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Navajo Nation San Juan Basin in New Mexico Water Rights Settlement Agreement of 2010

Navajo Nation

New Mexico

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Navajo Nation San Juan Basin, NM Water Rights Settlement, State of New Mexico v. United States, No. AN-07-001, cv-1975-00184, 11th Judicial District, San Juan County, New Mexico (Dec. 17, 2010)

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SAN JUAN RIVER BASIN IN NEW MEXICO
NAVAJO NATION WATER RIGHTS SETTLEMENT AGREEMENT

This Agreement is entered into as of the dates executed below, by and among the State of New Mexico, the Navajo Nation and the United States of America, acting through the Secretary of the Interior.

1.0 RECITALS

- 1.1 Proceedings to determine the nature and extent of the rights to water of the Navajo Nation in the San Juan River Basin in New Mexico are pending in the San Juan River Adjudication.
- 1.2 Recognizing that final resolution of the proceedings in the San Juan River Adjudication may take many years, entail great expense, and prolong uncertainty concerning the availability of water supplies in the San Juan River Basin in New Mexico, the Parties to this Agreement desire to arrive at a settlement regarding the water rights of the Navajo Nation and to seek entry of a partial final decree of those rights in the San Juan River Adjudication, setting forth the Navajo Nation's rights to use and administer waters of the San Juan River Basin in New Mexico.
- 1.3 It is the policy of the United States, in keeping with the trust responsibility of the United States to Indian tribes, to settle Indian water rights claims whenever possible without lengthy and costly litigation.
- 1.4 The United States and the Navajo Nation entered into treaties of 1849 and 1868 to create a permanent homeland for the Navajo people and this settlement will secure for the Navajo Nation a water supply from the San Juan River Basin of New Mexico for that homeland.

- 1.5 The State of New Mexico and the Navajo Nation previously executed the *San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement* on April 19, 2005, for the purposes of facilitating settlement of the Navajo Nation's water rights claims in the San Juan River Basin in New Mexico.
- 1.6 The Northwestern New Mexico Rural Water Projects Act of March 30, 2009 (123 Stat. 1367), Public Law 111-11, Title X, Subtitle B, requires the Secretary of the Interior, on behalf of the United States, to enter into the Agreement signed by the State of New Mexico and the Navajo Nation on April 19, 2005, to the extent that the Agreement does not conflict with the Northwestern New Mexico Rural Water Projects Act, including (A) any exhibits to the Agreement requiring the signature of the Secretary; and (B) any amendments to the Agreement necessary to make the Agreement consistent with the Northwestern New Mexico Rural Water Projects Act.

NOW, THEREFORE, in consideration of mutual and dependent covenants and conditions contained herein that each Party acknowledges inures to its respective benefit, the State of New Mexico, the Navajo Nation and the United States agree as follows:

2.0 DEFINITIONS

As used in this Agreement, the term:

- 2.1 "Act" or "Settlement Act" means the Northwestern New Mexico Rural Water Projects Act, Subtitle B of Title X of the Act of March 30, 2009 P.L. 111-11, (123 Stat. 1367).

- 2.2 “Agreement” or “Settlement Agreement” means this Agreement among the State of New Mexico, the Navajo Nation, and the United States and the three Appendices hereto, which are incorporated herein by this reference,
- 2.3 “Allottee” means a person that holds a beneficial real property interest in a Navajo allotment that –
- (A) is located within the Navajo Reservation or the State of New Mexico;
 - (B) is held in trust by the United States; and
 - (C) was originally granted to an individual member of the Navajo Nation by public land orders or otherwise.
- 2.4 “Animas-La Plata Project” has the meaning given the term in section 3 of Public Law 100-585 (102 Stat. 2973), including Ridges Basin Dam, Lake Nighthorse, the Navajo Nation Municipal Pipeline, and any other features or modifications made pursuant to the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106-554; 114 Stat. 2763A-238).
- 2.5 “Contract” or “Settlement Contract” means the contract between the United States and the Navajo Nation setting forth certain commitments, rights, and obligations of the United States and the Navajo Nation, as described in paragraph 6.0 of this Agreement and assigned as “Reclamation Contract No. 10-WC-40-384.”
- 2.6 “Echo Ditch Decree” means the decree entered April 8, 1948, by the First Judicial District Court of New Mexico within and for San Juan County in the matter of *The Echo Ditch Company, et al., v. The McDermott Ditch Company, et al.*, Cause No. 01690.

- 2.7 “Hydrologic Determination” means the hydrologic determination entitled “Water Availability from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico,” prepared by the Bureau of Reclamation pursuant to section 11 of the Act of June 13, 1962 (Public Law 87-483; 76 Stat.99), and dated May 23, 2007.
- 2.8 “Navajo Reservoir” means the reservoir created by the impoundment of the San Juan River at Navajo Dam as authorized by the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 *et seq.*).
- 2.9 “Navajo-Gallup Water Supply Project” means the Navajo-Gallup Water Supply Project authorized under section 10602(a) of the Settlement Act.
- 2.10 “Navajo Indian Irrigation Project” means the Navajo Indian irrigation project authorized by section 2 of Public Law 87-483 (76 Stat. 96).
- 2.11 “Navajo Nation” means a body politic and federally-recognized Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe List of 1994 (25 U.S.C. 497a(2)), also known variously as the “Navajo Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo Tribe of Indians” and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation.
- 2.12 “Partial Final Decree” means a final and binding judgment and decree entitled “Partial Final Judgment and Decree” entered by the Court in the Stream Adjudication, setting forth the rights of the Navajo Nation to use and administer

waters of the San Juan River Basin in New Mexico, the form of which is attached hereto as Appendix 1.

- 2.13 “Parties” means the State of New Mexico, the Navajo Nation and the United States.
- 2.14 “Report” means the Hydrographic Survey Report prepared by the United States and accepted by the State of New Mexico to determine certain reserved rights of the Navajo Nation and the Navajo Nation’s rights acquired under state law, as called for by paragraphs 3 and 4 of the Supplemental Partial Final Decree, respectively, and to provide the information required to administer subparagraph 4.4 of this Agreement.
- 2.15 “San Juan River Adjudication” or “Stream Adjudication” means the general stream adjudication that is the subject of *New Mexico v. United States*, No. 75-184 (11th Jud. Dist., San Juan County, New Mexico) (involving claims to waters of the San Juan River and the tributaries of that river).
- 2.16 “San Juan River Basin in New Mexico” or “Basin” means all areas located within the physical drainage of the San Juan River and its tributaries within the State of New Mexico.
- 2.17 “Supplemental Partial Final Decree” means a final and binding judgment and decree entitled “Supplemental Partial Final Judgment and Decree” entered by the Court in the Stream Adjudication, setting forth certain water rights of the Nation, the form of which is attached hereto as Appendix 2.
- 2.18 “United States” or “United States of America” in any given reference herein shall mean the United States acting in all of its capacities unless the capacity is set forth

in said reference. When the term “United States” or “United States of America” is used in reference to a particular agreement or contract, the term shall mean the United States acting in the capacity as set forth in such agreement or contract.

2.19 “Upper Basin” has the same meaning given the term in Article II(f) of the Colorado River Compact.

2.20 “Waiver and Release Document” means the document incorporating the waivers and releases required by section 10703(a) of the Settlement Act, attached hereto as Appendix 3.

3.0 PARTIAL FINAL DECREE

3.1 Terms and Conditions of the Partial Final Decree. The Parties have negotiated and agree to the terms and conditions contained in the Partial Final Decree.

3.2 Entry of the Partial Final Decree.

3.2.1 Once this Agreement is executed by all the Parties, the Parties shall file a joint motion with the Court in the Stream Adjudication for entry of the Partial Final Decree pursuant to expedited *inter se* procedures to be adopted by the Court.

3.2.2 To satisfy this Agreement, the Court in the Stream Adjudication must enter the Partial Final Decree in substantially the form of Appendix 1, unless modified pursuant to paragraph 4.3.3 of this Agreement.

4.0 SUPPLEMENTAL PARTIAL FINAL DECREE

4.1 Terms and Conditions of the Supplemental Partial Final Decree. The Parties have negotiated and agree to the terms and conditions contained in paragraphs 1, 2 and 5 through 12 of the Supplemental Partial Final Decree. Furthermore, the Parties

agree to the form of paragraphs 3 and 4 of the Supplemental Partial Final Decree and to the procedure described in subparagraphs 4.2 and 4.3.1 of this Agreement for determining the quantification of the Navajo Nation's rights under the respective paragraphs. To the extent that any modification is not inconsistent with the Act, the Parties may by mutual agreement modify the terms, conditions and form of the proposed Supplemental Partial Final Decree prior to filing the motion for its entry by the Court in the Stream Adjudication, or thereafter as necessary or required for its entry.

4.2 Hydrographic Survey Report.

4.2.1 Except as otherwise provided in subparagraph 4.3.1 of this Agreement, the basis for quantification of the Navajo Nation's rights under paragraphs 3 and 4 of the Supplemental Partial Final Decree shall be a Hydrographic Survey Report describing historic and existing water uses on lands set aside as reservation lands for the Navajo People, whether by treaty, statute, executive order or public land order, lands that are held in trust for the Navajo Nation by the United States, lands held in trust for members of the Navajo Nation by the United States, and lands held in fee ownership by the Navajo Nation. The Report shall be prepared by the United States and accepted by the State of New Mexico, and shall document the data and information called for by paragraphs 3 and 4 of the Supplemental Partial Final Decree.

4.2.2 The quantification of water rights for irrigation uses identified under paragraphs 3 and 4 of the Supplemental Partial Final Decree shall be

determined consistent with the approach or methodology for irrigation water requirements adopted by the Court in the Stream Adjudication for determining rights for other irrigation uses in the San Juan River Basin.

4.2.3 The United States and the State of New Mexico shall act in good faith to complete the Report as described in subparagraphs 4.2.1 and 4.2.2 in a timely manner. If the State of New Mexico and the United States are unable to agree on the preparation, contents or other aspects of the Report, the Parties agree to resolve the matter by submitting the dispute(s) to the Court in the Stream Adjudication or, by mutual agreement, to an alternative dispute resolution process.

4.3 Completion and Entry of the Supplemental Partial Final Decree.

4.3.1 Once the Report described in subparagraph 4.2 is complete, the Parties shall complete paragraphs 3 and 4 of the Supplemental Partial Final Decree based on the contents of the Report; except, that the permits and licenses for the diversion and use of water pursuant to New Mexico State Engineer File Nos. 758, 2472, 2807 and 2875 shall be cancelled, and no water rights shall be adjudicated for said permits and licenses.

4.3.2 Once paragraphs 3 and 4 of the Supplemental Partial Final Decree are complete, the Parties shall file a joint motion with the Court in the Stream Adjudication for entry of the Supplemental Partial Final Decree pursuant to expedited *inter se* procedures to be adopted by the Court.

4.3.3 To satisfy this Agreement, the Court in the Stream Adjudication must enter the Supplemental Partial Final Decree in substantially the form of

Appendix 2; however, the Parties may agree to incorporate the provisions of the Supplemental Partial Final Decree into the Partial Final Decree and to present such decree to the Court pursuant to the process described in paragraph 3.2 of this Agreement.

5.0 SETTLEMENT ACT

5.1 The Settlement Act. The Settlement Act provides authorizations, approvals, terms, restrictions and procedures to carry out this Agreement.

5.2 Deadlines. The deadlines described in subsection 10701(e)(1)(A) of the Settlement Act must be fulfilled in the manner provided therein.

5.2.1 Those deadlines are:

- (1) Not later than December 31, 2010, the Secretary shall execute this Agreement.
- (2) Not later than December 31, 2010, the Secretary and the Navajo Nation shall execute the Contract.
- (3) Not later than December 31, 2013, the Court in the Stream Adjudication shall have entered the Partial Final Decree.
- (4) Not later than December 31, 2016, the rehabilitation construction of the Fruitland-Cambridge Irrigation Project authorized under section 10607(a)(1) of the Act shall be completed.
- (5) Not later than December 31, 2016, the Court in the Stream Adjudication shall enter the Supplemental Partial Final Decree.
- (6) Not later than December 31, 2019, the rehabilitation construction of the Hogback-Cudei Irrigation Project authorized under section

10607(a)(2) the Act shall be completed.

(7) Not later than December 31, 2019, the United States shall make all deposits into the Trust Fund under section 10702 of the Act.

(8) Not later than December 31, 2019, the funds authorized to be appropriated under section 10609(b)(1) of the Act for the conjunctive use wells authorized under section 10606(b) should be appropriated.

(9) Not later than December 31, 2024, the construction of all Navajo-Gallup Water Supply Project facilities shall be completed.

5.2.2 The deadlines described in paragraph 5.2.1 may be extended if the Parties agree that an extension is reasonably necessary.

5.3 Consultation.

5.3.1 The Navajo Nation and the Department of the Interior shall consult concerning the scope and completion of the Fruitland-Cambridge Irrigation Project and the Hogback-Cudei Irrigation Project described in subparagraphs 5.2.1(4) and (6), respectively.

5.3.2 The Department of the Interior, acting through the Bureau of Reclamation, will consult with the Navajo Nation and the State of New Mexico concerning completion of the Navajo-Gallup Water Supply Project consistent with the deadline described in subparagraph 5.2.1(9). This consultation will include utilization of the Project Construction Committee as described in Section 10604(g) of the Settlement Act.

5.4 Revocation. If the Navajo Nation determines that a deadline described in paragraph 5.2 has not substantially been met, the Navajo Nation may submit to the Court in the Stream Adjudication a petition to enter an order revoking the Partial Final Decree and any supplemental decrees and terminating the Agreement. Not less than ninety (90) days prior to filing a petition, the Navajo Nation agrees to confer with the United States and the State of New Mexico. The Navajo Nation's right of revocation as described in section 10701(e)(2) shall expire on December 31, 2025, unless the deadlines set forth in paragraph 5.2 are extended, in which case, this right shall expire one year following the date of the last deadline, including extensions, pursuant to paragraph 5.2.2.

6.0 SETTLEMENT CONTRACT

6.1 Contract between the United States and the Navajo Nation. In order to implement provisions of this Agreement and the Settlement Act, the Navajo Nation and the United States entered into Reclamation Contract No. 10-WC-40-384 for the water supply authorized by section 10604(a) of the Settlement Act.

6.2 Termination of Contract. If the Settlement Agreement is terminated pursuant to paragraph 5.4, the Contract shall terminate as set out in article 34 of the Contract.

7.0 WAIVER AND RELEASE

7.1 Waiver and Release Document. The Waiver and Release Document executed by the Parties as set out in the Settlement Act at section 10703(a) is attached hereto as Appendix 3 and is incorporated and made a part hereof as though fully set forth herein.

7.2 Effective Date.

- 7.2.1 The Waiver and Release Document shall be effective on the date on which the Secretary publishes in the Federal Register a statement of findings documenting that each of the deadlines described in section 10701(e)(1) of the Settlement Act have been met.
- 7.2.2 If the deadlines described in section 10701(e)(1)(A) of the Settlement Act have not been met by the later of March 1, 2025, or the date of any extension under section 10701(e)(1)(B) of the Settlement Act, the Waiver and Release Document shall be of no effect and section 10701(e)(2)(B) of the Settlement Act shall apply.

8.0 ADDITIONAL ALLOCATIONS

- 8.1 Animas-La Plata Project. If it is determined that an allocation to New Mexico water users can be made without impairment to existing water rights in New Mexico from the water supply associated with New Mexico State Engineer File No. 2883 that is in addition to the Animas-La Plata Project water allocations to users in New Mexico made by section 302 of the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106-554; 114 Stat. 2763A-258):
- 8.1.1 the Navajo Nation shall receive for its use an additional share of water from the water supply associated with File No. 2883 that is equal to 50 percent of the additional allocation that can be made;
- 8.1.2 the remainder of the additional allocation shall be reserved for uses of water by member entities of the San Juan Water Commission, subject to approval of the State of New Mexico, acting through the Interstate Stream Commission; and

8.1.3 the allocations described in paragraphs 8.1.1 and 8.1.2 shall be subject to permits issued by the State Engineer and are not federal reserved water rights.

8.1.4 If an additional allocation is made to the Navajo Nation pursuant to paragraph 8.1.1, the additional allocation shall be held by the United States in trust on behalf of the Navajo Nation.

8.2 Additional Uses under Upper Basin Apportionment. If the yield available for development by the Upper Basin under the apportionments of water made by Article III of the Colorado River Compact is determined to be greater than that described in the Hydrologic Determination:

8.2.1 the New Mexico Interstate Stream Commission will determine the additional allocation of water available for use within the State of New Mexico's Upper Colorado River Basin Compact apportionment;

8.2.2 the additional allocation, if any, shall be shared as follows:

- (1) the Navajo Nation shall receive for its use an additional share of water that is equal to 50 percent of the additional allocation; and
- (2) the remainder of the additional allocation shall be reserved for uses of water by entities other than the Navajo Nation, and the State of New Mexico, acting through the Interstate Stream Commission, shall determine the shares for the non-Navajo entities; and

8.2.3 an additional allocation, if any, under paragraph 8.2.2 shall be:

- (1) supplied under New Mexico State Engineer File Nos. 2849, 2883, 2917 and 3215;

- (2) subject to approval by the Secretary of the Interior of a Navajo Reservoir supply water contract if necessary;
- (3) subject to non-impairment of existing water rights in New Mexico and to the provisions of subparagraph 8.1; and
- (4) subject to permits issued by the State Engineer and are not federal reserved water rights.

8.2.4 If an additional allocation is made to the Navajo Nation pursuant to paragraph 8.2.2(1), the additional allocation shall be held by the United States in trust on behalf of the Navajo Nation.

9.0 WATER ADMINISTRATION

9.1 Administration of Navajo Reservoir Releases. Subject to applicable federal law, whenever total storage in Navajo Reservoir is anticipated to exceed, or does exceed, a 1,000,000 acre-feet threshold at the end of May of the current year, excluding storage in any top water bank established in Navajo Reservoir pursuant to section 10401(b) of the Settlement Act, the Navajo Nation and the United States, acting in its capacity as trustee for the Navajo Nation, will not challenge the New Mexico State Engineer during the irrigation season making available to direct-flow water users on the San Juan River below Navajo Dam up to 225 cubic-feet-per-second (cfs) as measured at the San Juan River at Archuleta gauging station if inflow to the reservoir is determined to be less than 225 cfs. The direct-flow water users may divert and use water made available pursuant to this subparagraph without a contract for water from Navajo Reservoir. Making water available to direct-flow users pursuant to this paragraph shall not impair the

ability of the Secretary, in the current year, to deliver water to Navajo Reservoir water supply contractors or to provide flows to satisfy any obligation under federal law. The reservoir storage threshold may be adjusted from time to time to maintain within the storage threshold a consistent amount of active storage that reflects sedimentation of the reservoir determined by sediment surveys or any change in the minimum reservoir operating level for the Navajo Indian Irrigation Project diversion.

9.2 Alternate Water Source for San Juan River Uses.

9.2.1 When the direct flow of the San Juan River is insufficient to supply current beneficial uses under direct-flow water rights in New Mexico, the Navajo Nation agrees to make water available from the Settlement Contract, and the United States, acting in its capacity as trustee for the Navajo Nation, agrees that water can be made available from the Settlement Contract, to supply its uses under the reserved rights for Shiprock municipal uses and the Hogback-Cudei and Fruitland-Cambridge irrigation projects described in subparagraphs 3(d), 3(e) and 3(f), respectively, of the Partial Final Decree; provided, that:

- (1) the maximum amount of water to be made available from the Settlement Contract for this purpose during any one year is 12,000 acre-feet; and
- (2) the maximum amount described in (1) above is to be reduced in any year in which the Secretary of the Interior determines and allocates a shortage in the Navajo Reservoir water supply pursuant

to subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96) and section 10402(b) of the Settlement Act, such reduction to be a function of the percentage shortage in water supply to the diversion demand for the Navajo Indian Irrigation Project; whereby, the maximum amount shall decline linearly in proportionate parts from 12,000 acre-feet at no shortage to 0 acre-feet at 20 percent shortage.

The Navajo Nation at its sole discretion may increase the maximum amounts described in (1) and (2) above in any given year.

- 9.2.2 The amount of water made available from the Settlement Contract to supply Navajo Nation uses from the San Juan River pursuant to subparagraph 9.2.1 shall be determined as the releases from Navajo Dam made for this purpose, and shall be accounted against the Navajo Nation's rights to divert water under the Navajo Indian Irrigation Project described in subparagraph 3(a) of the Partial Final Decree. The depletions of the releases from Navajo Dam made for this purpose shall be accounted against the Navajo Nation's rights to deplete water under the Navajo Indian Irrigation Project described in subparagraph 3(a) of the Partial Final Decree. Depletions of releases for purposes of accounting under this subparagraph include consumptive uses, incidental depletions and incremental river carriage losses.
- 9.2.3 The Parties agree that the water to be supplied under the Settlement Contract to the Navajo Nation for use on the Navajo Indian Irrigation

Project may be delivered pursuant to subparagraph 9.2.1 to service the Navajo Nation's reserved rights under subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree as alternate points of delivery and use. No water rights transfer will be required for this purpose, nor shall the Navajo Nation be required to fallow irrigated acreage on the Navajo Indian Irrigation Project to effectuate the alternate delivery described in subparagraph 9.2.1. No further action shall be required by the Parties for this purpose.

9.2.4 Providing the alternate water supply under subparagraph 9.2.1 shall service, but shall not increase, the rights described in subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree, and shall not be affected by any transfers to non-irrigation uses of the irrigation rights described in subparagraphs 3(e) or 3(f) of the Partial Final Decree.

9.2.5 When the direct flow of the San Juan River is insufficient to supply current beneficial uses under direct-flow water rights in New Mexico and the amount of water to be made available, if any, from the Settlement Contract pursuant to subparagraph 9.2.1 to supply Navajo Nation uses under the reserved rights described in subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree is exhausted, either the Navajo Nation or the United States, acting in its capacity as trustee for the Navajo Nation, may request a priority administration of water uses in the San Juan River Basin as necessary to fully or partially meet the current beneficial uses of the Navajo Nation under such rights.

9.2.6 The provisions of subparagraph 9.2 are conditioned upon enforcement of the provisions of section 11 of the Act of June 13, 1962, that no water user has an entitlement to water released from Navajo Reservoir storage into the San Juan River that is in excess of the direct flow determined to be available at Navajo Dam except under contract with the Secretary; except, that:

- (1) direct-flow water users may divert and use water released from reservoir storage and made available to them pursuant to the provisions of subparagraph 9.1 of this Agreement; and
- (2) water released for delivery from a top water bank in the reservoir established pursuant to section 10401(b) of the Settlement Act is available only to the owners or assigns of the banked water.

9.3 Administration for Compact Compliance.

9.3.1 Subject to the provisions of the Partial Final Decree and the Supplemental Partial Final Decree, the Navajo Nation and the United States, acting in its capacity as trustee for the Navajo Nation, agree that the State of New Mexico may administer in priority water rights in the San Juan River Basin in New Mexico, including rights of the Navajo Nation, as may be necessary for New Mexico to comply with its obligations under interstate compacts and other applicable law.

9.3.2 If it is determined that the consumptive use of water in New Mexico from the San Juan River Basin exceeds the State of New Mexico's Upper Colorado River Basin Compact Article III(a) apportionment taking into

account salvage of river losses by use and other relevant factors, the Navajo Nation agrees, subject to subparagraphs 9.3.4 and 9.3.5, to not exercise a portion of its depletion rights adjudicated to the Navajo Nation by the Partial Final Decree and the Supplemental Partial Final Decree in an amount, as measured on the San Juan River, not to exceed in any year the lesser of:

- (1) the amount of over-allocation;
- (2) a quantity equal to: (i) 67% of the sum of 13,520 acre-feet per year plus the New Mexico share of Lake Nighthorse evaporation; plus (ii) an additional one acre-foot for each acre-foot of depletion for those water rights adjudicated as abandoned or forfeited by the Court in the Stream Adjudication or otherwise terminated by operation of law, or for those rights that may be permanently retired by the State of New Mexico, or for those permits or licenses cancelled by the New Mexico State Engineer, after the effective date of this Agreement; and
- (3) the sum of 13,520 acre-feet per year, plus the New Mexico share of Lake Nighthorse evaporation, minus the same percentage shortage that is allocated, if any, to the Navajo Nation's water uses in New Mexico under the Navajo-Gallup Water Supply Project as a result of such over-allocation.

9.3.3 In the event that the Upper Colorado River Commission determines pursuant to Article IV of the Upper Colorado River Basin Compact that

the State of New Mexico must curtail its consumptive uses of water for some period of time to allow the Upper Basin to comply with Article III of the Colorado River Compact, the Navajo Nation agrees, subject to subparagraphs 9.3.4 and 9.3.5, to not exercise for said period of time a portion of its depletion rights adjudicated to the Navajo Nation by the Partial Final Decree and the Supplemental Partial Final Decree in an amount, as measured on the San Juan River, not to exceed in any year the lesser of:

- (1) the amount of curtailment required of the State of New Mexico;
- (2) a quantity equal to: (i) 67% of the sum of 13,520 acre-feet per year plus the New Mexico share of Lake Nighthorse evaporation; plus (ii) an additional one acre-foot for each acre-foot of depletion for those water rights adjudicated as abandoned or forfeited by the Court in the Stream Adjudication or otherwise terminated by operation of law, or for those rights that may be permanently retired by the State of New Mexico, or for those permits or licenses cancelled by the New Mexico State Engineer, after the effective date of this Agreement; and
- (3) the sum of 13,520 acre-feet per year, plus the New Mexico share of Lake Nighthorse evaporation, minus the same percentage shortage that is allocated, if any, to the Navajo Nation's water uses in New Mexico under the Navajo-Gallup Water Supply Project as a result of such curtailment.

9.3.4 For the purpose of determining the quantity referenced in subparagraphs 9.3.2(2) and 9.3.3(2), depletion amounts for rights abandoned, forfeited, terminated or retired, or for permits or licenses cancelled, shall be as quantified by decree, permit or license, or if not so quantified shall be based on the consumptive use for municipal, industrial or commercial uses or on annual consumptive irrigation requirements that are consistent with those provided in the report of Hydrographic Survey approved by the Echo Ditch Decree for irrigation uses, as appropriate. Depletions associated with permits or licenses pursuant to New Mexico State Engineer File Nos. 758, 2472, 2807 and 2875, all cancelled in accordance with subparagraph 4.3.1, shall not be accounted towards the quantity referenced in subparagraphs 9.3.2(2) and 9.3.3(2). Nothing in subparagraphs 9.3.2, 9.3.3 or 9.3.4 shall affect the adjudication of water rights in the Stream Adjudication.

9.3.5 Any reduction in depletion by the Navajo Nation under subparagraphs 9.3.2 or 9.3.3 shall:

- (1) be in addition to any reductions otherwise required of Navajo Nation water uses pursuant to this Agreement or as a result of water rights administration in New Mexico;
- (2) be for the exclusive purpose to provide for depletions from the San Juan River stream system to be made by the Navajo Nation and non-Navajo Nation municipal and domestic water uses in New Mexico under the Animas-La Plata Project that are allocated by

section 302 of the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258);

- (3) be limited by the extent to which forbearance of the use of the Navajo Nation's depletion rights is necessary to permit the current beneficial use needs of the municipal and domestic uses described in (2) above to be served;
- (4) be further limited so as not to result in a greater percentage water supply being made available for depletion during any year by the municipal and domestic uses described in (2) above than is available for depletion during the same year by the Navajo Nation's water uses in New Mexico under the Navajo-Gallup Water Supply Project pursuant to the Settlement Contract and to section 11 of the Act of June 13, 1962, and section 10603(d) of the Settlement Act; and
- (5) not require any action by the United States which, in its capacity as trustee for the Navajo Nation, concurs with the reduction in depletion by the Navajo Nation.

9.4 Cooperative Water Sharing Agreements. Nothing in this Agreement prohibits the Navajo Nation or the United States from participating with water users in cooperative agreements for the sharing of water supplies in the San Juan River Basin.

9.5 Administration of Water Rights. Subject to the provisions of the Partial Final Decree, the Supplemental Partial Final Decree and this Agreement, the Navajo

Nation and the United States, acting in its capacity as trustee for the Navajo Nation, agree that the New Mexico State Engineer has authority under state law to administer water rights within, and to supervise the apportionment, diversion and use of the waters of, the San Juan River Basin in New Mexico, including by appointment of watermasters, according to the orders and decrees of the Court in the Stream Adjudication and the licenses and permits issued by the State Engineer in the Basin.

9.6 San Juan River Adjudication.

9.6.1 The Navajo Nation, and the United States, acting in its capacity as trustee for the Navajo Nation, agree to not challenge in the Stream Adjudication rights previously adjudicated by the Echo Ditch Decree so long as:

- (1) quantifications of irrigation water rights in the Stream Adjudication are based on the consumptive irrigation requirements per acre described by the report of hydrographic survey approved by the Echo Ditch Decree, and on the amounts of water allotted per acre by the decree;
- (2) quantifications of maximum ditch diversion rates for irrigation uses under ditches in the Stream Adjudication are based on the diversion rates per acre approved by the Echo Ditch Decree; and
- (3) priority dates for irrigation and non-irrigation rights in the Stream Adjudication are based on the priority dates adjudicated by the Echo Ditch Decree.

The Navajo Nation or the United States may challenge in the Stream Adjudication quantifications of both irrigation water right acreages and non-irrigation water rights for reasons of forfeiture or abandonment for non-use or unauthorized use since entry of the Echo Ditch Decree.

Further, the Navajo Nation or the United States may challenge in the Stream Adjudication quantifications of annual diversion requirements for irrigation uses under ditches to the extent that the requirements would exceed the annual diversion requirements per acre described by the report of hydrographic survey approved by the Echo Ditch Decree.

9.6.2 For irrigation rights not previously adjudicated by the Echo Ditch Decree, the Navajo Nation, and the United States, acting in its capacity as trustee for the Navajo Nation, agree to not challenge in the Stream Adjudication quantifications of water rights or maximum ditch diversion rates for irrigation uses under ditches so long as:

- (1) quantifications of water rights in the Stream Adjudication are based on the consumptive irrigation requirements and farm delivery requirements, or farm duties, stated or indicated, if any, in permits or licenses, or if not so stated or indicated in permits or licenses, based on a methodology that results in consumptive irrigation requirements and farm duties consistent with those described by the report of hydrographic survey approved by the Echo Ditch Decree; and

- (2) quantifications of maximum ditch diversion rates for irrigation uses under ditches in the Stream Adjudication are based on the diversion rates stated or indicated, if any, in permits or licenses, or if not so stated or indicated in permits or licenses, based on a methodology that results in maximum diversion rates per acre consistent with those approved by the Echo Ditch Decree.

The Navajo Nation or the United States may challenge in the Stream Adjudication quantifications of both irrigation water right acreages and non-irrigation water rights for reasons of forfeiture or abandonment for non-use or unauthorized use since issuance of a permit or license not included in the Echo Ditch Decree, and may challenge priority dates that may conflict with law; provided, that the Navajo Nation and the United States, acting in its capacity as trustee for the Navajo Nation, agree to not challenge in the Stream Adjudication quantifications of water rights under the Bureau of Reclamation's Hammond Irrigation Project based on a total water right acreage for the Project of up to 3,900 acres. Further, the Navajo Nation or the United States may challenge in the Stream Adjudication quantifications of annual diversion requirements for irrigation uses under ditches to the extent that the quantifications would exceed the annual amounts of diversion or the diversion requirements per acre described in permits or licenses, if any, or if not, the annual diversion requirements per acre described by the report of hydrographic survey approved by the Echo Ditch Decree.

- 9.7 Navajo Reservoir Water Supply Contracts. The Navajo Nation, and the United States, acting in its capacity as trustee for the Navajo Nation, do not object to the contracts and subcontracts with other entities that have been approved as of the date of this Agreement by the Secretary of the Interior pursuant to section 11 of the Act of June 13, 1962 (76 Stat. 96), and do not object to the permits approved as of the date of this Agreement by the State Engineer for the diversion and use by the contractors or subcontractors, respectively, of the water delivered under said contracts and subcontracts.
- 9.8 Notice of Applications. The New Mexico State Engineer shall provide notices to the Navajo Nation Department of Water Resources and the Department of the Interior, Bureau of Indian Affairs, Southwest Region Office, Division of Natural Resources, Water Resources of applications filed for new appropriations, or to change the point of diversion or the place or purpose of use of water, in the San Juan River Basin in New Mexico, said notices to be provided when the State Engineer provides the applicant with the notice to be published; except, that the State of New Mexico shall not be required to provide the Navajo Nation with notices of applications to appropriate ground water for stock, domestic, mineral or construction purposes of use filed pursuant to Section 72-12-1.1, 1.2, or 1.3, NMSA 1978 (2003).
- 9.9 Ground Water Consultations. The State of New Mexico, acting through the State Engineer, shall cooperate and consult with the Navajo Nation, as it would with other applicants, in the preparation of any proposed Navajo Nation application to appropriate ground water in accordance with state law and pursuant to

subparagraph 7(b)(2) of the Partial Final Decree, including the development of any replacement water plan required pursuant to subparagraph 7(c) of the Partial Final Decree and issues of impairment to existing rights related to a proposed application.

9.10 Uses in Other States.

9.10.1 The San Juan River and its tributaries shall be administered consistent with the provisions of the Upper Colorado River Basin Compact (63 Stat. 31).

9.10.2 The United States under a contract with the Navajo Nation may provide water for diversion in New Mexico for uses in the State of Arizona under the Navajo-Gallup Water Supply Project consistent with and limited to the authorizations provided by section 10603(c) of the Settlement Act, and pursuant to paragraph 6 of the Partial Final Decree. This Agreement shall continue in full force and effect independently of the status of the ability to divert water to the State of Arizona under this subparagraph.

9.10.3 The Navajo Nation may divert ground water from the San Juan River Basin in New Mexico for use in the San Juan River Basin in Arizona, or may use ground water diverted from the San Juan River Basin in Arizona in the San Juan River Basin in New Mexico, subject to, and consistent with, the provisions of subparagraph 7(g) of the Partial Final Decree. This Agreement shall continue in full force and effect independently of the status of the ability to divert or use ground water within the State of Arizona under this subparagraph.

9.11 Fulfillment of Rights in Other Basins with Water from San Juan River Basin.

9.11.1 To the extent that, and only so long as, water is diverted from the San Juan River Basin and delivered to supply a portion of the Navajo Nation uses in the Little Colorado River Basin in New Mexico or the Rio Grande Basin in New Mexico, such deliveries shall be the water supply to fulfill or service the water requirements of any rights adjudicated to the Navajo Nation for such uses in either or both of the latter two basins.

9.11.2 Navajo Nation water rights in the Little Colorado River Basin and the Rio Grande Basin shall not be:

- (1) exercised, transferred, leased or otherwise used to the extent that, and only so long as, the rights are being supplied by the delivery of water diverted from the San Juan River Basin; or
- (2) subject to forfeiture, abandonment or irretrievable loss to the Navajo Nation for reason of being supplied water from the San Juan River Basin in lieu of using water diverted from the Little Colorado River or Rio Grande basins.

9.11.3 This Agreement shall not alter or affect the quantification of claims or rights of the Navajo Nation to the diversion and use of water outside the San Juan River Basin in New Mexico.

10.0 STATE FUNDING FOR DITCH IMPROVEMENTS

10.1 Amount of Funds. The State of New Mexico agrees to make available a total of \$10 million during the ten fiscal years following entry by the Court in the Stream Adjudication of the Partial Final Decree for the express purpose of providing cost-

share funding for non-Navajo ditch improvement and water conservation projects in the San Juan River Basin in New Mexico in whole or partial fulfillment of the non-federal cost-share requirements for such projects to be carried out under section 10608 of the Settlement Act, subject to the New Mexico State Legislature appropriating funds for this purpose and to subparagraph 10.4.

10.2 Study and Prioritization. The State of New Mexico, acting through the Interstate Stream Commission, agrees to cooperate with the Secretary of the Interior to complete the requirements of paragraphs 10608(a)(1) and (2) of the Settlement Act.

10.3 Additional Contributions. Nothing herein prohibits the State of New Mexico from making additional allocations of funds for ditch improvement and water conservation projects in the San Juan River Basin.

10.4 Lack of Appropriations. This Agreement shall continue in full force and effect independently of the status of appropriations and funding for ditch improvement and water conservation projects pursuant to paragraph 10.0.

11.0 EFFECTIVENESS

11.1 Effective Date. This Agreement shall become effective upon the date of signature by all of the Parties.

11.2 Term. This Agreement shall be perpetual unless:

11.2.1 terminated pursuant to the conditions described by subsection 10701(e)(2) of the Settlement Act for revoking the Agreement or by paragraph 22 of the Partial Final Decree for revoking the decree; or

11.2.2 terminated by the mutual consent of the Parties and with approval of the Court in the Stream Adjudication.

12.0 RELATION TO ALLOTTEES

12.1 No Effect on Claims of Allottees. Nothing in this Agreement shall affect the rights or claims of Allottees, or the United States, acting in its capacity as trustee for or on behalf of Allottees, for water rights or damages related to lands allotted by the United States to Allottees by public land orders or otherwise.

12.2 Relationship of the Partial Final Decree to Allottees. Allottees, or the United States, acting in its capacity as trustee for Allottees, are not bound by the Partial Final Decree from making claims to water rights in the San Juan River Basin in New Mexico. Allottees, or the United States, acting in its capacity as trustee for Allottees, may make claims to, and may be adjudicated, individual water rights in the Basin.

12.3 Relationship of the Supplemental Partial Final Decree to Allottees.

12.3.1 Allottees, or the United States, acting in its capacity as trustee for Allottees, are not bound by the Supplemental Partial Final Decree from making claims to water rights in the San Juan River Basin in New Mexico. Allottees, or the United States, acting in its capacity as trustee for Allottees, may make claims to, and may be adjudicated, individual water rights in the Basin.

12.3.2 To the extent that water rights are adjudicated for Allottees, who are members of the Navajo Nation, or for the United States, acting in its capacity as trustee for Allottees who are members of the Navajo Nation,

for uses in the San Juan River Basin in New Mexico that are not based on historic and existing water uses, such water rights of Allottees shall be fulfilled or serviced by water rights adjudicated to the Navajo Nation by the Partial Final Decree or the Supplemental Partial Final Decree, or the depletions of flow of the San Juan River resulting from the use of water under such rights of Allottees shall be fully offset by a forbearance of use of water rights adjudicated to the Navajo Nation by the Partial Final Decree or the Supplemental Partial Final Decree. Nothing in this subparagraph shall create a right of any Allottee to delivery of water by the Navajo Nation.

13.0 EFFECT ON THE UNITED STATES ACTING IN SOVEREIGN CAPACITY OR OTHER CAPACITY

Nothing in this Settlement Agreement:

- 13.1 affects the ability of the United States, acting in its sovereign capacity, to take actions to protect water quality or otherwise to protect health, safety, or the environment in the San Juan River Basin including but not limited to taking actions authorized by law such as action authorized under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.); the Safe Drinking Water Act (42 U.S.C 300f et seq.); the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); the Endangered Species Act (16 U.S.C. 1531 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); and the regulations implementing such Acts;

- 13.2 affects the ability of the United States to take actions acting in its capacity as trustee for any other tribe or allottee;
- 13.3 confers jurisdiction on the Court in the Stream Adjudication to:
 - 13.3.1 interpret federal law regarding water quality, health, safety, or the environment or determine the duties of the United States or other parties pursuant to such federal law; or
 - 13.3.2 conduct judicial review of federal agency action; or
- 13.4 shall be construed to confer or bestow upon the Court in the Stream Adjudication jurisdiction over the interpretation of, or determinations under, any treaty or interstate compact, including but not limited to the provisions of the Mexican Water Treaty, the Colorado River Compact, the Upper Colorado River Basin Compact, the La Plata River Compact or the Animas-La Plata Project Compact.

14.0 OTHER PROVISIONS

- 14.1 Entire Agreement. This Agreement, including its Appendices, constitutes the entire understanding among the Parties. The Parties have, among themselves, negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation. This Agreement, among the Parties, resolves all water rights claims of the Navajo Nation in, to, and from the San Juan River Basin in New Mexico.
- 14.2 Construction and Effect. This Agreement is to be construed fairly and reasonably in its entirety. The paragraph and subparagraph titles used in this Agreement are for convenience only and shall not be considered in the construction of this Agreement. Each of the Parties has been fully represented in connection with the

preparation of this Agreement, and as such, this Agreement shall be neutrally interpreted and shall not be construed in favor of any Party or against any Party.

14.3 No Precedent. Nothing in this Agreement is intended to:

14.3.1 establish any precedent or standard for the quantification of federal reserved rights, aboriginal claims, or any other Indian claims to water in any other judicial or administrative proceeding, including the Navajo Nation's water rights or claims in basins other than the San Juan River Basin in New Mexico;

14.3.2 establish any precedent concerning the applicability of interstate compacts to the quantification of federal Indian reserved rights or rights pursuant to aboriginal claims to water, or to the administration or use of water under such rights; or

14.3.3 quantify or adversely affect the land and water rights, or claims or entitlements to water, of any Indian tribe or community other than the rights, claims, or entitlements of the Navajo Nation in, to, and from the San Juan River Basin in New Mexico.

14.4 Navajo Nation's Rights In Other Basins. The right of the Navajo Nation to use water under water rights the Navajo Nation has in other river basins in the State of New Mexico shall be forborne to the extent that the Navajo Nation supplies the uses for which the water rights exist by diversions of water from the San Juan River Basin under the Navajo-Gallup Water Supply Project consistent with subparagraph 9.11.

- 14.5 Authority. By signing this Agreement each person represents that he or she has the authority to execute it.
- 14.6 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.
- 14.7 Amendments. No modification of this Agreement shall be effective unless it is in writing, signed by all Parties; provided, that appendices 1 and 2 to this Agreement may be amended in accordance with their terms or applicable law.
- 14.8 Appropriations Contingency. The expenditure or advance of any money or the performance of any obligation by the United States, in any of its capacities, or by the State of New Mexico under this Agreement is contingent upon their respective appropriation of funds therefore. No liability shall accrue to the United States, in any of its capacities, or to the State of New Mexico in the event funds are not appropriated.
- 14.9 Waiver Limitation. No waiver of any breach of any of the terms or conditions of this Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Agreement.
- 14.10 Diversions in Other Basins Referenced in the Settlement Act. This Agreement shall continue in full force and effect regardless of, and is not conditioned upon, the Navajo Nation's ability or right to divert and use ground water in the Little Colorado River Basin and the Rio Grande Basin from wells constructed or rehabilitated pursuant to subsection 10606(c) of the Settlement Act.
- 14.11 Notices. For purpose of giving notices as required by this Agreement, written notice shall be mailed to:

For the Navajo Nation:

Director
Department of Water Resources
Navajo Nation
P.O. Box 678
Fort Defiance, AZ 86504
Telephone: (928) 729-4003
Telefax: (928) 729-4029

Attorney General
Office of the Attorney General
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
Telephone: (928) 871-6343
Telefax: (928) 871-6200

For the State of New Mexico:

New Mexico State Engineer
130 South Capitol Street
Concha Ortiz y Pino Building
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6091
Telefax: (505) 827-3806

New Mexico Interstate Stream Commission
Director
407 Galisteo Street
Bataan Memorial Building
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6161
Telefax: (505) 827-6188

For the United States:


Regional Director, Upper Colorado Region
125 South State Street, Room 6107
Salt Lake City, UT 84138-1102
Telephone: (801) 524-3600
Telefax: (801) 524-5499

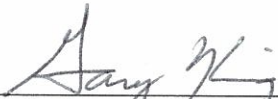
Area Manager, Western Colorado Area Office
2764 Compass Drive
Grand Junction, CO 81506-8744
Telephone: (970) 248-0690
Telefax: (970) 248-0601

14.12 Prior Agreement. This Agreement supersedes and replaces the Settlement Agreement executed between the Navajo Nation and the State of New Mexico on April 19, 2005.

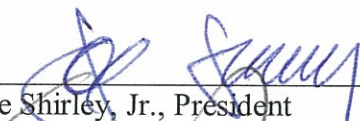
In witness whereof, the Parties hereto have duly executed this Agreement.

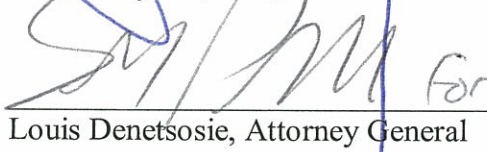
THE STATE OF NEW MEXICO

By:  Date: 12/10/10
Bill Richardson, Governor

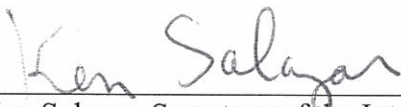
 Date: 12/10/10
Gary King, Attorney General

THE NAVAJO NATION

By:  Date: 12/17/10
Joe Shirley, Jr., President

 For Date: 12/17/10
Louis Denetsosie, Attorney General

THE UNITED STATES OF AMERICA

By:  Date: 12/17/10
Ken Salazar, Secretary of the Interior

APPENDIX 1

**PROPOSED PARTIAL FINAL JUDGMENT AND DECREE OF THE WATER
RIGHTS OF THE NAVAJO NATION**

August 9, 2010

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

STATE OF NEW MEXICO ex rel.)
State Engineer,)
)
 Plaintiff,)
)
 v.)
)
UNITED STATES OF AMERICA, et al.,)
)
 Defendants.)
)
)
_____)

No. CIV 75-184

SAN JUAN RIVER
ADJUDICATION SUIT

**PARTIAL FINAL JUDGMENT AND DECREE
OF THE WATER RIGHTS OF THE
NAVAJO NATION**

THIS CASE is a general adjudication filed pursuant to NMSA Sections 72-4-13 through -19 of the surface and underground water rights within the San Juan River Basin in New Mexico as authorized by 43 U.S.C. Section 666. The rights of the Navajo Nation to divert, impound, or use the surface waters within the San Juan River Basin, including the San Juan River and its tributaries, and the underground waters underlying the surface drainage of the San Juan River Basin in New Mexico, are decreed herein.

This matter comes before the Court on a Joint Motion for the Entry of a Partial Final Judgment and Decree filed by the State of New Mexico, the Navajo Nation and the United States. The Court finds that the proposed Partial Final Judgment and Decree (“Decree”) is the product of a negotiated settlement by the aforesaid parties. Notice of the deadline for filing and serving

objections to the water rights described in this Decree was served on the parties to this case and potential water right claimants pursuant to the expedited *inter se* procedures adopted by the Court. The Court, having considered the parties' motion, the objections thereto, the evidence in support thereof, and for good cause shown:

FINDS that the motion should be granted; and

FINDS FURTHER that there is no just reason for delay in accordance with Rule 1-054(C) NMRA 1996 and directs the entry of this Decree adjudicating the water rights of the Navajo Nation within the San Juan River Basin.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. JURISDICTION.

The Court has jurisdiction over the subject matter and the parties in this case.

2. RESERVED RIGHTS TO THE USE OF WATER.

The Navajo Nation's reserved rights, which are held in trust by the United States for the Navajo Nation, are described in paragraphs 3, 7(a), 8 and 10 of this Decree. These reserved rights have a priority date of June 1, 1868 and are not subject to abandonment, forfeiture or loss for non-use.

3. RESERVED RIGHTS FOR SPECIFIED SURFACE WATER DIVERSIONS.

The Navajo Nation has the right, subject to the limitations set forth in paragraph 5 of this Decree, to divert the waters of the San Juan River Basin in New Mexico, with a priority date of June 1, 1868, in quantities for the following uses not to exceed:

(a) NAVAJO INDIAN IRRIGATION PROJECT, an average diversion of 508,000

acre-feet per year, or the quantity of water necessary to supply an average depletion of 270,000 acre-feet per year from the San Juan River, whichever is less, of surface water from the San Juan River at the location of Navajo Reservoir during any period of ten consecutive years for irrigation of 110,630 acres of land on the Navajo Indian Irrigation Project generally located as described in Plate 1 of the Bureau of Indian Affairs' Biological Assessment for the Navajo Indian Irrigation Project dated June 11, 1999, and for other purposes as authorized by section 10402 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) and subparagraph 5(e) of this Decree, with a maximum diversion flow rate of 1,800 cubic feet per second; provided, however, that the quantities of diversion and depletion in any one year shall not exceed the aforesaid ten-year average quantities, respectively, by more than 15 percent;

(b) NAVAJO-GALLUP WATER SUPPLY PROJECT, a diversion of 22,650 acre-feet, or the quantity of water necessary to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is less, of surface water from Navajo Reservoir and the San Juan River, in combination, in any one year at the points of diversion and for the purposes of the Navajo-Gallup Water Supply Project as authorized by section 10603 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) for municipal, industrial, commercial and domestic uses, including residential outdoor uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of **48.1 (41)** cubic feet per second;

(c) ANIMAS-LA PLATA PROJECT, a diversion of 4,680 acre-feet, or the quantity

of water necessary to supply a depletion of 2,340 acre-feet from the San Juan River stream system, whichever is less, of surface water from the Animas River in any one year at the points of diversion for supplying water to the Navajo Nation Municipal Pipeline and for purposes of the Animas-La Plata Project as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258) for municipal, industrial, commercial and domestic uses, including residential outdoor uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 12.9 cubic feet per second;

(d) MUNICIPAL AND DOMESTIC USES, a diversion of 2,600 acre-feet, or the quantity of water necessary to supply a depletion of 1,300 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at locations below the confluence of the San Juan and La Plata rivers for municipal, industrial, commercial and domestic purposes, including residential outdoor uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 5.0 cubic feet per second, provided that a permit is obtained from the New Mexico State Engineer if diversion of this water is to be made off lands held in trust by the United States for the Navajo Nation or lands held in fee by the Navajo Nation;

(e) HOGBACK-CUDEI IRRIGATION PROJECT, a diversion of 48,550 acre-feet, or the quantity of water necessary to supply a depletion of 21,280 acre-feet from the San

Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at the diversion dam for the Hogback-Cudei Irrigation Project for irrigation of 8,830 acres of land on the project generally located along the north and south sides of the San Juan River in the vicinity of the community of Shiprock, New Mexico, and between the diversion dam for the project and Four Corners, as described by the Bureau of Indian Affairs' Crop Utilization Study for the Hogback and Cudei irrigation projects dated September 1993, with a maximum diversion flow rate of 221 cubic feet per second, including any diversions from an alternate point of diversion at the historic Cudei ditch diversion heading; and

(f) FRUITLAND-CAMBRIDGE IRRIGATION PROJECT, a diversion of 18,180 acre-feet, or the quantity of water necessary to supply a depletion of 7,970 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at the diversion dam for the Fruitland-Cambridge Irrigation Project for irrigation of 3,335 acres of land on the project generally located along the south side of the San Juan River in the vicinity of the community of Fruitland, New Mexico, and between the City of Farmington and the diversion dam for the Hogback-Cudei Irrigation Project, as described by the Bureau of Indian Affairs' Crop Utilization Study for the Fruitland Irrigation Project dated September 1993, with a maximum diversion flow rate of 100 cubic feet per second, including any diversions from an alternate point of diversion at the historic Cambridge ditch diversion heading.

The term "depletion" refers to the depletion caused by a particular use of water allowing for any depletion incident to the use.

4. SUPPLEMENTAL CARRIAGE WATER.

The Navajo Nation may divert the direct flow of the San Juan River to supplement diversions to provide additional carriage water for uses under the rights specified by subparagraphs 3(b) through 3(f) at such times and places that the New Mexico State Engineer determines there is direct flow available for such diversion without impairment to water rights in New Mexico, including uses under paragraph 8.0 of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Settlement Agreement), signed by the State of New Mexico, the Navajo Nation, and the Secretary of the Interior on _____. The Navajo Nation's diversions under this paragraph:

- (a) do not constitute water rights or consumptive use rights;
- (b) may be made only to the extent that such additional amounts of carriage water are necessary to fully develop the depletion amounts for the uses specified under subparagraphs 3(b) through 3(f);
- (c) may not be made to result in a depletion for any one use under subparagraphs 3(b) through 3(f) that exceeds the Navajo Nation's depletion rights described for that use;
- (d) may not be made to result in farm deliveries exceeding the farm delivery requirement for the Fruitland-Cambridge and Hogback-Cudei irrigation projects described in subparagraph 5(g); and
- (e) may be made only to the extent that the additional carriage water is returned to the San Juan River.

Any reduction in flow otherwise available for diversion by the Navajo Nation under this paragraph shall not be cause to deny approval of applications to transfer water rights in the San Juan River Basin in New Mexico, or to deny the allocation and use of water pursuant to paragraph 8.0 of the Settlement Agreement.

5. CONDITIONS.

The Navajo Nation has the right to divert, impound or use the water rights described in paragraph 3; provided, that:

(a) The Navajo Nation shall not assert or exercise the reserved rights described in subparagraphs 3(a), 3(b) and 3(c) so long as the rights of the Navajo Nation to the delivery of 535,330 acre-feet of water per year for uses in New Mexico under the terms of the Reclamation Contract No. 10-WC-40-384 (the Settlement Contract) between the Secretary of the Interior and the Navajo Nation, authorized and approved by the United States Congress in section 10701 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), are not irretrievably lost; provided, however, that nothing herein is intended to confer jurisdiction on this Court over any action to enforce or challenge the Settlement Contract or over any action for breach thereof, or to be in conflict with section 11 of the Act of June 13, 1962 (76 Stat. 96). The Navajo Nation may assert or exercise the reserved rights described in subparagraphs 3(a), 3(b) or 3(c) if and only if the Navajo Nation's respective rights to divert water under the Settlement Contract are irretrievably lost. The temporary loss of the use of part or all of the Navajo Nation's right to divert water under the Settlement Contract, including, but not limited to, loss resulting from a judicial determination that a particular use is speculative or constitutes waste and loss because a particular use is denied

or prohibited by applicable law, shall not constitute irretrievable loss. Also, forbearance or reduction of Navajo Nation uses pursuant to the provisions of this Decree or the Settlement Agreement shall not constitute irretrievable loss.

(b) The Navajo Nation's rights pursuant to the Settlement Contract for the uses described in subparagraphs 3(a) and 3(b) are based on, and shall be fulfilled or serviced by the Secretary of the Interior under, New Mexico State Engineer File No. 2849 with a priority date of June 17, 1955, for water originating in the drainage of the San Juan River above Navajo Dam, and File No. 3215 with a priority date of December 16, 1968, for inflow to the San Juan River arising below Navajo Dam. The Navajo Nation's contract rights for the uses described in subparagraphs 3(a) and 3(b) are subject to the sharing of shortages as provided in section 11 of the Act of June 13, 1962 (76 Stat. 96), and section 10402 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367). The Navajo Nation shall not have the right to recoup the quantities of water not delivered under the Settlement Contract due to shortages. The right under subparagraph 3(a) to divert water for the Navajo Indian Irrigation Project during any period of ten consecutive years shall be reduced by the amounts of any shortages allocated to the normal diversion requirement for the Project during said period of ten consecutive years.

(c) The Navajo Nation's rights pursuant to the Settlement Contract for the uses specified in subparagraph 3(c) are based on, and shall be fulfilled or serviced by the Secretary of the Interior under, New Mexico State Engineer File No. 2883 with a priority date of May 1, 1956, for water from the Animas River, and are subject to Article I of the Animas-La Plata Project Compact approved by subsection 501(c) of the Colorado River

Basin Project Act (82 Stat. 898), and the Settlement Contract approved by subsection 10604(a)(2)(A)(i) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367).

(d) The Navajo Nation has the right to fill and refill re-regulation storage reservoirs on the Navajo Indian Irrigation Project distribution system as follows:

(1) The Navajo Nation may fill and refill as often as water is available under the rights described in subparagraphs 3(a) and 3(b):

(i) Cutter Reservoir, with an active storage capacity of 1,793 acre-feet; and

(ii) Gallegos Reservoir, with an active storage capacity of 8,455 acre-feet, substantially as described in the May 1995 Gallegos Reservoir Needs and Cost Assessment prepared for the United States Bureau of Indian Affairs and the Bureau of Reclamation, or suitable storage alternatives to Gallegos Reservoir of equal or lesser combined capacity.

(2) Cutter Dam and Reservoir and Gallegos Dam and Reservoir are Navajo Indian Irrigation Project facilities, and may be used also to regulate deliveries of water under the Navajo-Gallup Water Supply Project authorized by Part III of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367).

(3) Water diverted from Navajo Reservoir into storage in Cutter Reservoir or Gallegos Reservoir, or suitable storage alternatives, for purposes of the Navajo Indian Irrigation Project or for Navajo Nation uses under the Navajo-Gallup Water Supply Project, and associated depletions caused by reservoir evaporation or

seepage losses, shall be accounted within the Navajo Nation's rights to divert and deplete water for the Navajo Indian Irrigation Project described in subparagraph 3(a) or for purposes of the Navajo-Gallup Water Supply Project described in subparagraph 3(b), respectively.

(4) The re-regulating reservoirs may retain and store water originating in the physical drainages above Cutter and Gallegos dams, or suitable storage alternatives, for use on the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project; provided, that the quantities of any such water retained and stored in Cutter Reservoir or Gallegos Reservoir, and the associated depletions of water, for Navajo Nation uses shall be accounted within the Navajo Nation's rights to divert and deplete water for the Navajo Indian Irrigation Project described in subparagraph 3(a) or for purposes of the Navajo-Gallup Water Supply Project described in subparagraph 3(b), respectively, and that such retention and storage of water shall be fulfilled or serviced by the Secretary of the Interior through the Settlement Contract as water is available under New Mexico State Engineer File No. 3215 with a priority date of December 16, 1968.

(5) The Navajo Nation's rights to store water in Cutter Reservoir and Gallegos Reservoir, or suitable storage alternatives, are not separable from the rights described in subparagraphs 3(a) and 3(b) or from the Navajo Indian Irrigation Project facilities.

(6) Sediment storage capacity may be provided in Gallegos Reservoir, or suitable storage alternatives; provided, that the reservoir, or suitable alternative, is

operated each year to maintain no more than 8,455 acre-feet of active conservation storage after consideration of the amount of sediment accumulated in the reservoir since completion of Gallegos Dam, or suitable alternative.

(e) The Navajo Nation's water rights, described in subparagraph 3(a), which are to be serviced under the Settlement Contract as described in subparagraphs (a) and (b) of this paragraph, may be used for non-irrigation purposes or transferred to other places of use consistent with the provisions of subsection 10402(a) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), paragraph 17 of this Decree and the following conditions:

(1) The Navajo Nation without approval of the New Mexico State Engineer or the Court, may change the purpose or place of use of any portion of the rights described in subparagraph 3(a); provided, that:

(i) notice is provided of any proposed change in purpose or place of use consistent with paragraph 18;

(ii) such changes do not involve transfers of places of use to locations outside the State of New Mexico, or to lands that are not held by the United States in trust for the Navajo Nation or its members as of the date of entry of this Decree, unless such lands are subsequently declared by the Secretary of the Interior to be held in trust by the United States for the Navajo Nation pursuant to section 3 of the Act of June 13, 1962 (76 Stat. 96), as amended by the Act of September 25, 1970 (84 Stat. 867);

(iii) the point of diversion is not changed;

(iv) the depletion quantities specified in subparagraph 3(a) are not exceeded as a result of the changes;

(v) the average annual diversion during any period of ten consecutive years for all uses made under the rights provided in subparagraph 3(a), including uses provided under the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, in the aggregate does not exceed 353,000 acre-feet per year;

(vi) the total diversion for all uses made under the rights provided in subparagraph 3(a), including uses provided under the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, in the aggregate does not exceed 405,950 acre-feet in any one year; and

(vii) no showing is made to and accepted by the Court pursuant to subparagraph 5(e)(2) that a change would or does impair other water rights in the San Juan River Basin in New Mexico.

Any change pursuant to this subsection in the purpose or place of use of a portion of the rights described in subparagraph 3(a) that would result in the total annual diversion or depletion amounts in the aggregate for all uses made under the rights described in subparagraph 3(a) exceeding the historic aggregate diversion or depletion amounts, respectively, under said rights shall not be presumed to impair other water rights solely because of the increase in annual use amounts.

(2) The Navajo Nation shall provide an administrative process for receiving from Navajo and non-Navajo water users protests of changes in purpose or place of

use proposed to be made pursuant to subparagraph 5(e)(1), and for reviewing and considering protests and impairment issues that may arise from such changes. The administrative process shall include consultation with the New Mexico State Engineer on proposed changes. The Navajo Nation shall not exercise its authority under subparagraph 5(e)(1) to implement a proposed change in purpose or place of use until the Navajo Nation has consulted with the State Engineer and completed the Navajo Nation's administrative process for the proposed change. Appeals of Navajo Nation decisions or actions made pursuant to the administrative process may be reviewed by the Court.

(3) The uses of water to make the depletions and diversions described in subparagraphs 3(d), 3(e) and 3(f) that are supplied under the Settlement Contract pursuant to the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, and that are accounted under the rights described in subparagraph 3(a) of this Decree for the Navajo Indian Irrigation Project in accordance with said provisions, are hereby approved by the Court.

(4) The Navajo Nation may divert more than an average of 353,000 acre-feet per year during any period of ten consecutive years, or more than 405,950 acre-feet in any one year, for the aggregate of all uses under the rights provided in subparagraph 3(a), including uses provided under the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, only pursuant to application with the New Mexico State Engineer and subject to non-impairment of other water rights in New Mexico in accordance with state law, unless the rights

provided in subparagraph 3(a) are used solely for irrigation purposes on the Navajo Indian Irrigation Project and to implement subparagraph 9.2 of the Settlement Agreement.

(f) If the Navajo Nation in any period of ten consecutive years inadvertently diverts or depletes water in excess of the ten-year average limitations described in subparagraph 3(a), the Navajo Nation, in the year following the subject period, shall forego the diversion and use under subparagraph 3(a) of amounts of water that are equal to the quantities of excess diversion and depletion, respectively, for the subject period. If the Navajo Nation in any year inadvertently diverts or depletes water in excess of the maximum allowable annual quantities described in subparagraphs 3(a), 3(b) or 3(c), the Navajo Nation in the following year shall forego the diversion and use under the applicable subparagraphs of amounts of water that are equal to the quantities of excess diversion and depletion.

(g) The Navajo Nation's rights to divert water for irrigation uses under subparagraphs 3(e) and 3(f) shall be subject to the maximum allowable annual diversion quantities specified in the subparagraphs only if the New Mexico State Engineer or the Court enforces annual diversion quantity limits on non-Navajo Nation irrigation diversions from the San Juan River below Navajo Dam and the Animas River in accordance with such quantities as may be adjudicated by the Court, but shall at all times be subject to:

(1) supplying the annual depletion quantities specified in subparagraphs 3(e) and 3(f), respectively; and

(2) supplying a farm delivery requirement of 3.3 acre-feet per acre per year for irrigation uses under the Hogback-Cudei and Fruitland-Cambridge irrigation

projects.

Those portions of the annual diversion and depletion quantities specified in subparagraphs 3(e) and 3(f) that are transferred to non-irrigation uses shall be administered and managed in the same manner as other direct flow diversions for non-irrigation uses in the San Juan River Basin in New Mexico.

(h) The Navajo Nation's right for the Fruitland-Cambridge Irrigation Project under subparagraph 3(f) to divert at a maximum diversion flow rate of 100 cubic feet per second shall not be fully exercised if the Court determines that rehabilitation and maintenance of the Project has resulted in a lesser flow rate being needed to supply the peak demand of the Project; provided, that the Navajo Nation shall not be required solely by virtue of the rehabilitation and maintenance to forego exercise of said maximum diversion flow rate right for the Project to less than 83.4 cubic feet per second. Reductions in diversions by the Project below 83.4 cubic feet per second at times may be required, however, if current beneficial uses require less water.

(i) The Navajo Nation's rights to divert and deplete water for irrigation uses under subparagraphs 3(e) and 3(f) may be increased using the approach or methodology that the Court adopts to determine irrigation water right amounts and diversion rates in this case if application of the approach or methodology adopted would result in annual diversion and depletion quantities that exceed those described herein or in an annual farm delivery requirement for the Hogback-Cudei and Fruitland-Cambridge irrigation projects that exceeds the amount described in subparagraph 5(g). The Navajo Nation's rights under subparagraphs 3(e) and 3(f), the diversion rates described in subparagraph 5(h), and the

farm delivery requirement described in subparagraph 5(g), shall not be recomputed if the approach or methodology adopted by the Court relies on, or results in, annual per acre farm delivery requirements and diversion and depletion quantities, and maximum per acre ditch diversion rates, for irrigation uses that are consistent with those given in the report of Hydrographic Survey approved by the Decree entered April 8, 1948, by the First Judicial District Court of New Mexico within and for San Juan County in the matter of *The Echo Ditch Company, et al., v. The McDermott Ditch Company, et al.*, Cause No. 01690 (Echo Ditch Decree), for those irrigation rights previously adjudicated by the Echo Ditch Decree.

(j) The Navajo Nation has the right under the water rights described in paragraphs 3, 7 and 8 to re-use tail water and waste water as follows:

(1) The Navajo Nation may collect tail water from an irrigation use for re-use under the associated water right; provided, that the re-use is measured and the depletion of water associated with the re-use is accounted against the depletion quantity for the water right. For purposes of this Decree, tail water shall include:

(i) any water collected that has not left Navajo Nation control and reached the underlying ground water table or discharged into a non-constructed or natural surface drainage channel; and

(ii) any water that through percolation from irrigation has reached the underlying ground water table and is pumped for the express purpose of maintaining the water table at a sufficient distance below the root zone to prevent subirrigation or waterlog damage to fields that otherwise would result from the initial irrigation use.

(2) The Navajo Nation may collect waste water from a non-irrigation use for re-use under the associated water right; provided, that the re-use is measured and the depletion of water associated with the re-use is accounted against the depletion quantity for the water right. For purposes of this Decree, waste water shall include any water collected that has not left Navajo Nation control and reached the underlying ground water table or discharged into a natural surface drainage channel.

(3) Re-use of water by the Navajo Nation shall not increase the depletion rights or the diversion rights of the Navajo Nation.

6. DIVERSIONS FOR NAVAJO-GALLUP PROJECT USES IN ARIZONA.

The Navajo Nation may contract with the United States to divert up to 6,411 acre-feet in any one year of surface water from the San Juan River in New Mexico for uses on Navajo lands, including lands held by the United States in trust for the Navajo Nation or members of the Navajo Nation and lands held in fee ownership by the Navajo Nation, within the State of Arizona solely for purposes of the Navajo-Gallup Water Supply Project as authorized by section 10603 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), with a maximum diversion flow rate of **17.7 (12)** cubic feet per second; provided, that the water delivery contract between the Navajo Nation and the United States is executed to provide such a contract right for the diversion of water in New Mexico for delivery to uses in Arizona consistent with section 10603 of the Act. The diversion of water in New Mexico for Navajo-Gallup Water Supply Project uses in Arizona shall be serviced under New Mexico State Engineer File Nos. 2849 and 3215, and shall be administered consistent with the provisions of the Upper Colorado River Basin Compact and the San Juan River Basin in New Mexico Water Projects and Settlement Act. Also, the diversion of water in New

Mexico for Project uses in Arizona shall continue only so long as the water delivery contract remains in effect, shall not be transferable to other uses, including uses in New Mexico, and shall not be leased or otherwise subcontracted to third parties. The contract right for the diversion of water in New Mexico for delivery to uses in Arizona shall not include carry-over storage in Navajo Reservoir from year to year.

7. GROUND WATER RIGHTS.

The Navajo Nation has the right to divert, pump or withdraw, and to consumptively use, ground water on Navajo lands in New Mexico, including lands held by the United States in trust for the Navajo Nation and lands held in fee ownership by the Navajo Nation, within the physical drainage of the San Juan River and its tributaries and in addition to rights to divert ground water for uses described by paragraphs 8, 9 and 10, subject to the following conditions:

(a) The Navajo Nation has a reserved right, with a priority date of June 1, 1868, to divert up to 2,000 acre-feet of ground water in any one year for beneficial use, including for municipal, industrial, commercial, domestic, agricultural and other purposes, on lands in New Mexico that are held by the United States in trust for the Navajo Nation, or on other lands if approved by the New Mexico State Engineer or the Court; except, that the Navajo Nation also may use ground water diverted pursuant to this subparagraph on lands that are held by the United States in trust for members of the Navajo Nation.

(b) The Navajo Nation has the right to divert ground water for municipal, industrial, commercial, domestic or agricultural uses, in addition to the rights described in subparagraph (a) of this paragraph and any ground water uses described by paragraphs 8, 9 and 10, subject to the following conditions:

(1) The Navajo Nation has the authority to make additional diversions of ground water in the San Juan River Basin in New Mexico on lands held by the United States in trust for the Navajo Nation as of the date of entry of this Decree and such rights shall be held in trust by the United States for the Navajo Nation:

(i) The Navajo Nation shall give notice of intent to drill or pump wells to effectuate such additional diversions of ground water by publication in a newspaper of general circulation within the San Juan River Basin in New Mexico once per week for three consecutive weeks and by letter to the New Mexico State Engineer, both such forms of notice to be completed at least 30 days prior to drilling new wells or to increasing pumping from existing wells, and to specify the proposed purpose and place of use, point of diversion, annual diversion and depletion amounts, and sources of ground water;

(ii) the priority dates of the additional diversions of ground water under subparagraph 7(b)(1) shall be the respective dates of notice to the State Engineer; except, that replacement wells shall retain the priority dates associated with the wells replaced; and

(iii) such diversions of ground water are subject to the other provisions of paragraph 7, except for subparagraphs 7(a) and 7(b)(2).

The Navajo Nation shall provide an administrative process for receiving from Navajo and non-Navajo water users protests of additional diversions of ground water proposed to be made pursuant to this subparagraph, and for reviewing and

considering protests and impairment issues that may arise from such additional diversions. The administrative process shall include the Navajo Nation consulting with the New Mexico State Engineer on proposed diversions, any necessary replacement water plans that may be required as per subparagraph 7(c), and impairment issues. The Navajo Nation shall not exercise its authority under this subparagraph to approve or implement a proposed additional diversion of ground water until it has consulted with the State Engineer and completed the administrative process for the proposed diversion. The Court shall have jurisdiction to review and resolve disputes, if any, between the Navajo Nation, the New Mexico State Engineer or other parties to this case regarding whether additional ground water diversions allowed by the Navajo Nation comply with the criteria stated in this paragraph.

(2) The Navajo Nation may appropriate ground water under state law for additional diversions of ground water in the San Juan River Basin in New Mexico on lands not held by the United States in trust for the Navajo Nation as of the date of entry of this Decree.

(3) The additional diversions of ground water under subparagraph 7(b) shall not impair the exercise of other surface water and ground water rights either within the physical drainage of the San Juan River Basin or in other drainage basins.

(4) The additional diversions of ground water under subparagraph 7(b) may supply uses on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the

Navajo Nation, or on other lands if transferred in accordance with the provisions of paragraph 17; except, that diversions of ground water in the San Juan River Basin in New Mexico may be delivered for domestic and sanitary uses in the San Juan River Basin in Arizona in accordance with the provisions of subparagraph 7(g).

(5) No additional diversions of ground water under subparagraph 7(b) shall be made until a model of ground water flow for the physical area of the San Juan River Basin in New Mexico, plus any pertinent adjoining areas, has been approved by the New Mexico State Engineer or the Court to determine impacts of existing ground water rights and new diversions of ground water on flow of the San Juan River for the purpose of conjunctively administering surface and ground water sources. Once a model is approved, a proposed additional diversion of ground water is subject to New Mexico State Engineer approval of a replacement plan to offset the depletions of streamflow attributable to the additional diversion, if such a plan is required pursuant to subparagraph 7(c).

(c) The Navajo Nation each year shall offset the cumulative reduction in the flow of the San Juan River during the year that is caused by all diversions and uses of ground water by the Navajo Nation under the rights described in subparagraphs (a) and (b) of this paragraph in the aggregate, and that is in excess of 2,000 acre-feet per year of cumulative reduction, in accordance with a replacement water plan approved by the New Mexico State Engineer. The replacement water plan shall specify and schedule how the Navajo Nation will satisfy this offset requirement annually by forbearing use of specific surface water rights to flows of the San Juan River stream system that are described by paragraph 3 in a

total amount of depletion equal to the amount of cumulative flow reduction for each year that is in excess of 2,000 acre-feet per year, and in such a manner as to offset the river flow impacts at the locations of impact. In addition, if the offset requirement necessitates a transfer or dedication of Navajo Nation rights under the Settlement Contract to below Navajo Dam, the State Engineer may determine conditions for dam releases to effectuate the transfer or dedication. Such conditions may include exceptions for periods when replacement water, in the State Engineer's judgment, is not needed to avoid impairment to other water rights or interstate compact delivery requirements.

(d) Diversions and uses of ground water in New Mexico on lands that are held by the United States in trust for the Navajo Nation, or held in fee ownership by the Navajo Nation, by agencies of the United States, including the Bureau of Indian Affairs and Indian Health Service, for municipal, industrial, commercial and domestic purposes for the benefit of the Navajo Nation or its members shall be included within and accounted against the Navajo Nation's rights to divert and use ground water under subparagraphs (a) and (b) of this paragraph.

(e) Diversions and uses of ground water underlying the area of the Navajo Indian Irrigation Project shall be included within and accounted against the Navajo Nation's rights to divert and use ground water under subparagraphs (a) and (b) of this paragraph; except, that any re-use of irrigation tail water that through percolation from irrigation of Project lands had reached the underlying ground water table and is pumped for the purpose of maintaining the water table at a sufficient distance below the root zone to prevent waterlog damage to Project fields that otherwise would result from the irrigation use may be included

within the Navajo Nation's rights under subparagraph 5(j)(1) to re-use tail water so long as the depletion of water associated with the re-use is accounted against the depletion quantity for the Project described in subparagraph 3(a).

(f) The Navajo Nation may use ground water diverted or withdrawn from within the San Juan River Basin in New Mexico in areas of the State of New Mexico located outside the physical drainage of the San Juan River and its tributaries; provided, that such diversion and use shall:

(1) be accounted against the rights of the Navajo Nation to divert ground water described in subparagraphs 7(a) and 7(b); and

(2) comply with the other provisions of paragraph 7.

(g) The Navajo Nation may divert or withdraw ground water from the San Juan River Basin in New Mexico for use in the San Juan River Basin in Arizona, and may use in the San Juan River Basin in New Mexico ground water withdrawn from the San Juan River Basin in Arizona, for domestic and sanitary purposes on lands that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation; provided, that:

(1) the depletion of the flow of the Colorado River at Lee Ferry resulting from such uses made in the State of New Mexico is a part of the consumptive use apportionment made to the State of New Mexico by Article III of the Upper Colorado River Basin Compact, and the depletion of the flow of the Colorado River at Lee Ferry resulting from such uses made in the State of Arizona is a part of the consumptive use apportionment made to the State of Arizona by Article III of the

Upper Colorado River Basin Compact;

(2) such uses are not inconsistent with the rights of the Navajo Nation, or of the United States as trustee for the Navajo Nation, to make such diversions and uses of water within the State of Arizona;

(3) the total of such diversions made within the State of New Mexico and delivered for uses in Arizona, plus the total of diversions made within the State of Arizona and delivered for such uses in New Mexico, pursuant to subparagraph 7(g) does not exceed 400 acre-feet in the aggregate;

(4) such diversions and uses within the State of New Mexico shall be accounted against, and otherwise comply with, the rights of the Navajo Nation to divert and use ground water described in subparagraphs 7(a) and 7(b); and

(5) the rights of the Navajo Nation to make such diversions and uses shall not be leased, exchanged or otherwise transferred for use by other parties or for other purposes.

(h) The Court retains jurisdiction to review any matter arising from the provisions of paragraph 7; except, that another court may have competent jurisdiction over issues of impairment to water rights in basins other than the San Juan River Basin or in other states.

8. HYDROGRAPHIC SURVEY – RESERVED RIGHTS.

The Navajo Nation has reserved rights for historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held by the United States in trust for the Navajo Nation, which rights have a priority date of June 1, 1868; except, that historic and existing uses that are included within the supplemental carriage water provisions described in paragraph 4 are not

reserved rights. The reserved rights for historic and existing irrigation uses and related purposes on the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project are included in the reserved right amounts specified by subparagraphs 3(a), 3(e) and 3(f), respectively. Reserved rights for historic, existing and future municipal, industrial, commercial and domestic uses, including residential agricultural uses such as yard and stock watering, are included in the reserved right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a). Pursuant to paragraph 20 of this Decree and paragraph 4.0 of the Settlement Agreement, the Navajo Nation and the United States, acting in its capacity as Trustee for the Navajo Nation, may petition the Court for entry of a supplemental Decree quantifying and adjudicating reserved rights of the Navajo Nation for historic and existing uses that are not included in paragraph 3 or subparagraph 7(a) upon completion by the United States of a Hydrographic Survey Report accepted by the State of New Mexico that describes such historic and existing uses. Entry of this Decree or any such supplemental Decree shall not be intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's reserved rights under Federal law. Except as otherwise provided, the conditions under which the Navajo Nation may make such changes are specified in paragraph 17, and are subject to the Court's continuing jurisdiction to interpret and enforce this Decree as provided in paragraph 14.

9. WATER RIGHTS ACQUIRED UNDER STATE LAW.

The Navajo Nation may have water rights acquired under New Mexico state law pursuant to Decreed rights or to permits or licenses issued by the New Mexico State Engineer, and for historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held in fee ownership by the Navajo Nation. Such rights would exclude any rights to the use of water

historically made by non-Navajo entities on Navajo lands under permits issued by the New Mexico State Engineer that have not been acquired from said entities by the Navajo Nation. Water rights for historic municipal, industrial, commercial or domestic uses, except for *de minimus* uses under paragraph 10, that have been made on lands which are held in fee ownership by the Navajo Nation and that have not been made pursuant to Decreed rights, or to permits or licenses issued by the New Mexico State Engineer, are included in the total water right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a). Pursuant to paragraph 20 of this Decree and paragraph 4.0 of the Settlement Agreement, the Navajo Nation may petition the Court for entry of a supplemental Decree quantifying and adjudicating the water rights of the Navajo Nation under state law. Entry of this Decree or any such supplemental Decree shall not be intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's water rights under Federal and state law, nor shall they be intended to limit in any way the right and ability of the Navajo Nation to acquire and transfer additional water rights perfected under state law. Except as otherwise provided, the conditions under which the Navajo Nation may make such changes are specified in paragraph 17, and are subject to the Court's continuing jurisdiction to interpret and enforce this Decree as provided in paragraph 14.

10. *DE MINIMUS* USES.

The Navajo Nation shall have the right to allow individual members of the Navajo Nation to divert and use surface water from springs and ground water in the San Juan River Basin in New Mexico without regard to the limitations and quantities of water rights described in paragraphs 3 through 9 solely for residential domestic and stock tank uses, excluding irrigation uses and stockponds, on Navajo lands, including lands held by the United States in trust for the Navajo

Nation and lands held in fee ownership by the Navajo Nation; provided, that such diversion and use of water does not involve the diversion and use of water under the water rights described in paragraphs 3 through 9, the diversion or conveyance of water by the project facilities authorized by the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) and preceding Acts of Congress, or the diversion and delivery of water by public water supply systems. The right under this paragraph to *de minimus* uses is a reserved right of the Navajo Nation.

11. ALLOTTEES.

Individual members of the Navajo Nation that have been allotted lands by the United States, by public land orders or otherwise, within the San Juan River Basin in New Mexico may have claims to reserved rights to the use of water. This Decree does not quantify the nature, extent or priority of such rights; however, historic and existing water uses on such allotted lands shall be determined by the Hydrographic Survey Report to be completed by the United States and accepted by the State of New Mexico pursuant to paragraph 4.0 of the Settlement Agreement. To the extent that water rights are adjudicated by the Court for such allotted lands that are in excess of the historic and existing water uses on those lands as described in the Hydrographic Survey Report, such water rights for allotted lands shall be fulfilled or serviced by rights of the Navajo Nation quantified in this Decree, or the depletions of flow of the San Juan River resulting from the use of water under such rights for allotted lands shall be fully offset by a forbearance of use of rights of the Navajo Nation quantified in this Decree. Nothing in this paragraph shall create a right of any Allottee to delivery of water by the Navajo Nation.

12. LIMITATIONS.

The Navajo Nation is hereby enjoined from the diversion or depletion of the surface or underground waters within the San Juan River Basin in New Mexico except in accordance with the rights described in this Decree, rights in any supplemental Decrees that may be entered by the Court pursuant to paragraph 20, or either Decreed rights or rights under New Mexico State Engineer permits or licenses that are acquired after the date of entry of this Decree or any supplemental Decrees. Beneficial use shall be the limit of the rights to use water adjudicated to the Navajo Nation by this Decree. The Navajo Nation shall not be entitled to receive, nor shall the United States or the State of New Mexico be required to deliver, nor shall non-Navajo water users be required to curtail water uses to provide to the Navajo Nation, any water not then necessary for beneficial use under the rights adjudicated herein or acquired hereafter. This Decree is binding upon political subdivisions, utilities, agencies and other entities of the Navajo Nation and the United States, and on successors and assigns.

13. DISCLAIMERS.

Except as explicitly provided herein, nothing in this Decree confers jurisdiction on the New Mexico State Engineer to administer or regulate the use of federally reserved rights on lands held by the United States in trust for the Navajo Nation or lands allotted by the United States to members of the Navajo Nation. Because the description of the Navajo Nation's water rights adjudicated in this Decree is based upon a negotiated settlement, the procedures and methods used to quantify and describe the Navajo Nation's water rights in this Decree shall not be binding under the law of the case doctrine upon any other water right claimant, the State of New Mexico or the United States in the adjudication of other water rights in this case and should not be relied upon as precedent under the *stare decisis* doctrine in any other water right adjudication suit. Nothing herein is intended to

adjudicate or encumber water rights under New Mexico State Engineer File Nos. 2847, 2848, 2849, 2873, 2883, 2917 or 3215, or 2847, 2849, 2873, 2917 combined, except for the amounts and uses of water specifically adjudicated to the Navajo Nation in subparagraphs 3(a), 3(b) and 3(c) of this Decree, subject to the limitations set forth in paragraph 5, and for the amount of diversion to supply a water delivery contract between the Navajo Nation and the United States for Navajo-Gallup Water Supply Project uses in Arizona adjudicated in paragraph 6.

14. JURISDICTION AFTER ENTRY OF DECREE.

This Decree is a final order under Rule 1-054(C) NMRA 200__, and it may be modified only pursuant to Rule 1-060(B) NMRA 200__. This Court retains jurisdiction to interpret and enforce this Decree. Subject to the provisions of this Decree, the State Engineer has authority under state law to administer water rights within, and to supervise the apportionment, diversion and use of the waters of, the San Juan River Basin in New Mexico, including by appointment of watermasters, according to the orders and decrees of the Court in this adjudication suit and the licenses and permits issued by the State Engineer in the Basin.

15. METERING OF WATER USES.

As part of the metering and monitoring of water uses in the San Juan River Basin in New Mexico, the Navajo Nation shall be responsible for metering and monitoring its uses of water under this Decree as follows:

- (a) The Navajo Nation within two years from the date of entry of this Decree shall cause to be installed and maintained flumes, gages, stage recorders, totalizing meters or other flow measuring devices on all surface water and ground water diversions, including

re-uses under subparagraph 5(j) but excluding uses under rights that may be quantified and adjudicated in supplemental Decrees pursuant to paragraphs 8 and 9, within the physical drainage of the San Juan River Basin in New Mexico; except, that diversions may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons. The Navajo Nation also shall cause to be installed and maintained remote sensing equipment on surface water diversion gages for ditch diversions under its rights from the San Juan River, including Navajo Reservoir. The Navajo Nation shall be responsible for rating all gages and for collecting the data necessary to accurately account diversions in the San Juan River Basin in New Mexico for administration by the State Engineer of this Decree.

(b) The Navajo Nation within two years from the date of entry of this Decree shall cause to be installed and maintained storage or water surface gages at all re-regulation storage reservoirs on the Navajo Indian Irrigation Project. In addition, the Navajo Nation shall cause to be installed and maintained recording or remote sensing equipment on reservoir storage gages at all re-regulation storage reservoirs on the Navajo Indian Irrigation Project, and shall maintain such records of inflows to and releases from reservoir storage, as may be necessary to determine reservoir losses and the storage of tributary inflows to the reservoirs under subparagraph 5(d)(4). The Navajo Nation shall be responsible for updating and maintaining current elevation-area-capacity data for the reservoirs.

(c) The New Mexico State Engineer shall be granted access to diversion data, and shall be allowed to inspect flow and storage measurement facilities and gages upon reasonable request to the Navajo Nation, as may be necessary for the State Engineer to

administer the diversion and use of water from the San Juan River stream system.

(d) The Navajo Nation beginning the year following the date of entry of this Decree shall during June or July each year conduct a field inventory of irrigated acreage on the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project, and shall provide the results of the inventory to the New Mexico State Engineer within two weeks of completion of the inventory. The Navajo Nation shall allow the State Engineer to participate, in cooperation with the Navajo Nation, in conducting the acreage inventory. Aerial photographs, satellite imagery or other records or documentation may be used in conjunction with field surveys to determine or verify lands irrigated in a particular year.

(e) Depletions for the uses described in subparagraphs 3(b), 3(c) and 3(d) shall be computed as diversion less measured return flow. The Navajo Nation shall be responsible for measuring any return flows.

(f) The Navajo Nation shall meter farm deliveries for irrigation uses on the Hogback-Cudei and Fruitland-Cambridge irrigation projects using technically sound methods if the State Engineer or the Court requires the metering of farm deliveries on ditches diverting from the San Juan River below Navajo Dam and from the Animas River for the State Engineer to administer water rights in the San Juan River Basin in New Mexico.

16. RECORDS OF WATER USE.

The Navajo Nation shall within two years from the date of entry of this Decree, and annually thereafter, prepare and maintain detailed and accurate records of the acreages of all Navajo lands,

including lands held by the United States in trust for the Navajo Nation and lands owned by the Navajo Nation in fee, in the San Juan River Basin in New Mexico irrigated each year from the San Juan River, its tributaries or underground water sources, and of the annual diversions and depletions of water, including re-uses, for its uses in the San Juan River Basin in New Mexico from the San Juan River, its tributaries and underground water sources, all stated separately as to each source of water. The Navajo Nation shall prepare and submit to the Secretary of the Interior and the New Mexico State Engineer on or before October 1 of each year a report of its records and calculations of actual acreage irrigated and diversions and depletions, by a methodology acceptable to the State Engineer, of San Juan River Basin waters for the previous calendar year. The records and calculations shall be segregated by each use specified in paragraphs 3 through 10 of this Decree; provided, that the Navajo Nation is not required to provide records of irrigated acreage, diversions or depletions for uses described by paragraphs 8 and 9 until such time the Court enters a supplemental Decree quantifying and adjudicating rights for such uses. Diversions and depletions may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons. The reports of the Navajo Nation prepared pursuant to this paragraph also shall include documentation as to which rights adjudicated herein are being used, if any, to service or offset water uses by Allottees pursuant to the provisions of paragraph 11 of this Decree and subparagraph 12.3.2 of the Settlement Agreement.

17. ADMINISTRATION.

The Navajo Nation shall have authority to administer the Navajo Nation's diversion and use of water under the rights adjudicated by this Decree as follows:

- (a) The Navajo Nation shall within two years from the date of entry of this Decree

cause to be installed and maintained headgates on all surface water diversions from the San Juan River stream system in New Mexico; except, that no headgate will be required for a diversion from a tributary to the San Juan River so long as the Navajo Nation and the State Engineer agree that there will not be sufficient benefit to justify the cost of a headgate. The State Engineer shall be allowed to inspect diversion headgates upon reasonable request to the Navajo Nation.

(b) The Navajo Nation shall have jurisdiction, authority and responsibility to measure, distribute, administer and regulate the use of water under the water rights that are adjudicated to the Navajo Nation by this Decree beginning at the points of diversion, subject to the provisions of this Decree and the Settlement Agreement. The New Mexico State Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the Navajo Nation's uses of water from the San Juan River stream system for compliance with this Decree. The Court retains jurisdiction to review and resolve disputes, if any, between the Navajo Nation, the State Engineer or other parties to this case regarding whether the Navajo Nation is properly regulating use of water in compliance with the rights adjudicated by this Decree or by any supplemental Decrees that may be entered by the Court pursuant to paragraph 20, or with any rights acquired after the date of entry of this Decree or any supplemental Decrees, or in compliance with applicable conditions of a water rights transfer made in accordance with this Decree.

(c) The Navajo Nation shall have authority to change the purpose and place of use of its reserved rights described by paragraphs 3, 7(a) and 8 and its ground water rights described by subparagraph 7(b)(1) on lands held by the United States in trust for the Navajo

Nation in New Mexico, subject to the conditions and limitations of subsection 10603(h) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) and subparagraphs 5(d)(5), 5(e), 7(c) and 7(g) of this Decree; provided, that:

(1) notice is given of any proposed change in purpose or place of use consistent with paragraph 18;

(2) such changes do not involve transfers of places of use to locations outside the State of New Mexico, or to lands that are not held by the United States in trust for the Navajo Nation or its members as of the date of entry of this Decree, unless such lands are subsequently declared by the Secretary of the Interior to be held in trust by the United States for the Navajo Nation pursuant to section 3 of the Act of June 13, 1962 (76 Stat. 96), as amended by the Act of September 25, 1970 (84 Stat. 867);

(3) the source of water supply is not changed;

(4) the point of diversion is not changed if the diversion is from the San Juan River or the Animas River;

(5) the diversion and depletion quantities specified in paragraphs 3, 7(a) and 8 for the subject reserved right are not exceeded as a result of such changes; and

(6) such changes would not impair other water rights.

The Navajo Nation shall provide an administrative process for receiving from Navajo and non-Navajo water users protests of changes in purpose or place of use proposed to be made pursuant to this subparagraph, and for reviewing and considering protests and impairment issues that may arise from such changes. The administrative process shall include the

Navajo Nation consulting with the New Mexico State Engineer on proposed changes and potential impairment. The Navajo Nation shall not exercise its authority under this subparagraph to implement a proposed change in purpose or place of use until it has consulted with the State Engineer and completed the administrative process for the proposed change. The Court retains jurisdiction to review and resolve disputes, if any, between the Navajo Nation, the New Mexico State Engineer or other parties to this case regarding whether changes allowed by the Navajo Nation in the purpose and place of use of its reserved rights comply with the above stated criteria. Other transfers of reserved rights or ground water rights adjudicated by this Decree, including transfers that involve a change in the point of diversion on the San Juan River, the Animas River or to a location off lands that are held by the United States in trust for the Navajo Nation, or that involve a change in the place of use to a location off lands that are held by the United States in trust for the Navajo Nation or its members, may be made pursuant to application with the New Mexico State Engineer and in accordance with state law.

(d) The following standards of review shall be recognized by the Court in its review of any Navajo Nation decisions or actions made pursuant to subparagraphs 5(e), 7(b)(1) or 17(c), such that the Court may reverse a Navajo Nation decision only if:

- (1) the Navajo Nation acted fraudulently, arbitrarily or capriciously;
- (2) the decision of the Navajo Nation is not supported by substantial evidence based on the whole record on appeal;
- (3) the action of the Navajo Nation was outside the scope of its authority under the Decree; or

(4) the action of the Navajo Nation was otherwise not in accordance with this Decree or applicable law.

(e) The Navajo Nation may acquire, and may subsequently change the point of diversion and purpose and place of use of, water rights that are not included in this Decree in accordance with state law; provided, that such rights retain the priority date and other elements of the Decreed, licensed or permitted right so acquired. The New Mexico State Engineer shall retain jurisdiction to administer and regulate the use and transfer of water rights that are acquired under state law, including the rights adjudicated under subparagraph 7(b)(2) and rights that may be adjudicated by supplemental Decree pursuant to paragraph 9 of this Decree.

(f) The Navajo Nation shall have authority to administer and regulate the leasing and contracting of the Navajo Nation's water rights adjudicated by this Decree; provided, that:

(1) any change in the purpose and place of use or a change in the point of diversion of any of the Navajo Nation's water rights shall comply with the provisions of paragraph 17;

(2) the provisions of section 10701(c) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) shall apply to any subcontract between the Navajo Nation and a third party of the Navajo Nation's rights to the delivery of water under the Settlement Contract between the United States and the Navajo Nation referred to in subparagraph 5(a), including the requirement that the Secretary of the Interior must approve such subcontracts;

(3) the provisions of section 10701(d) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) shall apply to leases, contracts or other agreements that the Navajo Nation may enter to provide water for use by other parties under the Navajo Nation's water rights that are not subject to the Settlement Contract; and

(4) the development and use of ground water by the Navajo Nation shall comply with the provisions of paragraph 7.

The non-use of the Navajo Nation's reserved rights by a leasee or contractor to the Navajo Nation shall in no event result in a forfeiture, abandonment, relinquishment or other loss of all or any part of the reserved rights described in paragraphs 3, 7(a), 8 and 10 of this Decree.

(g) The Navajo Nation's water rights adjudicated herein shall not be leased, contracted, exchanged, forborne or otherwise transferred for use directly or indirectly outside the boundaries of the State of New Mexico without the consent of the State of New Mexico, acting through the New Mexico Interstate Stream Commission, and unless in compliance with applicable law. The Navajo Nation, consistent with the Settlement Agreement and section 10603(d) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), may forbear use of a portion of its rights described in subparagraphs 3(a) or 3(b) as necessary to allow Navajo Nation municipal and domestic uses to be made in Arizona under the Navajo-Gallup Water Supply Project during years that the Secretary of the Interior pursuant to section 10402 of the Act allocates a shortage in the Navajo Reservoir water supply to the Navajo Nation's uses in Arizona under the Project. Except as provided in this paragraph, nothing in this Decree shall be construed to establish, address,

prejudice, or prevent any party from litigating, whether or to what extent any law or compact does or does not permit, govern, or apply to the lease, contract, exchange, forbearance or transfer of the Navajo Nation's water rights for use directly or indirectly in an area outside the State of New Mexico.

(h) The Navajo Nation shall have the jurisdiction, authority and responsibility to adjust its headgates and other diversion works to ensure that its diversions of water comply with the Navajo Nation's rights to divert as adjudicated by this Decree or any supplemental Decrees that may be entered by the Court pursuant to paragraph 20, or as subsequently acquired. During times when the Secretary of the Interior has determined and allocated shortages pursuant to subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96), and section 10402 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), or times when a priority call on the San Juan River or its tributaries is in effect or would have been in effect but for the provisions of subparagraph 9.2 of the Settlement Agreement, the New Mexico State Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the Navajo Nation's diversion and use of water from the San Juan River stream system to ensure that the waters are being beneficially used in compliance with this Decree, and shall have authority to request the Navajo Nation to make any appropriate adjustments to its diversions as necessary to comply with the provisions of this Decree and the proper administration of diversions in the San Juan River Basin in New Mexico. The Navajo Nation shall maintain its diversion, conveyance and storage facilities in good repair so as to prevent waste.

(i) The Navajo Nation shall drill, maintain and abandon ground water diversion

wells in a manner consistent with public health and safety and applicable laws and regulations. The Navajo Nation shall require that well completion logs be prepared for all newly drilled wells. Copies of well completion reports and well drilling logs shall be provided to the New Mexico State Engineer on a quarterly basis.

(j) The Navajo Nation shall construct and maintain, and breach if necessary, storage dams and reservoirs in a manner consistent with public health and safety and applicable laws and regulations. The Navajo Nation shall require that as built drawings be prepared for all newly constructed or rehabilitated dams; except, that dams that are 10 feet or less in height as measured from the downstream toe to the dam crest and dams that impound 10 acre-feet or less of water as measured by the volume of water stored at the spillway crest are exempt from such requirement for purposes of this Decree. Copies of as built drawings for dams, and copies of dam inspection reports on both newly constructed dams and existing dams, shall be provided to the New Mexico State Engineer on an annual basis.

18. NOTICE.

In addition to any notice provisions under applicable law, at least 30 days prior to any change in the place or purpose of use or point of diversion in the exercise of the water rights identified herein, the Navajo Nation, acting through the Department of Water Resources, shall complete notice of such change by publication in a newspaper of general circulation within the San Juan River Basin in New Mexico once per week for three consecutive weeks and by letter to the New Mexico State Engineer; except, that *de minimus* uses described in paragraph 10 are exempt from this notice requirement, and emergency replacement wells and emergency transfers for domestic and sanitary purposes may be made with less than 30 days notice. Both such forms of

notice shall specify the proposed purpose and place of use, point of diversion, diversion rate, annual diversion and depletion amounts, and source of water. Uses of water to make the depletions and diversions described in subparagraphs 3(d), 3(e) and 3(f) that are supplied under the Settlement Contract pursuant to the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, and that are accounted under the rights described in subparagraph 3(a) for the Navajo Indian Irrigation Project, also shall be exempt from this notice requirement. Any use of water for non-irrigation purposes under the rights associated with the Navajo Indian Irrigation Project is subject to the notice provisions of this paragraph notwithstanding the authorized uses of Project water specified at section 10402(a) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367); except, that no such notice shall be required to implement the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement to make the depletions and diversions described in subparagraphs 3(d), 3(e) and 3(f) regardless of whether part or all of the irrigation rights for the Hogback-Cudei and Fruitland-Cambridge irrigation projects have been transferred to non-irrigation uses.

19. SAN JUAN-CHAMA PROJECT.

Nothing in this Decree shall be construed to prohibit the Navajo Nation from acquiring the use of water diverted to the Rio Grande Basin via the San Juan-Chama Project authorized by the Act of June 13, 1962 (76 Stat. 96); provided, that the acquisition of such water:

- (a) is made by subcontract with existing contractors of said Project or by reallocation of Project water and subsequent contract with the Secretary of the Interior, subject to approval of the New Mexico Interstate Stream Commission; and
- (b) does not result in an increase in the amount of water required to be diverted by

the Project from the San Juan River Basin.

Nothing in this paragraph shall be construed to abrogate the Secretary of the Interior's obligations under existing water delivery and repayment contracts for the San Juan-Chama Project or under existing reservations or allocations of Project water.

20. SUPPLEMENTAL DECREES.

The Navajo Nation and the United States, acting in its capacity as Trustee for the Navajo Nation, may petition this Court for supplemental Decrees to adjudicate rights pursuant to:

- (a) hydrographic surveys of historic and existing uses as provided by paragraphs 8 and 9 of this Decree and paragraph 4.0 of the Settlement Agreement;
- (b) appropriations it may acquire after entry of this Decree; or
- (c) rights that may derive from additional allocations of water made to the Navajo Nation pursuant to paragraph 8.0 of the Settlement Agreement.

The Navajo Nation also may petition this Court to re-adjudicate the priority date for the reserved rights described in paragraphs 3, 7(a), 8 and 10 if the Court adjudicates a priority date earlier than June 1, 1868, to another party in this case.

21. INCORPORATION OF SETTLEMENT AGREEMENT.

The terms and conditions of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement, signed by the State of New Mexico, the Navajo Nation, and the Secretary of the Interior on _____, excluding the Appendices 1 and 2 thereto, are incorporated as though fully set forth herein. By this Decree, the Court takes no action and makes no determination to approve or disapprove the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), the Settlement Contract, or the schedule of anticipated depletions from the Upper

Basin prepared by the New Mexico Interstate Stream Commission and referred to in subparagraph 6.1 of the Settlement Agreement. Any amendments to the Settlement Agreement made pursuant to subparagraph 14.7 of that agreement and subsequent to entry of this Decree shall be binding as between the parties to the Settlement Agreement, but shall not be binding on other parties unless approved by the Court.

22. REVOCABILITY.

Notwithstanding the provisions of paragraph 14, this Decree may be revoked by the Court if the Settlement Agreement is terminated or upon a showing by the Navajo Nation that the conditions set forth at section 10701(e)(1) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) have not been substantially satisfied. If this Decree is revoked, the parties shall not be bound by it or the Settlement Agreement, including any agreements of the Navajo Nation or the United States relating to the settlement of claims provided pursuant to this Decree, the Settlement Agreement or the Northwestern New Mexico Rural Water Projects Act, and the Navajo Nation may petition the Court to proceed with the determination of its rights in this case. Nothing in this paragraph prohibits the Navajo Nation from seeking other remedies for performance or relief to accomplish the purposes of the Settlement Agreement and the Act. The Navajo Nation's right to present to the Court cause to revoke this Partial Final Decree and any supplemental decree under this paragraph shall expire on December 31, 2025, unless the deadlines set forth in paragraph 5.2 of the Settlement Agreement are extended, in which case, this right shall expire one year following the date of the last deadline, including extensions pursuant to paragraph 5.2.2 of the Settlement Agreement.

DATED: _____

—

APPENDIX 2

**PROPOSED SUPPLEMENTAL PARTIAL FINAL JUDGMENT AND DECREE
OF THE WATER RIGHTS OF THE NAVAJO NATION**

August 9, 2010

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

STATE OF NEW MEXICO ex rel.)
State Engineer,)
)
 Plaintiff,)
)
 v.)
)
UNITED STATES OF AMERICA, et al.,)
)
 Defendants.)
)
)
_____)

No. CIV 75-184

SAN JUAN RIVER
ADJUDICATION SUIT

**SUPPLEMENTAL PARTIAL FINAL JUDGMENT AND DECREE
OF THE WATER RIGHTS OF THE
NAVAJO NATION**

THIS CASE is a general adjudication filed pursuant to NMSA Sections 72-4-13 through -19 of the surface and underground water rights within the San Juan River Basin in New Mexico as authorized by 43 U.S.C. Section 666. The Court entered the Partial Final Judgment and Decree of the Water Rights of the Navajo Nation (“Decree”), dated _____, which describes the rights of the Navajo Nation to divert, impound or use the surface waters within the San Juan River Basin, including the San Juan River and its tributaries, and the underground waters underlying the surface drainage of the San Juan River Basin in New Mexico, and which provides for a supplemental decree to further describe rights for uses determined by hydrographic survey as per paragraphs 8 and 9 of the Decree entered by the Court. The rights of the Navajo Nation to divert, impound, or use the surface waters within the San Juan River Basin, including the San Juan River and its

tributaries, and the underground waters underlying the surface drainage of the San Juan River Basin in New Mexico, for uses determined by hydrographic survey are quantified and decreed herein.

This matter comes before the Court on a Joint Motion for the Entry of a Supplemental Partial Final Judgment and Decree filed by the State of New Mexico, the Navajo Nation and the United States. The Court finds that the proposed Supplemental Partial Final Judgment and Decree of the Water Rights of the Navajo Nation (“Supplemental Decree”) is the product of a negotiated settlement by the aforesaid parties. Notice of the deadline for filing and serving objections to the water rights described in this decree was served on the parties to this case and potential water right claimants pursuant to the expedited *inter se* procedures adopted by the Court. The Court, having considered the parties’ motion, the Hydrographic Survey Report of the water rights to be adjudicated in this decree, the objections thereto, the evidence in support thereof, and for good cause shown:

FINDS that the motion should be granted; and

FINDS FURTHER that there is no just reason for delay in accordance with Rule 1-054(C) NMRA 1996 and directs the entry of this decree adjudicating water rights of the Navajo Nation within the San Juan River Basin.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. JURISDICTION.

The Court has jurisdiction over the subject matter and the parties in this case.

2. SUPPLEMENT TO PARTIAL FINAL JUDGMENT AND DECREE.

This Supplemental Decree is entered pursuant to paragraph 20 of the Decree and is hereby incorporated therein.

3. HYDROGRAPHIC SURVEY – RESERVED RIGHTS.

The Navajo Nation has reserved rights, which are held in trust by the United States for the Navajo Nation, for the historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held in trust by the United States for the Navajo Nation are described in this decree and in the Hydrographic Survey Report. These rights have a priority date of June 1, 1868. The reserved rights for historic and existing irrigation uses and related purposes on the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project are included in the reserved right amounts specified by subparagraphs 3(a), 3(e) and 3(f), respectively, of the Decree. Reserved rights for historic, existing and future municipal, industrial, commercial and domestic uses, including residential agricultural uses such as yard and stock watering, are included in the reserved right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a) of the Decree. The total annual quantities of water to which the Navajo Nation has a reserved right for historic and existing uses and which are not included in paragraph 3 or subparagraph 7(a) of the Decree shall not exceed an annual diversion of _____ acre-feet, or the quantity of water necessary to supply an annual depletion at the places of use of _____ acre-feet (including depletions caused by the particular uses of water and depletions that are incident to the uses of water), whichever is less, and a net evaporation from stockponds and reservoirs of _____ acre-feet. These water rights are described below and constitute the rights described in paragraph 8 of the Decree. The following descriptions are not intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's reserved rights under Federal law. The conditions under which the Navajo Nation may make such changes are specified in paragraph 11 of this Supplemental Decree, and are subject to the Court's continuing jurisdiction to interpret and

enforce this Supplemental Decree as provided in paragraph 14 of the Decree and paragraph 8 of this Supplemental Decree.

A. LIVESTOCK WATER USE

1. STOCK PONDS

<u>PLACE OF USE</u>		<u>SURFACE AREA</u> <u>(acres)</u>	<u>VOLUME</u> <u>(acre-feet)</u>	<u>NET EVAPORATION</u> <u>(acre-feet)</u>
All stock ponds described in the Hydrographic Survey Report.	Totals:	_____	_____	_____

The location, source, surface area, volume and annual net evaporation of each stock pond are identified and described in the Hydrographic Survey Report attached to the joint motion as Exhibit __. The Navajo Nation has the right to fill and refill each identified stock pond to its full capacity as often as water is available.

2. STOCK USE

<u>PLACE OF USE</u>	<u>NO. OF</u> <u>ANIMAL UNITS</u>	<u>AMOUNT OF WATER</u> <u>DIVERSION</u> <u>(acre-feet)</u>	<u>DEPLETION</u> <u>(acre-feet)</u>
At stock wells and springs described below and in stock ponds described in the Hydrographic Survey Report.	_____	_____	_____

The foregoing diversion and depletion amounts are the annual amounts of water consumed by stock from the stock wells and springs listed below and stock ponds identified and described in the Hydrographic Survey Report attached to the joint motion as Exhibit __.

(a) STOCK WELLS

POINT OF DIVERSION

T	R	SEC	1/4	MAP	ID-NO.	SOURCE
__N	__W	___	___	___	___	___
__N	__W	___	___	___	___	___

(b) STOCK SPRINGS

POINT OF DIVERSION

T	R	SEC	1/4	MAP	ID-NO.	SOURCE
__N	__W	___	___	___	___	___
__N	__W	___	___	___	___	___

B. RECREATION WATER USE

1. RECREATION LAKES

LOCATION						SURFACE	VOLUME	NET
T	R	SEC	1/4	MAP	ID-NO.	AREA (acres)	(acre-feet)	EVAPORATION (acre-feet)
__N	__W	___	___	___	___	___	___	___
__N	__W	___	___	___	___	___	___	___
TOTALS								

The Navajo Nation has the right to fill and refill the lakes described above to their full capacity as often as water is available.

2. RECREATION USE

POINT OF DIVERSION					AMOUNT OF WATER	
T	R	SEC	SOURCE	MAP	DIVERSION (acre-feet)	DEPLETION (acre-feet)
__N	__W	___ & ___	___	___	___	___
__N	__W	___ & ___	___	___	___	___
TOTALS						

The foregoing annual depletion amounts include the depletion at the places of use caused by the recreation use of water and any depletion incident to the use.

C. IRRIGATION WATER USE

1. IRRIGATION DIVERSION

POINT OF DIVERSION				SOURCE	MAP	ACRES	AMOUNT OF WATER		DEPLETION (acre-feet)
							DIVERSION (acre-feet)	(cfs)	
T	R	SEC	1/4						
__N	__W	__	__	__	__	__	__	__	__
__N	__W	__	__	__	__	__	__	__	__
TOTALS									

The foregoing annual depletion amounts include the depletion at the places of use caused by the irrigation use of water and any depletion incident to the use. No more than _____ acres may be irrigated in any one calendar year within the _____ acres with irrigation water rights from tributaries to the San Juan River or from underground water sources within said tributary drainage areas. The amounts of water for the irrigation of _____ acres from said tributary areas and underground water sources shall not exceed an annual diversion of _____ acre-feet per year, or the quantity of water necessary to supply an annual depletion at the places of use of _____ acre-feet per year, whichever is less. The Navajo Nation’s diversions for the irrigation water uses described above shall be subject to the annual diversion quantities specified only if the New Mexico State Engineer or the Court enforces annual diversion quantity limits on non-Navajo Nation irrigation diversions in the San Juan River Basin in New Mexico in accordance with such quantities as may be adjudicated by the Court. The farm delivery requirements for the irrigation water uses

described above are as provided in the Hydrographic Survey Report attached to the joint motion as Exhibit _.

2. IRRIGATION RESERVOIR STORAGE

LOCATION						SURFACE	VOLUME	NET
T	R	SEC	1/4	MAP	ID-NO.	AREA	(acre-feet)	EVAPORATION
						(acres)		(acre-feet)
_N	_W	___	___	___	___	_____	_____	_____
_N	_W	___	___	___	___	_____	_____	_____
TOTALS								

The Navajo Nation has the right to fill and refill the reservoirs described above to their full capacity as often as water is available.

* * *

4. WATER RIGHTS ACQUIRED UNDER STATE LAW.

The Navajo Nation has water rights acquired under New Mexico state law pursuant to decreed rights or to permits or licenses issued by the New Mexico State Engineer, and for historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held in fee ownership by the Nation. These rights are described in this decree and in the Hydrographic Survey Report, and exclude rights to the use of water historically made by non-Navajo entities on Navajo lands under permits issued by the New Mexico State Engineer that have not been acquired from said entities by the Navajo Nation. Water rights for historic municipal, industrial, commercial or domestic uses, except for *de minimus* uses under paragraph 10 of the Decree, that have been made on lands which are held in fee ownership by the Navajo Nation and that have not been made pursuant to decreed rights, or to permits or licenses issued by the New Mexico State Engineer, are

included in the total water right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a) of the Decree. The total annual quantities of water to which the Navajo Nation has a water right under state law as of the date of entry of this decree amounts to an annual diversion of _____ acre-feet, or the quantity of water necessary to supply an annual depletion at the places of use of _____ acre-feet (including depletions caused by the particular uses of water and depletions that are incident to the uses of water), whichever is less, and a net evaporation from stockponds of _____ acre-feet. These water rights and the priority dates are described below and constitute the rights described in paragraph 9 of the Decree. The following descriptions are not intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's water rights under Federal and state law, nor are they intended to limit in any way the right and ability of the Navajo Nation to acquire and transfer additional water rights perfected under state law. The conditions under which the Navajo Nation may make such changes are specified in paragraph 11 of this Supplemental Decree and are subject to the Court's continuing jurisdiction to interpret and enforce this Supplemental Decree as provided in paragraph 14 of the Decree and paragraph 8 of this Supplemental Decree.

A. LIVESTOCK WATER USE

1. STOCK PONDS

<u>PLACE OF USE</u>		SURFACE AREA (acres)	VOLUME (acre-feet)	NET EVAPORATION (acre-feet)	<u>PRIORITY</u>
All stock ponds described in the Hydrographic Survey Report.	Totals:	_____	_____	_____	_____

The location, source, surface area, volume and annual net evaporation of each stock pond are identified and described in the Hydrographic Survey Report attached to the joint motion as Exhibit __. The Navajo Nation has the right to fill and refill each identified stock pond to its full capacity as often as water is available.

2. STOCK USE

<u>PLACE OF USE</u>	<u>NO. OF ANIMAL UNITS</u>	<u>AMOUNT OF WATER DIVERSION (acre-feet)</u>	<u>AMOUNT OF WATER DEPLETION (acre-feet)</u>	<u>PRIORITY</u>
At stock wells and springs described below and in stock ponds described in the Hydrographic Survey Report.	_____	_____	_____	_____

The foregoing diversion and depletion amounts are the annual amounts of water consumed by stock from the stock wells and springs listed below and stock ponds identified and described in the Hydrographic Survey Report attached to the joint motion as Exhibit __.

(a) STOCK WELLS

<u>POINT OF DIVERSION</u>				<u>MAP</u>	<u>ID-NO.</u>	<u>SOURCE</u>	<u>PRIORITY</u>
<u>T</u>	<u>R</u>	<u>SEC</u>	<u>1/4</u>				
___N	___W	___	___	___	___	___	___
___N	___W	___	___	___	___	___	___

(b) STOCK SPRINGS

<u>POINT OF DIVERSION</u>				<u>MAP</u>	<u>ID-NO.</u>	<u>SOURCE</u>	<u>PRIORITY</u>
<u>T</u>	<u>R</u>	<u>SEC</u>	<u>1/4</u>				
___N	___W	___	___	___	___	___	___
___N	___W	___	___	___	___	___	___

B. IRRIGATION WATER USE

POINT OF DIVERSION				SOURCE	MAP	ACRES	AMOUNT OF WATER		PRIORITY
T	R	SEC	1/4				DIVERSION	DEPLETION	
_____	_____	_____	_____	_____	_____	_____	(acre-feet)	(cfs)	(acre-feet)
__N	__W	__	__	_____	__	_____	_____	_____	_____
__N	__W	__	__	_____	__	_____	_____	_____	_____
<hr/> TOTALS									

The foregoing annual depletion amounts include the depletion at the places of use caused by the irrigation use of water and any depletion incident to the use. The Navajo Nation’s diversions for the irrigation water uses described above shall be subject to the annual diversion quantities specified only if the New Mexico State Engineer or the Court enforces annual diversion quantity limits on non-Navajo Nation irrigation diversions in the San Juan River Basin in New Mexico in accordance with such quantities as may be adjudicated by the Court. The farm delivery requirements for the irrigation water uses described above are as provided in the Hydrographic Survey Report attached to the joint motion as Exhibit _.

C. MUNICIPAL, INDUSTRIAL, COMMERCIAL AND DOMESTIC USE

POINT OF DIVERSION				SOURCE	FILE NO.	AMOUNT OF WATER		PRIORITY	
T	R	SEC	1/4			DIVERSION	DEPLETION		
_____	_____	_____	_____	_____	_____	_____	(acre-feet)	(cfs)	(acre-feet)
__N	__W	__	__	_____	_____	_____	_____	_____	_____
__N	__W	__	__	_____	_____	_____	_____	_____	_____
<hr/> TOTALS									

The foregoing annual depletion amounts include the depletion at the places of use caused by the use of water and any depletion incident to the use.

* * *

5. ALLOTTEES.

Individual members of the Navajo Nation that have been allotted lands, by the United States by public land orders or otherwise, within the San Juan River Basin in New Mexico may have claims to reserved rights to the use of water. This decree does not quantify the nature, extent or priority of such rights; however, historic and existing water uses on such allotted lands are described in the Hydrographic Survey Report. To the extent that water rights are adjudicated by the Court for such allotted lands that are in excess of the historic and existing water uses on those lands as described in the Hydrographic Survey Report, such water rights for allotted lands shall be fulfilled or serviced by rights of the Navajo Nation quantified in the Decree or in this Supplemental Decree, or the depletions of flow of the San Juan River resulting from the use of water under such rights for allotted lands shall be fully offset by a forbearance of use of rights of the Navajo Nation quantified in the Decree or in this Supplemental Decree. Nothing in this paragraph shall create a right of any Allottee to delivery of water by the Navajo Nation.

6. LIMITATIONS.

The Navajo Nation is hereby enjoined from the diversion or depletion of the surface or underground waters within the San Juan River Basin in New Mexico except in accordance with the rights described in the Decree and this Supplemental Decree, rights in any supplemental decrees adjudicating water rights acquired by the Navajo Nation after entry of this Supplemental Decree, or decreed rights or rights under New Mexico State Engineer permits or licenses that are acquired after the date of entry of this Supplemental Decree. Beneficial use shall be the limit of the rights to use water adjudicated to the Navajo Nation by this Supplemental Decree. The Navajo Nation shall not

be entitled to receive, nor shall the United States or the State of New Mexico be required to deliver, nor shall non-Navajo water users be required to curtail water uses to provide to the Navajo Nation, any water not then necessary for beneficial use under the rights adjudicated herein or acquired hereafter. This Supplemental Decree is binding upon political subdivisions, utilities, agencies and other entities of the Navajo Nation and the United States, and on successors and assigns.

7. DISCLAIMERS.

Except as explicitly provided herein, nothing in this Supplemental Decree confers jurisdiction on the New Mexico State Engineer to administer or regulate the use of federally reserved rights on lands held by the United States in trust for the Navajo Nation or lands allotted by the United States to members of the Navajo Nation. Because the description of the Navajo Nation's water rights adjudicated in this Supplemental Decree is based upon a negotiated settlement, the procedures and methods used to quantify and describe the Navajo Nation's water rights in this Supplemental Decree shall not be binding under the law of the case doctrine upon any other water right claimant, the State of New Mexico, or the United States in the adjudication of other water rights in this case and should not be relied upon as precedent under the *stare decisis* doctrine in any other water right adjudication suit.

8. JURISDICTION AFTER ENTRY OF DECREE.

This Supplemental Decree is a final order under Rule 1-054(C) NMRA 200__, and it may be modified only pursuant to Rule 1-060(B) NMRA 200__. This Court retains jurisdiction to interpret and enforce this Supplemental Decree. Subject to the provisions of the Decree and this Supplemental Decree, the State Engineer has authority under state law to administer water rights within, and to supervise the apportionment, diversion and use of the waters of, the San Juan River

Basin in New Mexico, including by appointment of watermasters, according to the orders and decrees of the Court in the Stream Adjudication and the licenses and permits issued by the State Engineer in the Basin..

9. METERING OF WATER USES.

As part of the metering and monitoring of water uses in the San Juan River Basin in New Mexico, the Navajo Nation shall be responsible for metering and monitoring its uses of water under this Supplemental Decree as follows:

(a) The Navajo Nation within two years from the date of entry of this Supplemental Decree shall cause to be installed and maintained flumes, gages, stage recorders, totalizing meters or other flow measuring devices on all surface water and ground water diversions within the physical drainage of the San Juan River Basin in New Mexico made pursuant to the rights adjudicated by this Supplemental Decree; except, that diversions for livestock water uses pursuant to subparagraphs 3.A and 4.A of this Supplemental Decree and for other water uses may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons. The Navajo Nation shall be responsible for rating all gages and for collecting the data necessary to accurately account diversions in the San Juan River Basin in New Mexico for administration by the State Engineer of this Supplemental Decree.

(b) The Navajo Nation within two years from the date of entry of this Supplemental Decree shall cause to be installed and maintained storage or water surface gages at all reservoirs of _____ acre-feet or more storage capacity that the Nation has a right to store water in the San Juan River Basin in New Mexico pursuant to this Supplemental Decree;

except, that amounts of water in storage may be estimated using technically sound methodologies where actual measurement of storage is not practical for technical or economic reasons. The Navajo Nation shall read at or near the end of each month the reservoir storage gages at all reservoirs of 100 acre-feet or more storage capacity that the Nation has a right to store water in the San Juan River Basin in New Mexico, and shall periodically, but not less than quarterly, read the reservoir storage gages at reservoirs of less than 100 acre-feet storage capacity. The Nation shall be responsible for updating and maintaining current elevation-area-capacity data for reservoirs with a storage capacity of _____ acre-feet or more.

(c) The New Mexico State Engineer shall be granted access to diversion and storage data, and shall be allowed to inspect flow and storage measurement facilities and gages upon reasonable request to the Navajo Nation, as may be necessary for the State Engineer to administer the diversion and use of water from the San Juan River stream system.

(d) The Navajo Nation beginning the year following the date of entry of this Supplemental Decree shall during June or July each year conduct a field inventory of irrigated acreage on Navajo lands in the San Juan River Basin in New Mexico for the irrigation uses made pursuant to this Supplemental Decree, and shall provide the results of the inventory to the New Mexico State Engineer within two weeks of completion of the inventory. The Navajo Nation shall allow the State Engineer to participate, in cooperation with the Navajo Nation, in conducting the acreage inventory. The Navajo Nation may use technically sound methodologies to estimate acreage and crops irrigated outside the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge

Irrigation Project that are not practical to field check every year for economic reasons. Aerial photographs, satellite imagery or other records or documentation may be used in conjunction with field surveys to determine or verify lands irrigated in a particular year.

(e) Depletions for the municipal, industrial, commercial and domestic uses that are described in paragraph 4.C shall be computed as diversion less measured return flow. The Navajo Nation shall be responsible for measuring any return flows.

(f) The Navajo Nation shall meter farm deliveries for irrigation uses under the rights decreed herein using technically sound methods if the State Engineer or the Court determines such metering to be necessary for the State Engineer to administer water rights in the San Juan River Basin in New Mexico.

10. RECORDS OF WATER USE.

The Navajo Nation shall within two years from the date of entry of this Supplemental Decree, and annually thereafter, prepare and maintain detailed and accurate records of the acreages of all Navajo lands, including lands held by the United States in trust for the Navajo Nation and lands owned by the Navajo Nation in fee, in the San Juan River Basin in New Mexico irrigated each year from the San Juan River, its tributaries or underground water sources, and of the annual diversions and depletions of water, including re-uses, for its uses in the San Juan River Basin in New Mexico from the San Juan River, its tributaries and underground water sources, pursuant to this decree, all stated separately as to each source of water. The Navajo Nation shall prepare and submit to the Secretary of the Interior and the New Mexico State Engineer on or before October 1 of each year a report of its records and calculations of actual acreage irrigated and diversions and depletions, by a methodology acceptable to the State Engineer, of San Juan River Basin waters for

the previous calendar year. The records and calculations shall be segregated by each use specified in paragraphs 3 and 4 of this Supplemental Decree. Diversions and depletions for livestock water uses pursuant to subparagraphs 3.A and 4.A, and for other water uses to be reported under this paragraph, may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons.

11. ADMINISTRATION.

The authority of the Navajo Nation to administer the Nation's diversion and use of water under the rights adjudicated by this Supplemental Decree shall be as specified by paragraph 17 of the Decree. In addition to any otherwise applicable requirements, any change of place or purpose of use or point of diversion of the uses described in paragraphs 3 and 4 of this Supplemental Decree shall be subject to the following requirements:

(a) Any change of place of use or point of diversion of the stock uses described in paragraph 3(A) of this Supplemental Decree shall comply with the provisions of paragraph 17(c) of the Decree; except that any proposed change of point of diversion that is to be located within 100 feet of the original point of diversion as described in the Hydrographic Survey Report attached to the joint motion as Exhibit _ and that does not relocate the diversion to a point below the confluence of the original water course with another water course shall not be subject to:

- (1) the notice provisions of subparagraph 17(c)(1) of the Decree;
- (2) paragraph 18 of the Decree;
- (3) paragraph 12 of this Supplemental Decree, or
- (4) the requirement that the Navajo Nation in its administrative process described in

paragraph 17(c) of the Decree consult with the New Mexico State Engineer on proposed changes and potential impairment.

The Navajo Nation each year shall make a report to the State Engineer identifying changes of points of diversion for stock uses. In addition, the purpose of use of stock uses described subparagraph 3(A) of this Supplemental Decree shall not be changed; and any change in point of diversion or place of use shall not result in any increase in depletion over and above the quantity of historic average annual depletion at the move-from location, and shall be supplied from the same tributary water course or ground water source.

(b) Any change of place or purpose of use or point of diversion of the recreation uses described in paragraph 3(B) of this Supplemental Decree shall comply with the provisions of paragraph 17(c) of the Decree. In addition, any such change in recreation use shall not result in any increase in depletion over and above the quantity of historic average annual depletion at the move-from location, and shall be supplied from the same tributary water course or ground water source.

(c) Any change of place or purpose of use or point of diversion of the irrigation uses described in paragraph 3(C) of this Supplemental Decree shall comply with the provisions of paragraph 17(c) of the Decree. In addition, any such change in irrigation use shall not result in any increase in depletion over and above the quantity of historic average annual depletion at the move-from location, and shall be supplied from the same tributary water course or ground water source.

(d) Any change of place or purpose of use or point of diversion of the uses described in paragraph 4 of this Supplemental Decree shall comply with the provisions of

paragraph 17(e) of the Decree.

12. NOTICE.

In addition to any notice provisions under applicable law, at least 30 days prior to any change in the place or purpose of use or point of diversion in the exercise of the water rights identified herein, the Navajo Nation, acting through its Department of Water Resources, shall complete notice of such change by publication in a newspaper of general circulation within the San Juan River Basin in New Mexico once per week for three consecutive weeks and by letter to the New Mexico State Engineer; except, that emergency replacement wells and emergency transfers for domestic and sanitary purposes may be made with less than 30 days notice. Both such forms of notice shall specify the proposed purpose and place of use, point of diversion, diversion rate, annual diversion and depletion amounts, and source of water.

DATED: _____

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APPENDIX 3
WAIVERS AND RELEASES
August 9, 2010

WAIVERS AND RELEASES

1.0 Claims by the Navajo Nation and the United States

In return for recognition of the Navajo Nation's water rights and other benefits as set forth in the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement and its three referenced appendices (collectively referred to in this appendix as the "Settlement Agreement") and the Northwestern New Mexico Rural Water Projects Act, Subtitle B of Title X of the Act of March 30, 2009 P.L. 111-11, (123 Stat. 1367) ("Settlement Act"), the Navajo Nation, on behalf of itself and members of the Navajo Nation (other than members in the capacity of the members as allottees), and the United States, acting in its capacity as trustee for the Navajo Nation, hereby waive and release:

- 1.1 all claims for water rights in, or for waters of, the San Juan River Basin in the State of New Mexico that the Navajo Nation, or the United States as trustee for the Navajo Nation, asserted, or could have asserted, in any proceeding, including but not limited to the stream adjudication, up to and including the effective date described in paragraph 6.0, except to the extent that such rights are recognized in the Settlement Agreement or the Settlement Act;
- 1.2 all claims for damages, losses, or injuries to water rights or claims of interference with, diversion, or taking of water (including but not limited to claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking) in the San Juan River Basin in the State of New Mexico that accrued at any time up to and including the effective date described in paragraph 6.0;
- 1.3 all claims of any damage, loss, or injury or for injunctive or other relief because of the condition of or changes in water quality related to, or arising out of, the exercise of water rights; and
- 1.4 all claims against the State of New Mexico, its agencies, or employees relating to the negotiation or the adoption of the Settlement Agreement.

2.0 Claims by the Navajo Nation against the United States.

The Navajo Nation, on behalf of itself and its members (other than in the capacity of the members as allottees), hereby waive and release:

- 2.1 all claims against the United States, its agencies, or employees relating to claims for water rights in or waters of the San Juan River Basin in the State of New Mexico that the United States, acting in its capacity as trustee for the Navajo Nation, asserted, or could have asserted, in any proceeding, including but not limited to the stream adjudication;
- 2.2 all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due

to loss of water or water rights (including but not limited to damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights; claims relating to inference with, diversion, or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water or water rights) in the San Juan River Basin in the State of New Mexico that first accrued at any time up to and including the effective date described in paragraph 6.0;

- 2.3 all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Navajo Nation's water rights in the stream adjudication;
- 2.4 all claims against the United States, its agencies, or employees relating to the negotiation, execution, or the adoption of these Waivers and Releases, the Settlement Agreement, the Contract defined in paragraph 2.5 of the Settlement Agreement, or the Settlement Act; and
- 2.5 all claims against the United States, its agencies, or employees relating to the negotiation, execution, or the adoption of the Settlement Agreement, the Contract defined in paragraph 2.5 of the Settlement Agreement, or the Settlement Act.

3.0 Reservation Claims.

Notwithstanding the waivers and releases described in subparagraphs 1 and 2, the Navajo Nation on behalf of itself and its members of the Navajo Nation (including members in the capacity of the members as allottees) and the United States acting in its capacity as trustee for the Navajo Nation and allottees, retain:

- 3.1 all claims for water rights or injuries to water rights arising out of activities occurring outside the San Juan River Basin in New Mexico, subject to subparagraphs 8.0, 9.3, 9.12, 9.13 and 14.9 of the Settlement Agreement;
- 3.2 all claims for enforcement of these Waivers and Releases, the Settlement Agreement, the Contract defined in paragraph 2.5 of the Settlement Agreement, or the Settlement Act, through any legal and equitable remedies available in any court of competent jurisdiction;
- 3.3 all rights to use and protect water rights acquired pursuant to state law after the date of enactment of the Settlement Act;
- 3.4 all claims relating to activities affecting the quality of water not related to the exercise of water rights, including but not limited to any claims the Navajo Nation might have under:
 - (1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*);
 - (2) the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); and
 - (3) the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*);

- 3.5 all claims relating to damages, losses, or injuries to land or natural resources not due to loss of water or water rights; and
- 3.6 all rights remedies, privileges, immunities, and powers not specifically waived and released under the terms of the Settlement Agreement or the Settlement Act.

4.0 No Effect on Claims of Allottees.

Nothing in the Settlement Agreement affect the rights or claims of Allottees, or the United States as trustee for or on behalf of Allottees, for water rights or damages related to lands allotted by the United States to Allottees by public land orders or otherwise.

5.0 Tolling of Claims.

- 5.1 Each applicable period of limitation and time-based equitable defense relating to a claim described in these Waivers and Releases shall be tolled for the period beginning on March 30, 2009 and ending on the earlier of March 1, 2025 or the effective date described in subparagraph 6.0.
- 5.2 Nothing in this subparagraph revives any claim or tolls any period of limitation or time-based equitable defense that expired before March 30, 2009.
- 5.3 Nothing in this paragraph precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

6.0 Effective Date.

- 6.1 The waivers and releases described in subparagraphs 1.0 and 2.0 shall be effective on the date on which the Secretary publishes in the Federal Register a statement of findings documenting that each of the deadlines described in section 10701(e)(1) of the Settlement Act have been met.
- 6.2 If the deadlines described in subparagraph section 10701(e)(1)(A) of the Settlement Act have not been met by the later of March 1, 2025, or the date of any extension under section 10701(e)(1)(B) of the Settlement Act, the waivers and releases described in subparagraphs 1.0 and 2.0 shall be of no effect and section 10701(e)(2)(B) of the Settlement Act shall apply.


7.0 Effect on the United States Acting in Sovereign Capacity or Other Capacity

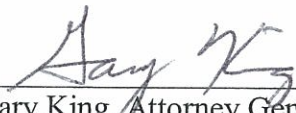
Nothing in the Settlement Agreement:

- 7.1 affects the ability of the United States acting in its sovereign capacity to take actions to protect water quality or otherwise to protect health, safety, or the environment in the San Juan River Basin including but not limited to taking actions authorized by law such as action authorized under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Safe Drinking Water Act (42 U.S.C 300f *et seq.*); and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*); the Endangered Species Act (16 U.S.C. 1531 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), and the regulations implementing such Acts;

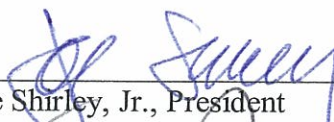
- 7.2 affects the ability of the United States to take actions acting in its capacity as trustee for any other Tribe or allottee; or
- 7.3 confers jurisdiction on the court in the Stream Adjudication to:
 - 7.3.1 interpret Federal law regarding water quality, health, safety, or the environment or determine the duties of the United States or other Parties pursuant to such Federal law; or
 - 7.3.2 conduct judicial review of Federal agency action.

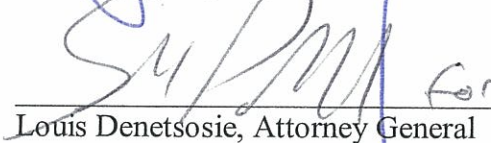
THE STATE OF NEW MEXICO

By:  Date: 12/10/10
Bill Richardson, Governor


 Date: 12/10/10
Gary King, Attorney General

THE NAVAJO NATION

By:  Date: 12/17/10
Joe Shirley, Jr., President

 for Date: 12/17/10
Louis Denetsosie, Attorney General

THE UNITED STATES OF AMERICA

By:  Date: 12/17/10
Ken Salazar, Secretary of the Interior