

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL -- Second Year, 2016

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, AND
NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; APPROVING
THE PROPOSED NAVAJO UTAH WATER RIGHTS SETTLEMENT AGREEMENT

BE IT ENACTED:

Section One. Findings

- A. In recognition of Tó'ée'iiná (water is life) the Navajo Nation Council has determined that water is essential "to provide for a permanent homeland for the Navajo People." 22 N.N.C. § 1101.
- B. Navajo communities in Utah have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015).
- C. The Resources and Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 500(C), exercises oversight authority over water to protect this resource for the Navajo Nation and People, now and for future generations.
- D. The Naabik'íyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 164(A)(9), reviews proposed legislation which requires final action by the Navajo Nation Council.
- E. The Navajo Nation Water Rights Commission was established by the Navajo Nation Council "to ensure that the water rights of the Navajo Nation are vigorously pursued, effectively coordinated, and to enhance the communication between all entities engaged in water rights efforts on behalf of the Navajo Nation." 2 N.N.C. § 1552.

- F. By Resolution IGRAP-60-3, the former Intergovernmental Relations Committee of the Navajo Nation Council approved a *Memorandum of Agreement Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation. The Memorandum was executed by the Navajo Nation and the State of Utah in August 2003, and the two sovereigns entered into settlement negotiations shortly thereafter.
- G. After numerous requests from the Navajo Nation and the State of Utah, the Department of the Interior appointed a Federal Indian Water Rights Negotiation Team in January 2013, to assist the Navajo Nation in settling its water rights claims within the State of Utah.
- H. Representatives of the Navajo Nation (including staff from the Departments of Water Resources and Justice, together with the Navajo Nation Water Rights Commission) and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (December 14, 2015) ("Settlement Agreement"), attached as "Exhibit A."
- I. The proposed Settlement Agreement, if approved and ratified by Congress, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, and members of the Navajo residing in the Utah portion of the Navajo Nation, and the proposed Settlement Agreement is summarized here:
- a. Section 1.0 - Purpose. The purpose of the Agreement is to provide a permanent settlement of the water rights of the Navajo Nation in the State of Utah and to avoid future controversy over the quantification of such rights,
 - b. Section 2.0 - Legal Basis for Agreement. This section affirms that the Agreement is made in accordance with the Constitution and laws of the United States and the State, and the treaties and laws of the Navajo Nation,

- c. Section 3.0 - Definitions. This section defines key terms to avoid future controversy concerning the interpretation of the Agreement,
- d. Section 4.0 - Quantification of Navajo Nation Water Rights. This section describes and quantifies the Navajo Nation's water rights, including:
 - i. the right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation,
 - ii. the right to divert and store up to 435 cubic feet per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded,
 - iii. the right to unlimited diversions from groundwater and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded,
 - iv. the right to market or lease these water rights to the same extent as other water rights holders in Utah, and
 - v. the priority date for most of the water would be May 17, 1884; however, the Navajo right would be subordinated to existing uses but senior to any non-Navajo use that may be developed in the future. In other words, during times of physical shortage of water in the river or its tributaries, the Navajo Nation's subordinated right means it could not seek to curtail non-Navajo rights existing as of the Enforceability Date, but could seek to curtail all rights developed thereafter. Nevertheless, this early priority date protects Navajo water in Utah from being cut off in the event that the State of Utah is forced to curtail water uses throughout the state in order to comply with its downstream delivery obligations pursuant to interstate compacts,

- e. Section 5.0 - Utah Navajo Water Development Fund. This section describes the obligation of the United States to provide: (1) \$198.3M (2014\$) for the purpose of creating a trust fund for the construction of various water development projects to meet the water needs of Navajo communities in Utah and (2) to create an Operation, Maintenance and Replacement ("OM&R") Trust Account in the amount of \$11.1M (2014\$) to help defray the operation, maintenance and replacement costs of the water development projects. The level of funding was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014), prepared by the Navajo Nation Department of Water Resources; however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future,
- f. Section 6.0 - Rights of Members and Allottees. This section explains that the Agreement does not quantify the rights of allottees but requires such rights to be satisfied out of the rights of the Navajo Nation as described in the Agreement,
- g. Section 7.0 - Identification of Existing On-Reservation State Appropriative Water Rights. This section describes how existing state rights will be converted into on-Reservation Navajo rights,
- h. Section 8.0 - Water Administration. This section describes how the Navajo Nation and the State of Utah will administer the water rights under the Agreement,
- i. Section 9.0 - Transfers Off the Reservation. This section describes how the Navajo Nation can use its water rights off of the Navajo Reservation, including water marketing,
- j. Section 10.0 - Administration for Compact Compliance. This section describes how the State may administer, in priority, water rights in the Southeastern Colorado River Basin in Utah, where Navajo Utah lands are located, for purposes of complying with interstate compacts relating to the Colorado River,

- k. Section 11.0 - Enforceability Date. This section describes the conditions that must be met for the Agreement to be final and enforceable,
- l. Section 12.0 - Waivers and Releases of Claims. This section describes the waivers that the Navajo Nation, the State of Utah and the United States (the "Parties") must enter into in order for the Agreement to be considered binding on the parties. Generally, the waivers and releases require each Party to waive claims concerning damages, losses or injuries to the water rights of that Party and release the other Parties from liability for any such claims. The United States, as the trustee of tribal lands, has required similar waiver and release provisions in all recent Indian water rights settlements approved by Congress. The Navajo Nation Council understands that upon the Enforceability Date, the Agreement becomes a final, binding and permanent quantification of the water rights of the Navajo Nation in the State of Utah, and that the Navajo Nation cannot claim water rights in addition to those described in the Agreement, however, nothing in the Agreement prevents the Nation from acquiring additional water rights by purchase in the future. The Navajo Nation Council further understands that the Navajo Nation will retain all claims relating to activities affecting the quality of water, such as the Gold King Mine spill that occurred in August of 2015,
- m. Section 13.0 - Enforcement. This section describes how the Agreement shall be enforced, including how actions against the Parties to the Agreement, to enforce the Agreement may be brought in federal court, and reiterates that the Agreement is intended to provide water in perpetuity to the Navajo Nation by way of settlement in lieu of water rights claims that could be asserted in the General Stream Adjudication,
- n. Section 14.0 - Ratification and Amendment. This section acknowledges that Congress must ratify the Agreement and that the Parties must agree to any amendments to the Agreement in writing,

- o. Section 15.0 - Evidentiary Effect of the Negotiations. This section states that the Agreement was the result of a good faith negotiation; therefore, no offers or compromises made during the course of those negotiations will be used in Court to interpret or enforce the Agreement,
 - p. Section 16.0 - Obtaining Court Decree in General Stream Adjudication. This section describes how the rights of the Navajo Nation in the Agreement will be incorporated into a final decree to be filed with the court in the General Stream Adjudication,
 - q. Section 17.0 - Necessary Acts and Cooperation. This section commits the Parties to cooperate, including the cooperation necessary to obtain a final binding decree,
 - r. Section 18.0 - Contingent on the Appropriation of Funds. This section clarifies that the performance of any obligations of the United States under the Agreement are contingent on the availability of funds. The Navajo Nation Council understands that if Congress does not appropriate the funds for the purposes described in Section 5.0, the Enforceability Date described in Section 11.0 will not occur and the Agreement is not enforceable,
 - s. Section 19.0 - Other Provisions. This section describes miscellaneous provisions such as the addresses for notices to be sent pursuant to the Agreement,
 - t. Section 20.0 - Signature Authority. This section requires the signatories to the Agreement to be authorized to bind the Party each person represents to the Agreement.
- J. The Navajo Nation Water Rights Commission, with technical assistance from the Department of Water Resources, gave numerous presentations on the Settlement Agreement in the Utah portion of the Navajo Nation, including seven chapters, and all seven chapters passed resolutions endorsing the Settlement Agreement as follows:

- a. Red Mesa Chapter Resolution # RMC 006-092115 *Endorsing the Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement* (September 21, 2015), attached as "Exhibit B" (internal attachments omitted),
 - b. Resolution of TeecNosPos Chapter TNPCH 10-032-015 *Endorsing the Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement* (October 5, 2015), attached as "Exhibit C" (internal attachments omitted),
 - c. Resolution of the Aneth Chapter ACOCT-16-005 *Endorsing the Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement* (October 11, 2015), attached as "Exhibit D" (internal attachments omitted),
 - d. Mexican Water Chapter Resolution MWCOCT14-032 *Approve to endorse the proposed Navajo Nation / State of Utah water rights settlement agreement* (October 14, 2015), attached as "Exhibit E" (internal attachments omitted),
 - e. Resolution of Dennehotso Chapter DCHOCT-06-2015 *Endorsing the Proposed Navajo Nation / State of Utah Water Rights Settlement Agreement* October 15, 2015, attached as "Exhibit F" (internal attachments omitted),
 - f. Resolution of Oljato Chapter OLJ11-01-2015 *Endorsing the Proposed Navajo Nation / State of Utah Water Rights Settlement Agreement* November 8, 2015, attached as "Exhibit G" (internal attachments omitted),
 - g. Resolution of the Naatsis'aan (Navajo Mountain) Chapter of the Navajo Nation Resolution No. NM11/009-2016 *Endorsing the Proposed Navajo Nation / State of Utah Water Rights Settlement Agreement* November 13, 2015, attached as "Exhibit H" (internal attachments omitted).
- K. The Navajo Nation Water Rights Commission has provided periodic reports to the Navajo Utah Commission concerning the status of those negotiations since the commencement of negotiations with the State of Utah, by Resolution NUCNOV-659-15 is attached as "Exhibit I," (internal attachments

omitted), the Navajo Utah Commission endorsed the Settlement Agreement and encouraged the Navajo Nation Council to expeditiously approve the Settlement Agreement.

- L. On March 26, 2015, Utah Governor Herbert signed S.C.R. 2, attached as "Exhibit J", a concurrent resolution of the Utah Legislature and Governor, which "declares support for the negotiated settlement of federal reserved water rights between the Navajo Nation and representatives of the state of Utah."
- M. The presentations made by the Navajo Nation Water Rights Commission to the public, to the chapters, and to the Navajo Utah Commission were based on a July 17, 2015 draft of the Settlement Agreement. Since the time of those presentations, minor changes have been made to the Settlement Agreement to clarify, but not change the terms of the proposed settlement. Those changes are described in the list attached as "Exhibit K."
- N. Consistent with the concept of Tó'ée'iiná, the Navajo Nation Council has determined that the proposed Settlement Agreement is in the best interests of Navajo chapters in Utah, the Navajo People in Utah, and the Navajo Nation.

Section Two. Approving the Proposed Utah Water Rights Settlement Agreement

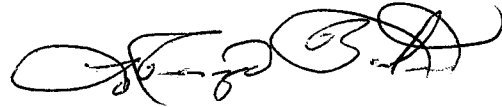
The Navajo Nation Council hereby approves the proposed Navajo Utah Water Rights Settlement Agreement in the form of or substantially similar to the form of "Exhibit A" as attached, and authorizes the President of the Navajo Nation to execute the same.

Section Three. Procedures for Approving Changes in the Settlement Agreement

In the event changes are made to the Navajo Utah Water Rights Settlement Agreement as a result of actions taken by Congress, such that the form of the Settlement Agreement is not substantially similar to the Settlement Agreement attached as "Exhibit A," the Navajo Nation Council delegates to the Naabik'íyáti' Committee the authority to approve the revised settlement agreement, and authorizes the President of the Navajo Nation to execute the same.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 in favor and 7 opposed, this 26th day of January 2016.



LoRenzo Bates, Speaker
Navajo Nation Council

Feb 2, 2016

Date

Motion: Honorable Seth Damon
Second: Honorable Nathaniel Brown

FOR SETTLEMENT DISCUSSION ONLY

THIS SETTLEMENT AGREEMENT HAS NOT BEEN FORMALLY APPROVED BY ANY OF THE PARTIES.

THE UNITED STATES HAS NOT REVIEWED OR COMMENTED ON THE TERMS OF THE AGREEMENT AND RESERVES ALL RIGHTS TO OBJECT TO OR PROPOSE CHANGES TO THE AGREEMENT. Importantly, the United States has not agreed to any funding amounts or projects as part of the settlement and is currently engaged in a technical review of the settlement and has made no decisions concerning the settlement whatsoever.

**NAVAJO NATION / STATE OF UTAH
WATER RIGHTS SETTLEMENT AGREEMENT**

The State of Utah, Navajo Nation and the United States of America, acting through their respective representatives, agree to this Navajo Nation/State of Utah Water Settlement Agreement as follows:

**SECTION 1.0
PURPOSE**

The Parties have reached this Agreement after government-to-government good faith negotiations by the Navajo Nation and the State. Through this Agreement, the Parties intend to recognize and protect the reserved Water Rights of the Navajo Nation as described herein, and all those possessing Water Rights derived by or through the Nation. The purpose of this Agreement is to remove the causes of present and future controversy over the quantification, allocation, distribution, and use of all waters derived by or through the Navajo Nation pursuant to any and all legal theories. The Parties also intend to protect State Appropriative Water Rights, and to provide Navajo and non-Indian citizens in the Upper Colorado River Basin in Utah with certainty regarding Water Rights, water management, and administration that will allow them to plan their futures.

**SECTION 2.0
LEGAL BASIS FOR AGREEMENT**

This Agreement is made in accordance with the Constitution and laws of the United States and the State, and the treaties and laws of the Navajo Nation.

SECTION 3.0
DEFINITIONS

As used in this Agreement, these terms, when capitalized in this Agreement, shall have the following meaning:

“AFY” means acre-feet per year.

“Act” means the Navajo Nation/State of Utah Water Rights Settlement Act of 2012.

“Agreement” means this Settlement Agreement, including and incorporating all exhibits hereto, and as it may be revised pursuant to the terms of this Settlement Agreement.

“Allottee” means individual Members of the Navajo Nation for whom the United States holds in trust title to an allotment.

“Allotment” means (i) a parcel of land located within the exterior boundaries of the Reservation; or (ii) Bureau of Indian Affairs parcel number 792 634511 in San Juan County, Utah consisting of 160 acres located in Township 41S, Range 20E, sections 11, 12 and 14, originally set aside by the United States for the benefit of an individual identified in the allotting document as a Navajo Indian and held in trust by the United States.

“CFS” means cubic feet per second.

“Colorado River System” means that portion of the Colorado River and its tributaries within the United States of America.

“Deplete” or “Depletion” means the use of water that renders it no longer available because it has been evaporated, transpired by plants, incorporated into products or crops, consumed by people or livestock, consumed by industrial processes, or otherwise permanently removed from the Upper Colorado River drainage.

“Divert” or “Diversion” means removing water from its natural course or location, or controlling water in its natural course or location, by means of a control structure, ditch, canal, flume, reservoir, pipeline, conduit, well, pump, or other structure or device.

1 “Effective Date” means the date upon which this Agreement has been ratified by both the
2 Navajo Nation and the State of Utah.

3 “Enforceability Date” means the date on which the Secretary publishes in the Federal
4 Register the statement of findings described in Section 11.0 of this Agreement.

5 “Existing and Developed” means that the owners of Water Rights have Diverted water
6 and put the water to beneficial use.

7 “General Stream Adjudication” means the adjudication currently pending in the Seventh
8 Judicial District in and for Grand County, State of Utah, commonly known as the
9 Southeastern Colorado River General Adjudication, Civil No. 810704477,
10 conducted pursuant to State law.

11 “IHS” means the Indian Health Service within the United States Department of Health and
12 Human Services.

13 “Injuries to Water Rights” means the loss, deprivation, or diminution of Water Rights.

14 “Member” means any person who is a duly enrolled member of the Navajo Nation.

15 “Navajo Nation” or “Nation” means a body politic and federally-recognized Indian nation
16 as provided for in Section 101(2) of the Federally Recognized Indian Tribes List
17 Act of 1994 (Public Law 103-454, 108 Stat. 4791), 79 Federal Register 4748
18 (January 29, 2014)), also known variously as the “Navajo Nation,” the “Navajo
19 Nation of Arizona, New Mexico & Utah,” and the “Navajo Nation of Indians” and
20 other similar names, and includes all bands of Navajo Indians and chapters of the
21 Navajo Nation and all divisions, agencies, officers, and agents thereof.

22 “Utah Navajo Water Development Projects” means water supply, distribution and
23 conservation projects constructed pursuant to this Agreement.

24 “OM&R” means operation, maintenance and replacement.

25 “Parties” means the Navajo Nation, State, and the United States.

26 “Place of Use” means the location where water is beneficially used.

27 “Point of Diversion” means the location where water is Diverted from a river, stream,
28 well, or other source of water.

1 “Purpose of Use” means the purpose for which water is beneficially used.

2 “Reclamation” means the Bureau of Reclamation within the United States Department of
3 the Interior.

4 “Reservation” means, for purposes of this Agreement, that part of the Navajo Nation
5 Reservation located within the boundaries of Utah and established by
6 Executive Order of May 17, 1884;
7 Executive Order 324A of May 15, 1905;
8 Act of March 1, 1933, Ch. 160, 47 Stat. 1418, 1419;
9 Act of April 28, 1948, Ch. 238, 62 Stat. 203, 204;
10 Act of Sept. 7, 1949, Ch. 567, 63 Stat. 698; and
11 Act of Sept 2, 1958, Pub. L. 85-868, 72 Stat. 1686-1690, as amended by Act of
12 May 17, 1968, Pub. L. 90-306, 82 Stat. 121;

13 as further depicted by the map attached hereto as Exhibit A.

14 “Secretary” means the Secretary of the United States Department of the Interior or a duly
15 authorized representative thereof.

16 “State” means the State of Utah and all officers, agents, departments, and political
17 subdivisions thereof.

18 “State Appropriative Water Rights” means a State appropriative water right or approved
19 water right application obtained pursuant to the laws of the State.

20 “State Engineer” means the State Engineer for the State as defined in Utah Code
21 Annotated, Section 73-2-1 (2004), as it may be amended.

22 “Store” means to artificially impound water under a Water Right’s respective priority date
23 for future use in accordance with the Right.

24 “United States” means the United States of America and all departments, agencies,
25 bureaus, officers, and agents thereof.

26 “United States Acting in Its Trust Capacity” means the United States acting for the benefit
27 of the Navajo Nation or for the benefit of Allottees.

28 “Water Right” or “Right” means a right under tribal, state and federal law to Divert,
29 pump, impound, Store, use or reuse water.
30

SECTION 4.0
QUANTIFICATION OF NAVAJO NATION WATER RIGHTS

4.1 Navajo Nation Reserved Water Rights

4.1.1 Quantification. The Navajo Nation shall have the right to use water from the Colorado River System located within Utah and adjacent to or encompassed within the boundaries of the Navajo Reservation resulting in Depletions not to exceed 81,500 AFY. The Navajo Nation's Water Rights shall be held in trust by the United States for the use and benefit of the Navajo Nation.

4.1.2 Diversion Rate. From the San Juan River located on or adjacent to the Reservation, the Navajo Nation has the right to Divert and Store up to 435 CFS of water for beneficial purposes resulting in total Depletions not to exceed 81,500 AFY. The Nation shall have the right to Divert additional quantities of water so long as the Nation can demonstrate that such additional Diversions do not impair any State Appropriative Water Rights Existing and Developed prior to the date notice is provided pursuant to Subsection 4.2.5 for the additional Diversion, and provided that such Diversions do not exceed the Depletion limit established in Subsection 4.1.1. Groundwater withdrawals from any source and Diversions from Lake Powell are not subject to the limitations established in this Subsection 4.1.2, however the Depletion limit established in Subsection 4.1.1 shall apply.

4.2 Navajo Nation Water Rights Priority

4.2.1 Priorities. The priority date of the Navajo Nation's Water Rights will be as set forth below:

	Priority Date	Allowable Depletion of Water (Units: AFY)
Block 1	May 17, 1884	69,275
Block 2	May 15, 1905	4,480
Block 3	March 1, 1933	3,670
Block 4	September 2, 1958	4,075

1 4.2.2 Subordination. Existing Navajo Nation Water Rights identified by and
2 quantified pursuant to Subsection 4.5.4 shall not be subordinated and shall have a priority
3 date determined by the Executive Order establishing that part of the Reservation where
4 water is Diverted. As additional Navajo Nation Water Rights described in Subsection 4.1
5 are developed and put to beneficial use:

6 i) On tributaries north of the San Juan River draining from lands that
7 are not part of the Reservation in Utah, the development of Navajo Nation Water Rights
8 shall not impair or interfere with State Appropriative Water Rights with a priority date
9 prior to the new use, and the Navajo Nation may not request a priority call on the tributary
10 against such rights in order to satisfy the water requirements of the new Navajo uses;

11 ii) On the San Juan River, the development of Navajo Nation Water
12 Rights shall not impair or interfere with State Appropriative Water Rights Existing and
13 Developed on the Effective Date and the Navajo Nation may not request a priority call on
14 the River against such rights in order to satisfy the water requirements of Navajo uses
15 developed after the Effective Date.

16 4.2.3 Physical Shortages. The subordination described in Subsection 4.2.2 will
17 apply when there are physical shortages to the supply of water available for use in the San
18 Juan River Basin in Utah. Physical shortages are shortages not attributable to Compact
19 curtailment as described in Subsection 4.2.4.

20 4.2.4 Compact Curtailment. If the State is required to curtail its consumptive uses
21 because it is determined that the consumptive use of water in Utah from the Upper
22 Colorado River Basin exceeds the State's Upper Colorado River Basin Compact Article
23 III(a) apportionment or if the Upper Colorado River Commission determines pursuant to
24 Article IV of the Upper Colorado River Basin Compact that the State must curtail its
25 consumptive uses of water for some period of time to allow the Upper Basin to comply
26 with Article III of the Colorado River Compact, the subordination described in
27 Subsections 4.2.2 and 4.2.3 shall not apply, and the State may curtail the consumptive

uses of the Navajo Nation only to the extent the Navajo Nation Diversions would require curtailment under a system of priority administration.

4.2.5 Notice. To allow the State Engineer to track and account for general water usage, as the Nation places to use water not put to use prior to the Effective Date, it shall provide the State a written notice at least 90 days before the water is Diverted and put to use. The notice shall denote the source of supply, Point of Diversion, proposed use of the water, the period of time during the year when the water will be used, and other related information about the proposed water use. The State Engineer shall place such notice on its web page for informational purposes.

4.3 Beneficial Use

The Navajo Nation may use its Water Rights for any beneficial use permitted by Tribal, federal or State law, anywhere within Utah. After the water is Diverted from the source, the use shall not be subject to State law, regulation or jurisdiction, except as set forth in this Section and in Section 9.0, addressing off-Reservation uses.

4.4 Water Rights Not Subject to Loss

The Navajo Nation's Water Rights shall not be subject to loss by abandonment, forfeiture or non-use.

4.5 Accounting for Depletion

4.5.1 Accounting Methodology. The Depletions allowed for under this Agreement derive from the water apportioned to the State under the Colorado River Agreement (1922), the Upper Colorado River Compact (1948) and other existing laws governing the administration of the Colorado River. Navajo Depletions described in this Agreement will be accounted for using the same methodology applied to all other comparable uses within the Colorado River System in the State.

4.5.2 Out-of-State Deliveries. Any water Diverted in Utah and delivered across the Utah state line for consumptive use in another state will be accounted for as Navajo Nation Depletions allocated for the Navajo Nation in the state where the water is used. The right of the Navajo Nation to Divert water for consumptive use in another state shall

1 be subject to State Appropriative Water Rights with a priority date prior to the date notice
2 is provided pursuant to Subsection 4.2.5 for a new Navajo Nation Diversion.

3 4.5.3 Reporting. All such uses and Depletions within the calendar year shall be
4 accounted for using sound engineering practices and reported annually to the State on or
5 before April 30 of the following year.

6 4.5.4 Hydrographic Survey. The Parties shall complete a detailed hydrographic
7 survey of all historic and existing water uses on the Reservation within four years of the
8 Enforceability Date. The costs of preparing a hydrographic survey in the amount of
9 \$1,000,000 shall be part of the federal obligation in this Agreement. The Navajo Nation
10 shall be responsible to lead the survey effort and perform or contract for such survey. The
11 approach, and method to be used, shall be reviewed with and approved by the State and
12 the United States. The survey shall document all available water measurements and the
13 Parties shall develop Depletion estimates where actual measurements are not available.
14 The Navajo Nation shall report to the State annually as to the progress of the survey effort.

15 4.5.5 Monitoring Diversions. All uses of water that have associated Depletions of
16 greater than 100 AFY shall be metered from the source where water is Diverted and
17 records of Diversions shall be kept by the Nation. All water Diverted and used for
18 domestic water purposes and supplying more than 25 families shall be metered and water
19 use records maintained. Such Diversion records shall be maintained in perpetuity and
20 made available to the State Engineer upon request.

21 **4.6 Development of Water Sources**

22 The Navajo Nation may develop and use ground water sources located on the
23 Reservation and surface water sources flowing through or adjacent to the Reservation.

24 **4.7 Use of Water for Religious and Cultural Purposes**

25 The Navajo Nation and its Members shall have the right to withdraw water by
26 traditional methods from the streams and springs on the Reservation for religious and
27 cultural purposes. The Parties agree that such public uses are insignificant, shall not be

part of the Water Rights described in Subsection 4.1.1, and shall not be subject to the subordination provisions of this Agreement.

SECTION 5.0

UTAH NAVAJO WATER DEVELOPMENT FUND

This Agreement provides for the Utah Navajo Water Development Fund. This Agreement contemplates a comprehensive approach to addressing Reservation water needs by including costs for domestic and municipal water supply and distribution infrastructure and agricultural water conservation. To allow the Navajo Nation flexibility in meeting the needs of its people over time as both circumstances and technologies evolve, this Agreement uses the costs to meet Reservation water needs determined in the studies referenced in Subsection 5.1 to establish the dollar amount of the Navajo Utah Water Development Fund. To help ensure that water supply systems constructed pursuant to the Agreement can be successfully developed and transitioned to be user-supported systems, the Agreement also includes a Utah Navajo OM&R Trust Account. The monies from these funds is to be used only for the benefit of Members within the Reservation in Utah.

5.1 Investigations Supporting Utah Navajo Water Development Fund

Documents entitled "San Juan – Mexican Hat to Kayenta Regional Water Supply Study" (June 2014), and "Draft San Juan – Mexican Hat to Kayenta Regional Water Supply Report" (March 2015) prepared by Reclamation; "Navajo Utah Chapters Regional Water Plans and Analysis of the Existing Public Water System Upgrade Project" (Phase 1: Hydraulic Engineering Analysis and Capital Improvements Plan (May 2010); Phase 2: Utah Chapters Water Plan (August 2010)), prepared by Brown and Caldwell; and the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014), prepared by the Navajo Nation Department of Water Resources, describe the water supply needs of the Reservation and propose a range of alternatives for addressing those needs.

1 5.1.1. Water Supply. Regional systems providing water supply trunk lines were
2 determined to be the most cost effective means for meeting water demands. However, the
3 Parties acknowledge that there are a number of variables that are subject to change in the
4 future with the potential to affect the determination of which water delivery alternative is
5 most cost effective. The final design of any water supply system or project shall consist
6 of those components or features determined by the Nation to best meet the water supply
7 needs of the Reservation. This determination shall be made in consultation with the
8 Secretary pursuant to Subsection 5.4.

9 5.1.2 Water Distribution. The Navajo Nation looked to the investigations
10 performed by the IHS to identify deficiencies in the Reservation water distribution system.
11 Costs in the Utah Navajo Water Development Fund for a water distribution system were
12 derived from the costs associated with:

13 i) a capital improvement plan including, but not limited to,
14 approximately fifty short-term public water system upgrades as generally described in the
15 documents referenced in Subsection 5.1;

16 ii) a remote community water development plan to improve sanitation
17 facilities for rural homes and communities, which may include in-home sanitation
18 facilities, and including, but not limited to, approximately thirty projects on the IHS
19 sanitation deficiency list as generally described in the documents referenced in Subsection
20 5.1.

21 5.1.3 Agricultural Water Conservation and Management. The Navajo Nation
22 investigated methods for better managing and conserving water for agricultural uses on
23 the Reservation. The Utah Navajo Water Development Fund includes costs for
24 improvements to avoid water shortages to approximately 2,400 acres of historically
25 irrigated Navajo lands. Practices to be implemented include sprinklers and drip irrigation
26 systems, land leveling, construction of wells, pipelines, pumping stations and storage,
27 stream bank stabilization, pasture seeding and management, and construction of fencing

1 and wind breaks. No more than \$5 million (2014\$) of the Utah Navajo Water
2 Development Fund shall be used for this purpose.

3 **5.2 Project Planning, Design and Construction**

4 The Secretary, acting through the Commissioner of Reclamation, shall plan, design,
5 and construct the water diversion, delivery and conservation features of the Utah Navajo
6 Water Development Projects. The Secretary may enter into intergovernmental agreements
7 with other federal, state or Navajo Nation agencies as necessary or appropriate to
8 implement this Section.

9 **5.3 Lead Agency**

10 Reclamation, or any agency with an intergovernmental agreement with the
11 Secretary pursuant to subsection 5.2, shall serve as the lead agency with respect to any
12 activity to plan, design and construct the water diversion, delivery and conservation
13 features of any Utah Navajo Water Development Project to be constructed by that agency.

14 **5.4 Water Supply System Final Project Design**

15 5.4.1. Design Review. Prior to beginning construction activities for any water
16 supply system constructed pursuant to this Agreement, the Secretary shall review the
17 proposed design and perform value engineering analyses.

18 5.4.2 Negotiation with the Navajo Nation. On the basis of the review described in
19 Subsection 5.4.1, the Secretary shall negotiate and reach agreement with the Navajo
20 Nation regarding appropriate changes to the final design so that the final design meets
21 applicable industry standards, as well as changes, if any, that would allow the projects to
22 be constructed for the funding amounts made available pursuant to Subsection 5.5, and
23 improve the cost-effectiveness of the projects.

24 5.4.3 Project Management Committee. The Secretary shall facilitate the
25 formation of a project management committee composed of representatives of: (a) the
26 Navajo Nation; (b) Reclamation, the Bureau of Indian Affairs, and/or IHS, as appropriate;
27 and (c) the State—

1 i) to review cost factors and budgets for construction, operation and
2 maintenance activities;

3 ii) to improve management of inherently governmental activities
4 through enhanced communication; and

5 iii) to seek additional ways to reduce overall costs.

6 **5.5 Project Funding**

7 5.5.1 Federal Obligation. The total amount of obligations incurred by the
8 Secretary to plan, design and construct the Utah Navajo Nation Water Development
9 Projects shall not exceed \$198,300,000, except that the total amount of \$198,300,000 shall
10 be increased or decreased, as appropriate, based on ordinary fluctuations from June 2014,
11 in construction cost indices applicable to the types of construction involved in the design
12 and construction of the Utah Navajo Water Development Projects.

13 5.5.2. State Cost Share. The State shall contribute \$8,000,000, payable to the
14 Secretary in installments in each of the three years following the execution of the
15 Agreement by the Secretary on behalf of the United States, for planning, design and
16 construction of the Utah Navajo Water Development Projects.

17 5.5.3 Transfers to Navajo OM&R Trust Account. Monies made available for the
18 Utah Navajo Water Development Fund but not used to construct water supply, distribution
19 and conservation projects may, at the discretion of the Navajo Nation, be transferred to the
20 Utah Navajo OM&R Trust Account established by Subsection 5.6.

21 **5.6 Navajo Nation OM&R Trust Account**

22 The United States shall establish a trust account in the amount of \$11,100,000,
23 indexed to June 2014 dollars in the Treasury of the United States for the operation,
24 maintenance, and replacement of any water supply system constructed pursuant to this
25 Agreement.

26 **5.7 Applicability of the Indian Self-Determination Act**

27 5.7.1 Utah Navajo Water Development Projects Contractible. At the request of
28 the Navajo Nation, and in accordance with the Indian Self-Determination and Education

Assistance Act (25 U.S.C. §§ 459 *et seq.*), the Secretary, or any other federal agency engaged in planning, design or construction activities pursuant to an intergovernmental agreement authorized by Subsection 5.2, shall enter into one or more agreements with the Navajo Nation to carry out the activities authorized by this Section.

5.7.2 Oversight Costs. Reclamation and the Navajo Nation shall negotiate the cost of any oversight activities carried out by Reclamation for each agreement under this Section, provided that the total cost for that oversight shall not exceed four percent of the total project costs.

5.8 Conveyance of Title to Utah Navajo Water Development Projects

5.8.1 Project Completion. The Secretary shall convey to the Navajo Nation title to any water supply system or project constructed pursuant to this Agreement when construction of each project is complete and the project is operating and, if applicable, delivering potable water.

5.8.2 Limitation of Liability. Effective on the date of the conveyance authorized by Subsection 5.8.1, the United States shall not be held liable by any court for damages arising out of any act, omission, or occurrence relating to the facilities conveyed pursuant to this Subsection, other than damages caused by any intentional act or act of negligence committed by the United States, or by employees or agents of the United States, prior to the date of conveyance.

5.8.3 OM&R Obligation of United States. The United States shall have no obligation to pay for the operation, maintenance, or replacement costs of any Utah Navajo Water Development Project beginning on the date on which—

- i) title to the project is conveyed to the Navajo Nation; and
- ii) the amounts required to be deposited in the Navajo OM&R Trust Account pursuant to Subsection 5.6 have been deposited in that account.

5.8.4. Technical Assistance. The Secretary shall provide technical assistance to prepare the Navajo Nation for operation of the Utah Navajo Water Development Projects, including operation and management training.

SECTION 6.0
RIGHTS OF MEMBERS AND ALLOTTEES

6.1 On-Reservation Uses

There are approximately 73 Allotments located within the Reservation. Any entitlement to water of any Member, including any Allottee, for lands within the Reservation shall be satisfied out of the Water Rights recognized in this Agreement. Nothing in this Agreement shall be deemed to recognize or establish any right of a Member of the Navajo Nation to water on the Reservation.

6.2 Off-Reservation Allotments

There is approximately 1 Allotment outside the Reservation in Utah. The Water Rights of any Allottee for an Allotment located outside the boundaries of the Reservation shall be satisfied out of the Water Rights recognized in this Agreement. The historic and existing uses for such Allotments shall be determined by the Bureau of Indian Affairs and described in abstracts attached hereto as Exhibit B.

6.3 Application of Navajo Nation Water Code

The entitlements and rights described in Subsections 6.1 and 6.2 shall be administered pursuant to the Navajo Nation Water Code, 22 N.N.C. §§ 1101 *et seq.*

SECTION 7.0
STATE APPROPRIATIVE WATER
RIGHTS ON RESERVATION

7.1 Identification of Existing On-Reservation State Appropriative Water Rights

There are approximately 54 State Appropriative Water Rights with a place of use located on the Navajo Reservation. The Navajo Nation Water Rights described in Subsection 4.1.1 include all uses of water on the Reservation, including those State Appropriative Water Rights that list as the place of use lands which are part of the Reservation. The Parties agree to work cooperatively to identify all of the State Appropriative Water Rights with uses on the Reservation, and the State will provide such information from their records as may be necessary to facilitate the management and

reporting of uses of these Water Rights by the Navajo Nation as further described in Section 4.5.

7.2 Change to Off-Reservation Use

When any State Appropriative Water Right is moved pursuant to a change application approved by the State Engineer from the Reservation to lands outside the Reservation, only uses remaining on the Reservation will be counted as part of the Water Rights described in Subsection 4.1.1.

7.3 New Applications to the State Engineer for On-Reservation Uses

After the Effective Date, the State Engineer will reject any application that seeks to use water upon the Reservation; provided, however, that should a court of competent jurisdiction finally determine that the Navajo Nation lacks jurisdiction to regulate water use on non-Indian owned fee lands within the Reservation, the State Engineer may accept an application to put water to use on such lands. Applications filed with the State Engineer after the Effective Date that seek to Divert water on the Reservation for use outside the Reservation will be approved by the State Engineer only on the condition that a permit is also secured from the Navajo Nation for the Diversion and for conveyance works located on the Reservation.

7.4 Permitting of On-Reservation Uses Pursuant to Navajo Law

Any person who has a State Appropriative Water Right on the Reservation may seek to have the water use associated with that right permitted pursuant to Navajo law, and the State will not object to such a permit.

SECTION 8.0 WATER ADMINISTRATION

8.1 Role of State Engineer

The State Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the Navajo Nation's Diversion and use of water from the Upper Colorado River Basin in Utah to ensure that the waters are being beneficially used in compliance with this Agreement and the 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 Agreement and the proper administration of diversions from the Upper Colorado River Basin in Utah.

8.2 Role of Navajo Nation

The Navajo Nation shall have jurisdiction, authority and responsibility to measure, distribute, administer and regulate the use of the Navajo Nation's Water Rights beginning at the Point of Diversion, subject to the terms and conditions set forth in this Agreement. After water is Diverted from the source, use thereof shall not be subject to State law, regulation or jurisdiction, except as set forth in Section 4.0.

8.3 Change in Water Use

The Navajo Nation shall administer and regulate changes in the Point of Diversion, Place of Use, Purpose of Use, and period of use of water uses located on the Reservation, except for applications to move the Navajo Nation's Water Rights off the Reservation as set forth in Section 9.0. The Navajo Nation shall provide information to the State Engineer documenting any such changes in water use as provided in Subsection 4.2.5.

SECTION 9.0 TRANSFERS OFF THE RESERVATION

9.1 Change Application Required

The Nation must apply for a change application consistent with State law and secure the State Engineer's approval prior to the Diversion or use of the Navajo Nation's Water Rights outside the Reservation within Utah. An application for change, and any action taken on any such application, affects only the Nation's right to Divert and use water off the Reservation and does not otherwise diminish, constrain or negate such Water Rights as confirmed in Subsection 4.3 of this Agreement.

9.2 Applicable Law

If the Navajo Nation elects to transfer any of its Water Rights off the Reservation, during the period of use off the Reservation, such Water Rights shall be subject to the same restrictions applicable to other Water Rights in the State of Utah. Nothing in this

Agreement shall constitute specific authority for the sale, exchange, lease, use or other disposition of any Navajo Nation Water Right outside of Utah.

SECTION 10.0
ADMINISTRATION FOR COMPACT COMPLIANCE

The Navajo Nation and the United States agree that the State may administer in priority Water Rights in the Southeastern Colorado River Basin in Utah, including Water Rights of the Navajo Nation, as may be necessary for the State to comply with its obligations under interstate compacts and other applicable laws relating to the Colorado River.

SECTION 11.0
ENFORCEABILITY DATE AND CONDITIONS PRECEDENT

11.1 Secretary's Statement of Findings

The Enforceability Date shall occur, and the waivers and release contained in Section 12.0 of this Agreement shall become effective, as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

11.1.1 to the extent that the Agreement conflicts with the Act, the Agreement has been revised to conform with the Act;

11.1.2 the Agreement, so revised, including waivers and releases of claims set forth in Section 12.0, has been executed by the Parties, including the United States;

11.1.3 Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds agreed to in Subsections 4.54 and 5.5;

11.1.4 the State has enacted all necessary legislation and provided the funding agreed to in Subsection 5.5; and

11.1.5 the court has entered a judgment and decree confirming the water rights of the Navajo Nation in the general stream adjudication pursuant to Utah Rule of Civil Procedure 54(b), that confirms the water rights of the Navajo Nation and is final as to all parties to the general stream adjudication and from which no further appeals may be

taken, which the parties find is consistent in all material respects with the Agreement and with the proposed judgment and decree agreed to by the parties to the Agreement.

11.2 Failure of Conditions

If the Secretary does not publish the statement of findings pursuant to Subsection 11.1 by [date to be determined by agreement], then this Agreement shall be null and void.

11.3 Extension

The expiration date set forth in Subsection 11.2 may be extended if the Navajo Nation, the State and the United States (acting through the Secretary) agree that an extension is reasonably necessary.

SECTION 12.0 WAIVERS AND RELEASES OF CLAIMS

12.1 Waiver and Release of Claims by the Navajo Nation and the United States Acting in its Capacity as Trustee for the Nation

In return for recognition of the Navajo Nation's Water Rights, the Water Rights or rights to use water of Allottees, and other benefits set forth in this Agreement, and in return for a waiver of claims by the State against the Nation and the United States Acting in Its Trust Capacity, the Nation and the United States Acting in Its Trust Capacity hereby waive and release:

12.1.1 All claims for Water Rights within the boundaries of Utah based on any and all legal theories that the Navajo Nation, Allottees, or the United States Acting in Its Trust Capacity, asserted, or could have asserted, at any time in any proceeding, including but not limited to the pending proceedings in the General Stream Adjudication, up to and including the Enforceability Date, except to the extent that such Rights are recognized in this Agreement;

12.1.2 All claims for damages, losses, or Injuries to Water Rights or claims of interference with, Diversion, or taking of Water Rights (including but not limited to claims for injury to lands resulting from such damages, losses, injuries, interference with, Diversion, or taking of Water Rights) within Utah against the State, or any person, entity,

corporation or municipality, that accrued at any time up to and including the Enforceability Date.

12.2 Waiver and Release of Claims by the Navajo Nation Against the United States

The Navajo Nation waives and releases:

12.2.1 All claims the Navajo Nation may have against the United States relating in any manner to claims for Water Rights in or water of Utah that the United States Acting in Its Trust Capacity asserted, or could have asserted, in any proceeding, including but not limited to the pending proceedings in the General Stream Adjudication.

12.2.2 All claims the Navajo Nation may have against the United States relating in any manner to damages, losses, or injuries to water, Water Rights, land, or other 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 interference with, Diversion or taking of water; or claims relating to failure to protect, acquire, replace, or develop water or Water Rights) within Utah that first accrued at any time up to and including the Enforceability Date.

12.2.3 All claims the Navajo Nation may have against the United States relating in any manner to the litigation of claims relating to the Nation's Water Rights in proceedings in Utah; and

12.2.4 All claims the Nation may have against the United States relating in any manner to the negotiation, execution, or the adoption of this Agreement.

12.3 Waiver and Release of Claims by the State

Except as provided in Subsection 12.5, the State waives and releases any claims that the State may have against the Navajo Nation, Allottees, and the United States Acting in Its Trust Capacity, under federal, State or other law for:

12.3.1 Past and present claims for Injury to Water Rights resulting from the Diversion or use of water on or for: the Reservation; Navajo trust land in Utah; Navajo fee land in Utah; or Allotments, arising from time immemorial through the Enforceability Date;

12.3.2 Claims for injury to Water Rights arising after the Enforceability Date resulting from the Diversion or use of water on or for: the Reservation; Navajo trust land in Utah; Navajo fee land in Utah; or Allotments, in a manner not in violation of this Agreement or applicable law; and

12.3.3 Past, present and future claims arising out of or related in any manner to the negotiation or execution of this Agreement, or the negotiation or enactment of the Act.

12.4 Reservation of Rights and Retention of Claims by the Navajo Nation and United States Acting in Its Trust Capacity

Notwithstanding the waivers and releases authorized in this Agreement, the Navajo Nation and the United States Acting in Its Trust Capacity retain:

12.4.1 All claims for the enforcement of this Agreement and the final or interlocutory decree entered in the General Stream Adjudication, through such legal and equitable remedies as may be available in the decree court or the Federal District Court for the District of Utah;

12.4.2 All rights to use and protect Water Rights acquired after the Enforceability Date of this Agreement;

12.4.3 All claims relating to activities affecting the quality of water including but not limited to any claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 4321 *et seq.* (including but not limited to claims for damages to natural resources), the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, and the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the regulations implementing those Acts; and

12.4.4 All rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Agreement.

12.5 Reservations of Rights and Retention of Claims by the State

Notwithstanding the waivers of claims and releases described in this Section, the State shall retain any right to:

12.5.1 Assert claims for injuries to, and seek enforcement of, the State's rights under the Agreement in any State or Federal court of competent jurisdiction;

12.5.2 Assert claims for injury to and seek enforcement of the State's rights under the judgment and decree entered by the court in the General Stream Adjudication, as described in Subsection 11.1.5;

12.5.3 Assert past, present and future claims to water that are subject to the General Stream Adjudication or other applicable law, and that are not inconsistent with the Agreement; and

12.5.4 Assert any claims for Injury to Water Rights not specifically waived herein.

12.5.5 Further, nothing in Subsection 12.3 shall preclude the State from taking any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety or the environment.

12.6 Effect of Section

Nothing in this Agreement—

12.6.1 Affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including any laws relating to health, safety, or the environment, including 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 Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, the regulations implementing those laws, and the common law;

12.6.2 Affects the ability of the United States to take actions acting in its capacity as trustee for any other Indian tribe or allottee; or

12.6.3 Confers jurisdiction on any State court to:

- i) interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law; or
- ii) conduct judicial review of Federal agency action.

12.7 Delay Not a Waiver

No delay or failure by any Party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly provided herein. No waiver by a Party under this Agreement shall affect or alter the remainder of this Agreement, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other then existing and subsequently occurring breach.

12.8 Claims Waived or Released

Nothing herein acknowledges the existence or validity of any claims that are being waived or released.

**SECTION 13.0
ENFORCEMENT**

13.1 Enforcement

For purposes of compelling compliance with the terms of this Agreement, each Party waives the defense of sovereign immunity only as to claims brought by any other Party to enforce the terms of this Agreement, including any defense under the Eleventh Amendment to the United States Constitution. A Party's claim that any other Party, or its officials are acting to impair or violate any right or privilege recognized in this Agreement, shall be brought in the United States District Court for the District of Utah. The federal court jurisdiction provided for herein shall not be diminished by reason of a related State court proceeding. While the primary responsibility for protecting and preserving the Navajo Nation's Water Rights rests with the United States and the Navajo Nation, the State, through the State Engineer, shall use its best efforts to see that the Navajo Nation's Water Rights secured in this Agreement are protected from impairment; provided however, that nothing herein shall subject the State, its officers, or employees to a claim for monetary damages in its efforts to so administer and protect the Navajo Nation's Water Rights.

1 **13.2 Rights and Remedies**

2 The Parties shall have all rights and remedies provided under applicable federal or
3 State law for a breach or threatened breach of this Agreement; provided, however, that
4 because this Agreement is intended to supply water in perpetuity to the Navajo Nation in
5 lieu of the Water Rights claims that could have been filed by the United States on behalf
6 of the Navajo Nation in the General Stream Adjudication, termination of this Agreement
7 for breach of this Agreement is not a permitted or authorized right or remedy under this
8 Agreement. These rights and remedies shall not be mutually exclusive, and the exercise
9 of one or more of these rights and remedies shall not preclude the exercise of any other
10 rights and remedies. Each Party confirms that damages at law may be an inadequate
11 remedy for the breach or threatened breach of any provision hereof and the respective
12 rights and obligations of the Parties hereunder shall be enforceable by specific
13 performance, injunction, or other equitable remedy. Subject to the provisions of
14 Subsection 13.1, nothing in this Agreement shall be construed to waive the sovereign
15 immunity of the United States, except as to the General Stream Adjudication under the
16 McCarran Amendment, 43 U.S.C. § 666.

17
18 **SECTION 14.0**
19 **RATIFICATION AND AMENDMENT**

20 **14.1 Ratification**

21 The Parties acknowledge that this Agreement must be ratified by Congress and the
22 Navajo Nation and the State shall use their best cooperative efforts to secure that
23 ratification. The Parties shall take all appropriate actions necessary to implement this
24 Agreement. Upon the occurrence of the Enforceability Date, the terms of this Agreement
25 will have the force and effect of law and the Parties agree to adopt all statutes, regulations,
26 ordinances, and codes that are or may be necessary to harmonize the same with the terms
27 of this Agreement.
28

1 **14.2 Amendments**

2 Any amendments or modifications of this Agreement shall be binding only if
3 evidenced in writing and signed by each Party or the authorized representative of each
4 Party.

5 **SECTION 15.0**
6 **EVIDENTIARY EFFECT OF NEGOTIATIONS**

7 **15.1 No Admission Against Interest**

8 This Agreement has been arrived at in process of good faith negotiations for the
9 purpose of resolving legal disputes, including any pending litigation. All Parties agree
10 that no offers and/or compromises made in the course of this process shall be construed as
11 admissions against interests or be used in any legal proceeding other than ones for
12 approval, confirmation, interpretation, or enforcement of this Agreement.

13 **15.2 Voluntary Compromise**

14 This Agreement is the result of a voluntary compromise settlement reached among
15 the Parties. Accordingly, no provision of this Agreement or its adoption as part of any
16 General Stream Adjudication shall be construed as altering or affecting the determination
17 of any issues relating to any other reserved water rights claims that may belong to other
18 Indian tribes within or outside of Utah.

19 **15.3 Construction and Effect**

20 This Agreement is to be construed fairly and reasonably in its entirety. The Section
21 and Subsection titles used in this Agreement are for convenience only and shall not be
22 considered in the construction of this Agreement. Each of the Parties has been fully
23 represented in connection with the preparation of this Agreement and, as such, this
24 Agreement shall be neutrally interpreted and shall not be construed in favor of any Party
25 or against any Party.
26

SECTION 16.0
OBTAINING COURT DECREE
IN GENERAL STREAM ADJUDICATION

16.1 Proposed Determination of Rights

Upon ratification of this Agreement pursuant to Subsection 15.1 herein, this Agreement and its exhibits or attachments will be incorporated into a Proposed Determination of Rights issued by the State Engineer in the General Stream Adjudication. The Parties will cooperate to obtain an interlocutory decree covering the same.

16.2 Joinder of the United States

The United States Acting in Its Trust Capacity consents to its joinder in that limited capacity as a party in the General Stream Adjudication upon the ratification of this Agreement and execution of the Agreement, as it may be amended to conform to the Act, by the Secretary on behalf of the United States.

16.3 Binding Effect

If the Parties are unsuccessful in securing an interlocutory decree, this Agreement shall remain binding upon the Parties until a final decree is issued in the General Stream Adjudication covering the Navajo Nation's Water Rights as set forth in this Agreement and its attachments or until the Agreement becomes null and void pursuant to Subsection 11.2.

SECTION 17.0
NECESSARY ACTS AND COOPERATION

17.1 Acts Necessary to Effectuate Agreement

The Parties shall do any act or thing and execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement; provided, however, that the United States, shall not be required to do any act or thing that is not authorized by law and for which funds have not been appropriated by Congress; provided, further, that the State shall not be required to do any act or thing that is not authorized by law and for which funds have not been appropriated by the State legislature; and provided, further, that the Navajo Nation shall not be required to do any

act or thing that is not authorized by law and for which funds have not been appropriated by the Navajo Nation Council.

17.2 Application Necessary to Effectuate Agreement

The Parties shall not protest any application filed with the State Engineer in furtherance of or as needed to effectuate the provisions of this Agreement.

17.3 Proposed Determinations Necessary to Effectuate Agreement

The Parties shall not file any objection or protest to any proposed determination(s) that may be issued by the State Engineer in furtherance of or as needed to effectuate this Agreement, except to the extent that such proposed determination(s) may be inconsistent with this Agreement.

17.4 Proposed Judgment and Decree

The Parties shall not file any objection or protest to the proposed judgment and decree described in Subsection 11.1.5 that is filed by stipulation of the Parties in the General Stream Adjudication.

17.5 Filings in General Stream Adjudication

The Parties shall file in the General Stream Adjudication those documents required to obtain a decree(s), pursuant to Utah Rule of Civil Procedure 54(b), that is final as to all Parties to the General Stream Adjudication and from which no further appeals may be taken, which confirms the State Engineer's proposed determination.

**SECTION 18.0
CONTINGENT ON APPROPRIATION
OF FUNDS**

The expenditure or advance of any money or the performance of any obligation by the United States under this Agreement shall be contingent upon appropriation of funds therefore. No liability shall accrue to the United States or to any other Party in the event that funds are not appropriated.

**SECTION 19.0
OTHER PROVISIONS**

19.1 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

19.2 Entire Agreement

This Agreement, including its Appendices, supersedes any prior understanding, representation, or agreement of the Parties regarding the subject matter hereof.

19.3 Notices

Any notice to be given hereunder shall have been properly given when hand delivered to the officer or manager designated in this Subsection, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

President
Navajo Nation
P.O. Box 9000
Window Rock, AZ 86515

Regional Director
Bureau of Reclamation
Upper Colorado Region
125 South State Street, Room 6107
Salt Lake City UT 84138-1147

Executive Director
Utah Department of Natural Resources
P.O. Box 145610
Salt Lake City, UT 84114-5610

19.4 Officials Not to Benefit

No member of or delegate to Congress or the Utah Legislature shall be admitted to any share of this Agreement or to any benefit that may arise here from.

19.5 Persons Bound by Agreement

19.5.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective employees, representatives, successors, and assigns.

1 19.5.2 The signature of each Party to this Agreement shall be non-revocable from
2 the date of the signature through the Enforceability Date of this Agreement.

3 **19.6 No Benefit to Third Party**

4 Except as expressly stated herein, this Agreement is not intended to be for the
5 benefit of any third party, and shall not be deemed to confer any rights or cause of action
6 upon any person or entity other than the Parties to this Agreement, nor create any
7 obligations of the Parties to third persons or entities.

8 **SECTION 20.0**
9 **SIGNATURE AUTHORITY**

10 The undersigned representative of each Party to this Agreement certifies that he or
11 she is fully authorized to enter into the terms and conditions of this Agreement, to execute
12 it and to bind the Party each person represents to this Agreement.

13 **20.1 Navajo Nation**

14 This Agreement is executed by the Navajo Nation, acting through its President or
15 its Attorney General.

16 **20.2 United States**

17 This Agreement is executed by the United States Acting in Its Trust Capacity,
18 acting through the Secretary.

19 **20.3 State of Utah**

20 This Agreement is executed by the State, acting through its Executive Director of
21 the Department of Natural Resources.
22

1 IN WITNESS WHEREOF, the Parties have executed this Agreement dated on the
2 day and year first above written.

3 **THE NAVAJO NATION**

4 By: _____

5 Its: _____

6 Date: _____

7 **STATE OF UTAH**

8 By: _____

9 Its: _____

10 Date: _____

11 **UNITED STATES OF AMERICA**

12 By: _____

13 Its: _____

14 Date: _____

DRAFT - For Settlement Purposes Only



RED MESA CHAPTER
Red Mesa, Navajo Nation

Resolution# RMC 006-092115



ENDORISING THE PROPOSED NAVAJO NATION/STATE OF UTAH WATER RIGHTS SETTLEMENT AGREEMENT.

WHEREAS:

1. The Red Mesa Chapter (Łichíí'da'askáni) is a duly recognized and certified chapter of the Navajo Nation Government pursuant to 11 N.N.C. §10; and
2. The Navajo Nation Council has declared that water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
3. Navajo communities in Utah, including Red Mesa Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation/State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The Navajo Nation Water Rights Commission held public meetings at Red Mesa Chapter on June 9, 2014, and September 21, 2015, concerning the proposed Settlement Agreement; and
7. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development; including
 - a) The right to deplete a total of 81,500 acre feet from all water sources within Upper Colorado River Basin in Utah on the Navajo Nation;
 - b) The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
 - c) The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
 - d) The right to market or lease these water rights to the same extent as other water rights holders in Utah;
 - e) A trust fund in the amount of \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future;
 - f) A trust fund in the amount of \$11.1M (2014\$) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the "White Paper"; and
8. Red Mesa Chapter believes that the proposed Settlement Agreement is in the best interests of Red Mesa Chapter, the Navajo People in Utah, and the Navajo Nation.

NOW THEREFORE BE IT RESOLVED THAT:

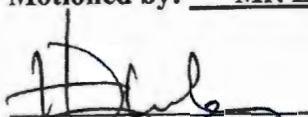
- A. The Red Mesa Chapter hereby endorses the proposed Navajo/ State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
- B. The Red Mesa Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation/ State of Utah Water Rights Settlement Agreement as expeditiously as possible.

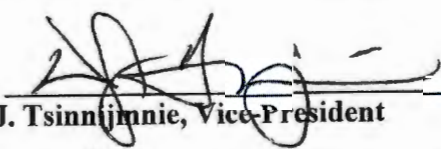
CERTIFICATION:

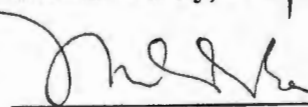
We hereby certify that the foregoing resolution was duly considered by the Red Mesa Chapter of the Northern Agency at a duly called meeting in Red Mesa, Utah, Navajo Nation, at which a quorum was present and that same passed by a vote of 48 FAVORED, 00 OPPOSED, and 01 ABSTAINED on this 21st day of SEPTEMBER 2015.

Motioned by: Mr. Edward Tapaha

Seconded by: Mr. Floyd Tsinnijinnie


Herman Farley, President


Doris J. Tsinnijinnie, Vice-President


Marlene Dee Ben, Secretary/Treasurer


Davis Filfred, Council Delegate



TEEC NOS POS CHAPTER

P. O. Box 106, Teec Nos Pos, Arizona, Navajo Nation 86514
 Highway 160 BIA School Road #5114 Chapter Government Building
 Telephone #928-656-3662 Facsimile #928-656-3661

RESOLUTION OF TEECNOSPOS CHAPTER

TNPCH 10-032-015

ENDORING THE PROPOSED NAVAJO NATION AND STATE OF UTAH WATER RIGHTS SETTLEMENT AGREEMENT.

WHEREAS:

1. The TeecNosPos Chapter is a duly recognized and certified chapter of the Navajo Nation government pursuant to 11 N.N.C. 10 ; and
2. The TeecNosPos Chapter is part of the decision the Navajo Nation council declared that water is essential "to provide for a permanent homeland for the Navajo people,
"22 N.N.C. 1101; and
3. The TeecNosPos Chapter is part of the Navajo community in Utah and have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. The TeecNosPos Chapter knows in 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussion of Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. The TeecNosPos Chapter is aware of the representative of the Navajo Nation and the State of Utah who have reached agreement as to the quantification and settlement of the Navajo Nation water rights claims in the State of Utah, reflected in the proposed Navajo Nation/State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The TeecNosPos Chapter were informed of the Navajo Nation Water Rights Commission public meeting concerning the proposed Settlement Agreement; and
7. The TeecNosPos Chapter is made aware of the proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development including:
 - a. *The right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;*
 - b. *The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81, 500 acre feet is not exceeded;*
 - c. *The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;*

CHAPTER OFFICERS

Alfred L. Jini
President

Arnold L. Bitah
Vice President

Vernon Francisco
Secretary/Treasurer

Herman Lee
Grazing Officer

Devis Filfred
Council Delegate

ADMINISTRATION:

Steven Begally
Chapter Coordinator

Melinda Begay
Office

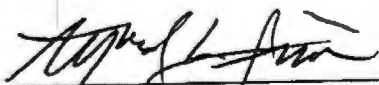
- d. *The right to market or lease these water rights to the same extent as other water rights holders in Utah;*
 - e. *A trust fund in the amount of \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/Utah Water Rights Settlement Projects: White Paper" (June 06, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future; and*
 - f. *A trust fund in the amount of \$11.1M (2014\$) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the White Paper; and*
8. The TeecNosPos Chapter believes that the proposed Settlement Agreement is in the best interests of TeecNosPos Chapter, the Navajo People in Utah, and the Navajo Nation.

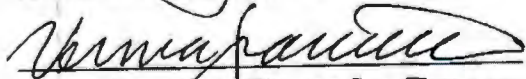
NOW THEREFORE BE IT RESOLVED THAT:

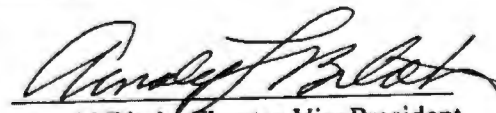
- 1. The TeecNosPos Chapter hereby respectfully endorsed Navajo Nation/State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
- 2. The TeecccccNosPos Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation/State of Utah Water Rights Settlement Agreement as expeditiously as possible.

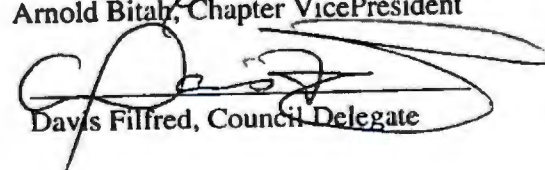
C E R T I F I C A T I O N

We, hereby, certify, that the foregoing resolution was duly considered by the TeecNosPos Chapter at a duly called Regular Chapter Meeting in TeecNosPos, Navajo Nation, Arizona, at which a quorum was present and that same was passed by a vote of 25 infavor, 0 opposed 02 abstain, on this 08th day of October, 2015; motioned by Juanita Woodis, seconded by John MacDonald, Sr.


Alfred L. Jim, Chapter President


Verma Francisco, Chapter Sec./Treasurer


Arnold Bitah, Chapter VicePresident


Davis Filfred, Council Delegate

THE ANETH CHAPTER
ANETH, NAVAJO NATION (UTAH)



DARRELL WILLIAMS PRESIDENT
BILL TODACHENNIE VICE PRESIDENT
BRENDA BROWN SECRETARY/TREASURER



**RESOLUTION OF
THE ANETH CHAPTER**

ACOCT-16-005

**ENDORISING THE PROPOSED NAVAJO NATION /STATE OF UTAH WATER RIGHTS
SETTLEMENT AGREEMENT**

WHEREAS:

1. Pursuant to Navajo Tribal Council Resolution No. CMY-23-79, the Aneth Chapter is duly certified and recognized as an official local unit of the Navajo Nation Government with all duties, responsibilities, and authorities conferred according to 26 N.N.C. § 1 et seq. and has the power and authority to enact plans and development goals that are in the best interest of the community and to recommend, support, and approve community related projects); and
2. The Navajo Nation Council has declared that water is essential "to provide for a permanent homeland for the Navajo People, "22 N.N.C. §1101; and
3. Navajo communities in Utah, including Aneth Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, Water Resource Development Strategy for the Navajo Nation (July 2000) and the Bureau of Reclamation, Draft Rural Water Supply Appraisal Report (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo nation/State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement), attached as Exhibit A; and
6. The Navajo Nation Water Rights Commission held a public meeting at Aneth Chapter on September 23, 2015, concerning the proposed Settlement Agreement; and
7. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, including:
 - a. The right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin In Utah on the Navajo Nation;

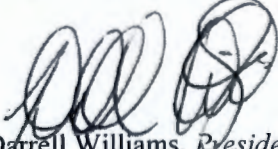
- b. The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
- c. The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
- d. The right to market or leased these water rights to the same extent as other water rights holders in Utah;
- e. A trust fund in the amount of \$198.3M (2014\$ for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future; and
- f. The trust fund in the of \$11.1M (2014\$) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the White Paper; and
- g. Aneth Chapter believes that the proposed Settlement Agreement is in the best interests of Aneth Chapter, the Navajo People in Utah, and the Navajo Nation.

NOW, THEREFORE BE IT RSOLVED THAT:

- 1. The Aneth Chapter hereby endorses, the proposed Navajo Nation /State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
- 2. The Aneth Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation /State of Utah Water Rights Settlement Agreement as expeditiously as possible.

C E R T I F I C A T I O N

I hereby certify that this forgoing resolution was duly considered by the Aneth Chapter Membership at a duly called meeting at which a quorum was present and that the same was passed with a vote of 14 in favor, 1 opposed and 2 abstained this 11th day of October, 2015.


Darrell Williams, *Resident*
ANETH CHAPTER

Motioned by: Helen Archie
Seconded by: Harriett Lansing



MEXICAN WATER CHAPTER



Red Mesa TP#1019, HC 61 Box 38 • Teec Nos Pos, AZ 86514 • (928) 429-0986

Mexican Water Chapter

MWCOCT14-032



RESOLUTION OF MEXICAN WATER CHAPTER

Approve to endorse the proposed Navajo Nation / State of Utah water rights settlement agreement

WHEREAS:

1. Pursuant to 26 N.N.C., Section 102 (B); which permits Mexican Water Chapter to exercise local governance authorities contained within 26 N.N.C. Section 103, with the exception of land administration authority pursuant to 26 N.N.C. Section (D) (1); and
2. Pursuant to 26 N.N.C., Section 3 (A) the Mexican water Chapter is a recognized certified Chapter of the Navajo Nation government, as listed at 11 N.N.C. part 1, section 10; and
3. Pursuant to CAP-34-98, the Navajo Nation Council adopted the Navajo Nation Local Governance Act (LGA); and
4. Pursuant to Mexican Water Chapter resolution , the Mexican Water Chapter has approved its Five Management System Policies and Procedures Manuals; and
5. Pursuant to the Resources and Development Committee certifying Mexican Water Chapter having met requirement under 26 N.N.C. & 102 (A) on February 07, 2012; and
6. The Navajo Nation Council has declared that water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
7. Navajo communities in Utah, including Mexican Water Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, Water Resource Development Strategy for the Navajo Nation (July 2000) and the Bureau of Reclamation, Draft Rural Water Supply Appraisal Report (March 2015); and
8. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
9. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
10. The Navajo Nation Water Rights Commission held a public meeting at Mexican Water Chapter concerning the proposed Settlement Agreement; and
11. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, including:
 - a. The right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;

.....

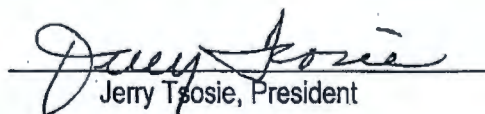
- b. The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
 - c. The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
 - d. The right to market or lease these water rights to the same extent as other water rights holders in Utah;
12. A trust in the amount of \$198.3M (2014) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future; and
13. A trust fund in the amount of \$11.1M (2014) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the White Paper; and
14. Mexican Water Chapter believes that the proposed Settlement Agreement is in the best interests of Mexican Water Chapter, the Navajo People in Utah, and the Navajo Nation.

NOW THEREFORE IT BE RESOLVED THAT:

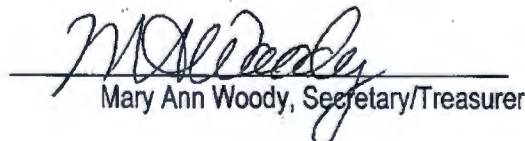
1. The Mexican Water Chapter hereby endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
2. The Mexican Water Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement as expeditiously as possible.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered at a duly called meeting at Mexican Water Chapter, (Navajo Nation), Utah at which a quorum was present and that same was passed by a vote of 21 in favor and 00 opposed, 02 abstained on the 14th day of October 2015.


Jerry Tsosie, President


David L. John, Vice President


Mary Ann Woody, Secretary/Treasurer



DENNEHOTSO CHAPTER

Western Navajo Agency
P.O. Box 2301
Dennehotso, Arizona 86535
928.658.3300/3301
Fax: 928.658.3304



Frank C Yazzie
President

Martha Littleman
Vice-President

Nancy Tsosie
Secretary/Treasurer

Nathaniel Brown
Council Delegate

RESOLUTION OF DENNEHOTSO CHAPTER DCHOCT-06-2015

ENDORISING THE PROPOSED NAVAJO NATION / STATE OF UTAH WATER RIGHTS SETTLEMENT AGREEMENT

WHEREAS:

1. Dennehotso (Dennahootsoh) Chapter is a duly recognized and certified chapter of the Navajo Nation government pursuant to 11 N.N.C. § 10; and
2. The Navajo Nation Council has declared that water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
3. Navajo communities in Utah, including Dennehotso Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The Navajo Nation Water Rights Commission held a public meeting at Dennehotso Chapter on October 15, 2015, concerning the proposed Settlement Agreement; and



DENNEHOTSO CHAPTER

Western Navajo Agency
P.O. Box 2301
Dennehotso, Arizona 86535
928.658.3300/3301
Fax: 928.658.3304

Frank C Yazzie
President

Martha Littleman
Vice-President

Nancy Tsosie
Secretary/Treasurer

Nathaniel Brown
Council Delegate

7. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, including:
 - a. The right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;
 - b. The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
 - c. The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
 - d. The right to market or lease these water rights to the same extent as other water rights holders in Utah;
 - e. A trust fund in the amount of \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future; and
 - f. A trust fund in the amount of \$11.1M (2014\$) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the White Paper; and
8. Dennehotso Chapter believes that the proposed Settlement Agreement is in the best interests of Dennehotso Chapter, the Navajo People in Utah, and the Navajo Nation.



DENNEHOTSO CHAPTER

Western Navajo Agency
P.O. Box 2301
Dennehotso, Arizona 86535
928.658.3300/3301
Fax: 928.658.3304

Frank C Yazzie
President

Martha Littleman
Vice-President

Nancy Tsosie
Secretary/Treasurer

Nathaniel Brown
Council Delegate

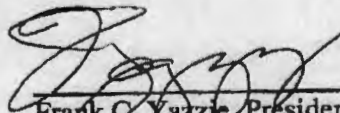
NOW THEREFORE BE IT RESOLVED THAT:

- A. The Dennehotso Chapter hereby endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
- B. The Dennehotso Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement as expeditiously as possible.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered at a duly called meeting of the Dennehotso Chapter, Navajo Nation, at which a quorum was present and that the same was passed by a vote of 25 in favor; 0 opposed and 3 abstained on this 15th day of October, 2015.

Motion by: Andrew Tso
Second by: Chester V. Haskan


Frank C. Yazzie, President
Dennehotso Chapter - WNA

James Adakai, President
 Albert Holiday, Vice President
 LaNell Menard-Parrish, Secretary/Treasurer
 Shirlee A. Bedonie, CSC



Herman Daniels Jr., Council Delegate
 Benedict Daniels, Grazing Official
 Peggy Abrigo, AMS
 Phone: 435-727-5850 Fax: 5852

Oljato Chapter; PO Box 360455; Monument Valley, Utah 84536

RESOLUTION OF OLJATO CHAPTER
 Resolution No: _____

**ENDORISING THE PROPOSED NAVAJO NATION / STATE OF UTAH
 WATER RIGHTS SETTLEMENT AGREEMENT**

WHEREAS:

1. Oljato (Ool jée'tó) Chapter is a duly recognized and certified chapter of the Navajo Nation government pursuant to 11 N.N.C. § 10; and
2. Water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
3. Navajo communities in Utah, including Oljato Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The Navajo Nation Water Rights Commission held a public meeting at Oljato Chapter on November 8, 2015, concerning the proposed Settlement Agreement; and
7. The proposed Settlement Agreement is summarized here:
 - a. Section 1.0 Purpose. The purpose of the Agreement is to provide a permanent settlement of the water rights of the Navajo Nation in the State of Utah and to avoid future controversy over the quantification of such rights.
 - b. Section 2.0 Legal Basis for Agreement. This section affirms that the Agreement is made in accordance with the Constitution and laws of the United States and the State, and the treaties and laws of the Navajo Nation.

c. Section 3.0 Definitions. This section defines key terms to avoid future controversy concerning the interpretation of the Agreement.

d. Section 4.0 Quantification of Navajo Nation Water Rights. This section describes and quantifies the Navajo Nation's water rights, including:

- i. the right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;
- ii. the right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
- iii. the right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
- iv. the right to market or lease these water rights to the same extent as other water rights holders in Utah; and
- v. the priority date for most of the water would be May 17, 1884; however, the Navajo right would be subordinated to existing uses but senior to any non-Navajo use that may be developed in the future. In other words, during times of physical shortage of water in the river or the tributaries, the Navajo Nation's subordinated right means it could not seek to curtail non-Navajo rights existing as of the Enforceability Date, but could seek to curtail all rights developed thereafter. Nevertheless, this early priority date protects Navajo water in Utah from being cut off in the event that the State of Utah is forced to curtail water uses throughout the state in order to comply with its downstream delivery obligations pursuant to interstate compacts.

e. Section 5.0 Utah Navajo Water Development Projects. This section describes the obligation of the United States to provide: (1) \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah and (2) to create an OM&R Trust Account in the amount of \$11.1M (2014\$) to help defray the operation, maintenance and replacement costs of the water development projects. The level of funding was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future.

f. Section 6.0 Rights of Members and Allottees. This section explains that the Agreement does not purport to quantify the rights of allottees but requires such rights to be satisfied out of the rights of the Navajo Nation as described in the Agreement.

g. Section 7.0 Identification of Existing On-Reservation State Appropriative Water Rights. This section describes how existing state rights will be converted into on-Reservation Navajo rights.

h. Section 8.0 Water Administration. This section describes how the Navajo Nation and the State of Utah will administer the water rights under the Agreement.

i. Section 9.0 Transfers Off the Reservation. This section describes how the Navajo Nation can use its water rights off of the Navajo Reservation.

j. Section 10.0 Administration for Compact Compliance. This section describes how the State may administer, in priority, water rights in the Southeastern Colorado River Basin in Utah, where Navajo Utah lands are located, for purposes of complying with interstate compacts relating to the Colorado River.

k. Section 11.0 Enforceability Date. This section describes the conditions that must be met for the Agreement to be final and enforceable.

l. Section 12.0 Waivers and Releases of Claims. This section describes the waivers that the Navajo Nation, the State of Utah and the United States (the "Parties") must enter into in order for the Agreement to be considered binding on the parties. Generally, the waivers and releases require each Party to waive claims concerning damages, losses or injuries to the water rights of that Party and release the other Parties from liability for any such claims. The United States, as the trustee of tribal lands, has required similar waiver and release provisions in all recent Indian water rights settlements approved by Congress. Members of the Oljato Chapter understand that upon the Enforceability Date, the Agreement becomes a final, binding and permanent quantification of the water rights of the Navajo Nation in the State of Utah, and that the Navajo Nation cannot claim water rights in addition to those described in the Agreement, however, nothing in the Agreement prevents the Nation from acquiring additional water rights by purchase in the future. Members of the Oljato Chapter further understand that the Navajo Nation will retain all claims relating to activities affecting the quality of water, such as the Gold King Mine spill that occurred in August of 2015.

m. Section 13.0 Enforcement. This section describes how the Agreement shall be enforced, including how actions against the Parties to the Agreement, to enforce the Agreement may be brought in federal court.

n. Section 14.0 Capacities in Which Agreement is Executed. This section describes the capacities of the persons signing the Agreement on behalf of the Parties.

o. Section 15.0 Ratification and Amendment. This section acknowledges that Congress must ratify the Agreement and that the Parties must agree to any amendments to the Agreement in writing.

p. Section 16.0 Evidentiary Effect of the Negotiations. This section states that the Agreement was the result of a good faith negotiation; therefore, no offers or compromises made during the course of those negotiations will be used in Court to interpret or enforce the Agreement.

q. Section 17.0 Rights and Remedies. This section describes the rights and remedies of the Parties to enforce the Agreement and reiterates that the Agreement is intended to provide water in perpetuity to the Navajo Nation by way of settlement in lieu of water rights claims that could be asserted in the General Stream Adjudication.

r. Section 18.0 Obtaining Court Decree in General Stream Adjudication. This section describes how the rights of the Navajo Nation in the Agreement will be incorporated into a final decree to be filed with the court in the General Stream Adjudication.

s. Section 19.0 Necessary Acts and Cooperation. This section commits the Parties to cooperate, including the cooperation necessary to obtain a final binding decree.

t. Section 20.0 Contingent on the Appropriation of Funds. This section clarifies that the performance of any obligations of the United States under the Agreement are contingent on the availability of funds. Members of the Oljato Chapter understand that if funds are not available for the purposes

described in Section 5.0, the Enforceability Date described in Section 11.0 will not occur and the Agreement is not enforceable.

u. Section 21.0 Other Provisions. This section describes miscellaneous provisions such as the addresses for notices to be sent pursuant to the Agreement.

v. Section 22.0 Signature Authority. This section requires the signatories to the Agreement to be authorized to bind the Party each person represents to the Agreement.

8. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, and members of the Oljato Chapter believe that the proposed Settlement Agreement is in the best interests of Oljato Chapter, the Navajo People in Utah, and the Navajo Nation.

NOW THEREFORE BE IT RESOLVED THAT:

A. The Oljato Chapter hereby endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.

B. The Oljato Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement as expeditiously as possible.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered at a duly called meeting of the Oljato Chapter, Navajo Nation, at which a quorum was present and that the same was passed by a vote of 33 in favor; 1 opposed and 0 abstained on this 8 day of **NOVEMBER 2015**.

1st Motion: Nelson Yellowman 2nd Motion: Shirlee Bedonie

James Adakai
James Adakai, President

Albert Holiday
Albert Holiday, Vice President

LaNell Menard-Parrish
LaNell Menard-Parrish, Secretary/Treasurer

Benedict Daniels
Benedict Daniels, Grazing Officer



**RESOLUTION OF THE
Naatsis'aan (NAVAJO MOUNTAIN)
CHAPTER OF THE NAVAJO NATION**

RESOLUTION NO: NM11/009-2016

**ENDORSING THE PROPOSED NAVAJO NATION / STATE OF UTAH
WATER RIGHTS SETTLEMENT AGREEMENT**

WHEREAS:

1. Pursuant to 26 N.N.C., Section 3 (A), the Navajo Mountain Chapter is a duly recognized certified Chapter of the Navajo Nation Government, as listed at 11 N. N. N., Part 1, Section 10; and
2. The Navajo Mountain Chapter is a recognized Chapter of the Navajo Nation government, vested with authority and responsibilities consider and take actions on matters of local concern that are in the best interest of the health, safety, and welfare of its chapter members and residents; and
3. Navajo Mountain (Naatsis'aán) Chapter is a duly recognized and certified chapter of the Navajo Nation government pursuant to 11 N.N.C. § 10; and
4. Water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
5. Navajo communities in Utah, including Navajo Mountain Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
6. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
7. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State

EXHIBIT

H

Alex
Presi

Jamie R. Holgate
Vice-President

Ella Jean Badoni
Secretary/Treasurer

Lucille S. Krause
Grazing Committee
Member

Herman Daniels, Jr.
Council Delegate

of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and

8. The Navajo Nation Department of Justice gave a presentation at Navajo Mountain Chapter concerning the proposed Settlement Agreement on June 14, 2014 and the Navajo Nation Water Rights Commission gave a similar presentation on November 13, 2015; and

9. The proposed Settlement Agreement is summarized here:

a. Section 1.0 Purpose. The purpose of the Agreement is to provide a permanent settlement of the water rights of the Navajo Nation in the State of Utah and to avoid future controversy over the quantification of such rights.

b. Section 2.0 Legal Basis for Agreement. This section affirms that the Agreement is made in accordance with the Constitution and laws of the United States and the State, and the treaties and laws of the Navajo Nation.

c. Section 3.0 Definitions. This section defines key terms to avoid future controversy concerning the interpretation of the Agreement.

d. Section 4.0 Quantification of Navajo Nation Water Rights. This section describes and quantifies the Navajo Nation's water rights, including:

- i. the right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;
- ii. the right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
- iii. the right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
- iv. the right to market or lease these water rights to the same extent as other water rights holders in Utah; and
- v. the priority date for most of the water would be May 17, 1884; however, the Navajo right would be subordinated to existing uses but senior to any non-Navajo use that may be developed in the future. In other words, during times of physical shortage of water in the river or the tributaries, the Navajo Nation's subordinated right means it could not seek to curtail non-Navajo rights existing as of the Enforceability Date, but could seek to curtail all rights developed thereafter. Nevertheless, this early priority

date protects Navajo water in Utah from being cut off in the event that the State of Utah is forced to curtail water uses throughout the state in order to comply with its downstream delivery obligations pursuant to interstate compacts.

e. Section 5.0 Utah Navajo Water Development Projects. This section describes the obligation of the United States to provide: (1) \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah and (2) to create an OM&R Trust Account in the amount of \$11.1M (2014\$) to help defray the operation, maintenance and replacement costs of the water development projects. The level of funding was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future.

f. Section 6.0 Rights of Members and Allottees. This section explains that the Agreement does not purport to quantify the rights of allottees but requires such rights to be satisfied out of the rights of the Navajo Nation as described in the Agreement.

g. Section 7.0 Identification of Existing On-Reservation State Appropriative Water Rights. This section describes how existing state rights will be converted into on-Reservation Navajo rights.

h. Section 8.0 Water Administration. This section describes how the Navajo Nation and the State of Utah will administer the water rights under the Agreement.

i. Section 9.0 Transfers Off the Reservation. This section describes how the Navajo Nation can use its water rights off of the Navajo Reservation.

j. Section 10.0 Administration for Compact Compliance. This section describes how the State may administer, in priority, water rights in the Southeastern Colorado River Basin in Utah, where Navajo Utah lands are located, for purposes of complying with interstate compacts relating to the Colorado River.

k. Section 11.0 Enforceability Date. This section describes the conditions that must be met for the Agreement to be final and enforceable.

l. Section 12.0 Waivers and Releases of Claims. This section describes the waivers that the Navajo Nation, the State of Utah and the United States (the "Parties") must enter into in order for the Agreement to be considered binding on the parties. Generally, the waivers and releases require each Party to waive claims concerning

damages, losses or injuries to the water rights of that Party and release the other Parties from liability for any such claims. The United States, as the trustee of tribal lands, has required similar waiver and release provisions in all recent Indian water rights settlements approved by Congress. Members of the Navajo Mountain Chapter understand that upon the Enforceability Date, the Agreement becomes a final, binding and permanent quantification of the water rights of the Navajo Nation in the State of Utah, and that the Navajo Nation cannot claim water rights in addition to those described in the Agreement, however, nothing in the Agreement prevents the Nation from acquiring additional water rights by purchase in the future. Members of the Navajo Mountain Chapter further understand that the Navajo Nation will retain all claims relating to activities affecting the quality of water, such as the Gold King Mine spill that occurred in August of 2015.

m. Section 13.0 Enforcement. This section describes how the Agreement shall be enforced, including how actions against the Parties to the Agreement, to enforce the Agreement may be brought in federal court.

n. Section 14.0 Capacities in Which Agreement is Executed. This section describes the capacities of the persons signing the Agreement on behalf of the Parties.

o. Section 15.0 Ratification and Amendment. This section acknowledges that Congress must ratify the Agreement and that the Parties must agree to any amendments to the Agreement in writing.

p. Section 16.0 Evidentiary Effect of the Negotiations. This section states that the Agreement was the result of a good faith negotiation; therefore, no offers or compromises made during the course of those negotiations will be used in Court to interpret or enforce the Agreement.

q. Section 17.0 Rights and Remedies. This section describes the rights and remedies of the Parties to enforce the Agreement and reiterates that the Agreement is intended to provide water in perpetuity to the Navajo Nation by way of settlement in lieu of water rights claims that could be asserted in the General Stream Adjudication.

r. Section 18.0 Obtaining Court Decree in General Stream Adjudication. This section describes how the rights of the Navajo Nation in the Agreement will be incorporated into a final decree to be filed with the court in the General Stream Adjudication.

s. Section 19.0 Necessary Acts and Cooperation. This section commits the Parties to cooperate, including the cooperation necessary to obtain a final binding decree.

t. Section 20.0 Contingent on the Appropriation of Funds. This section clarifies that the performance of any obligations of the United States under the

Agreement are contingent on the availability of funds. Members of the Navajo Mountain Chapter understand that if funds are not available for the purposes described in Section 5.0, the Enforceability Date described in Section 11.0 will not occur and the Agreement is not enforceable.

u. Section 21.0 Other Provisions. This section describes miscellaneous provisions such as the addresses for notices to be sent pursuant to the Agreement.

v. Section 22.0 Signature Authority. This section requires the signatories to the Agreement to be authorized to bind the Party each person represents to the Agreement.

10. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, and members of the Navajo Mountain Chapter believe that the proposed Settlement Agreement is in the best interests of Navajo Mountain Chapter, the Navajo People in Utah, and the Navajo Nation.

NOW, THEREFORE BE IT RESOLVED THAT:

A. The Navajo Mountain Chapter hereby endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.

B. The Navajo Mountain Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement as expeditiously as possible.

CERTIFICATION

We, hereby certify that the foregoing resolution was considered at a duly called Chapter meeting at Navajo Mountain Chapter (Navajo Nation) in Navajo Mountain, Utah at which a quorum present and the same was passed by a vote of 24 in favor 00 opposed and 00 abstained on the 13th day of November.

Motion: Willie Coreypers

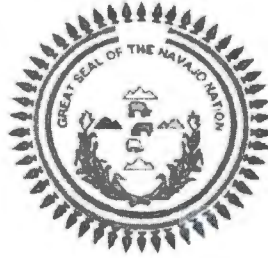
Second: Ella Jensen

Alex Bitsinnie
Alex Bitsinnie, President

Ella J. Badoni
Ella J. Badoni, Secretary / Treasurer

Jamie Holgate
Jamie Holgate, Vice- President

Lucille Krause
Lucille Krause, Grazing Member



**RESOLUTION OF THE
NAVAJO UTAH COMMISSION
OF THE NAVAJO NATION COUNCIL**

NUCNOV-659-15

**ENDORISING THE PROPOSED NAVAJO NATION / STATE OF UTAH
WATER RIGHTS SETTLEMENT AGREEMENT**

Whereas:

1. The Navajo Utah Commission is a governmental subdivision of the Navajo Nation and is subject to oversight by the Navajo Nation Council Naabik'iya'ti' Committee pursuant to resolution no. NABIAP-21-15; and
2. Water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
3. Navajo communities in Utah have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The Navajo Utah Commission has received numerous periodic reports concerning the status of those negotiations from the Department of Justice, the Department of Water Resources and the Navajo Nation Water Rights Commission, including a work session on January 17, 2013 for newly elected Navajo Utah Chapter

Officials and an additional extensive briefing on July 28, 2015, concerning the terms of the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement; and

7. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, and members of the Navajo residing in the Utah portion of the Navajo Nation, and the proposed Settlement Agreement is summarized here:

- a. Section 1.0 Purpose. The purpose of the Agreement is to provide a permanent settlement of the water rights of the Navajo Nation in the State of Utah and to avoid future controversy over the quantification of such rights,
- b. Section 2.0 Legal Basis for Agreement. This section affirms that the Agreement is made in accordance with the Constitution and laws of the United States and the State, and the treaties and laws of the Navajo Nation,
- c. Section 3.0 Definitions. This section defines key terms to avoid future controversy concerning the interpretation of the Agreement,
- d. Section 4.0 Quantification of Navajo Nation Water Rights. This section describes and quantifies the Navajo Nation's water rights, including:
 - i. the right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation,
 - ii. the right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded,
 - iii. the right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded,
 - iv. the right to market or lease these water rights to the same extent as other water rights holders in Utah, and
 - v. the priority date for most of the water would be May 17, 1884; however, the Navajo right would be subordinated to existing uses but senior to any non-Navajo use that may be developed in the future. In other words, during times of physical shortage of water in the river or its tributaries, the Navajo Nation's subordinated right means it could not seek

to curtail non-Navajo rights existing as of the Enforceability Date, but could seek to curtail all rights developed thereafter. Nevertheless, this early priority date protects Navajo water in Utah from being cut off in the event that the State of Utah is forced to curtail water uses throughout the state in order to comply with its downstream delivery obligations pursuant to interstate compacts,

e. Section 5.0 Utah Navajo Water Development Projects. This section describes the obligation of the United States to provide: (1) \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah and (2) to create an OM&R Trust Account in the amount of \$11.1M (2014\$) to help defray the operation, maintenance and replacement costs of the water development projects. The level of funding was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future,

f. Section 6.0 Rights of Members and Allottees. This section explains that the Agreement does not quantify the rights of allottees but requires such rights to be satisfied out of the rights of the Navajo Nation as described in the Agreement,

g. Section 7.0 Identification of Existing On-Reservation State Appropriative Water Rights. This section describes how existing state rights will be converted into on-Reservation Navajo rights,

h. Section 8.0 Water Administration. This section describes how the Navajo Nation and the State of Utah will administer the water rights under the Agreement,

i. Section 9.0 Transfers Off the Reservation. This section describes how the Navajo Nation can use its water rights off of the Navajo Reservation,

j. Section 10.0 Administration for Compact Compliance. This section describes how the State may administer, in priority, water rights in the Southeastern Colorado River Basin in Utah, where Navajo Utah lands are located, for purposes of complying with interstate compacts relating to the Colorado River,

k. Section 11.0 Enforceability Date. This section describes the conditions that must be met for the Agreement to be final and enforceable,

l. Section 12.0 Waivers and Releases of Claims. This section describes the waivers that the Navajo Nation, the State of Utah and the United States (the "Parties") must enter into in order for the Agreement to be considered binding on the parties. Generally, the waivers and releases require each Party to waive claims concerning damages, losses or injuries to the water rights of that Party and release the other Parties from liability for any such claims. The United States, as the trustee of tribal lands, has required similar waiver and release provisions in all recent Indian water rights settlements approved by Congress. The Navajo Utah Commission understands that upon the Enforceability Date, the Agreement becomes a final, binding and permanent quantification of the water rights of the Navajo Nation in the State of Utah, and that the Navajo Nation cannot claim water rights in addition to those described in the Agreement, however, nothing in the Agreement prevents the Nation from acquiring additional water rights by purchase in the future. The Navajo Utah Commission further understands that the Navajo Nation will retain all claims relating to activities affecting the quality of water, such as the Gold King Mine spill that occurred in August of 2015,

m. Section 13.0 Enforcement. This section describes how the Agreement shall be enforced, including how actions against the Parties to the Agreement, to enforce the Agreement may be brought in federal court,

n. Section 14.0 Capacities in Which Agreement is Executed. This section describes the capacities of the persons signing the Agreement on behalf of the Parties,

o. Section 15.0 Ratification and Amendment. This section acknowledges that Congress must ratify the Agreement and that the Parties must agree to any amendments to the Agreement in writing,

p. Section 16.0 Evidentiary Effect of the Negotiations. This section states that the Agreement was the result of a good faith negotiation; therefore, no offers or compromises made during the course of those negotiations will be used in Court to interpret or enforce the Agreement,

q. Section 17.0 Rights and Remedies. This section describes the rights and remedies of the Parties to enforce the Agreement and reiterates that the Agreement is intended to provide water in perpetuity to the Navajo Nation by way

of settlement in lieu of water rights claims that could be asserted in the General Stream Adjudication,

r. Section 18.0 Obtaining Court Decree in General Stream Adjudication. This section describes how the rights of the Navajo Nation in the Agreement will be incorporated into a final decree to be filed with the court in the General Stream Adjudication,

s. Section 19.0 Necessary Acts and Cooperation. This section commits the Parties to cooperate, including the cooperation necessary to obtain a final binding decree,

t. Section 20.0 Contingent on the Appropriation of Funds. This section clarifies that the performance of any obligations of the United States under the Agreement are contingent on the availability of funds. The Navajo Utah Commission understands that if Congress does not appropriate the funds for the purposes described in Section 5.0, the Enforceability Date described in Section 11.0 will not occur and the Agreement is not enforceable,

u. Section 21.0 Other Provisions. This section describes miscellaneous provisions such as the addresses for notices to be sent pursuant to the Agreement,

v. Section 22.0 Signature Authority. This section requires the signatories to the Agreement to be authorized to bind the Party each person represents to the Agreement; and

8. On July 25, 2015, The Navajo Utah Commission advised the Nation Water Rights Commission that it would not take official action to endorse the Settlement Agreement until public meetings were held to educate the Navajo People living in the seven chapters on the Navajo Nation in Utah concerning the terms of the Settlement Agreement; and

9. The Navajo Nation Water Rights Commission gave numerous presentations on the Settlement Agreement in Utah, including seven chapter meetings, and all seven chapters passed resolutions endorsing the Settlement Agreement as follows:

a. Red Mesa Chapter Resolution # RMC 006-092115 *Endorsing the Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement* (September 21, 2015),

b. Resolution of TeecNosPos Chapter TNPCH 10-032-015 *Endorsing the Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement* (October 5, 2015),

c. Resolution of the Aneth Chapter ACOCT-16-005 *Endorsing the Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement* (October 11, 2015),

d. Mexican Water Chapter Resolution MWCOCT14-032 *Approve to endorse the proposed Navajo Nation / State of Utah water rights settlement agreement* (October 14, 2015),

e. Resolution of Dennehotso Chapter DCHOCT-06-2015 *Endorsing the Proposed Navajo Nation / State of Utah Water Rights Settlement Agreement* October 15, 2015,

f. Resolution of Oljato Chapter OLJ11-01-2015 *Endorsing the Proposed Navajo Nation / State of Utah Water Rights Settlement Agreement* November 8, 2015,

g. Resolution of the Naatsis'aan (Navajo Mountain) Chapter of the Navajo Nation Resolution No. NM11/009-2016 *Endorsing the Proposed Navajo Nation / State of Utah Water Rights Settlement Agreement* November 13, 2015;
and

10. The Navajo Utah Commission has determined that the proposed Settlement Agreement is in the best interests of Navajo chapters in Utah, the Navajo People in Utah, and the Navajo Nation.

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Utah Commission hereby:

1. Endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.

2. Encourages the Navajo Nation Council to take steps to expeditiously approve the Navajo Nation / State of Utah Water Rights Settlement Agreement.

CERTIFICATION

We, hereby certify that the foregoing resolution was duly considered by Navajo Utah Commission at a duly called meeting at Naa'Tsis' Aan , Utah at which a quorum was present and the same was passed by a vote of 5 in favor, 0 opposed, and 1 abstentions, this 19th day of November, 2015.

A handwritten signature in dark ink, appearing to read 'Darrell Williams', is written over a horizontal line.

Darrell Williams, Chairperson
NAVAJO UTAH COMMISSION

MOTION: Davis Filfred
SECOND: Herman Farley



Enrolled Copy

S.C.R. 2

1 **CONCURRENT RESOLUTION REGARDING NAVAJO WATER**
2 **RIGHTS SETTLEMENT**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David P. Hinkins**

6 House Sponsor: Jack R. Draxler

7

8 **LONG TITLE**

9 **General Description:**

10 This concurrent resolution of the Legislature and the Governor declares support for the
11 negotiated settlement of federal reserved water rights between the Navajo Nation and
12 representatives of the state of Utah.

13 **Highlighted Provisions:**

14 This resolution:

15 ▸ declares support for the negotiated settlement of federal reserved water rights,
16 particularly the state of Utah/Navajo Nation Reserved Water Rights Settlement
17 proposed by a negotiating committee composed of the Navajo Nation and Utah
18 representatives and currently being considered by a United States negotiating team.

19 **Special Clauses:**

20 None

21

22 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

23 WHEREAS, the Governor of Utah and the President of the Navajo Nation, by a
24 memorandum of understanding dated August 13, 2003, agreed to jointly explore settlement of
25 federal reserved water right claims for the portion of the Navajo Nation located in southeastern
26 Utah;

27 WHEREAS, representatives of the state of Utah and the Navajo Nation have negotiated
28 a proposed settlement in good faith;

29 WHEREAS, the proposed agreement identifies projects to be built that will provide

30 drinking water to portions of the Navajo Nation located within Utah;

31 WHEREAS, the proposed settlement involves an amount of water and other provisions
32 to minimize the impact of the settlement on Utah water rights, particularly municipal rights,
33 and to assure that the water needed for the settlement fits within Utah's allocation from the
34 Colorado River;

35 WHEREAS, the United States has appointed a federal negotiating team to represent its
36 interest as trustee for the Navajo Nation;

37 WHEREAS, the federal negotiating team is currently evaluating the proposed
38 settlement agreement;

39 WHEREAS, in exchange for providing most of the funds for construction of the
40 drinking water projects that the agreement contemplates, the United States receives a valuable
41 waiver of claims related to lands located within Utah;

42 WHEREAS, when the settlement is ratified by the Utah Legislature, the Navajo Nation,
43 and the United States Congress, it will have the effect of law to resolve all controversies with
44 regard to water right claims by the Navajo Nation and its members in Utah;

45 WHEREAS, in consideration of the promises made in and the value received from the
46 settlement agreement, the state of Utah will be required to contribute to the construction of
47 projects identified in the agreement;

48 WHEREAS, the amount is currently projected to be approximately \$8 million;

49 WHEREAS, the state of Utah has established a Navajo Water Right Settlement Fund,
50 into which money has been deposited in anticipation of the agreement's ratification;

51 WHEREAS, at the present time, the Utah Legislature prefers not to encumber
52 additional funds for the settlement, recognizing these funds will likely not be expended during
53 the upcoming fiscal year; and

54 WHEREAS, the state of Utah maintains a rainy day fund that contains sufficient money
55 that could be used to fulfill its settlement obligations, if necessary;

56 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the
57 Governor concurring therein, declares support for the negotiated settlement of federal reserved

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S.C.R. 2

58 water rights, particularly the state of Utah/Navajo Nation Reserved Water Rights Settlement
59 proposed by a negotiating committee composed of Navajo Nation and Utah representatives and
60 currently being considered by a United States negotiating team.

61 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of
62 the United States, the Majority Leader of the United States Senate, the Speaker of the United
63 States House of Representatives, the President of the Navajo Nation, the Navajo Nation
64 Council, the Navajo Nation Department of Justice, and the members of Utah's congressional
65 delegation.

**Revisions made to the July 17, 2015
Navajo Nation/State of Utah Water Rights Settlement Agreement
Reflected in the December 14, 2015 Settlement Agreement**

- Section 3.0 – DEFINITIONS. The definition of “Utah Navajo Water Development Projects” has been clarified.
- Subsection 4.5 – Accounting for Depletion. The phrase “within the Colorado River System” was added. It is possible that as the State of Utah develops water, such that it gets closer to fully utilizing its Colorado River apportionment, it may adopt a depletion accounting methodology that may result in greater overall water uses in the State of Utah. If that happens, the depletions on the Navajo Nation should be accounted for in a similar manner so that the Nation may realize greater overall water uses as well.
- Section 5.0 – UTAH NAVAJO WATER DEVELOPMENT FUND. The title has been changed and the section revised to clarify that the settlement would create a fund to assist the Navajo Nation in addressing the water needs of the Utah portion of the Reservation, rather than require the construction of any particular water project. This gives the Nation the flexibility to meet its needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future. The revisions to Section 5 better reflect how the Settlement Agreement was explained to the Chapters and to the Navajo Utah Commission. Subsection 5.6 includes additional language to reflect that monies that are put into the OM&R Trust Account should be indexed to June 2014 dollars, so the Navajo Nation will not be “penalized” for any inflation that occurs after June 2014.
- Section 9.0 – TRANSFERS OFF THE RESERVATION. The language contained in the July 17 draft placed numerous restrictions on the Navajo Nation’s ability to transfer water to the Lower Colorado River Basin. The State of Arizona indicated it would seek additional limitations on the Navajo Nation. The language of Subsection 9.2 was revised, and Subsection 9.3 was deleted, to reflect that the Navajo Nation would be treated the same as any other water user in the State of Utah, thereby simplifying this section and making it less objectionable to Arizona or any other Colorado River Basin State.
- Section 13.0 – ENFORCEMENT. This section now includes subsection headings, but the text remains the same, with the exception that the provisions of Section 17.0 from the July 17 draft (RIGHTS AND REMEDIES) have been moved to this section and are now subsection 13.2 (Rights and Remedies).
- Section 20.0 – SIGNATURE AUTHORITY. The provisions of Section 14.0 from the July 17 draft (CAPACITIES IN WHICH AGREEMENT IS EXECUTED) have been incorporated here.

NAVAJO NATION

RCS# 365

Winter Session

1/26/2016

04:46:22 PM

Amd# to Amd#

Legislation No. 0412-15

PASSED

MOT Damon

Approving the Proposed

SEC Brown

Navajo Utah Water Rights
Settlement Agreement

Yea : 13

Nay : 7

Not Voting : 4

Yea : 13

Begay, K
Begay, M
Begay, NM
Bennett

Brown
Damon
Daniels

Filfred
Jack
Phelps

Slim
Tso
Tsosie

Nay : 7

BeGaye, N
Chee

Hale
Perry

Pete
Smith

Witherspoon

Not Voting : 4

Crotty

Shepherd

Yazzie

Bates