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Contract Between the United States and the Jicarilla Apache Tribe

Jicarilla Apache Nation

United States

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Jicarilla Apache Nation Water Rights Settlement (Dec. 8, 1992)

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CONTRACT BETWEEN THE UNITED STATES
AND THE JICARILLA APACHE TRIBE

PREAMBLE

This contract is entered into this 8th day of December, 1992, between the United States of America, acting through the Secretary of the Interior pursuant to the Jicarilla Apache Water Rights Settlement Act of October 23, 1992, 106 Stat. 2237, and the Act of June 13, 1962, 76 Stat. 96, and the Jicarilla Apache Tribe.

EXPLANATORY RECITALS

WITNESSETH, THAT:

WHEREAS, the United States and the Jicarilla Apache Tribe have negotiated a resolution of all water right claims of the Tribe, including tribal reserved rights claims which are the subject of general stream adjudications in state and federal courts in New Mexico and which claims, if unresolved, impair water resource development by the Tribe and the State of New Mexico; and,

WHEREAS, the settlement of these claims will secure to the Tribe a perpetual water supply; and

WHEREAS, in order to preserve opportunities for Indian reservation development while at the same time allowing for other economical water resource development, it is the intent of this contract that the Jicarilla Apache Tribe, if it does not or cannot put the water supply secured to it under this contract to use, may exercise the right to market such water; and,

WHEREAS, the Jicarilla Apache Tribe has never been the beneficiary of any public water resource development, though federal projects have diverted water upstream from the Jicarilla Apache Indian Reservation and have impounded water downstream from the reservation; and,

WHEREAS, the federal government is undertaking no obligation to construct any additional water resource development facility to fulfill the terms and conditions of this contract; rather, the Tribe will be free to determine both the use to which the water will be applied and the need to construct any facilities; and,

WHEREAS, the Secretary of the Interior has determined in accordance with section 11 of the Act of June 13, 1962, 76 Stat. 96, 99-100, pursuant to the hydrologic determination submitted to Congress on February 2, 1989, that there is sufficient water reasonably likely to be available for use in the State of New Mexico to enable the United States to enter into this contract;

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

GENERAL DEFINITIONS

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

(a) "Secretary" means the Secretary of the Department of the Interior or a designee.

(b) "Contracting Officer" means the representative of the Commissioner of Reclamation authorized to administer this contract.

(c) "Tribe" means the Jicarilla Apache Tribe, acting through its authorized representative.

(d) "Navajo Reservoir" means the reservoir created by the impoundment of the San Juan River at the Navajo Dam as authorized by the Act of Congress of April 11, 1956, 70 Stat. 105, as amended.

(e) "Navajo Reservoir Supply" means the water that the Secretary of the Interior is entitled to use under the rights acquired pursuant to New Mexico State Engineer file Nos. 2848, 2849, 2873, 2917 combined, and 3215. The Secretary's water rights for the San Juan-Chama Project and for the New Mexico portion of the Animas-LaPlata Project are not a part of the Navajo Reservoir Supply.

(f) "San Juan-Chama Project" means the Project authorized by Section 8 of the Act of June 13, 1962, 76 Stat. 96, and the Act of April 11, 1956, 70 Stat. 105, as amended.

(g) "Navajo River" means the river of that name which flows across the Jicarilla Apache Indian Reservation in New Mexico, and all tributaries thereto.

(h) "Reservation" means the Jicarilla Apache Indian Reservation, as recognized by the Secretary of the Interior on the date of this contract.

CONDITIONS

2. (a) Except for the commitments made in section 3(a), this contract will give rise to rights and obligations on the part of the Jicarilla Apache Tribe and the United States only after the following events have occurred:

(i) the lawsuit styled Jicarilla Apache Tribe v. United States, et al., Civ. No. 82-1327 JP (U.S. Dist. Ct., D.N.M.), has been dismissed with prejudice pursuant to a stipulation of the parties;

(ii) Claims 3 and 4 of the lawsuit styled Jicarilla Apache Tribe v. United States, Cl. Ct. No. 112-77, have been dismissed with prejudice pursuant to a stipulation of the parties;

(iii) a partial final decree is entered by the District Court of San Juan County, New Mexico, in the general stream adjudication of the San Juan River stream system, New Mexico v. United States, No. 75-184, which decree adjudicates all the water rights of the Jicarilla Apache Tribe in the following manner:

(A) the decree shall provide that the reserved water rights of the Tribe, when added to the Tribe's reserved water rights adjudicated in the Rio Chama stream system, authorize diversion not to exceed 40,000 acre-feet per year from the two stream systems, in addition to the amounts referred to in subsections 2(a)(iii)(C) and 2(a)(iv)(B); and

(B) the decree shall provide that those reserved water rights referred to in subsection 2(a)(iii)(A) shall be subordinated to the rights of the Jicarilla Apache Tribe under this contract; and

(C) the decree shall adjudicate the water rights the Tribe has under state law, and also any water rights the Tribe has to groundwater, ponds and lakes which are within the Reservation which are recognized in addition to the rights which the Tribe acquires under this contract; provided, that nothing herein shall be construed to limit the right of the Tribe to withdraw and use groundwater which withdrawal and use does not deplete the San Juan River stream system;

(iv) a partial final decree is entered by the U.S. District Court of the District of New Mexico in the general stream adjudication of the Rio Chama stream system, New Mexico v. Aragon, Civ. No. 7941 SC, which decree adjudicates all the water rights of the Jicarilla Apache Tribe in the following manner:

(A) the decree shall provide that the reserved water rights of the Tribe shall be subordinated to the rights of the Jicarilla Apache Tribe under this contract; and

(B) the decree shall adjudicate the water rights which the Tribe has under state law, and also any water rights the Tribe has to groundwater, ponds or lakes which are within the Reservation, which are recognized in addition to the rights which the Tribe acquires under this contract; Provided, that nothing herein shall be construed to limit the right of the Tribe to withdraw and use groundwater which withdrawal and use does not deplete the Rio Chama stream system.

(b) A "partial final decree ... which ... adjudicates all the water rights of the Jicarilla Apache Tribe," within the meaning of subsection (a)(iii) of this section, means a state district court decree which, after a stipulation of the United States, the Jicarilla Apache Tribe, the State of New Mexico, and BHP-Utah International, Inc., and after the hearing of any objections or opposition, adjudicates all the water rights of the Tribe in the stream system consistent with the terms and conditions of this contract. Within the meaning of subsection (a)(iv), such decree means a federal district court decree which, after a stipulation of the United States, the Jicarilla Apache Tribe, and the State of New Mexico, and after the hearing of any objections or opposition, adjudicates all the water rights of the Tribe in the stream system consistent with the terms and conditions of this contract. The possibility that future objections to these decrees may be raised in the context of the entire general stream adjudication of all water rights in the stream system does not render these partial final decrees anything other than "final" for purposes of this contract.

PRELIMINARY UNDERSTANDINGS

3. (a) Both the United States and the Jicarilla Apache Tribe will in good faith take all steps necessary to assure the fulfillment of the conditions of section 2.

(b) It is understood between the parties that all stipulated dismissals and partial final decrees referred to in section 2(a) constitute mutual consideration for the purchase and delivery of water under this contract, and that neither party will have any obligation under this contract to purchase water from or deliver water to the other party until all the conditions of section 2 have been met.

WATER DELIVERY PROVISIONS

4. (a) The United States agrees to deliver, or make available for delivery, to the Tribe up to a total of 40,000 acre-feet of water per year from the Navajo Reservoir Supply, including any diversion from the Navajo River on the Reservation, and from the San Juan-Chama Project, in accordance with the provisions of this contract. To the extent that delivery of water is made through federal water resource facilities, the Tribe will reimburse for this service in accordance with the provisions of section 10 of this contract.

(b) Of the water to be made available under subsection 4(a), the Tribe may divert up to 33,500 acre-feet per year from the Navajo River on the Reservation. The Tribe must notify the Contracting Officer at least 30 days prior to any such diversion of the amount and timing of the diversion. Because water diverted from the Navajo River on the Reservation will not have been stored or diverted through federal water resource facilities, no cost shall be charged to the Tribe by the United States for the diversion of that water, notwithstanding the provisions of section 10 of this contract.

(c) Of the water to be made available under subsection 4(a), the Tribe may divert and the United States agrees to deliver up to 33,500 acre-feet per year from the Navajo Reservoir supply; provided, that the total diversions under this contract from the Navajo Reservoir Supply do not exceed 33,500 acre-feet of water per year.

(d) Of the water to be made available under subsection 4(a), the United States agrees to deliver up to 6,500 acre-feet per year from the San Juan-Chama Project. The point of delivery for San Juan-Chama water shall be the existing outlet works at Heron Reservoir unless otherwise agreed by the Contracting Officer and the Tribe.

(e) Separate contracts for additional water, whether for temporary or permanent use, as available, may be negotiated by the Tribe with the Bureau of Reclamation in the future, but they do not constitute any part of the consideration for this contract.

(f) The water delivery rights recognized by this contract shall be perpetual, and the Tribe shall have the right to subcontract with others for use of said water supply as provided in section 11.

(g) The Tribe shall have no holdover storage rights in the Navajo or Heron Reservoirs from year to year. Any water subject to delivery hereunder not called for by the end of each calendar year shall become integrated with the water supply for all purposes of the reservoirs at that time.

(h) Nothing in this section is intended to impose on the United States any obligation to maintain the Navajo Reservoir and San Juan-Chama Project beyond their useful lives or to take extraordinary measures to keep these facilities operating.

(i) The United States agrees that it will make provision for the buy-out of private water rights, effective prior to the year 2040, aggregating 11,000 acre-feet depletion of the San Juan River stream system in order to reconcile total commitments of depletion from the system in New Mexico with the State's allocation of Upper Colorado River Basin water, as reflected on page 24 of the hydrologic determination sent to Congress on February 2, 1989, or make other satisfactory provision to reconcile those commitments with New Mexico's allocation. Either the Tribe or the State of New Mexico may specifically enforce this contractual obligation provided that this obligation may not be enforced prior to the year 2000. The Tribe's right to delivery of water prior to the year 2040 under the terms of this section is not dependent upon the United States' fulfillment of this obligation.

TRANSPORTATION LOSSES

5. Transportation of water from the reservoir or other points of delivery shall be the sole responsibility of the Tribe, so that no conveyance losses, including channel losses, shall be borne by the United States.

CONSTRUCTION AND OPERATION OF FACILITIES

6. Nothing herein shall be construed to obligate the United States to construct, install, operate, or maintain pumps, pipelines, storage tanks, distribution lines, or other facilities required to take, measure, convey, or distribute water for use beyond agreed upon points of delivery.

RESPONSIBILITY FOR DISTRIBUTION

7. Upon delivery the Tribe shall be responsible for the control, carriage, handling, distribution, measurement, and use of all water made available under this contract, and shall hold the United States, its officers, agents, employees, and successors or assigns, harmless from every claim for damages to persons or property,

direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, carriage, handling, distribution or use of such water beyond the point of delivery.

WATER SUPPLY

8. (a) Notwithstanding any other provisions of this contract, in times of shortage the Tribe will share in the available water supply in the manner set forth in Section 11(a) of the Act of June 13, 1962, 76 Stat. 96, 99-100.

(b) With respect to water made available under the terms of this contract from the San Juan-Chama Project, during periods when the Contracting Officer finds that the actual available water supply is more or less than the estimated firm yield of the Project, the Tribe shall share in the available water supply in the ratio that its contract amount bears to the firm yield.

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

UNCONTROLLABLE FORCES

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

(b) If and only if the United States is unable to deliver all or part of the San Juan-Chama Project water to the Tribe pursuant to section 4(d) as a result of the physical failure of the project, the Tribe may take an equivalent amount of water out of the Navajo Reservoir Supply, notwithstanding the provisions of section 4(c).

COST PROVISIONS

10. (a) Charges for water from the Navajo Reservoir Supply will be as follows:

(i) Construction costs shall be charged at the annual amortization rate of \$2.60 per acre-foot ending at the year 2012 for water delivered for irrigation. Construction charges for water delivered for irrigation of Indian land shall be allocated and payment deferred under the provisions of the Leavitt Act, 47 Stat. 564, as authorized in section 4(d) of the Colorado River Storage Project Act.

(ii) Construction costs shall be charged to the Tribe at an annual amortization rate of \$2.60 per acre-foot ending at the year 2012 for Navajo Reservoir Supply water delivered for municipal and industrial uses.

(iii) The Tribe shall pay the United States, or its designee if some organization other than the United States is operating the project, its proportionate share of the annual operation, maintenance and replacement costs (OM&R) assignable to the amount of water made available from the Navajo Reservoir Supply to the Tribe through this contract.

(iv) The Contracting Officer or a designee will bill the Tribe for construction and OM&R costs for Navajo Reservoir on or before September 1 of the year proceeding the year of use. The Tribe shall pay all accrued costs within 30 days after receipt of the bill.

(b) The Tribe's construction cost obligation for the San Juan-Chama Project is estimated to be \$1,056,250. Payment for the principal and interest due from 1972 through date of execution of this contract shall be treated as non-reimbursable. Construction costs shall be charged at an annual amortization rate of \$3.25 per acre-foot ending at the year 2021 for water delivered for irrigation. Construction charges for water delivered for irrigation on Indian land shall be allocated and payment deferred under the provisions of the Leavitt Act, 47 Stat. 564, as authorized in section 4(d) of the Colorado River Storage Project Act.

(i) Construction costs for irrigation water converted and designated as municipal and industrial water shall be charged to the Tribe at an annual amortization rate of \$29.40 per acre-foot ending at the year 2021, including the project interest rate of 3.046% on the unpaid balance. Payments made by the Tribe for municipal and industrial water pursuant to this subsection shall be

applied according to Reclamation law. This amortization rate for the San Juan-Chama Project, as provided herein, shall be paid by the Tribe until the actual costs have been determined in the final cost allocation. Upon completion of the final cost allocation, the amortization rate payable by the Tribe shall be adjusted to provide payment on the basis of actual costs until its share of the project is paid off.

(ii) The Contracting Officer or a designee will bill the Tribe for construction costs associated with the San Juan-Chama Project on or before September 1 of the year preceding the year of use. The Tribe shall pay all accrued costs within 30 days after receipt of the bill.

(iii) The Tribe shall pay the United States, or its designee if some organization other than the United States is operating the project, its proportionate share of the annual operation, maintenance and replacement costs (OM&R) assignable to the amount of water made available from the San Juan-Chama Project to the Tribe through this contract.

(iv) OM&R costs for the San Juan-Chama Project shall be paid on the basis of annual estimates made by the Secretary. A billing from the Secretary will be sent to the Tribe on or before May 1 for the next year's annual reimbursable OM&R costs assessed to the Tribe. The Tribe shall advance its share of the OM&R costs for each calendar year in quarterly payments which will be due on December 31 of the same calendar year as the billing, and on March 10, May 10, and August 30 of the year of applicability. The first such billing will be issued immediately following execution of this contract. In the event this first notice shall be for costs of service of less than a full year, such costs shall be prorated for the period covered. Each billing shall show an itemization of the estimated reimbursable OM&R costs of the San Juan-Chama Project.

(v) The Tribe shall pay its pro rata share of the annual OM&R costs of the San Juan-Chama Project, based upon the ratio of the number of acre-feet allocated to the Tribe to the total number of acre-feet under contract by all contractors for San Juan-Chama Project water.

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

(d) The annual amortization rates and annual OM&R assessments specified in section 10(a) and 10(b) above shall be charged to the Tribe for all water subcontracted to third parties.

(e) Billings from the Contracting Officer and payments by the Tribe of the construction and OM&R costs outlined under this section shall be made on the basis of section 10(a) and 10(b) as may be modified by section 10(f). For project operation purposes, the Tribe will provide an annual notice to the Contracting Officer listing the amount of water estimated to be used by the Tribe, the estimated period and point of diversion for each intended purpose and a listing of all executed subcontracts with third parties, including those subcontracts anticipated to be executed during the year of applicability. The Tribe shall send this notice on or before February 1 of the year preceding the year of use described in the notice. Upon receipt of such notice, the Contracting Officer will bill the Tribe for payment of costs as prescribed herein. Billing adjustments will be made to correct for differences in the estimated and actual use of water during the preceding year.

(f) All or part of the annual construction and OM&R costs may be waived on a project-specific basis if the Tribe demonstrates to the satisfaction of the Secretary that, practically speaking, no market exists for all or part of the water contracted from either Navajo Reservoir Supply or the San Juan-Chama Project. Such demonstration shall be in written form and shall accompany the February 1 notice provided for in section 10(e). With respect to the San Juan-Chama Project, those OM&R costs waived on an annual basis will be paid by the Secretary, and those construction costs waived annually will be treated as non-reimbursable.

SUBCONTRACTING

11. (a) When water made available under this contract is not being used by the Tribe, the Tribe may subcontract with third parties, subject to the approval of the Secretary in accordance with this section, to supply water for beneficial use outside of the Reservation, subject to and not inconsistent with the same requirements and conditions of State law, and any applicable Federal law, interstate compact, and international law as apply to the exercise of water rights held by non-federal, non-Indian entities; provided, however, that nothing in this contract shall be construed to establish, address, prejudice, or to prevent any party from litigating whether or to what extent any of the aforementioned laws do or do not permit, govern, or apply to the use of the Tribe's water outside the State.

(b) Subcontracts made by the Tribe with third parties shall be subject to the provisions of this contract and must include terms of use, purchase, measurement, operations, and default. A copy of each proposed subcontract shall be filed with the Contracting Officer and the New Mexico Interstate Stream Commission prior to being executed by the Tribe, and two copies of each executed subcontract shall be filed with the Contracting Officer and one copy with the New Mexico Interstate Stream Commission.

(c) Prior to approving any tribal subcontract, the Secretary shall comply with section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. §4332(2)(C).

(d) The Secretary shall approve any subcontract submitted by the Tribe if he determines:

(i) that the diversion and use of water under the subcontract would comply with applicable state law, including all applicable permitting and reporting requirements of the New Mexico State Engineer;

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

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

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

(v) that delivery obligations under the subcontract are not inconsistent with other obligations of the Secretary to deliver water under preexisting contracts; and

(vi) that the subcontract is in the best interests of the Tribe.

(e) The Tribe agrees to include the following equal opportunity language in any subcontract for use of water off the Reservation:

(i) The subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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

(iii) The Tribe will take such action with respect to any subcontractor as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided however, if the Tribe becomes involved in, or is threatened with, litigation with a subcontractor as a result of such direction, the Tribe may request the United States to enter into such litigation to protect the interest of the United States.

Nothing in paragraphs (i) through (iii), above, shall be read as prohibiting the Tribe from requiring that subcontractors give preferential employment to members of the Jicarilla Apache Tribe.

FISH AND WILDLIFE COORDINATION

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

(b) The Tribe and the Department of the Interior agree to work with the State of New Mexico and affected water users to assure that Navajo Dam and Reservoir and San Juan-Chama Project are operated in compliance with applicable laws while meeting water delivery obligations, so as to provide, to the maximum extent possible, quantities and timing of deliveries to provide for downstream flows necessary to maintain and protect existing fisheries and other resources, with particular emphasis on endangered species.

DOWNSTREAM FISHERY RESOURCE

13. Operation of the Navajo Reservoir has created a substantial stream fishery resource in the reach of the San Juan River below Navajo Dam. The Contracting Officer and the Tribe, subject to such water rights as have been heretofore and may be hereinafter granted or adjudicated upon the San Juan River or the tributaries thereof, agree to encourage water deliveries at points of diversion that would be compatible with maintaining the downstream fishery. The Tribe agrees to work closely with the United States Fish and Wildlife Service in all municipal and industrial water marketing and deliveries to protect this fishery resource insofar as practicable.

AIR AND WATER POLLUTION CONTROL

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

BOOKS, ACCOUNTS AND RECORDS

15. (a) The Tribe shall establish and maintain accounts and other books and records such as are necessary to enable the Secretary to operate the subject facilities. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

(b) Subsection (a) of this section shall not apply to water diverted directly from the Navajo River for use on the Jicarilla Apache Reservation. For such water the Tribe is required only to notify the Contracting Officer, at least 30 days prior to any such diversion, of reasonable estimates of the amount and timing of the diversion, and to provide the Contracting Officer, within 30 days after diversion of the water, with proof of actual amount of water diverted.

COMPLIANCE WITH RECLAMATION LAWS

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

RULES, REGULATIONS, AND DETERMINATIONS

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

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

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

18. (a) The obligation of the Tribe to pay the United States as provided in this contract is a general obligation of the Tribe notwithstanding the manner in which the obligation may be distributed among the Tribe's water users and notwithstanding the default of individual water users in their obligations to the Tribe.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. The Tribe shall have no right to the use of water supplied from any project facilities during any period in which the Tribe may be in arrears in the payment of any operation, maintenance, and replacement charges due the United States or in arrears for more than 12 months in the payment of any construction and interest installments due the United States.

(c) The Tribe shall pay penalty charges on delinquent installments or payments. When payment is not received by the due date, the Tribe shall pay an interest charge for each day the

payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Tribe shall pay an administrative charge to cover additional costs of billings and processing the delinquent payment. When a payment is delinquent 90 days or more, the Tribe shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Tribe shall pay any fees incurred for debt collection services associated with the delinquent payment.

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

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

WATER QUALITY

19. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the United States. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

WATER CONSERVATION

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

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENT OF FUNDS

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

NOTICES

22. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given on behalf of the Tribe when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84111, and on behalf of the United States when mailed, postage prepaid, or delivered to the Tribe. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

OFFICIALS NOT TO BENEFIT

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

SAVINGS CLAUSES

24. (a) Prior to the fulfillment of the conditions in section 2, nothing in this contract shall be construed as an admission, or be used by any party as evidence, that the Tribe is or is not legally entitled to reserved water rights in the San Juan or the Rio Chama stream systems.

(b) Nothing contained in this contract shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of the Boulder Canyon Project Act, 45 Stat. 1057; the Boulder Canyon Project Adjustment Act, 54 Stat. 774; the Colorado River Compact, proclaimed on June 25, 1929, 46 Stat. 3000; the Upper Colorado River Basin Compact, 63 Stat. 31; the Rio Grande Compact of 1938, 53 Stat. 785; the 1944 Treaty with the United Mexican States, Treaty Series 994, 59 Stat. 1219; the Act of June 13, 1962, 76 Stat. 96; the Colorado River Basin Project Act, 82 Stat. 885; or the Colorado River Storage Project Act, 70 Stat. 105.

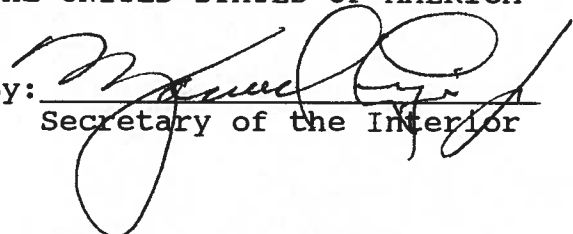
(c) The use of water, including that diverted from the Colorado River system to the Rio Grande Basin, through works constructed under the authority of the Act of June 13, 1962, 76 Stat. 96, shall be subject to and controlled by the Colorado River compact, the Upper Colorado River Basin compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act, and the Mexican Water Treaty (Treaty Series 994), and shall be included within and shall in no way increase the total quantity of water to the use of which the State of New Mexico is entitled and limited under said compacts, statutes, and treaty.

TERMINATION

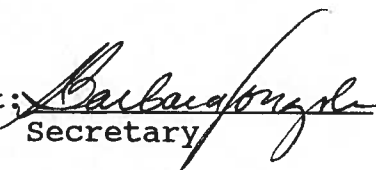

25. This contract may not be canceled, terminated, or rescinded by either party, except by act of Congress.

IN WITNESS WHEREOF, the parties hereto have executed this contract this day and year first above written.

THE UNITED STATES OF AMERICA

By: 
Secretary of the Interior

JICARILLA APACHE TRIBE

Attest:  Secretary By: 
President, Jicarilla Apache Tribe