

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND
THE NAVAJO NATION

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

PART I. SETTLEMENT	3
1. PREAMBLE	3
2. EXPLANATORY RECITALS	3
3. GENERAL DEFINITIONS	4
4. CONDITIONS	7
5. PRELIMINARY UNDERSTANDINGS	7
PART II. NIIP	8
6. WATER DELIVERY PROVISIONS	8
7. WATER SUPPLY AND SHORTAGE	10
8. BLOCK NOTICE FOR NIIP WATER DELIVERY	10
9. COST PROVISIONS	11
10. RESPONSIBILITY FOR DISTRIBUTION LIMITED	13
11. ENVIRONMENTAL COMPLIANCE	14
PART III. ALP	14
12. WATER DELIVERY PROVISIONS	14
13. CONSTRUCTION AND OPERATION OF FACILITIES	15
14. WATER SUPPLY AND SHORTAGE	17
15. BLOCK NOTICE FOR ALP WATER DELIVERY	18
16. COST PROVISIONS	18
17. RESPONSIBILITY FOR DISTRIBUTION LIMITED	20
18. ENVIRONMENTAL COMPLIANCE	21
PART IV. NGWSP	21
19. WATER DELIVERY PROVISIONS	21
20. CONSTRUCTION AND OPERATION OF FACILITIES	22
21. WATER SUPPLY AND SHORTAGE	23
22. BLOCK NOTICE FOR NGWSP WATER DELIVERY	23
23. COST PROVISIONS	24
24. RESPONSIBILITY FOR DISTRIBUTION LIMITED	26
25. ENVIRONMENTAL COMPLIANCE	26
PART V. GENERAL	26
26. TERM OF CONTRACT	26
27. TRANSPORTATION LOSSES	27

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

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND
THE NAVAJO NATION

PART I. SETTLEMENT

1. PREAMBLE

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

2. EXPLANATORY RECITALS

WHEREAS, the United States and the Navajo Nation have negotiated a resolution of all water right claims of the 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, the settlement of these claims will secure to the Navajo Nation a
2 perpetual water supply; and

3 WHEREAS, to preserve opportunities for the Navajo Nation to develop while at
4 the same time allowing for other economic development in New Mexico, it is the intent
5 of this contract that the Navajo Nation may exercise the right to market the water supply
6 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, the Federal government is undertaking to construct additional water
13 development facilities to fulfill the terms and conditions of the Northwestern New
14 Mexico Rural Water Projects Act (123 Stat. 1367) and this contract, including facilities to
15 extend the current service area of the Navajo Indian Irrigation Project, as well as,
16 facilities to convey much needed municipal, industrial and domestic water supplies to
17 Navajo Nation communities; and

18 WHEREAS, the Secretary of the Interior has determined in accordance with
19 ~~section~~Section 11 of the Act of June 13, 1962 (76 Stat. 96), pursuant to the hydrologic
20 determination recognized at Section 10604(a)(1) of the Act submitted to Congress on
21 _____ that there is sufficient water reasonably likely to be available for
22 use in the State of New Mexico to enable the 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) “Intergovernmental Agreement” or “IGA” means that agreement dated
6 March 4, 2009 and entered into by the Colorado Water Resource and Power
7 Development Authority, the La Plata Conservancy District, the Navajo Nation, the San
8 Juan Water Commission, the Southern Ute Indian Tribe, and the Ute Mountain Ute
9 Indian Tribe to establish the Animas-La Plata Operations, Maintenance, and Replacement
10 Association (Association) and provide for the terms, conditions, and concepts under
11 which OM&R of the transferred works of the ALP is to take place.

12 (d) “Lake Nighthorse”, formerly Ridges Basin Reservoir, means the reservoir
13 created by the impoundment on Basin Creek by Ridges Basin Dam, a facility of the ALP
14 as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat.
15 2763A-258).

16 (e) “Navajo Nation” or “Nation” means a body politic and federally-recognized
17 Indian nation as provided for in ~~section~~Section 101(2) of the Federally Recognized Indian
18 Tribe 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) “Partial Final Decree” means a final and binding judgment and decree
16 entered by a court in the stream adjudication, setting forth the rights of the Nation to use
17 and administer waters of the San Juan River Basin in New Mexico, as set forth in
18 Appendix 1 of the Settlement Agreement.

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

21 (o) “Project Participants” means the Navajo Nation, the City of Gallup and,
22 should it choose to participate, the Jicarilla Apache Nation.

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

26 (q) “Secretary” means the Secretary of the United States Department of the
27 Interior or an authorized designee.

28 (r) “Settlement Agreement” means the agreement between the State of New
29 Mexico, the Nation and the United States setting forth a stipulated and binding settlement
30 agreement as to the rights of the Nation to use and administer waters of the San Juan

1 River Basin in New Mexico, signed by the State of New Mexico and the Nation on
2 _____ and executed by the Secretary on _____.

3 (s) “Statutory Water Allocation” means the municipal and industrial (M&I)
4 water allocation delivered to the Nation from the ALP pursuant to ~~section~~Section
5 6(a)(1)(A)(ii)(III) of the Colorado Ute Indians Water Rights Settlement Act of 1988
6 (Public Law 100-585) as amended.

7
8 4. CONDITIONS

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

18
19 5. PRELIMINARY UNDERSTANDINGS

20 (a) The United States and the Nation will proceed in good faith to take all steps
21 necessary to assure the entry of the ~~partial final decree~~Partial Final Decree ~~described in~~
22 ~~Part I Article 4.~~

23 (b) The Nation may purchase, receive and use ALP water or NGWSP water in
24 accordance with the relevant provisions of this contract prior to the entry of the ~~partial~~
25 ~~final decree~~Partial Final Decree; except, that the obligation of the United States to deliver
26 such water shall become null and void if ~~the partial final decree~~Partial Final Decree ~~is~~
27 ~~not entered by the date specified in subsection 10701(e)(1)(A)(ii) of the Navajo~~
28 ~~Settlement Act~~the Contract is terminated by court order pursuant to subsection
29 10701(e)(2)(A) of the Navajo Settlement Act. Neither party will have any obligation
30 under this contract to purchase water from or deliver water to the other party for the NIIP
31 until the entry of the ~~partial final decree~~Partial Final Decree.

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

6 (d) Separate contracts for additional water, whether for temporary or permanent
7 use, as available, may be negotiated between the Nation and the United States in the
8 future, but they do not constitute any part of the consideration for this contract.
9

10 PART II. NIIP

11 6. WATER DELIVERY PROVISIONS

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

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

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

20 (B) the Navajo Dam outlet works; or

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

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

24 (b) Pursuant to the Act of June 13, 1962, as amended by ~~section~~Section 10402
25 of the Navajo Settlement Act, water diverted by the NIIP may be used within the area
26 served by 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.

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 Settlement Agreement executed under
5 ~~section~~Section 10701(a)(2) of the Navajo Settlement Act.

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

14 (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~~Partial Final Decree, ~~referred~~
16 ~~to in Part I Article 4~~, that are supplied under this Contract pursuant to the alternate water
17 source provisions of subparagraph 9.2 of the Settlement Agreement, and that are
18 accounted under the contract rights for delivery of water under the NIIP described in Part
19 II herein, shall not be required to have 30 days advance notice.

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

23 (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 16(a) unless changed consistent with the ~~partial final decree~~Partial Final Decree
26 ~~referred to in Part I Article 4~~ and pursuant to agreement of the Contracting Officer and
27 the Nation. Water made available at Navajo Dam to make the diversions and depletions
28 described in subparagraphs 3(d), 3(e) and 3(f) of the ~~partial final decree~~Partial Final
29 Decree, ~~referred to in Part I Article 4~~, that are supplied under this Contract pursuant to the
30 alternate water source provisions of subparagraph 9.2 of the Settlement Agreement shall

Formatted:
Highlight

1 be accounted under the contract rights for delivery of water under the NIIP described in
2 Part II herein.

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 in accordance with
5 the provisions of Part II **Article 3-8** of this contract.

Formatted:
Highlight

6
7 7. WATER SUPPLY AND SHORTAGE

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

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

20
21 8. BLOCK NOTICE FOR NIIP WATER DELIVERY

Formatted: Level 2

22 (a) Upon one (1) year from the date of execution of this Settlement Contract, the
23 Contracting Officer will give the Nation written notice, referred to herein as the "block
24 notice" for the blocks at that time which are receiving NIIP water. The block notice shall
25 contain a list of the current blocks receiving delivery of NIIP water, the location of those
26 blocks, the quantity of NIIP water available to each block, and the proportionate share of
27 NIIP OM&R costs allocated to the blocks. As additional blocks of the NIIP are ready to
28 receive delivery of NIIP water, the United States shall, after consultation, issue to the
29 Nation additional block notices which will contain the effective date that water is
30 available for delivery to the Nation, the location of the block, the quantity of NIIP water
31 available to the block, and the proportionate share of NIIP OM&R costs allocated to the

Formatted: Bullets
and Numbering

1 block. The Nation will be required to pay the OM&R costs for those blocks under notice
2 as provided in Part II Article 9(b).

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

5
6 8.9. COST PROVISIONS

7 (a) Charges for water made available pursuant to Part II Article 4-6 will be as
8 follows:

9 (a) The Nation's construction cost obligation for the NIIP within the ability of
10 the land to repay Construction costs of Navajo Dam and Reservoir that are assignable to
11 water delivered for irrigation on the NIIP or other Navajo Lands shall be allocated and
12 payment deferred under the provisions of the Leavitt Act (47 Stat. 564), as authorized in
13 subsection 4(d) of the Colorado River Storage Project Act (70 Stat. 105). The Nation's
14 construction cost obligation for the NIIP beyond the ability of the land to repay shall be
15 nonreimbursable as authorized in subsection (6) of the Colorado River Storage Project
16 Act (70 Stat. 105).

17 (b) The Nation's OM&R obligation for water made available pursuant to Part II
18 Article 1 will be as follows: Construction costs of Navajo Dam and Reservoir shall be
19 charged to the Nation at the annual amortization rate of \$2.60 per acre foot for Navajo
20 Reservoir water delivered for non irrigation purposes, ending after the year the
21 construction costs of the Colorado River Storage Project initial units allocated to
22 irrigation have been fully repaid.

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

Formatted: Bullets and Numbering

Formatted: Highlight

Comment [R1]: The changes in this article need further discussion.

Formatted: Highlight

Formatted: Highlight

(ii) OM&R costs for the NIIP shall be paid on the basis of annual estimates made by the Contracting Officer, or the NIIP Operator based upon water use estimates provided by the Nation pursuant to Part II Article 9(c)(iv).
(ii) The Contracting Officer or a designee will bill the Nation for construction and OM&R costs for Navajo Dam and Reservoir on or before September 1 of the year preceding the year of use based upon water use estimates provided by the Nation pursuant to Part II Article 3(b)(iv). The Nation shall pay all accrued costs within 30 days after receipt of the bill.

Formatted:
Highlight

Formatted:
Highlight

Comment [R2]: The NIIP OM&R payment provisions require further discussion.

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

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

(i) The Contracting Officer or a designee will bill the Nation for OM&R costs for Navajo Dam and Reservoir on or before September 1 of the year preceding the year of use based upon water use estimates provided by the Nation pursuant to Part II Article 9(c)(iv). The Nation shall pay all accrued costs within 30 days after receipt of the bill.

Formatted:
Highlight

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

Formatted:
Highlight

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

(iii) In the event either the OM&R cost estimate falls short of the actual costs in any period, or whenever it is anticipated by the Contracting Officer

1 that a deficit will occur during the year, supplemental notices may be issued
2 by the Contracting Officer requesting additional funds.- OM&R funds not
3 spent during one calendar year will be carried over for use during the next
4 calendar year with funds required for that year being reduced accordingly. An
5 itemized statement of actual costs incurred during each year shall be furnished
6 to the Nation.

7 (iv) Billings from the Contracting Officer, or ~~the any~~ Project Operator ~~of a~~
8 ~~specific project~~, and payments by the Nation of the ~~construction and~~ OM&R
9 costs outlined under this section shall be made on the basis of Part II Article
10 ~~39(ba)~~. -For project operation purposes, the Nation will provide an annual
11 notice to the Contracting Officer, or the Project Operator ~~of a specific project~~,
12 ~~identifying limiting~~ the amount of water estimated to be used by the Nation,
13 the estimated period and point of diversion for each intended purpose and a
14 listing of all executed subcontracts with third parties, including those
15 subcontracts anticipated to be executed during the year of applicability. -The
16 Nation shall send this notice on or before February 1 of the year preceding the
17 year of use described in the notice.- Upon receipt of such notice, the
18 Contracting Officer, or the Project Operator ~~of a specific project~~, will bill the
19 Nation for payment of costs as prescribed herein. -Billing adjustments will be
20 made to correct for differences in the estimated and actual use of water, as
21 well as, the estimated and actual costs during the preceding year.

Formatted:
Highlight

Comment [rcr3]:
The changes here
address the separation
of the projects in this
contract and modify
the language initially
used when all projects
were discussed
together.

Formatted: Bullets
and Numbering

Formatted:
Highlight

23 9.10.

RESPONSIBILITY FOR DISTRIBUTION LIMITED

24 (a) Upon delivery, as specified under Part II Article ~~16~~(a) herein, the Nation
25 shall ~~be responsible for the control, carriage, handling, distribution, measurement and use~~
26 ~~of all water made available under this contract, and shall~~ hold the United States, its
27 officers, agents, employees, and successors or assigns, harmless from every claim for
28 damages to persons or property, direct or indirect, and of whatever nature, arising out of
29 or in any manner connected with the control, carriage, handling, distribution or use of
30 such water beyond the point of delivery; except to the extent that such responsibilities are
31 placed on the United States by Act of Congress.

Comment [R4]: Ne
ed a new title and
revise language of
article (a).

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

Formatted: Level 2

Formatted: Bullets and Numbering

Formatted: Indent: First line: 18 pt

Comment [rcr5]: Need to cite ROD and B.O. in this portion.

8 PART III. ALP

9 11.12. WATER DELIVERY PROVISIONS

Formatted: Bullets and Numbering

10 (a) As provided for in the Colorado Ute Settlement Act Amendments of 2000,
11 the United States agrees to deliver, or make available for delivery, to the Nation water for
12 an annual diversion not to exceed 4,680 acre-feet of water, with an average annual
13 depletion not to exceed 2,340 acre-feet from the ALP water supply under New Mexico
14 State Engineer File No. 2883, subject to the provisions of the Navajo Settlement Act, the
15 Settlement Agreement, the Partial Final Decree and this contract. Water delivered
16 pursuant to this article shall be measured utilizing measuring facilities installed by the
17 United States as a part of the ALP at the following points of delivery:

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

21 (b) The Nation may divert or receive this water from the Animas River at the
22 points of diversion for supplying water to the NNMP for delivery to Nation communities,
23 recipients or subcontractors allotted water by the Nation under its water rights for the
24 ALP. The Nation's ALP water allocation diverted from the San Juan River will be either
25 replaced with ALP water released from Lake Nighthorse or natural river flows bypassed
26 at the Durango Pumping Plant. Sufficient water will be delivered from ALP storage or
27 bypassed at the Durango Pumping Plant to ensure the Nation annually receives its
28 Statutory Water Allocation.

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

1 (d) If the IGA is voided or otherwise terminated, the Nation under this contract
2 shall have 869 acre-feet of storage capacity space allocated for its exclusive use in Lake
3 Nighthorse to support use of the ALP water supply as described in Part III Article 12(a).
4 The United States, or the Project Operator, shall fill and refill the Nation's storage
5 capacity space as often as direct flow is available from the Animas River to fill said space
6 under the ALP diversion right issued in the State of Colorado and the Animas-La Plata
7 Project Compact (82 Stat. 898). The Nation shall have holdover storage rights in Lake
8 Nighthorse from year to year to the extent that water stored in the Nation's storage
9 capacity space may be held for exclusive delivery to the Nation in future years as all or a
10 portion of the Nation's Statutory Water Allocation as necessary to meet the delivery
11 demands of the Nation in accordance with Part III Article 12(a) and 143(a). Nothing in
12 this contract shall prohibit the Nation from acquiring additional storage capacity space in
13 Lake Nighthorse if additional space becomes available.

Comment [R6]: Further discussion is necessary on the storage quantity. (Replace with language from PL111-11?)

Formatted: Highlight

Formatted: Highlight

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

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

21 (g) The points of delivery of water made available for use pursuant to this
22 section from the ALP shall be as specified in Part III Article 124(a) unless changed
23 consistent with the Partial Final Decree and pursuant to written agreement of the
24 Contracting Officer and the Nation.

Formatted: Highlight

25 (h) To the extent that delivery of water is made through or from federal
26 facilities, the Nation will reimburse costs associated with this delivery in accordance with
27 the provisions of Part III Article 165 of this contract.

Formatted: Highlight

28
29 ~~12.13.~~ CONSTRUCTION AND OPERATION OF FACILITIES

Formatted: Bullets and Numbering

30 (a) Nothing herein shall be construed to obligate the United States to construct,
31 install, operate or maintain dams, pumps, pipelines, storage tanks, distribution lines or

1 other facilities required to take, measure, convey or distribute water for use beyond
2 agreed upon points of delivery; except, that the United States shall have such obligations
3 as conferred upon the Secretary by the authorities to construct, maintain and operate the
4 ALP in accordance with the Colorado River Storage Project Act (70 Stat. 105), the Act of
5 June 13, 1962 (76 Stat. 96), and the Colorado Ute Settlement Act Amendments of 2000
6 (114 Stat. 2763A-258). Nor shall anything herein be construed to affect or alter
7 obligations that the United States may have under treaty, statute or otherwise to provide
8 or operate other water project facilities and water distribution systems on Navajo Lands.

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

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

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

19 (ii) The Project Operations Committee will initially consist of
20 representatives of those entities which have been identified by the Colorado
21 Ute Settlement Act Amendments of 2000, as amended, to receive a water
22 allocation. Initially, this committee will determine the appropriate entity to
23 contract with Reclamation for the operation and maintenance of ALP
24 multipurpose facilities and the development, among the ALP contractors, of a
25 common understanding of the appropriate level of OM&R activities to be
26 performed on the ALP multipurpose facilities to assure the long-term
27 operational integrity of ALP and public safety. Ultimately, this committee
28 will oversee the ongoing OM&R activities of ALP, providing consultation and
29 coordination among the committee members on such items as annual OM&R
30 funding, maintenance schedules, and public safety issues.

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

8
9 ~~13.14.~~

10 WATER SUPPLY AND SHORTAGE

Formatted: Bullets and Numbering

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

17 (b) Pursuant to Part III ~~Article 12~~ of this contract, the Nation may request and
18 require of the United States the release of any and all ~~storage water available to water that~~
19 the Nation ~~may have stored~~ in Lake Nighthorse for delivery ~~to its point of diversion of~~
20 ALP water ~~in the State of New Mexico~~ as necessary to meet the ~~Statutory Water~~
21 ~~Allocation delivery demands~~ of the Nation ~~under the ALP of not more than 4,680 acre~~
22 ~~feet with an average annual depletion of 2,340 acre feet in any one year~~. In any year in
23 which there may occur a shortage ~~in the Statutory Water Allocation at the points of~~
24 ~~delivery~~ from any cause, the Contracting Officer or the ALP Operator reserves the right
25 ~~to make a conclusive determination of shortage and~~ to apportion the available ALP water
26 allocation ~~among the ALP sponsors subject pursuant~~ to the Colorado Ute Settlement Act
27 Amendments of 2000, as amended, the IGA, and applicable laws, including the Animas-
28 La Plata Project Compact, ~~among the ALP contractors entitled to receive ALP water in~~
29 ~~accordance with the conclusive determination of the Bureau of Reclamation or the ALP~~
30 ~~Operator~~.

Formatted: Highlight

31 (c) On account of drought or other causes outside the control of the United States, there may occur at times during any year a shortage in the quantity of water

Comment [R7]: The effect of this language needs to be clarified. Intent to identify shortage at the points of delivery.

1 available for delivery touse by the Nation pursuant to this contract. In no event shall any
2 liability accrue against the United States or any of its officers, agents, or employees, for
3 any damage, direct or indirect, arising out of any such shortage, and payments due the
4 United States provided for herein shall not be reduced because of such shortage.

5 If the IGA is in effect, evaporation of the Nation's water stored in Lake
6 Nighthorse shall be accounted for as specified under the Joint Storage Pool concept in the
7 IGA.

Formatted: Bullets and Numbering

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

13
14 14.15. BLOCK NOTICE FOR
15 ALPROJECT WATER DELIVERY

Formatted: Bullets and Numbering

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

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

23
24 15.16. COST PROVISIONS

Formatted: Bullets and Numbering

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

26 (a) Prior to water becoming available for use by the Nation, pursuant to Part III
27 Article 154(a) above, the OM&R costs allocated to the Nation's ALP Project Water shall
28 be paid by Reclamation. Upon water becoming available for use by the Nation, pursuant
29 to Part III Article 154(a) above, the Contracting Officer will notify the Nation of the
30 transfer of responsibility for the Nation's ALP OM&R costs at least sixty (60) days prior
31 to the effective date of the transfer.

Formatted: Highlight

Formatted: Highlight

1 (b) The OM&R costs ~~of the multipurpose facilities~~ allocated to the Nation's
2 Statutory Project Water Allocation will be comprised of:

3 (i) the Nation's share of Fixed OM&R costs of the multipurpose facilities
4 as defined in the IGA. The Nation's share, as identified in the draft IGA,
5 would be 2.5% of the total Fixed OM&R costs. If the IGA is voided or
6 otherwise terminated the Nation's share of Fixed OM&R will be defined by
7 the final cost allocation~~The final allocation of Fixed OM&R costs will be~~

8 ~~finalized and stated in the OM&R Transfer Contract between Reclamation and~~
9 ~~the Association, which transfers OM&R responsibility to the Association;~~

10 ~~(ii)~~ Variable OM&R costs of the multipurpose facilities, which are actual costs
11 of replacing Project Wwater released from storage in Lake Nighthorse by
12 request of the Nation, ~~which are further~~ as defined in the IGA;

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

15 (iii) All OM&R costs associated with the NNMP shall be the sole
16 responsibility of the Nation during the period in which title to the pipeline is
17 held by the United States. In addition, the Nation shall be responsible for
18 providing OM&R of the NNMP and for funding the OM&R costs of the
19 pipeline if ownership of the pipeline is transferred to the Nation

20 (c) The Nation agrees to pay, in advance, its share of the ALP OM&R costs.

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

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

Formatted: Bullets
and Numbering

Formatted: Bullets
and Numbering

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

8 ~~(f)~~(e) Billings from the Contracting Officer or ~~the~~any Project Operator ~~of a~~
9 ~~specific project~~, and payments by the Nation of the ~~construction and~~ OM&R costs
10 outlined under this section shall be made on the basis of Part III Articles ~~165~~(b) and
11 ~~165~~(c). For project operation purposes, the Nation will provide an annual notice to the
12 Contracting Officer, or the Project Operator ~~of a specific project~~, ~~identifying~~limiting the
13 amount of water estimated to be used by the Nation, the estimated period and point of
14 diversion for each intended purpose and a listing of all executed subcontracts with third
15 parties, including those subcontracts anticipated to be executed during the year of
16 applicability. The Nation shall send this notice on or before February 1 of the year
17 preceding the year of use described in the notice. Upon receipt of such notice, the
18 Contracting Officer, or the Project Operator ~~of a specific project~~, will bill the Nation for
19 payment of costs as prescribed herein. Billing adjustments will be made to correct for
20 differences in the estimated and actual use of water, as well as, the estimated and actual
21 costs during the preceding year.

Formatted:
Highlight

Comment [R8]: Bi
lling language needs to
be developed which
covers NNMP
specifically and
associated billings.

23 ~~16.17.~~ RESPONSIBILITY FOR DISTRIBUTION ~~LIMITED~~

24 ~~(a)~~ Upon delivery, as specified under Part III Article ~~12~~(a) herein, the Nation shall
25 ~~be responsible for the control, carriage, handling, distribution, measurement and use of all~~
26 ~~water made available under this contract, and shall~~ hold the United States, its officers,
27 agents, employees, and successors or assigns, harmless from every claim for damages to
28 persons or property, direct or indirect, and of whatever nature, arising out of or in any
29 manner connected with the control, carriage, handling, distribution or use of such water
30 beyond the point of delivery; except to the extent that:

Formatted: Bullets
and Numbering

Formatted:
Highlight

31 ~~(b) such responsibilities are placed on the United States by Act of Congress; and~~

Formatted: Bullets
and Numbering

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

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

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

12 PART IV. NGWSP

13 ~~18.19.~~ WATER DELIVERY PROVISIONS

14 ~~(a)~~The United States agrees to deliver, or make available for delivery, to the
15 Nation a diversion of not more than 22,650 acre-feet, or the quantity of water necessary
16 to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is less in
17 any one year for delivery to communities, recipients or subcontractors allotted water by
18 the Nation under its water rights for the NGWSP uses in New Mexico from Navajo
19 Reservoir or the points of diversion from the San Juan River under State Engineer File
20 Nos. 2849 and 3215.;

21 ~~(b)~~Navajo Reservoir from the following delivery points under State Engineer File
22 No. 2849:

23 ~~(c)~~the intake to the NHP main canal; or

24 ~~(d)~~the Navajo Dam outlet works; or

25 ~~(i)~~inflows below Navajo Dam under State Engineer File No. 3215 at Cutter
26 Reservoir; or

27 ~~(ii)~~a NGWSP diversion on the San Juan River under State Engineer File No.
28 3215; or

29 ~~(iv)(i)~~ All in combination.

Comment [R9]: Provide new title. Should be the same as Part II 4(a).

Formatted: Level 2

Formatted: Bullets and Numbering

Formatted: Indent: First line: 18 pt

Comment [R10]: Include reference to the B.O.

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

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

4 (c) The points of delivery of water made available for use pursuant to this
5 section from Navajo Reservoir and the San Juan River shall be as specified in Part IV
6 ~~Article 19(a) unless changed as allowed by the consistent with the partial final~~
7 ~~decree~~Partial Final Decree referred to in Part I Article 4 and pursuant to written
8 agreement of the Contracting Officer and the Nation.

Formatted:
Highlight

9 (d) To the extent that delivery of water is made through or from federal
10 facilities, the Nation will reimburse costs associated with this delivery in accordance with
11 the provisions of Part IV ~~Article 235~~ of this contract.

Formatted:
Highlight

12
13 ~~19.20.~~ CONSTRUCTION AND OPERATION OF FACILITIES

Formatted: Bullets
and Numbering

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

Comment [R11]: S
tart here at next
negotiation meeting.

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

29 (i) The Project Construction Committee shall:

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

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

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

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

10
11 20:21.

WATER SUPPLY AND SHORTAGE

Formatted: Bullets and Numbering

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

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

22. BLOCK NOTICE FOR NGWSP WATER DELIVERY

Formatted: Bullets and Numbering

24
25 (a) When the NGWSP Project Water becomes available for use by the Nation,
26 the United States shall, after consultation, give the Nation written notice, referred to
27 herein as the "block notice". The block notice shall contain: the quantity of Project Water
28 available to the Nation from the Project, and the effective date that water is available for
29 delivery to the Nation.
30

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

Comment [rcr12]:
This language is intended to address the provisions in PL111-11 that allow for use of the NGWSP in portions as they are completed.

Formatted: Bullets and Numbering

3
4 22.23. COST PROVISIONS

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

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

8 (ii) The Nation shall pay the United States, or its designee if some
9 organization other than the United States is operating the NGWSP facilities,
10 its proportionate share of the OM&R costs assignable to the amount of water
11 made available from the NGWSP to the Nation through this contract for any
12 and all portions of the NGWSP that have been declared by the Secretary to be
13 substantially complete and which are delivering water; said share to include

Comment [rcr13]:
Provides a start to the assessment of OM&R costs.

14 an allocation of the fixed OM&R costs of NGWSP facilities that is based
15 upon the ratio of the number of acre-feet contracted for delivery to the Nation
16 and planned for delivery through each NGWSP reach as described in the July
17 2009 Planning Report and Final Environmental Impact Statement ~~March 2007~~
18 ~~Planning Report and the March 2007 Draft Environmental Impact Statement~~
19 for the NGWSP prepared by the United States, as conditioned and modified
20 by the Navajo Settlement Act, to the total number of acre-feet contracted for
21 delivery to all contractors through each NGWSP reach, and an allocation of
22 the variable OM&R costs of NGWSP facilities that is based upon the ratio of
23 the number of acre-feet delivered to the Nation or its subcontractors through
24 each NGWSP reach to the total number of acre-feet of water delivered to all
25 contractors through each NGWSP reach.

26 (b) OM&R costs for the NGWSP shall be paid on the basis of annual estimates
27 made by the Contracting Officer, or the NGWSP Operator based upon water use
28 estimates provided by the Nation pursuant to Part IV Article 235(e). An estimate from
29 the Contracting Officer, or the NGWSP Operator, will be sent to the Nation on or before
30 May 1 for the next year's annual reimbursable OM&R costs assessed to the Nation. The
31 Nation shall advance its share of the OM&R costs for each calendar year in quarterly

Formatted:
Highlight

1 payments which will be due on December 31 of the same calendar year as the billing, and
2 on March 31, June 30, and September 30 of the year of applicability. The first such
3 billing will be issued immediately following a notice of water availability. In the event
4 this first notice shall be for costs of service of less than a full year, such costs shall be
5 prorated for the period covered. An itemization of the OM&R costs will accompany the
6 billing.

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

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

19 (e) Billings from the Contracting Officer, or ~~the any~~ Project Operator ~~of a~~
20 ~~specific project~~, and payments by the Nation of the construction and OM&R costs
21 outlined under this section shall be made on the basis of Part IV **Article 235**(a). For
22 project operation purposes, the Nation will provide an annual notice to the Contracting
23 Officer, or the Project Operator ~~of a specific project~~, ~~identifying limiting~~ the amount of
24 water estimated to be used by the Nation, the estimated period and point of diversion for
25 each intended purpose and a listing of all executed subcontracts with third parties,
26 including those subcontracts anticipated to be executed during the year of applicability.
27 The Nation shall send this notice on or before February 1 of the year preceding the year
28 of use described in the notice. Upon receipt of such notice, the Contracting Officer, or
29 the Project Operator ~~of a specific project~~, will bill the Nation for payment of costs as
30 prescribed herein. Billing adjustments will be made to correct for differences in the

Formatted:
Highlight

1 estimated and actual use of water, as well as, the estimated and actual costs during the
2 preceding year.

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

9
10 23-24. RESPONSIBILITY FOR DISTRIBUTION LIMITED

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

18 ~~(b) such responsibilities are placed on the United States by Act of Congress;~~

19 ~~(ii)(a)~~ provisions of ~~sub~~Sections 10602(f) of the Navajo Settlement Act placed
20 upon the City of Gallup certain responsibilities for the conveyance and distribution of
21 water made available under this contract for the NGWSP.

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

25 25. ENVIRONMENTAL COMPLIANCE

26 (a) Construction and operation of the NGWSP will be in accordance with the
27 FEIS, dated July 2009, and subsequent Record of Decision, dated October 1, 2009.

28
29 **PART V. GENERAL**

30 25-26. **TERM OF CONTRACT**

Formatted: Bullets and Numbering

Formatted: Highlight

Formatted: Bullets and Numbering

Formatted: Level 2

Formatted: Bullets and Numbering

Comment [rcr14]: Identifies NGWSP EIS and provides a baseline for future environmental compliance.

Formatted: Bullets and Numbering

1 The water delivery rights recognized by this contract shall be perpetual to the
2 extent the terms of the contract are met, and the Nation has the right to subcontract with
3 third parties for the delivery and use of water made available under this contract as
4 provided in Part V Article 29(4).

Formatted:
Highlight

6 26:27. TRANSPORTATION LOSSES

Formatted: Bullets
and Numbering

7 No conveyance losses beyond the points of delivery shall be borne by the United
8 States. In the event that points of delivery are changed in consistent with the partial final
9 decreePartial Final Decree and pursuant to agreement of the Contracting Officer and the
10 Nationaccordance with subsection 4(d), transportation of water from the original points
11 of delivery to other points of delivery shall be the sole responsibility of the Nation, so
12 that no conveyance losses, including channel losses, shall be borne by the United States.

Comment [rcr15]:
This change will
require discussion.

14 27:28. UNCONTROLLABLE FORCES

Formatted: Bullets
and Numbering

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

25 28:29. SUBCONTRACTING

Formatted: Bullets
and Numbering

26 (a) The Nation may subcontract with third parties, subject to the provisions of
27 the Navajo Settlement Act, the Settlement Agreement, the partial final decreePartial Final
28 Decree-referred to in Part I Article 4, and approval of the Contracting Officer in
29 accordance with this section, to supply water for beneficial use on or off Navajo Lands in
30 the State of New Mexico, subject to and consistent with the same requirements and
31 conditions of State law, and any applicable Federal law, interstate compact, and

1 international treaty as apply to the exercise of water rights held by non-federal, non-
2 Indian entities. Nothing in this ~~C~~contract shall be construed to establish, address, or
3 prejudice whether, or to prevent any party from litigating whether, or to the extent to
4 which, any of the aforementioned laws do or do not permit, govern, or apply to the use of
5 the Nation’s water outside the State.

6 (b) Subcontracts made by the Nation with third parties shall be subject to the
7 provisions of the Navajo Settlement Act, the Settlement Agreement, the ~~partial-final~~
8 ~~decree~~Partial Final Decree ~~referred to in Part I Article 4~~, and this ~~C~~contract, and must
9 include terms of use, purchase, measurement, operations and default. A copy of each
10 proposed subcontract shall be filed with the Contracting Officer and the New Mexico
11 Interstate Stream Commission at least 30 days prior to being executed by the Nation;
12 provided, that proposed emergency subcontracts may be filed with less than 30 days
13 notice. Two copies of each executed subcontract shall be filed with the Contracting
14 Officer and one copy with the New Mexico Interstate Stream Commission.

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

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

26 (i) the diversion and use of water under the subcontract would comply
27 with the Settlement Agreement, the ~~partial-final-decree~~Partial Final Decree
28 ~~referred to in Part I Article 4~~, and other applicable law, including any
29 applicable permitting requirements and permit conditions of the New Mexico
30 State Engineer, and the provisions of this contract;

- (ii) the sum of the term of the subcontract plus all renewables is no more than 99 years;
- (iii) the use of water under the subcontract is not inconsistent with the provisions of the Endangered Species Act or other provisions of federal law designed to protect the environment;
- (iv) the subcontract is sufficiently specific as to the amount of water and points of diversion to enable the Contracting Officer to account for the water as it is diverted; or, in the alternative, that the subcontract reserves the Contracting Officer's right to review and approve future diversions sought under the subcontract, such review and approval to be consistent with this contract;
- (v) the delivery obligations under the subcontract are not inconsistent with other obligations of the Contracting Officer to deliver water under preexisting contracts.

The Nation agrees to include the equal opportunity language as specified in Part VI

Article 454 of this contract in any subcontract for use of water off Navajo Lands.

(e) The annual amortization rates and annual OM&R assessments specified in Part II Article 93, Part III Article 165, and Part IV Article 235 above shall be charged to the Nation for all water subcontracted to third parties.

~~29.30.~~ SEVERABILITY

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

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Bullets and Numbering

Comment [rcr16]: This language is intended to allow for portions of this contract to remain in force, should some portions be identified as unenforceable.

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

~~30.31.~~

TERMINATION

Formatted: Bullets and Numbering

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

~~31.32.~~

SAVINGS CLAUSES

Formatted: Bullets and Numbering

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

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

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

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

9
10 33. ENVIRONMENTAL COORDINATION

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

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

26
27 34. ADDITIONAL ENVIRONMENTAL COMPLIANCE

28 Any additions, changes to, or operation of works or changes in use of the water
29 allocations from that stated in the respective NEPA documents, as well as the Final
30 Environmental Impact Statement for Navajo Reservoir Operations dated April, 2006
31 may, as required by law, be subject to further compliance with applicable environmental

Comment [rcr17]:
This article was
moved from the
Standard Articles
portion of the contract,
as it is more
appropriate here.

Formatted: Bullets
and Numbering

Formatted: Bullets
and Numbering

Formatted: Indent:
First line: 18 pt

1 statutes which shall include an analysis of potential impacts and must be approved by the
2 United States. Additional environmental compliance will be required for additional uses
3 of water identified for diversion to the NIIP, as identified in Title X of the Navajo
4 Settlement Act.

Comment [rcr18]:
Recognizes that future
environmental
compliance may be
necessary.

6 PART VI. STANDARD ARTICLES

7 ~~28. ENVIRONMENTAL COORDINATION~~

8 ~~29.~~

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

Formatted: Bullets
and Numbering

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

25 ~~(e)~~

26 34.35. AIR AND WATER POLLUTION CONTROL

Formatted: Bullets
and Numbering

27
28 The Nation agrees that in taking delivery of water under this contract, it will
29 comply with federal air and water pollution control laws, now or hereafter in force, that
30 may be applicable or relevant to the use being made of the water. Also, the Nation agrees
31 that any subcontract it may enter into for the furnishing of water pursuant to this contract
32 will contain similar air and water pollution control provisions including state and local
33 requirements, where applicable. The Nation further agrees that any such subcontract it
34 may enter into will require that its designs and plans for air and water pollution control
35 facilities or equipment which are necessary parts of any design, facility, plant or process
36 which utilizes water delivered pursuant to this contract will be submitted to the Secretary
37 for his review and written comments prior to contracting for said facilities, their
38 installation or major modification thereof.

39 40 35.36. OPERATION AND MAINTENANCE ← 41 OF TRANSFERRED WORKS--PAYMENT OF MISCELLANEOUS COSTS

Formatted: Bullets
and Numbering

42
43 (a) Should the care, operation, and maintenance of any Federal project works be
44 transferred to the Nation in accordance with this contract, title to the transferred works

1 | will remain in the name of the United States, unless transferred as otherwise provided by
2 | the Congress of the United States.

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

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

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

20 | (e) The Nation agrees to indemnify the United States for, and hold the United
21 | States and all of its representatives harmless from, all damages resulting from suits,
22 | actions, or claims of any character brought on account of any injury to any person or
23 | property arising out of any act, omission, neglect, or misconduct in the manner or method
24 | of performing any construction, care, operation, maintenance, supervision, examination,
25 | inspection, or other duties of the Nation or the United States on transferred works
26 | required under this contract, regardless of who performs those duties. The Nation does
27 | not agree to indemnify the United States for any damages arising from intentional torts or
28 | malicious actions committed by employees of the United States.

29 | (f) The Nation shall cooperate with the Contracting Officer in implementing an
30 | effective safety of dam(s) program. The United States agrees to provide the Nation and
31 | the appropriate agency of the State or States in which the project facilities are located
32 | with design data, designs, and an operating plan for the dam(s) and related facilities
33 | consistent with the current memorandum of understanding between the United States and
34 | the State(s) of _____ relating to the coordination of planning, design, construction,
35 | operation, and maintenance processes for dams and related facilities.

36 | (g) In the event the Nation is found to be operating the transferred works or any
37 | part thereof in violation of this contract or the Nation is found to be failing any financial
38 | commitments or other commitments to the United States under the terms and conditions
39 | of this contract, then upon the election of the Contracting Officer, the United States may
40 | take over from the Nation the care, operation, and maintenance of the transferred works
41 | by giving written notice to the Nation of such election and the effective date thereof.
42 | Thereafter, during the period of operation by the United States, upon notification by the
43 | Contracting Officer the Nation shall pay to the United States, annually in advance, the
44 | cost of operation and maintenance of the works as determined by the Contracting Officer.
45 | Following written notification from the Contracting Officer the care, operation, and
46 | maintenance of the works may be transferred back to the Nation.

Comment [rcr19]:
This change is
intended to recognize
the title transfer
provisions of the Act.

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

5
6 ~~36.37.~~

EMERGENCY

7 RESERVE FUND

Formatted: Bullets and Numbering

Comment [rcr20]: Changes to this standard article are consistent with the changes made in the ALP OM&R contract, which the Nation is a party to.

8
9 (a) Commencing upon execution of this contract, the Nation shall accumulate
10 and maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer
11 that other funds are available for use as an emergency reserve fund. The Nation shall
12 establish and maintain that emergency reserve fund to meet costs incurred during periods
13 of special stress caused by damaging droughts, storms, earthquakes, floods, or other
14 emergencies threatening or causing interruption of water service.

15 (b) The Nation shall accumulate the reserve fund with annual deposits or
16 investments of not less than \$_____ to a Federally insured, interest- or dividend-
17 bearing account or in securities guaranteed by the Federal Government: *Provided, That*
18 money in the reserve fund, including accrued interest, shall be available within a
19 reasonable time to meet expenses for such purposes as those identified in paragraph (d)
20 herein. Such annual deposits and the accumulation of interest to the ~~Emergency R~~reserve
21 ~~F~~fund shall continue until the basic amount of \$_____ is accumulated. The above
22 amounts will be adjusted (adjusted balance) as may be justified by reason of ordinary
23 fluctuations in the construction, operation and maintenance costs as indicated by
24 engineering cost indices applicable to the types of construction, operation and
25 maintenance for which this Emergency Reserve Fund is established. Following an
26 emergency expenditure from the fund, the annual deposits shall continue from the year
27 following the emergency expenditure until the previous balance (or adjusted balance if an
28 adjustment pursuant to this paragraph or paragraph (c) is made) is restored. After the
29 initial amount is accumulated or after the previous balance is restored, the annual deposits
30 may be discontinued, and the interest earnings shall continue to accumulate and be
31 retained as part of the ~~Emergency R~~reserve ~~F~~fund.

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

38 (d) The Nation may make expenditures from the ~~Emergency R~~reserve ~~F~~fund
39 only for meeting usual operation and maintenance costs incurred during periods of
40 special stress, as described in paragraph (a) herein; or for meeting unforeseen
41 extraordinary operation and maintenance costs; or for meeting unusual or extraordinary
42 repair or replacement costs; or for meeting betterment costs (in situations where
43 recurrence of severe problems can be eliminated) during periods of special stress.
44 Proposed expenditures from the fund shall be submitted to the Contracting Officer in
45 writing for review and written approval prior to disbursement. Whenever the ~~Emergency~~
46 ~~R~~reserve ~~F~~fund is reduced below the current balance by expenditures therefrom, the

1 Nation shall restore that balance by the accumulation of annual deposits as specified in
2 paragraphs (b) or (c) herein.

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

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

9
10 37.38. ADMINISTRATION OF FEDERAL PROJECT LANDS

← Formatted: Bullets
and Numbering

11
12 The lands and interests in lands acquired, withdrawn, or reserved and needed by
13 the United States for the purposes of care, operation, and maintenance of Federal project
14 works may be used by the Nation for such purposes. The Nation shall ensure that no
15 unauthorized encroachment occurs on Federal project lands and rights-of-way. The
16 Nation does not have the authority to issue any land-use agreement or grant that conveys
17 an interest in Federal real property, nor to lease or dispose of any interest of the United
18 States.

19
20 38.39. EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS,
21 RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION
22 AND MAINTENANCE

← Formatted: Bullets
and Numbering

23
24 (a) The Contracting Officer may from time to time, examine the following: the
25 Nation's books, records, and reports; the project works being operated by the Nation; the
26 adequacy of the OM&R and safety of dams programs; the reserve fund; and the water
27 conservation program including the water conservation fund, if applicable.

28 Notwithstanding title ownership, where the United States retains a financial, physical, or
29 liability interest in facilities either constructed by the United States or with funds
30 provided by the United States, the Contracting Officer may examine any or all of the
31 project works providing such interest to the United States.

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

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

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

45 (e) The costs incurred by the United States in conducting operation and
46 maintenance examinations, inspections, and audits and preparing associated reports and

1 recommendations related to high- and significant hazard dams and associated facilities
2 shall be nonreimbursable. Associated facilities include carriage, distribution, and
3 drainage systems; pumping and pump-generating plants; powerplant structures;
4 tunnels/pipelines; diversion and storage dams (low hazard); Type 2 bridges which are
5 Reclamation-owned bridges not located on a public road; regulating reservoirs (low
6 hazard); fish passage and protective facilities, including hatcheries; river channelization
7 features; rural/municipal water systems; desalting and other water treatment plants;
8 maintenance buildings and service yards; facilities constructed under Federal loan
9 programs (until paid out); and recreation facilities (reserved works only); and any other
10 facilities as determined by the Contracting Officer.

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

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

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

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

27
28 | 39-40. BOOKS, ACCOUNTS AND RECORDS

← - - - Formatted: Bullets
and Numbering

29
30 The Nation shall furnish to the Contracting Officer, as requested, information
31 pertaining to land use and crop census, water supply, water use, changes in project works,
32 and to other matters relating to the NIIP, the ALP, the NGWSP, and other projects that
33 may utilize the Nation's water rights supplied under this contract for miscellaneous
34 municipal, industrial, commercial and domestic uses. The Secretary and the Nation shall
35 jointly establish and maintain accounts and other books and records such as are necessary
36 to enable the Secretary to operate the subject facilities. Reports thereon shall be
37 furnished to the Contracting Officer in such form and on such date or dates as the
38 Contracting Officer may require. Subject to applicable Federal laws and regulations,
39 each party shall have the right during office hours to examine and make copies of the
40 other party's books and records relating to matters covered by this contract. Records of
41 diversions of water for use by the Nation pursuant to this contract shall be supplied to the
42 New Mexico State Engineer.

43
44 | 40-41. CONTAMINATION OR POLLUTION
45 OF FEDERAL PROPERTY

← - - - Formatted: Bullets
and Numbering

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

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

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

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

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

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

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

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

41
42 41.42.
43 AND WATER

CLEAN AIR

Formatted: Bullets
and Numbering

44
45 (a) The Nation agrees as follows:

- 1 (i) To comply with all the requirements of Section 114 of the Clean Air
2 Act, as amended (42 U.S.C. 7414), and Section 308 of the Federal Water
3 Pollution Control Act, as amended by Public Law 92-500 (33 U.S.C. 1318),
4 respectively, relating to inspection, monitoring, entry, reports, and
5 information, as well as other requirements specified in Section 114 of the Air
6 Act and Section 308 of the Water Act, respectively, and all regulations and
7 guidelines issued thereunder before the execution of this contract.
- 8 (ii) That no portion of the work required by this contract will be performed
9 in a facility listed on the Environmental Protection Agency List of Violating
10 Facilities on the date when this contract was executed unless and until the
11 Environmental Protection Agency eliminates the name of such facility or
12 facilities from such listing.
- 13 (iii) To use its best efforts to comply with clean air standards and clean
14 water standards at the facility where the contract work is being performed.
- 15 (iv) To insert the substance of the provisions of this article into any
16 nonexempt subcontract, including this paragraph (a)(4).
- 17 (b) The terms used in this article have the following meanings:
- 18 (i) The term “Air Act” means the Clean Air Act, as amended
19 (42 U.S.C. 7401 *et seq.*).
- 20 (ii) The term “Water Act” means the Federal Water Pollution Control Act,
21 as amended (33 U.S.C. 1251 *et seq.*).
- 22 (iii) The term “clean air standards” means any enforceable rules,
23 regulations, guidelines, standards, limitations, orders, controls, prohibitions, or
24 other requirements which are contained in, issued under, or otherwise adopted
25 pursuant to the Air Act or Executive Order 11738, an applicable
26 implementation plan as described in Section 110 of the Air Act (42 U.S.C.
27 7410), an approved implementation procedure or plan under Section 111(c) or
28 Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or (d)), or an
29 approved implementation procedure under Section 112(d) of the Air Act (42
30 U.S.C. 7412(d)).
- 31 (iv) The term “clean water standards” means any enforceable limitation,
32 control, condition, prohibition, standard, or other requirement which is
33 promulgated pursuant to the Water Act or contained in a permit issued to a
34 discharger by the Environmental Protection Agency or by a state under an
35 approved program, as authorized by Section 402 of the Water Act
36 (33 U.S.C. 1342), or by local government to ensure compliance with
37 pretreatment regulations as required by Section 307 of the Water Act
38 (33 U.S.C. 1317).
- 39 (v) The term “comply” means compliance with clean air or water
40 standards. Comply shall also mean compliance with a schedule or plan
41 ordered or approved by a court of competent jurisdiction, the Environmental
42 Protection Agency, or an air or water pollution control agency in accordance
43 with the requirements of the Air Act or Water Act and regulations issued
44 pursuant thereto.
- 45 (vi) The term “facility” means any building, plant, installation, structure,
46 mine, vessel or other floating craft, location, or site of operations owned,

1 leased, or supervised by a contractor or subcontractor to be utilized in the
2 performance of a contract or subcontract. Where a location or site of
3 operations contains or includes more than one building, plant, installation, or
4 structure, the entire location or site shall be deemed to be a facility except
5 where the Director, Office of Federal Activities, Environmental Protection
6 Agency, determines that independent facilities are collocated in one
7 geographical area.
8

9 42.43.

PEST MANAGEMENT

Formatted: Bullets and Numbering

10
11 The Nation shall take appropriate steps to prevent the introduction and spread of,
12 and to otherwise control undesirable plants and animals, as defined by the Contracting
13 Officer, on Federal project lands, project waters, and project works for which the Nation
14 has operation and maintenance responsibility. The Nation is responsible for inspecting
15 its vehicles and equipment for reproductive and vegetative parts, foreign soil, mud or
16 other debris that may cause the spread of weeds, invasive species and other pests, and for
17 removing such materials before moving its vehicles and equipment onto any Federal land
18 or out of any area on Federal project land where work is performed. Where
19 decontamination is required prior to entering Federal project land, it shall be performed at
20 the point of prior use, or at an approved offsite facility able to process generated cleaning
21 wastes. Upon the completion of work, decontamination shall be performed within the
22 work area before the vehicles and equipment are removed from Federal project lands.
23 Programs for the control of these undesirable plants and animals on Federal project lands,
24 project waters, and project works for which the Nation has operation and maintenance
25 responsibility will incorporate Integrated Pest Management (IPM) concepts and practices.
26 IPM refers to a systematic and environmentally compatible program to maintain pest
27 populations within economically and environmentally tolerable levels. In implementing
28 an IPM program, the Nation will adhere to applicable Federal and State laws and
29 regulations and Department of the Interior and Bureau of Reclamation polices, directives,
30 guidelines, and manuals.
31
32
33

34 43.44. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY

Comment [rcr21]: Changes to this article are consistent with changes that have been made in the LeChee Water Service contract with the Nation.

35
36 (a) In accordance with the provisions of Title 42 U.S.C. 2000-e-2(i), the Nation
37 shall, during the performance of this contract, give preference in employment to Indian
38 residents of the Navajo Nation Indian Reservation.~~members of the Nation.~~ The Bureau
39 of Indian Affairs Office of Employment Assistance shall be notified of employment
40 opportunities 48 hours before any positions are advertised to the general public. Nothing
41 in this section shall be read as prohibiting the Nation from giving preferential
42 employment to members of the Nation.

Formatted: Bullets and Numbering

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

45 (i) The Nation will not discriminate against any employee or applicant for
46 employment because of race, color, religion, sex, disability, or national origin.

1 The Nation will take affirmative action to ensure that applicants are employed,
2 and that employees are treated during employment, without regard to their
3 race, color, religion, sex, disability, or national origin. Such action shall
4 include, but not be limited to the following: employment, upgrading,
5 demotion, or transfer; recruitment or recruitment advertising; layoff or
6 termination; rates of pay or other forms of compensation; and selection for
7 training, including apprenticeship. The Nation agrees to post in conspicuous
8 places, available to employees and applicants for employment, notices to be
9 provided by the Contracting Officer setting forth the provisions of this
10 nondiscrimination clause.

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

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

22 (iv) The Nation will comply with all provisions of Executive Order No.
23 11246 of September 24, 1965, and of the rules, regulations, and relevant
24 orders of the Secretary of Labor.

25 (v) The Nation will furnish all information and reports required by
26 Executive Order 11246 of September 24, 1965, and by the rules, regulations,
27 and orders of the Secretary of Labor, or pursuant thereto, and will permit
28 access to his books, records, and accounts by the Contracting Agency and the
29 Secretary of Labor for purposes of investigation to ascertain compliance with
30 such rules, regulations, and orders.

31 (vi) In the event of the Nation's noncompliance with the nondiscrimination
32 clauses of this contract or with any of such rules, regulations, or orders, this
33 contract may be canceled, terminated or suspended in whole or in part and the
34 Nation may be declared ineligible for further Government contracts in
35 accordance with procedures authorized in Executive Order 11246 of
36 September 24, 1965, and such other sanctions may be imposed and remedies
37 invoked as provided in Executive Order 11246 of September 24, 1965 or by
38 rule, regulation, or order of the Secretary of Labor, or as otherwise provided
39 by law.

40 (vii) The Nation will include the provisions of paragraphs (1) through (7),
41 modified to refer to the party to be bound, in every subcontract or purchase
42 order unless exempted by the rules, regulations, or orders of the Secretary of
43 Labor issued pursuant to Section 204 of Executive Order 11246 of September
44 24, 1965, so that such provisions will be binding upon each subcontractor or
45 vendor. The Nation will take such action with respect to any subcontract or
46 purchase order as may be directed by the Secretary of Labor as a means of

1 enforcing such provisions, including sanctions for noncompliance: *Provided,*
2 *however,* that in the event the Nation becomes involved in, or is threatened
3 with, litigation with a subcontractor or vendor as a result of such direction, the
4 Nation may request the United States to enter into such litigation to protect the
5 interests of the United States.
6

7 44.45. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

Formatted: Bullets and Numbering

9 (a) The Nation shall comply with Title VI of the Civil Rights Act of 1964
10 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as
11 amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Americans with
12 Disabilities Act of 1990, as applicable, and any other applicable civil rights laws, as well
13 as with its respective implementing regulations and guidelines imposed by the U.S.
14 Department of the Interior and/or Bureau of Reclamation.

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

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

30 (d) Complaints of discrimination against the Nation shall be investigated by the
31 Contracting Officer's Office of Civil Rights.
32
33
34
35

36 45.46. CERTIFICATION OF
37 NONSEGREGATED FACILITIES

Formatted: Bullets and Numbering

39 The Nation hereby certifies that it does not maintain or provide for its employees
40 any segregated facilities at any of its establishments and that it does not permit its
41 employees to perform their services at any location under its control where segregated
42 facilities are maintained. It certifies further that it will not maintain or provide for its
43 employees any segregated facilities at any of its establishments and that it will not permit
44 its employees to perform their services at any location under its control where segregated
45 facilities are maintained. The Nation agrees that a breach of this certification is a
46 violation of the Equal Employment Opportunity clause in this contract. As used in this

1 certification, the term "segregated facilities" means any waiting rooms, work areas, rest
2 rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and
3 other storage or dressing areas, parking lots, drinking fountains, recreation or
4 entertainment areas, transportation, and housing facilities provided for employees which
5 are segregated by explicit directive or are in fact segregated on the basis of race, creed,
6 color, or national origin, because of habit, local custom, disability, or otherwise. The
7 Nation further agrees that (except where it has obtained identical certifications from
8 proposed subcontractors for specific time periods) it will obtain identical certifications
9 from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
10 which are not exempt from the provisions of the Equal Employment Opportunity clause;
11 that it will retain such certifications in its files; and that it will forward the following
12 notice to such proposed subcontractors (except where the proposed subcontractors have
13 submitted identical certifications for specific time periods):

14
15 | 46.47. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR ← - - - - Formatted: Bullets
16 CERTIFICATIONS OF NONSEGREGATED FACILITIES and Numbering

17
18 A Certification of Nonsegregated Facilities must be submitted prior to the award
19 of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal
20 Employment Opportunity clause. The certification may be submitted either for each
21 subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or
22 annually). Note: The penalty for making false statements in offers is prescribed in
23 18 U.S.C. 1001.

24
25 | 47.48. COMPLIANCE WITH RECLAMATION LAWS ← - - - - Formatted: Bullets
26 and Numbering

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

30
31 | 48.49. RULES, REGULATIONS, AND DETERMINATIONS ← - - - - Formatted: Bullets
32 and Numbering

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

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

46

1 | 49.50. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

Formatted: Bullets and Numbering

2
3 (a) The obligation of the Nation to pay the United States as provided in this
4 contract is a general obligation of the Nation notwithstanding the manner in which the
5 obligation may be distributed among the Nation’s water users and notwithstanding the
6 default of individual water users in their obligation to the Nation.

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

16
17 | 50.51. MEDIUM FOR TRANSMITTING PAYMENTS

Formatted: Bullets and Numbering

18
19 All payments from the Nation to the United States under this contract shall be by
20 the medium requested by the United States on or before the date payment is due. The
21 required method of payment may include checks, wire transfers, or other types of
22 payment specified by the United States.

23
24 | 51.52. CHARGES FOR DELINQUENT PAYMENTS

Formatted: Bullets and Numbering

25
26 (a) The Nation shall pay penalty charges on delinquent installments or
27 payments. When payment is not received by the due date, the Nation shall pay an interest
28 charge for each day the payment is delinquent beyond the due date. When a payment
29 becomes 60 days delinquent, the Nation shall pay an administrative charge to cover
30 additional costs of billings and processing the delinquent payment. When a payment is
31 delinquent 90 days or more, the Nation shall pay an additional penalty charge of 6.0
32 percent per year for each day the payment is delinquent beyond the due date. Further, the
33 Nation shall pay any fees incurred for debt collection services associated with the
34 delinquent payment.

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

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

43
44 | 52.53. WATER QUALITY

Formatted: Bullets and Numbering

1 The operation and maintenance of project facilities shall be performed in such
2 manner as is practicable to maintain the quality of raw water made available through such
3 facilities at the highest level reasonably attainable, as determined by the United States.
4 The United States does not warrant the quality of water and is under no obligation to
5 construct or furnish water treatment facilities to maintain or better the quality of water;
6 except, that the Secretary shall construct, operate and maintain treatment facilities for the
7 NGWSP as authorized by ~~subs~~Section 10602 of the Navajo Settlement Act.

8
9
10 53.54. WATER CONSERVATION

← - - - Formatted: Bullets and Numbering

11
12 Prior to the delivery of water to the Nation provided from or conveyed through
13 federally constructed or federally financed facilities pursuant to this contract, the Nation
14 shall develop an effective water conservation program which shall contain definite water
15 conservation objectives, appropriate economically feasible water conservation measures,
16 and time schedules for meeting those objectives. At subsequent three-year intervals, the
17 Nation shall submit a report on the results of the program to the Contracting Officer for
18 review. Based on the conclusions of the review, the Contracting Officer and the Nation
19 shall consult and agree to continue or to revise the existing water conservation program.
20 This paragraph shall be included in all subcontracts, and such measures shall be required
21 for all water purchasers.

22
23 54.55. CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS

← - - - Formatted: Bullets and Numbering

24
25 The expenditure of any money or the performance of any obligation by the United
26 States under this contract shall be contingent upon appropriations or allotments of funds.
27 Absence of appropriation or allotment of funds shall not relieve the Nation from any
28 obligations under this contract. No liability shall accrue against the United States in case
29 funds are not appropriated or allotted.

30
31 55.56. NOTICES

← - - - Formatted: Bullets and Numbering

32
33 Any notice, demand, or request authorized or required by this contract shall be
34 deemed to have been given on behalf of the Nation when mailed, postage prepaid, or
35 delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125
36 South State Street, P.O. Box 11568, Salt Lake City, Utah 84111, and on behalf of the
37 United States when mailed, postage prepaid, or delivered to the President, Navajo Nation,
38 Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515. The designation
39 of the addressee or the address may be changed by notice given in the same manner as
40 provided in this section for other notices.

41
42 56.57. OFFICIALS NOT TO BENEFIT

← - - - Formatted: Bullets and Numbering

43
44 No Member of or Delegate to Congress or Resident Commissioner or official of
45 the Nation shall benefit from this contract or any subcontract other than as a water user or
46 landowner in the same manner as other water users or landowners.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

In witness whereof, the parties hereto have duly executed this contract the day and year first above written.

THE UNITED STATES OF AMERICA

Department of the Interior

By: _____

Secretary of the Interior

THE NAVAJO NATION

By: _____

President

DRAFT