~with third parties, including those subcontracts anticipated to be executed during the year~~
9 ~~of applicability. The Navajo Nation shall send this notice on or before February 1 of the~~
10 ~~year preceding the year of use described in the notice. Upon receipt of such notice, the~~
11 ~~Contracting Officer, or the Project Operator of a specific project, will bill the Navajo~~
12 ~~Nation for payment of costs as prescribed herein. Billing adjustments will be made to~~
13 ~~correct for differences in the estimated and actual use of water, as well as, the estimated~~
14 ~~and actual costs during the preceding year.~~

15
16 9. **LIMITED RESPONSIBILITY FOR DISTRIBUTION**

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

23 (b) This section is not intended to waive any responsibility the United States
24 may have under treaty, statute or otherwise, to provide or operate water distribution
25 systems on Navajo Lands.

26
27 **PART III. ALP**

28 10. **WATER DELIVERY PROVISIONS**

29 (a) As provided for in the Colorado Ute Settlement Act Amendments of 2000,
30 the United States agrees to deliver, or make available for delivery an average annual
31 depletion not to exceed 2,340 acre-feet from the ALP water supply under New Mexico

1 State Engineer File No. 2883, subject to the provisions of the Navajo Settlement Act, the
2 Settlement Agreement, the Partial Final Decree and this Contract. Water delivered
3 pursuant to this article shall be measured utilizing measuring facilities installed by the
4 United States as a part of the ALP at the following points of delivery:

- 5 (i) The outlet works of Ridges Basin Dam; or
- 6 (ii) Bypassed at the Durango Pumping Plant; or
- 7 (iii) Both in combination.

8 (b) The Navajo Nation may divert or receive this water at the points of
9 diversion for ~~use by delivery to~~ Navajo Nation communities, recipients or subcontractors
10 allotted water by the Navajo Nation under its water rights for the ALP, consistent with
11 the Decree. The Navajo Nation's ALP Statutory Water Allocation will be either replaced
12 with ALP water released from Lake Nighthorse or flows bypassed at the Durango
13 Pumping Plant. Sufficient water will be delivered from ALP water released from Lake
14 Nighthorse or bypassed at the Durango Pumping Plant to meet the annual requirements of
15 the Navajo Nation up to its Statutory Water Allocation.

16 (c) If the IGA is in effect, the Navajo Nation shall have the right to utilize
17 storage space in Lake Nighthorse in accordance with the Joint Storage Pool as described
18 in the IGA.

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

1 acquiring additional storage capacity space in Lake Nighthorse if additional space
2 becomes available.

3 (e) The Navajo Nation must notify the Contracting Officer or the Project
4 Operator of any changes in delivery of water from the ALP prior to requested change of
5 delivery of water from the ALP under State Engineer File No. 2883.

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

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

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

17

18 11. ALP PROJECT WORKS

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

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

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

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

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

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

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

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

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

29 (e) Construction and operation of the ALP will be in accordance with the
30 Environmental Commitments in Chapters 4 and 5 of the FSEIS, which are attached as
31 Exhibit XX to this Contract.

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

12. CONSTRUCTION AND OPERATION OF FACILITIES

(a) Nothing herein shall be construed to obligate the United States to construct, install, operate or maintain dams, pumps, pipelines, storage tanks, distribution lines or other facilities required to take, measure, convey or distribute water for use beyond agreed upon points of delivery; except, that the United States shall have such obligations as conferred upon the Secretary by the authorities to construct, maintain and operate the ALP in accordance with the Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), and the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258). Nor shall anything herein be construed to affect or alter obligations that the United States may have under treaty, statute or otherwise to provide or operate other water project facilities and water distribution systems on Navajo Lands.

(b) ~~The~~ ALP shall be operated in a manner consistent with applicable law.

(c) Coordination of construction, operation and maintenance of the ALP shall be accomplished through the ~~establishment of the~~ following two committees, both of which ~~will~~ consist of representatives of the Bureau of Reclamation and Project contractors, including the Navajo Nation:

(i) The Project Construction Coordination Committee ~~shall provides~~ coordination and consultation on the construction activities among all ALP sponsors, seeking common understanding and consensus on decisions associated with final plans, construction schedules and costs for ALP facilities, and shall dissolve upon completion of ALP construction.

(ii) The ~~Association Project Operations Committee will initially~~ consists of representatives of those entities which have been identified by the Colorado Ute Settlement Act Amendments of 2000, as amended, to receive a water allocation. ~~Initially, this committee will determine the appropriate entity to~~ This Association has contracted with Reclamation for the operation and maintenance of ALP multipurpose facilities and ~~developed the development,~~ among the ALP ~~sponsorse~~ contractors, ~~of~~ a common understanding of the appropriate level of OM&R activities to be performed on the ALP multipurpose facilities to assure the long-term operational integrity of ALP

1 | and public safety. Ultimately, ~~the Association~~this committee will oversee the
2 | ongoing OM&R activities of ALP, providing consultation and coordination
3 | among the committee members on such items as annual OM&R funding,
4 | maintenance schedules, and public safety issues.

5 | (iii) Failure of the committees to reach common understandings or to
6 | otherwise coordinate with the Bureau of Reclamation on construction,
7 | operation and maintenance of the ALP shall in no way nullify or reduce the
8 | obligation of the United States to construct, operate and maintain Project ALP
9 | facilities, including the NNMP, or to deliver water to the Navajo Nation as
10 | authorized by the Colorado Ute Settlement Act Amendments of 2000 (114
11 | Stat. 2763A-258), the Navajo Settlement Act, the Settlement Agreement, and
12 | ~~this contract~~this Contract.

13 |
14 | 13. WATER SUPPLY AND SHORTAGE

15 | (a) With respect to water made available from the ALP under the terms of this
16 | Contract, during periods when the Contracting Officer, or the ALP Operator finds that the
17 | direct flow of the Animas River is insufficient to supply 100 percent of the water
18 | deliveries under contracts for ALP water, the Navajo Nation shall share in the available
19 | direct flow consistent with Article 1 of the Animas-La Plata Project Compact (82 Stat.
20 | 898).

21 | (b) Pursuant to Part III Article 10 of this Contract, the Navajo Nation may
22 | request and require of the United States the release of any and all storage water available
23 | to the Navajo Nation in Lake Nighthorse for delivery of ALP water as necessary to meet
24 | the Statutory Water Allocation of the Navajo Nation. In any year in which there may
25 | occur a shortage in the Statutory Water Allocation at the points of delivery from any
26 | cause, the Contracting Officer or the ALP Operator reserves the right to make a
27 | conclusive determination of shortage and to apportion the available ALP water allocation
28 | among the ALP sponsors subject to the Colorado Ute Settlement Act Amendments of
29 | 2000, as amended, the IGA, and applicable laws, including the Animas-La Plata Project
30 | Compact.

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

7
8 14. BLOCK NOTICE FOR ALP WATER DELIVERY

9 (a) When the ALP Project Water becomes available for use by the Navajo
10 Nation, the United States shall, after consultation, give the Navajo Nation written notice,
11 referred to herein as the "block notice". The block notice shall contain: the quantity of
12 Project Water available to the Navajo Nation from the [Project ALP](#), and the effective date
13 that water is available for delivery to the Navajo Nation.

14 (b) The block notice and any amendments thereto shall become a part of this
15 Contract.

16
17 15. COST PROVISIONS

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

19 (a) Prior to water becoming available for use by the Navajo Nation, pursuant to
20 Part III [Article 13\(a\)](#) above, the OM&R costs allocated to the Navajo Nation's ALP
21 Project Water shall be paid by Reclamation. Upon water becoming available for use by
22 the Navajo Nation, pursuant to Part III [Article 13\(a\)](#) above, the Contracting Officer will
23 notify the Navajo Nation of the transfer of responsibility for the Navajo Nation's ALP
24 OM&R costs at least sixty (60) days prior to the effective date of the transfer.

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

27 (i) the Navajo Nation's share of ~~fixed OM&R~~ [Fixed OM&R](#) costs of the
28 multipurpose facilities as defined in the IGA. The Navajo Nation's share, as
29 identified in the IGA is 2.5% of the total ~~fixed OM&R~~ [Fixed OM&R](#) costs. If
30 the IGA is voided or otherwise terminated, the Navajo Nation's share of ~~fixed~~
31 [OM&R](#) ~~Fixed OM&R~~ will be defined by the final cost allocation;

1 (ii) the Navajo Nation's share of ~~variable OM&R~~ Variable OM&R costs of
2 the multipurpose facilities, which are actual costs of replacing water released
3 from storage in Lake Nighthorse by request of the Navajo Nation, as defined
4 in the IGA, provided that the IGA contains provisions for a variable
5 OM&R Variable OM&R fund, designed to pay all or part of the Project ALP
6 ~~variable OM&R~~ Variable OM&R costs;

7 (iii) all OM&R costs associated with the NNMP during the period in which
8 title to the pipeline is held by the United States. In addition, the Navajo
9 Nation shall be responsible for providing OM&R of the NNMP and for
10 funding the OM&R costs of the pipeline if ownership of the pipeline is
11 transferred to the Navajo Nation.

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

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

28 (e) Billings from the Contracting Officer or the Project Operator, and payments
29 by the Navajo Nation of the OM&R costs outlined under this section shall be made on the
30 basis of Part III Articles 14(b) and 16(c). For project operation purposes, the Navajo
31 Nation will provide an annual notice to the Contracting Officer, or the Project Operator,

1 identifying the amount of water estimated to be used by the Navajo Nation, the estimated
2 period and point of diversion for each intended purpose and a listing of all executed
3 subcontracts with third parties, including those subcontracts anticipated to be executed
4 during the year of applicability. The Navajo Nation shall send this notice on or before
5 February 1 of the year preceding the year of use described in the notice. Upon receipt of
6 such notice, the Contracting Officer, or the Project Operator, will bill the Navajo Nation
7 for payment of costs as prescribed herein. Billing adjustments will be made to correct for
8 differences in the estimated and actual use of water, as well as, the estimated and actual
9 costs during the preceding year.

10 |
11 16. TITLE TRANSFER

12 Title to NNMP facilities shall remain in the name of the United States, unless
13 transferred to the Navajo Nation pursuant to Section 10605(b) of the Navajo Settlement
14 Act.

15
16 17. LIMITED RESPONSIBILITY FOR DISTRIBUTION

17 (a) Upon delivery, as specified under Part III Article 10(a) herein, the Navajo
18 Nation shall hold the United States, its officers, agents, employees, and successors or
19 assigns, harmless from every claim for damages to persons or property, direct or indirect,
20 and of whatever nature, arising out of or in any manner connected with the control,
21 carriage, handling, distribution or use of such water beyond the point of delivery; except
22 to the extent that provisions of Section 10605(b) of the Navajo Settlement Act placed
23 upon the City of Farmington certain responsibilities for the diversion, treatment and
24 conveyance of water made available under this Contract.

25 (b) This section is not intended to waive any responsibility the United States
26 may have under treaty, statute or otherwise, to provide or operate water distribution
27 systems on Navajo Lands.

28
29 PART IV. NGWSP

30 18. WATER DELIVERY PROVISIONS

1 (a) The United States agrees to deliver, or make available for delivery, to the
2 Navajo Nation a diversion of not more than 22,650 acre-feet, or the quantity of water
3 necessary to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is
4 less in any one year for delivery to communities, recipients or subcontractors allotted
5 water by the Navajo Nation under its water rights for the NGWSP uses in New Mexico
6 from Navajo Reservoir or the points of diversion from the San Juan River ~~downstream of~~
7 ~~Fruitland, NM and upstream of the existing PNM diversions~~ as authorized by Section
8 10603 of the Navajo Settlement Act, under State Engineer File Nos. 2849 and 3215 or as
9 modified pursuant to applicable law.

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

13 (c) The points of delivery of water made available for use pursuant to this
14 section from Navajo Reservoir and the San Juan River shall be as specified in Part IV
15 **Article** 16(a) unless changed as allowed by the Partial Final Decree and pursuant to
16 written agreement of the Contracting Officer and the Navajo Nation.

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

20 21 19. NGWSP FACILITIES

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

26 (a) The NGWSP Facilities consist of two laterals which are presently identified
27 to include the following:

28 (i) San Juan Lateral

29 (A) A pumping plant on the San Juan River in the vicinity of Kirtland,
30 New Mexico.

1 (B) A main pipeline from the San Juan River near Kirtland, New
2 Mexico to Shiprock, New Mexico and Gallup, New Mexico which follows
3 United States Highway 491.

4 (C) Additional pumping plants as may be necessary for operation of
5 the lateral.

6 (D) Lateral pipelines from the main pipeline to Navajo communities in
7 the States of New Mexico and Arizona.

8 (E) Water treatment facilities as may be necessary for operation of the
9 lateral.

10 (F) Appurtenant facilities which may include water regulation or
11 storage facilities, service connections to existing public water supply
12 systems, power substations, or power distribution works that are related to
13 the NGWSP Facilities for the lateral.

14 (ii) Cutter Lateral

15 (A) A main pipeline from the Cutter Reservoir to Ojo Encino, New
16 Mexico which follows United States Highway 550.

17 (B) Pumping plants as may be necessary for operation of the lateral.

18 (C) Lateral pipelines from the main pipeline to Navajo communities in
19 the State of New Mexico.

20 (D) Water treatment facilities as may be necessary for operation of the
21 lateral.

22 (E) Appurtenant facilities which may include water regulation or
23 storage facilities, service connections to existing public water supply
24 systems, power substations, or power distribution works that are related to
25 the NGWSP Facilities for the lateral.

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

29 (c) As a condition of construction of the facilities authorized under Section
30 10602 (b) of the Navajo Settlement Act, the Project Participants shall provide all land or
31 interest in land, as appropriate, that the United States identifies as necessary for

1 acquisition under Section 10602 (c) of the Navajo Settlement Act at no cost to the United
2 States.

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

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

13
14 20. _____ CONSTRUCTION AND OPERATION OF FACILITIES

15 (a) Nothing herein shall be construed to obligate the United States to construct,
16 install, operate or maintain dams, pumps, pipelines, storage tanks, distribution lines or
17 other facilities required to take, measure, convey or distribute water for use beyond
18 agreed upon points of delivery; except, that the United States shall have such obligations
19 as conferred upon the Secretary by the authorities to construct, maintain and operate
20 Navajo Dam and Reservoir, the NIIP and the NGWSP in accordance with the Colorado
21 River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), and the
22 Navajo Settlement Act. Nor shall anything herein be construed to affect or alter
23 obligations that the United States may have under treaty, statute or otherwise to provide
24 or operate other water project facilities and water distribution systems on Navajo Lands.

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

29 (i) The Project Construction Committee shall:

30 (A) review cost factors and budgets for construction and operation and
31 maintenance activities; and

1 (B) improve construction management through enhanced communication;
2 and

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

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

11
12 21. WATER SUPPLY AND SHORTAGE

13 (a) Notwithstanding any other provisions of this Contract, during times of
14 shortage in the Navajo Reservoir water supply to meet demands under contracts for
15 delivery of water from said supply, taking into account water available from inflows
16 below Navajo Dam to help meet the demands, the Navajo Nation will share in the
17 available water supply in the manner set forth in Section 11 of the Act of June 13, 1962
18 (76 Stat. 96), and Section 10402 (b) of the Navajo Settlement Act.

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

25
26 22. NOTIFICATION OF SUBSTANTIAL COMPLETION

27 When features or reaches of the NGWSP have been declared to be substantially
28 complete and water can be made available to the Navajo Nation, the United States shall,
29 after consultation, give the Navajo Nation written notice, referred to herein as the “Notice
30 of Substantial Completion”. The Notice of Substantial Completion shall contain: (1) the
31 NGWSP facilities that have been determined to be substantially complete and can

1 generate for water delivery, (2) a list of the feature(s) or reach(es) which are completed, (3)
2 the effective date of that substantial completion declaration, and (4) the proportionate
3 share of the completed NGWSP facilities allocated to the Navajo Nation.

4
5 23. WATER AVAILABILITY BLOCK NOTICE FOR NGWSP

6 (a) When NGWSP water can be made available to the Navajo Nation, the
7 United States shall, after consultation, give the Navajo Nation written notice, referred to
8 herein as the “Block Notice”. The Block Notice shall contain: (1) the effective date that
9 NGWSP water is made available, (2) the quantity of NGWSP water available to the
10 Navajo Nation from the block, (3) the feature(s) or reach(es) which can receive NGWSP
11 water.

12 (a)(b) The block notice and any amendments thereto shall become a part of this
13 Contract.

14
15 24. CARRIAGE OF NON-PROJECT WATER

16 (a) During the period where Title to NGWSP Facilities is held by the United
17 States, the Secretary may enter into a contract for the treatment and carriage of non-
18 Project water through the NGWSP if capacity is available without impairing delivery to a
19 Project Participant. Any contract for treatment and carriage of non-Project water shall
20 include the following terms:

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

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

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

28 (b) Following transfer of Title to an NGWSP facility to the Navajo Nation
29 pursuant to Article 27, the Navajo Nation may enter into a contract for the treatment and
30 carriage of non-Project water through that NGWSP facility if capacity is available

1 without impairing delivery to a Project Participant. Any contract for treatment and
2 carriage of non-Project water shall include the following terms:

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

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

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

10
11 25. ADDITIONAL CAPACITY

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

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

20 (ii) pay any fee established by the Secretary, in consultation with the
21 Navajo Nation, to assist in recovering capital costs relating to the additional
22 use; and

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

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

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

7
8 ~~23-26.~~

COST PROVISIONS

9 (a) The Navajo Nation shall pay the United States, or its designee if some
10 organization other than the United States is operating Navajo Dam and Reservoir, the
11 Navajo Nation's proportionate share of the OM&R costs for Navajo Dam and Reservoir
12 assignable to the amount of water made available to the Navajo Nation through Part IV
13 Article 23 of this Contract.

14 (b) The Navajo Nation shall pay the United States, or its designee if some
15 organization other than the United States is operating the NIIP, a proportionate
16 assignable share of OM&R costs for the NIIP facilities that are used to convey NGWSP
17 water made available to the Navajo Nation through Part IV Article 23 of this contractthis
18 Contract. The proportionate share of OM&R costs for the NIIP facilities used to convey
19 NGWSP water shall be identified and provisions for payment made in a future agreement
20 between the Navajo Nation and the United States.

21 ~~(c)~~ (c) The Navajo Nation's construction cost obligation for the NGWSP shall be
22 allocated, waived and declared non-reimbursable by the Secretary.

23 (d) The Navajo Nation's OM&R cost obligation for the NGWSP shall be paid to
24 the United States, or its designee if some organization other than the United States is
25 operating the NGWSP facilities, as follows:

- 26 (i) For any feature or reach of the NGWSP, declared substantially complete
27 under Part IV Article 22, through or by which water can only be delivered to
28 the Navajo Nation, the Navajo Nation shall pay all OM&R costs associated
29 with water delivery, until such time water can be delivered through or by that
30 feature or reach to other Project Participants, at which time Part IV Article
31 24(d)(ii) below shall apply.

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

4 (A) the Navajo Nation's share of "Fixed OM&R" costs" based upon its
5 proportionate share of the design capacity for all NGWSP facilities, or
6 reaches of those facilities, which have been declared substantially
7 complete through Part IV Article 22 of this Contract, "Fixed OM&R"
8 costs" include costs of labor, materials, equipment and replacements
9 required to maintain all NGWSP facilities, as well as, the administration
10 and overhead costs of the NGWSP.

11 (B) the Navajo Nation's share of "Variable OM&R" costs" based on
12 actual costs of power including energy consumption and that share of
13 power demand costs for operation of the water treatment plants and
14 pumping plants based on the proportionate share of water treated and
15 delivered, as well as water treatment chemical costs.

16 (e) Billing and payment for the Navajo Nation's OM&R cost obligations shall
17 be conducted as follows:

18 —The Navajo Nation's obligation for Navajo Dam and Reservoir
19 OM&R shall be paid on the basis of annual cost estimates made by the
20 Contracting Officer, or its designee, based upon the quantity of NGWSP water
21 that is requested for delivery by ~~made available to the Navajo Nation through~~
22 ~~the block notice.~~ An estimate from the Contracting Officer will be sent
23 annually to the Navajo Nation on or before May 1 for the next Federal fiscal
24 year, which begins October 1 of the same calendar year and ends September
25 30 of the next calendar year. The Navajo Nation shall advance its annual
26 share of the Navajo Dam and Reservoir OM&R costs for the succeeding
27 Federal fiscal year on or before September 30. The first such billing will be
28 issued based upon the effective date stated in the block notice and in the event
29 this effective date shall be for costs of service of less than a full year, such
30 costs shall be prorated for the period covered.

1 (i) The Navajo Nation's obligation for the assignable OM&R of the NHP
2 facilities used to convey NGWSP water to the Navajo Nation shall be paid on
3 the basis of annual cost estimates made by the United States, or the NHP
4 Operator, based upon the quantity of NGWSP water that is made available to
5 the Navajo Nation through the block notice and conveyed through the NHP
6 facilities. The Navajo Nation will provide on or before February 1 an annual
7 estimate to the United States, or the NHP Operator, of the amount of NGWSP
8 water to be conveyed through NHP facilities for the next Federal fiscal year.
9 An OM&R cost estimate from the United States, or the NHP Operator, based
10 upon the Navajo Nation's estimated conveyance, will then be sent annually to
11 the Navajo Nation on or before May 1 for the next Federal fiscal year, which
12 begins October 1 of the same calendar year and ends September 30 of the next
13 calendar year. The Navajo Nation shall advance its assignable share of the
14 NHP OM&R costs for the next Federal fiscal year on or before September 30.
15 In the event NGWSP water is made available through block notice and the
16 Navajo Nation requires conveyance through NHP facilities for a period less
17 that a full year, the assignable OM&R cost of conveyance shall be prorated for
18 the period covered.

19 (ii) Fixed OM&R costs for the NGWSP shall be paid on the basis of
20 annual cost estimates made by the Contracting Officer, or the NGWSP
21 Operator, based upon the proportionate share of the design capacity for those
22 NGWSP facilities which have been declared substantially complete through
23 Part IV Article 22 of this Contract. An estimate from the Contracting Officer,
24 or the NGWSP Operator, will be sent to the Navajo Nation on or before May
25 1 for the next Federal fiscal year, which begins October 1 of the same
26 calendar year and ends September 30 of the next calendar year. The Navajo
27 Nation shall advance its share of the OM&R costs for each Federal fiscal year
28 in quarterly payments which will be due on September 30, December 31,
29 March 31, and June 30 of the Federal fiscal year of applicability. The first
30 such billing will be issued immediately following a notice of substantial
31 completion as provided in Part IV Article 22 of this Contract. In the event the

1 first notice shall be for costs of service of less than a full year, such costs shall
2 be prorated for the period covered. An itemization of the estimated Fixed
3 OM&R costs will accompany the billing.

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

17 ~~(b)(f)~~ In the event either the OM&R cost estimates fall short of the actual
18 costs in any period, or whenever it is anticipated by the Contracting Officer that a deficit
19 will occur during the fiscal year, supplemental notices may be issued by the Contracting
20 Officer requesting additional funds. OM&R funds not spent during one fiscal year will
21 be carried over for use during the next fiscal year with funds required for that year being
22 reduced accordingly. An itemized statement of actual costs incurred during each year
23 shall be furnished to the Navajo Nation. Billing adjustments will be made to correct for
24 differences in the estimated and actual costs at the beginning of the next fiscal year, and
25 in the case of Variable OM&R costs, for differences in the Navajo Nation's estimated
26 water delivery requirements and the actual metered flow.

27 ~~(e)(g)~~ The Fixed OM&R costs and Variable OM&R costs of the NGWSP
28 allocated to the Navajo Nation for the NGWSP facilities that have been determined to be
29 substantially complete for water delivery through Part IV Article 22 of this Contract, that
30 the Secretary determines are in excess of the ability of the Navajo Nation to pay may be
31 waived and declared non-reimbursable by the Secretary for not more than ten (10) years

1 from the effective date established by the notice of substantial completion, pursuant to
2 Sec. 10604(f)(1) of the Navajo Settlement Act. This waiver authority shall terminate on
3 the date on which title to a facility is transferred to the Navajo Nation pursuant to Sec.
4 10604(f)(5).

5
6 | ~~24-27.~~

TITLE TRANSFER

7 Title to NGWSP facilities shall remain in the name of the United States, unless
8 | ~~conveyed~~~~transferred~~ pursuant to Section 10602(f) of the Navajo Settlement Act.

9
10 | ~~25-28.~~

LIMITED RESPONSIBILITY FOR DISTRIBUTION

11 (a) Upon delivery, as specified under Part IV **Article** 16(a) herein, the Navajo
12 Nation shall hold the United States, its officers, agents, employees, and successors or
13 assigns, harmless from every claim for damages to persons or property, direct or indirect,
14 and of whatever nature, arising out of or in any manner connected with the control,
15 carriage, handling, distribution or use of such water beyond the point of delivery; except
16 to the extent that provisions of Section 10602(f) of the Navajo Settlement Act placed
17 upon the City of Gallup certain responsibilities for the conveyance and distribution of
18 water made available under this Contract for the NGWSP.

19 (b) This section is not intended to waive any responsibility the United States
20 may have under treaty, statute or otherwise, to provide or operate water distribution
21 systems on Navajo Lands.

PART V. GENERAL

22 |
23
24 | ~~26-29.~~

TERM OF CONTRACT

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

27
28 | ~~27-30.~~

TRANSPORTATION LOSSES

29 No conveyance losses beyond the points of delivery as specified in Part II **Article** 6(a),
30 Part III **Article** 10(a), and Part IV **Article** 16 shall be borne by the United States. In the
31 event that points of delivery are changed as allowed by the **Partial Final Decree** and

1 | ~~pursuant to agreement of the Contracting Officer and the Navajo Nation~~accordance with
2 | ~~subsection 4(d)~~, transportation of water from the original points of delivery to other
3 | points of delivery shall be the sole responsibility of the Navajo Nation, so that no
4 | conveyance losses, including channel losses, shall be borne by the United States.
5 |

6 | ~~28.31.~~ UNCONTROLLABLE FORCES

7 | Neither party shall be considered to be in default in respect to any obligation
8 | hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces.
9 | The term uncontrollable forces shall mean, for the purposes of ~~this contract~~this Contract,
10 | any cause beyond the control of the party affected, including but not limited to, drought,
11 | failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil
12 | disturbance, labor disturbance, sabotage, and restraint by court or public authority, which
13 | by exercise of due diligence and foresight, such party could not reasonably have been
14 | expected to avoid. Either party rendered unable to fulfill any obligation by reason of
15 | uncontrollable forces shall exercise due diligence to remove expeditiously such inability.
16 |

17 | ~~29.32.~~ SUBCONTRACTING

18 | (a) The Navajo Nation may subcontract with third parties, subject to the
19 | provisions of the Navajo Settlement Act, the Settlement Agreement, the Partial Final
20 | Decree, and approval of the Contracting Officer in accordance with this section, to supply
21 | water available under Part III Article 10 and Part IV Article 18 for beneficial use ~~on or~~
22 | ~~off Navajo Lands~~ in the State of New Mexico, subject to and consistent with the same
23 | requirements and conditions of State law, and any applicable Federal law, interstate
24 | compact, and international treaty as apply to the exercise of water rights held by non-
25 | federal, non-Indian entities. Nothing in this Contract shall be construed to establish,
26 | address, or prejudice whether, or to prevent any party from litigating whether, or to the
27 | extent to which, any of the aforementioned laws do or do not permit, govern, or apply to
28 | the use of the Navajo Nation's water outside the State.

29 | (b) Subcontracts made by the Navajo Nation with third parties shall be subject
30 | to the provisions of the Navajo Settlement Act, the Settlement Agreement, the Partial
31 | Final Decree, and this Contract, and must include terms of use, purchase, measurement,

1 operations and default. A copy of each proposed subcontract shall be filed with the
2 ~~Contracting Officer and the~~ New Mexico Interstate Stream Commission at least 30 days
3 prior to being executed by the Navajo Nation; provided, that proposed emergency
4 subcontracts may be filed with less than 30 days notice. ~~ATwo copyies~~ of each executed
5 subcontract shall be filed with ~~the Contracting Officer and one copy with~~ the New
6 Mexico Interstate Stream Commission.

7 (c) Prior to approving any subcontract, the Contracting Officer shall comply
8 with subsection 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42
9 U.S.C. § 4332(2)(C). The Navajo Nation will furnish any data and information as may
10 be required by the Contracting Officer for NEPA compliance documentation. The
11 Contracting Officer has the authority under the Contributed Funds Act of 1921 (43 USC
12 §395) to charge any subcontractor for the costs associated with this compliance
13 documentation. The Contracting Officer will coordinate with the Navajo Nation and the
14 subcontractor throughout the NEPA process, including furnishing copies of all related
15 documentation.

16 (d) The Contracting Officer shall approve any subcontract submitted by the
17 Navajo Nation if the Contracting Officer determines that:

- 18 (i) the diversion and use of water under the subcontract would comply
19 with the Settlement Agreement, the Partial Final Decree, and other applicable
20 law, including any applicable permitting requirements and permit conditions
21 of the New Mexico State Engineer, and the provisions of this Contract;
- 22 (ii) the sum of the term of the subcontract plus all renewals is no more
23 than 99 years;
- 24 (iii) the use of water under the subcontract is not inconsistent with the
25 provisions of the Endangered Species Act or other provisions of federal law
26 designed to protect the environment;
- 27 (iv) the subcontract is sufficiently specific as to the amount of water and
28 points of diversion to enable the Contracting Officer to account for the water
29 as it is diverted; or, in the alternative, that the subcontract reserves the
30 Contracting Officer's right to review and approve future diversions sought

1 under the subcontract, such review and approval to be consistent with this
2 Contract;

3 (v) the delivery obligations under the subcontract are not inconsistent with
4 other obligations of the Contracting Officer to deliver water under preexisting
5 contracts.

6 (e) The Navajo Nation agrees to include the following equal opportunity
7 language ~~as specified in Part VI Article 45 42 of this contract~~ in any subcontract for use
8 of water off Navajo Lands:-

9 EQUAL EMPLOYMENT OPPORTUNITY

10 During the performance of this contract, the Contractor agrees as follows:

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

22 (2) The Contractor will, in all solicitations or advertisements for employees
23 placed by or on behalf of the Contractor, state that all qualified applicants will receive
24 consideration for employment without regard to race, color, religion, sex, disability, or
25 national origin.

26 (3) The Contractor will send to each labor union or representative of workers with
27 which it has a collective bargaining agreement or other contract or understanding, a
28 notice, to be provided by the Contracting Officer, advising the labor union or workers'
29 representative of the Contractor's commitments under Section 202 of Executive Order
30 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places
31 available to employees and applicants for employment.

32 (4) The Contractor will comply with all provisions of Executive Order No. 11246
33 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
34 of Labor.

35 (5) The Contractor will furnish all information and reports required by Executive
36 Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the
37 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and
38 accounts by the Contracting Agency and the Secretary of Labor for purposes of
39 investigation to ascertain compliance with such rules, regulations, and orders.

40 (6) In the event of the Contractor's noncompliance with the nondiscrimination
41 clauses of this contract or with any of such rules, regulations, or orders, this contract may

1 | be canceled, terminated or suspended in whole or in part and the Contractor may be
2 | declared ineligible for further Government contracts in accordance with procedures
3 | authorized in Executive Order 11246 of September 24, 1965, and such other sanctions
4 | may be imposed and remedies invoked as provided in Executive Order 11246 of
5 | September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as
6 | otherwise provided by law.

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

17 |
18 | (e)(f) The annual OM&R assessments specified in **Part II Article 89**, Part III
19 | **Article 146**, and Part IV **Article 23-20** above shall be charged to the Navajo Nation for all
20 | water subcontracted to third parties.

21 | (f)(g) The Secretary shall approve or disapprove any subcontract within 180
22 | days of receipt of the negotiated subcontract.

23 |
24 | ~~30-33.~~ SEVERABILITY

25 | If any provisions of this contract shall be held, by a court of competent
26 | jurisdiction, to be invalid, illegal, unenforceable or in conflict with the law of any
27 | jurisdiction, the parties intend that the validity, legality and enforceability of the
28 | remaining provisions shall not in any way be affected or impaired thereby. In the event
29 | that the Contract is terminated pursuant to Section 10701(e)(2)(B) of the Navajo
30 | Settlement Act, the parties agree to reinstate and continue in full force and effect those
31 | portions of the Contract for which separate authority is made other than pursuant to the
32 | Navajo Settlement Act.

33 |
34 | ~~31-34.~~ CONTRACT AMENDMENTS

35 | Any modifications to this Contract necessitated by future negotiations between
36 | the parties can be accomplished by amending this Contract to the extent such

1 amendments are consistent with the provisions of the Partial Final Decree and the Navajo
2 Settlement Act, including any future amendments.

3
4
5 ~~32.35.~~

SAVINGS CLAUSES

6 (a) Prior to the entry of the Partial Final Decree, nothing in this Contract shall
7 be construed as an admission, or be used by any party as evidence, that the Navajo Nation
8 is or is not legally entitled to reserved water rights in the San Juan River stream system.

9 (b) Nothing contained in this Contract shall be construed to alter, amend, repeal,
10 construe, interpret, modify, or be in conflict with the provisions of: the Boulder Canyon
11 Project Act (45 Stat. 1057); the Boulder Canyon Project Adjustment Act (54 Stat. 774);
12 the Colorado River Compact, proclaimed on June 25, 1929 (46 Stat. 3000); the Upper
13 Colorado River Basin Compact (63 Stat. 31); the 1944 Treaty with the United Mexican
14 States, Treaty Series 994 (59 Stat. 1219); the Act of June 13, 1962 (76 Stat. 96); the
15 Colorado River Basin Project Act (82 Stat. 885); the Colorado River Storage Project Act
16 (70 Stat. 105); the Animas-La Plata Project Compact (82 Stat. 898); the Jicarilla Apache
17 Tribe Water Rights Settlement Act (106 Stat. 2237); the Colorado Ute Settlement Act
18 Amendments of 2000 (114 Stat. 2763A-258); or the Navajo Settlement Act.

19 (c) The uses of water in the State of New Mexico through works constructed
20 under the authority of the Colorado River Storage Project Act (70 Stat. 105), the Act of
21 June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114
22 Stat. 2763A-258) and the Navajo Settlement Act shall be subject to and controlled by the
23 Colorado River Compact, the Upper Colorado River Basin Compact, the Animas-La
24 Plata Project Compact, the Boulder Canyon Project Act, the Boulder Canyon Project
25 Adjustment Act, the Colorado River Storage Project Act, the Colorado River Basin
26 Project Act, the Mexican Water Treaty (Treaty Series 994), the Colorado Ute Settlement
27 Act Amendments of 2000 and the Navajo Settlement Act, and shall be included within
28 and shall in no way increase the total quantity of water to the use of which the State of
29 New Mexico is entitled under said compacts, statutes, and treaty.

30 (d) Nothing in this Contract shall be construed in any way to quantify or
31 otherwise adversely affect the land and water rights, claims or entitlements to water of

1 any Indian tribe or community other than those of the Navajo Nation in, to and from the
2 San Juan River Basin in New Mexico; except, that the right of the Navajo Nation to use
3 water under water rights it may have in other river basins in New Mexico shall be
4 forborne only so long as and to the extent that the Navajo Nation supplies the uses for
5 which said water rights may exist by diversions of water from the San Juan River Basin
6 under this Contract consistent with subparagraph 9.13 of the Settlement Agreement.

7 |
8 ~~33.36.~~ ENVIRONMENTAL COMPLIANCE AND COORDINATION

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

16 (b) The Navajo Nation and the Department of the Interior agree to work with the
17 State of New Mexico and affected water users to assure that Navajo Dam and Reservoir,
18 the NIIP, the ALP and the NGWSP are operated in compliance with applicable laws
19 while meeting water delivery obligations.

20 | (c) Any additions, changes to, or operation of works or changes in use of the
21 water allocations from that stated in the respective NEPA documents, as well as the Final
22 Environmental Impact Statement for Navajo Reservoir Operations dated April, 2006
23 may, as required by law, be subject to further compliance with applicable environmental
24 statutes which shall include an analysis of potential impacts and must be approved by the
25 United States. Additional environmental compliance may be required for additional uses
26 of water identified for diversion to the NIIP, as identified in Title X of the Navajo
27 Settlement Act.

28
29
30
31 **PART VI. STANDARD ARTICLES**
32

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

35-38. OPERATION AND MAINTENANCE
OF TRANSFERRED WORKS--PAYMENT OF MISCELLANEOUS COSTS

(a) Should the care, operation, and maintenance of any Federal project works be transferred to the Navajo Nation in accordance with this contract, title to the ~~T~~ransferred ~~W~~orks will remain in the name of the United States, unless title is transferred as otherwise provided by the Congress of the United States.

(b) The Navajo Nation, without expense to the United States, shall care for, operate, and maintain the ~~transferred works~~Transferred Works in full compliance with the terms of this contract and in a manner that the ~~transferred works~~Transferred Works remain in good and efficient condition.

(c) Necessary repairs of the ~~transferred works~~Transferred Works shall be made promptly by the Navajo Nation. In case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the ~~transferred works~~Transferred Works threatening or causing interruption of water service, the Contracting Officer may issue to the Navajo Nation a special written notice of those necessary repairs. Except in the case of an emergency, the Navajo Nation will be given 60 days to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer. In the case of an emergency, or if the Navajo Nation fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs shall be paid by the Navajo Nation as directed by the Contracting Officer.

(d) The Navajo Nation shall not make any substantial changes in the ~~transferred works~~Transferred Works without first obtaining written consent of the Contracting Officer. The Navajo Nation shall ensure that no unauthorized encroachment occurs on project land and rights-of-way.

(e) The Navajo Nation agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision,

1 examination, inspection, or other duties of the Navajo Nation or the United States on
2 | ~~transferred works~~ Transferred Works required under this contract, regardless of who
3 performs those duties. The Navajo Nation does not agree to indemnify the United States
4 for any damages arising from intentional torts or malicious actions committed by
5 employees of the United States.

6 (f) The Navajo Nation shall cooperate with the Contracting Officer in
7 implementing an effective safety of dam(s) program. The United States agrees to provide
8 the Navajo Nation and the appropriate agency of the State or States in which the project
9 facilities are located with design data, designs, and an operating plan for the dam(s) and
10 related facilities consistent with the current memorandum of understanding between the
11 United States and the State of New Mexico relating to the coordination of planning,
12 design, construction, operation, and maintenance processes for dams and related
13 facilities.

14 (g) In the event the Navajo Nation is found to be operating the ~~transferred~~
15 | ~~works~~ Transferred Works or any part thereof in violation of this contract or the Navajo
16 Nation is found to be failing any financial commitments or other commitments to the
17 United States under the terms and conditions of this contract, then upon the election of
18 the Contracting Officer, the United States may take over from the Navajo Nation the care,
19 | operation, and maintenance of the ~~transferred works~~ Transferred Works by giving written
20 notice to the Navajo Nation of such election and the effective date thereof. Thereafter,
21 during the period of operation by the United States, upon notification by the Contracting
22 Officer the Navajo Nation shall pay to the United States, annually in advance, the cost of
23 operation and maintenance of the works as determined by the Contracting Officer.
24 Following written notification from the Contracting Officer the care, operation, and
25 maintenance of the works may be transferred back to the Navajo Nation.

26 (h) In addition to all other payments to be made by the Navajo Nation under this
27 contract, the Navajo Nation shall reimburse to the United States, following the receipt of
28 a statement from the Contracting Officer, all miscellaneous costs incurred by the United
29 States for any work involved in the administration and supervision of this contract.

30
31 | ~~36.39~~ EMERGENCY
32 | RESERVE FUND

33
34 (a) Commencing upon execution of this contract, the Navajo Nation shall
35 accumulate and maintain a reserve fund or demonstrate to the satisfaction of the
36 Contracting Officer that other funds are available for use as an emergency reserve fund.
37 The Navajo Nation shall establish and maintain that emergency reserve fund to meet
38 costs incurred during periods of special stress caused by damaging droughts, storms,
39 earthquakes, floods, or other emergencies threatening or causing interruption of water
40 service.

41 (b) The Navajo Nation shall accumulate the reserve fund with annual deposits or
42 investments of not less than \$_____ to a Federally insured, interest- or dividend-
43 bearing account or in securities guaranteed by the Federal Government: *Provided, That*
44 money in the reserve fund, including accrued interest, shall be available within a
45 reasonable time to meet expenses for such purposes as those identified in paragraph (d)
46 | herein. Such annual deposits and the accumulation of interest to the ~~Emergency R~~ Emergency Reserve

1 | ~~F~~fund shall continue until the basic amount of \$ _____ is accumulated. The above
2 | amounts will be adjusted (adjusted balance) as may be justified by reason of ordinary
3 | fluctuations in the construction, operation and maintenance costs as indicated by
4 | engineering cost indices applicable to the types of construction, operation and
5 | maintenance for which this Emergency Reserve Fund is established. Following an
6 | emergency expenditure from the fund, the annual deposits shall continue from the year
7 | following the emergency expenditure until the previous balance (or adjusted balance if an
8 | adjustment pursuant to this paragraph or paragraph (c) is made) is restored. After the
9 | initial amount is accumulated or after the previous balance is restored, the annual deposits
10 | may be discontinued, and the interest earnings shall continue to accumulate and be
11 | retained as part of the Emergency Reserve ~~F~~fund.

12 | (c) Upon mutual agreement between the Navajo Nation and the Contracting
13 | Officer, the ~~basic reserve fund or the accumulated reserve fund~~Emergency Reserve Fund
14 | may be adjusted to account for risk and uncertainty stemming from the size and
15 | complexity of the project; the size of the annual operation and maintenance budget;
16 | additions to, deletions from, or changes in project works; and operation and maintenance
17 | costs not contemplated when this contract was executed.

18 | (d) The Navajo Nation may make expenditures from the Emergency Reserve
19 | ~~F~~fund only for meeting usual operation and maintenance costs incurred during periods of
20 | special stress, as described in paragraph (a) herein; or for meeting unforeseen
21 | extraordinary operation and maintenance costs; or for meeting unusual or extraordinary
22 | repair or replacement costs; or for meeting betterment costs (in situations where
23 | recurrence of severe problems can be eliminated) during periods of special stress.
24 | Proposed expenditures from the fund shall be submitted to the Contracting Officer in
25 | writing for review and written approval prior to disbursement. Whenever the Emergency
26 | Reserve ~~F~~fund is reduced below the current balance by expenditures therefrom, the
27 | Navajo Nation shall restore that balance by the accumulation of annual deposits as
28 | specified in paragraphs (b) or (c) herein.

29 | (e) During any period in which any of the project works are operated and
30 | maintained by the United States, the Navajo Nation agrees the Emergency Reserve
31 | ~~F~~fund shall be available for like use by the United States.

32 | (f) On or before _____ of each year, the Navajo Nation shall provide a
33 | current statement of the principal and accumulated interest of the Emergency Reserve
34 | ~~F~~fund account to the Contracting Officer.

35 |
36 | 37-40. ADMINISTRATION OF FEDERAL PROJECT LANDS

37 |
38 | The lands and interests in lands acquired, withdrawn, or reserved and needed by
39 | the United States for the purposes of care, operation, and maintenance of Federal project
40 | works may be used by the Navajo Nation for such purposes. The Navajo Nation does not
41 | have the authority to issue any land-use agreement or grant that conveys an interest in
42 | Federal real property, nor to lease or dispose of any interest of the United States. The
43 | Navajo Nation shall ~~ensure that no~~report unauthorized encroachments ~~occurs~~ on Federal
44 | project lands and rights-of-way to the appropriate Federal agency. ~~The Nation does not~~
45 | ~~have the authority to issue any land-use agreement or grant that conveys an interest in~~
46 | ~~Federal real property, nor to lease or dispose of any interest of the United States.~~

1
2 | ~~38.41.~~ EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS,
3 RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION
4 AND MAINTENANCE
5

6 (a) The Contracting Officer may from time to time, examine the following: the
7 Navajo Nation's books, records, and reports; the project works being operated by the
8 Navajo Nation; the adequacy of the OM&R and safety of dams programs; the reserve
9 fund; and the water conservation program including the water conservation fund, if
10 applicable. Notwithstanding title ownership, where the United States retains a financial,
11 physical, or liability interest in facilities either constructed by the United States or with
12 funds provided by the United States, the Contracting Officer may examine any or all of
13 the project works providing such interest to the United States.

14 (b) The Contracting Officer may, or the Navajo Nation may ask the Contracting
15 Officer to, conduct special inspections of any project works being operated by the Navajo
16 Nation and special audits of the Navajo Nation's books and records to ascertain the extent
17 of any operation and maintenance deficiencies to determine the remedial measures
18 required for their correction and to assist the Navajo Nation in solving specific problems.
19 Except in an emergency, any special inspection or audit shall be made only after written
20 notice thereof has been delivered to the Navajo Nation by the Contracting Officer.

21 (c) The Navajo Nation shall provide access to the project works, operate any
22 mechanical or electrical equipment, and be available to assist in the examination,
23 inspection, or audit.

24 (d) The Contracting Officer shall prepare reports based on the examinations,
25 inspections, or audits and furnish copies of such reports and any recommendations to the
26 Navajo Nation.

27 (e) The costs incurred by the United States in conducting operation and
28 maintenance examinations, inspections, and audits and preparing associated reports and
29 recommendations related to high- and significant hazard dams and associated facilities
30 shall be nonreimbursable. Associated facilities include carriage, distribution, and
31 drainage systems; pumping and pump-generating plants; powerplant structures;
32 tunnels/pipelines; diversion and storage dams (low hazard); Type 2 bridges which are
33 Reclamation-owned bridges not located on a public road; regulating reservoirs (low
34 hazard); fish passage and protective facilities, including hatcheries; river channelization
35 features; rural/municipal water systems; desalting and other water treatment plants;
36 maintenance buildings and service yards; facilities constructed under Federal loan
37 programs (until paid out); and recreation facilities (reserved works only); and any other
38 facilities as determined by the Contracting Officer.

39 (f) Expenses incurred by the Navajo Nation, as applicable, in participating in
40 the operation and maintenance site examination will be borne by the Navajo Nation.

41 (g) Requests by the Navajo Nation for consultations, design services, or
42 modification reviews, and the completion of any operation and maintenance activities
43 identified in the formal recommendations resulting from the examination (unless
44 otherwise noted) are to be funded as project operation and maintenance and are
45 reimbursable by the Navajo Nation to the extent of current project operation and
46 maintenance allocations.

1 (h) Site visit special inspections that are beyond the regularly scheduled
2 operation and maintenance examinations conducted to evaluate a particular concern(s) or
3 problem(s) and provide assistance relative to any corrective action (either as a follow up
4 to an operation and maintenance examination or when requested by the Navajo Nation)
5 shall be nonreimbursable.

6 (i) The Contracting Officer may provide the State(s) an opportunity to observe
7 and participate in, at their own expense, the examinations and inspections. The State(s)
8 may be provided copies of reports and any recommendations relating to such
9 examinations and inspections.

10
11 | ~~39-42.~~ BOOKS, ACCOUNTS AND RECORDS

12
13 The Navajo Nation shall furnish to the Contracting Officer, as requested,
14 information pertaining to land use and crop census, water supply, water use, changes in
15 project works, and to other matters relating to the NIIP, the ALP, the NGWSP, and other
16 projects that may utilize the Navajo Nation's water rights supplied under this contract for
17 miscellaneous municipal, industrial, commercial and domestic uses. The Secretary and
18 the Navajo Nation shall jointly establish and maintain accounts and other books and
19 records such as are necessary to enable the Secretary to operate the subject facilities.
20 Reports thereon shall be furnished to the Contracting Officer in such form and on such
21 date or dates as the Contracting Officer may require. Subject to applicable Federal laws
22 and regulations, each party shall have the right during office hours to examine and make
23 copies of the other party's books and records relating to matters covered by this contract.
24 Records of diversions of water for use by the Navajo Nation pursuant to this contract
25 shall be supplied to the New Mexico State Engineer.

26
27 | ~~40-43.~~ CONTAMINATION OR POLLUTION
28 OF FEDERAL PROPERTY

29
30 (a) The Navajo Nation shall not allow contamination or pollution of Federal
31 project lands, project waters, or project works of the United States or administered by the
32 United States and for which the Navajo Nation has the responsibility for care, operation,
33 and maintenance by its employees or agents. The Navajo Nation shall also take
34 reasonable precautions to prevent such contamination or pollution by third parties.

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

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

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

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

13 (f) The Navajo Nation shall be liable for any response action or corrective
14 measure necessary to protect public health and the environment or to restore Federal
15 project lands, project waters, or project works that are adversely affected as a result of
16 such violation, and for all costs, penalties or other sanctions that are imposed for violation
17 of any Federal or Tribal laws and regulations concerning hazardous material. At the
18 discretion of the Contracting Officer, the United States may also terminate this Contract
19 as a result of such violation.

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

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

25
26 | ~~41-44.~~

CLEAN AIR

27 AND WATER

28
29 (a) The Navajo Nation agrees as follows:

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

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

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

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

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

- 1 (i) The term “Air Act” means the Clean Air Act, as amended
2 (42 U.S.C. 7401 *et seq.*).
- 3 (ii) The term “Water Act” means the Federal Water Pollution Control Act,
4 as amended (33 U.S.C. 1251 *et seq.*).
- 5 (iii) The term “clean air standards” means any enforceable rules,
6 regulations, guidelines, standards, limitations, orders, controls, prohibitions, or
7 other requirements which are contained in, issued under, or otherwise adopted
8 pursuant to the Air Act or Executive Order 11738, an applicable
9 implementation plan as described in Section 110 of the Air Act (42 U.S.C.
10 7410), an approved implementation procedure or plan under Section 111(c) or
11 Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or (d)), or an
12 approved implementation procedure under Section 112(d) of the Air Act (42
13 U.S.C. 7412(d)).
- 14 (iv) The term “clean water standards” means any enforceable limitation,
15 control, condition, prohibition, standard, or other requirement which is
16 promulgated pursuant to the Water Act or contained in a permit issued to a
17 discharger by the Environmental Protection Agency or by a state under an
18 approved program, as authorized by Section 402 of the Water Act
19 (33 U.S.C. 1342), or by local government to ensure compliance with
20 pretreatment regulations as required by Section 307 of the Water Act
21 (33 U.S.C. 1317).
- 22 (v) The term “comply” means compliance with clean air or water
23 standards. Comply shall also mean compliance with a schedule or plan
24 ordered or approved by a court of competent jurisdiction, the Environmental
25 Protection Agency, or an air or water pollution control agency in accordance
26 with the requirements of the Air Act or Water Act and regulations issued
27 pursuant thereto.
- 28 (vi) The term “facility” means any building, plant, installation, structure,
29 mine, vessel or other floating craft, location, or site of operations owned,
30 leased, or supervised by a contractor or subcontractor to be utilized in the
31 performance of a contract or subcontract. Where a location or site of
32 operations contains or includes more than one building, plant, installation, or
33 structure, the entire location or site shall be deemed to be a facility except
34 where the Director, Office of federal Activities, Environmental Protection
35 Agency, determines that independent facilities are collocated in one
36 geographical area.

37
38 | 42.45.

PEST MANAGEMENT

39
40 The Navajo Nation shall take appropriate steps to prevent the introduction and
41 spread of, and to otherwise control undesirable plants and animals, as defined by the
42 Contracting Officer, on Federal project lands, project waters, and project works for which
43 the Navajo Nation has operation and maintenance responsibility. The Navajo Nation is
44 responsible for inspecting its vehicles and equipment for reproductive and vegetative
45 parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive
46 species and other pests, and for removing such materials before moving its vehicles and

1 equipment onto any Federal land or out of any area on Federal project land where work is
2 performed. Where decontamination is required prior to entering Federal project land, it
3 shall be performed at the point of prior use, or at an approved offsite facility able to
4 process generated cleaning wastes. Upon the completion of work, decontamination shall
5 be performed within the work area before the vehicles and equipment are removed from
6 Federal project lands. Programs for the control of these undesirable plants and animals
7 on Federal project lands, project waters, and project works for which the Navajo Nation
8 has operation and maintenance responsibility will incorporate Integrated Pest
9 Management (IPM) concepts and practices. IPM refers to a systematic and
10 environmentally compatible program to maintain pest populations within economically
11 and environmentally tolerable levels. In implementing an IPM program, the Navajo
12 Nation will adhere to applicable Federal and State laws and regulations and Department
13 of the Interior and Bureau of Reclamation polices, directives, guidelines, and manuals.
14
15
16

17 | 43-46. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY
18

19 (a) In accordance with the provisions of Title 42 U.S.C. 2000-e-2(i), the Navajo
20 Nation shall, during the performance of this contract, give preference in employment to
21 Indian residentsmembers of the Navajo Nation Indian Reservation.~~members of the~~
22 ~~Nation~~. The Bureau of Indian Affairs Office of Employment Assistance shall be notified
23 of employment opportunities 48 hours before any positions are advertised to the general
24 public. Nothing in this section shall be read as prohibiting the Navajo Nation from giving
25 preferential employment to members of the Navajo Nation.

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

- 28 (i) The Navajo Nation will not discriminate against any employee or
29 applicant for employment because of race, color, religion, sex, disability, or
30 national origin. The Navajo Nation will take affirmative action to ensure that
31 applicants are employed, and that employees are treated during employment,
32 without regard to their race, color, religion, sex, disability, or national origin.
33 Such action shall include, but not be limited to the following: employment,
34 upgrading, demotion, or transfer; recruitment or recruitment advertising;
35 layoff or termination; rates of pay or other forms of compensation; and
36 selection for training, including apprenticeship. The Navajo Nation agrees to
37 post in conspicuous places, available to employees and applicants for
38 employment, notices to be provided by the Contracting Officer setting forth
39 the provisions of this nondiscrimination clause.
- 40 (ii) The Navajo Nation will, in all solicitations or advertisements for
41 employees placed by or on behalf of the Navajo Nation, state that all qualified
42 applicants will receive consideration for employment without regard to race,
43 color, religion, sex, disability, or national origin.
- 44 (iii) The Navajo Nation will send to each labor union or representative of
45 workers with which it has a collective bargaining agreement or other contract
46 or understanding, a notice, to be provided by the Contracting Officer, advising

1 the labor union or workers' representative of the Navajo Nation's
2 commitments under Section 202 of Executive Order 11246 of September 24,
3 1965, and shall post copies of the notice in conspicuous places available to
4 employees and applicants for employment.

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

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

14 (vi) In the event of the Navajo Nation's noncompliance with the
15 nondiscrimination clauses of this contract or with any of such rules,
16 regulations, or orders, this contract may be canceled, terminated or suspended
17 in whole or in part and the Navajo Nation may be declared ineligible for
18 further Government contracts in accordance with procedures authorized in
19 Executive Order 11246 of September 24, 1965, and such other sanctions may
20 be imposed and remedies invoked as provided in Executive Order 11246 of
21 September 24, 1965 or by rule, regulation, or order of the Secretary of Labor,
22 or as otherwise provided by law.

23 (vii) The Navajo Nation will include the provisions of paragraphs (1)
24 through (7), modified to refer to the party to be bound, in every subcontract or
25 purchase order unless exempted by the rules, regulations, or orders of the
26 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246
27 of September 24, 1965, so that such provisions will be binding upon each
28 subcontractor or vendor. The Navajo Nation will take such action with
29 respect to any subcontract or purchase order as may be directed by the
30 Secretary of Labor as a means of enforcing such provisions, including
31 sanctions for noncompliance: *Provided, however*, that in the event the Navajo
32 Nation becomes involved in, or is threatened with, litigation with a
33 subcontractor or vendor as a result of such direction, the Navajo Nation may
34 request the United States to enter into such litigation to protect the interests of
35 the United States.

36
37 | ~~44.47.~~ COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
38

39 (a) The Navajo Nation shall comply with Title VI of the Civil Rights Act of
40 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as
41 amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Americans with
42 Disabilities Act of 1990, as applicable, and any other applicable civil rights laws, as well
43 as with its respective implementing regulations and guidelines imposed by the U.S.
44 Department of the Interior and/or Bureau of Reclamation.

45 (b) These statutes require that no person in the United States shall be excluded
46 from participation in, be denied the benefits of, or be otherwise subjected to

1 discrimination under any program or activity receiving financial assistance from the
2 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.
3 By executing this contract, the Navajo Nation agrees to immediately take any measures
4 necessary to implement this obligation, including permitting officials of the United States
5 to inspect premises, programs, and documents.

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

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

16
17
18
19
20 | ~~45-48.~~ CERTIFICATION OF
21 NONSEGREGATED FACILITIES

22
23 The Navajo Nation hereby certifies that it does not maintain or provide for its
24 employees any segregated facilities at any of its establishments and that it does not permit
25 its employees to perform their services at any location under its control where segregated
26 facilities are maintained. It certifies further that it will not maintain or provide for its
27 employees any segregated facilities at any of its establishments and that it will not permit
28 its employees to perform their services at any location under its control where segregated
29 facilities are maintained. The Navajo Nation agrees that a breach of this certification is a
30 violation of the Equal Employment Opportunity clause in this contract. As used in this
31 certification, the term "segregated facilities" means any waiting rooms, work areas, rest
32 rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and
33 other storage or dressing areas, parking lots, drinking fountains, recreation or
34 entertainment areas, transportation, and housing facilities provided for employees which
35 are segregated by explicit directive or are in fact segregated on the basis of race, creed,
36 color, or national origin, because of habit, local custom, disability, or otherwise. The
37 Navajo Nation further agrees that (except where it has obtained identical certifications
38 from proposed subcontractors for specific time periods) it will obtain identical
39 certifications from proposed subcontractors prior to the award of subcontracts exceeding
40 \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity
41 clause; that it will retain such certifications in its files; and that it will forward the
42 following notice to such proposed subcontractors (except where the proposed
43 subcontractors have submitted identical certifications for specific time periods):
44

45 | ~~46-49.~~ NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
46 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1
2 A Certification of Nonsegregated Facilities must be submitted prior to the award
3 of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal
4 Employment Opportunity clause. The certification may be submitted either for each
5 subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or
6 annually). Note: The penalty for making false statements in offers is prescribed in
7 18 U.S.C. 1001.
8

9 | 47.50. COMPLIANCE WITH RECLAMATION LAWS

10
11 The parties agree that the delivery of irrigation water or the use of federal
12 facilities pursuant to this contract is governed by applicable Reclamation law, except that
13 this delivery or use is not subject to the Reclamation Reform Act of 1982, as amended.
14

15 | 48.51. RULES, REGULATIONS, AND DETERMINATIONS

16
17 (a) The United States or its assigns shall take all prudent and ordinary measures
18 to operate and maintain all existing facilities necessary to this contract, but nothing in this
19 section shall be construed to require the United States to operate such facilities beyond
20 the useful life of the existing facilities. These facilities will be operated for multiple
21 benefits of the project in accordance with project authorization and contracts, including
22 this contract. The Contracting Officer, in consultation with the Navajo Nation, shall have
23 the right to make determinations necessary to administer this contract that are consistent
24 with the express and implicit conditions of this contract, the laws of the United States and
25 rules and regulations promulgated by the Secretary of the Interior.

26 (b) Where the terms of this contract provide for action to be based upon the
27 opinion or determination of either party to this contract, whether or not stated to be
28 conclusive, said terms shall not be construed as permitting such action to be predicted
29 upon arbitrary, capricious, or unreasonable opinions or determinations.
30

31 | 49.52. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

32
33 (a) The obligation of the Navajo Nation to pay the United States as provided in
34 this contract is a general obligation of the Navajo Nation notwithstanding the manner in
35 which the obligation may be distributed among the Navajo Nation’s water users and
36 notwithstanding the default of individual water users in their obligation to the Navajo
37 Nation.

38 (b) The payment of charges becoming due hereunder is a condition precedent to
39 receiving benefits under this contract. The Navajo Nation shall not have the right to the
40 use of water supplied from any project facilities during any period in which the Navajo
41 Nation may be in arrears in the payment of any operation, maintenance, and replacement
42 charges due the United States or in arrears for more than 12 months in the payment of
43 any construction and interest installments due the United States. The Navajo Nation shall
44 not deliver water under the terms and conditions of this contract for lands or parties that
45 are in arrears in the advance payment of water rates or OM&R charges or in arrears more

1 than 12 months in the payment of construction charges as levied or established by the
2 Navajo Nation.

3
4 | ~~50.53.~~ MEDIUM FOR TRANSMITTING PAYMENTS

5
6 All payments from the Navajo Nation to the United States under this contract
7 shall be by the medium requested by the United States on or before the date payment is
8 due. The required method of payment may include checks, wire transfers, or other types
9 of payment specified by the United States.

10
11 | ~~51.54.~~ CHARGES FOR DELINQUENT PAYMENTS

12
13 (a) The Navajo Nation shall pay penalty charges on delinquent installments or
14 payments. When payment is not received by the due date, the Navajo Nation shall pay an
15 interest charge for each day the payment is delinquent beyond the due date. When a
16 payment becomes 60 days delinquent, the Navajo Nation shall pay an administrative
17 charge to cover additional costs of billings and processing the delinquent payment. When
18 a payment is delinquent 90 days or more, the Navajo Nation shall pay an additional
19 penalty charge of 6.0 percent per year for each day the payment is delinquent beyond the
20 due date. Further, the Navajo Nation shall pay any fees incurred for debt collection
21 services associated with the delinquent payment.

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

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

30
31 | ~~52.55.~~ WATER QUALITY

32
33 The operation and maintenance of project facilities shall be performed in such
34 manner as is practicable to maintain the quality of raw water made available through such
35 facilities at the highest level reasonably attainable, as determined by the United States.
36 The United States does not warrant the quality of water and is under no obligation to
37 construct or furnish water treatment facilities to maintain or better the quality of water;
38 except, that the Secretary shall construct, operate and maintain treatment facilities for the
39 | NGWSP as authorized by ~~subs~~Section 10602 of the Navajo Settlement Act.

40
41
42 | ~~53.56.~~ WATER CONSERVATION

43
44 Prior to the delivery of water to the Navajo Nation provided from or conveyed
45 through federally constructed or federally financed facilities pursuant to this contract, the
46 Navajo Nation shall develop an effective water conservation program which shall contain

1 definite water conservation objectives, appropriate economically feasible water
2 conservation measures, and time schedules for meeting those objectives. At subsequent
3 three-year intervals, the Navajo Nation shall submit a report on the results of the program
4 to the Contracting Officer for review. Based on the conclusions of the review, the
5 Contracting Officer and the Navajo Nation shall consult and agree to continue or to revise
6 the existing water conservation program. This paragraph shall be included in all
7 subcontracts, and such measures shall be required for all water purchasers.

8
9 | 54.57. CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

10
11 The expenditure of any money or the performance of any obligation by the United
12 States under this contract shall be contingent upon appropriations or allotments of funds.
13 Absence of appropriation or allotment of funds shall not relieve the Navajo Nation from
14 any obligations under this contract. No liability shall accrue against the United States in
15 case funds are not appropriated or allotted.

16
17 | 55.58. NOTICES

18
19 Any notice, demand, or request authorized or required by this contract shall be
20 deemed to have been given on behalf of the Navajo Nation when mailed, postage prepaid,
21 or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation,
22 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84111, and on behalf of the
23 United States when mailed, postage prepaid, or delivered to the President, Navajo Nation,
24 Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515. The designation
25 of the addressee or the address may be changed by notice given in the same manner as
26 provided in this section for other notices.

27
28 | 56.59. OFFICIALS NOT TO BENEFIT

29
30 No Member of or Delegate to Congress or Resident Commissioner or official of
31 the Navajo Nation shall benefit from this contract or any subcontract other than as a
32 water user or landowner in the same manner as other water users or landowners.

33
34
35
36 In witness whereof, the parties hereto have duly executed this contract the day and
37 year first above written.

38
39
40
41 |
42 THE UNITED STATES OF AMERICA

43 Department of the Interior

44
45 By: _____

1
2
3
4
5
6
7

Secretary of the Interior

THE NAVAJO NATION

By: _____

President

DRAFT