

RESOLUTION OF THE  
NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE  
23<sup>rd</sup> NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE AND NAABIK'ÍYÁTI'; SUPPORTING THE UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION ASSISTANCE AGREEMENT WITH THE NAVAJO NATION TRIBAL GOVERNMENT IN THE AMOUNT OF \$74,699,286.00 FOR THE AGREEMENT R18AC00045 FOR THE DESIGN AND CONSTRUCTION OF THE CROWNPOINT LATERAL AND A PORTION OF THE WINDOW ROCK LATERAL OF THE NAVAJO-GALLUP WATER SUPPLY PROJECT; AND, APPROVING A WAIVER OF THE INDIRECT COST RATE

BE IT ENACTED:

**Section One. Authority**

- A. The Resources and Development Committee (RDC) is a standing committee of the Navajo Nation Council. It is empowered to oversee regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alteration of natural state of the resource, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as a good steward. 2 N.N.C. §§ 500 (A), 500 (C) (2).
- B. The Budget and Finance Committee is a standing committee of the Navajo Nation Council. It is empowered to "[a]uthorize, review, approve and accept agreements, including contracts and grants, between the Navajo Nation and any federal, state or regional authority upon the recommendation of the standing committee which has oversight of the division, department or program which has applied for the agreement, or upon recommendation of the Chapter." 2 N.N.C. §§ 300 (A), 301 (B) (15).
- C. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. Among other statutory powers, the committee has the delegated responsibility to "review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments." 2 N.N.C. § 701 (A) (7). Regarding grants, the Naabik'íyáti' Committee negotiates

indirect cost rates; and, it is authorized to waive such costs. 2 N.N.C. § 701(A)(10).

## **Section Two. Findings**

- A. The Water Management Branch requests "waiving of the Indirect Cost (IDC) for Agreement R18AC00045 with the U.S. Bureau of Reclamation for the design and construction of the Crownpoint Lateral and a portion of the Window Rock Lateral of the Navajo-Gallup Water Supply (Project). The request for the waiver is based on the funding ceiling for the [Navajo-Gallup Water Supply] Project as part of the San Juan River Water Rights Settlement Agreement in New Mexico. While the [Navajo-Gallup Water Supply] Project's budget ceiling is indexed on an annual basis, it originally did not anticipate the Navajo Nation constructing portions of the [Navajo-Gallup Water Supply] Project and, therefore, no IDC was budgeted in the original budget as part of the [San Juan River Water Rights] Settlement Agreement." July 18, 2018 memorandum from Jason John, Principal Hydrologist, to 164 Reviewers.
- B. The budget forms for the initial allocation of \$40,000,000 for the U.S. Bureau of Reclamation Navajo-Gallup Water Supply Project Crownpoint Lateral are attached as Exhibit A.
- C. The United States Department of the Interior Bureau of Reclamation Assistance Agreement Number R18AC00045 and the Cooperative Agreement Between Bureau of Reclamation and the Navajo Nation Tribal Government for Design, Construction and Construction Oversight for Reaches 10.1, 10.2, 10.3 & 12.3 of the Navajo Gallup Water Supply Project are attached as **Exhibit B**.
- D. The Naabik'íyáti' Committee of the Navajo Nation Council reviews and approves "the negotiation and setting of the Navajo Nation's indirect cost or administrative cost rate agreements with the cognizant federal agent." 2 N.N.C. §701(A)(10). The Naabik'íyáti' Committee may waive such costs when it determines it is in the best interests of the Navajo Nation and when the "division, department or program requesting the waiver demonstrates a statutory and/or regulatory requirement that limits the indirect cost or administrative cost rate available for a particular grant or contract, or ... [t]here is a showing of necessity and a commitment of available general funds by the division, department or program requesting the waiver which is

available to offset the loss in indirect costs or administrative costs." 2 N.N.C. §701(A)(10)(a) and (b).


- E. The Naabik'iyáti' Committee of the Navajo Nation Council finds it is in the best interest of the Navajo Nation to waive the Indirect Cost Rate because there is a showing of necessity for the waiver.

**Section Three. Approving waiver of Indirect Cost Rate**

The Navajo Nation hereby supports the United States Department of the Interior Bureau of Reclamation Assistance Agreement R18AC00045 with the Navajo Nation Tribal Government in the amount of \$74,699,286.00 and approves a waiver of the indirect cost rate.

**CERTIFICATION**

I, hereby, certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 23<sup>rd</sup> 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 12 in Favor, and 00 Opposed, on this 23<sup>RD</sup> day of August 2018.



Jonathan L. Hale, Chairman Pro Tem  
Naabik'iyáti' Committee

Motioned: Honorable Seth Damon  
Second : Honorable Benjamin L. Bennett

Chairman Pro Tem Jonathan L. Hale not voting

**EXHIBIT**  
**A**

PART I. Business Unit No.:		NEW		Program Title:		USBOR NGWSP CROWNPOINT		Division/Branch: Natural Resources/Executive		
Prepared By:		Jason John		Phone No.:		928-727-4004		Email Address: jasonjohn@navajo-nsn.gov		
PART II. FUNDING SOURCE(S)		Fiscal Year	Amount	% of	PART III. BUDGET SUMMARY		Fund Type	(A) NNC Approved Original Budget	(B) Proposed Budget	(C) Difference (Column B - A)
USBOR		10/1/18-9/30/19	40,000,000.00	100%						
					2001 Personnel Expenses					
					3000 Travel Expenses					
					3500 Meeting Expenses					
					4000 Supplies					
					5000 Lease and Rental					
					5500 Communications and Utilities					
					6000 Repairs and Maintenance					
					6500 Contractual Services		6		12,869,571	12,869,571
					7000 Special Transactions					
					8000 Public Assistance		6		27,130,428.64	27,130,429
					9000 Capital Outlay					
					9500 Matching Funds					
					9500 Indirect Cost					
					TOTAL				40,000,000.00	40,000,000
					PART IV. POSITIONS AND VEHICLES			(D)	(E)	
					Total # of Positions Budgeted:			0	0	
					Total # of Permanently Assigned Vehicles:			0	0	
					TOTAL:			\$40,000,000.00	100%	
PART V. I HEREBY ACKNOWLEDGE THAT THE INFORMATION CONTAINED IN THIS BUDGET PACKAGE IS COMPLETE AND ACCURATE.										

Jason John, Principal Hydrologist

SUBMITTED BY: Program Manager's Printed Name

SUBMITTED BY: Program Manager's Signature and Date

Bidlah Becker, Executive Director

APPROVED BY: Division Director/Branch Chief's Printed Name

APPROVED BY: Division Director/Branch Chief's Signature and Date



THE NAVAJO NATION  
PROGRAM PERFORMANCE CRITERIA

FY 2018

PART I. PROGRAM INFORMATION:

Business Unit No.: NEW

Program Name/Title: USBOR NGWSP CROWNPOINT

PART II. PLAN OF OPERATION/RESOLUTION NUMBER/PURPOSE OF PROGRAM

Pursuant to RDCO-79-16: A) The Department of Water Resources shall provide stewardship to manage, provide comprehensive water planning, compile information on existing surface and groundwater resources, coordination of the development and utilization of the Navajo Nation's waters to manage existing uses and to plan for future adequate water resources for domestic, industrial, agricultural, recreation, wildlife, aquatic life and other beneficial uses for maximum beneficial use to enhance the natural and human environment and exercise the sovereignty of the Navajo Nation over its waters; B) The Department of Water Resources shall provide administration and ensure compliance with all applicable laws, rules, regulations, policies and procedures related to the department's administrative, technical and financial functions; C) The Department of Water Resources shall operate and maintain all livestock, irrigation and domestic water facilities under its jurisdiction; D) The Department of Water Resources shall study, plan, design, construct, rehabilitate and provide Engineering, Geohydrological, drilling and construction support to water development projects; E) The Department of Water Resources shall participate in the study, planning, design, monitoring, rehabilitation/upgrade of major dams on the Navajo Nation; F) The Department of Water Resources shall serve as a repository for water and climate related data...

PART III. PROGRAM PERFORMANCE CRITERIA:

1st QTR	2nd QTR	3rd QTR	4th QTR
Goal	Actual	Goal	Actual

1. Goal Statement:

Water Project Planning/Design

Program Performance Measure:

Draft Project Alignment and Permission to Survey

25%

75%

100%

2. Goal Statement:

Water Project Planning/Design

Program Performance Measure:

Environmental Assessment and Cultural Resource Surveys

10%

30%

60%

90%

3. Goal Statement:

Water Project Planning/Design

Program Performance Measure:

Draft Design

10%

30%

60%

90%

4. Goal Statement:

Water Project Planning/Design

Program Performance Measure:

Draft Bid Package

25%

50%

90%

5. Goal Statement:

Program Performance Measure:

PART IV. I HEREBY ACKNOWLEDGE THAT THE ABOVE INFORMATION HAS BEEN THOROUGHLY REVIEWED.

Jason John, Principal Hydrologist

Program Manager's Printed Name

8/5/18

Program Manager's Signature and Date

Bidiah Becker, Executive Director

Division Director/Branch Chief's Printed Name

Division Director/Branch Chief's Signature and Date

210

THE NAVAJO NATION  
DETAILED BUDGET AND JUSTIFICATION

FY 2018

<b>PART I. PROGRAM INFORMATION:</b> Program Name/Title: <u>USBOR NGWSP CROWNPOINT</u>		Business Unit No.: <u>NEW</u>	
<b>PART II. DETAILED BUDGET:</b>			
(A)		(B)	
Object Code (LOD 6)	Object Code Description and Justification (LOD 7)	(C) Total by DETAILED Object Code (LOD 6)	(D) Total by MAJOR Object Code (LOD 4)
6500	<b>CONTRACTUAL SERVICES</b> Navajo-Gallup Water Supply Project Crownpoint Lateral Engineering		12,869,571
6830	Other Technical Services 6865 Technical Service Expense (Plans and Designs for NGWSP Reaches 10.1, 10.2 and 10.3 with sub-Reaches)	12,869,571	
8500	<b>PUBLIC ASSISTANCE</b> Navajo-Gallup Water Supply Project Crownpoint Lateral Construction		27,130,428
	Infrastructure (Non-Cap) 8550 Water/Wastewater (NGWSP Reaches 10.1, 10.2 and 10.3 with sub-Reaches)	27,130,429	
<b>TOTAL</b>		40,000,000	40,000,000

**Budget Break-down for Navajo Nation  
Cooperative Agreement No. R18AC00045 (Initial Obligation)**

<b>Budget Category</b>	<b>Amount</b>
Total Pre-Construction Costs (Non-Contract & ROW)	\$ 12,019,751.86
NNBAT (6%)	\$ 309,555.08
NMGRT (7.875%)	\$ 540,264.41
<b>Total Pre-Construction Costs, w/ Taxes</b>	<b>\$ 12,869,571.36</b>
Construction Cost	\$ 25,594,744.00
NNBAT	\$ 1,535,684.64
<b>Construction Cost, w/ Tax</b>	<b>\$ 27,130,428.64</b>
<b>Total Budget Allocation</b>	<b>\$ 40,000,000.00</b>



**Pre-Construction Cost Detail by Reach for NGWSP Reaches 10.1, 10.2 & 10.3 with Sub-Reaches (Pre-Construction Costs)**

Reach	Non-Contract (Pre-Const)	Navajo Nation Tax (8%)	NMGR (7.875%)	Non-Contract (pre-const) w/ Tax	ROW	Navajo Nation Tax (8%)	ROW w/ Tax	Pre-Const NC + ROW	Navajo Nation Tax (8%)	NMGR (7.875%)	Pre-Const NC + ROW, w/ Tax
Reach 10.1	\$ 735,638	\$ 14,638	\$ 38,719	\$ 788,985	\$ 177,305	\$ 10,638	\$ 187,943	\$ 912,943	\$ 25,276	\$ 38,719	\$ 976,938
Reach 10.1.1 (CC)	\$ 434,715	\$ 9,527	\$ 21,730	\$ 465,971	\$ 135,703	\$ 8,142	\$ 143,845	\$ 570,418	\$ 17,669	\$ 21,730	\$ 609,817
Reach 10.1 w/Sub-Reaches	\$ 1,170,353	\$ 24,165	\$ 60,449	\$ 1,254,968	\$ 313,008	\$ 18,780	\$ 331,788	\$ 1,483,360	\$ 42,945	\$ 60,449	\$ 1,586,755
Reach 10.2	\$ 3,808,625	\$ 60,927	\$ 219,963	\$ 4,089,515	\$ 859,488	\$ 51,569	\$ 911,057	\$ 4,668,113	\$ 112,496	\$ 219,963	\$ 5,000,572
Reach 10.2.1 (SR)	\$ 211,605	\$ 5,357	\$ 9,633	\$ 226,595	\$ 78,802	\$ 4,728	\$ 83,530	\$ 290,407	\$ 10,085	\$ 9,633	\$ 310,125
Reach 10.2 w/Sub-Reaches	\$ 4,020,230	\$ 66,284	\$ 229,596	\$ 4,316,110	\$ 938,290	\$ 56,297	\$ 994,587	\$ 4,958,520	\$ 122,581	\$ 229,596	\$ 5,310,697
Reach 10.3	\$ 2,453,564	\$ 44,784	\$ 134,439	\$ 2,632,787	\$ 644,668	\$ 38,680	\$ 683,348	\$ 3,098,232	\$ 83,464	\$ 134,439	\$ 3,316,136
Reach 10.3.1 (Cmpl)	\$ 1,928,104	\$ 32,324	\$ 109,413	\$ 2,069,841	\$ 409,938	\$ 24,596	\$ 434,535	\$ 2,338,042	\$ 56,920	\$ 109,413	\$ 2,504,375
Reach 10.3.2 (Nhdg)	\$ 39,306	\$ 967	\$ 1,826	\$ 42,099	\$ -	\$ -	\$ -	\$ 39,306	\$ 967	\$ 1,826	\$ 42,099
Reach 10.3.3 (CPR - Bcn&LW)	\$ 74,627	\$ 1,018	\$ 4,541	\$ 80,186	\$ 27,665	\$ 1,660	\$ 29,324	\$ 102,291	\$ 2,677	\$ 4,541	\$ 109,510
Reach 10.3 w/Sub-Reaches	\$ 4,495,601	\$ 78,092	\$ 250,220	\$ 4,824,913	\$ 1,082,271	\$ 64,936	\$ 1,147,207	\$ 5,577,872	\$ 144,028	\$ 250,220	\$ 5,972,120
<b>Total</b>	<b>\$ 9,686,183</b>	<b>\$ 169,541</b>	<b>\$ 540,264</b>	<b>\$ 10,395,989</b>	<b>\$ 2,333,589</b>	<b>\$ 140,014</b>	<b>\$ 2,473,603</b>	<b>\$ 12,019,762</b>	<b>\$ 309,566</b>	<b>\$ 540,264</b>	<b>\$ 12,869,571</b>

Note: All Pre-Construction and Non-Contract and ROW costs are given at 2018 Price Level.





UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
ASSISTANCE AGREEMENT

1A. AGREEMENT NUMBER R18AC00045		1B. MOD NUMBER N/A		2. TYPE OF AGREEMENT <input type="checkbox"/> GRANT <input checked="" type="checkbox"/> COOPERATIVE AGREEMENT		3. CLASS OF RECIPIENT Tribal Government			
4. ISSUING OFFICE Bureau of Reclamation Upper Colorado Regional Office 125 South State Street, Room 8100 Salt Lake City, UT 84138				5. RECIPIENT Navajo Nation Tribal Government 2 miles N of HWY 264 Window Rock, AZ 86515					
				EIN #:		86-0092335		County Apache	
				DUNS #:		009001702		Congress Dist 01	
6. GRANTS MANAGEMENT SPECIALIST Deborah Chorlton Bureau of Reclamation Upper Colorado Regional Office 125 South State Street, Room 8100 Salt Lake City, UT 84138 801-524-3734 dchorlton@usbr.gov				7. RECIPIENT PROJECT MANAGER Jason John, Branch Manager and Principal Hydrologist Navajo Nation Water Management Branch, Dept. of Water Resources P.O. Box 678 Fort Defiance, AZ 86504 928-729-4501 jasonjohn@navajo-nsn.gov					
8. GRANTS OFFICER TECHNICAL REPRESENTATIVE Dianne Paxton Western Colorado Area Office 185 Suttle Street, Suite 2 Durango, CO 81303 970-385-6547 dpaxton@usbr.gov				9A. INITIAL AGREEMENT EFFECTIVE DATE See Box 17a.		9B. MODIFICATION EFFECTIVE DATE: N/A			
				10. COMPLETION DATE December 31, 2024					
11A. PROGRAM STATUTORY AUTHORITY Public Law 111-11, Subtitle B, Part III Navajo Gallup Water Supply Project						11B. CFDA Number 15.552			
12. FUNDING INFORMATION		RECIPIENT/OTHER		RECLAMATION		13. REQUISITION NUMBER 20155241			
Total Estimated Amount of Agreement		\$0.00		\$74,699,286.00		14A. ACCOUNTING AND APPROPRIATION DATA XXXR4081G1 RN169570CP.1152000			
This Obligation		\$0.00		\$40,000,000.00					
Previous Obligation		\$0.00		\$0.00					
Total Obligation		\$0.00		\$40,000,000.00					
Cost-Share %		0%		100%		14B. TREASURY ACCOUNT FUNDING SYMBOL 14X4081			
15. PROJECT TITLE Design, Construction and Construction Oversight for Reaches 10.1, 10.2, 10.3 & 12.3 of the Navajo Gallup Water Supply Project									
16a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the above-named recipient.  BY: _____  DATE: _____				17a. Award of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America, Department of the Interior, Bureau of Reclamation.  BY: _____  DATE: _____					
				17b. NAME OF GRANTS OFFICER Brent Rhees					
16b. NAME, TITLE, AND TELEPHONE NUMBER OF SIGNER Russell Begaye, President, The Navajo Nation  Additional signatures are attached									

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**Cooperative Agreement  
Between  
Bureau of Reclamation  
And  
The Navajo Nation Tribal Government  
For  
Design, Construction and Construction Oversight for Reaches 10.1, 10.2, 10.3  
& 12.3 of the Navajo Gallup Water Supply Project**

**I. OVERVIEW AND SCHEDULE**

**1. AUTHORITY**

This Cooperative Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as "Reclamation," and The Navajo Nation Tribal Government, hereinafter referred to as the "Recipient," "Navajo Nation" or "non-Federal entity" pursuant to Public Law 111-11, Title X, Subtitle B, Part III, Section 10602 Authorization of Navajo Gallup Water Supply Project (NGWSP). The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

**SEC. 10602. AUTHORIZATION OF NAVAJO-GALLUP WATER SUPPLY PROJECT.**

(a) **IN GENERAL.** The Secretary, acting through the Commissioner of Reclamation, is authorized to design, construct, operate, and maintain the Project in substantial accordance with the preferred alternative in the Draft Impact Statement.

**2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION**

Once completed, the Navajo Gallup Water Supply Project (NGWSP or Project) will provide a reliable municipal, industrial, and domestic water supply to the Navajo Nation chapter communities located in New Mexico; the City of Gallup, New Mexico; Window Rock and Fort Defiance, Arizona; the Navajo Agricultural Products Industry; and a portion of the Jicarilla Apache Nation (JAN). These areas currently rely on a rapidly depleting groundwater supply that is of poor quality and inadequate to meet the current and future needs.

**3. BACKGROUND AND OBJECTIVES**

The NGWSP is described in the preferred alternative of the Planning Report/Final Environmental Impact Statement (PR/FEIS) and subsequent Record of Decision dated October 1, 2009, which is generally described in Section 10602 (b) of the Public Law 111-11. Reaches 10.1, 10.2, 10.3 and 12.3 (Reaches) are among laterals which are part of this Project. Reclamation does not immediately have the resources available to add this specific



reach work to their current workload without adversely impacting the overall schedule of the Project. Due to a statutory deadline for completion of the Project of December 31, 2024 any delay could place the success of the Project, as well as the put the water rights settlement at considerable jeopardy.

The Navajo Nation's Department of Water Resources (NNDWR) has constructed more than 90 miles of NGWSP water transmission facilities. NNDWR is familiar with the terrain, local entities, and the Navajo Tribal Utility Authority (NTUA) systems in this area. They have a well-established institutional process for completing reach and facilities work within the NGWSP. This process includes public involvement, cultural resources compliance, National Environmental Protection Act of 1964 (NEPA) compliance, right of way (ROW) acquisition, field alignment (which is sensitive to cultural, NEPA, ROW, and public relations issues), design, and construction. These process steps are all part of an integrated and inter-dependent process.

The NNDWR, through their subcontractor Navajo Engineering and Construction Authority (NECA), is currently constructing Reaches 24, 25, and 26 on the NGWSP Cutter Lateral. Recently, NNDWR has investigated numerous scenarios for the NGWSP Crownpoint Lateral (Reaches 10.1, 10.2 and 10.3) that combine different alignments, peaking factors, ratios of surface water to ground water supply, NTUA connection points, and points of diversion from the San Juan Lateral trunk line. The NNDWR has recommended refinements to the original PR/FEIS alignment, which will extend the line to Crownpoint and provide initial connections to all the six chapters (Coyote Canyon, Standing Rock, Nahodishgish, Crownpoint, Becenti, and LittleWater) in the service areas. Further, the NNDWR, in collaboration with NTUA and Indian Health Services (IHS), have investigated numerous scenarios for Reach 12.3 of the NGWSP.

The scenarios for design, implementation, and costs for Reaches 10.1, 10.2, 10.3, and 12.3 are controlled by Reclamation's funding limitations as determined by the estimated cost for these reaches identified in the NGWSP Working Cost Estimate (WCE), which is updated annually, and takes in account Reclamation's costs for administering the Agreement. The latest released WCE is at the October 2016 price.

Both Reclamation and NNDWR have mutually determined the most effective means to accomplish this work would be for Reclamation to provide available funds under a Cooperative Agreement, allowing NNDWR to build the Reaches facilities with substantial involvement from Reclamation. As such the NNDWR will; provide the planning, design, plans, specifications, environmental compliance, cultural resource compliance, acquisition of land, acquisition of easements, rights-of-way, permitting, engineering reviews, contract administration, construction, construction management, inspections, and oversight for the transmission of water through the Reaches.

All lands and interests in land owned or held by the Navajo Nation will be provided by the Navajo Nation at no charge to the government in accordance with Section 10602 (c) of Public Law 111-11.



Upon completion of the work for the Reaches, the Navajo Nation will retain ownership and title to these Project facilities and be responsible for the operation, maintenance, and replacement of these portions of the Project.

#### **4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY**

This Agreement becomes effective on the date shown in Block 17a of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The Agreement shall remain in effect until the date shown in Block 10 of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The Completion date in Block 10 of Form 7-2279 is the statutory deadline of December 31, 2024 for Project completion. Any delays could place the success of the NGWSP, as well as the overall water rights settlement at considerable risk. The period of performance for this Agreement may only be modified through written modification to the Agreement by a Reclamation Grants Officer (GO).

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by the Grants Officer.

The estimated amount of this Agreement is based on; the detailed estimate for design and construction of Reaches 10.1, 10.2, 10.3 in the amount of \$63,219,263.00 (at October 2016 price levels); and a preliminary estimate for design and construction of Reach 12.3 in the amount of \$11,480,023.00 (at January 2018 price levels). The combined total estimated amount of this Agreement is \$74,699,286.00 as indicated by the "Total Estimated Amount of Agreement" within Block 12 of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement.

The initial amount of federal funding obligated to this Agreement at award is \$40,000,000.00 and is indicated by "This Obligation" within Block 12 of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement.

Subject to the availability of Congressional appropriations, subsequent funds will be made available for payment through written modifications to this Agreement by a Reclamation Grants Officer.

Additionally, there are other specific funding limitations and conditions identified for this Agreement. These are detailed in Section 7 of this Agreement, and below as follows:

- Specific to the Reaches 10.1, 10.2, and 10.3 detailed estimate of work (and as described in Section 3), the estimated amount and total amount of Federal funding to be expended for this work is further controlled by Reclamation's funding limitations identified in the NGWSP Working Cost Estimate (WCE). The WCE amount, currently updated to the October 2016 price level, and less Reclamation administrative costs, is approximately \$57,049,000. As such, any funding availability over \$57,049,000 is strictly subject to

**approved annual updates to the WCE and to the programmatic redirection of WCE funding by Reclamation for this portion of work.**

- **Specific to the Reach 12.3 preliminary estimate of work, access by the Recipient to any Reach 12.3 fund obligations is strictly contingent upon the Recipient's submittal, and GOTR and Grants Officer's approval of a detailed budget for the design and construction of this work. In addition, funding availability is subject to the limitations identified in PIN No. 014.2, dated July 24, 2017.**

## **5. SCOPE OF WORK AND MILESTONES**

This Agreement pertains to the design and construction of Reaches 10.1, 10.2, and 10.3 of the Crownpoint Lateral as further described herein, and in the report developed by Souder, Miller, and Associates titled "Draft Beacon Bisti/N9 Lateral Regional Water Plan and Capital Improvement Plan, dated February 2018," (See Attachment A); and Reach 12.3 of the Window Rock Lateral as further described herein, and in the report developed by the Indian Health Services (IHS) entitled "Feasibility Report, Community Water Supply Facilities, NGWSP, Waterline Extension, Reach 12.3, Phases I, II, and II, NTUA Preferred Route, dated March 2018" (See Attachment B).

The work under this Agreement will be referred to hereinafter as the "scope of work" (SOW). The SOW will include all work associated with; planning, design, plans, specifications, environmental compliance, cultural resource compliance, acquisition of land, acquisition of easements and rights-of-way, permitting, engineering reviews, contract administration, construction field work, construction management, inspections, oversight, and transfer of the facilities to "in service" status for Reaches 10.1, 10.2, 10.3 and 12.3.

Portions of the SOW will be at various stages of planning, estimating, design, and engineering, and are subject to change. Final determination, including value engineering recommendations, for the actual facilities cannot be made until the 90% final design and specification process for those reaches are completed. In the event, final design determinations require additional or revised facilities, and/or require the need for additional federal funding, the Recipient will submit written notification to Reclamation.

The SOW is separated into two (2) sections and specifically described below.

### **5.1 Description, Map, and SOW for Reaches 10.1, 10.2, and 10.3 (BBN9 Lateral)**

Reaches 10.1, 10.2, and 10.3 will be located in McKinley County, New Mexico on the Navajo Nation Reservation about 50 miles northeast of Gallup, New Mexico (Township 17 North, Range 12 West, Section 30). This is near the vicinity of the existing NTUA distribution systems for Navajo chapter communities, and will serve the following chapters: Coyote Canyon, Standing Rock (a.k.a. Tse'ii'ahi), Nahodishgish (a.k.a. Dalton Pass), Crownpoint, Becenti, and Littlewater (See Attachment C).

Reaches 10.1, 10.2, and 10.3 mean all facilities conveying transmission water from the end

of the transmission system at the Crownpoint turnout (near Pumping Plant No. 07), to the Coyote Canyon turnout, to the Standing Rock turnout, to the Dalton Pass turnout, and ending at or near the existing Crownpoint storage tank. These facilities will include pipeline transmission lines, valves, pump plants, storage tanks, chlorination stations, supervisory control and data acquisition (SCADA) systems, and such facilities required as part of the Project to store and deliver water to existing (or future) distribution systems which are not part of this Agreement. *Note: Facilities necessary to connect to distribution systems (both existing and future) are an integral part of the NGWSP and are specifically authorized in the authorizing legislation. Indian water rights settlement projects are built not only to meet today's needs, but more importantly, future demands.*

Reaches 10.1, 10.2, and 10.3 will also include associated sub-reaches for Navajo chapter service connections. These chapter connection plans (also referred to as Phase 1 service connections) will be as follows:

Reach 10.1 will include the Coyote Canyon connection plan;  
Reach 10.2 will include the Standing Rock connection plan;  
Reach 10.3 will include the; Crownpoint, Nahodishgish, Becenti, and Littlewater connections.

Reaches 10.1, 10.2, and 10.3 and their associated sub-reaches are collectively known as the Beacon Bisti/N-9 Lateral, or BBN9 Lateral. Detailed descriptions of these reaches and sub-reaches are as follows:

- Reach 10.1 transmission line from near Pumping Plant No. 07 near Twin Lakes to Coyote Canyon turnout;
- Reach 10.2 transmission line from Coyote Canyon turnout to Standing Rock turnout;
- Reach 10.3 transmission line from Standing Rock turnout to Nahodishgish (a.k.a. Dalton Pass) turnout;
- Reach 10.1.1 Phase 1 service connection from Coyote Canyon turnout part-way to existing Coyote Canyon tank
- Reach 10.2.1 Phase 1 service connection from Standing Rock turnout to existing Standing Rock tank #1
- Reach 10.3.1 Phase 1 service connection from Nahodishgish turnout to Crownpoint tank #2
- Reach 10.3.2 Phase 1 service to Nahodishgish utilizing existing inter-tie to the Crownpoint Regional System
- Reach 10.3.3 Phase 1 service to Becenti and Littlewater systems utilizing existing Crownpoint Regional System.

The final determination of the actual facilities that are included in the BBN9 Lateral will be made during the final design process for these reaches.

The BBN9 Lateral system will provide for the capacity to deliver water equivalent to the annual San Juan River (SJR) depletions contemplated in the PR/FEIS. The system, including main



line and combined Phase 1 and future follow-up Phase 2 service connections, will have the capacity to deliver the following:

- Coyote Canyon community 282 acre foot (af) per year with a peak demand of 0.39 cubic feet per second (cfs);
- Standing Rock community 363 af per year with a peak demand of 0.50 cfs;
- Nahodishgish community 266 af per year with a peak demand of 0.37 cfs;
- Crownpoint community 1,398 af per year with a peak demand of 1.93 cfs;
- Becenti community 140 af per year with a peak demand of 0.19 cfs;
- Littlewater community 200 af per year with a peak demand of 0.28 cfs;
- \*\*Lake Valley community 93 af per year with a peak demand of 0.13 cfs;
- \*\*White Rock community 77 af per year with a peak demand of 0.11 cfs;

*\*\*Lake Valley and White Rock connections are not part of the current SOW, but their demand is included in the capacity for Reaches 10.1, 10.2, and 10.3.*

The BBN9 Lateral system includes the capacity to service the chapters of Lake Valley and White Rock. In the future, the Navajo Nation may pursue a connection from Becenti to these Lake Valley and White Rock chapters, using non-NGWSP funds. As such, these connections are not part of the work under this Agreement.

## **5.2 Description, Map, and SOW for Reach 12.3**

Reach 12.3 will be located in Apache County, Arizona on the Navajo Nation Reservation, about 20 miles northwest of Gallup, New Mexico and along U.S. Route 264. It will be situated near Window Rock, AZ (close to the Arizona/New Mexico Border) and will service the communities of Fort Defiance and Saint Michaels, Arizona (**See Attachment D**).

Reach 12.3 means all facilities conveying transmission water from the end of the Reach 12.2 transmission system, at the Window Rock Turnout, and routed west to St. Michael's tank site. This will be part of the Fort Defiance/Window Rock Regional Water System which is operated by NTUA. These facilities will include a pipeline transmission line, valves, pumps, a chlorination point and building, storage tank, SCADA systems, and such facilities required as part of the Project to store and deliver water to existing (or future) distribution systems which are not part of this Agreement.

Reach 12.3 will be divided into three (3) phases; Phase I, II, and III:

- Phase I will connect the existing water system in Window Rock to the end of Reach 12.2, and will install a chlorination point/building through a connection plan;



- Phase II will construct a new transmission line, a connection point, and erect a water storage tank, as well as upgrade the chlorination building built in Phase I; Phase III will not be part of the work under this Agreement, and is intended to address any additional flowrate or storage capacities required to meet the needs of future populations.

### 5.3 Milestones

The SOW is expected to begin in the Fall of 2018 and continue through December 2024. The SOW and schedule are subject to available appropriations, and may be adjusted in consultation with the PCC and Recipient periodically to account for any delay in activities, appropriations, or if other adjustment are necessary. The following milestone dates will be used as the baseline for SOW schedule and will be periodically updated by the Grants Officer Technical Representative (GOTR) and the Recipient's Project Manager, with the Grants Officer's approval.

Milestone / Task / Activity	Planned Start Date	Planned Completion Date
Reach 10.1		
a) 30 – 60% Design	10/01/18	09/18/19
b) Environmental & Cultural Compliance	10/01/18	09/04/20
c) 90 - 100% Design	09/18/19	09/04/20
d) BOR's Review & NTP Issued	09/05/20	11/01/20
e) Construction Contract Award Process	11/01/20	12/29/20
f) Construction work	12/29/20	06/21/21
g) Substantially Complete and Final Acceptance	06/21/21	08/18/21
h) Facility In-Service	-	10/15/21
Reach 10.2		
a) 30 – 60% Design	10/01/19	09/17/20
b) Environmental & Cultural Compliance	10/01/19	09/04/21
c) 90 - 100% Design	09/17/20	09/04/21
d) BOR's Review & NTP Issued	09/04/21	11/01/21
e) Construction Contract Award Process	11/01/21	12/20/21
f) Construction work	12/20/21	06/16/24
g) Substantially Complete and Final Acceptance	06/16/24	07/17/24
h) Facility In-Service	-	08/13/24
Reach 10.3		
a) 30 – 60% Design	10/01/20	09/18/21
b) Environmental & Cultural Compliance	10/01/20	08/05/22
c) 90 - 100% Design	09/18/21	08/05/22
d) BOR's Review & NTP Issued	08/05/22	10/02/22
e) Construction Contract Award Process	10/02/22	11/30/22
f) Construction work	11/30/22	10/26/24
g) Substantially Complete and Final Acceptance	10/26/24	11/24/24

h) Facility In-Service	-	12/23/24
Reach 12.3		
a) 30 - 60% Design	01/01/21	09/18/21
b) Environmental & Cultural Compliance	01/01/21	06/06/22
c) 90 - 100% Design	09/18/21	06/06/22
d) BOR's Review & NTP Issued	06/06/22	08/03/22
e) Construction Contract Award Process	08/03/22	09/30/22
f) Construction	09/30/22	12/31/23
g) Substantially Complete and Final Acceptance	01/01/24	03/01/24
h) Facility In-Service	-	05/01/24

## 6. RESPONSIBILITY OF THE PARTIES

### 6.1 Recipient Responsibilities

**6.1.1** The Recipient shall carry out the Scope of Work (SOW) in accordance with the terms and conditions stated herein. The Recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the SOW contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

**6.1.2** Federal funds will be provided for the construction contracts, pre-construction costs, construction oversight, and project management for the Reaches. The Recipient will perform all design, construction, and construction oversight for the portion of the Reaches identified under Section 5.

**6.1.3** The Recipient will be responsible for the following:

- A. Furnish all materials and either perform the construction work or direct the construction work associated with construction of the Reaches.
- B. Secure all right of ways (ROW), permits and perform any regulatory compliance work required for the Recipient to administer construction work associated with construction of Reaches.
- C. Provide design and specification submittals at pre-agreed stages at 30%, 60% and 90%, for Reclamation review and approval. Reclamation will require a minimum of 30 days to provide comments for each submittal. All Reclamation comments require resolution prior to issuance of final documents.
- D. As final designs are developed (approaching the 90% design level), provide any additional detailed SOW and accompanying budget estimates to Reclamation for review and approval. Approval will be provided through formal modification of this agreement, by the Grants Officer incorporating the detailed SOW and budget.

- E. Provide Reclamation with information copies of award documents for contracts and subcontracts. The Recipient shall provide Reclamation's representative advance notification for all proposed contract actions involving funding, SOW changes, and disputes, for Reclamation's written concurrence, prior to award or modification issuance. Reclamation shall review and respond to the Recipient submittals within an appropriate time frame of approximately 30 days.
- F. Perform the following environmental compliance work.

- i. Coordinate and consult with Reclamation regarding the planned construction to determine if supplemental National Environmental Policy Act of 1964 (NEPA) will be required and if other federal agencies need to be included.

Coordination will consist of Reclamation's environmental protection specialist reviewing and commenting on contractor-produced draft and final work products. The work products will be prepared for final compliance signature by Reclamation.

- ii. Provide for approval to Reclamation, a final report documenting the following compliance work. The timeline and schedule for completion and submittal of this report should follow the established milestone start and completion dates for each of the individual reaches, as shown in Section 5.3 Milestones, under Item b) for each of the reaches. This report should include an environmental decision document for Reclamation's signature if supplemental NEPA is required. The work products must include the final cultural resource compliance documents described below.
      - a) Construct all work within the alignment analyzed in the PR/FEIS. Should deviations from that alignment be required, prepare supplemental NEPA documentation to comply with federal regulation and agency guidance as determined in Reclamation's 516 Departmental Manual, Chapter 14. The documentation shall disclose any impacts from the construction. Should any work be planned on Navajo Lands, prior to construction, the following is required:
        - 1) Coordinate with the Navajo Natural Heritage Program (NNHP) to determine if surveys will be required for sensitive species. If required by NNHP, provide for biological surveys and consult with the NNHP for effects to those species.
        - 2) If biological surveys were required by NNHP, obtain clearance from NNHP and obtain concurrence from the US Fish and Wildlife Service (USFWS) as required under the Endangered Species Act of 1973, Section 7 Consultation for federal project effects on federally listed threatened and endangered species and critical habitats.
    - iii. Support Reclamation's efforts in obtaining any regulatory authorities approval and/or concurrence.

**G. Perform the following cultural resource compliance work:**

- i. Coordinate with Reclamation's archaeologist to ensure compliance with the NGWSP Programmatic Agreement (PA), executed in November 2011, which identifies the roles and responsibilities of the signatory parties to ensure compliance with applicable federal, state, and tribal laws and requirements pertaining to the protection of cultural resources and historic properties. Activities will include, but not be limited to the following:
  - a) It is anticipated that coordination with Reclamation's area archaeologist will include review of the Recipient's preliminary draft report, the draft report, and the final report.
  - b) Reclamation will provide the final report to the PA advisory group to solicit their concerns.
  - c) Reclamation will provide the final report to the New Mexico State Historic Preservation Office (SHPO) and/or the Tribal Historic Preservation Office (THPO) for concurrence.
  - d) Upon selection of a feasibility-level alignment notification by the Recipient, Reclamation will coordinate with its contractor to perform the ethnographic survey.
  - e) Should mitigation or data recovery be required, Reclamation will coordinate with its contractor to perform this work.
- ii. Regarding the planned construction, provide a contractor, qualified per the Secretary of the Interior's standards, to perform the National Historic Preservation Act (NHPA) PL 89-665, as amended through 1992 (16 USC 470), Section 106, Class III survey compliance work, including site documentation, reporting and recommendations, in compliance with the PA, to the standards established by Reclamation. Provide a preliminary draft report of this work, for approval to Reclamation. Following receipt of Reclamation's comments on the preliminary draft report, provide a final draft report. Following receipt of Reclamation's comments on the final draft report, provide a final report. The timeline and schedule for completion and submittal of these reports should follow the established milestone start and completion dates for each of the individual reaches, as shown in Section 5.3 Milestones, under Item b) for each reach. The results of the final report are required to be incorporated into the environmental compliance work.

Reclamation, as the federal agency or nexus, will provide the final report or documentation to the regulatory authorities for approval and/or concurrence.
- iii. Provide construction contract provisions requiring work stoppage should a cultural resource be discovered.



- iv. Provide monitoring during construction as agreed upon in consultation with Reclamation, and enforce the construction contract provisions to stop work if cultural resources are discovered. Note the following clarifications; the Recipient has no responsibility for Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) compliance activities, data recovery or mitigation requirements. Reclamation's cultural resource contractor will be mobilized to address the discovery, including data recovery, and NAGPRA recoveries for mitigation in accordance with the PA and research design.
- H. Upon transfer to operations, maintenance, and replacement (OM&R) status of Reaches, the Recipient will assume full responsibility for the performance of and costs associated with the OM&R of the Reaches, except as provided for in P.L. 111-11, Section 10604(f).
- I. Provide the general construction oversight and acceptance necessary to ensure the Reaches are constructed to standards mutually developed by the Project Construction Committee.
- J. The Recipient, acting not as an agent of the U.S. Government and in performing work under this Agreement, shall not represent that it is acting in any manner as an agent of or on behalf of the United States.
- K. Comply with the applicable provisions contained in Standard Form 424D, Assurances-Construction Programs, which is part of this Agreement.
- L. Include all materials required for submittals under cover of a transmittal letter which shall contain:
  - Reference to this Cooperative Agreement No. R18AC00045
  - Complete list of enclosures, which are being submitted.
  - Purpose of submittal, i.e., information, review, approval, etc.
  - Transmit submittals to:

Dianne Paxton  
Grants Officer Technical Representative  
Bureau of Reclamation  
Western Colorado Area Office  
185 Suttle Street, Suite 2  
Durango, CO 81303
- M. Complete the financial and performance reports detailed within Section 1.9, Reporting Requirements and Distribution.
- N. Hold Reclamation harmless from any claims for any payments by all of Recipient's contractors, subcontractors and consultants for payment by all contractors,

subcontractors and/or consultants arising from any of Recipient's contracts.

- O. Ensure any deficiencies identified in the final inspection are corrected.
- P. Performing all work undertaken by the Recipient pursuant to this Agreement and all records pertaining thereto shall at all reasonable times and with reasonable advance notice to the Recipient, be open and subject to inspection by Reclamation.
- Q. Provide for all costs associated with furnishing and installing a pipeline, or appurtenances greater than that required to meet the needs of the Project.

## **6.2 Reclamation Responsibilities**

**6.2.1** Reclamation will monitor and provide Federal oversight of activities performed under this Agreement. Monitoring and oversight includes review and approval of financial status and performance reports, payment requests, and any other deliverables identified as part of the SOW. Additional monitoring activities may include site visits, conference calls, and other on-site and off-site monitoring activities. At the Recipient's request, Reclamation may also provide technical assistance to the Recipient in support of the SOW and objectives of this Agreement.

**6.2.2** Substantial involvement by Reclamation is anticipated during the performance of activities funded under this cooperative agreement. In support of this Agreement, Reclamation will be responsible for the following:

- A. Reclamation will perform the planning, design and construction work for facilities necessary to deliver Project water to the Crownpoint Turnout (for Reaches 10.1, 10.2, and 10.3) and to the downstream end of Reach 12.2 (for Reach 12.3). Reclamation will perform acceptance activities of the Recipient's planning, design and construction of the transmission facilities in the general area of Reaches.
- B. Reclamation, as the lead federal agency, will perform NEPA compliance oversight of the related work described herein performed by the Recipient. Reclamation will be the lead agency under a PA developed to comply with the NHPA, Section 106 and will perform compliance oversight of the related work described herein performed by the Recipient. Reclamation will perform all NAGPRA compliance activities in accordance with the PA.
- C. Review and acceptance of the design for Reaches prior to construction. Acceptance is for determining that the designed works meet the requirements of the Project from the perspective of the owner by performing a technical review of the design performed by the Recipient, and that the federal expenditures are appropriate.
- D. Review and approve detailed SOW and budget estimates submitted to Reclamation by the Recipient. Approval shall be through formal modification of this agreement by the Grants Officer incorporating the approved scope of work and budget.

- E. Provide engineering consultation, design criteria, and construction oversight for construction of Reaches with the intent of providing early identification of issues for resolution during performance and listing and identifying any deficiencies resulting from mistakes or misinterpretations during the design or construction of the project.
- F. Provide coordination, consultation, and reviews of environmental compliance work and cultural resource compliance work. The intent is to provide early identification of issues for resolution during performance and listing and identifying any deficiencies resulting from mistakes or misinterpretations during the design or construction of the project.
- G. Perform all NAGPRA compliance or cultural resource mitigation requirements. Reclamation's cultural resource contractor will be mobilized to address any inadvertent discovery, including data recovery in accordance with the NAGPRA Plan of Action, PA and research design.
- H. Review and oversight and provision for correction of reimbursement of costs and expenses reasonably incurred by the Recipient in conjunction with the planning, design, plans, specifications, engineering review, contract(s), contract administration, construction and construction oversight, consultation, and administration for the completion of Reaches.
- I. Reviewing and/or concurrence, in a timely manner, all necessary submittals and requests for reimbursements of funds.

**6.2.3 Reclamation and the Recipient mutually agree:**

- A. That the designs, plans, specifications, engineering reviews, contract(s), contract administration, construction and construction oversight for Reaches, will meet minimum codes, engineering standards and specifications regarding potable water supply pipelines and safety. Design criteria mutually developed by the Project Construction Committee shall be used as a guide for determining facilities constructed under this Agreement.
- B. To work effectively and efficiently to maintain public access and utilization of the affected public transportation. Apply best practices and prudent management of resources including existing land rights-of-way, environmental and cultural resources, and Reclamation funding resources.
- C. To complete work in the least disruptive manner to the general public and Reclamation's contractors working on other features of the Project. Both parties shall require that its contractors take reasonable steps to coordinate and cooperate.
- D. To appoint respective representatives (Refer to Section 8 of this Agreement) to coordinate administration of this Agreement as well as construction review and management.
- E. To jointly participate and concur in periodic and final inspections of the completed facilities associated with Reaches. Correction of identified deficiencies shall be approved by both parties.



- F. That all parties' responsibilities are subject to budget requirements as set forth in Section 7.

**6.2.4 Notice to Proceed.** No expenditure for any construction activity of obligated funds will be allowed until a written notice to proceed (NTP) is issued by Reclamation's Grants Officer to the Recipient. This clause is limited to expenditure of all funds related to construction of the Agreement work. This is required to assure all precedent to construction activities has been satisfactorily performed. Each portion of work associated with Reach 10.1, 10.2, 10.3 and 12.3 will require a distinct NTP.

## **7. BUDGET**

**7.1 Budget Estimate.** The approved budget estimate for this Agreement is \$74,699,286.00, and is based on separate portions of work, each with particular estimate level details, conditions, and limitations as follows:

- A. The approved budget estimate includes a detailed estimate for the portion of Reaches 10.1, 10.2, and 10.3, in the amount of \$63,219,263. See Table 1 below, entitled "Cost Summary for NGWSP Reaches 10.1, 10.2, 10.3 with sub-reaches." This detailed budget estimate includes all field costs and "service/non-contract" costs (as defined under Table 1, Note 1) for completion of all reach work. This budget estimate was reviewed and submitted from the Recipient through development by their subcontractor Souder, Miller, and Associates (SMA).

For all Reach 10.1, 10.2, 10.3 portions of work, the estimated amount and total amount of Federal funding to be expended for this work is further controlled by Reclamation's funding limitations identified in the NGWSP Working Cost Estimate (WCE). The WCE amount, currently updated to the October 2016 price level, and less Reclamation administrative costs, is approximately \$57,049,000. **As such, any funding availability over \$57,049,000 is strictly subject to approved annual updates to the WCE and to the programmatic redirection of WCE funding by Reclamation for this portion of work.**

- B. The approved budget estimate also includes the preliminary estimate for the portion of Reaches 12.3 in the amount of \$11,480,023. See Table 2 below, entitled "Preliminary Cost Summary for NGWSP Reach 12.3". This preliminary estimate includes all field costs and "service/non-contract" costs (as defined under Table 2, Note 1) for completion of all reach work. This preliminary budget estimate was reviewed and submitted by the Recipient through collaboration and development with NTUA and IHS for the portion of field costs. Reclamation provided further input for the portion of "service/non-contract costs" only.

**For the Reach 12.3 portion of work, due to the preliminary estimate provided, access by the Recipient to any Reach 12.3 fund obligations is strictly contingent upon the Recipient's submittal and Reclamation's review and approval of a detailed budget**



**for the design and construction of this work. In addition, funding availability is subject to the limitations identified in PIN No. 014.2, dated July 24, 2017.**

- C. For all Reaches 10.1, 10.2, 10.3 and 12.3, final design and engineering determinations (including any potential value engineering recommendations) for the facilities cannot be made until and during the 90% final design and specifications process for those Reaches. In the event, final design determinations require additional or revised facilities and/or require the need for additional federal funding, the Recipient will submit written notification to Reclamation. The Recipient's notification will include a request for additional funding, accompanied by a final detailed SOW, revised budget estimates, and justification for such additional reach facility costs. Reclamation will review and provide final approval through formal modifications of this agreement by the Grants Officer incorporating the final detailed SOW and budget estimate for such reaches.
- D. As federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this Agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this Agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this Agreement are the responsibility of the Grants Officer. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the Grants Management Specialist for review prior to incurrence of the costs in question.

**Table 1 – Cost Summary for NGWSP Reaches 10.1, 10.2 & 10.3 with Sub-Reaches**

Reach 10.1, 10.2, 10.3	Field Cost	Navajo Nation Tax (5%)	Total Field Cost w/tax	Service/Non-Contract Costs *See Note 1	Navajo Nation Tax (5%)	Total Service/Non-Contract w/tax	Total Cost w/tax
Reach 10.1	\$ 3,425,538	\$ 171,277	\$ 3,596,815	\$ 978,887	\$ 48,944	\$ 1,027,831	\$ 4,624,646
Reach 10.1.1 (CC)	\$ 2,031,433	\$ 101,572	\$ 2,133,005	\$ 572,346	\$ 28,617	\$ 600,963	\$ 2,733,968
<i>Reach 10.1 w/Sub-Reaches</i>	<i>\$ 5,456,971</i>	<i>\$ 272,849</i>	<i>\$ 5,729,820</i>	<i>\$ 1,551,233</i>	<i>\$ 77,582</i>	<i>\$ 1,628,794</i>	<i>\$ 7,358,614</i>
Reach 10.2	\$ 18,880,066	\$ 944,003	\$ 19,824,069	\$ 5,003,136	\$ 250,157	\$ 5,253,293	\$ 25,077,362
Reach 10.2.1 (SR)	\$ 919,996	\$ 46,000	\$ 965,996	\$ 266,317	\$ 13,316	\$ 279,633	\$ 1,245,629
<i>Reach 10.2 w/Sub-Reaches</i>	<i>\$ 19,800,062</i>	<i>\$ 990,003</i>	<i>\$ 20,790,065</i>	<i>\$ 5,269,454</i>	<i>\$ 263,473</i>	<i>\$ 5,532,926</i>	<i>\$ 26,322,991</i>
Reach 10.3	\$ 12,396,284	\$ 619,814	\$ 13,016,098	\$ 3,310,004	\$ 165,500	\$ 3,475,504	\$ 16,491,602
Reach 10.3.1 (Crnpt)	\$ 9,330,159	\$ 466,508	\$ 9,796,667	\$ 2,530,868	\$ 126,543	\$ 2,657,411	\$ 12,454,078
Reach 10.3.2 (Nhdg)	\$ 142,264	\$ 7,113	\$ 149,377	\$ 48,972	\$ 2,449	\$ 51,420	\$ 200,797
Reach 10.3.3 (CPR-Bcn&LW)	\$ 283,028	\$ 14,151	\$ 297,179	\$ 89,525	\$ 4,476	\$ 94,001	\$ 391,180
<i>Reach 10.3 w/Sub-Reaches</i>	<i>\$ 22,151,735</i>	<i>\$ 1,107,587</i>	<i>\$ 23,259,322</i>	<i>\$ 5,979,368</i>	<i>\$ 298,968</i>	<i>\$ 6,278,336</i>	<i>\$ 29,537,658</i>
<b>Total</b>	<b>\$ 47,408,768</b>	<b>\$ 2,370,438</b>	<b>\$ 49,779,206</b>	<b>\$12,800,054</b>	<b>\$ 640,003</b>	<b>\$ 13,440,057</b>	<b>\$ 63,219,263</b>

*\*Note 1: Service/Non-Contract Costs include all pre-construction and construction-phase professional service costs such as: design, engineering, alignment verifications, surveying, permitting, ROW, plan/spec book preparation, construction management, inspections, phase engineering, staking, and close-out. Additionally, costs are included for; NEPA compliance and sufficiency, and cultural surveying and monitoring.*

**Table 2 – Preliminary Cost Summary for NGWSP Reach 12.3**

<b>REACH 12.3</b>	<b>Field Cost</b>	<b>Service/Non-Contract Costs *See Note 1</b>	<b>Sub-Total</b>	<b>Navajo Nation Tax (5%)</b>	<b>Total Cost w/tax</b>
<b>R12.3 - Phase I</b>	\$ 456,953	\$ 123,377	\$ 580,330	\$ 29,017	\$ 609,347
<b>R12.3 - Phase II</b>	\$8,151,988	\$2,201,037	\$10,353,025	\$517,651	\$10,870,676
<b>R12.3 - Phase III</b>	N/A	N/A	N/A	N/A	N/A
<b>Total</b>	<b>\$8,608,941</b>	<b>\$2,324,414</b>	<b>\$10,933,355</b>	<b>\$546,668</b>	<b>\$11,480,023</b>

*\*Note 1: Service Non-Contract Costs include all pre-construction and construction-phase professional service costs such as: design, engineering, alignment verifications, surveying, permitting, ROW, plan/spec book preparation, construction management, inspections, phase engineering, staking, and close-out. Additionally, costs are included for; NEPA compliance and sufficiency, and cultural surveying and monitoring.*

## 7.2 Cost Sharing Requirement

Non-Federal cost-share is not required for this Agreement.

<b>FUNDING SOURCES</b>	<b>% TOTAL PROJECT COST</b>	<b>TOTAL COST BY SOURCE</b>
RECIPIENT FUNDING	0%	\$0
OTHER NON-FEDERAL FUNDING	0%	\$0
RECLAMATION FUNDING	100%	\$74,699,286
OTHER FEDERAL FUNDING	0%	\$0
<b>TOTALS</b>	<b>100%</b>	<b>\$74,699,285</b>

## 7.3 Pre-Award Incurrence of Costs

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

## 7.4 Allowable Costs (2 CFR Subpart E §200.400 through §200.475)

Costs incurred for the performance of this Agreement must be allowable, allocable to the project, and reasonable. The following regulations, codified within the Code of Federal Regulations (CFR), governs the allowability of costs for Federal financial assistance: 2 CFR Subpart E, "Cost Principles."

Expenditures for the performance of this Agreement must conform to the requirements within this CFR. The Recipient must maintain sufficient documentation to support these expenditures. Questions on the allowability of costs should be directed to the GO responsible for this Agreement.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the Agreement. The only costs which are authorized for a period of up to 90 days following the project performance period are those strictly associated with closeout activities for preparation of the final reports.

#### **7.5 Revision of Budget and Program Plans (2 CFR §200.308)**

In accordance with 2 CFR §200.308(g) the recipient must request prior written approval for any of the following changes:

- A. A change in the approved scope of work or associated tasks, even if there are no associated budget revisions.
- B. Revisions which require additional Federal funds to complete the project.
- C. Revisions which involve specific costs for which prior written approval requirements may be imposed consistent with OMB cost principles listed in 2 CFR 200 Subpart E "Cost Principles."

#### **7.6 Modifications**

Any changes to this Agreement shall be made by means of a written modification. Reclamation may make changes to the Agreement by means of a unilateral modification to address administrative matters, such as changes in address, no-cost time extensions, changes to Reclamation Key Personnel, or the addition of previously agreed upon funding. Additionally, a unilateral modification may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 2 CFR §200.338.

All other changes shall be made by means of a bilateral modification to the Agreement. No oral statement made by any person, or written statement by any person other than the GO, shall be allowed in any manner or degree to modify or otherwise effect the terms of the Agreement. All requests for modification of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GO. Any request for project extension shall be made at least 45 days prior to the expiration date of the Agreement or the expiration date of any extension period that may have been previously granted. Any determination to extend the period of performance or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.



## **8. KEY PERSONNEL**

### **8.1 Recipient's Key Personnel**

The Recipient's Project Manager for this Agreement shall be:

**Jason John**, Branch Manager and Principal Hydrologist  
Navajo Nation - Water Management Branch, Department of Water Resources  
PO Box 678  
Fort Defiance, Arizona 86504  
Phone: 928-729-4501 Email: [jasonjohn@navajo-nsn.gov](mailto:jasonjohn@navajo-nsn.gov)

Additional Key personnel for this Agreement are identified as follows:

**Ray Benally**, Director  
Navajo Nation - Water Management Branch, Department of Water Resources  
PO Box 678  
Fort Defiance, Arizona 86504  
Phone: 928-729-4003 Email: [rbenally@frontiernet.net](mailto:rbenally@frontiernet.net)

**Max Bighorse**, Principal Civil Engineer  
Navajo Nation - Water Management Branch, Department of Water Resources  
PO Box 678  
Fort Defiance, Arizona 86504  
Phone: 928-729-4122 Email: [mbighorse@yahoo.com](mailto:mbighorse@yahoo.com)

**Lucinda Davis**, Senior Contract Analyst  
Navajo Nation - Water Management Branch, Department of Water Resources  
PO Box 678  
Fort Defiance, Arizona 86504  
Phone: 928-729-4127 Email: [lgdavis@navajo-nsn.gov](mailto:lgdavis@navajo-nsn.gov)

**Laura Johnson**, FMIS Project Manager  
Navajo Nation – Office of the Controller  
PO Box 3150  
Window Rock, Arizona 86515  
Phone: 928-871-6308 Email: [ljohnson@nnooc.org](mailto:ljohnson@nnooc.org)

**Cordell Shortey**, Contracting Officer  
Navajo Nation – Office of Management and Budget  
PO Box 646  
Window Rock, Arizona 86515  
Phone: 928-871-6470 Email: [cshortey@omb.navajo-nsn.gov](mailto:cshortey@omb.navajo-nsn.gov)



## **8.2 Reclamation's Key Personnel**

### **8.2.1 Grants Officer (GO):**

**Brent Rhees**

Bureau of Reclamation  
Upper Colorado Regional Director  
125 South State Street, Suite 8100  
Salt Lake City, UT 84138

- A. The GO is the only official with legal delegated authority to represent Reclamation. The GO's responsibilities include, but are not limited to, the following:
- i. Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
  - ii. Approve through formal modification changes in the scope of work and/or budget;
  - iii. Approve through formal modification any increase or decrease in the period of performance of the Agreement;
  - iv. Approve through formal modification changes in any of the expressed terms, conditions, or specifications of the Agreement;
  - v. Be responsible for the overall administration, management, and other non-programmatic aspects of the Agreement including, but not limited to, interpretation of financial assistance statutes, regulations, circulars, policies, and terms of the Agreement;
  - vi. Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

### **8.2.2 Grants Officer Technical Representative (GOTR):**

**Dianne Paxton**

Bureau of Reclamation  
Western Colorado Area Office  
185 Suttle Street, Suite 2  
Durango, CO 81303  
970-385-6547 [dpaxton@usbr.gov](mailto:dpaxton@usbr.gov)

- A. The GOTR's authority is limited to technical and programmatic aspects of the Agreement. The GOTR's responsibilities include, but are not limited to, the following:

- i. Assist the Recipient, as necessary, in interpreting and carrying out the scope of work in the Agreement;
  - ii. Review, and where required, approve Recipient reports and submittals as required by the Agreement;
  - iii. Where applicable, monitor the Recipient to ensure compliance with the technical requirements of the Agreement;
  - iv. Where applicable, ensure that Reclamation complies with the technical requirements of the Agreement;
- B. The GOTR does not have the authority to and may not issue any technical assistance which:
- i. Constitutes an assignment of additional work outside the scope of work of the Agreement;
  - ii. In any manner causes an increase or decrease in the total estimated cost or the time required for performance; or
  - iii. Changes any of the expressed terms, conditions, or specifications of the Agreement.

**8.2.3 Grants Management Specialist.** The Grants Management Specialist is the primary administrative point of contact for this agreement and should be contacted regarding issues related to the day-to-day management of the agreement. Requests for approval regarding the terms and conditions of the agreement, including but not limited to modifications and prior approval, may only be granted, in writing, by a Reclamation Grants Officer. Please note that for some agreements, the Grants Officer and the Grants Management Specialist may be the same individual.

**Deborah Chorlton**  
Bureau of Reclamation  
Upper Colorado Regional Office  
125 South State Street, Room 8100  
Salt Lake City, UT 84138  
801-524-3734 [dchorlton@usbr.gov](mailto:dchorlton@usbr.gov)

## **9. REPORTING REQUIREMENTS AND DISTRIBUTION**

**9.1 Noncompliance.** Failure to comply with the reporting requirements contained in this Agreement may be considered a material noncompliance with the terms and conditions of the award. Noncompliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with 2 CFR §200.338.

**9.2 Financial Reports.** Financial Status Reports shall be submitted by means of the SF-425 and shall be submitted in accordance with the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

**9.3 Monitoring and reporting program performance (2 CFR §200.328)**

- A. Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §200.331 Requirements for pass-through entities.
- B. Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
  - i. The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.
  - ii. The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
    - a) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

b) The reasons why established goals were not met, if appropriate.

c) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

C. Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

D. Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

- i. Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
- ii. Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Reclamation requires Performance reporting for all financial assistance awards, both Construction and non-Construction. Performance reports for Construction agreements shall meet the same minimum requirements outlined in 2 CFR §200.328(b)(2) above.

**9.4 Report Frequency and Distribution.** The following table sets forth the reporting requirements for this Agreement. Please note the first report due date listed for each type of report.

Required Reports	Interim Reports	Final Report
<b>Performance Report</b>		
Format	No specific format required. See content requirements within Section 9.3 (2 CFR §200.328) above.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 9.3 (2 CFR §200.328) above.
Reporting Frequency	Quarterly	Final Report due upon completion of Agreement's period of performance
Reporting Period	<b>For Quarterly Reporting:</b> Federal fiscal quarters ending: December 31, March 31, June 30 September 30	Entire period of performance



Due Date*	<b>For Quarterly Reporting:</b> Within 30 days after the end of the Reporting Period.	Within 90 days after the completion date of the Agreement
First Report Due Date	The first performance report is due for reporting period ending December 31, 2018	N/A
Submit to:	GOTR and GMS	GOTR and GMS
<b>Federal Financial Report</b>		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Quarterly	Final Report due upon completion of Agreement's period of performance
Reporting Period	<b>For Quarterly Reporting:</b> Federal fiscal quarters ending: December 31, March 31, June 30 September 30	Entire period of performance
Due Date*	<b>For Quarterly Reporting:</b> Within 30 days after the end of the Reporting Period.	Within 90 days after the completion date of the Agreement
First Report Due Date	The first Federal financial report is due for reporting period ending December 31, 2018	N/A
Submit to:	GOTR and GMS	GOTR and GMS

\* If the completion date is prior to the end of the next reporting period, then no interim report is due for that period. Instead, the Recipient is required only to submit the final financial and performance reports, which will cover the entire period of performance including the last abbreviated reporting period.

## 10. REGULATORY COMPLIANCE

The Recipient agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the NEPA, including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the SHPO in accordance with the NHPA and NAGPRA.

Certain environmental and other associated compliance are Federal responsibilities, and will occur as appropriate. Reclamation will identify the need for and assure the completion of any appropriate environmental compliance requirements, as identified above, pursuant to activities specific to this Agreement work.

Environmental, cultural and any other associated compliance shall be completed prior to the start of any Agreement construction work. As such, and as noted in Section 6.2.4 of this Agreement,

Reclamation shall not provide any funds to the Recipient for Agreement construction purposes, and the Recipient shall not begin implementation of construction work described in this Agreement, until Reclamation provides a written notice to proceed to the Recipient that all applicable environmental and regulatory compliances and clearances have been completed and that the Recipient may begin implementation of the specific Agreement construction work. If the Recipient begins work activities that require environmental and other regulatory compliance approval, such as construction activities, prior to receipt of written notice from Reclamation that all such clearances have been obtained, then Reclamation reserves the right to unilaterally terminate this agreement for cause.

#### **11. TITLE TO REACHES 10.1, 10.2, 10.3, and 12.3**

Section 10602 (f) of the Act authorizes title transfer (including prior to full Project completion) of this Agreement's facilities, including Reaches 10.1, 10.2, 10.3 and 12.3, to the Recipient. The Recipient will retain title to all facilities constructed under this Agreement.

#### **12. INDEMNIFICATION**

Title to other Project facilities shall be held by the United States, or conveyed to the Navajo Nation as authorized under Section 10602(f) of the Act. Any claims regarding liability of the Federal government or its agents arising from the activities associated with this agreement will be processed according to the provisions of the Federal Tort Claims Act. Any claims regarding liability of the Navajo Nation or its agents arising from activities associated with this agreement will be processed according to the provisions of the Navajo Nation Sovereign Immunity Act.

The Navajo Nation, as owner and/or operator of Reaches 10.1, 10.2, 10.3 and 12.3 being constructed, modified, or rehabilitated with funds being provided by the United States under provisions of this Agreement, accepts all responsibility for the structural integrity and safety of Reaches 10.1, 10.2, 10.3 and 12.3. The Navajo Nation hereby releases the United States and its officers and employees from liability related to the planning, design, and construction, of Reaches 10.1, 10.2, 10.3 and 12.3. The Navajo Nation hereby releases the United States and its officers and employees from the responsibility to operate and maintain Reaches 10.1, 10.2, 10.3, and 12.3, unless otherwise required by federal law.

## **II. RECLAMATION STANDARD TERMS AND CONDITIONS**

### **1. REGULATIONS**

The regulations at 2 CFR Subtitle A, Chapter II, Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, are hereby incorporated by reference as though set forth in full text. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

### **2. PAYMENT**

#### **2.1 Payment. (2 CFR §200.305)**

(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302 Financial management paragraph (b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

(3) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.207 Specific conditions, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.



(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §§200.207 Specific conditions, Subpart D—Post Federal Award Requirements of this part, 200.338 Remedies for Noncompliance, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with §200.342 Effects of suspension and termination.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

(i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation and expenditure of funds.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

**(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply.**

- (i) The non-Federal entity receives less than \$120,000 in Federal awards per year.**
- (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.**
- (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.**
- (iv) A foreign government or banking system prohibits or precludes interest bearing accounts.**

**(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as "addenda records" by Financial Institutions) as that will assist in the timely posting of interest earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:**

**(i) For ACH Returns:**

**Routing Number: 051036706**

**Account number: 303000**

**Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN**

**(ii) For Fedwire Returns\*:**

**Routing Number: 021030004**

**Account number: 75010501**

**Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY**

**(\* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)**

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)

Bank: Citibank N.A. (New York)

Swift Code: CITIUS33

Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA

Payment Details (Line 70): Agency

Name (abbreviated when possible) and ALC Agency POC: Michelle Haney,  
(301) 492-5065

(iv) For recipients that do not have electronic remittance capability, please make check\*\* payable to: "The Department of Health and Human Services."

Mail Check to Treasury approved lockbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

(\*\* Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

(v) Any additional information/instructions may be found on the PMS Web site at <http://www.dpm.psc.gov/>.

## 2.2 Payment Method

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

Recipients must complete enrollment in ASAP for all active financial assistance agreements with Reclamation. ASAP enrollment is specific to each Agency and Bureau; meaning, if a Recipient organization has an existing ASAP account with another Federal agency or Department of the Interior bureau, but not with Reclamation, then the Recipient must initiate and complete enrollment in ASAP under Reclamation's Agency Location Code (1425) through submission of an enrollment form found at [www.usbr.gov/mso/aamd/asap.html](http://www.usbr.gov/mso/aamd/asap.html). For information regarding ASAP enrollment, please visit [www.usbr.gov/mso/aamd/asap.html](http://www.usbr.gov/mso/aamd/asap.html), or contact the Reclamation ASAP Help Desk [BOR\\_ASAP\\_Enroll@usbr.gov](mailto:BOR_ASAP_Enroll@usbr.gov). Further information regarding ASAP may be obtained from the ASAP website at <http://www.fms.treas.gov/asap>.

In accordance with 2 CFR 25.200(b)(2) the Recipient shall "Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency". If the Recipient allows their SAM registration to lapse, the Recipient's accounts within ASAP will be automatically suspended by Reclamation until such time as the Recipient renews their SAM registration.



### **3. PROCUREMENT STANDARDS (2 CFR§200.317 through §200.326)**

#### **§200.317 Procurements by states.**

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

#### **§200.318 General procurement standards.**

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a

more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.212 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

**§200.319 Competition.**

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:



(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

**§200.320 Methods of procurement to be followed.**

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]



**§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**§200.322 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

**§200.323 Contract cost and price.**

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

**§200.324 Federal awarding agency or pass-through entity review.**

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
  - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
  - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
  - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

#### **§200.325 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.



(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### **§200.326 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

#### **4. EQUIPMENT (2 CFR §200.313)**

See also §200.439 Equipment and other capital expenditures.

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

- (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
- (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
- (3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) Use.

(1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

- (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

(2) Except as provided in §200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]



## **5. SUPPLIES (2 CFR §200.314)**

See also §200.453 Materials and supplies costs, including costs of computing devices.

(a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See §200.313 Equipment, paragraph (e)(2) for the calculation methodology.

(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

## **6. INSPECTION**

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

## **7. AUDIT REQUIREMENTS (2 CFR Subpart F §200.501)**

(a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also §200.331 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

## **8. REMEDIES FOR NONCOMPLIANCE (2 CFR §200.338)**

### **§200.338 Remedies for noncompliance.**

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in §200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

## **9. TERMINATION (2 CFR §200.339)**

- (a) The Federal award may be terminated in whole or in part as follows:

- (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

- (2) By the Federal awarding agency or pass-through entity for cause;

- (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

- (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of



partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

(b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

#### **10. DEBARMENT AND SUSPENSION (2 CFR §1400)**

The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at <http://www.gpoaccess.gov/ecfr/>.

#### **11. DRUG-FREE WORKPLACE (2 CFR §182 and §1401)**

The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

#### **12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE**

The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement. All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards;

Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

### **13. COVENANT AGAINST CONTINGENT FEES**

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

### **14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR §175.15)**

Trafficking in persons.

*(a) Provisions applicable to a recipient that is a private entity.*

(1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not

(i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

(ii) Procure a commercial sex act during the period of time that the award is in effect; or

(iii) Use forced labor in the performance of the award or subawards under the award.

(2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

(i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

(ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:

(A) Associated with performance under this award; or

(B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1400.

**(b) *Provision applicable to a recipient other than a private entity.*** We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

(1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

(2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:

(i) Associated with performance under this award; or

(ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1400.

**(c) *Provisions applicable to any recipient.***

(1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

(2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

(i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

(ii) Is in addition to all other remedies for noncompliance that are available to us under this award.

(3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

**(d) *Definitions.*** For purposes of this award term:

(1) “Employee” means either:

(i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

(ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.



(2) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(3) "Private entity":

(i) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

(ii) Includes:

(A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

(B) A for-profit organization.

(4) "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

#### **15. NEW RESTRICTIONS ON LOBBYING (43 CFR §18)**

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

(c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making

or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC § 4601 *et seq.*)**

- (a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. § 4601 *et seq.*, as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing sellers, it is not anticipated that Reclamation funds will result in any “displaced persons,” as defined under the URA.
- (b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. § 4651.
- (c) Exemptions to the URA and 49 CFR Part 24
  - (1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as “voluntary transactions.” Such “voluntary transactions” are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR § 24.101(b)(1)(i)-(iv).
  - (2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:
    - (i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;
    - (ii) inform the owner in writing of what it believes to be the market value of the property
- (d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR § 24.104. Such reviews may be conducted by the Department of the Interior’s Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

## **17. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS (2 CFR 25, APPENDIX A)**

*The Central Contractor Registration (CCR) has been migrated to the System for Award Management (SAM). Recipients must continue to comply with the CCR requirements below by maintaining current registration within [www.SAM.gov](http://www.SAM.gov).*

### ***A. Requirement for Central Contractor Registration (CCR)***

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

### ***B. Requirement for Data Universal Numbering System (DUNS) Numbers***

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

### ***C. Definitions***

For purposes of this award term:

1. *Central Contractor Registration (CCR)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).
2. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
  - a. A Governmental organization, which is a state, local government, or Indian Tribe;
  - b. A foreign public entity;
  - c. A domestic or foreign nonprofit organization;
  - d. A domestic or foreign for-profit organization; and
  - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.



4. *Subaward*:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. II.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

**18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING**

Executive Order 13513, *Federal Leadership On Reducing Text Messaging While Driving*, was signed by President Barack Obama on October 1, 2009 (ref: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

**19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A)**

I. Reporting Subawards and Executive Compensation.

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

- i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

**b. Reporting Total Compensation of Recipient Executives.**

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.html>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.ccr.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

**c. Reporting of Total Compensation of Subrecipient Executives.**

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and  
ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.i. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions*

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards,  
and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Subaward:*

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").



- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- 4. *Subrecipient* means an entity that:
  - i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
- 5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - i. *Salary and bonus.*
  - ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
  - v. *Above-market earnings on deferred compensation which is not tax-qualified.*
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)**

- (a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).
- (b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.
- (c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR § 52.203-17 (as referenced in 48 CFR § 3.908-9).
- (d)

## **21. RECIPIENT INTEGRITY AND PERFORMANCE MATTERS (APPENDIX XII to 2 CFR Part 200)**

### **A. Reporting of Matters Related to Recipient Integrity and Performance**

#### **1. General Reporting Requirement**

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

#### **2. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five year period; and
- c. Is one of the following:
  - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - (4) Any other criminal, civil, or administrative proceeding if:
    - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
    - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### 3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### 5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.



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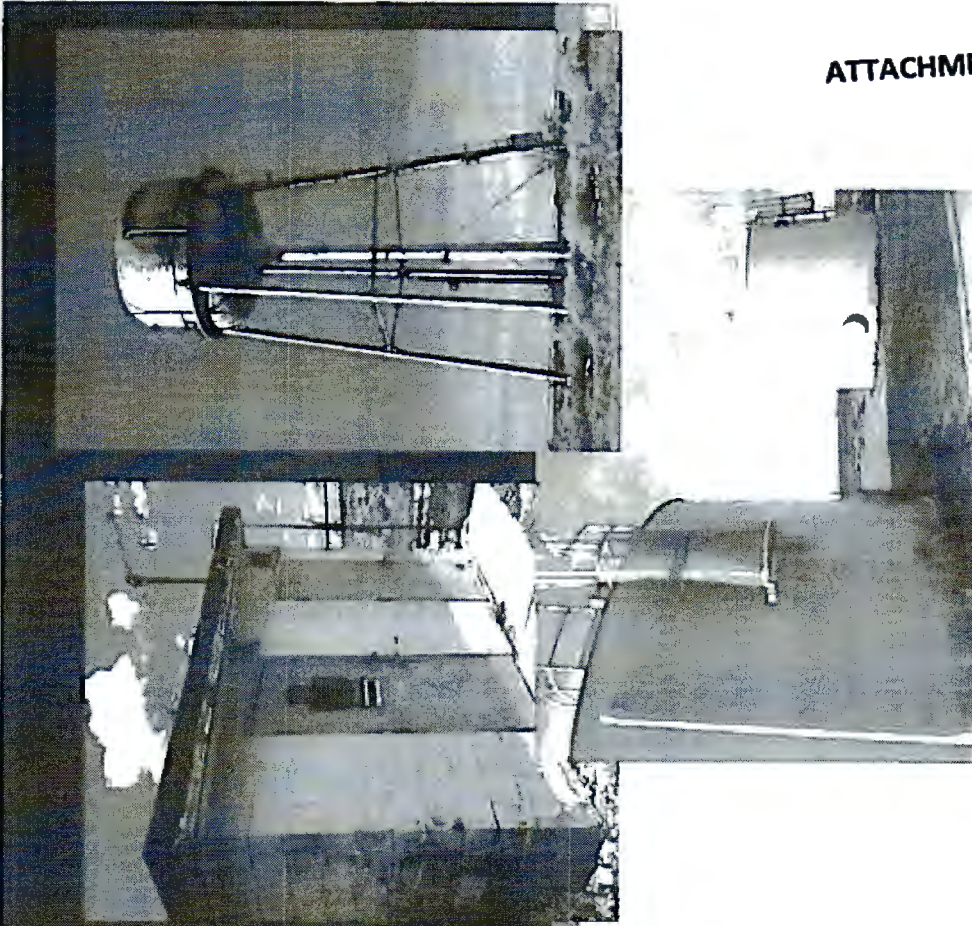
Beacon Bisti / N9 Lateral  
Regional Water Plan  
and Capital  
Improvement Plan

Coyote Canyon, Standing  
Rock, Nahodishgish,  
Becenti, Littlewater, and  
Crownpoint Chapters



February 2018

ATTACHMENT A



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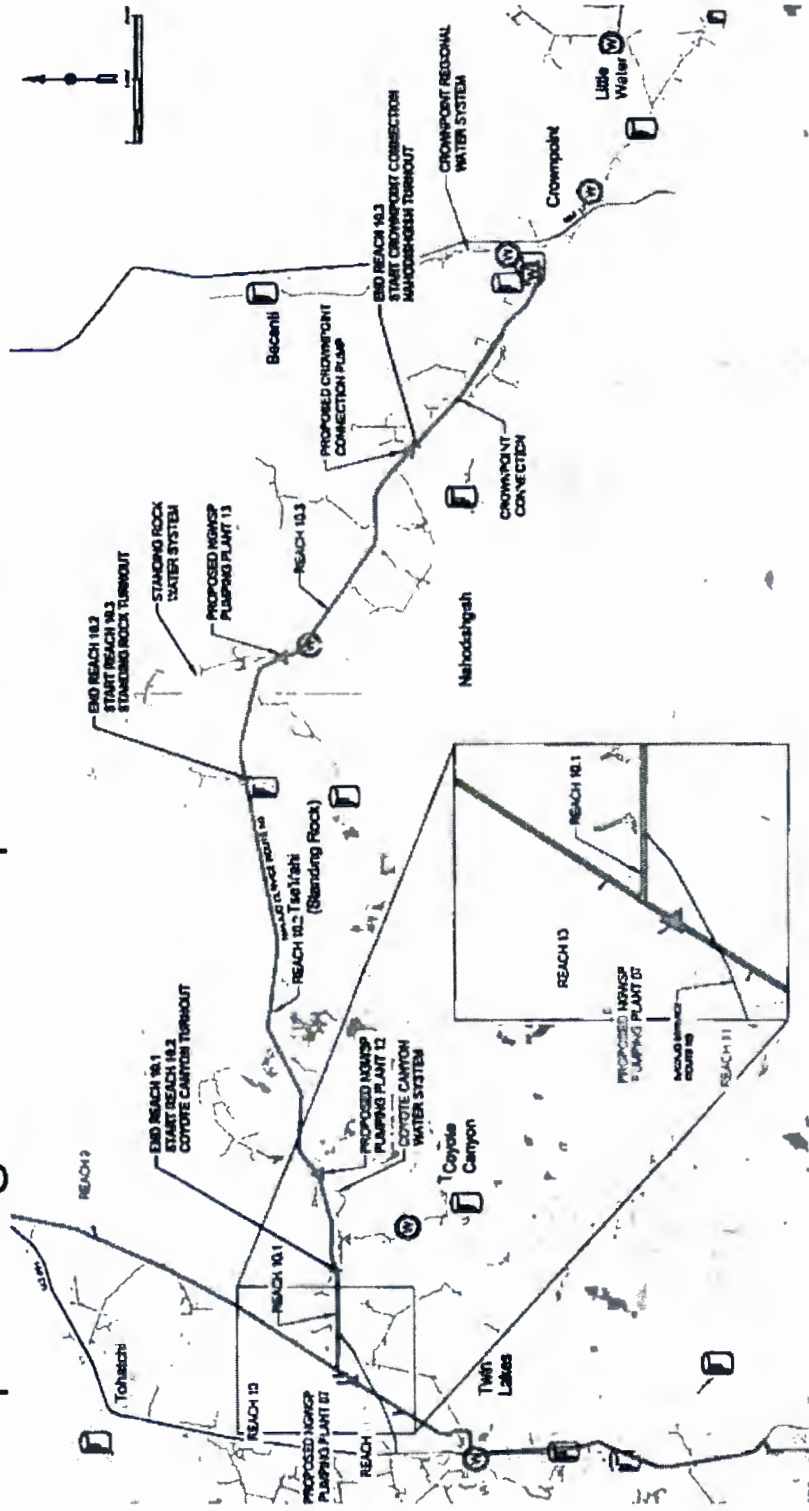
## Into the Weeds: Key design updates

- Pipeline, Tank & Pump Optimization
  - Aligned and sized to balance long-term capacity with short-term water age and OM&R considerations
- Water Source
  - Conjunctive GW wells in back-up status
- SJL Tie-in
  - Upstream of PP07





# Pump Configurations Upstream of SJL PP07:





## Design Alternatives – Mainline (incl. Crownpoint Connection)

Alternative	FEIS Design	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5	Alternative 6	Alternative 7	Alternative 8
Conjunctive GW	Yes	No	No	Yes	Yes	No	No	Yes	Yes
Connection Relative to NGWSP PP07	Upstream	Upstream	Downstream	Upstream	Downstream	Upstream	Downstream	Upstream	Downstream
Number of Pumping Plants	2	3	2	3	2	3	2	3	2
Reach 10.1 Diameter (in)	24" & 18"	20"	20"	18"	18"	16"	16"	14"	14"
Reach 10.2 Diameter (in)	20" & 18"	18"	20"	18" & 16"	18"	16" & 14"	16"	14" & 12"	14"
Reach 10.3 Diameter (in)	20" & 16"	16" & 14"	16" & 14"	14"	14"	12"	16" & 12"	12" & 10"	12" & 10"
Pipeline to Crownpoint Diameter (in)	N/A	14"	14"	14"	14"	12"	12"	10"	10"
Total Capital Cost*	\$67,644,772**	\$65,745,515	\$66,227,520	\$64,377,456	\$63,156,635	\$58,705,758	\$58,823,409	\$52,595,834	\$51,750,186

\* Costs include 10% construction contingency.

\*\* Indexed CCE Cost as of Oct. 2016 (7% Internal BOR cost not deducted)

\*\*\* BBN9 Lateral revised designs do not require an additional Crownpoint Storage Tank by the end of the planning period per IHS Criteria storage capacity calculations.



## Design Alternatives – Mainline (incl. Crownpoint Connection)

Alternative	FEIS Design	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5	Alternative 6	Alternative 7	Alternative 8
Conjunctive GW	Yes	No	No	Yes	Yes	No	No	Yes	Yes
Connection Relative to NGWSP PP07	Upstream	Upstream	Downstream	Upstream	Downstream	Upstream	Downstream	Upstream	Downstream
Number of Pumping Plants	2	3	2	3	2	3	2	3	2
Reach 10.1 Diameter (in)	24" & 18"	20"	20"	18"	18"	16"	16"	14"	14"
Reach 10.2 Diameter (in)	20" & 18"	18"	20"	18" & 16"	18"	16" & 14"	16"	14" & 12"	14"
Reach 10.3 Diameter (in)	20" & 16"	16" & 14"	16" & 14"	14"	14"	12"	16" & 12"	12" & 10"	12" & 10"
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\* Costs include 10% construction contingency.

\*\* Indexed CCE Cost as of Oct. 2018 (7% Internal BOR cost not deducted)

\*\*\* BBN9 Lateral revised designs do not require an additional Crownpoint Storage Tank by the end of the planning period per IHS Criteria storage capacity calculations.

## Water Age

FEIS Design	Water Age (days) at Crownpoint #1 Tank Inlet		
	2020	2040	-
From Beginning of Reach 10.1 to Crownpoint	2.0 days	1.2 days	-
Revised Design	2026	2040	2066
From Beginning of Reach 10.1 to Crownpoint	2.9 days	1.9 days	1.3 days



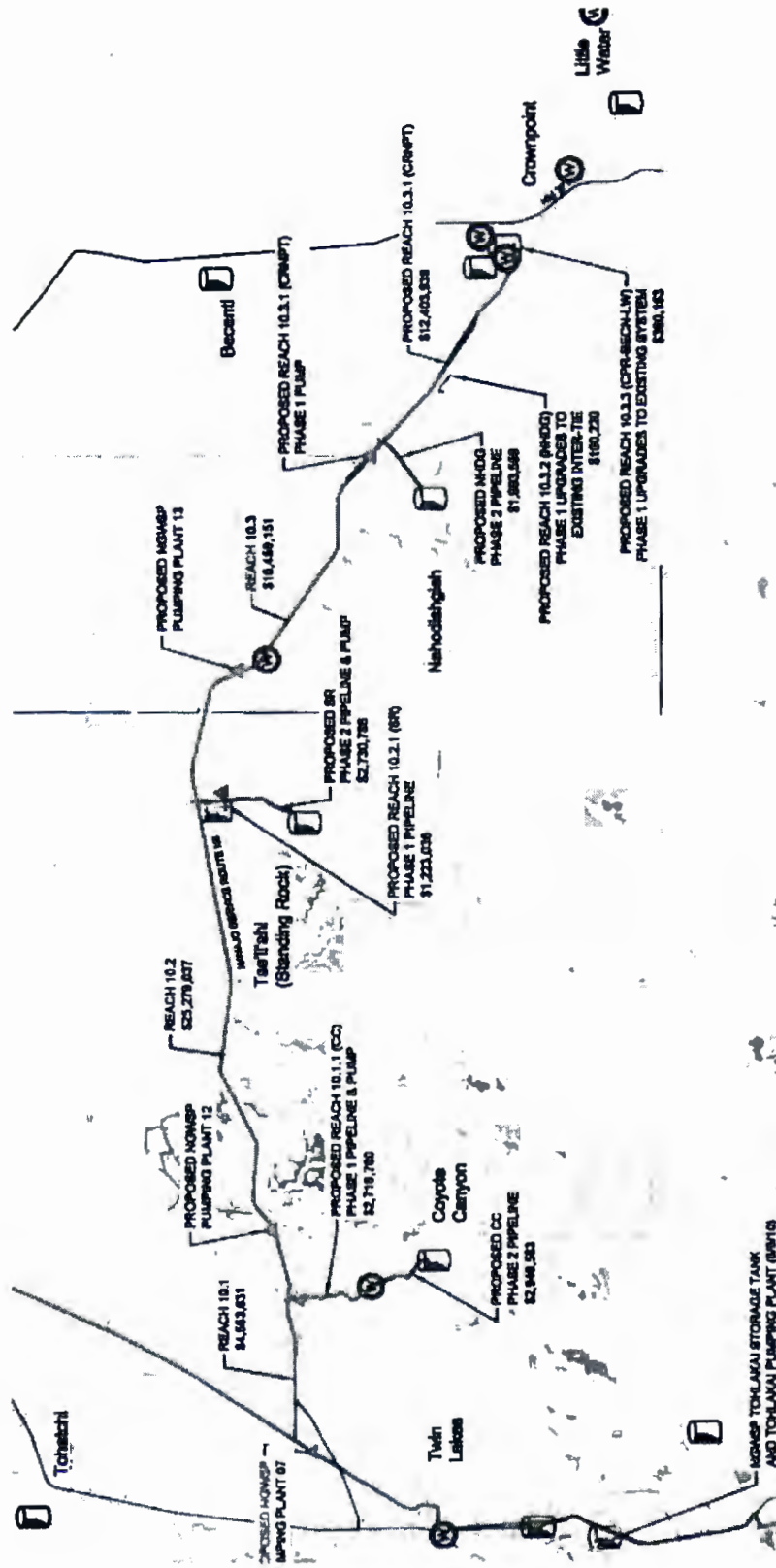
## Potential future refinements during final design process:

- Depending on actual topographic survey of final field alignment, it may be possible to reduce Reaches 10.1 and/or 10.2 pipe diameter by one nominal size.
- Depending on actual topographic survey of final field alignment, it may be possible to move PP 12 to eliminate Coyote Canyon turn-out booster pump.

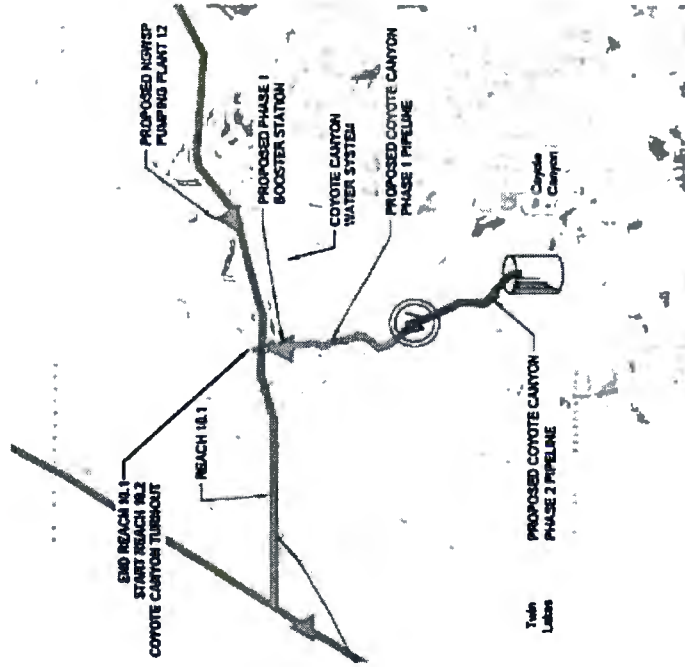
These and other potential refinements would be evaluated for feasibility and cost savings during final design.



# Connections to NTUA Systems



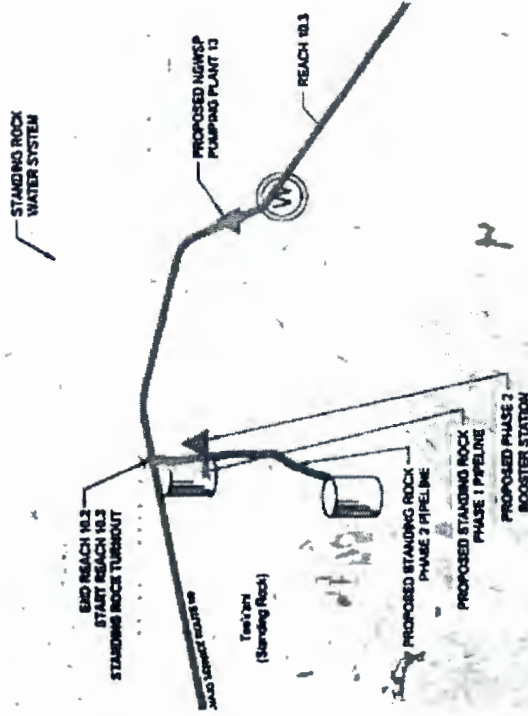
# Connection to Coyote Canyon System



- Phase 1: New pump station, and replace 50% of existing CC tank fill-line
  - 2.2 miles of 8" DR 14 & DR 18 pipe (tie-in to existing tank fill line), new pump station, PRVs for existing branches off of fill line, SCADA
  - Pumped flow
  - Capital Cost: \$2,719,760
- Phase 2: Replace rest of existing CC tank fill-line
  - 2.3 miles of 8" pipe (tie-in to Phase 1 pipeline), Chlorinator, SCADA, tie-in to existing tanks
  - Additional storage: 255,000 gal
  - Pumped flow
  - Capital Cost:
    - Without additional storage: \$2,949,583
    - With additional storage: \$3,673,474
- Capital Cost of both phases of Connection:
  - Without additional storage: \$5,669,343
  - With additional storage: \$6,393,234

# Connection to Standing Rock System

- Phase 1: Connection to Tank #1
  - 1.2 miles of 6" DR18 pipe, Chlorinator, SCADA, new altitude valve on existing Tank #1
  - No additional storage required
  - Gravity flow
  - Tank #1 can serve ~40% of system
  - Capital Cost: \$1,223,036
- Phase 2: Connection to Tanks #2 & #3
  - Construct 3.1 miles of 6" DR18 pipe, booster pump station, SCADA
  - No additional storage required
  - Pumped flow
  - Tanks #2 & #3 serve rest of the system
  - Capital Cost: \$2,730,786
- Capital Cost of both phases of Connection: \$3,953,822

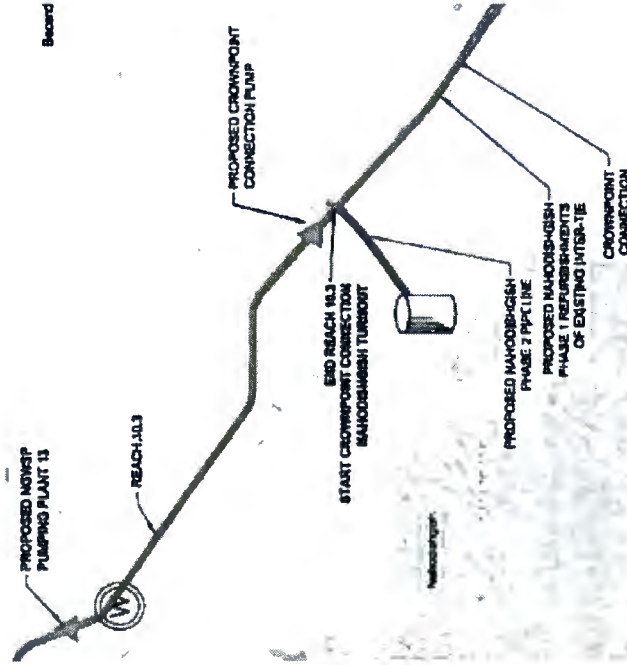


North Arrow

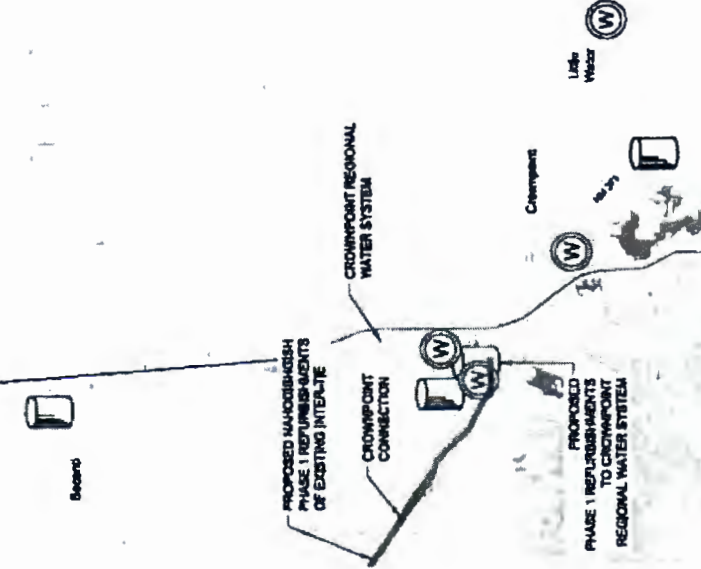


# Connection to Nahodishgish System

- Phase 1: Utilize existing inter-tie to the Crownpoint system
  - Use existing inter-tie with Crownpoint regional system to convey water by gravity to Nahodishgish
  - Gravity flow
  - Capital Cost: \$190,220
- Phase 2: Connection to Nahodishgish Tank
  - 2.4 miles of 6" DR18 pipe, Chlorinator, SCADA
  - Additional storage: 140,000 gal
  - Gravity flow
  - Capital Cost:
    - Without additional storage: \$1,993,559
    - With additional storage: \$2,478,720
- Capital Cost of both phases of Connection:
  - Without additional storage: \$2,183,779
  - With additional storage: \$2,668,940



# Crownpoint-Becenti-Littlewater System



## Crownpoint Regional System (Crownpoint, Becenti, Littlewater)

- Crownpoint Regional System connection is included in updated design for the BBN9 Lateral mainline. No further connections are required. However, improvements with existing regional system are recommended to make sustainable.
  - Crownpoint Connection Cost: \$12,403,939
- Becenti will receive SJR water by gravity via existing connection.
- Littlewater will receive SJL water by gravity via existing connection.
- Phase 1 : Crownpoint Regional System improvements
  - Crownpoint #1 Tank altitude valve
  - Crownpoint elevated tank improvements
  - Becenti tanks altitude valve
  - Extend 3-phase power to Littlewater booster pump
  - Capital Cost: \$380,153
- No Phase 2 required

## Chapter Connections Costs

Phase 1 Connection Total Capital Costs	
Coyote Canyon Phase 1	\$2,719,760
Standing Rock Phase 1	\$1,223,036
Nahodishgish Phase 1	\$190,220
Crownpoint Regional System Phase 1	\$12,784,092
Total - Phase 1 Connections	\$16,917,108



# Summary

Alternative	CCE Cost Ceiling	Capital Costs*							
		Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5	Alternative 6	Alternative 7	Alternative 8
BBN9 Lateral**	\$63,219,419***	\$65,745,515	\$66,227,520	\$64,377,456	\$63,156,635	\$58,497,086	\$58,823,409	\$52,595,834	\$51,750,186
BBN9 & Phase 1 Connections (CC & SR1 & N & CPR)**	N/A	\$74,300,482	\$74,762,487	\$73,205,033	\$71,984,213	\$63,218,927	\$63,013,145	\$57,971,518	\$57,125,870
BBN9 & All Connections**	N/A	\$79,024,828	\$79,506,833	\$77,929,379	\$76,708,558	\$70,360,750	\$70,687,073	\$66,061,299	\$65,115,651

\* Costs include 10% construction contingency

\*\* All costs exclude additional storage tanks, but include pertinent NTUA recommended upgrades

\*\*\* Indexed CCE Cost as of Oct. 2016, less 7% BOR Internal Cost

# Summary

Alternative	CCE Cost Ceiling	Capital Costs*							
		Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5	Alternative 6	Alternative 7	Alternative 8
BBN9 Lateral**	\$63,219,419***	\$65,745,515	\$66,227,520	\$64,377,456	\$63,156,635	\$58,497,086	\$58,823,409	\$52,595,834	\$51,750,186
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\* Costs include 10% construction contingency

\*\* All costs exclude additional storage tanks, but include pertinent NTUA recommended upgrades

\*\*\* Indexed CCE Cost as of Oct. 2016, less 7% BOR Internal Cost



## Challenges

- Indian Allotment (IA) Rights of Way required (up to 12 parcels)
- Align project with the Chapters' Community Land Use Plans (CLUP)
- High cultural site density
- Rock for a major portion of the alignment

## **ATTACHMENT B**

### **FEASIBILITY REPORT**

#### **COMMUNITY WATER SUPPLY FACILITIES**

**Navajo-Gallup Water Supply Project**

**Waterline Extension**

**Reach 12.3**

**Phases I, II, and III**

**NTUA Preferred Route**

**Saint Michael's Chapter, Navajo Nation**

**Apache County, Arizona**

**Indian Health Service**

**SDS Project No. NM17419-0401**

**Public Law 86-121**

**U.S. Department of Health and Human Services**

**Public Health Service**

**Indian Health Service**

**Office of Environmental Health and Engineering**

**Division of Sanitation Facilities Construction**

**Navajo Area Indian Health Service**

**Window Rock, Arizona**

**March 2018**



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**FEASIBILITY REPORT**  
**COMMUNITY WATER SUPPLY FACILITIES**  
**Navajo-Gallup Water Supply Project**  
**Waterline Extension**  
**Reach 12.3**  
**Phases I, II, and III**  
**NTUA Preferred Route**

Saint Michaels Chapter, Navajo Nation  
Apache County, Arizona

Indian Health Service  
SDS Project No. NM17419-0401

Public Law 86-121

**I. INTRODUCTION**

The Bureau of Reclamations (BOR) is preparing the design and construction of Reach 12.2, a water transmission line that will deliver water to the New Mexico/Arizona State Line near Window Rock, Arizona. The Indian Health Service (IHS) previously provided a Feasibility Study dated October, 2013 which proposed constructing additional water transmission line, and water storage tanks to provide delivery of water from the BOR constructed facilities into the existing Fort Defiance/Window Rock Regional Water System.

The BOR is estimating that Reach 12.2 construction will be completed in 2019. Design work on the follow up Reach 12.3 has not begun. The delayed start of Reach 12.3 will result in the postponed use of water delivered by Reach 12.2. To facilitate an earlier water delivery to the Fort Defiance/Window Rock Regional Water System, the BOR requested that the IHS break up Reach 12.3 into phases. The division of the project into phases is also required due to cost increases since the initial cost estimate was prepared in 2013.

Reach 12.3 will be divided into three phases. Phase I will install a chlorination point, and will connect the existing water system in Window Rock to the end of Reach 12.2. The cost of Phase I is \$559,000.

Phase II will construct a 30,000 feet extension consisting of 24-inch fusible PVC pipe, and erect a 1,000,000 gallon water storage tank. The cost of Phase II is \$9,968,000.

Phase III recommends creating an account with funds remaining in the Reach 12.3 funding allocation. The funds will be used to construct additional flowrate and storage capacity required to meet the needs of the 2040 design population of 40,052 persons. After completion of Phase I and Phase II, \$3.4 million may be available for deferred costs.

This report was first completed in July 2017. After review by the NTUA the report was updated so that Phase II waterline routing followed a preferred route of the NTUA. The previous report routed Phase II south of the Window Rock Airport. This updated report routes Phase II waterline along Arizona State Highway 264.

The remainder of this report will provide additional technical details, and costs for the three phases.

**II. PROPOSAL LOCATION**

Reach 12.3 is located in Arizona on the Navajo Reservation in Apache County, about 20 miles northwest of Gallup, New Mexico along U.S. Route 264 (see Figure 1). It is situated along the Arizona/New Mexico Border. The project area is located within the Window Rock and Fort Defiance communities.

The elevation in the Window Rock area ranges from 6,700 feet to 7,300 feet, with most of the valley being approximately 6,800 feet above sea level. The area's vegetation is characteristic of the high, semi-arid climate

of the Colorado Plateau with predominantly sparse grasses and brushes at the lower elevations progressing to juniper, pinion trees in the foothills. Land use is primarily grazing with very little cultivation. The area is drained south by the intermittent Black Creek that drains into the Puerco River.

The overall climate in the area is semi-arid with average annual precipitation ranging from 10 to 14 inches and average annual lake evaporation ranging from 50 to 60 inches. Temperatures are typically moderate to cool, with average daytime highs in the summer around 85-degrees Fahrenheit and average low temperatures in the winter of approximately 15-degrees Fahrenheit.

Houses located in the proposal area are traditional Navajo log-mud Hogan's, conventional wood frame structures, and mobile homes. The NTUA provides electrical power. Economic support for many of the chapters' households is provided by raising livestock, and by employment on the reservation with various private businesses and government agencies. Population growth in the area is considered average for Navajo Tribal lands due to prospects of continued employment in Window Rock, Arizona and Gallup, New Mexico. Based on U.S. Census data, the Window Rock/Fort Defiance area has a population of 11,767 and is expected to be 40,052 in 2040.

### III. EXISTING SANITATION FACILITIES

#### Water Supply

The Fort Defiance/Window Rock water system is operated by NTUA. It is interconnected with the Navajo Chapter water system and has approximately 4,000 metered water connections. As part of this feasibility report, the community of Navajo will not be included in the service area because of its higher elevation, thus reducing the service population of Reach 12.3 to approximately 2,846 homes. Due to the topography, the system has multiple pressure zones (See Figure 2). Groundwater from 17 wells is treated with chlorine prior to distribution to 24 steel water storage tanks with the total storage of 7.2 MG.

Community residents without water services haul water from a watering point in an adjacent Chapter, from a water filling station in Gallup, or from community windmills. The dual utilization of these community windmills, for both livestock and domestic needs creates the potential for unhealthy sanitation conditions.

#### Sewage Disposal

Residents on the community water system have individual septic tank and drainfield systems and those without community water use pit privies for human waste disposal. In the more densely populated areas, housing developments, local and Federal government buildings, schools, hospitals, and local businesses are connected to the Window Rock sewage treatment facility. This facility uses surface lagoons for sewage treatment.

#### Solid Waste

There are no transfer stations in the Window Rock area. Navajo Sanitation located on the west side of Route 12 which is operated by the Damon family is available for solid waste disposal. Transfer stations are available in Ganado, Arizona and Gallup, New Mexico.

### IV. PARTICIPATION

The Navajo-Gallup Supply Water Project is a cooperative effort of the Navajo Nation, BOR, U.S. Department of Interior, the IHS, the Jicarilla Apache Nation, and the City of Gallup. If the full estimated funding for Reach 12.3 of \$14,000,000 becomes available the participating groups will need to determine who is responsible for design and construction management.



## V. OPERATION AND MAINTENANCE OF FACILITIES

Upon transfer of the community water supply facilities, the Navajo Nation will assign the operation and maintenance (O&M) responsibilities for these facilities to the Navajo Tribal Utility Authority.

## VI. ENVIRONMENTAL REVIEW

An Environmental Review will be completed prior to construction in accordance with the requirement in the Division of Environmental Health's Environmental Review Manual.

## VII. SANITATION DEFICIENCIES

Upon completion of Reach 12.3, sanitation deficiency levels for water and sewer facilities, as reported in the Sanitation Deficiency System Project for homes in the Window Rock/Fort Defiance Chapters will be reduced to a deficiency level 1.

## VIII. PHASING

Reach 12.3 will be divided into three phases. The phasing will allow for a staggered connection plan that matches delivery requirements with growth. The phasing will also allow for funding flexibility since not all funds are available to meet the current total estimated cost. Figure 3 is a map showing the locations of the facilities proposed by the three phases.

**Phase I:** Reach 12.2 will terminate near the New Mexico/Arizona state line. The Fort Defiance/Window Rock Regional Water System has a 10-inch transmission line near the terminal point. Phase I will construct a 24-inch PVC connection allowing Reach 12.2 water to flow into the regional water system's Pressure Zone B/H. Flow will be controlled by a solenoid flow control/pressure reducing valve. The valve will be opened and closed based on a radio signal from the system's H Tanks. A chlorination building will boost chlorine levels at the connection point. The chlorination building will also house piping and electrical controls for the turnout to Phase II. The total cost of Phase I is \$559,000. See Table 1 for a breakdown of Phase I.

Unrestricted flow from the BOR's Black Hat Tank to the H tanks will reach 1,500 gpm. Due to the need to reduce pressures, and to match current demands, the flow rate will be reduced to less than 500 gpm.

**Phase II:** As shown on Figure 3, Phase II will construct approximately 30,000 feet of 24-inch PVC transmission line. The new transmission line will be routed south to avoid the congested business area directly west of the Reach 12.2 termination point. There will be a major crossing of Highway 264, and the large wash directly south of the highway. The line will be routed west to a point on the north side of the Window Rock Airport. At this point the line will cross back across the wash and Highway 264. The remainder of the waterline will parallel Highway 264 to the tank site in St. Michaels Chapter. There will be a highway crossing of Navajo Route 12 in the St. Michael's area, and a third crossing of Highway 264. Phase II will construct a 1,000,000 gallon tank in the south-west end of Pressure Zone A/C. There will be one connection point with the existing regional water system at the south-west end of Pressure Zone A/C. Phase II's total cost is \$9,988,000, (see Table 2 for Phase II costs).

Flows to the new 1,000,000 gallon tank will be controlled by a solenoid valve with no flow control or pressure control. Flow rates to the tank will reach 600 gpm. The connection to the south-west end of Pressure Zone A/C will alleviate low pressure issues currently experienced by the existing system.

**Phase III:** Reach 12.3 was proposed to serve an estimated population of 40,052 persons. The current population is approximately one-third of the estimated 2040 population. As the Fort Defiance-Window Rock area population grows the flows provided by the Reach 12.3 facilities will increase. The facilities provided by Phase I and Phase II will have built in expandability allowing for increased flowrates. A natural consequence of the higher population will be the requirement to modify and replace portions of the Fort Defiance/Window Rock Regional Water System to accommodate the increased flows. What modifications will be required, and where the modifications will be located is beyond the scope of this study. Rather than guess where the population growth will occur, and build facilities before they are required, it is recommended that funds remaining in the Reach 12.3 budget be placed in an account managed by the Navajo Tribal Utility Authority. The funds will be used to construct facilities that will increase the capacity of Reach 12.3. Future expansion may include additional storage, connection points, booster stations, and transmission line.

Recent discussions between the BOR, the IHS, and the Navajo Nation have concluded that the total available funding for Reach 12.3 is approximately \$14,000,000. An estimated \$3.4 million may be available for deferred cost after completion of Phase I and Phase II. Further negotiations between the participating parties will be required to determine the actual amount.



**IX. Cost of Recommended Facilities**

As edited by Reclamation to include other costs for; design, engg, construction mngt, ROW, NEPA, cultural, etc.

**Table 1. Preliminary Cost Estimate - Phase I**

Coalmine NGWSP Reach 12.3 Feasibility Report

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL COST
<u>Field Costs (i.e. Construction Contract costs) - Water Supply Facilities</u>				
Mobilization/Site prep/Testing Allowance/misc. support	1	LS	\$ 80,000	\$ 80,000
Archaeological Clearances	5	AC	\$ 250	\$ 1,250
Endangered Species Survey	1	LS	\$ 3,500	\$ 3,500
Stormwater Pollution Prevention and BMPs	1	LS	\$ 8,086	\$ 8,086
24-inch PVC DR18	800	LF	\$ 53.50	\$ 42,800
Rock Excavation Water	800	LF	\$ 3.47	\$ 2,776
Electrical Power Extension (3 Phase)	0.25	MI	\$ 140,000	\$ 35,000
Chlorination Station	1	LS	\$ 200,000	\$ 200,000
Electrical & Telemetric Controls	1	LS	\$ 42,000	\$ 42,000
	Sub-total			\$ 415,412
10% Contingency - Unknown construction conditions, items, etc.				\$ 41,541
	Sub-total			\$ 456,953
<u>Non-Field costs (i.e. "Non-contract" costs for Professional Services)</u>				
Pre-Construction and Construction-Phase Professional Services which include: Design, Engineering, Alignment, Surveying, Permitting (regulatory), R-O-W, Construction Mngt, Inspections, Phase Engg, Staking, Close-out. Also includes; NEPA Sufficiency Compliance work and Cultural Monitoring (during construction).				
	% of construction		27%	\$ 123,377
	Sub-total			\$ 580,330
5% Navajo Nation Tax				\$ 29,017
	TOTAL			\$ 609,347

**IX. Cost of Recommended Facilities**

As edited by Reclamation to include other costs for; design, engg, construction mngt, ROW, NEPA, cultural, etc.

**Table 2. Preliminary Cost Estimate - Phase II**

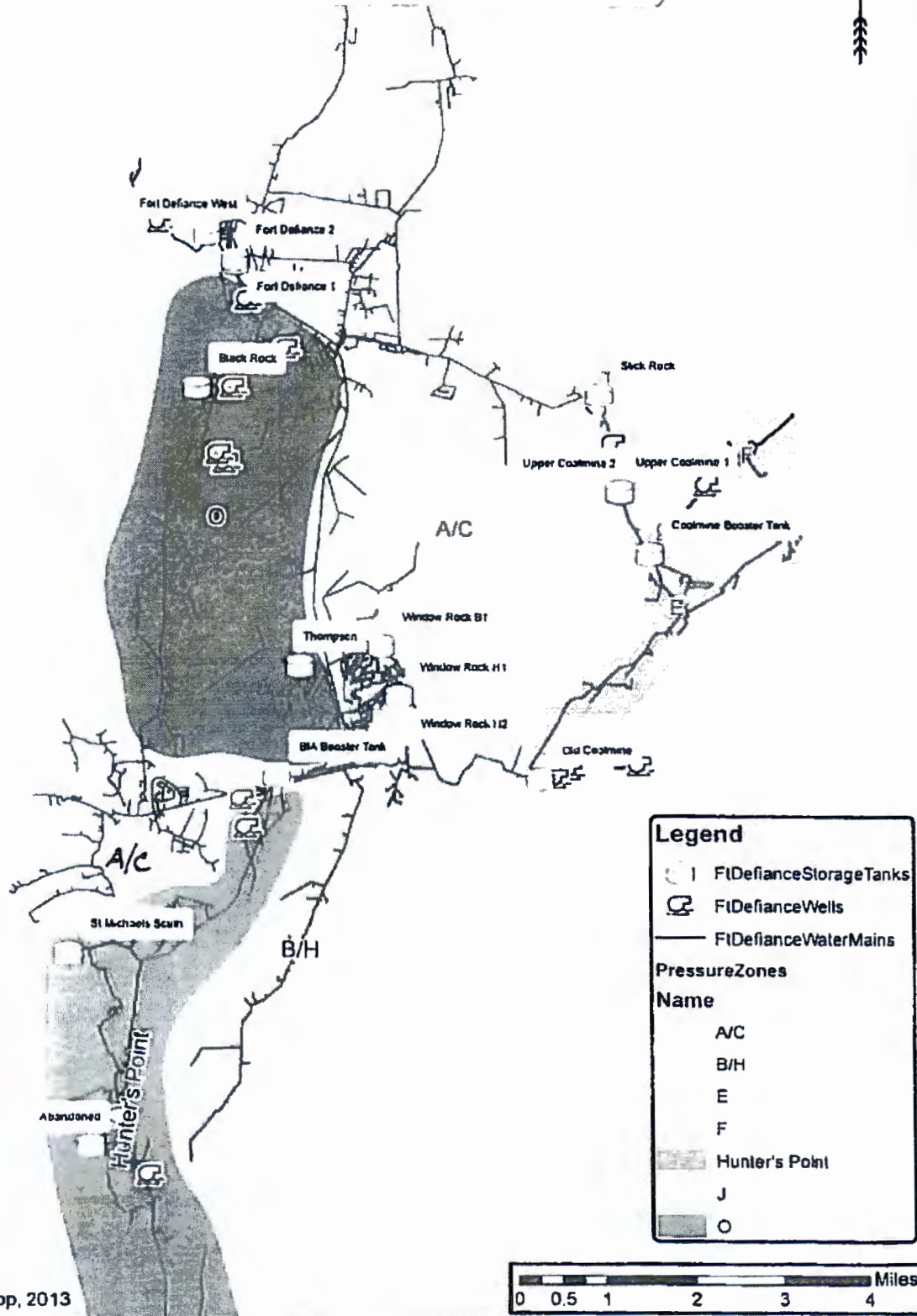
Coalmine NGWSP Reach 12.3 Feasibility Report

ITEM	QUANTITY	UNIT	UNIT COST	TOTAL COST
<b>Field Costs (i.e. Construction Contract costs) - Water Supply Facilities</b>				
Mobilization/Site prep/Testing Allowance/misc. support	1	LS	\$ 1,300,000.00	\$ 1,300,000
Archaeological Clearance	69	AC	\$ 250.00	\$ 17,250
Endangered Species Survey	1	LS	\$ 3,500.00	\$ 3,500
Stormwater Pollution Prevention and BMPs	1	LS	\$ 13,586.00	\$ 13,586
ROW Tree Clearing	6000	LF	\$ 3.00	\$ 18,000
Pipeline Crossing	10	EA	\$ 1,678.72	\$ 16,787
24" Waterline - Directional Bore	2750	LF	\$ 187.00	\$ 514,250
24" FPVC DR18	27250	LF	\$ 115.00	\$ 3,133,750
Road Crossing - Open Cut	2000	LF	\$ 50.00	\$ 100,000
Road Crossing - Boring	500	LF	\$ 136.27	\$ 68,135
Rock Excavation Water	12000	LF	\$ 3.47	\$ 41,640
St. Michaels West Water Tank	1000000	GAL	\$ 2.04	\$ 2,040,000
Chlorination Station Upgrades	1	EA	\$ 60,000.00	\$ 60,000
Electrical & Telemetric Controls	2	LS	\$ 42,000.00	\$ 84,000
	Sub-total			\$ 7,410,898
10% Contingency - Unknown construction conditions, items, etc.				\$ 741,090
	Sub-total			\$ 8,151,988
<b>Non-Field costs (i.e. "Non-contract" costs for Professional Services)</b>				
Pre-Construction and Construction-Phase Professional Services which include: Design, Engineering, Alignment, Surveying, Permitting (regulatory), R-O-W, Construction Mngt, Inspections, Phase Engg, Staking, Close-out. Also includes; NEPA Sufficiency Compliance work and Cultural Monitoring (during construction).				
	% of construction		27%	\$ 2,201,037
	Sub-total			\$ 10,353,025
	5% Navajo Nation Tax			\$ 517,651
	TOTAL			\$ 10,870,676

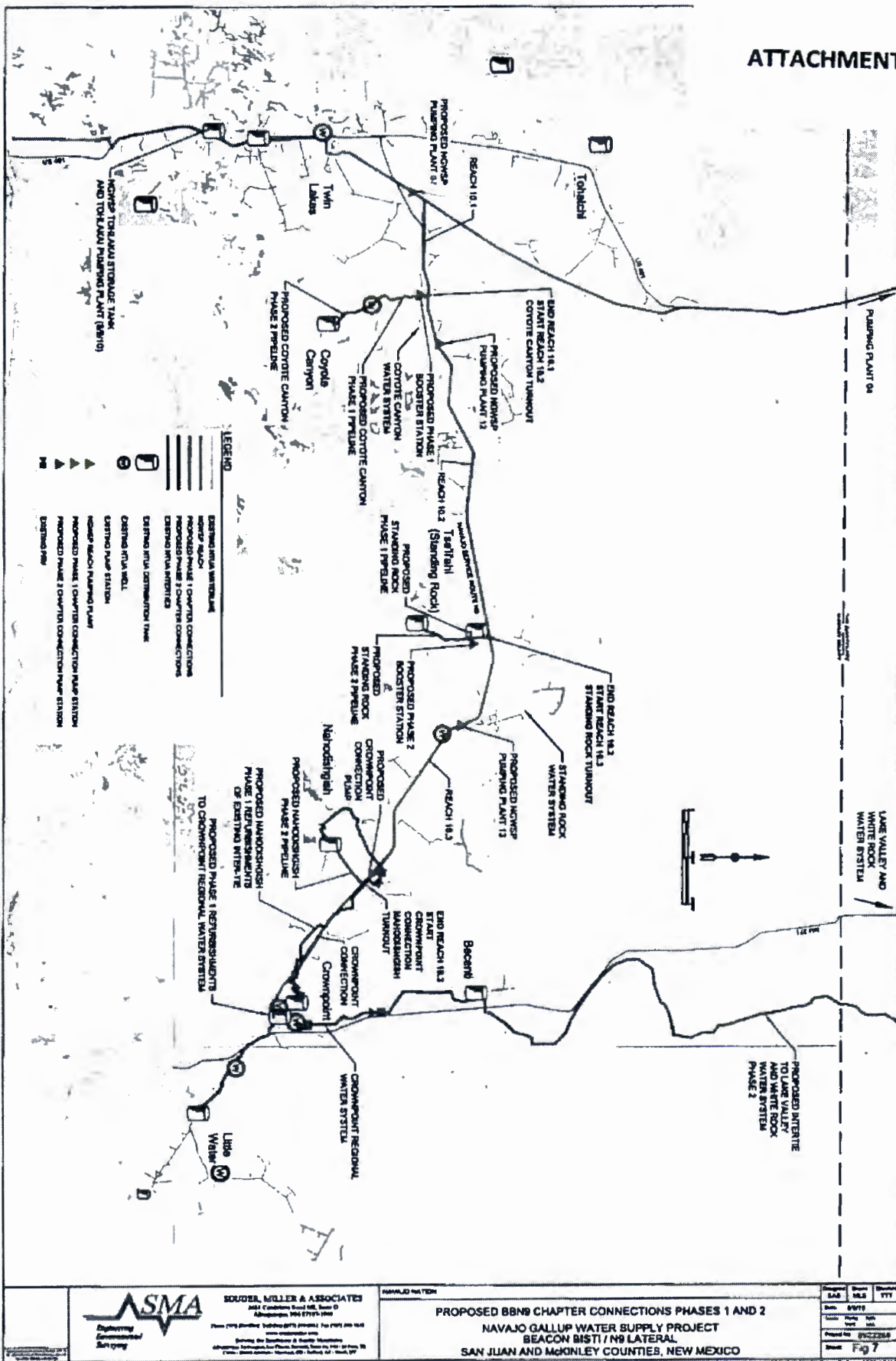
## **X. CONCLUSION**

Reach 12.3 can be constructed in three phases. Phase I will connect Reach 12.2 to the existing regional water system through a simple connection plan. The connection will prevent delaying the flow of water from Reach 12.2 into the regional water system. Phase II will construct a large transmission line allowing for the delivery of water to strategic locations on the existing regional water system. Phase II will also construct a 1,000,000 gallon water storage tank, and upgrade the chlorination building built in Phase I. This will allow for gravity flow from the NGWSP Black Hat Tank to pressure zones A/C, and B/H. Phase III will create an account with remaining Reach 12.3 funds. The funds will be used to increase Reach 12.3 capacity as the population nears the design population of 40,052 persons. The estimated total cost of all three phases is \$14,000,000.

Figure 2 - Window Rock/Fort Defiance  
Pressure Zone Map







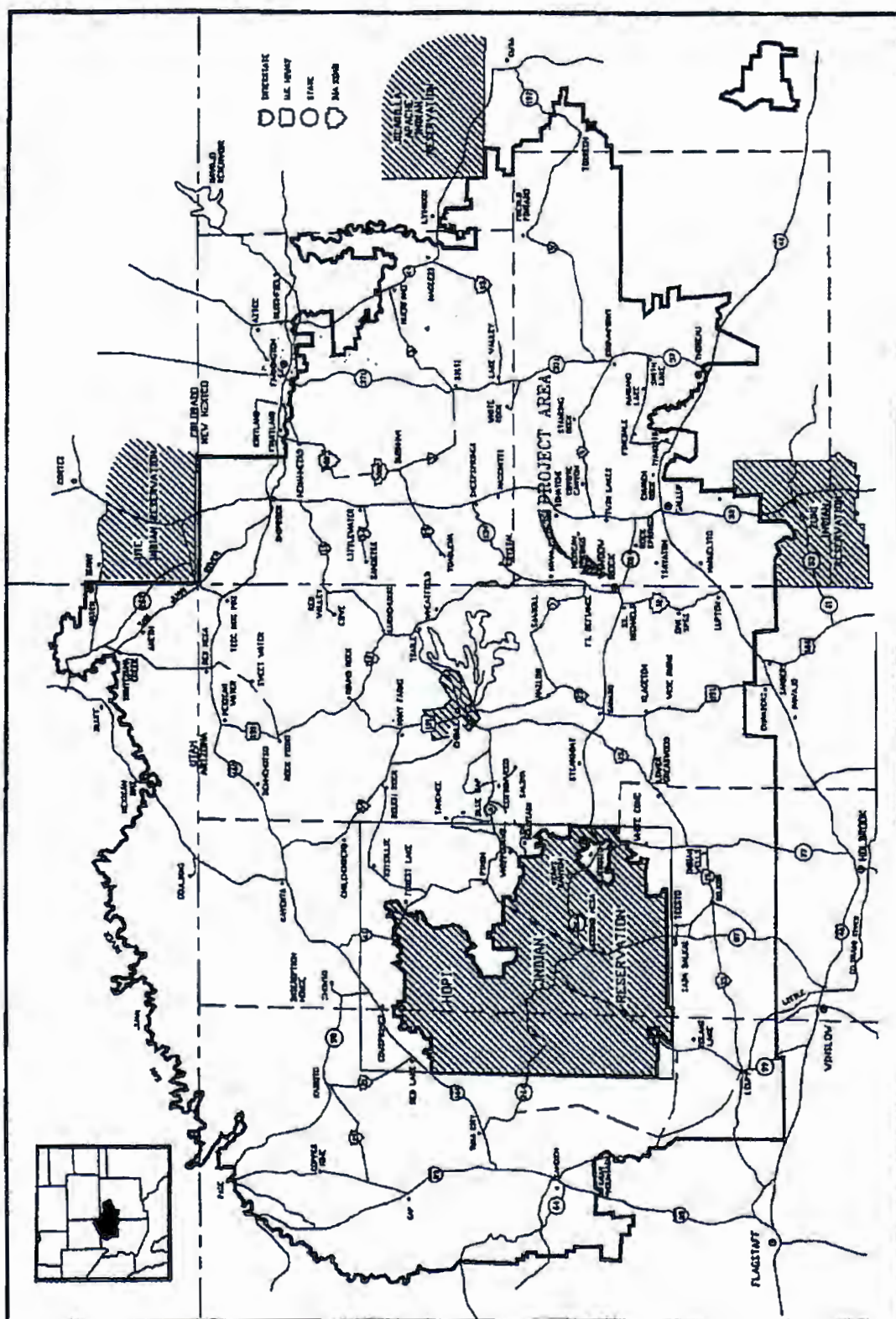


FIGURE 1  
GENERAL VICINITY MAP





Document No. 009943Date Issued 03/19/2018**EXECUTIVE OFFICIAL REVIEW**Title of Document: SF-424 App for Federal Assistance-NGWSPContact Name JOHN, JASON GProgram/Division: DIVISION OF NATURAL RESOURCESEmail jasonjohn@navajo-nsn.govPhone Number (928) 729-4004

			Sufficient	Insufficient
<input type="checkbox"/>	<b>Business Site Lease</b>			
1	Division	Date	<input type="checkbox"/>	<input type="checkbox"/>
2	Office of the Controller	Date	<input type="checkbox"/>	<input type="checkbox"/>
(only if Procurement Clearance is not issued within 30 days of the initiation of the E O review)				
3	Office of the Attorney General	Date	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions</b>			
1	Division	Date	<input type="checkbox"/>	<input type="checkbox"/>
2	Office of the Attorney General	Date	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications</b>			
1	Office of Management and Budget	Date	<input type="checkbox"/>	<input type="checkbox"/>
2	Office of the Controller	Date	<input type="checkbox"/>	<input type="checkbox"/>
3	Office of the Attorney General	Date	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Navajo Housing Authority Request for Release of Funds</b>			
1	NNEPA	Date	<input type="checkbox"/>	<input type="checkbox"/>
2	Office of the Attorney General	Date	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Lease Purchase Agreements</b>			
1	Office of the Controller	Date	<input type="checkbox"/>	<input type="checkbox"/>
(recommendation only)				
2	Office of the Attorney General	Date	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<b>Grant Applications</b>			
1	Office of Management and Budget	Date	<input type="checkbox"/>	<input type="checkbox"/>
2	Office of the Controller	Date	<input type="checkbox"/>	<input type="checkbox"/>
3	Office of the Attorney General	Date	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval</b>			
1	Division	Date:	<input type="checkbox"/>	<input type="checkbox"/>
2	Office of the Attorney General	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Relinquishment of Navajo Membership</b>			
1	Land Department	Date:	<input type="checkbox"/>	<input type="checkbox"/>
2	Elections	Date:	<input type="checkbox"/>	<input type="checkbox"/>
3	Office of the Attorney General	Date:	<input type="checkbox"/>	<input type="checkbox"/>



☐ **Land Withdrawal or Relinquishment for Commercial Purposes**

			Sufficient	Insufficient
1	Division	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2	Office of the Attorney General:	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases**

1	NLD	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2	F&W	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3	HPD	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4	Minerals	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5	NNEPA	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6	DNR	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7	DOJ	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Rights of Way**

1	NLD	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2	F&W	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3	HPD	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4	Minerals	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5	NNEPA	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6	Office of the Attorney General:	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7	OPVP	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease**

1	Minerals	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2	OPVP	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3	NLD	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Assignment of Mineral Lease**

1	Minerals	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2	DNR	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3	DOJ	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)**

1	NLD	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2	F&W	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3	HPD	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4	Minerals	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5	NNEPA	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6	DNR	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7	DOJ	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
8	OPVP	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **OTHER:**

1.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>




# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

## MEMORANDUM

**TO:** Division Directors, Department and Program Managers  
Executive Branch

**FROM:**

  
Russell Begaye, President  
THE NAVAJO NATION

**DATE:** February 21, 2018

**SUBJECT:** Directive Regarding CJA-01-18: Amending 2 N.N.C. § 164(B) Agreements Not  
Requiring Committee or Council Approval

As you are aware, CJA-01-18, *Amending 2 N.N.C. § 164(B) Agreements Not Requiring Committee or Council Approval*, was signed on February 9, 2018. CJA-01-18 reads:

Prior to final execution as provided in 2 N.N.C. § 222, documents not requiring approval by resolution of the Navajo Nation Council or its committees shall be reviewed and signed by the President of the Navajo Nation within ten (10) calendar days after the document(s) is logged in at the Office of the President; and, upon notice to the Speaker and Chairperson of the oversight committee for an extension, an additional ten (10) days shall be allowed.

While CJA-01-18 will ensure that all contracts, grants, agreements and other documents are reviewed in an expedient manner, the Begaye-Nez Administration believes that a collaborative effort between essential Navajo Nation Divisions is needed to create a beneficial review system for all under CJA-01-18. A 164(B) Task Force will be assembled to ensure that all pertinent divisions are consulted in the creation of a uniformed review process immediately.

Therefore, I hereby direct that Executive Order No. 07-2013, *The 164 Review and Signature Process*, shall remain in effect until March 16, 2018.

Please contact Ms. Clara Pratte, Chief of Staff for the Office of the President and Vice President, with your questions regarding this directive. Ms. Pratte may be reached at (928) 871-7000.

Application for Federal Assistance SF-424			
<b>* 1. Type of Submission</b> <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application		<b>* 2. Type of Application:</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision	
		<b>* If Revision select appropriate letter(s)</b> _____ <b>* Other (Specify)</b> _____	
<b>* 3. Date Received</b> _____		<b>4. Applicant Identifier:</b> _____	
<b>5a. Federal Entity Identifier:</b> _____		<b>5b. Federal Award Identifier:</b> _____	
<b>State Use Only:</b>			
<b>6. Date Received by State</b> _____		<b>7. State Application Identifier:</b> _____	
<b>8. APPLICANT INFORMATION:</b>			
<b>* a. Legal Name</b> The Navajo Nation			
<b>* b. Employer/Taxpayer Identification Number (EIN/TIN)</b> 86- 933		<b>* c. Organizational DUNS</b> 0090017020000	
<b>d. Address:</b>			
<b>* Street1</b> P. O. Box 78			
<b>Street2:</b> _____			
<b>* City</b> Fort Defiance			
<b>County/Parish:</b> _____			
<b>* State</b> AZ: Arizona			
<b>Province</b> _____			
<b>* Country</b> USA: UNITED STATES			
<b>* Zip / Postal Code</b> 86504			
<b>e. Organizational Unit:</b>			
<b>Department Name:</b> NWR - Water Management Branch		<b>Division Name</b> Navajo Nation Natural Resources	
<b>f. Name and contact information of person to be contacted on matters involving this application:</b>			
<b>Prefix</b> Mr.		<b>* First Name</b> Jason	
<b>Middle Name:</b> _____			
<b>* Last Name</b> John			
<b>Suffix</b> _____			
<b>Title</b> Branch Manager			
<b>Organizational Affiliation</b> N.N. Dept of Water Resources - Water Management Branch			
<b>* Telephone Number:</b> 928-729- 01		<b>Fax Number:</b> 928 729-4126	
<b>* Email</b> jasonj_hn@navajo-nsn.gov			

**Application for Federal Assistance SF-424**

**\* 9. Type of Applicant 1: Select Applicant Type:**

☒ Indian/Native American Tribal Government (Federally Recognized)

**Type of Applicant 2: Select Applicant Type:**

**Type of Applicant 3: Select Applicant Type:**

**\* Other (specify)**

**\* 10. Name of Federal Agency:**

Bureau of Reclamation - Upper Colorado Region

**11. Catalog of Federal Domestic Assistance Number:**

15.452

**CFDA Title:**

Navajo All-Pipe Water Supply Project (NGWSP)

**\* 12. Funding Opportunity Number:**

**\* Title:**

Design, Construction, and Construction Oversight for Reaches 10.1, 10.2, 10.3 (Crownpoint Lateral) and 12.3 (Window Rock Lateral) of the NGWSP.

**13. Competition Identification Number:**

**Title:**

**14. Areas Affected by Project (Cities, Counties, States, etc.):**

Add Attachment

Delete Attachment

View Attachment

**\* 15. Descriptive Title of Applicant's Project:**

Design, Construction, and Construction Oversight for Reaches 10.1, 10.2, 10.3 (Crownpoint Lateral) and 12.3 (Window Rock Lateral) of the NGWSP.

Attach supporting documents as specified in agency instructions

Add Attachments

Delete Attachments

View Attachments



# Application for Federal Assistance SF-424

## 16. Congressional Districts Of:

\* a. Applicant

114 1

\* b. Program/Project

114 1

Attach an additional list of Program/Project Congressional Districts if needed

Add Attachment

Delete Attachment

View Attachment

## 17. Proposed Project:

\* a. Start Date

1 1 1

\* b. End Date

12 31/2 24

## 18. Estimated Funding (\$):

\* a. Federal

80,000,000.00

\* b. Applicant

\* c. State

\* d. Local

\* e. Other

\* f. Program Income

\* g. TOTAL

80,000,000.00

## \* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on

☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review

☒ c. Program is not covered by E.O. 12372.

## \* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)

☐ Yes

☒ No

If "Yes", provide explanation and attach

Add Attachment

Delete Attachment

View Attachment

21. "By signing this application, I certify (1) to the statements contained in the list of certifications\*\* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances\*\* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

☒ \*\* I AGREE

\*\* The list of certifications and assurances or an internet site where you may obtain this list is contained in the announcement or agency specific instructions

## Authorized Representative:

Prefix:

Mr.

\* First Name

Russell

Middle Name:

\* Last Name:

B. Gay

Suffix:

\* Title:

President, The Navajo Na

\* Telephone Number:

928-871-7000

Fax Number:

928-871-4

\* Email:

knbegaye@navajo-nsn.gov

\* Signature of Authorized Representative

*Russell B. Gay*

\* Date Signed:

3/30/12

### BUDGET INFORMATION - Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.

COST CLASSIFICATION	a Total Cost	b Costs Not Allowable for Participation	c Total Allowable Costs (Columns a-b)
1 Administrative and legal expenses	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
2 Land structures rights-of-way appraisals etc	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
3 Relocation expenses and payments	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
4 Architectural and engineering fees	\$ <input type="text" value="12,612."/>	\$ <input type="text"/>	\$ <input type="text" value="12,612."/>
5 Other architectural and engineering fees	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
6 Project inspection fees	\$ <input type="text" value="4,940."/>	\$ <input type="text"/>	\$ <input type="text" value="4,940."/>
7 Site work	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
8 Demolition and removal	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
9 Construction	\$ <input type="text" value="63,012."/>	\$ <input type="text"/>	\$ <input type="text" value="63,012."/>
10 Equipment	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
11 Miscellaneous	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
12 SUBTOTAL (sum of lines 1-11)	\$ <input type="text" value="80,074."/>	\$ <input type="text"/>	\$ <input type="text" value="80,074."/>
13 Contingencies	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
14 SUBTOTAL	\$ <input type="text" value="80,074."/>	\$ <input type="text"/>	\$ <input type="text" value="80,074."/>
15 Project (program) income	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
16 TOTAL PROJECT COSTS (subtract #15 from #14)	\$ <input type="text" value="80,074."/>	\$ <input type="text"/>	\$ <input type="text" value="80,074."/>
<b>FEDERAL FUNDING</b>			
17 Federal assistance requested, calculate as follows: (Consult Federal agency for Federal percentage share ) Enter the resulting Federal share.	Enter eligible costs from line 16c. Multiply X <input type="text"/> %		\$ <input type="text" value="80,074."/>

## ASSURANCES - CONSTRUCTION PROGRAMS

OMB Number 4040-0009  
Expiration Date 01/31/2019

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant

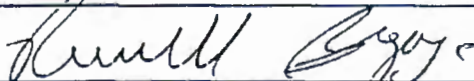
- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this application.</li> <li>2. Will give the awarding agency the Comptroller General of the United States and, if appropriate, the State the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.</li> <li>3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.</li> <li>4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.</li> <li>5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.</li> <li>6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.</li> <li>7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.</li> </ol> | <ol style="list-style-type: none"> <li>8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).</li> <li>9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.</li> <li>10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681, 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.</li> </ol> |
|---|--|



11. Will comply or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of

Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
	President
APPLICANT ORGANIZATION	DATE SUBMITTED
The Navajo Nation	5/30/2018



Navajo Nation - Division of Finance  
Office of the Controller  
164 or Signature Authorization Sheet (SAS) Sign-Off Sheet for OOC

*(Attach sign off sheet to SAS document to ensure each section within OOC signs off on SAS)*

**PLEASE NOTE OOC (ALL SECTIONS IN TOTAL) HAS 7 DAYS TO REVIEW**

10716
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OOO - Section	Date
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- |                            |       |
|----------------------------|-------|
| 1 Accounts Receivable:     | <hr/> |
| 2 General Accounting:      | <hr/> |
| 3 Contract Accounting:     | <hr/> |
| 4 Contract Administration: | <hr/> |

**Comments:**

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Document No. 010716Date Issued: 07/18/2018**SECTION 164 REVIEW FORM**Title of Document: BOR Assistance Agreement Contact Name: JOHN, JASON GProgram/Division: DIVISION OF NATURAL RESOURCESEmail: jasonjohn@navajo-nsn.gov Phone Number: (928) 729-4004Division Director Approval for 164A: 25

**Check document category: only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.**

**Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council**

<input type="checkbox"/>	Statement of Policy or Positive Law:		Sufficient	Insufficient
	1. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)			
	1. OMB: <u>C. Shultz - see memo</u>	Date: <u>7/30/18</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	2. OOC: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

DC  
Javier.

**Section 164(B) Final approval rests with the President of the Navajo Nation**

<input type="checkbox"/>	Grant/Funding Agreement or amendment:			
	1. Division: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OMB: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OOC: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Subcontract/Contract expending or receiving funds or amendment:			
	1. Division: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. BRD: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OMB: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OOC: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	5. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:			
	1. Division: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	M.O.A. or Letter of Assurance expending or receiving funds or amendment:			
	1. Division: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OMB: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OOC: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OAG: _____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>



# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM

☐ RESUBMITTAL

DOJ	
DATE / TIME	
<input type="checkbox"/> 7 Day Deadline	
DOC #:	_____
SAS #	_____
UNIT	_____

\*\*\* FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

### CLIENT TO COMPLETE

DATE OF REQUEST:	7/18/2018	DIVISION:	Natural Resources
CONTACT NAME:	Jason John	DEPARTMENT:	DWR/Water Management Branch
PHONE NUMBER:	(928) 729-4004	E-MAIL:	jasonjohn@navajo-nsn.gov
TITLE OF DOCUMENT: <i>BOR Assistance Agreement for Design, Construction and Construction Oversight for Reaches 10.1, 10.2, 10.3 &amp; 12.3 of the Navajo Gallup Water Supply Project.</i>			

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	REVIEWING ATTORNEY/ADVOCATE:
--------------------	------------------------------

DATE TIME OUT OF UNIT:
------------------------

### DOJ ATTORNEY / ADVOCATE COMMENTS

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
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DOJ Secretary Called:	for Document Pick Up on	at	By:
-----------------------	-------------------------	----	-----

PICKED UP BY: (Print)	DATE / TIME:
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THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

MEMORANDUM

DATE: July 18, 2018

TO: 164 Reviewers

FROM:   
Jason John, Principal Hydrologist

RE: 164 Review Document 10716 for Crownpoint Lateral of Navajo - Gallup Water Supply Project

The Water Management Branch requests a 164(A) review of the subject document for the purpose of waiving Indirect Cost (IDC) for Agreement R18AC00045 with the U.S. Bureau of Reclamation for the design and construction of the Crownpoint Lateral of the Navajo - Gallup Water Supply Project (Project).

The request for the waiver is based on the funding ceiling for the Project as part of the San Juan River Water Rights Settlement Agreement in New Mexico. While the Project's budget ceiling is indexed on an annual basis, it originally did not anticipate the Navajo Nation constructing portions of the Project and, therefore, no IDC was budgeted in the original budget as part of the Settlement Agreement.

Please contact me if you have any questions at [jasonjohn@navajo-nsn.gov](mailto:jasonjohn@navajo-nsn.gov) or at x4004.

Thank you





# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

July 30, 2018

## MEMORANDUM

**To:** Bidtah Becker, Division Director  
Division of Natural Resources

**From:** C M  
Cordell Shortey, Contracting Officer  
Contracts and Grants Section/OMB

**Subject:** 164 (A) Review on Doc. No. 010716-Bureau of Reclamation (BOR) Assistance Agreement

The purpose of this review is to accept BOR Assistance Agreement, award and to request for IDC waiver through Naabik'yati' Committee by 164 (A) Review. The subject document was surmamed as **insufficient** for the following reason:

1. FY 2018 NN BIM Appendix L Sec. III. B. requires budget for the award submitted on NNBFs 1-5. The budget in this format is not included in the packet.

The program/division are advised to resolve the matter and adhere to the NN BIM at all times.

Call our office, if you have question at extension 6033.

cc: Jason John, Principal Hydrologist, Water Mgmt. Branch/DNR  
File

8/5/18  
Response:  
Budget forms  
added. -882

Received

JUL 30 2018

Water Management Branch


**Contracts and Grants Section / OMB**  
**Document Review Check on Grant Application, Award or Modification**

(Fill in Spaces Highlighted Green that Apply)

**Document Review No. / Date :** 010716/7/18/18 submitted for our review. 164 (A)

**Application, A.** yes  
**Appli. due date:** N/A **Date Appli. Submitted to funding agency** 3/19/2018  
**Award, B or C.** N/A **Mod. No., D** #  
**Signature Block for Branch Chief?** N/A

**FY 2018 NN BIM Appendix L Sec. IV. Submit Grant Application/Accept Grant Award**

- A. **Application, Sec. 164(A) or Executive Official Review on EO 07-2013** Sec. 164 (A) Assistance Agreement  
Reference Application e.g., SF-424, etc. BOR-7-2279  
1 **Grant Agreement, Terms & Conditions** Assistance Agreement  
    **Budget** 40,000,000 **Funding Period** Date of Agreement signed by BOR to 12/31/2024  
2 **Scope of Work (SOW) specific to grant purpose.** Included  
3 **Required NNBF 1-5: budget comply w/ Sec. III. B. justify, calcu., etc.** Not Included  
    - NNBF 3 supported by DPM List of Employee Assignment n/a  
    - Budget each Subcontract Separate n/a  
    *On lower right hand corner of each page, initial & indicate date of review.*  
4 **IDC, use most current approved IDC rate. Indicate FY & IDC Rate** Requesting a Waiver to NNC  
    - Supported by IDC calculation check sheet, page 86 of BIM. no  
5 **Cost Sharing Contribution, Form Appendix L-2** no  
6 **CFDA No. on federal funds** 15.552  
7 **DUNS no. 009001702** Navajo Nation's DUNS # used  
8 **SAMS** No info. cited in memo to obtain one.  
B. **Award, Sec. 164(B) Review; Address Appli. requirement above.**  
    - Document review no. on Appl./ Date 164 (B) No. 009943 03/19/18  
    - Notice of Grant Award (NOGA) / Date (attach): Cited in the Agreement funds obligated under § 4.  
    - Change to Appli. on Award, explain in **Comment** section below n/a  
C. **Award (automatic) for successor year on multi-year contract; Address Appli. requirement above.**  
    - Term (Begin & End Date) of multi-year contract N/A  
    - NOGA / Date (attach): N/A  
D. **Sec. III. C. Contract Modification, Form Summary of Change to Ext Grant Budget Appdx L-1**  
    **Additional allocation to annual award e.g., CR funding on federal award.**  
    - Required NNBF 3 or 4 or both.  
    - NOGA / Date (attached):  
E. **Comment on issues, concerns, etc.**  
    *The Assistance Agreement is to secure BOR funding and to seek a waiver for IDC from the NNC. The Application was completed via 164(B) Doc. No. 009943 dated 3/19/18 hereto attached. With the exception of Agreement all completed, the NNBF 1-6 weren't included. This caused the review insufficient.*  
F. **Document is Sufficient or Insufficient:** Insufficient  
G. **Review By / Date:**  Patric Nelson, Senior Contract Analyst 5/18/18  
**Surname By / Date:**

**Result of Review:** Explain by memorandum reason document is deemed Insufficient and issues/concerns noted in Section E above.

# NAVAJO NATION

RCS# 994

8/23/2018

Naa'bik'iyati Committee

02:49:46 PM

Amd# to Amd#

Legislation No. 0277-18

PASSED

MOT Damon

Supporting the United States

SEC Bennett

Dept. of the Interior Bureau of  
Reclamation Assistance Agreement

**Yea : 12**

**Nay : 0**

**Excused : 0**

**Not Voting : 12**

**Yea : 12**

Begay, S

Damon

Phelps

Tsosie

BeGaye, N

Daniels

Slim

Witherspoon

Bennett

Perry

Tso

Yazzie

**Nay : 0**

**Excused : 0**

**Not Voting : 12**

Bates

Brown

Filfred

Pete

Begay, K

Chee

Hale

Shepherd

Begay, NM

Crotty

Jack

Smith