

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND
THE NAVAJO NATION

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UNITED STATES
DEPARTMENT OF THE INTERIOR
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CONTRACT BETWEEN THE UNITED STATES AND
THE NAVAJO NATION

PART I. SETTLEMENT

1. PREAMBLE

This contract is entered into this ____ day of _____, _____, 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, the Act of June 13, 1962 (76 Stat. 96), 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.

Comment [rcr1]:
Do we need to include CRSP in the preamble?

2. EXPLANATORY RECITALS

~~Witnesseth, That:~~

~~Whereas~~WHEREAS, the United States and the Navajo Nation have negotiated a resolution of all water right claims of the 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 Nation and the State of New Mexico; and

1 | ~~Whereas~~WHEREAS, the settlement of these claims will secure to the Navajo
2 Nation a perpetual water supply; and

3 | ~~Whereas~~WHEREAS, to preserve opportunities for the Navajo Nation to develop
4 while at the same time allowing for other economic development in New Mexico, it is the
5 intent of this contract that the Navajo Nation may exercise the right to market the water
6 supply secured to it under this contract subject to the provisions of this contract and the
7 agreement between the State of New Mexico, the Navajo Nation and the United States
8 setting forth a stipulated and binding settlement agreement as to the rights of the Nation
9 to use and administer waters of the San Juan River Basin in New Mexico, signed by the
10 State of New Mexico and the Navajo Nation on _____ and executed by
11 the Secretary on _____; and

12 | ~~Whereas~~WHEREAS, the Federal government is undertaking to construct
13 additional water development facilities to fulfill the terms and conditions of the
14 Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) and this contract,
15 including facilities to extend the current service area of the Navajo Indian Irrigation
16 Project, as well as, facilities to convey much needed municipal, industrial and domestic
17 water supplies to Navajo Nation communities; and

18 | ~~Whereas~~WHEREAS, the Secretary of the Interior has determined in accordance
19 with section 11 of the Act of June 13, 1962 (76 Stat. 96), pursuant to the hydrologic
20 determination submitted to Congress on _____ that there is sufficient
21 water reasonably likely to be available for use in the State of New Mexico to enable the
22 United States to enter into this contract:

23
24 NOW, THEREFORE, in consideration of mutual and dependent covenants and
25 conditions contained herein, the parties agree to the following:

26
27 3. GENERAL DEFINITIONS

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

30 (a) "Animas-La Plata Project", or "ALP", means the project of the same name
31 authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-

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

3 (b) “Contracting Officer” means the representative of the Secretary of the
4 Interior authorized to administer this contract.

5 (c) “Lake Nighthorse”, formerly Ridges Basin Reservoir, means the reservoir
6 created by the impoundment on Basin Creek by Ridges Basin Dam, a facility of the ALP
7 as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat.
8 2763A-258).

9 (d) “Intergovernmental Agreement” or “IGA” means that agreement dated
10 March 4, 2009 and entered into by the Colorado Water Resource and Power
11 Development Authority, the La Plata Conservancy District, the Navajo Nation, the San
12 Juan Water Commission, the Southern Ute Indian Tribe, and the Ute Mountain Ute
13 Indian Tribe to establish the Animas-La Plata Operations, Maintenance, and Replacement
14 Association (Association) and provide for the terms, conditions, and concepts under
15 which OM&R of the Transferred Works of the ALP is to take place.

Comment [rcr2]:
This definition was
moved to this location
following the technical
meeting.

16 (e) “Navajo Nation” or “Nation” means a body politic and federally-recognized
17 Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe
18 List of 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the
19 “Navajo Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo
20 Tribe of Indians” and other similar names, and includes all bands of Navajo Indians and
21 chapters of the Navajo Nation, acting through its authorized representative.

22 (f) “Navajo-Gallup Water Supply Project”, or “NGWSP”, means the project of
23 the same name authorized by Section 10602 of the Northwestern New Mexico Rural
24 Water Projects Act (123 Stat. 1367).

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

28 (h) “Navajo Lands” means lands set aside as reservation lands for the Navajo
29 People, whether by treaty, statute, executive order or public land order. Also included in
30 this definition are lands that are held in trust for the Nation by the United States, held in

1 trust for members of the Nation by the United States, or held in fee ownership by the
2 Nation.

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

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

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

14 (l) “OM&R” means annual operation, maintenance and replacement.

15 (m) “Project Operator” means the entity that has been transferred the OM&R
16 responsibilities for a specific project covered under this contract.

17 (n) “Project Participants” means the Navajo Nation, the City of Gallup, and,
18 should they choose to participate, the Jicarilla Apache Nation.

19 (o) “San Juan River” means that river which originates in the State of Colorado
20 and flows through or constitutes the boundary of the Navajo Indian Reservation in
21 northwestern New Mexico and southeastern Utah, where it flows into Lake Powell.

22 (p) “Secretary” means the Secretary of the U.S. Department of the Interior or an
23 authorized designee.

24 (q) “Settlement Agreement” means the agreement between the State of New
25 Mexico, the Nation and the United States setting forth a stipulated and binding settlement
26 agreement as to the rights of the Nation to use and administer waters of the San Juan
27 River Basin in New Mexico, signed by the State of New Mexico and the Nation on
28 _____ and executed by the Secretary on _____.

29 (r) “Statutory Water Allocation” means the municipal and industrial (M&I)
30 water allocation delivered to the Nation from the ALP pursuant to section

Comment [rcr3]:
This change is to recognize that the NGWSP can be constructed without the participation of the Jicarilla Apache Nation.

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1 6(a)(1)(A)(ii)(III) of the Colorado Ute Indians Water Rights Settlement Act of 1988
2 (Public Law 100-585).

Comment [rcr4]:
The term "Statutory Water Allocation" is used in the ALP section of the contract and a definition was needed.

3
4 4. CONDITIONS

5 This contract will give rise to rights and obligations on the part of the Nation and
6 the United States and will become enforceable only after a partial final decree is entered
7 by the District Court of San Juan County, New Mexico, in the general stream
8 adjudication of the San Juan River stream system, *New Mexico v. United States*, No. 75-
9 184, which partial final decree adjudicates water rights of the Nation in and from the San
10 Juan River Basin in New Mexico per paragraph 3.0 of the Settlement Agreement and is
11 of the form provided in Appendix 1 to the Settlement Agreement.

12
13 5. PRELIMINARY UNDERSTANDINGS

14 (a) The United States and the Nation will proceed in good faith to take all steps
15 necessary to assure the entry of the partial final decree described in Part I Article 4.

16 (b) The Nation may purchase, receive and use ALP water or NGWSP water in
17 accordance with the relevant provisions of this contract prior to the entry of the partial
18 final decree; except, that the obligation of the United States to deliver such water shall
19 become null and void if the partial final decree is not entered by the date specified in
20 subsection 10701(e)(1)(A)(ii) of the Navajo Settlement Act. Neither party will have any
21 obligation under this contract to purchase water from or deliver water to the other party
22 for the NIIP until the entry of the partial final decree.

23 (c) The obligations of the parties under Contract No. 14-06-W-269 between the
24 United States and the Nation for delivery of water from Navajo Reservoir for the
25 principal purpose of furnishing irrigation water to the NIIP shall continue in force until
26 the entry of the partial final decree referred to in Part I Article 4, after which Contract No.
27 14-06-W-269 shall be superseded by this contract.

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

31

1 PART II. NIIP

2 1. WATER DELIVERY PROVISIONS

3 ~~(a) The United States agrees to deliver, or make available for delivery, to the~~
4 ~~Nation water for diversion of not more than 530,650 acre-feet of water per year, on~~
5 ~~average, during any period of ten consecutive years, and not more than 606,850 acre-feet~~
6 ~~of water in any one year, from Navajo Reservoir under New Mexico State Engineer File~~
7 ~~No. 2849 and from inflow to the San Juan River below Navajo Dam under New Mexico~~
8 ~~State Engineer File No. 3215, in combination, subject to the provisions of the Navajo~~
9 ~~Settlement Act, the Settlement Agreement, the partial final decree referred to in Part I~~
10 ~~Article 4, and this contract. Of the water to be made available under this subsection, the~~
11 ~~Nation may divert or receive:~~

12 (a) ~~a~~An average diversion of not more than 508,000 acre-feet per year, or the
13 quantity of water necessary to supply an average depletion of 270,000 acre-feet per year
14 from the San Juan River, whichever is less, during any period of ten consecutive years,
15 and not more than 584,200 acre-feet in any one year for delivery to the NIIP from:

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

- 18 (A) the intake to the NIIP main canal; or
- 19 (B) the Navajo Dam outlet works; or

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

22 ~~(iii) both (i) and (ii) in combination, and~~

23 ~~(iii) A diversion as specified in Part IV Article 1(a)(ii) herein.~~

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

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

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

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

3 (iv) The implementation of the alternate water source provisions described
4 in subparagraph 9.2 of the agreement executed under section 10701(a)(2) of
5 the Navajo Settlement Act.

6 ~~(b)(c)~~ The Nation under this contract shall have no holdover storage rights in
7 Navajo Reservoir from year to year. -Any water at Navajo Reservoir subject to delivery
8 hereunder not called for by the end of each calendar year shall become integrated with
9 the water supply for all purposes of the reservoir at that time.

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

14 ~~(e)(e)~~ Uses of water to make the diversions and depletions described in
15 subparagraphs 3(d), 3(e) and 3(f) of the partial final decree, referred to in Part I Article 4,
16 that are supplied under this Contract pursuant to the alternate water source provisions of
17 subparagraph 9.2 of the Settlement Agreement, and that are accounted under the contract
18 rights for delivery of water under the NIIP described in Part II herein, shall not be
19 required to have 30 days advance notice.

20 ~~(e)(f)~~ Nothing in this section is intended to impose on the United States
21 any obligation to maintain Navajo Dam and Reservoir, or the NIIP beyond their useful
22 lives or to take extraordinary measures to keep these facilities operating.

23 ~~(f)(g)~~ The points of delivery of water made available for use pursuant to this
24 section from Navajo Reservoir and the San Juan River shall be as specified in Part II
25 Article 1(a) unless changed consistent with the partial final decree referred to in Part I
26 Article 4 and pursuant to agreement of the Contracting Officer and the Nation. Water
27 made available at Navajo Dam to make the diversions and depletions described in
28 subparagraphs 3(d), 3(e) and 3(f) of the partial final decree, referred to in Part I Article 4,
29 that are supplied under this Contract pursuant to the alternate water source provisions of
30 subparagraph 9.2 of the Settlement Agreement shall be accounted under the contract
31 rights for delivery of water under the NIIP described in Part II herein.

Comment [rcr5]:
This language is intended to recognize the provisions of the Act that allow for additional uses of the NIIP water.

1 ~~(g)(h)~~ To the extent that delivery of water is made through or from federal
2 facilities, the Nation will reimburse ~~costs associated with this delivery for this service~~ in
3 accordance with the provisions of Part I Article 3 of this contract.

Comment [rcr6]:
This language is intended to address Stanley's concern over the use of "service". Also used in Parts III and IV.

4
5 2. WATER SUPPLY AND SHORTAGE

6 (a) Notwithstanding any other provisions of this contract, in times of shortage in
7 the Navajo Reservoir water supply to meet demands under contracts for delivery of water
8 from said supply, taking into account water available from inflows below Navajo Dam to
9 help meet the demands, the Nation will share in the available water supply in the manner
10 set forth in section 11 of the Act of June 13, 1962 (76 Stat. 96), and section 10402
11 ~~(e)10604(b)~~ of the Navajo Settlement Act.

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

18
19 3. COST PROVISIONS

20 ~~(a)~~ Charges for water made available pursuant to Part II Article 1 will be as follows:

21 (a) ~~The Nation's construction cost obligation for the NIIP within the ability of~~
22 ~~the land to repay Construction costs of Navajo Dam and Reservoir that are assignable to~~
23 ~~water delivered for irrigation on the NIIP or other Navajo Lands~~ shall be allocated and
24 payment deferred under the provisions of the Leavitt Act (47 Stat. 564), as authorized in
25 subsection 4(d) of the Colorado River Storage Project Act (70 Stat. 105). ~~The Nation's~~
26 ~~construction cost obligation for the NIIP beyond the ability of the land to repay shall be~~
27 ~~nonreimbursable as authorized in subsection (6) of the Colorado River Storage Project~~
28 ~~Act (70 Stat. 105).~~

29 (b) ~~The Nation's OM&R obligation for water made available pursuant to Part II~~
30 ~~Article 1 will be as follows: Construction costs of Navajo Dam and Reservoir shall be~~
31 ~~charged to the Nation at the annual amortization rate of \$2.60 per acre foot for Navajo~~

Comment [rcr7]:
Changes here were made to make the Contract consistent with the Act.

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1 ~~Reservoir water delivered for non-irrigation purposes, ending after the year the~~
2 ~~construction costs of the Colorado River Storage Project initial units allocated to~~
3 ~~irrigation have been fully repaid.~~

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

11 ~~(ii)~~ OM&R costs for the NIIP shall be paid on the basis of annual
12 estimates made by the Contracting Officer, or the NIIP Operator based upon
13 water use estimates provided by the Nation pursuant to Part II Article 3(c)(iv).

14 ~~(ii)~~ ~~The Contracting Officer or a designee will bill the Nation for construction~~
15 ~~and OM&R costs for Navajo Dam and Reservoir on or before September 1 of~~
16 ~~the year preceding the year of use based upon water use estimates provided by~~
17 ~~the Nation pursuant to Part II Article 3(b)(iv). The Nation shall pay all~~
18 ~~accrued costs within 30 days after receipt of the bill.~~

19 ~~(b) Billing of costs and payment. The Nation's cost obligations for the NIIP will be~~
20 ~~as follows:~~

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

23 ~~(i)~~ The Contracting Officer or a designee will bill the Nation for OM&R
24 costs for Navajo Dam and Reservoir on or before September 1 of the year
25 preceding the year of use based upon water use estimates provided by the
26 Nation pursuant to Part II Article 3(c)(iv). The Nation shall pay all accrued
27 costs within 30 days after receipt of the bill.

28 ~~(ii)~~ OM&R costs for the NIIP shall be paid on the basis of annual
29 estimates made by the Contracting Officer, or the NIIP Operator based upon
30 water use estimates provided by the Nation pursuant to Part II Article 3(b)(iv).

31 An estimate from the Contracting Officer, or NIIP Operator, will be sent to

1 | the Nation on or before May 1 for the next year's annual reimbursable NIIP
2 | OM&R costs for each calendar year in quarterly payments which will be due
3 | on December 31 of the same calendar year as the billing, and on March 31,
4 | June 30, and September 30 of the year of applicability. -The first such billing
5 | will be issued immediately following execution of this contract. -In the event
6 | this first notice shall be for costs of service of less than a full year, such costs
7 | shall be prorated for the period covered. -An itemization of the OM&R costs
8 | will accompany each billing.

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

17 | (iv) ~~Billings from the Contracting Officer, or the any Project Operator of a~~
18 | ~~specific project,~~ and payments by the Nation of the ~~construction and~~ OM&R
19 | costs outlined under this section shall be made on the basis of Part II Article
20 | 3(ba). -For project operation purposes, the Nation will provide an annual
21 | notice to the Contracting Officer, or the Project Operator ~~of a specific project,~~
22 | ~~identifying limiting~~ the amount of water estimated to be used by the Nation,
23 | the estimated period and point of diversion for each intended purpose and a
24 | listing of all executed subcontracts with third parties, including those
25 | subcontracts anticipated to be executed during the year of applicability. -The
26 | Nation shall send this notice on or before February 1 of the year preceding the
27 | year of use described in the notice.- Upon receipt of such notice, the
28 | Contracting Officer, or the Project Operator ~~of a specific project,~~ will bill the
29 | Nation for payment of costs as prescribed herein. -Billing adjustments will be
30 | made to correct for differences in the estimated and actual use of water, as
31 | well as, the estimated and actual costs during the preceding year.

Comment [rcr8]:
The changes here address the separation of the projects in this contract and modify the language initially used when all projects were discussed together.

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4. RESPONSIBILITY FOR DISTRIBUTION

(a) Upon delivery, as specified under Part II Article 1(a) herein, the Nation shall be responsible for the control, carriage, handling, distribution, measurement and use of all water made available under this contract, and shall hold the United States, its officers, agents, employees, and successors or assigns, harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, carriage, handling, distribution or use of such water beyond the point of delivery; except to the extent that such responsibilities are placed on the United States by Act of Congress

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

5. ENVIRONMENTAL COMPLIANCE
Construction and operation of the NIIP will be in accordance with the Environmental Impact Statement (EIS) No. INT FES 76-52.

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Comment [rcr9]: Identifies NIIP EIS and provides a baseline for future environmental compliance.

PART III. ALP

1. WATER DELIVERY PROVISIONS

(a) As provided for in the Colorado Ute Settlement Act Amendments of 2000, the United States agrees to deliver, or make available for delivery, to the Nation water for annual diversion of not less than 4,680 acre-feet of water, with an average annual depletion not to exceed 2,340 acre-feet from the ALP water supply under New Mexico State Engineer File No. 2883, subject to the provisions of the Navajo Settlement Act, the Settlement Agreement, the partial final decree referred to in Part I Article 4, and this contract. Water delivered pursuant to this article shall be measured utilizing measuring facilities installed by the United States as a part of the ALP at the following points of delivery:

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

1 (b) The Nation may divert or receive this water from the Animas River at the
2 points of diversion for supplying water to the NNMP for delivery to Nation communities,
3 recipients or subcontractors allotted water by the Nation under its water rights for the
4 ALP. The Nation's ALP water allocation diverted from the San Juan River will be either
5 replaced with ALP water released from Lake Nighthorse or natural river flows bypassed
6 at the Durango Pumping Plant.

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

9 (d) If the IGA is voided or otherwise terminated, the Nation under this contract
10 shall have 869 acre-feet of storage capacity space allocated for its exclusive use in Lake
11 Nighthorse to support use of the ALP water supply as described in Part III Article 1(a).
12 The United States, or the Project Operator, shall fill and refill the Nation's storage
13 capacity space as often as direct flow is available from the Animas River to fill said space
14 under the ALP diversion right issued in the State of Colorado and the Animas-La Plata
15 Project Compact (82 Stat. 898). The Nation shall have holdover storage rights in Lake
16 Nighthorse from year to year to the extent that water stored in the Nation's storage
17 capacity space may be held for exclusive delivery to the Nation in future years as all or a
18 portion of the Nation's Statutory Water Allocation as necessary to meet the delivery
19 demands of the Nation in accordance with Part III Article 1(a) and 3(a). Nothing in this
20 contract shall prohibit the Nation from acquiring additional storage capacity space in
21 Lake Nighthorse if additional space becomes available.

22 (e) The Nation must notify the Contracting Officer or the ~~appropriate~~-Project
23 Operator of any changes in delivery of water from the ALP prior to requested change of
24 delivery of water from the ALP under State Engineer File No. 2883.

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

29 (g) The points of delivery of water made available for use pursuant to this
30 section from the ALP shall be as specified in Part III Article 1(a) unless changed

Comment [rcr10]:
NMISC would like further discussion concerning the points of delivery for the ALP.

Comment [rcr11]:
This language is consistent with other contracts on the ALP.

1 consistent with the partial final decree referred to in Part I Article 4 and pursuant to
2 written agreement of the Contracting Officer and the Nation.

3 (h) To the extent that delivery of water is made through or from federal
4 facilities, the Nation will reimburse costs associated with this delivery~~for this service~~ in
5 accordance with the provisions of Part III Article 5 of this contract.

6
7 2. CONSTRUCTION AND OPERATION OF FACILITIES

8 (a) Nothing herein shall be construed to obligate the United States to construct,
9 install, operate or maintain dams, pumps, pipelines, storage tanks, distribution lines or
10 other facilities required to take, measure, convey or distribute water for use beyond
11 agreed upon points of delivery; except, that the United States shall have such obligations
12 as conferred upon the Secretary by the authorities to construct, maintain and operate the
13 ALP in accordance with the Colorado River Storage Project Act (70 Stat. 105), the Act of
14 June 13, 1962 (76 Stat. 96), and the Colorado Ute Settlement Act Amendments of 2000
15 (114 Stat. 2763A-258). Nor shall anything herein be construed to affect or alter
16 obligations that the United States may have under treaty, statute or otherwise to provide
17 or operate other water project facilities and water distribution systems on Navajo Lands.

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

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

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

28 (ii) The Project Operations Committee will initially consist of
29 representatives of those entities which have been identified by the Colorado
30 Ute Settlement Act Amendments of 2000, as amended, to receive a water
31 allocation. Initially, this committee will determine the appropriate entity to

Comment [rcr12]:
In order to prevent confusion between ALP and NGWSP the term "sponsors" was inserted which is consistent with ALP references.

1 contract with Reclamation for the operation and maintenance of ALP
2 multipurpose facilities and the development, among the ALP contractors, of a
3 common understanding of the appropriate level of OM&R activities to be
4 performed on the ALP multipurpose facilities to assure the long-term
5 operational integrity of ALP and public safety. Ultimately, this committee
6 will oversee the ongoing OM&R activities of ALP, providing consultation and
7 coordination among the committee members on such items as annual OM&R
8 funding, maintenance schedules, and public safety issues.

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

16 |
17 3. WATER SUPPLY AND SHORTAGE

18 (a) With respect to water made available from the ALP under the terms of this
19 contract, during periods when the Contracting Officer, or the ALP Operator finds that the
20 direct flow of the Animas River physically available is insufficient to supply 100 percent
21 of the water diversion demands under contracts for delivery of ALP water, the Nation
22 shall share in the available direct flow consistent with Article 1 of the Animas-La Plata
23 Project Compact (82 Stat. 898).

24 (b) Pursuant to Part III Article 1 of this contract, the Nation may request and
25 require of the United States the release of any and all water that the Nation may have
26 stored in Lake Nighthorse for delivery to its point of diversion of ALP water in the State
27 of New Mexico as necessary to meet the delivery demands of the Nation under the ALP
28 of not more than 4,680 acre-feet with an average annual depletion of 2,340 acre-feet in
29 any one year. In any year in which there may occur a shortage from any cause, the
30 Contracting Officer or the ALP Operator reserves the right to apportion the available
31 ALP water allocation pursuant to the Colorado Ute Settlement Act Amendments of 2000,

1 as amended, the IGA, and applicable laws, including the Animas-La Plata Project
2 Compact, among the ALP contractors entitled to receive ALP water in accordance with
3 the conclusive determination of the Bureau of Reclamation or the ALP Operator.

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

10 (d) If the IGA is in effect, evaporation of the Nation's water stored in Lake
11 Nighthorse shall be accounted for as specified under the Joint Storage Pool concept in the
12 IGA.

13 (e) If the IGA is voided or is otherwise terminated, wWater stored in Lake
14 Nighthorse by or on behalf of the Nation shall be subject to loss by its proportionate share
15 of reservoir evaporation and, upon release, channel conveyance loss. The evaporation
16 loss on the Nation's stored water in Lake Nighthorse will not be charged against the
17 diversion amount specified in Part III Article 1.

Comment [rcr13]:
This language is again
to recognize the
existence of the ALP
agreements, to which
the Nation is a party.

19 4. BLOCK NOTICE FOR PROJECT WATER DELIVERY

20 (a) When the ALP Project Water becomes available for use by the Nation, the
21 United States shall, after consultation, give the Nation written notice, referred to herein as
22 the "block notice". The block notice shall contain: the quantity of Project Water available
23 to the Nation from the Project, and the effective date that water is available for delivery
24 to the Nation.

25 (b) The block notice and any amendments thereto shall become a part of this
26 contract.

28 5. COST PROVISIONS

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

30 (a) Prior to water becoming available for use by the Nation, pursuant to Part III
31 Article 4(a) above, the OM&R costs allocated to the Nation's ALP Project Water shall be

1 paid by Reclamation. Upon water becoming available for use by the Nation, pursuant to
2 Part III Article 4(a) above, the Contracting Officer will notify the Nation of the transfer
3 of responsibility for the Nation's ALP OM&R costs at least sixty (60) days prior to the
4 effective date of the transfer.

5 (b) The OM&R costs allocated to the Nation's Project Water will be comprised
6 of:

7 (i) the Nation's share of Fixed OM&R costs as defined in the IGA. The
8 Nation's share, as identified in the draft IGA, would be 2.5% of the total
9 Fixed OM&R costs. The final allocation of Fixed OM&R costs will be
10 finalized and stated in the OM&R Transfer Contract between Reclamation and
11 the Association, which transfers OM&R responsibility to the Association;

12 (ii) Variable OM&R costs, which are actual costs of replacing Project
13 Water released from Lake Nighthorse by request of the Nation, which are
14 further defined in the IGA;

15 (iii) provided, however, that the IGA contains provisions for a Variable
16 OM&R fund, designed to pay all or part of the Project Variable OM&R costs.

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

25 (d) All OM&R costs associated with the NNMP shall be the sole responsibility
26 of the Nation. In addition, the Nation shall be responsible for providing OM&R of the
27 NNMP and for funding the OM&R costs of the pipeline if ownership of the pipeline is
28 transferred to the Nation.

29 (e) In the event either the ALP OM&R cost estimate falls short of the actual
30 costs in any period, or whenever it is anticipated by the Contracting Officer that a deficit
31 will occur during the year, supplemental notices may be issued by the Contracting Officer

Comment [rcr14]:
These provisions are intended to allow for compliance with ALP concepts and agreements.

1 requesting additional funds. OM&R funds not spent during one calendar year will be
2 carried over for use during the next calendar year with funds required for that year being
3 reduced accordingly. An itemized statement of actual costs incurred during each year
4 shall be furnished to the Nation.

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

20 6. RESPONSIBILITY FOR DISTRIBUTION

21 (a) Upon delivery, as specified under Part III Article 1(a) herein, the Nation
22 shall be responsible for the control, carriage, handling, distribution, measurement and use
23 of all water made available under this contract, and shall hold the United States, its
24 officers, agents, employees, and successors or assigns, harmless from every claim for
25 damages to persons or property, direct or indirect, and of whatever nature, arising out of
26 or in any manner connected with the control, carriage, handling, distribution or use of
27 such water beyond the point of delivery; except to the extent that:

- 28 (i) such responsibilities are placed on the United States by Act of
29 Congress; and

(ii) provisions of section 10605(b) of the Navajo Settlement Act placed upon the City of Farmington certain responsibilities for the diversion, treatment and conveyance of water made available under this contract.

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

7. ENVIRONMENTAL COMPLIANCE
Construction and operation of the ALP will be in accordance with the Environmental Commitments in Chapters 4 and 5 of the Final Supplemental EIS, dated July 2000 and subsequent Record of Decision dated September 25, 2000.

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Comment [rcr15]: Identifies ALP EIS and provides a baseline for future environmental compliance.

PART IV. NGWSP

1. WATER DELIVERY PROVISIONS

~~(a) The United States agrees to deliver, or make available for delivery, to the Nation water for diversion of not more than 530,650 acre-feet of water per year, on average, during any period of ten consecutive years, and not more than 606,850 acre feet of water in any one year, from Navajo Reservoir under New Mexico State Engineer File No. 2849 and from inflow to the San Juan River below Navajo Dam under New Mexico State Engineer File No. 3215, in combination, subject to the provisions of the Navajo Settlement Act, the Settlement Agreement, the partial final decree referred to in Part I Article 4, and this contract. Of the water to be made available under this subsection, the Nation may divert or receive:~~

~~(b) A diversion as specified in Part II Article 1(a)(i) herein; and~~

(a) A diversion of not more than 22,650 acre-feet, or the quantity of water necessary to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is less in any one year for delivery to communities, recipients or subcontractors allotted water by the Nation under its water rights for the NGWSP uses in New Mexico from:

Comment [rcr16]: This change was made to allow the contract to be segmented.
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(i) Navajo Reservoir from the following delivery points under State Engineer File No. 2849:

- (A) the intake to the NIIP main canal; or
- (B) the Navajo Dam outlet works; or

1 (ii) inflows below Navajo Dam under State Engineer File No. 3215 at

2 Cutter Reservoir; or

3 (iii) a NGWSP diversion on the San Juan River under State Engineer File

4 No. 3215; or

5 (iv) All in combination.

Comment [rcr17]:
NMISC would like to discuss these delivery points further.

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

9 (c) The points of delivery of water made available for use pursuant to this
10 section from Navajo Reservoir and the San Juan River shall be as specified in Part IV
11 Article 1(a) unless changed consistent with the partial final decree referred to in Part I
12 Article 4 and pursuant to agreement of the Contracting Officer and the Nation. ~~Water~~
13 ~~made available at Navajo Dam to make the diversions and depletions described in~~
14 ~~subparagraphs 3(d), 3(e) and 3(f) of the partial final decree, referred to in Part I Article 4,~~
15 ~~that are supplied under this Contract pursuant to the alternate water source provisions of~~
16 ~~subparagraph 9.2 of the Settlement Agreement shall be accounted under the contract~~
17 ~~rights for delivery of water under the NIIP described in Part II herein.~~

Comment [rcr18]:
This section was requested to be moved to the NIIP part of the contract. It already exists in the NIIP portion and was simply deleted.

18 (d) To the extent that delivery of water is made through or from federal
19 facilities, the Nation will reimburse ~~costs associated with this delivery for this service~~ in
20 accordance with the provisions of Part IV Article 5 of this contract.

21 2. CONSTRUCTION AND OPERATION OF FACILITIES

22 (a) Nothing herein shall be construed to obligate the United States to construct,
23 install, operate or maintain dams, pumps, pipelines, storage tanks, distribution lines or
24 other facilities required to take, measure, convey or distribute water for use beyond
25 agreed upon points of delivery; except, that the United States shall have such obligations
26 as conferred upon the Secretary by the authorities to construct, maintain and operate
27 Navajo Dam and Reservoir, the NIIP and the NGWSP in accordance with the Colorado
28 River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), the
29 Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the
30 Navajo Settlement Act. Nor shall anything herein be construed to affect or alter
31

1 obligations that the United States may have under treaty, statute or otherwise to provide
2 or operate other water project facilities and water distribution systems on Navajo Lands.

3 (b) Coordination of construction, operation and maintenance of the NGWSP
4 shall be accomplished through the establishment of a Project Construction Committee
5 which will consist of representatives of the Bureau of Reclamation, the Project
6 Participants, and the State of New Mexico.

7 (i) The Project Construction Committee shall:

8 (A) review cost factors and budgets for construction and operation and
9 maintenance activities; and

10 (B) improve construction management through enhanced communication;
11 and

12 (C) seek additional ways to reduce overall ~~NGWSP~~Project costs.

13 (ii) Failure of the committee to reach common understandings or to
14 otherwise coordinate with the Bureau of Reclamation on construction,
15 operation and maintenance of the NGWSP shall in no way nullify or reduce
16 the obligation of the United States to construct, operate and maintain Project
17 facilities or to deliver water to the Nation as authorized by the Navajo
18 Settlement Act, the Settlement Agreement, and this contract.

19
20 3. WATER SUPPLY AND SHORTAGE

21 (a) Notwithstanding any other provisions of this contract, in times of shortage in
22 the Navajo Reservoir water supply to meet demands under contracts for delivery of water
23 from said supply, taking into account water available from inflows below Navajo Dam to
24 help meet the demands, the Nation will share in the available water supply in the manner
25 set forth in section 11 of the Act of June 13, 1962 (76 Stat. 96), and section 10402 (b) of
26 the Navajo Settlement Act.

27 (b) On account of drought or other causes outside the control of the United
28 States, there may occur at times during any year a shortage in the quantity of water
29 available for use by the Nation pursuant to this contract. In no event shall any liability
30 accrue against the United States or any of its officers, agents, or employees, for any

1 damage, direct or indirect, arising out of any such shortage, and payments due the United
2 States provided for herein shall not be reduced because of such shortage.

3
4 4. BLOCK NOTICE FOR PROJECT WATER DELIVERY

5 (a) When the NGWSP Project Water becomes available for use by the Nation,
6 the United States shall, after consultation, give the Nation written notice, referred to
7 herein as the "block notice". The block notice shall contain: the quantity of Project Water
8 available to the Nation from the Project, and the effective date that water is available for
9 delivery to the Nation.

10 (b) The block notice and any amendments thereto shall become a part of this
11 contract.

Comment [rcr19]:
This language is intended to address the provisions in PL111-11 that allow for use of the NGWSP in portions as they are completed.

12
13 5. COST PROVISIONS

14 (a) The Nation's cost obligations for the NGWSP will be as follows:

15 (i) The Nation's construction cost obligation for the NGWSP shall be
16 allocated, waived and declared non-reimbursable by the Secretary.

17 (ii) The Nation shall pay the United States, or its designee if some
18 organization other than the United States is operating the NGWSP facilities,
19 its proportionate share of the OM&R costs assignable to the amount of water
20 made available from the NGWSP to the Nation through this contract for any
21 and all portions of the NGWSP that have been declared by the Secretary to be
22 substantially complete and which are delivering water; said share to include
23 an allocation of the fixed OM&R costs of NGWSP facilities that is based
24 upon the ratio of the number of acre-feet contracted for delivery to the Nation
25 and planned for delivery through each NGWSP reach as described in the July
26 2009 Planning Report and Final Environmental Impact Statement~~March 2007~~
27 ~~Planning Report and the March 2007 Draft Environmental Impact Statement~~
28 for the NGWSP prepared by the United States, as conditioned and modified
29 by the Navajo Settlement Act, to the total number of acre-feet contracted for
30 delivery to all contractors through each NGWSP reach, and an allocation of
31 the variable OM&R costs of NGWSP facilities that is based upon the ratio of

Comment [rcr20]:
Provides a start to the assessment of OM&R costs.

1 the number of acre-feet delivered to the Nation or its subcontractors through
2 each NGWSP reach to the total number of acre-feet of water delivered to all
3 contractors through each NGWSP reach.

4 (b) OM&R costs for the NGWSP shall be paid on the basis of annual estimates
5 made by the Contracting Officer, or the NGWSP Operator based upon water use
6 estimates provided by the Nation pursuant to Part IV Article 5(e). An estimate from the
7 Contracting Officer, or the NGWSP Operator, will be sent to the Nation on or before
8 May 1 for the next year's annual reimbursable OM&R costs assessed to the Nation. The
9 Nation shall advance its share of the OM&R costs for each calendar year in quarterly
10 payments which will be due on December 31 of the same calendar year as the billing, and
11 on March 31, June 30, and September 30 of the year of applicability. The first such
12 billing will be issued immediately following a notice of water availability. In the event
13 this first notice shall be for costs of service of less than a full year, such costs shall be
14 prorated for the period covered. An itemization of the OM&R costs will accompany the
15 billing.

16 (c) The Nation shall be responsible for providing OM&R on NGWSP facilities
17 and for funding its proportionate OM&R costs of NGWSP facilities that are assignable to
18 the Nation, excluding costs assignable to the Jicarilla Apache Nation and the City of
19 Gallup for conveyance of their water under the NGWSP, if ownership of the facilities is
20 transferred to the Nation.

21 (d) In the event either the OM&R cost estimate falls short of the actual costs in
22 any period, or whenever it is anticipated by the Contracting Officer that a deficit will
23 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 Nation.

28 (e) Billings from the Contracting Officer, or ~~the any~~ Project Operator ~~of a~~
29 ~~specific project~~, and payments by the Nation of the construction and OM&R costs
30 outlined under this section shall be made on the basis of Part IV Article 5(a). For project
31 operation purposes, the Nation will provide an annual notice to the Contracting Officer,

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

11 | (f) The OM&R ~~costs obligation~~ of the Nation for a section of the NGWSP that
12 | the Secretary determines are in excess of the ability of the Nation to pay may be waived
13 | and declared nonreimbursable by the Secretary for not more than ten (10) years from the
14 | date on which that section of the NGWSP has been declared substantially complete and
15 | the Nation can receive a delivery of water generated by and through that section of the
16 | NGWSP, pursuant to the Navajo Settlement Act.

17 |
18 | 6. RESPONSIBILITY FOR DISTRIBUTION

19 | (a) Upon delivery, as specified under Part IV Article 1(a) herein, the Nation
20 | shall be responsible for the control, carriage, handling, distribution, measurement and use
21 | of all water made available under this contract, and shall hold the United States, its
22 | officers, agents, employees, and successors or assigns, harmless from every claim for
23 | damages to persons or property, direct or indirect, and of whatever nature, arising out of
24 | or in any manner connected with the control, carriage, handling, distribution or use of
25 | such water beyond the point of delivery; except to the extent that:

26 | (i) such responsibilities are placed on the United States by Act of
27 | Congress;

28 | (ii) provisions of subsections 10602(f) of the Navajo Settlement Act
29 | placed upon the City of Gallup certain responsibilities for the conveyance and
30 | distribution of water made available under this contract for the NGWSP.

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

4 **7. ENVIRONMENTAL COMPLIANCE**

5 (a) Construction and operation of the NGWSP will be in accordance with the
6 EIS, dated July 2009, and subsequent Record of Decision, dated

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Comment [rcr21]: Identifies NGWSP EIS and provides a baseline for future environmental compliance.

8 **PART V. GENERAL**

9 1. **TERM OF CONTRACT**

10 The water delivery rights recognized by this contract shall be perpetual to the
11 extent the terms of the contract are met, and the Nation has the right to subcontract with
12 third parties for the delivery and use of water made available under this contract as
13 provided in Part V Article (4).

14
15 2. **TRANSPORTATION LOSSES**

16 No conveyance losses beyond the points of delivery shall be borne by the United
17 States. In the event that points of delivery are changed in-consistent with the partial final
18 decree referred to in Part I Article 4 and pursuant to agreement of the Contracting Officer
19 and the Nation accordance with subsection 4(d), transportation of water from the original
20 points of delivery to other points of delivery shall be the sole responsibility of the Nation,
21 so that no conveyance losses, including channel losses, shall be borne by the United
22 States.

Comment [rcr22]: This change will require discussion.

23
24 3. **UNCONTROLLABLE FORCES**

25 Neither party shall be considered to be in default in respect to any obligation
26 hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces.
27 The term uncontrollable forces shall mean, for the purposes of this contract, any cause
28 beyond the control of the party affected, including but not limited to, drought, failure of
29 facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance,
30 labor disturbance, sabotage, and restraint by court or public authority, which by exercise
31 of due diligence and foresight, such party could not reasonably have been expected to

1 avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable
2 forces shall exercise due diligence to remove expeditiously such inability.

3
4 4. SUBCONTRACTING

5 (a) The Nation may subcontract with third parties, subject to the provisions of
6 the Navajo Settlement Act, the Settlement Agreement, the partial final decree referred to
7 in Part I Article 4, and approval of the Contracting Officer in accordance with this
8 section, to supply water for beneficial use on or off Navajo Lands in the State of New
9 Mexico, subject to and consistent with the same requirements and conditions of State
10 law, and any applicable Federal law, interstate compact, and international treaty as apply
11 to the exercise of water rights held by non-federal, non-Indian entities. Nothing in this
12 contract shall be construed to establish, address, or prejudice whether, or to prevent any
13 party from litigating whether, or to the extent to which, any of the aforementioned laws
14 do or do not permit, govern, or apply to the use of the Nation's water outside the State.

15 (b) Subcontracts made by the Nation with third parties shall be subject to the
16 provisions of the Navajo Settlement Act, the Settlement Agreement, the partial final
17 decree referred to in Part I Article 4, and this contract, and must include terms of use,
18 purchase, measurement, operations and default. A copy of each proposed subcontract
19 shall be filed with the Contracting Officer and the New Mexico Interstate Stream
20 Commission at least 30 days prior to being executed by the Nation; provided, that
21 proposed emergency subcontracts may be filed with less than 30 days notice. Two copies
22 of each executed subcontract shall be filed with the Contracting Officer and one copy
23 with the New Mexico Interstate Stream Commission.

24 (c) Prior to approving any subcontract, the Contracting Officer shall comply
25 with subsection 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42
26 U.S.C. § 4332(2)(C). The Nation will furnish any data and information as may be
27 required by the Contracting Officer for NEPA compliance documentation. The
28 Contracting Officer has the authority under the Contributed Funds Act of 1921 (43 USC
29 §395) to charge any subcontractor for the costs associated with this compliance
30 documentation. The Contracting Officer will coordinate with the Nation and the

1 subcontractor throughout the NEPA process, including furnishing copies of all related
2 documentation.

3 (d) The Contracting Officer shall approve any subcontract submitted by the
4 Nation if the Contracting Officer determines that:

5 (i) the diversion and use of water under the subcontract would comply
6 with the Settlement Agreement, the partial final decree referred to in Part I
7 Article 4, and other applicable law, including any applicable permitting
8 requirements and permit conditions of the New Mexico State Engineer, and
9 the provisions of this contract;

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

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

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

21 (v) the delivery obligations under the subcontract are not inconsistent with
22 other obligations of the Contracting Officer to deliver water under preexisting
23 contracts.

24 The Nation agrees to include the equal opportunity language as specified in Part VI
25 Article 11 of this contract in any subcontract for use of water off Navajo Lands.

26 (e) The annual amortization rates and annual OM&R assessments specified in
27 Part II Article 3, Part III Article 5, and Part IV Article 5 above shall be charged to the
28 Nation for all water subcontracted to third parties.

29
30 5. **SEVERABILITY**

1 ~~If any provisions of the contract shall, for any reason be determined to be illegal~~
2 ~~or unenforceable, the parties, nevertheless, intend that the remainder of the contract shall~~
3 ~~remain in full force and effect~~If any provisions of this contract shall be held, by a court of
4 competent jurisdiction, to be invalid, illegal, unenforceable or in conflict with the law of
5 any jurisdiction, the parties intend that the validity, legality and enforceability of the
6 remaining provisions shall not in any way be affected or impaired thereby. Furthermore,
7 any adjustments or variations to this contract necessitated by future negotiations between
8 the Parties can be accomplished by amending this contract to the extent such amendments
9 are consistent with the provisions of the Navajo Settlement Act, including any future
10 amendments.

Comment [rcr23]: This language is intended to allow for portions of this contract to remain in force, should some portions to be identified as unenforceable.

11
12 6. TERMINATION

13 This contract may only be cancelled, terminated, or rescinded as provided in the
14 Navajo Settlement Act.

15
16 7. SAVINGS CLAUSES

17 (a) Prior to the entry of the partial final decree described in Part I Article 4,
18 nothing in this contract shall be construed as an admission, or be used by any party as
19 evidence, that the Nation is or is not legally entitled to reserved water rights in the San
20 Juan River stream system.

21 (b) Nothing contained in this contract shall be construed to alter, amend, repeal,
22 construe, interpret, modify, or be in conflict with the provisions of: the Boulder Canyon
23 Project Act (45 Stat. 1057); the Boulder Canyon Project Adjustment Act (54 Stat. 774);
24 the Colorado River Compact, proclaimed on June 25, 1929 (46 Stat. 3000); the Upper
25 Colorado River Basin Compact (63 Stat. 31); the 1944 Treaty with the United Mexican
26 States, Treaty Series 994 (59 Stat. 1219); the Act of June 13, 1962 (76 Stat. 96); the
27 Colorado River Basin Project Act (82 Stat. 885); the Colorado River Storage Project Act
28 (70 Stat. 105); the Animas-La Plata Project Compact (82 Stat. 898); the Jicarilla Apache
29 Tribe Water Rights Settlement Act (106 Stat. 2237); the Colorado Ute Settlement Act
30 Amendments of 2000 (114 Stat. 2763A-258); or the Navajo Settlement Act.

1 (c) The uses of water in the State of New Mexico through works constructed
2 under the authority of the Colorado River Storage Project Act (70 Stat. 105), the Act of
3 June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114
4 Stat. 2763A-258) and the Navajo Settlement Act shall be subject to and controlled by the
5 Colorado River Compact, the Upper Colorado River Basin Compact, the Animas-La
6 Plata Project Compact, the Boulder Canyon Project Act, the Boulder Canyon Project
7 Adjustment Act, the Colorado River Storage Project Act, the Colorado River Basin
8 Project Act, the Mexican Water Treaty (Treaty Series 994), the Colorado Ute Settlement
9 Act Amendments of 2000 and the Navajo Settlement Act, and shall be included within
10 and shall in no way increase the total quantity of water to the use of which the State of
11 New Mexico is entitled under said compacts, statutes, and treaty.

12 (d) Nothing in this contract shall be construed in any way to quantify or
13 otherwise adversely affect the land and water rights, claims or entitlements to water of
14 any Indian tribe or community other than those of the Nation in, to and from the San Juan
15 River Basin in New Mexico; except, that the right of the Nation to use water under water
16 rights it may have in other river basins in New Mexico shall be forborne only so long as
17 and to the extent that the Nation supplies the uses for which said water rights may exist
18 by diversions of water from the San Juan River Basin under this contract consistent with
19 subparagraph 9.13 of the Settlement Agreement.

20
21 8. ENVIRONMENTAL COORDINATION

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

29 (b) The Nation and the Department of the Interior agree to work with the State
30 of New Mexico and affected water users to assure that Navajo Dam and Reservoir, the
31 NIIP, the ALP and the NGWSP are operated in compliance with applicable laws while

Comment [rcr24]:
This article was moved from the Standard Articles portion of the contract, as it is more appropriate here.

1 meeting water delivery obligations, so as to provide, to the maximum extent possible,
2 quantities and timing of deliveries to provide for downstream flows necessary to maintain
3 and protect existing resources, with particular emphasis on endangered species. The
4 Nation and the Secretary agree to follow existing reasonable and prudent measures, as
5 well as the terms and conditions in all Biological Opinions related to the San Juan River.

6
7 **9. ADDITIONAL ENVIRONMENTAL COMPLIANCE**

8 Any additions, changes to, or operation of works or changes in use of the water
9 allocations from that stated in the respective NEPA documents, as well as the Final
10 Environmental Impact Statement for Navajo Reservoir Operations dated April, 2006
11 may, as required by law, be subject to further compliance with applicable environmental
12 statutes which shall include an analysis of potential impacts and must be approved by the
13 United States. Additional environmental compliance will be required for additional uses
14 of water identified for diversion to the NIIP, as identified in Title X of the Navajo
15 Settlement Act.

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Comment [rcr25]: Recognizes that future environmental compliance may be necessary.

16
17 **PART VI. STANDARD ARTICLES**

18
19 **1. ENVIRONMENTAL COORDINATION**

20 ~~2. —~~
21 ~~(a)The Nation, the Fish and Wildlife Service, the Bureau of Reclamation and the~~
22 ~~Bureau of Indian Affairs agree to cooperate and coordinate in the planning and~~
23 ~~construction of projects, diversions and changes in water management associated with the~~
24 ~~water made available to the Nation under the terms of this agreement as required by~~
25 ~~federal law, including, but not limited to, the Bald and Golden Eagle Protection Act, the~~
26 ~~Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act,~~
27 ~~and the National Environmental Policy Act.~~

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28 ~~(b)The Nation and the Department of the Interior agree to work with the State of~~
29 ~~New Mexico and affected water users to assure that Navajo Dam and Reservoir, the NIIP,~~
30 ~~the ALP and the NGWSP are operated in compliance with applicable laws while meeting~~
31 ~~water delivery obligations, so as to provide, to the maximum extent possible, quantities~~
32 ~~and timing of deliveries to provide for downstream flows necessary to maintain and~~
33 ~~protect existing resources, with particular emphasis on endangered species. The Nation~~
34 ~~and the Secretary agree to follow existing reasonable and prudent measures, as well as~~
35 ~~the terms and conditions in all Biological Opinions related to the San Juan River.~~

36 ~~(c) —~~
37 **1. AIR AND WATER POLLUTION CONTROL**

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

12
13 2. OPERATION AND MAINTENANCE OF TRANSFERRED WORKS--
14 PAYMENT OF MISCELLANEOUS COSTS
15

16 (a) Should the care, operation, and maintenance of any Federal project works be
17 transferred to the Nation in accordance with this contract, title to the transferred works
18 will remain in the name of the United States, unless transferred as otherwise provided by
19 the Congress of the United States.

Comment [rcr26]:
This change is
intended to recognize
the title transfer
provisions of the Act.

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

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

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

37 (e) The Nation agrees to indemnify the United States for, and hold the United
38 States and all of its representatives harmless from, all damages resulting from suits,
39 actions, or claims of any character brought on account of any injury to any person or
40 property arising out of any act, omission, neglect, or misconduct in the manner or method
41 of performing any construction, care, operation, maintenance, supervision, examination,
42 inspection, or other duties of the Nation or the United States on transferred works
43 required under this contract, regardless of who performs those duties. The Nation does
44 not agree to indemnify the United States for any damages arising from intentional torts or
45 malicious actions committed by employees of the United States.

1 (f) The Nation shall cooperate with the Contracting Officer in implementing an
2 effective safety of dam(s) program. The United States agrees to provide the Nation and
3 the appropriate agency of the State or States in which the project facilities are located
4 with design data, designs, and an operating plan for the dam(s) and related facilities
5 consistent with the current memorandum of understanding between the United States and
6 the State(s) of _____ relating to the coordination of planning, design, construction,
7 operation, and maintenance processes for dams and related facilities.

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

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

23
24 3. **EMERGENCY RESERVE FUND**

25
26 (a) Commencing upon execution of this contract, the Nation shall accumulate
27 and maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer
28 that other funds are available for use as an emergency reserve fund. The Nation shall
29 establish and maintain that emergency reserve fund to meet costs incurred during periods
30 of special stress caused by damaging droughts, storms, earthquakes, floods, or other
31 emergencies threatening or causing interruption of water service.

32 (b) The Nation shall accumulate the reserve fund with annual deposits or
33 investments of not less than \$_____ to a Federally insured, interest- or dividend-
34 bearing account or in securities guaranteed by the Federal Government: *Provided, That*
35 money in the reserve fund, including accrued interest, shall be available within a
36 reasonable time to meet expenses for such purposes as those identified in paragraph (d)
37 herein. Such annual deposits and the accumulation of interest to the **Emergency R**reserve
38 **F**fund shall continue until the basic amount of \$_____ is accumulated. **The above**
39 **amounts will be adjusted (adjusted balance) as may be justified by reason of ordinary**
40 **fluctuations in the construction, operation and maintenance costs as indicated by**
41 **engineering cost indices applicable to the types of construction, operation and**
42 **maintenance for which this Emergency Reserve Fund is established.** Following an
43 emergency expenditure from the fund, the annual deposits shall continue from the year
44 following the emergency expenditure until the previous balance **(or adjusted balance if an**
45 **adjustment pursuant to this paragraph or paragraph (c) is made)** is restored. After the
46 initial amount is accumulated or after the previous balance is restored, the annual deposits

Comment [rcr27]:
Changes to this
standard article are
consistent with the
changes made in the
ALP OM&R contract,
which the Nation is a
party to.

1 may be discontinued, and the interest earnings shall continue to accumulate and be
2 retained as part of the Emergency Rreserve Ffund.

3 (c) Upon mutual agreement between the Nation and the Contracting Officer, the
4 ~~basic reserve fund or the accumulated reserve fund~~Emergency Reserve Fund may be
5 adjusted to account for risk and uncertainty stemming from the size and complexity of the
6 project; the size of the annual operation and maintenance budget; additions to, deletions
7 from, or changes in project works; and operation and maintenance costs not contemplated
8 when this contract was executed.

9 (d) The Nation may make expenditures from the Emergency Rreserve Ffund
10 only for meeting usual operation and maintenance costs incurred during periods of
11 special stress, as described in paragraph (a) herein; or for meeting unforeseen
12 extraordinary operation and maintenance costs; or for meeting unusual or extraordinary
13 repair or replacement costs; or for meeting betterment costs (in situations where
14 recurrence of severe problems can be eliminated) during periods of special stress.
15 Proposed expenditures from the fund shall be submitted to the Contracting Officer in
16 writing for review and written approval prior to disbursement. Whenever the Emergency
17 Rreserve Ffund is reduced below the current balance by expenditures therefrom, the
18 Nation shall restore that balance by the accumulation of annual deposits as specified in
19 paragraphs (b) or (c) herein.

20 (e) During any period in which any of the project works are operated and
21 maintained by the United States, the Nation agrees the Emergency Rreserve Ffund shall
22 be available for like use by the United States.

23 (f) On or before _____ of each year, the Nation shall provide a current
24 statement of the principal and accumulated interest of the Emergency Rreserve Ffund
25 account to the Contracting Officer.

26 4. ADMINISTRATION OF FEDERAL PROJECT LANDS

27
28
29 The lands and interests in lands acquired, withdrawn, or reserved and needed by
30 the United States for the purposes of care, operation, and maintenance of Federal project
31 works may be used by the Nation for such purposes. The Nation shall ensure that no
32 unauthorized encroachment occurs on Federal project lands and rights-of-way. The
33 Nation does not have the authority to issue any land-use agreement or grant that conveys
34 an interest in Federal real property, nor to lease or dispose of any interest of the United
35 States.

36 5. EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, 37 RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION 38 AND MAINTENANCE

39
40
41 (a) The Contracting Officer may from time to time, examine the following: the
42 Nation's books, records, and reports; the project works being operated by the Nation; the
43 adequacy of the OM&R and safety of dams programs; the reserve fund; and the water
44 conservation program including the water conservation fund, if applicable.
45 Notwithstanding title ownership, where the United States retains a financial, physical, or
46 liability interest in facilities either constructed by the United States or with funds

1 provided by the United States, the Contracting Officer may examine any or all of the
2 project works providing such interest to the United States.

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

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

13 (d) The Contracting Officer shall prepare reports based on the examinations,
14 inspections, or audits and furnish copies of such reports and any recommendations to the
15 Nation.

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

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

30 (g) Requests by the Nation for consultations, design services, or modification
31 reviews, and the completion of any operation and maintenance activities identified in the
32 formal recommendations resulting from the examination (unless otherwise noted) are to
33 be funded as project operation and maintenance and are reimbursable by the Nation to the
34 extent of current project operation and maintenance allocations.

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

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

44
45 6. BOOKS, ACCOUNTS AND RECORDS
46

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

14 15 7. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

16
17 (a) The Nation shall not allow contamination or pollution of Federal project
18 lands, project waters, or project works of the United States or administered by the United
19 States and for which the Nation has the responsibility for care, operation, and
20 maintenance by its employees or agents. The Nation shall also take reasonable
21 precautions to prevent such contamination or pollution by third parties.

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

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

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

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

45 (f) The Nation shall be liable for any response action or corrective measure
46 necessary to protect public health and the environment or to restore Federal project lands,

1 project waters, or project works that are adversely affected as a result of such violation,
2 and for all costs, penalties or other sanctions that are imposed for violation of any Federal
3 or Tribal laws and regulations concerning hazardous material. At the discretion of the
4 Contracting Officer, the United States may also terminate this Contract as a result of such
5 violation.

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

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

11
12 8. CLEAN AIR AND WATER

13
14 (a) The Nation agrees as follows:

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

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

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

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

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

32 (i) The term "Air Act" means the Clean Air Act, as amended
33 (42 U.S.C. 7401 *et seq.*).

34 (ii) The term "Water Act" means the Federal Water Pollution Control Act,
35 as amended (33 U.S.C. 1251 *et seq.*).

36 (iii) The term "clean air standards" means any enforceable rules,
37 regulations, guidelines, standards, limitations, orders, controls, prohibitions, or
38 other requirements which are contained in, issued under, or otherwise adopted
39 pursuant to the Air Act or Executive Order 11738, an applicable
40 implementation plan as described in Section 110 of the Air Act (42 U.S.C.
41 7410), an approved implementation procedure or plan under Section 111(c) or
42 Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or (d)), or an
43 approved implementation procedure under Section 112(d) of the Air Act (42
44 U.S.C. 7412(d)).

45 (iv) The term "clean water standards" means any enforceable limitation,
46 control, condition, prohibition, standard, or other requirement which is

1 promulgated pursuant to the Water Act or contained in a permit issued to a
2 discharger by the Environmental Protection Agency or by a state under an
3 approved program, as authorized by Section 402 of the Water Act
4 (33 U.S.C. 1342), or by local government to ensure compliance with
5 pretreatment regulations as required by Section 307 of the Water Act
6 (33 U.S.C. 1317).

7 (v) The term “comply” means compliance with clean air or water
8 standards. Comply shall also mean compliance with a schedule or plan
9 ordered or approved by a court of competent jurisdiction, the Environmental
10 Protection Agency, or an air or water pollution control agency in accordance
11 with the requirements of the Air Act or Water Act and regulations issued
12 pursuant thereto.

13 (vi) The term “facility” means any building, plant, installation, structure,
14 mine, vessel or other floating craft, location, or site of operations owned,
15 leased, or supervised by a contractor or subcontractor to be utilized in the
16 performance of a contract or subcontract. Where a location or site of
17 operations contains or includes more than one building, plant, installation, or
18 structure, the entire location or site shall be deemed to be a facility except
19 where the Director, Office of Federal Activities, Environmental Protection
20 Agency, determines that independent facilities are collocated in one
21 geographical area.

22 9. PEST MANAGEMENT

23
24
25 The Nation shall take appropriate steps to prevent the introduction and spread of,
26 and to otherwise control undesirable plants and animals, as defined by the Contracting
27 Officer, on Federal project lands, project waters, and project works for which the Nation
28 has operation and maintenance responsibility. The Nation is responsible for inspecting
29 its vehicles and equipment for reproductive and vegetative parts, foreign soil, mud or
30 other debris that may cause the spread of weeds, invasive species and other pests, and for
31 removing such materials before moving its vehicles and equipment onto any Federal land
32 or out of any area on Federal project land where work is performed. Where
33 decontamination is required prior to entering Federal project land, it shall be performed at
34 the point of prior use, or at an approved offsite facility able to process generated cleaning
35 wastes. Upon the completion of work, decontamination shall be performed within the
36 work area before the vehicles and equipment are removed from Federal project lands.
37 Programs for the control of these undesirable plants and animals on Federal project lands,
38 project waters, and project works for which the Nation has operation and maintenance
39 responsibility will incorporate Integrated Pest Management (IPM) concepts and practices.
40 IPM refers to a systematic and environmentally compatible program to maintain pest
41 populations within economically and environmentally tolerable levels. In implementing
42 an IPM program, the Nation will adhere to applicable Federal and State laws and
43 regulations and Department of the Interior and Bureau of Reclamation polices, directives,
44 guidelines, and manuals.

1
2 10. **INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY**
3

Comment [rcr28]:
Changes to this article
are consistent with
changes that have been
made in the LeChee
Water Service contract
with the Nation.

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

11 (b) Except as provided above, during the performance of this contract the Nation
12 agrees as follows:

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

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

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

36 (iv) The Nation will comply with all provisions of Executive Order No.
37 11246 of September 24, 1965, and of the rules, regulations, and relevant
38 orders of the Secretary of Labor.

39 (v) The Nation will furnish all information and reports required by
40 Executive Order 11246 of September 24, 1965, and by the rules, regulations,
41 and orders of the Secretary of Labor, or pursuant thereto, and will permit
42 access to his books, records, and accounts by the Contracting Agency and the
43 Secretary of Labor for purposes of investigation to ascertain compliance with
44 such rules, regulations, and orders.

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

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

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

20 21 11. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

22
23 (a) The Nation shall comply with Title VI of the Civil Rights Act of 1964
24 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as
25 amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Americans with
26 Disabilities Act of 1990, as applicable, and any other applicable civil rights laws, as well
27 as with its respective implementing regulations and guidelines imposed by the U.S.
28 Department of the Interior and/or Bureau of Reclamation.

29 (b) These statutes require that no person in the United States shall be excluded
30 from participation in, be denied the benefits of, or be otherwise subjected to
31 discrimination under any program or activity receiving financial assistance from the
32 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.
33 By executing this contract, the Nation agrees to immediately take any measures necessary
34 to implement this obligation, including permitting officials of the United States to inspect
35 premises, programs, and documents.

36 (c) The Nation makes this agreement in consideration of and for the purpose of
37 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal
38 financial assistance extended after the date hereof to the Nation by the Bureau of
39 Reclamation, including installment payments after such date on account of arrangements
40 for Federal financial assistance which were approved before such date. The Nation
41 recognizes and agrees that such Federal assistance will be extended in reliance on the
42 representations and agreements made in this article and that the United States reserves the
43 right to seek judicial enforcement thereof.

44 (d) Complaints of discrimination against the Nation shall be investigated by the
45 Contracting Officer's Office of Civil Rights.
46

1
2
3
4 12. CERTIFICATION OF NONSEGREGATED FACILITIES
5

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

28 13. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
29 CERTIFICATIONS OF NONSEGREGATED FACILITIES
30

31 A Certification of Nonsegregated Facilities must be submitted prior to the award
32 of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal
33 Employment Opportunity clause. The certification may be submitted either for each
34 subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or
35 annually). Note: The penalty for making false statements in offers is prescribed in
36 18 U.S.C. 1001.
37

38 14. COMPLIANCE WITH RECLAMATION LAWS
39

40 The parties agree that the delivery of irrigation water or the use of federal
41 facilities pursuant to this contract is governed by applicable Reclamation law, except that
42 this delivery or use is not subject to the Reclamation Reform Act of 1982, as amended.
43

44 15. RULES, REGULATIONS, AND DETERMINATIONS
45

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

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

14 15 16. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

16
17 (a) The obligation of the Nation to pay the United States as provided in this
18 contract is a general obligation of the Nation notwithstanding the manner in which the
19 obligation may be distributed among the Nation’s water users and notwithstanding the
20 default of individual water users in their obligation to the Nation.

21 (b) The payment of charges becoming due hereunder is a condition precedent to
22 receiving benefits under this contract. The Nation shall not have the right to the use of
23 water supplied from any project facilities during any period in which the Nation may be
24 in arrears in the payment of any operation, maintenance, and replacement charges due the
25 United States or in arrears for more than 12 months in the payment of any construction
26 and interest installments due the United States. The Nation shall not deliver water under
27 the terms and conditions of this contract for lands or parties that are in arrears in the
28 advance payment of water rates or OM&R charges or in arrears more than 12 months in
29 the payment of construction charges as levied or established by the Nation.

30 31 17. MEDIUM FOR TRANSMITTING PAYMENTS

32
33 All payments from the Nation to the United States under this contract shall be by
34 the medium requested by the United States on or before the date payment is due. The
35 required method of payment may include checks, wire transfers, or other types of
36 payment specified by the United States.

37 38 18. CHARGES FOR DELINQUENT PAYMENTS

39
40 (a) The Nation shall pay penalty charges on delinquent installments or
41 payments. When payment is not received by the due date, the Nation shall pay an interest
42 charge for each day the payment is delinquent beyond the due date. When a payment
43 becomes 60 days delinquent, the Nation shall pay an administrative charge to cover
44 additional costs of billings and processing the delinquent payment. When a payment is
45 delinquent 90 days or more, the Nation shall pay an additional penalty charge of 6.0
46 percent per year for each day the payment is delinquent beyond the due date. Further, the

1 Nation shall pay any fees incurred for debt collection services associated with the
2 delinquent payment.

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

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

11
12 19. WATER QUALITY

13
14 The operation and maintenance of project facilities shall be performed in such
15 manner as is practicable to maintain the quality of raw water made available through such
16 facilities at the highest level reasonably attainable, as determined by the United States.
17 The United States does not warrant the quality of water and is under no obligation to
18 construct or furnish water treatment facilities to maintain or better the quality of water;
19 except, that the Secretary shall construct, operate and maintain treatment facilities for the
20 NGWSP as authorized by subsection 10602 of the Navajo Settlement Act.

21
22
23 20. WATER CONSERVATION

24
25 Prior to the delivery of water to the Nation provided from or conveyed through
26 federally constructed or federally financed facilities pursuant to this contract, the Nation
27 shall develop an effective water conservation program which shall contain definite water
28 conservation objectives, appropriate economically feasible water conservation measures,
29 and time schedules for meeting those objectives. At subsequent three-year intervals, the
30 Nation shall submit a report on the results of the program to the Contracting Officer for
31 review. Based on the conclusions of the review, the Contracting Officer and the Nation
32 shall consult and agree to continue or to revise the existing water conservation program.
33 This paragraph shall be included in all subcontracts, and such measures shall be required
34 for all water purchasers.

35
36 21. CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

37
38 The expenditure of any money or the performance of any obligation by the United
39 States under this contract shall be contingent upon appropriations or allotments of funds.
40 Absence of appropriation or allotment of funds shall not relieve the Nation from any
41 obligations under this contract. No liability shall accrue against the United States in case
42 funds are not appropriated or allotted.

43
44 22. NOTICES

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

9
10 23. OFFICIALS NOT TO BENEFIT

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

15
16
17
18 In witness whereof, the parties hereto have duly executed this contract the day and
19 year first above written.

20
21
22
23
24 THE UNITED STATES OF AMERICA

25 Department of the Interior

26
27 By: _____

28 Secretary of the Interior

29
30 THE NAVAJO NATION

31
32 By: _____

33 President

34