

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND  
THE NAVAJO NATION

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**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



1 258; 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 (t) "Transferred Works" means facilities which are necessary to support the  
8 operation and maintenance of a Project, and for which the OM&R responsibility has been  
9 transferred to the Nation by the United States.

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10  
11 4. CONDITIONS

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

21  
22 5. PRELIMINARY UNDERSTANDINGS

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

26 (b) The Nation may purchase, receive and use ALP water or NGWSP water in  
27 accordance with the relevant provisions of this contract prior to the entry of the ~~partial~~  
28 ~~final decree~~Partial Final Decree; except, that the obligation of the United States to deliver  
29 such water shall become null and void if ~~the partial final decree~~Partial Final Decree ~~is~~  
30 ~~not entered by the date specified in subsection 10701(e)(1)(A)(ii) of the Navajo~~  
31 Settlement Act the Contract is terminated by court order pursuant to subsection

1 | 10701(e)(2)(A) of the Navajo Settlement Act. Neither party will have any obligation  
2 | under this contract to purchase water from or deliver water to the other party for the NIIP  
3 | until the entry of the ~~partial final decree~~Partial Final Decree.

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

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

## 13 | PART II. NIIP

### 14 | 6. WATER DELIVERY PROVISIONS

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

20 | (i) Navajo Reservoir from the following delivery points under State  
21 | Engineer File No. 2849:

22 | (A) the intake to the NIIP main canal; or

23 | (B) the Navajo Dam outlet works; or

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

26 | (iii) both (i) and (ii) in combination.

27 | (b) Pursuant to the Act of June 13, 1962, as amended by ~~section~~Section 10402  
28 | of the Navajo Settlement Act, water diverted by the NIIP may be used within the area  
29 | served by the NIIP facilities for the following purposes:

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

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

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

8 (iv) The implementation of the alternate water source provisions described  
9 in subparagraph 9.2 of the Settlement Agreement executed under  
10 ~~section~~Section 10701(a)(2) of the Navajo Settlement Act.

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

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

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

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

28 (g) The points of delivery of water made available for use pursuant to this  
29 section from Navajo Reservoir and the San Juan River shall be as specified in Part II  
30 Article 16(a) unless changed consistent with the ~~partial final decree~~Partial Final Decree  
31 ~~referred to in Part I Article 4~~ and pursuant to agreement of the Contracting Officer and

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1 the Nation. Water made available at Navajo Dam to make the diversions and depletions  
2 described in subparagraphs 3(d), 3(e) and 3(f) of the ~~partial final decree~~ Partial Final  
3 Decree, referred to in Part I Article 4, that are supplied under this Contract pursuant to the  
4 alternate water source provisions of subparagraph 9.2 of the Settlement Agreement shall  
5 be accounted under the contract rights for delivery of water under the NIIP described in  
6 Part II herein.

7 (h) To the extent that delivery of water is made through or from federal  
8 facilities, the Nation will reimburse costs associated with this delivery in accordance with  
9 the provisions of Part II Article 3-8 of this contract.

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## 11 7. WATER SUPPLY AND SHORTAGE

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) as amended by  
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.

## 25 8. BLOCK NOTICE FOR NIIP WATER DELIVERY

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

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1 receive delivery of NIIP water, the United States shall, after consultation, issue to the  
2 Nation additional block notices which will contain the effective date that water is  
3 available for delivery to the Nation, the location of the block, the quantity of NIIP water  
4 available to the block, and the proportionate share of NIIP OM&R costs allocated to the  
5 block. The Nation will be required to pay the OM&R costs for those blocks under notice  
6 as provided in Part II Article 9(b).

7 ~~10. The block notice and any amendments thereto shall become a part of this contract.~~

8 ~~11. —~~

9 8. COST PROVISIONS

10 ~~(a)~~ Charges for water made available pursuant to Part II **Article 6** will be as  
11 follows:

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

20 (b) The Nation's OM&R obligation for water made available pursuant to Part II  
21 Article 6(b) will be as follows:~~Construction costs of Navajo Dam and Reservoir shall be~~  
22 ~~charged to the Nation at the annual amortization rate of \$2.60 per acre foot for Navajo~~  
23 ~~Reservoir water delivered for non-irrigation purposes, ending after the year the~~  
24 ~~construction costs of the Colorado River Storage Project initial units allocated to~~  
25 ~~irrigation have been fully repaid.~~

26 ~~(ii)~~(i) The Nation shall pay the United States, or its designee if some  
27 organization other than the United States is operating Navajo Dam and  
28 Reservoir, the Nation's proportionate share of the OM&R costs for Navajo  
29 Dam and Reservoir assignable to the amount of water made available to the  
30 Nation through Part II **Article 6** of this contract; except, that the OM&R

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1 costs for Navajo Dam and Reservoir assignable to water delivered for  
2 irrigation on the NIIP or other Navajo Lands shall be waived by the Secretary.

3 (ii) OM&R costs for the NIIP shall be paid on the basis of annual  
4 estimates made by the Contracting Officer, or the NIIP Operator based upon  
5 water use estimates provided by the Nation pursuant to Part II Article 8(c)(iv).

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

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

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

15 (i) The Contracting Officer or a designee will bill the Nation for OM&R  
16 costs for Navajo Dam and Reservoir on or before September 1 of the year  
17 preceding the year of use based upon water use estimates provided by the  
18 Nation pursuant to Part II Article 8(c)(iv). The Nation shall pay all accrued  
19 costs within 30 days after receipt of the bill.

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

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

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

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

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25 9. **LIMITED RESPONSIBILITY FOR DISTRIBUTION**

26 (a) Upon delivery, as specified under Part II **Article 16(a)** herein, the Nation  
27 shall ~~be responsible for the control, carriage, handling, distribution, measurement and use~~  
28 ~~of all water made available under this contract, and shall~~ hold the United States, its  
29 officers, agents, employees, and successors or assigns, harmless from every claim for  
30 damages to persons or property, direct or indirect, and of whatever nature, arising out of  
31 or in any manner connected with the control, carriage, handling, distribution or use of

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1 such water beyond the point of delivery; except to the extent that such responsibilities are  
2 placed on the United States by Act of Congress.

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

6 ENVIRONMENTAL COMPLIANCE

7 Construction and operation of the NHP will be in accordance with the Environmental  
8 Impact Statement (EIS) No. INT FES 76 52.

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10 PART III. ALP

11 11.10. WATER DELIVERY PROVISIONS

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

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

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

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

3 (d) If the IGA is voided or otherwise terminated, the Nation under this contract  
4 shall have 869 acre-feet of storage capacity space allocated for its exclusive use in Lake  
5 Nighthorse to support use of the ALP water supply as described in Part III Article 10(a).

Comment [R1]: Further discussion is necessary on the storage quantity. (Replace with language from PL111-11?)

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6 The United States, or the Project Operator, shall fill and refill the Nation's storage  
7 capacity space as often as direct flow is available from the Animas River to fill said space  
8 under the ALP diversion right issued in the State of Colorado and the Animas-La Plata  
9 Project Compact (82 Stat. 898). The Nation shall have holdover storage rights in Lake  
10 Nighthorse from year to year to the extent that water stored in the Nation's storage  
11 capacity space may be held for exclusive delivery to the Nation in future years as all or a  
12 portion of the Nation's Statutory Water Allocation as necessary to meet the delivery  
13 demands of the Nation in accordance with Part III Article 10(a) and 123(a). Nothing in  
14 this contract shall prohibit the Nation from acquiring additional storage capacity space in  
15 Lake Nighthorse if additional space becomes available.

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

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

23 (g) The points of delivery of water made available for use pursuant to this  
24 section from the ALP shall be as specified in Part III Article 104(a) unless changed  
25 consistent with the Partial Final Decree and pursuant to written agreement of the  
26 Contracting Officer and the Nation.

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27 (h) To the extent that delivery of water is made through or from federal  
28 facilities, the Nation will reimburse costs associated with this delivery in accordance with  
29 the provisions of Part III Article 145 of this contract.

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30  
31 12.11. CONSTRUCTION AND OPERATION OF FACILITIES

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

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

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

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

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

1 coordination among the committee members on such items as annual OM&R  
2 funding, maintenance schedules, and public safety issues.

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

10  
11 13.12.

## WATER SUPPLY AND SHORTAGE

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

18 (b) Pursuant to Part III Article 10 of this contract, the Nation may request and  
19 require of the United States the release of any and all ~~storage water available to water that~~  
20 the Nation ~~may have stored~~ in Lake Nighthorse for delivery ~~to its point of diversion of~~  
21 ALP water ~~in the State of New Mexico~~ as necessary to meet the Statutory Water  
22 Allocation ~~delivery demands~~ of the Nation ~~under the ALP of not more than 4,680 acre-~~  
23 ~~feet with an average annual depletion of 2,340 acre-feet in any one year.~~ In any year in  
24 which there may occur a shortage in the Statutory Water Allocation at the points of  
25 delivery from any cause, the Contracting Officer or the ALP Operator reserves the right  
26 to make a conclusive determination of shortage and to apportion the available ALP water  
27 allocation among the ALP sponsors subject pursuant to the Colorado Ute Settlement Act  
28 Amendments of 2000, as amended, the IGA, and applicable laws, including the Animas-  
29 La Plata Project Compact, ~~among the ALP contractors entitled to receive ALP water in~~  
30 ~~accordance with the conclusive determination of the Bureau of Reclamation or the ALP~~  
31 ~~Operator.~~

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

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

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

15  
16 ~~14.13.~~ BLOCK NOTICE FOR  
17 ~~ALP~~PROJECT WATER DELIVERY

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

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

25  
26 ~~15.14.~~ COST PROVISIONS

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

28 (a) Prior to water becoming available for use by the Nation, pursuant to Part III  
29 **Article 134**(a) above, the OM&R costs allocated to the Nation's ALP Project Water shall  
30 be paid by Reclamation. Upon water becoming available for use by the Nation, pursuant  
31 to Part III **Article 134**(a) above, the Contracting Officer will notify the Nation of the

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1 transfer of responsibility for the Nation's ALP OM&R costs at least sixty (60) days prior  
2 to the effective date of the transfer.

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

5 (i) the Nation's share of Fixed OM&R costs of the multipurpose facilities  
6 as defined in the IGA. The Nation's share, as identified in the draft IGA,  
7 would be 2.5% of the total Fixed OM&R costs. If the IGA is voided or  
8 otherwise terminated the Nation's share of Fixed OM&R will be defined by  
9 the final cost allocation~~The final allocation of Fixed OM&R costs will be~~  
10 ~~finalized and stated in the OM&R Transfer Contract between Reclamation and~~  
11 ~~the Association, which transfers OM&R responsibility to the Association;~~

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

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

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

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

30 ~~(d) All OM&R costs associated with the NNMP shall be the sole responsibility of~~  
31 ~~the Nation. In addition, the Nation shall be responsible for providing OM&R of the~~

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1 ~~NNMP and for funding the OM&R costs of the pipeline if ownership of the pipeline is~~  
2 ~~transferred to the Nation.~~

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

10 ~~(f)(e)~~ Billings from the Contracting Officer or ~~the any~~ Project Operator ~~of a~~  
11 ~~specific project~~, and payments by the Nation of the ~~construction and~~ OM&R costs  
12 outlined under this section shall be made on the basis of Part III Articles 145(b) and  
13 165(c). For project operation purposes, the Nation will provide an annual notice to the  
14 Contracting Officer, or the Project Operator ~~of a specific project~~, ~~identifying limiting~~ the  
15 amount of water estimated to be used by the Nation, the estimated period and point of  
16 diversion for each intended purpose and a listing of all executed subcontracts with third  
17 parties, including those subcontracts anticipated to be executed during the year of  
18 applicability. The Nation shall send this notice on or before February 1 of the year  
19 preceding the year of use described in the notice. Upon receipt of such notice, the  
20 Contracting Officer, or the Project Operator ~~of a specific project~~, will bill the Nation for  
21 payment of costs as prescribed herein. Billing adjustments will be made to correct for  
22 differences in the estimated and actual use of water, as well as, the estimated and actual  
23 costs during the preceding year.

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24  
25 16.15. LIMITED RESPONSIBILITY FOR DISTRIBUTION

26 ~~(a)~~ Upon delivery, as specified under Part III Article 10(a) herein, the Nation shall  
27 ~~be responsible for the control, carriage, handling, distribution, measurement and use of all~~  
28 ~~water made available under this contract, and shall~~ hold the United States, its officers,  
29 agents, employees, and successors or assigns, harmless from every claim for damages to  
30 persons or property, direct or indirect, and of whatever nature, arising out of or in any

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1 manner connected with the control, carriage, handling, distribution or use of such water  
2 beyond the point of delivery; except to the extent that:

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

4 ~~(ii)(a) provisions of section Section 10605(b) of the Navajo Settlement Act~~

5 placed upon the City of Farmington certain responsibilities for the diversion, treatment  
6 and conveyance of water made available under this contract.

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

10 ENVIRONMENTAL COMPLIANCE

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

14  
15 **PART IV. NGWSP**

16 18.16. **WATER DELIVERY PROVISIONS**

17 ~~(a) The United States agrees to deliver, or make available for delivery, to the~~  
18 ~~Nation a diversion of not more than 22,650 acre-feet, or the quantity of water necessary~~  
19 ~~to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is less in~~  
20 ~~any one year for delivery to communities, recipients or subcontractors allotted water by~~  
21 ~~the Nation under its water rights for the NGWSP uses in New Mexico from Navajo~~  
22 ~~Reservoir or the points of diversion from the San Juan River downstream of Fruitland,~~  
23 ~~NM and upstream of the existing PNM diversion, as described in EIS under State~~  
24 ~~Engineer File Nos. 2849 and 3215 or as modified pursuant to applicable law.;~~

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

27 ~~(c) the intake to the NIIP main canal; or~~

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

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

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1 ~~(ii) a NGWSP diversion on the San Juan River under State Engineer File No.~~  
2 ~~3215; or~~

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

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

7 (c) The points of delivery of water made available for use pursuant to this  
8 section from Navajo Reservoir and the San Juan River shall be as specified in Part IV  
9 Article 16(a) unless changed as allowed by the consistent with the partial final  
10 decreed Partial Final Decree referred to in Part I Article 4 and pursuant to written  
11 agreement of the Contracting Officer and the Nation.

12 (d) To the extent that delivery of water is made through or from federal  
13 facilities, the Nation will reimburse costs associated with this delivery in accordance with  
14 the provisions of Part IV Article 205 of this contract.

15  
16 19.17. CONSTRUCTION AND OPERATION OF FACILITIES

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

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

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- 1 (i) The Project Construction Committee shall:
- 2 (A) review cost factors and budgets for construction and operation and
- 3 maintenance activities; and
- 4 (B) improve construction management through enhanced communication;
- 5 and
- 6 (C) seek additional ways to reduce overall NGWSP costs.
- 7 (ii) Failure of the committee to reach common understandings or to
- 8 otherwise coordinate with the Bureau of Reclamation on construction,
- 9 operation and maintenance of the NGWSP shall in no way nullify or reduce
- 10 the obligation of the United States to construct, operate and maintain Project
- 11 facilities or to deliver water to the Nation as authorized by the Navajo
- 12 Settlement Act, the Settlement Agreement, and this contract.
- 13

14 20.18.

#### WATER SUPPLY AND SHORTAGE

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15 (a) Notwithstanding any other provisions of this contract, in times of shortage in

16 the Navajo Reservoir water supply to meet demands under contracts for delivery of water

17 from said supply, taking into account water available from inflows below Navajo Dam to

18 help meet the demands, the Nation will share in the available water supply in the manner

19 set forth in sectionSection 11 of the Act of June 13, 1962 (76 Stat. 96), and

20 sectionSection 10402 (b) of the Navajo Settlement Act.

21 (b) On account of drought or other causes outside the control of the United

22 States, there may occur at times during any year a shortage in the quantity of water

23 available for use by the Nation pursuant to this contract. In no event shall any liability

24 accrue against the United States or any of its officers, agents, or employees, for any

25 damage, direct or indirect, arising out of any such shortage, and payments due the United

26 States provided for herein shall not be reduced because of such shortage.

#### 19. SUBSTANTIAL COMPLETION AND WATER AVAILABILITY BLOCK

#### 29 NOTICE FOR NGWSP

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30 (a) When features or reaches of the NGWSP have been declared to be

31 substantially complete and water can be made available to the Nation, the United States

1 shall, after consultation, give the Nation written notice, referred to herein as the “block  
2 notice”. The block notice shall contain: (1) the NGWSP facilities that have been  
3 determined to be substantially complete for water delivery, (2) the effective date that  
4 water is made available, (3) the feature(s) or reach(es) which can receive water, (4) the  
5 quantity of NGWSP water that can be made available to the Nation, and (5) the  
6 proportionate share of the completed NGWSP facilities allocated to the Nation.

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

9  
10 22.20.

#### COST PROVISIONS

11 (a) The Nation shall pay the United States, or its designee if some organization  
12 other than the United States is operating Navajo Dam and Reservoir, the Nation’s  
13 proportionate share of the OM&R costs for Navajo Dam and Reservoir assignable to the  
14 amount of water made available to the Nation through Part IV **Article 19** of this contract.

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

17 (c) The Nation’s OM&R cost obligation for the NGWSP shall be paid to the  
18 United States, or its designee if some organization other than the United States is  
19 operating the NGWSP facilities.

20 (i) For any feature or reach of the NGWSP through or by which water can  
21 only be delivered to the Nation, the Nation shall pay all OM&R costs  
22 associated with water delivery, until such time water can be delivered through  
23 or by that feature or reach to other NGWSP participants, at which time Part IV  
24 **Article 20**(c)(ii) below shall apply.

25 (ii) For any feature or reach of the NGWSP through or by which water  
26 delivery is a benefit to the Nation and other NGWSP participants, the Nation’s  
27 OM&R cost obligation will be comprised of:

28 (A) The Nation’s share of “Fixed OM&R costs” shall be based upon its  
29 proportionate share of the design capacity for all NGWSP facilities, or  
30 reaches of those facilities, which have been declared substantially  
31 complete through Part IV **Article 19** of this contract, “Fixed OM&R costs”

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1 include costs of labor, materials, equipment and replacements required to  
2 maintain all NGWSP facilities, as well as, the administration and overhead  
3 costs of the NGWSP.

4 (B) The Nation's share of "Variable OM&R costs" shall be based on  
5 actual costs of power including energy consumption and that share of  
6 power demand costs for operation of the water treatment plants and  
7 pumping plants based on the proportionate share of water treated and  
8 delivered, as well as water treatment chemical costs.

9 (d) Billing and payment for the Nation's OM&R cost obligations shall be  
10 conducted as follows:

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

23 (ii) Fixed OM&R costs for the NGWSP shall be paid on the basis of  
24 annual cost estimates made by the Contracting Officer, or the NGWSP  
25 Operator, based upon the proportionate share of the design capacity for those  
26 NGWSP facilities which have been declared substantially complete through  
27 Part IV **Article** 19 of this contract. An estimate from the Contracting Officer,  
28 or the NGWSP Operator, will be sent to the Nation on or before May 1 for the  
29 next Federal fiscal year, which begins October 1 of the same calendar year  
30 and ends September 30 of the next calendar year. The Nation shall advance its  
31 share of the OM&R costs for each Federal fiscal year in quarterly payments

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1 which will be due on September 30, December 31, March 31, and June 30 of  
2 the Federal fiscal year of applicability. The first such billing will be issued  
3 immediately following a notice of substantial completion as provided in Part  
4 IV **Article** 19 of this contract. In the event the first notice shall be for costs of  
5 service of less than a full year, such costs shall be prorated for the period  
6 covered. An itemization of the estimated Fixed OM&R costs will accompany  
7 the billing.

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

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

1 (f) The Fixed OM&R costs of the NGWSP allocated to the Nation for the  
2 NGWSP facilities that have been determined to be substantially complete for water  
3 delivery through Part IV **Article** 19 of this contract, that the Secretary determines are in  
4 excess of the ability of the Nation to pay may be waived and declared non-reimbursable  
5 by the Secretary for not more than ten (10) years from the effective date established by  
6 the block notice, pursuant to the Navajo Settlement. This waiver shall terminate on the  
7 date on which title of a facility is transferred to the Nation.

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8  
9 21. TITLE TRANSFER

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10 Title to NGWSP facilities shall remain in the name of the United States, unless  
11 transferred to the Nation pursuant to Section 10604(f) of the Navajo Settlement Act.

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12  
13 23.22. LIMITED RESPONSIBILITY FOR DISTRIBUTION

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

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

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22 ~~(ii)(a) provisions of subSections 10602(f) of the Navajo Settlement Act placed~~  
23 ~~upon the City of Gallup certain responsibilities for the conveyance and distribution of~~  
24 ~~water made available under this contract for the NGWSP.~~

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

28 ENVIRONMENTAL COMPLIANCE

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29 ~~Construction and operation of the NGWSP will be in accordance with the~~  
30 ~~FEIS, dated July 2009, and subsequent Record of Decision, dated October 1, 2009.~~

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1 Federal law, interstate compact, and international treaty as apply to the exercise of water  
2 rights held by non-federal, non-Indian entities. Nothing in this Contract shall be  
3 construed to establish, address, or prejudice whether, or to prevent any party from  
4 litigating whether, or to the extent to which, any of the aforementioned laws do or do not  
5 permit, govern, or apply to the use of 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, and this Contract, and must include terms of use, purchase, measurement,  
9 operations and default. A copy of each proposed subcontract shall be filed with the  
10 Contracting Officer and the New Mexico Interstate Stream Commission at least 30 days  
11 prior to being executed by the Nation; provided, that proposed emergency subcontracts  
12 may be filed with less than 30 days notice. Two copies of each executed subcontract  
13 shall be filed with the Contracting Officer and one copy with the New Mexico Interstate  
14 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, and other applicable  
28 law, including any applicable permitting requirements and permit conditions  
29 of the New Mexico State Engineer, and the provisions of this contract;
- 30 (ii) the sum of the term of the subcontract plus all renewals is no more  
31 than 99 years;

- 1 (iii) the use of water under the subcontract is not inconsistent with the  
2 provisions of the Endangered Species Act or other provisions of federal law  
3 designed to protect the environment;
- 4 (iv) the subcontract is sufficiently specific as to the amount of water and  
5 points of diversion to enable the Contracting Officer to account for the water  
6 as it is diverted; or, in the alternative, that the subcontract reserves the  
7 Contracting Officer's right to review and approve future diversions sought  
8 under the subcontract, such review and approval to be consistent with this  
9 contract;
- 10 (v) the delivery obligations under the subcontract are not inconsistent with  
11 other obligations of the Contracting Officer to deliver water under preexisting  
12 contracts.

13 The Nation agrees to include the equal opportunity language as specified in Part VI  
14 Article 45-42 of this contract in any subcontract for use of water off Navajo Lands.

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

Comment [P3]: Carter to look into EEO requirements for 3<sup>rd</sup> Party Contractors. Does this need to be in this contract?

18  
19 29:27.

#### SEVERABILITY

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

28  
29 28. CONTRACT AMENDMENTS

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30 Any modifications to this contract necessitated by future negotiations between the parties  
31 can be accomplished by amending this contract to the extent such amendments are

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

3  
4  
5 31.29.

#### SAVINGS CLAUSES

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

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

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

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

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

7  
8 30. ENVIRONMENTAL COMPLIANCE AND COORDINATION

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

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

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

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31 PART VI. STANDARD ARTICLES  
32

1 | 34.31.

AIR AND WATER POLLUTION CONTROL

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2  
3 The Nation agrees that in taking delivery of water under this contract, it will  
4 comply with federal air and water pollution control laws, now or hereafter in force, that  
5 may be applicable or relevant to the use being made of the water. Also, the Nation agrees  
6 that any subcontract it may enter into for the furnishing of water pursuant to this contract  
7 will contain similar air and water pollution control provisions including state and local  
8 requirements, where applicable. The Nation further agrees that any such subcontract it  
9 may enter into will require that its designs and plans for air and water pollution control  
10 facilities or equipment which are necessary parts of any design, facility, plant or process  
11 which utilizes water delivered pursuant to this contract will be submitted to the Secretary  
12 for his review and written comments prior to contracting for said facilities, their  
13 installation or major modification thereof.  
14

15 | 35.32.

OPERATION AND MAINTENANCE

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16 OF TRANSFERRED WORKS--PAYMENT OF MISCELLANEOUS COSTS  
17

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

Comment [rcr4]: This change is intended to recognize the title transfer provisions of the Act.

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

Comment [P5]: NIP?

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

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

41 (e) The Nation agrees to indemnify the United States for, and hold the United  
42 States and all of its representatives harmless from, all damages resulting from suits,  
43 actions, or claims of any character brought on account of any injury to any person or  
44 property arising out of any act, omission, neglect, or misconduct in the manner or method  
45 of performing any construction, care, operation, maintenance, supervision, examination,  
46 inspection, or other duties of the Nation or the United States on ~~transferred~~

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

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

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

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

27 |  
28 | 36.33.

EMERGENCY

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29 | RESERVE FUND

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

37 | (b) The Nation shall accumulate the reserve fund with annual deposits or  
38 | investments of not less than \$ \_\_\_\_\_ to a Federally insured, interest- or dividend-  
39 | bearing account or in securities guaranteed by the Federal Government: *Provided, That*  
40 | money in the reserve fund, including accrued interest, shall be available within a  
41 | reasonable time to meet expenses for such purposes as those identified in paragraph (d)  
42 | herein. Such annual deposits and the accumulation of interest to the Emergency Rreserve  
43 | Ffund shall continue until the basic amount of \$ \_\_\_\_\_ is accumulated. The above  
44 | amounts will be adjusted (adjusted balance) as may be justified by reason of ordinary  
45 | fluctuations in the construction, operation and maintenance costs as indicated by  
46 | engineering cost indices applicable to the types of construction, operation and

1 | maintenance for which this Emergency Reserve Fund is established. Following an  
2 | emergency expenditure from the fund, the annual deposits shall continue from the year  
3 | following the emergency expenditure until the previous balance (or adjusted balance if an  
4 | adjustment pursuant to this paragraph or paragraph (c) is made) is restored. After the  
5 | initial amount is accumulated or after the previous balance is restored, the annual deposits  
6 | may be discontinued, and the interest earnings shall continue to accumulate and be  
7 | retained as part of the Emergency Reserve Fund.

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

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

25 | (e) During any period in which any of the project works are operated and  
26 | maintained by the United States, the Nation agrees the Emergency Reserve Fund shall  
27 | be available for like use by the United States.

28 | (f) On or before \_\_\_\_\_ of each year, the Nation shall provide a current  
29 | statement of the principal and accumulated interest of the Emergency Reserve Fund  
30 | account to the Contracting Officer.

31 |  
32 | 37.34. ADMINISTRATION OF FEDERAL PROJECT LANDS

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

Comment [P6]: Carter to check w/  
LisaV on this change.

44 | 38.35. EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS,  
45 | RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION  
46 | AND MAINTENANCE

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1  
2 (a) The Contracting Officer may from time to time, examine the following: the  
3 Nation's books, records, and reports; the project works being operated by the Nation; the  
4 adequacy of the OM&R and safety of dams programs; the reserve fund; and the water  
5 conservation program including the water conservation fund, if applicable.  
6 Notwithstanding title ownership, where the United States retains a financial, physical, or  
7 liability interest in facilities either constructed by the United States or with funds  
8 provided by the United States, the Contracting Officer may examine any or all of the  
9 project works providing such interest to the United States.

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

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

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

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

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

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

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

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

5  
6 | 39.36.

#### BOOKS, ACCOUNTS AND RECORDS

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

21  
22 | 40.37.

#### CONTAMINATION OR POLLUTION 23 OF FEDERAL PROPERTY

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24  
25 (a) The Nation shall not allow contamination or pollution of Federal project  
26 lands, project waters, or project works of the United States or administered by the United  
27 States and for which the Nation has the responsibility for care, operation, and  
28 maintenance by its employees or agents. The Nation shall also take reasonable  
29 precautions to prevent such contamination or pollution by third parties.

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

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

41 (d) Upon discovery of any event which may or does result in contamination or  
42 pollution of Federal project lands, project water, or project works, the Nation shall  
43 immediately undertake all measures necessary to protect public health and the  
44 environment, including measures necessary to contain or abate any such contamination or  
45 pollution and shall report such discovery with full details of the actions taken to the  
46 Contracting Officer. Reporting shall be within a reasonable time period but shall not

1 exceed 24 hours from the time of discovery if it is an emergency and the first working  
2 day following discovery in the event of a non-emergency.

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

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

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

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

19  
20 | 41.38.  
21 AND WATER

CLEAN AIR

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22  
23 (a) The Nation agrees as follows:

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

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

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

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

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

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

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

45 (iii) The term "clean air standards" means any enforceable rules,  
46 regulations, guidelines, standards, limitations, orders, controls, prohibitions, or

1 other requirements which are contained in, issued under, or otherwise adopted  
2 pursuant to the Air Act or Executive Order 11738, an applicable  
3 implementation plan as described in Section 110 of the Air Act (42 U.S.C.  
4 7410), an approved implementation procedure or plan under Section 111(c) or  
5 Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or (d)), or an  
6 approved implementation procedure under Section 112(d) of the Air Act (42  
7 U.S.C. 7412(d)).

8 (iv) The term “clean water standards” means any enforceable limitation,  
9 control, condition, prohibition, standard, or other requirement which is  
10 promulgated pursuant to the Water Act or contained in a permit issued to a  
11 discharger by the Environmental Protection Agency or by a state under an  
12 approved program, as authorized by Section 402 of the Water Act  
13 (33 U.S.C. 1342), or by local government to ensure compliance with  
14 pretreatment regulations as required by Section 307 of the Water Act  
15 (33 U.S.C. 1317).

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

22 (vi) The term “facility” means any building, plant, installation, structure,  
23 mine, vessel or other floating craft, location, or site of operations owned,  
24 leased, or supervised by a contractor or subcontractor to be utilized in the  
25 performance of a contract or subcontract. Where a location or site of  
26 operations contains or includes more than one building, plant, installation, or  
27 structure, the entire location or site shall be deemed to be a facility except  
28 where the Director, Office of Federal Activities, Environmental Protection  
29 Agency, determines that independent facilities are collocated in one  
30 geographical area.

31  
32 | 42.39.

## PEST MANAGEMENT

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33  
34 The Nation shall take appropriate steps to prevent the introduction and spread of,  
35 and to otherwise control undesirable plants and animals, as defined by the Contracting  
36 Officer, on Federal project lands, project waters, and project works for which the Nation  
37 has operation and maintenance responsibility. The Nation is responsible for inspecting  
38 its vehicles and equipment for reproductive and vegetative parts, foreign soil, mud or  
39 other debris that may cause the spread of weeds, invasive species and other pests, and for  
40 removing such materials before moving its vehicles and equipment onto any Federal land  
41 or out of any area on Federal project land where work is performed. Where  
42 decontamination is required prior to entering Federal project land, it shall be performed at  
43 the point of prior use, or at an approved offsite facility able to process generated cleaning  
44 wastes. Upon the completion of work, decontamination shall be performed within the  
45 work area before the vehicles and equipment are removed from Federal project lands.  
46 Programs for the control of these undesirable plants and animals on Federal project lands,

1 project waters, and project works for which the Nation has operation and maintenance  
2 responsibility will incorporate Integrated Pest Management (IPM) concepts and practices.  
3 IPM refers to a systematic and environmentally compatible program to maintain pest  
4 populations within economically and environmentally tolerable levels. In implementing  
5 an IPM program, the Nation will adhere to applicable Federal and State laws and  
6 regulations and Department of the Interior and Bureau of Reclamation polices, directives,  
7 guidelines, and manuals.

8  
9  
10  
11 | 43-40. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY

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12  
13 (a) In accordance with the provisions of Title 42 U.S.C. 2000-e-2(i), the Nation  
14 shall, during the performance of this contract, give preference in employment to Indian  
15 ~~residents~~members of the Navajo Nation Indian Reservation, ~~members of the Nation~~. The  
16 Bureau of Indian Affairs Office of Employment Assistance shall be notified of  
17 employment opportunities 48 hours before any positions are advertised to the general  
18 public. Nothing in this section shall be read as prohibiting the Nation from giving  
19 preferential employment to members of the Nation.

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

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

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

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

1 (iv) The Nation will comply with all provisions of Executive Order No.  
2 11246 of September 24, 1965, and of the rules, regulations, and relevant  
3 orders of the Secretary of Labor.

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

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

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

31  
32 | 44.41. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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33  
34 (a) The Nation shall comply with Title VI of the Civil Rights Act of 1964  
35 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as  
36 amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Americans with  
37 Disabilities Act of 1990, as applicable, and any other applicable civil rights laws, as well  
38 as with its respective implementing regulations and guidelines imposed by the U.S.  
39 Department of the Interior and/or Bureau of Reclamation.

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

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

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

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15 | 45.42.  
16 NONSEGREGATED FACILITIES

CERTIFICATION OF

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

39  
40 | 46.43. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
41 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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42  
43 A Certification of Nonsegregated Facilities must be submitted prior to the award  
44 of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal  
45 Employment Opportunity clause. The certification may be submitted either for each  
46 subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or

1 annually). Note: The penalty for making false statements in offers is prescribed in  
2 18 U.S.C. 1001.

3  
4 | 47.44. COMPLIANCE WITH RECLAMATION LAWS

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5  
6 The parties agree that the delivery of irrigation water or the use of federal  
7 facilities pursuant to this contract is governed by applicable Reclamation law, except that  
8 this delivery or use is not subject to the Reclamation Reform Act of 1982, as amended.  
9

10 | 48.45. RULES, REGULATIONS, AND DETERMINATIONS

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11  
12 (a) The United States or its assigns shall take all prudent and ordinary measures  
13 to operate and maintain all existing facilities necessary to this contract, but nothing in this  
14 section shall be construed to require the United States to operate such facilities beyond  
15 the useful life of the existing facilities. These facilities will be operated for multiple  
16 benefits of the project in accordance with project authorization and contracts, including  
17 this contract. The Contracting Officer, in consultation with the Nation, shall have the  
18 right to make determinations necessary to administer this contract that are consistent with  
19 the express and implicit conditions of this contract, the laws of the United States and  
20 rules and regulations promulgated by the Secretary of the Interior.

21 (b) Where the terms of this contract provide for action to be based upon the  
22 opinion or determination of either party to this contract, whether or not stated to be  
23 conclusive, said terms shall not be construed as permitting such action to be predicted  
24 upon arbitrary, capricious, or unreasonable opinions or determinations.  
25

26 | 49.46. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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27  
28 (a) The obligation of the Nation to pay the United States as provided in this  
29 contract is a general obligation of the Nation notwithstanding the manner in which the  
30 obligation may be distributed among the Nation’s water users and notwithstanding the  
31 default of individual water users in their obligation to the Nation.

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

42 | 50.47. MEDIUM FOR TRANSMITTING PAYMENTS

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43  
44 All payments from the Nation to the United States under this contract shall be by  
45 the medium requested by the United States on or before the date payment is due. The

1 required method of payment may include checks, wire transfers, or other types of  
2 payment specified by the United States.

3  
4 | 51.48. CHARGES FOR DELINQUENT PAYMENTS

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

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

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

23  
24 | 52.49. WATER QUALITY

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

33  
34  
35 | 53.50. WATER CONSERVATION

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36  
37 Prior to the delivery of water to the Nation provided from or conveyed through  
38 federally constructed or federally financed facilities pursuant to this contract, the Nation  
39 shall develop an effective water conservation program which shall contain definite water  
40 conservation objectives, appropriate economically feasible water conservation measures,  
41 and time schedules for meeting those objectives. At subsequent three-year intervals, the  
42 Nation shall submit a report on the results of the program to the Contracting Officer for  
43 review. Based on the conclusions of the review, the Contracting Officer and the Nation  
44 shall consult and agree to continue or to revise the existing water conservation program.  
45 This paragraph shall be included in all subcontracts, and such measures shall be required  
46 for all water purchasers.



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By: \_\_\_\_\_

President

DRAFT