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United States' Statement of Claims of Water Rights in the New Mexico San Juan River Basin on Behalf of the Navajo Tribe

United States

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STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

STATE OF NEW MEXICO, *ex rel.*
STATE ENGINEER,

Plaintiff,

v.

THE UNITED STATES OF
AMERICA, *et al.*,

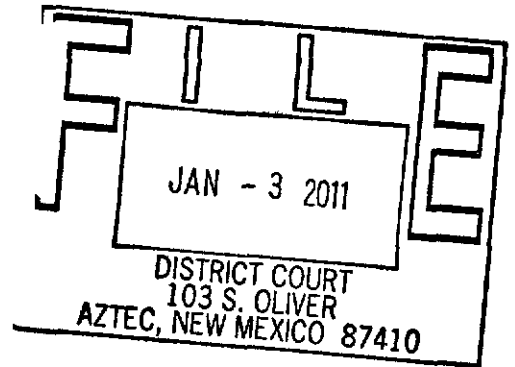
Defendants,

CV-75-184

HON. JAMES J.
WECHSLER
PRESIDING JUDGE

SAN JUAN RIVER
ADJUDICATION

Claims of Navajo Nation
Case No: AB-07-1



**THE UNITED STATES' STATEMENT OF CLAIMS OF WATER RIGHTS IN THE
NEW MEXICO SAN JUAN RIVER BASIN ON BEHALF OF THE NAVAJO NATION**

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I. INTRODUCTION

The settlement agreement concerning the water rights of the Navajo Nation in the San Juan River Basin of New Mexico (“Navajo Settlement Agreement”) was initially signed by Defendant Intervenor Navajo Nation (“Navajo Nation” or “Nation”) and Plaintiff State of New Mexico (“State”) on April 19, 2005. On March 30, 2009, the President of the United States signed Public Law 111-11 that authorized the United States to enter into the settlement with the Navajo Nation and the State. On December 17, 2010, the Secretary of the Interior signed the Navajo Settlement Agreement and, as such, the United States became a settling party along with the Navajo Nation and the State. Today, the water rights of the Navajo Nation in the San Juan River Basin of New Mexico (“SJR”) have been resolved and settled between the State, the United States, and the Navajo Nation (collectively, “Settling Parties”).¹

Pursuant to the 2010 Order, the United States submits this statement of claims for water rights in the SJRB on behalf of the Navajo Nation (“Statement of Claims”). This Statement of Claims was prepared in response to the Court’s 2010 Order and the Court’s stated desire to have the United States describe, with some particularity, the potential water rights claims of the United States on behalf of the Navajo Nation in the SJRB. The purpose of this Statement of Claims is to form a partial basis on which the proposed settlement decrees can be evaluated. This Statement of Claims is the United States’ good faith estimate of the water rights that

¹ In accordance with the Court’s the Order of August 19, 2010 (“2010 Order”) and simultaneous with the filing of this Statement of Claims, the Settling Parties are submitting to the Court the proposed settlement decrees for this Court’s consideration. See 2010 Order page 12, subsection II.A.

it can assert on behalf of the Navajo Nation in the SJRB and supersedes all previous federal descriptions of the Navajo Nation's water rights in the SJRB.

II. SCOPE OF CLAIMS

A. Legal Basis for the Claims

The legal basis for this Statement of Claims is both the federal reserved water rights doctrine and the aboriginal use and occupancy of the lands in the SJRB. *See Winters v. United States*, 207 U.S. 564 (1908) (establishing the federal reserved rights doctrine and acknowledging that Indians aboriginally exercised authority over their lands and waters); *Arizona v. California*, 373 U.S. 546 (1963) (applying the federal reserved rights doctrine to Indian reservations); and *United States v. Ahtanum Irrigation District*, 236 F.2d 321, 326 (9th Cir. 1956), *cert. denied*, 352 U.S. 988 (1957) (recognizing Indians' right to use water based on their historic right of use and occupancy). The United States Supreme Court has consistently interpreted the federal reserved rights doctrine to mean that when the Federal Government reserves land, it reserves not only the land but also the amount of water necessary to accomplish the purpose of the reservation. *See Arizona v. California*, 373 U.S. at 596; and *United States v. Cappaert*, 426 U.S. 128, 138 (1976); *see also United States v. Adair*, 723 F.2d 1394, 1411 (9th Cir. 1984) (relying on *Winters* and *Arizona v. California* as the basis on which to recognize a federally reserved water right associated with the reservation purpose). It is now well-recognized that "the essential purpose of Indian reservations is to provide Native American people with a permanent home and abiding place." *See In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 313 (2001) (internal quotations omitted). Accordingly, the United States claims

sufficient water to provide for the present and future water needs necessary to fulfill the purposes of the trust lands in the SJRB as a permanent home and abiding place for the Navajo Nation.

B. Lands for Which Water Rights are Claimed

The subject of this adjudication is those lands located within the State of New Mexico whose waters drain to the San Juan River. *See* Order Adopting Case Management Plan (June 25, 2003) (adopting the State Engineer's Second Amended Plan for Administrative Data Development To Complete the San Juan River Basin Adjudication). Over the past two centuries, a series of treaties, executive orders, Congressional acts, and administrative actions by the United States have identified and secured lands throughout the SJRB as lands held in trust by the United States on behalf of the Navajo Nation (referred to as "trust land" throughout this Statement of Claims).² Therefore, the United States makes water rights claims on behalf of the Navajo Nation for all lands within the SJRB that are held in trust for the Navajo Nation.³ The United States estimates that within the SJRB of New Mexico 2,613,430 acres of land are held in trust by the United States on behalf of the Navajo Nation.

² The following treaties and executive orders are associated with the United States' trust obligation to the Navajo Nation or have affected SJRB lands held in trust for the Navajo Nation: the Treaty of 1849 (9 Stat. 974); the Treaty of Guadalupe Hidalgo (1848) (9 Stat. 922, 929); the Treaty of June 1, 1868 (15 Stat. 667-672); Executive Order of January 6, 1880; Executive Order of December 16, 1882; Executive Order of May 17, 1884; Executive Order of April 24, 1886; Executive Order of November 9, 1907; Executive Order of January 28, 1908; Executive Order of January 16, 1911; and Executive Order of December 1, 1913. Of course, this is not an exhaustive list as numerous Congressional and Executive actions have impacted both the trust obligation of the United States and those lands held in trust for the Navajo Nation.

³ This Statement of Claims makes no water rights claim for lands held in fee by the Navajo Nation and makes no water right claim for allotment lands held in trust by the United States for individuals.

Appendix AA contains the following information:

- a. Map AA-1 depicts the lands held in trust for the Navajo Nation and for which water rights are asserted.⁴

C. Priority Date

Prior to contact with the representatives of the United States government, the aboriginal territory of the Navajo Nation extended throughout the SJRB. Since contact, these aboriginal lands in the SJRB have been continuously occupied and used. From time immemorial, the Navajo have farmed and raised livestock throughout the SJRB. In addition, they have engaged in fundamental domestic, cultural, and economic activities. These activities established the trust lands in the SJRB as the homeland of the Navajo Nation.⁵ Today, the lands in the SJRB held in trust for the Navajo Nation are so held to provide and ensure a permanent homeland for the Navajo Nation. Likewise, the water rights claimed on behalf of the Navajo Nation are claimed to provide a permanent homeland for the Navajo Nation now and in the future.

Based on the aboriginal occupation of and the homeland purpose associated with the trust lands in the SJRB, the United States claims a priority date of time immemorial for all water rights claims associated with lands held in trust on behalf of the Navajo Nation. *See Winans*, 198 U.S. at 381; *Winters*, 207 U.S. at 576-77; *Adair*, 763 F.2d at 1401.

⁴ All maps provided with this statement of claims have been provided to the Court in paper and electronic format.

⁵ The trust lands in the SJRB make up only a part of the Navajo Nation's homeland. The lands held in trust for and the homeland of the Navajo Nation extend well beyond the SJRB into other areas of New Mexico, Utah, and Arizona.

D. Categories of Water Use

The stated claims are based on the following four broad categories of past, present, and future water uses: 1) per capita domestic, commercial, municipal and industrial (DCMI) (see subsection III.A., below); 2) heavy industrial(see subsection III.B., below); 3) livestock (see subsection III.C., below); and 4) irrigation (see subsection III.D., below). For each category of use, amounts may be claimed for the past and/or present uses of the Navajo Nation, as well as for the future needs of the Navajo Nation. *See Arizona v. California*, 373 U.S. at 600.

E. Subsequent Revision or Supplement to Claims

As described above, the United States submits this Statement of Claims pursuant to the 2010 Order. By submitting this Statement of Claims, the United States informs the Court and all parties of the nature and current potential extent of the SJRB water rights that the United States holds in trust for the Navajo Nation. These water rights are based on the best available information available to the United States at this time. Until the Navajo Nation's water rights in the SJRB are resolved, the United States will continue to investigate Navajo water rights claims. The United States reserves the right to update this Statement of Claims as needed based on additional analysis performed and information received. Further, and as recognized by the Court (2010 Order at page 14, subsection II.B.3), in the event that the Court does not enter the proposed settlement decrees, the United States specifically reserves the right to further amend its Statement of Claims. The United States' right to amend includes the right to identify additional bases for water rights and to claim greater quantities of water associated with identified water rights. This Statement of Claims is the most reasonable estimate that could be generated in the

short timeframe within which the United States was asked to generate an estimate of the water rights that might be asserted on behalf of the Navajo Nation.

III. CLAIMS ON BEHALF OF THE NAVAJO NATION

A. Domestic, Commercial, Municipal, and Industrial

The United States, on behalf of the Navajo Nation, claims the right of 36,592 acre-feet per year (“afy”) depletion for DCMI water uses.⁶ This claim is based on the current population estimate for trust lands in the SJRB, future population projections for the trust lands in the SJRB, and estimated rates of water consumption per capita. The water sources for this claim are the surface water that crosses or borders trust lands in the SJRB and the groundwater that underlies trust lands in the SJRB. At the discretion of the Navajo Nation, the surface water or the groundwater may be utilized singularly or in combination to satisfy this water right.

1. Per Capita Water Usage

In terms of total quantity, the DCMI water demand can be estimated on the basis of a per capita demand in gallons per day (“gpcpd”). This water use represents several components including: residential indoor use; residential outdoor use including watering domestic landscape and gardens; light commercial use; light industrial use; municipal public uses; and system losses. Based on comparisons with local area water use, state averages, and regional averages, the Navajo Nation’s per capita demand to meet the water demand for the projected population is 160 gpcpd.

⁶ Unless otherwise specified, the diversion and depletion quantities described in this document do not necessarily reflect water diversion and depletion from the surface flows of the San Juan River.

2. Navajo Population Projections

The current population living on trust land in the SJRB is estimated to be 55,052. The population living on trust land in the SJRB is predicted to achieve a stable population of 204,032 shortly after the year 2110.⁷

3. Population Maps and Tables

Materials concerning the present population living on trust land in the SJRB can be found in the United States' Hydrographic Survey of Navajo Lands in the San Juan River Basin which was filed simultaneously with this Statement of Claims ("Hydrographic Survey"). See Hydrographic Survey, subsection III.B and Appendix C.⁸ Materials concerning the estimate of future population living on trust land in the SJRB and their geographic distribution are contained within Appendix BB of this Statement of Claims. Appendix BB contains the following information:

- a. Table BB-1 describes the estimates of future population and geographic distribution along with estimates of water demands in acre-feet per year based on 160 gpcpd; and
- b. Map BB-1 depicts provides a geographic overview of future population distribution and population centers.

B. Heavy Industrial Activities

On trust lands in the SJRB, a number of heavy industrial activities have taken place and have the potential to take place that have an associated water use above that which is contemplated by population-based DCMI considerations (described in subsection III.A, above). The United States asserts water rights

⁷ This population projection is based, in part, on available census data. The United States anticipates that it will revise its population estimates once 2010 Census data becomes available in 2011.

⁸ The United States incorporates the Hydrographic Survey into this Statement of Claims by reference.

claims for past heavy industrial activities that have occurred on trust lands in the SJRB. In addition, the United States asserts water rights for heavy industrial activities that have the potential of occurring on trust lands in the SJRB in the future that will be needed to ensure that the trust lands in the SJRB remain a permanent homeland for the Navajo Nation. The rights associated with each component of the United States' heavy industrial activity water rights claim are described below.

1. Mineral Resource Development

Under trust lands, significant deposits of valuable minerals have been identified (e.g., coal, uranium, helium, natural gas, and oil). Based on past and present mineral resource development and the known potential for future mineral resource development on trust lands in the SJRB, the United States on behalf of the Navajo Nation claims the right of 7,184 afy depletion (33,652 afy diversion) for past, present, and future mineral resource development. Materials concerning the historic and present mineral resource development on trust land in the SJRB can be found in the United States' Hydrographic Survey. *See Hydrographic Survey*, subsection III.D.1 and Appendices K and L. Materials concerning the estimate of future mineral resource development on trust land in the SJRB and their geographic distribution are contained within Appendix CC of this Statement of Claims.

Appendix CC contains the following information:

- a. Table CC-1 describes the future mineral resource development along with estimates of water demand in acre feet per year; and
- b. Maps CC-1 and CC-2 depict the approximate location and distribution of future mineral resource development.

The water sources for this claim are both the surface water that crosses or borders trust lands in the SJRB and groundwater that underlies trust lands in the

SJRB. At the discretion of the Navajo Nation, surface water or groundwater may be utilized singularly or in combination to satisfy this water right. The United States asserts that the federal reserved water rights of the Navajo Nation necessarily incorporate the right to establish new points of diversion as needed to meet the needs of the Navajo Nation.

2. Energy Development

Trust lands in the SJRB currently support coal-based energy generation.⁹ Further, economic potential exists to develop additional energy generation facilities in the future. Therefore, the United States on behalf of the Navajo Nation claims the right of 46,501 afy depletion (58,251 afy diversion) for past, present, and future energy development activities. Materials concerning the historic and present energy development on trust land in the SJRB can be found in the United States' Hydrographic Survey. *See* Hydrographic Survey, subsection III.D.2 and Appendices K and L. Materials concerning the estimate of future energy development on trust land in the SJRB and their geographic distribution are contained within Appendix CC of this Statement of Claims. Appendix CC contains the following information:

- a. Table CC-1 describes the estimates of future energy development along with estimates of water demands in acre feet per year; and
- b. Map CC-2 depicts the approximate location and distribution of future energy development.

The water sources for this claim are the surface water that crosses or borders

⁹ Currently, a 2040-megawatt coal fired power plant (the Four Corners Power Plant) currently operates on trust lands in the SJRB. The plant's water demands (including the demands associated with coal extraction to serve the plant) are served from the surface waters of the San Juan River. *See* Hydrographic Survey at subsection III.D.2 and Appendices K and L.

lands in the SJRB and the groundwater that underlies trust lands in the SJRB. At the discretion of the Navajo Nation, surface water or groundwater may be utilized, singularly or in combination, to satisfy this water right. Further, the United States asserts that the federal reserved water rights of the Navajo Nation necessarily incorporate the right to establish new points of diversion as needed to meet the needs of the Navajo Nation.

3. Additional Heavy Industrial Activities

Additional heavy industrial activities such as agricultural product processing, helium processing and transportation, uranium processing, and industrial park activities have occurred and have the economic potential to develop further on trust lands in the SJRB. Therefore, the United States on behalf of the Navajo Nation claims the right of 7,198 afy depletion (8,756 afy diversion) for past, present, and future additional heavy industrial activities. Materials concerning the historic and present additional heavy industrial activities on trust land in the SJRB can be found in the United States' Hydrographic Survey. *See* Hydrographic Survey, subsection III.D.3 and Appendix K and L. Materials concerning the estimate of future additional heavy industrial activities on trust land in the SJRB and their geographic distribution are contained within Appendix CC of this Statement of Claims. Appendix CC contains the following information:

- a. Table CC-1 describes the estimates of future additional heavy industrial activities along with estimates of water demands in acre feet per year; and
- b. Maps CC-1 and CC-2 depict the approximate location and distribution of future additional heavy industrial activities.

The water sources for this claim are the surface water that crosses or borders

lands in the SJRB and the groundwater that underlies trust lands in the SJRB. At the discretion of the Navajo Nation, surface water or groundwater may be utilized, singularly or in combination, to satisfy this water right. The United States asserts that the federal reserved water rights of the Navajo Nation necessarily incorporate the right to establish new points of diversion as needed to meet the needs of the Navajo Nation.

C. Livestock

The Navajo have raised livestock in the SJRB for centuries as a means of sustenance and economic development, and such activities will continue to develop in the future. The United States on behalf of the Navajo Nation claims the right of 733 afy depletion (1,173 afy diversion) for present and future livestock consumption. This claim is based on the maximum carrying capacity of the rangeland within the trust lands of the SJRB. This rangeland is approximately 2,345,604 acres with a maximum livestock carrying capacity of 52,343 Animal Units ("AU"). The water consumption is calculated based on an estimate of 12.5 gallons per day for each AU. A depletion of 20 gallons per AU per day is used for the claim based on a water use efficiency of 60% to account for evaporation, spills, and other losses. The water source for this claim is the surface water that crosses or borders trust lands in the SJRB and the groundwater that underlies trust lands in the SJRB. Further, this water right encompasses the water rights associated with historic, present, and future livestock activity. Information concerning historic and present livestock activity can be found in the Hydrographic Survey. *See* Hydrographic Survey at subsection III.E and Appendices B and M.

D. Historic and Present Irrigation

The United States has identified a cumulative total of approximately 103,526 acres of trust lands in the SJRB that either have been historically or are presently irrigated to grow crops. Of these lands, four distinct categories of irrigated lands have been identified: 1) lands irrigated through BIA irrigation projects using water from the mainstem of the San Juan River; 2) lands of the Navajo Indian Irrigation Project (“NIIP”); 3) tributary irrigation projects using water sources other than the mainstem of the San Juan River¹⁰; and 4) tributary irrigation non-project lands using water sources other than the mainstem of the San Juan River¹¹. These irrigation projects and practices are described in the Hydrographic Survey, which includes descriptive tables and maps. See Hydrographic Survey subsection III.C and Appendices E through J.

Based on the historic and existing irrigation on trust lands in the SJRB, the United States on behalf of the Navajo Nation claims the right of 253,070 afy depletion (477,114 afy diversion) to irrigate these lands. The water right claims associated with each category of existing and historic irrigated acreage is described below.

- a. For BIA irrigation project lands using water from the mainstem of the San Juan River, which comprise 13,030 acres of existing and/or historic irrigated acres – 34,930 afy (depletion) and 137,937 afy

¹⁰ A tributary irrigation project refers to an organized irrigation project (water source other than the San Juan River) that was operated by the BIA (or its predecessor the U.S. Indian Service) or another group that required significant investment in irrigation ditch construction, impoundment development, well development, and/or spring development

¹¹ Tributary irrigation non-project land simply refers to land outside of identified tributary irrigation project areas that did not involve the significant investment and development associated with tributary irrigation projects. Tributary irrigation non-project lands may nonetheless be associated with ditch-irrigated field system(s), impoundment(s), well(s), and/or improved spring(s).

(diversion). *See* Hydrographic Survey Appendix E (Maps E-1 through E-12) and Appendix G (Table G-1).

- b. For lands of the NIIP, which comprise 78,336 acres of existing and/or historic irrigated acres – 193,914 afy (depletion) and 259,576 afy (diversion). *See* Hydrographic Survey Appendix E (Maps E-1 through E-12) and Appendix H (Table H-1).
- c. For tributary irrigation project lands using water from sources other than the San Juan River, which comprise 8,426 acres of existing and/or historic irrigated acres – 18,766 afy (depletion) and 70,490 afy (diversion). *See* Appendix DD (Table DD-1) of this Statement of Claims for a summary of water rights claims associated with tributary irrigation project lands. *See also* Hydrographic Survey Appendix E (Maps E-13 through E-64).
- d. For tributary irrigation non-project lands, which comprise 3,734 acres of existing and/or historic irrigated acres – 5,460 afy (depletion) afy and 9,111 afy (diversion). *See* Appendix DD (Table DD-2) of this Statement of Claims for a summary of water rights claims associated with tributary irrigation non-project lands. *See also* Hydrographic Survey Appendix E (Maps E-13 through E-64).

As a reserved water right for an Indian tribe to irrigate is never abandoned, and as the Navajo Nation has the right to improve irrigation practices as water becomes available through technology or otherwise, the irrigation claim here is based on acreage irrigated and the water duty associated with such lands. Regardless of the historic source of water associated with a specific field, the water source for this claim is the surface water that crosses or borders lands in the SJRB and the groundwater that underlies trust lands in the SJRB. The United States asserts that the federal reserved water rights of the Navajo Nation necessarily incorporate the right to establish new points of diversion as needed to meet the needs of the Navajo Nation. At the discretion of the Navajo Nation, surface water or groundwater may be utilized singularly or in combination to satisfy this water

right.

E. Future NIIP Irrigation

In 1962, Congress authorized the complete construction of the NIIP, and since then, sufficient funds have been secured to build approximately 80% of the authorized project. *See* Hydrographic Survey subsection III.C.2 and Appendices E and H for a description of the NIIP acres developed to date. There are 34,880 acres remaining to be developed in Blocks 9, 10, and 11 of the NIIP.¹² Therefore, the United States on behalf of the Navajo Nation claims the right of 86,342 afy depletion (115,579 afy diversion) for irrigation of the remaining authorized and planned blocks of the NIIP on trust lands.

Materials concerning the estimates for the authorized but undeveloped NIIP irrigation claim involving trust lands associated with Blocks 9, 10, and 11 are contained within Appendix EE of this Statement of Claims. Appendix EE contains the following information:

- a. Table EE-1 describes the trust lands associated with future NIIP development; and
- b. Map EE-1 depicts the trust lands associated with future NIIP development.

As the NIIP has been historically and is currently irrigated from the surface water of the San Juan River, the United States claims the surface water of the San Juan River to meet the water rights associated with lands remaining to be developed through the NIIP. The United States asserts that the federal reserved water rights of

¹² As described in the Hydrographic Survey, shortly after the NIIP was authorized, the acres associated with the NIIP were subdivided and developed for irrigation in "blocks." Since 1962, Blocks 1 through 8 and Block 9 (in part) have been developed. *See* Hydrographic Survey at subsection III.C.2 and Appendices E and H.

the Navajo Nation necessarily incorporate the right to establish new points of diversion as needed to meet the needs of the Navajo Nation.

F. Additional Future Irrigation

In addition to the lands that have been historically or are presently irrigated, the trust lands in the SJRB include thousands of additional acres whose soil conditions meet the necessary conditions for farming in the future (i.e., the soils are arable). The United States has identified that, based on the location of arable land, distance to ground or surface water sources, and reasonable economic conditions, at least 53,888 acres of trust land exist in the SJRB on which economically feasible irrigated agriculture production can occur. These lands have not previously been irrigated to grow crops.

Based on the location of arable land, the location of ground and surface water, and reasonable economic conditions, the United States on behalf of the Navajo Nation claims the right of 153,781 afy depletion (189,628 afy diversion) afy for irrigation of arable acreage not otherwise associated with historic or existing irrigation activities on trust lands in the SJRB (described in subsection III.D, above). Based on the source of water, this claim has been divided into two components: 1) claims associated with the practicable irrigable acreage (PIA) whose irrigation would be supported by surface water; and 2) claims associated with the PIA whose irrigation would be supported by groundwater. The water right described here is described with more specificity in subparagraphs 1) and 2) below.

1. PIA Claim Associated with Lands Irrigated from the Surface Water of the San Juan River

Within the SJRB, the United States has determined that 52,649 acres of

arable trust land are located in relatively close proximity to the San Juan River. Examination of these lands indicates that these lands have not been previously irrigated; however, engineering and economic analysis reveals that these lands could be practicably irrigated with surface water from the San Juan River to profitably grow crops. Therefore, the United States on behalf of the Navajo Nation claims the right of 150,775 afy depletion (186,000 afy diversion) for the practicably irrigable lands that could be irrigated from the surface water of the San Juan River.

Materials concerning the estimates for the PIA claim involving lands that could be irrigated from the surface water of the San Juan River are contained within Appendix FF of this Statement of Claims. Appendix FF contains the following information:

- a. Table FF-1 describes the PIA that can be irrigated from the surface water of the San Juan River; and
- b. Map FF-1 depicts the area of the PIA area that can be irrigated from the surface water of the San Juan River.

The United States claims the surface water of the San Juan River to meet its water right associated with the PIA described here. The United States asserts that the federal reserved water rights of the Navajo Nation necessarily incorporate the right to establish new points of diversion as needed to meet the needs of the Navajo Nation.

2. PIA Claim Associated with Lands Irrigated from SJRB Groundwater

The United States has determined that at least 1,239 acres of arable trust land are located in areas with close proximity to groundwater of satisfactory water quality. Examination of these lands indicates that these lands have not been

previously irrigated; however, engineering and economic analysis reveals that these lands could be practicably irrigated from groundwater to profitably grow crops. Therefore, the United States on behalf of the Navajo Nation claims the right of 3,006 afy depletion (3,628 afy diversion) for the practicably irrigable lands that could be irrigated from the groundwater in the SJRB.

Materials concerning the estimates for the PIA claim involving lands that could be irrigated from the groundwater of the San Juan River are contained within Appendix GG of this Statement of Claims. Appendix GG contains the following information:

- a. Table GG-1 describes the PIA that can be irrigated from the groundwater of the SJRB; and
- b. Map GG-1 depicts the area of the PIA that can be irrigated from the groundwater of the SJRB.

The United States claims the groundwater in the SJRB to meet its water right associated with the PIA described here. The United States asserts that the federal reserved water rights of the Navajo Nation necessarily incorporate the right to establish new wells as needed to meet the needs of the Navajo Nation.

G. Impoundment Storage Right

The Navajo Nation has in the past used, or is at present using, the impoundments of water located throughout trust land. See Hydrographic Survey at subsection III.A, III.B.2, III.C, III.D, and III.E and Appendices B, D, F, K, and M. Based on the cumulative capacity of impoundments located on trust lands, the United States claims on behalf of the Navajo Nation the right to divert and store 65,647 acre feet (“af”) to fill existing, identified impoundments to their full capacity as needed.

The United States asserts that the federal reserved water rights of the Navajo Nation necessarily incorporate the right to fill and refill each impoundment to its full capacity whenever the source of supply is available. In addition, the United States claims the right to maintain each impoundment at its described location, to repair, deepen, or replace (in close proximity to its original location) each impoundment as may be necessary to preserve its utility, and to use the waters diverted for storage for the indicated purposes and any other purposes chosen within the sole discretion of the Navajo Nation. In addition, subject to the total quantity of rights asserted herein, the United States claims for the benefits of the Navajo Nation a federal reserved right to create such new impoundments as may be necessary to meet the needs of a permanent Navajo Nation homeland.

H. Wells and Springs

The Navajo Nation has in the past used, or is at present using, the wells and springs located throughout trust land. *See* Hydrographic Survey at subsection III.A, III.B.2, III.C, III.D, and III.E and Appendices B, D, F, K, and M. The United States claims the right to divert and deplete groundwater from existing wells and springs to meet the needs of a Navajo Nation homeland.

The United States asserts that the federal reserved water rights of the Navajo Nation necessarily incorporate the right to maintain each well at its described location, to deepen or replace each well as may be necessary to preserve its utility, and to use groundwater diverted by means of such wells for the indicated purposes and any other purposes chosen within the sole discretion of the Navajo Nation. In addition, subject to the total quantity of rights asserted herein, the United States claims for the benefits of the Navajo Nation a federal reserved right to create such

new wells as may be necessary to meet the needs of a permanent Navajo Nation homeland.

I. Claim Summary

The Navajo Claim Summary Table, below, provides an overview of the water rights claimed on behalf of the Navajo Nation in the SJRB in New Mexico. As described in the paragraphs above, the appendices attached to this Statement of Claims and the Hydrographic Survey provide a more detailed summary of the claims with each water right attribute identified.

Navajo Claim Summary Table

DCMI	36,592	36,592
Heavy Industrial and Commercial Activities	100,659	60,883
Livestock	1,173	733
Historic and Present Irrigation	477,114	253,070
Future NIIP Irrigation	115,579	86,342
Additional Future Irrigation	189,628	153,781
Impoundment Storage Right (65,647 acre feet - Fill and Refill)	Variable	Variable
Total Claim¹³	920,745	591,401

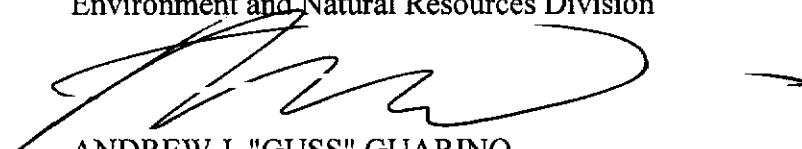
¹³ As the Navajo Nation's storage right is one to fill and refill impoundments as water is available, the quantities described here for total diversion and depletion do not include the amount associated with the described impoundment storage right (65,647 af).

IV. CONCLUSION

The paragraphs above, along with references and appendices described, constitute the statement of water rights claims of the United States on behalf of the Navajo Nation in the San Juan River Basin. As described above, these water rights would be pursued by the United States on behalf of the Navajo Nation without the Navajo Settlement Agreement. As described by the Court in its 2010 Order, if the Navajo Settlement Agreement is not approved by this Court, the United States reserves the right to pursue on behalf of the Navajo Nation all water rights necessary to establish a permanent homeland in the San Juan River Basin in New Mexico regardless whether such water rights are described in this Statement of Claims or are additional to the water rights described in this Statement of Claims.

Respectfully submitted by the United States this 29th day of December, 2010,

Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division

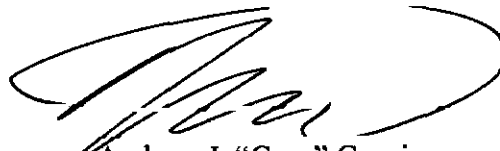


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CERTIFICATE OF SERVICE

Pursuant to the Procedural Order (page 12, subsection II.A), I hereby certify that a true and accurate PDF copy of this *United States' Statement of Claims of Water Rights in the New Mexico San Juan River Basin on Behalf of the Navajo Nation* was served this 29th day of December 2010 to counsel listed on Attachment "A."



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Attachment A

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APPENDIX GG