

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE OF THE  
23<sup>rd</sup> Navajo Nation Council --- Third Year, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A RIGHT-OF-WAY AND TEMPORARY CONSTRUCTION EASEMENT TO BUREAU OF RECLAMATION, FARMINGTON CONSTRUCTION OFFICE, TO CONSTRUCT, OPERATE AND MAINTAIN THE "12.1 - SAN JUAN LATERAL WATER SUPPLY PROJECT" REACH PORTION LOCATED ON NAVAJO NATION FEE LANDS IN ROCK SPRINGS CHAPTER VICINITY (MCKINLEY COUNTY, NEW MEXICO)

BE IT ENACTED:

SECTION ONE. AUTHORITY

Pursuant to 2 N.N.C. Section §501 (B)(2), the Resources and Development Committee of the Navajo Nation Council has the authority to give final approval of all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation land and unrestricted (fee) land.

SECTION TWO. FINDINGS

A. The Bureau of Reclamation (BOR), Farmington Construction Office, has submitted a right-of-way (ROW) and temporary construction easement (TCE) application to construct, operate and maintain the "12.1-San Juan Lateral Water Supply Project" located on, over and across Navajo Nation Fee Lands in the Rock Springs Chapter vicinity (McKinley County, New Mexico). The applications for the right-of-way and temporary construction easement are attached hereto and incorporated herein as **Exhibits "A-1" and "A-2."**

B. The proposed permanent right-of-way is located in the vicinity of the Rock Springs Chapter (McKinley County, New Mexico) and the location is more particularly described on the survey map attached hereto and incorporated herein as **Exhibit "B."**

C. The Project Review Section with the Navajo Land Department have determined that the "Navajo Nation is the only affected land user and provided the necessary consent from Rock Springs Chapter Officials along with the concurrence of the District 16 Land Board member," and the Project Review Section memorandum is attached hereto and made a part hereof as **Exhibit "C."**

D. Bureau of Reclamation requests the term of the right-of-way to "continue as long as the Grantee Bureau of Reclamation (BOR) or its successors, or assigns uses the right-of-way for the construction, operation, and maintenance of the Navajo Gallup Water Supply Project."

E. The consideration for this request for right-of-way and temporary construction easement should be waived because the project will supply water to the Navajo Nation.

F. It is in the best interest of the Navajo Nation to waive the bond pursuant to a memorandum dated November 22, 2016 from the United States Department of the Interior attached as **Exhibit "F."**

G. The environmental and archaeological studies have been completed and are attached hereto and incorporated herein by this reference.

### **SECTION THREE. APPROVAL**

A. The Resources and Development Committee of the Navajo Nation Council hereby grants approval of a Right-of-Way and Temporary Construction Easement to Bureau of Reclamation to construct, operate and maintain the "12.1-San Juan Lateral Water Supply Project" located on Navajo Nation Fee Lands in Rock Springs Chapter vicinity, McKinley County, New Mexico. The location is more particularly described on the map attached hereto as **Exhibit "B."**

B. The Resources and Development Committee of the Navajo Nation Council hereby approves the right-of-way and temporary construction easement subject to, but not limited to, the following terms and conditions attached hereto and incorporated herein as **Exhibits "D" and "E."**

C. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

**CERTIFICATION**

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at Tohajiilee Chapter, Tohajiilee, (Navajo Nation) New Mexico, at which quorum was present and that same was passed by a vote of 3 in favor, 0 opposed, 1 abstained this 7<sup>th</sup> day of February, 2017.



**Jonathan J. Perry, Pro Tem Chairperson  
Resources and Development Committee  
Of the 23<sup>rd</sup> Navajo Nation Council**

Motion: Honorable Davis Filfred  
Second: Honorable Benjamin Bennett

Document No. 005368Date Issued: 01/29/2016**EXECUTIVE OFFICIAL REVIEW**DIVISION OF  
NATURAL RESOURCES  
DEC 14 2015Title of Document: BOR for ROW&TCE FeeLand REACH 12.1  
NGWSPContact Name: DRAPER, HOWARDProgram/Division: DIVISION OF NATURAL RESOURCESEmail: howarddraper@frontiernet.netPhone Number: 928/871-6447

<input type="checkbox"/>	<b>Business Site Lease</b>			<b>Sufficient</b>	<b>Insufficient</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"/>
 	<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"/>
 	<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"/>
 	<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"/>
 	<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"/>
 	<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"/>
 	<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"/>
 	<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: \_\_\_\_\_ ☐ ☐  
 2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

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

1. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 2. F&W \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 3. HPD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 4. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 5. NNEPA \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 6. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 7. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Rights of Way

1. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 2. F&W \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 3. HPD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 4. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 5. NNEPA \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 6. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 7. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

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

1. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 2. OPVP \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 3. NLD \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☐ Assignment of Mineral Lease

1. Minerals \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 2. DNR \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 3. DOJ \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

☒ 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: 25 July 16 ☒ ☐  
 2. F&W \_\_\_\_\_ Date: 7/29/16 ☒ ☐  
 3. HPD \_\_\_\_\_ Date: 12/13/16 ☒ ☐  
 4. Minerals \_\_\_\_\_ Date: 8-12-2016 ☒ ☐  
 5. NNEPA \_\_\_\_\_ Date: 12-07-16 ☒ ☐  
 6. DNR \_\_\_\_\_ Date: 12/15/16 ☒ ☐  
 7. DOJ (ic) \_\_\_\_\_ Date: 12/21/16 ☒ ☐  
 8. OPVP \_\_\_\_\_ Date: 12-27-16 ☒ ☐

☐ OTHER:

1. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 2. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 3. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 4. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐  
 5. \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐





# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ	
12/20/16 9:12am	
DATE / TIME	
<input type="checkbox"/> 7 Day Deadline	
DOC #:	005368
SAS #:	
UNIT:	NRN

☐ RESUBMITTAL

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

### CLIENT TO COMPLETE

DATE OF REQUEST:	1/29/2016	DIVISION:	Div. of Natural Resources
CONTACT NAME:	Howard Draper/ Kayla Bia	DEPARTMENT:	Navajo Land Department
PHONE NUMBER:	928/871-6447	E-MAIL:	howarddraper@frontiernet.net
TITLE OF DOCUMENT: Approving Bureau of Reclamation (BOR) ROW and TCE on Navajo Nation Fee Lands for REACH 12.1 (NGWSP)			

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	12.20.16 10am	REVIEWING ATTORNEY/ADVOCATE:	Juan Chee 12.30.16
DATE TIME OUT OF UNIT: 12.21.16 @ 10:30 P			

### DOJ ATTORNEY / ADVOCATE COMMENTS

- Document is legally sufficient.

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Travis Gabe	12-20-16	Jail Graham	12/21/16 9:47AM

DOJ Secretary Called: Joan Jones for Document Pick Up on 12.21.16 at 10am By: J

PICKED UP BY: (Print)	DATE / TIME:
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NNDOJ/DRRF-July 2013

COMPLETED

# *Bureau of Reclamation*

## **Navajo Gallup Water Supply Project**

### **Tribal Fee Land**

### **Reach 12.1 - San Juan Lateral**



UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
APPLICATION FOR A GRANT OF EASEMENT FOR RIGHT-OF-WAY



(Tribal Fee Lands – NGWSP Reach 12.1)

LANDOWNER NAME: Navajo Nation

Allotment No.'s: Tribal Fee Lands as Described Herein

**APPLICANT:** US Bureau of Reclamation having a residence or principal place of business at 1235 La Plata Highway, Farmington, New Mexico 87401 hereby files an application with the Navajo Nation, pursuant to the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC §§ 323 – 328), and to the regulations of the Department of the Interior contained in Title 25, Code of Federal Regulations, Part 169, as applicable, multiple grants of Easement for Right-of-Way, without limitation in term, for the following purposes and reasons:

**PURPOSE:** The Omnibus Public Land Management Act of 2009, Title X, Part III (Public Law 111-11) (Act) authorizes the Bureau of Reclamation to construct the Navajo-Gallup Water Supply Project (NGWSP) that includes water treatment plants, pipeline, several pumping stations and ancillary facilities. Once completed, the NGWSP will deliver a reliable source of potable water, sourced from the San Juan River, to Navajo communities in northwestern New Mexico, Window Rock, AZ, the City of Gallup, NM, and the southwest portion of the Jicarilla Apache Reservation for municipal and industrial use. The NGWSP will connect to existing and future water distribution systems operated on the reservation by the Navajo Tribal Utility Authority (NTUA) and in Gallup, by the City of Gallup. The high quality treated water provided by the NGWSP will bring immediate benefits, including improved health and wellbeing to the individuals on the reservation and to those living in the greater Gallup area.

The Easement for Right-of-Way (ROW) will be used for the construction, operation, maintenance and/or replacement of a 36 inch in diameter, or less, water transmission pipeline over, across, and through Navajo Nation Tribal Fee Lands that will be crossed by a portion of Reach 12.1 of the San Juan Lateral, a part of the Navajo-Gallup Water Supply Project in the area of the Twin Lakes, Rock Springs and Tsayatoh Chapters in McKinley County, New Mexico. Ancillary appurtenances may include but are not limited to thrust features, vaults, valves, fiber optic supervisory control and data acquisition systems (SCADA), cathodic protection systems, single phase utility power to support the operation of the pipeline infrastructure, and a patrol road.

**ACROSS THE FOLLOWING DESCRIBED NAVAJO NATION TRIBAL FEE LANDS:**

**1) Easement for ROW – Parcel No. Rch 12.1-01 - ROW Drawing No. 1695-529-421.**

A parcel of Navajo Nation Tribal Fee Land lying in the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4), Section 5, Township 16 North of Range 18 West, New Mexico Principle Meridian, McKinley County, New Mexico. Said ROW being a strip of land approximately 479-feet in length and 80-feet in width, containing 0.88 acres, as illustrated on ROW Drawing No. 1695-529-421, attached hereto and by reference, made a part hereof.

**Description of the ROW - Parcel No. Rch 12.1-01 - ROW Drawing No. 1695-529-421:**

The Point of Beginning being said Reach 12.1 Station 121022+01.74, a point lying on the boundary of Parcel No. 07 of the Tohlakai Pumping Plant as illustrated on Drawing No. 1695-529-407, as approved November 19, 2013, from which the Northwest corner of said Section 05 bears North 05°02'27" West a distance of 3361.18-feet; Thence from the Point of Beginning, South 35°36'47" West a distance of 326.35-feet to Station 121025+28.09; Thence South 44°46'11" West a distance of 152.49-feet to Station 121026+80.58, a point on the West line of said Section 05 and the point of terminus from which the Southwest corner of said Section 05 bears South 01°37'07" West a distance of 2107.17-feet. The sidelines of said strip shall be extended or shortened to the boundary of Parcel No. 7 of the



Tohlokai Pumping Plant, and the West line of said Section 5. Parcel No. Rch 12.1-01 will contain 0.88 acres, more or less.

**2) Easement for ROW - Parcel No. Rch 12.1-03 - ROW Drawing No. 1695-529-422:**

A parcel of Navajo Nation Tribal Fee Land lying in the North Half (N1/2) of Section 11, Township 16 North of Range 19 West, New Mexico Principle Meridian, McKinley County, New Mexico. Said ROW being a strip of land approximately 5695-feet in length and 80-feet in width, containing 10.46 acres, as illustrated on ROW Drawing No. 1695-529-422, attached hereto and by reference, made a part hereof.

**Description of the ROW - Parcel No. Rch 12.1-03 - ROW Drawing No. 1695-529-422:**

The Point of Beginning being said Reach 12.1 Station 121147+24.14, a point lying on the East line of said Section 11, from which the Northeast corner of said Section 11 bears North 00°33'36" East a distance of 1725.17 feet; Thence, from the Point of Beginning North 81°29'52" West a distance of 3.80 feet to Station 121147+27.94; Thence North 78°32'13" West a distance of 3933.29 feet to Station 121186+61.23; Thence South 60°17'05" West a distance of 678.19 feet to Station 121203+45.44; Thence South 86°22'33" West a distance of 73.16 feet to Station 121204+18.60, a point on the West line of said Section 11 and the point of terminus from which the West Quarter corner of said Section 11 bears South 01°16'44" East a distance of 1779.56 feet. The sidelines of said strip shall be extended or shortened to East and West line of said Section 11. Parcel No. Rch 12.1-03 will contain 10.46 acres, more or less.

**3) Easement for ROW - Parcel No. Rch 12.1-05 – ROW Drawing No. 1695-529-423:**

A Parcel of Navajo Nation Tribal Fee Land lying in the South Half of the Northeast Quarter, the Southeast Quarter of the Northwest Quarter, and the North Half of the Southwest Quarter (S1/2NE1/4, SE1/4NW1/4, N1/2SW1/4), Section 12, Township 16 North of Range 20 West, New Mexico Principle Meridian, McKinley County, New Mexico. Said ROW being a strip of land approximately 5757-feet in length and 80-feet in width, containing 10.57 acres, as illustrated on ROW Drawing No. 1695-529-423, attached hereto and by reference, made a part hereof.

**Description of the ROW - Parcel No. Rch 12.1-05 - ROW Drawing No. 1695-529-423:** The Point of Beginning being said Reach 12.1 Station 121415+29.96, a point on the East line of Section 12, from which the East Quarter corner of said Section 12 bears South 00°39'22" West a distance of 590.07 feet; Thence, from the Point of Beginning South 79°43'54" West a distance of 1328.72 feet to Station 121428+58.68; Thence South 80°31'44" West a distance of 2547.92-feet to Station 121454+06.60; Thence South 88°50'22" West a distance of 1206.59-feet to Station 121466+13.20; Thence South 80°33'43" West a distance of 673.73 feet to Station 121472+86.93, a point on the West line of said Section 12 and the point of terminus from which the West Quarter corner of said Section 12 bears North 00°52'37" East a distance of 192.72-feet. The sidelines of said strip shall be extended or shortened to the East and West lines of said Section 12. Parcel No. Rch 12.1-05 contains 10.57 acres, more or less.

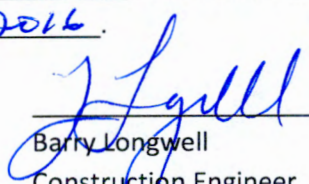
**Said applicant understands and expressly agrees to the following stipulations:**

- (a). To construct and maintain the right-of-way in a workmanlike manner.
- (b). ~~To pay all damages and compensation in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction, and maintenance of the right-of-way.~~

- (c). ~~To indemnify the landowners and authorized users and occupants against any liability for the life, personal injury, and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.~~
- (d). To restore the lands as nearly as possible to their original condition upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted.
- (e). To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during the construction and maintenance of the project.
- (f). To take soil and resources conservation projection measures, including weed control, on the land covered by the right-of-way.
- (g). To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
- (h). To build and repair such roads, fences and trails as may be destroyed or injured by the construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained or operated under the right-of-way.
- (i). That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition.
- (j). To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principle place of business and of the names and addresses of its principle officers.
- (k). The applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

IN WITNESS WHEREOF, Barry Longwell has caused this instrument to be executed this 21<sup>st</sup> day of January, 2016.

  
Witness

  
Barry Longwell  
Construction Engineer  
U.S. Bureau of Reclamation  
Four Corners Construction Office  
1235 La Plata Hwy.  
Farmington, NM, 87401

REQUIRED SUPPORTING DOCUMENTS:

1. ( ) ~~Form 5-104b – Signed Statement of Owners of Allotted Indian Lands~~
2. ( ) ~~Evidence of Authority of Officers to execute Papers (ROW Form 94-4).~~
3. ( ) ~~Evidence of good faith and financial responsibility.~~
4. ( ) ~~Double estimated damages (deposit – 25 CFR 169.4).~~
5. ( ) ~~State certified corporate charter or articles of incorporation.~~
6. ( ) ~~Certified copy of resolution or by laws of the corporation authorizing the filing of the application.~~
7. ( ) ~~State certification that the applicant is authorized to conduct business in the State of xxx.~~
8. ( ) ~~Certified copy of the articles of partnership or association.~~
9. (X) **Other attachments:**
  - (X) ROW and TCE Summary Spread Sheet – Tribal Fee Land
  - (X) Application for Grant of Easement for Right-of-Way
  - (X) ROW Drawing No. 1695-529-421
  - (X) ROW Drawing No. 1695-529-422
  - (X) ROW Drawing No. 1695-529-423
  - (X) ROW Description - Drawing No. 1695-529-421
  - (X) ROW Description - Drawing No. 1695-529-422
  - (X) ROW Description - Drawing No. 1695-529-423
  - (X) Feasibility Map - Reach 12.1 – Dated 08-19-2014
  - (X) Project Map – No. 1695-529-537 – Dated 04-28-2015
  - (X) Plan and Profile Drawings No's. 1695-D-XX1 through 1695-D-X13
  - (X) Final Environmental Impact Statement and Record of Decision can be viewed at:  
<http://www.usbr.gov/uc/envdocs/eis/navgallup/FEIS/index.html>.
  - (X) FEIS – Record of Decision (ROD) – Dated September 2009
  - (X) Final ESA – Phase I Site Assessment – Dated 05-30-14
  - (X) NEPA Sufficiency Report – Rch 12.1 and Reach 12.2 – Dated 08-2014
  - (X) Cultural Compliance – NNHP – HPD-15-116 – Class III Survey and Concurrence of Eligibility Determinations - Dated 12-30-14
  - (X) Memorandum – NEPA Sufficiency and BIA Cultural Compliance
  - (X) BRCF – Biological Resource Compliance Form No. 13NC-08 – Approved 08-15-14
  - (X) Executive Order No. 03-2012 in Support of the NGWSP
  - (X) Chapter Resolution in Support the NGWSP - Rock Springs
  - (X) Chapter Resolution in Support the NGWSP – Twin Lakes
  - (X) Chapter Resolution in Support the NGWSP – Tsayatoh



**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION**

**APPLICATION FOR A GRANT OF EASEMENT FOR RIGHT-OF-WAY**

(Tribal Fee Lands – NGWSP Reach 12.1)

**LANDOWNER NAME:** Navajo Nation

**Allotment No.'s:** Tribal Fee Lands as Described Herein

- 1) **Navajo Nation Tribal Fee Land: Parcel No. Rch 12.1-01 - ROW Drawing No. 1695-529-421:** A Parcel of Navajo Nation Tribal Fee Land lying in the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4), Section 5, Township 16 North of Range 18 West, New Mexico Principle Meridian, McKinley County, New Mexico.
- 2) **Navajo Nation Tribal Fee Land: Parcel No. Rch 12.1-03 - ROW Drawing No. 1695-529-422:** A Parcel of Navajo Nation Tribal Fee Land lying in the North Half (N1/2), Section 11, Township 16 North of Range 19 West, New Mexico Principle Meridian, McKinley County, New Mexico.
- 3) **Navajo Nation Tribal Fee Land: Parcel No. Rch 12.1-05 - ROW Drawing No. 1695-529-423:** A Parcel of Navajo Nation Tribal Fee Land lying in the South Half of the Northeast Quarter, the Southeast Quarter of the Northwest Quarter, and the North Half of the Southwest Quarter (S1/2NE1/4, SE1/4NW1/4, N1/2SW1/4), Section 12, Township 16 North of Range 20 West, New Mexico Principle Meridian, McKinley County, New Mexico.

**COMES NOW THE APPLICANT:** The Bureau of Reclamation, Four Corners Construction Office, having a principle place of business at 1235 La Plata Highway, Farmington, New Mexico 87401, who on this 20th day of January, 2016, hereby petitions the Navajo Nation, and respectfully files under the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328), and Departmental Regulations 25 CFR, Ch.1, Subchapter H, Part 169 § 169.5, Act of February 5, 1948 and contained in Title 25, Code of Federal Regulations, 25 CFR, Ch. 1, Subchapter H, Part 169 § 169.5, as applicable, a request for Easements for Right-of-Way (ROW) over the subject Navajo Nation Tribal Fee Lands, without limitation in term, and for as long as the easements are used for the intended purpose as described herein.

**The Purpose of the Proposed Action:** The Omnibus Public Land Management Act of 2009, Title X, Part III (Public Law 111-11) (Act) authorizes the Bureau of Reclamation to construct the Navajo-Gallup Water Supply Project (NGWSP) that includes water treatment plants, pipeline, several pumping stations and ancillary facilities. Once completed, the NGWSP will deliver a reliable source of potable water, sourced from the San Juan River, to Navajo communities in northwestern New Mexico, the City of Gallup, NM, and the southwest portion of the Jicarilla Apache Reservation for municipal and industrial use. The NGWSP will connect to existing and future water distribution systems operated on the reservation by the Navajo Tribal Utility Authority (NTUA) and in Gallup, by the City of Gallup. The high quality treated water provided by the NGWSP will bring immediate benefits, including improved health and wellbeing to the individuals on the reservation and to those living in the greater Gallup area.

**Authorization:** Reclamation is authorized by the Act, under Part III, Section 10602, Subsection (c)(1) and (2) which states : “As a condition of construction of the facilities authorized under this part, the Project Participants shall provide all land or interest in land, as appropriate, that the Secretary identifies as necessary for acquisition under this subsection at no cost to the Secretary”. Reclamation hereby respectfully requests that this application be processed so as to acquire ROW’s that are deemed necessary and appropriate in order to accommodate the construction, operation, maintenance, and replacement of the main and ancillary facilities of the NGWSP Reach 12.1.



The NGWSP will be constructed in segments identified by Reach. Reach 12.1 of the NGWSP will begin at Station 121020+80.00 and will terminate at Station 121631+67.92 where it will be joined to the Reach 12.2 pipeline. Plan and Profile Drawings No.'s 1695-D-XX1 through 1695-D-X13 illustrate the Reach 12.1 pipeline route and the locations of ancillary appurtenances.

**ROW Type, Size and Purpose:**

**1) Easement for ROW – Parcel No. Rch 12.1-01. ROW Drawing No. 1695-529-421.**

Reclamation hereby requests that the Navajo Nation grant a ROW - Parcel No. Rch 12.1-01 containing 0.88 acres, across, over and through Navajo Nation Tribal Fee Land located in the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) of Section 5, Township 16 North of Range 18 West, New Mexico Principle Meridian, McKinley County, New Mexico, without limitation in term, and for as long as the easement is used for the intended purpose, in accordance with 25 CFR, Ch.1, Subchapter H, Part 169 § 169.18, as applicable. Parcel No. Rch 12.1-01 will contain 0.88 acres, more or less.

Said ROW being a strip of land approximately 479-feet in length and 80-feet in width, centered on the Reach 12.1 pipeline centerline, 40-feet each side, across, over and through Navajo Nation Tribal Fee Land from Station 121022+01.74 to Station 121026+80.58, as illustrated on ROW Drawing No. 1695-529-421, and Plan and Profile Drawing No. 695-D-XX1, for the construction, operation, maintenance and/or replacement of a 36 inch I.D. or smaller water pipeline with appurtenances thereto.

Ancillary appurtenances may include but are not limited to thrust features, vaults, valves, fiber optic supervisory control and data acquisition systems (SCADA), cathodic protection systems, single phase utility power to support the operation of the pipeline infrastructure, and a patrol road. Reclamation will submit a separate application to request a Temporary Construction Easement (TCE) to obtain additional working area to supplement the ROW. Parcel No. Rch 12.1-01 will contain 0.88 acres, more or less.

**Description of the ROW - Parcel No. Rch 12.1-01:** The Point of Beginning being said Reach 12.1 Station 121022+01.74, a point lying on the boundary of Parcel No. 07 of the Tohlokai Pumping Plant as illustrated on Drawing No. 1695-529-407, as approved November 19, 2013, from which the Northwest corner of said Section 05 bears North 05°02'27" West a distance of 3361.18-feet; Thence from the Point of Beginning South 35°36'47" West a distance of 326.35-feet to Station 121025+28.09; Thence South 44°46'11" West a distance of 152.49-feet to Station 121026+80.58, a point on the West line of said Section 05 and the point of terminus from which the Southwest corner of said Section 05 bears South 01°37'07" West a distance of 2107.17-feet. The sidelines of said strip shall be extended or shortened to the boundary of Parcel No. 7 of the Tohlokai Pumping Plant, and the West line of said Section 5. Parcel No. Rch 12.1-01 will contain 0.88 acres, more or less.

**2) Easement for ROW - Parcel No. Rch 12.1-03 - ROW Drawing No. 1695-529-422:**

Reclamation hereby requests that the Navajo Nation grant a ROW - Parcel No. Rch 12.1-03 containing 10.46 acres, across, over and through Navajo Nation Tribal Fee Land located in the North Half (N1/2) of Section 11, Township 16 North of Range 19 West, New Mexico Principle Meridian, McKinley County, New Mexico, without limitation in term, and for as long as the easement is used for the intended purpose, in accordance with 25 CFR, Ch.1, Subchapter H, Part 169 § 169.18, as applicable. Parcel No. Rch 12.1-03 will contain 10.46 acres, more or less.

Said ROW being a strip of land approximately 5695-feet in length and 80-feet in width, centered on the Reach 12.1 pipeline centerline, 40-feet each side from Station 121147+24.14 to Station 121204+18.60, as illustrated on ROW Drawing No. 1695-529-422, and Plan and Profile Drawing No. 695-D-XX3 through 695-D-XX5, for the construction, operation, maintenance and/or replacement of a 36 inch I.D. or smaller water pipeline with appurtenances thereto. Ancillary appurtenances may include but

are not limited to thrust features, vaults, valves, fiber optic supervisory control and data acquisition systems (SCADA), cathodic protection systems, single phase utility power to support the operation of the pipeline infrastructure, and a patrol road. Reclamation will submit a separate application to request a TCE to obtain additional working area to supplement the ROW. Parcel No. Rch 12.1-03 will contain 10.46 acres, more or less.

**Description of the ROW – Parcel No. Rch 12.1-03:** The Point of Beginning being said Reach 12.1 Station 121147+24.14, a point lying on the East line of said Section 11, from which the Northeast corner of said Section 11 bears North 00°33'36" East a distance of 1725.17-feet; Thence, from the Point of Beginning North 81°29'52" West a distance of 3.80-feet to Station 121147+27.94; Thence North 78°32'13" West a distance of 3933.29-feet to Station 121186+61.23; Thence South 60°17'05" West a distance of 678.19-feet to Station 121203+45.44; Thence South 86°22'33" West a distance of 73.16-feet to Station 121204+18.60, a point on the West line of said Section 11 and the point of terminus from which the West Quarter corner of said Section 11 bears South 01°16'44" East a distance of 1779.56-feet. The sidelines of said strip shall be extended or shortened to East and West line of said Section 11. Parcel No. Rch 12.1-03 will contain 10.46 acres, more or less.

**3) Easement for ROW - Parcel No. Rch 12.1-05 - ROW Drawing No. 1695-529-423:**

Reclamation hereby requests that the Navajo Nation grant a ROW - Parcel No. Rch 12.1-05 containing 10.57 acres, across, over and through Navajo Nation Tribal Fee Land located in the South Half of the Northeast Quarter, the Southeast Quarter of the Northwest Quarter, and the North Half of the Southwest Quarter (S1/2NE1/4, SE1/4NW1/4, N1/2SW1/4) of Section 12, Township 16 North of Range 20 West, New Mexico Principle Meridian, McKinley County, New Mexico, without limitation in term, and for as long as the easement is used for the intended purpose, in accordance with 25 CFR, Ch.1, Subchapter H, Part 169 § 169.18, as applicable. Parcel No. Rch 12.1-05 will contain 10.57 acres, more or less.

Said ROW being a strip of land approximately 5757-feet in length and 80-feet in width, centered on the Reach 12.1 pipeline centerline, 40-feet each side, across, over and through Navajo Nation Tribal Fee Land from Station 121415+29.96 to Station 121472+86.93, as illustrated on ROW Drawing No. 1695-529-423, and Plan and Profile Drawing No.'s 695-D-XX9 and 695-D-X10, for the construction, operation, maintenance and/or replacement of a 36 inch I.D. or smaller water pipeline with appurtenances thereto. Ancillary appurtenances may include but are not limited to thrust features, vaults, valves, fiber optic supervisory control and data acquisition systems (SCADA), cathodic protection systems, single phase utility power to support the operation of the pipeline infrastructure, and a patrol road. Reclamation will submit a separate application to request a TCE to obtain additional working area to supplement the ROW. Parcel No. Rch 12.1-01 will contain 10.57 acres, more or less.

**Description of the ROW - Parcel No. Rch 12.1-05 - ROW Drawing No. 1695-529-423:** The Point of Beginning being said Reach 12.1 Station 121415+29.96, a point on the East line of Section 12, from which the East Quarter corner of said Section 12 bears South 00°39'22" West a distance of 590.07-feet; Thence, from the Point of Beginning South 79°43'54" West a distance of 1328.72-feet to Station 121428+58.68; Thence South 80°31'44" West a distance of 2547.92-feet to Station 121454+06.60; Thence South 88°50'22" West a distance of 1206.59-feet to Station 121466+13.20; Thence South 80°33'43" West a distance of 673.73-feet to Station 121472+86.93, a point on the West line of said Section 12 and the point of terminus from which the West Quarter corner of said Section 12 bears North 00°52'37" East a distance of 192.72-feet. The sidelines of said strip shall be extended or shortened to the East and West lines of said Section 12. Parcel No. Rch 12.1-05 contains 10.57 acres, more or less.



**Total Requested ROW over Navajo Nation Tribal Fee Lands – NGWSP-Rch 12.1:** The total ROW requested in this application, over, under and through the aforementioned Navajo Nation Tribal Fee Lands crossed by the Reach 12.1 alignment contains 21.91 acres, more or less.

**Environmental Clearance:** The Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) (Bureau of Reclamation 2009), or can be viewed on the world-wide web at: <http://www.usbr.gov/uc/envdocs/eis/navgallup/FEIS/index.html>.

Subsequently, Reclamation conducted an additional Environmental Assessment (EA) over Reach 12.1, Dated 05-30-14, and a Final NEPA Sufficiency Report over Reaches 12.1 and 12.2 Dated 08-2014, to determine if any changes had occurred since the FEIS and ROD finalized in 2009, that would require additional action. Review of the most recent EA has determined that no additional action is necessary.

**Biological Resource Compliance:** Please see attached BRCF – NNDFW Review No. 13NC-08, that documents the approval by the NNDFW that the NGWSP Reach 12.1 proposed to be constructed in the area of the Twin Lakes, Rock Springs, and Tsayatoh Chapters is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. The NNDFW concurs with the mitigation recommendations outlined in the BE, Section 6.5 and is approved by Ms. Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife by the duly inscribed signature thereto, dated August 15, 2014.

**Cultural Resource Compliance:** Please see attached letter referring to NNHPD – HPD-15-116, and dated February 19, 2015, that includes the Class III Survey and Concurrence of Eligibility Determinations Report prepared by Paleo West for the NGWSP Reach 12.1 pipeline and the proposed Black Hat Water Storage Tank Facility. The survey was conducted under the authority of General Archaeological Investigation Permit No. NM-13-210-S, and Navajo Nation Cultural Resources Permit No. B13543. Twenty-five cultural resource sites are located within the proposed Reach 12.1 ROW. The report also locates and documents nine sites located on private lands within the project area. The archaeological resources survey also located twenty-five archaeological sites including eight previously recorded sites, and seventeen newly recorded sites that may be affected by the construction of the Reach 12.1 segment of the NGWSP.

Reclamation submitted said report to the Navajo Nation Tribal Historic Preservation Officer and requested concurrence of eligibility determinations, which was obtained as is evidenced by his duly subscribed signature on the second page of the report. The report was also consulted upon with all NGWSP signatory and consulting parties in compliance with the programmatic agreement for the NGWSP. Reclamation has requested a Cultural Resource Clearance Form, which is in process of being issued.

Please see the enclosed Letter of Agreement countersigned by officials from Reclamation and the BIA that established a NEPA Sufficiency Review Process for long-term implementation of the NGWSP. Also enclosed is a memorandum (29 October, 2015) issued by BIA-Navajo Region that provides guidance concerning the various compliance documents that are considered to be acceptable in satisfaction of NEPA and NHPA regulations. The letter referenced above, being prepared by Reclamation and approved by NNHPD, complies with NHPA, and the enclosed FONSI satisfies NEPA requirements under guidance provided in said memorandum.

**Reclamation and Revegetation of the ROW:** Once Reach 12.1 construction is completed, Reclamation will reclaim the ROW and TCE using a seed mixture appropriate to the area in compliance with the requirements of Departmental Regulations 25 CFR, Ch.1, Subchapter H, Part 169 § 169.5 and the NGWSP Revegetation Plan. Construction of Reach 22B is anticipated to begin in September of 2016 and be completed in April of 2018.

**Waiver of Title 25, Code of Federal Regulations, Part 169.4:** The Bureau of Reclamation, an agency of the Federal Government, is prohibited by the Anti-deficiency Act (31 C.F.R. § 1341) from obligating government funds by agreeing to open-ended indemnification, or to depositing government funds for payment of claims that have not been made. Therefore, Reclamation requests a waiver of said regulation, as is provided for in Title 25, *Code of Federal Regulations*, Part 169.4. Reclamation hereby assures that it will pay damages promptly, when they are sustained, under the provisions of the Federal Tort Claims Act (June 25, 1948, Ch. 646, Title IV, 62 Stat. 982, "28 U.S.C. Pt. VI Ch.171" and 28 U.S.C. Part 1346(b)).

**SAID APPLICANT UNDERSTANDS AND EXPRESSLY AGREES TO THE FOLLOWING STIPULATIONS:**

1. To construct and maintain the right-of-way in a workmanlike manner.
2. ~~To pay all damages and compensation, in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction and maintenance of the right-of-way.~~
3. ~~To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.~~
4. To restore the lands as nearly as may be possible to their original condition upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted.
5. To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during construction and maintenance of the project.
6. To take soil and resource conservation protection measures, including weed control, on the land covered by the right-of-way.
7. To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
8. To build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.
9. That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.
10. To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.
11. The applicant will not interfere with the use of the lands by or under the authority of the landowners, for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.
12. During the term of this Grant of Easement, if any previously unidentified cultural resources are discovered within the easement area, work should be halted immediately and the BIA and/or Tribal Contractor should be contacted immediately.

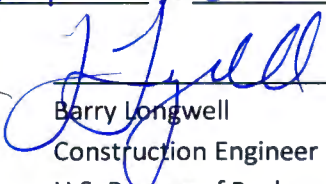


**THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:**

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

IN WITNESS WHEREOF Barry Longwell has caused this instrument to be executed this 21<sup>st</sup> day of January 20 2016.

Witness

  
Barry Longwell  
Construction Engineer  
U.S. Bureau of Reclamation  
Four Corners Construction Office  
1235 La Plata Hwy.  
Farmington, NM, 87401

Required Supporting Documents:

1. ( ) Form 5-104b – Signed Statement of Owners of Allotted Indian Lands
2. ( ) Evidence of Authority of Officers to execute Papers (ROW Form 94-4).
3. ( ) Evidence of good faith and financial responsibility.
4. ( ) Double estimated damages (deposit – 25 CFR 169.4).
5. ( ) State certified corporate charter or articles of incorporation.
6. ( ) Certified copy of resolution or by laws of the corporation authorizing the filing of the application.
7. ( ) State certification that the applicant is authorized to conduct business in the State of xxx.
8. ( ) Certified copy of the articles of partnership or association.
9. (X) **Other attachments:**
  - (X) ROW and TCE Summary Spread Sheet – Tribal Fee Land
  - (X) Application for Grant of Easement for Right-of-Way
  - (X) ROW Drawing No. 1695-529-421
  - (X) ROW Drawing No. 1695-529-422
  - (X) ROW Drawing No. 1695-529-423
  - (X) ROW Description - Drawing No. 1695-529-421
  - (X) ROW Description - Drawing No. 1695-529-422
  - (X) ROW Description - Drawing No. 1695-529-423
  - (X) Feasibility Map - Reach 12.1 – Dated 08-19-2014
  - (X) Project Map – No. 1695-529-537 – Dated 04-28-2015
  - (X) Plan and Profile Drawings No's. 1695-D-XX1 through 1695-D-X13
  - (X) Final Environmental Impact Statement and Record of Decision can be viewed at:  
<http://www.usbr.gov/uc/envdocs/eis/navgallup/FEIS/index.html>.
  - (X) FEIS – Record of Decision (ROD) – Dated September 2009
  - (X) Final ESA – Phase I Site Assessment – Dated 05-30-14
  - (X) NEPA Sufficiency Report – Rch 12.1 and Reach 12.2 – Dated 08-2014

- (X) Cultural Compliance – NNHP – HPD-15-116 – Class III Survey and Concurrence of Eligibility Determinations - Dated 12-30-14
- (X) Memorandum – NEPA Sufficiency and BIA Cultural Compliance – Dated 10-29-15
- (X) BRCF – Biological Resource Compliance Form No. 13NC-08 – Approved 08-15-14
- (X) Executive Order No. 03-2012 in Support of the NGWSP
- (X) Chapter Resolution in Support the NGWSP - Rock Springs
- (X) Chapter Resolution in Support the NGWSP – Twin Lakes
- (X) Chapter Resolution in Support the NGWSP – Tsayatoh

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
APPLICATION FOR A GRANT OF TEMPORARY CONSTRUCTION EASEMENT

(Tribal Fee Lands – NGWSP Reach 12.1)



LANDOWNER NAME: Navajo Nation

Allotment No.'s: Tribal Fee Lands as Described Herein

**APPLICANT:** US Bureau of Reclamation, having a residence or principal place of business at 1235 La Plata Highway, Farmington, New Mexico 87401, hereby files an application with the Navajo Nation pursuant to the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC §§ 323 – 328), and to the regulations of the Department of the Interior contained in Title 25, Code of Federal Regulations, Part 169, for Tribal Consent to grants of multiple Temporary Construction Easements to be effective for a term of forty-eight months from the date granted, for the following purposes and reasons:

**PURPOSE:** The Omnibus Public Land Management Act of 2009, Title X, Part III (Public Law 111-11) (Act) authorizes the Bureau of Reclamation to construct the Navajo-Gallup Water Supply Project (NGWSP) that includes water treatment plants, pipeline, several pumping stations and ancillary facilities. Once completed, the NGWSP will deliver a reliable source of potable water, sourced from the San Juan River, to Navajo communities in northwestern New Mexico, Window Rock, AZ, the City of Gallup, NM, and the southwest portion of the Jicarilla Apache Reservation for municipal and industrial use. The NGWSP will connect to existing and future water distribution systems operated on the reservation by the Navajo Tribal Utility Authority (NTUA) and in Gallup, by the City of Gallup. The high quality treated water provided by the NGWSP will bring immediate benefits, including improved health and wellbeing to the individuals on the reservation and to those living in the greater Gallup area.

The Temporary Construction Easement (TCE) will supplement the Easement for Right-of-Way (ROW) and provide additional working space to be used for the construction of a 36 inch in diameter, or less, water transmission pipeline, with appurtenances thereto, over, across, and through Navajo Nation Tribal Fee Lands that will be crossed by a portion of Reach 12.1 of the San Juan Lateral, a part of the NGWSP in the area of the Twin Lakes, Rock Springs and Tsayatoh Chapters in McKinley County, New Mexico. No structure will be constructed inside the TCE, and all construction related activities will be confined to the TCE boundary.

**ACROSS THE FOLLOWING DESCRIBED NAVAJO NATION TRIBAL FEE LANDS:**

**1) TCE - Parcel No. Rch 12.1-02 - ROW Drawing No. 1695-529-421:**

A parcel of Navajo Nation Tribal Fee Land lying in the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4), Section 5, Township 16 North of Range 18 West, New Mexico Principle Meridian, McKinley County, New Mexico. Said TCE being a strip of land approximately 479-feet in length and 150-feet in width, containing 1.65 acres, as illustrated on ROW Drawing No. 1695-529-421, attached hereto and by reference, made a part hereof.

**Description of the TCE - Parcel No. Rch 12.1-02 - ROW Drawing No. 1695-529-421:**

The Point of Beginning being said Reach 12.1 Station 121022+01.74, a point lying on the boundary of Parcel No. 07 of the Tohlakai Pumping Plant as illustrated on Drawing No. 1695-529-407, as approved November 19, 2013, from which the Northwest corner of said Section 05 bears North 05°02'27" West a distance of 3361.18-feet; Thence from the Point of Beginning, South 35°36'47" West a distance of 326.35-feet to Station 121025+28.09; Thence South 44°46'11" West a distance of 152.49-feet to Station 121026+80.58, a point on the West line of said Section 05 and the point of terminus from which the Southwest corner of said Section 05 bears South 01°37'07" West a distance of 2107.17-feet. The sidelines of said strip shall be extended or shortened to the boundary of Parcel No. 7 of the

Tohlakai Pumping Plant, and the West line of said Section 5. Parcel No. Rch 12.1-02 will contain 1.65 acres, more or less.

**2) TCE - Parcel No. Rch 12.1-04 - ROW Drawing No. 1695-529-422:**

A parcel of Navajo Nation Tribal Fee Land lying in the North Half (N1/2) of Section 11, Township 16 North of Range 19 West, New Mexico Principle Meridian, McKinley County, New Mexico. Said TCE being a strip of land approximately 5695-feet in length and 150-feet in width, containing 19.61 acres, as illustrated on ROW Drawing No. 1695-529-422, attached hereto and by reference, made a part hereof.

**Description of the TCE - Parcel No. Rch 12.1-04 - ROW Drawing No. 1695-529-422:**

The Point of Beginning being said Reach 12.1 Station 121147+24.14, a point lying on the East line of said Section 11, from which the Northeast corner of said Section 11 bears North 00°33'36" East a distance of 1725.17-feet; Thence, from the Point of Beginning North 81°29'52" West a distance of 3.80-feet to Station 121147+27.94; Thence North 78°32'13" West a distance of 3933.29-feet to Station 121186+61.23; Thence South 60°17'05" West a distance of 678.19-feet to Station 121203+45.44; Thence South 86°22'33" West a distance of 73.16-feet to Station 121204+18.60, a point on the West line of said Section 11 and the point of terminus from which the West Quarter corner of said Section 11 bears South 01°16'44" East a distance of 1779.56-feet. The sidelines of said strip shall be extended or shortened to East and West line of said Section 11. Parcel No. Rch 12.1-04 will contain 19.61 acres, more or less.

**3) TCE - Parcel No. Rch 12.1-06 – ROW Drawing No. 1695-529-423:**

A Parcel of Navajo Nation Tribal Fee Land lying in the South Half of the Northeast Quarter, the Southeast Quarter of the Northwest Quarter, and the North Half of the Southwest Quarter (S1/2NE1/4, SE1/4NW1/4, N1/2SW1/4), Section 12, Township 16 North of Range 20 West, New Mexico Principle Meridian, McKinley County, New Mexico. Said TCE being a strip of land approximately 5757-feet in length and 150-feet in width, containing 19.82 acres, as illustrated on ROW Drawing No. 1695-529-423, attached hereto and by reference, made a part hereof.

**Description of the TCE - Parcel No. Rch 12.1-06 - ROW Drawing No. 1695-529-423:**

The Point of Beginning being said Reach 12.1 Station 121415+29.96, a point on the East line of Section 12, from which the East Quarter corner of said Section 12 bears South 00°39'22" West a distance of 590.07-feet; Thence, from the Point of Beginning South 79°43'54" West a distance of 1328.72-feet to Station 121428+58.68; Thence South 80°31'44" West a distance of 2547.92-feet to Station 121454+06.60; Thence South 88°50'22" West a distance of 1206.59-feet to Station 121466+13.20; Thence South 80°33'43" West a distance of 673.73-feet to Station 121472+86.93, a point on the West line of said Section 12 and the point of terminus from which the West Quarter corner of said Section 12 bears North 00°52'37" East a distance of 192.72-feet. The sidelines of said strip shall be extended or shortened to the East and West lines of said Section 12. Parcel No. Rch 12.1-06 contains 19.82 acres, more or less.

**Said applicant understands and expressly agrees to the following stipulations:**

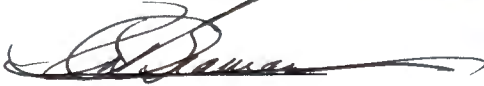
- (a). To construct and maintain the right-of-way in a workmanlike manner.
- (b). ~~To pay all damages and compensation in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction, and maintenance of the right-of-way.~~
- (c). ~~To indemnify the landowners and authorized users and occupants against any liability for the life, personal injury, and property damage arising from the construction,~~



~~maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.~~

- (d). To restore the lands as nearly as possible to their original condition upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted.
- (e). To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during the construction and maintenance of the project.
- (f). To take soil and resources conservation projection measures, including weed control, on the land covered by the right-of-way.
- (g). To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
- (h). To build and repair such roads, fences and trails as may be destroyed or injured by the construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained or operated under the right-of-way.
- (i). That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition.
- (j). To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principle place of business and of the names and addresses of its principle officers.
- (k). The applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

IN WITNESS WHEREOF, Barry Longwell has caused this instrument to be executed this 21<sup>st</sup> day of January, 2016.



Witness



Barry Longwell  
Construction Engineer  
U.S. Bureau of Reclamation  
Four Corners Construction Office  
1235 La Plata Hwy.  
Farmington, NM, 87401

REQUIRED SUPPORTING DOCUMENTS:

1. ( ) ~~Form 5-104b – Signed Statement of Owners of Allotted Indian Lands~~
2. ( ) ~~Evidence of Authority of Officers to execute Papers (ROW Form 94-4).~~
3. ( ) ~~Evidence of good faith and financial responsibility.~~
4. ( ) ~~Double estimated damages (deposit – 25 CFR 169.4).~~
5. ( ) ~~State certified corporate charter or articles of incorporation.~~
6. ( ) ~~Certified copy of resolution or by laws of the corporation authorizing the filing of the application.~~
7. ( ) ~~State certification that the applicant is authorized to conduct business in the State of xxx.~~
8. ( ) ~~Certified copy of the articles of partnership or association.~~
9. (X) **Other attachments:**
  - (X) ROW and TCE Summary Spread Sheet – Tribal Fee Land
  - (X) Application for Grant of Temporary Construction Easement
  - (X) ROW Drawing No. 1695-529-421
  - (X) ROW Drawing No. 1695-529-422
  - (X) ROW Drawing No. 1695-529-423
  - (X) ROW Description - Drawing No. 1695-529-421
  - (X) ROW Description - Drawing No. 1695-529-422
  - (X) ROW Description - Drawing No. 1695-529-423
  - (X) Feasibility Map - Reach 12.1 – Dated 08-19-2014
  - (X) Project Map – No. 1695-529-537 – Dated 04-28-2015
  - (X) Plan and Profile Drawings No's. 1695-D-XX1 through 1695-D-X13
  - (X) Final Environmental Impact Statement and Record of Decision can be viewed at:  
<http://www.usbr.gov/uc/envdocs/eis/navgallup/FEIS/index.html>.
  - (X) FEIS – Record of Decision (ROD) – Dated September 2009
  - (X) Final ESA – Phase I Site Assessment – Dated 05-30-14
  - (X) NEPA Sufficiency Report – Rch 12.1 and Reach 12.2 – Dated 08-2014
  - (X) Cultural Compliance – NNHP – HPD-15-116 – Class III Survey and Concurrence of Eligibility Determinations - Dated 12-30-14
  - (X) Memorandum – NEPA Sufficiency and BIA Cultural Compliance
  - (X) BRCF – Biological Resource Compliance Form No. 13NC-08 – Approved 08-15-14
  - (X) Executive Order No. 03-2012 in Support of the NGWSP
  - (X) Chapter Resolution in Support the NGWSP - Rock Springs
  - (X) Chapter Resolution in Support the NGWSP – Twin Lakes
  - (X) Chapter Resolution in Support the NGWSP – Tsayatoh

# UNITED STATES DEPARTMENT OF THE INTERIOR

## BUREAU OF RECLAMATION

### REQUEST FOR A GRANT OF TEMPORARY CONSTRUCTION EASEMENT

(Tribal Fee Lands – NGWSP Reach 12.1)

**LANDOWNER NAME:** Navajo Nation

**Allotment No.'s:** Tribal Fee Lands as Described Herein

- 1) **Navajo Nation Tribal Fee Land: Parcel No. Rch 12.1-02 - ROW Drawing No. 1695-529-421:** A Parcel of Navajo Nation Tribal Fee Land lying in the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4), Section 5, Township 16 North of Range 18 West, New Mexico Principle Meridian, McKinley County, New Mexico.
- 2) **Navajo Nation Tribal Fee Land: Parcel No. Rch 12.1-04 - ROW Drawing No. 1695-529-422:** A Parcel of Navajo Nation Tribal Fee Land lying in the North Half (N1/2), Section 11, Township 16 North of Range 19 West, New Mexico Principle Meridian, McKinley County, New Mexico.
- 3) **Navajo Nation Tribal Fee Land: Parcel No. Rch 12.1-06 - ROW Drawing No. 1695-529-423:** A Parcel of Navajo Nation Tribal Fee Land lying in the South Half of the Northeast Quarter, the Southeast Quarter of the Northwest Quarter, and the North Half of the Southwest Quarter (S1/2NE1/4, SE1/4NW1/4, N1/2SW1/4), Section 12, Township 16 North of Range 20 West, New Mexico Principle Meridian, McKinley County, New Mexico.

**COMES NOW THE APPLICANT:** The Bureau of Reclamation, Four Corners Construction Office, having a principle place of business at 1235 La Plata Highway, Farmington, New Mexico 87401, who on this 20th day of January, 2016, hereby petitions the Navajo Nation, and respectfully files under the terms and provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328), and Departmental Regulations 25 CFR, Ch.1, Subchapter H, Part 169 § 169.5, Act of February 5, 1948 and contained in Title 25, Code of Federal Regulations, 25 CFR, Ch. 1, Subchapter H, Part 169 § 169.5, as applicable, a request for multiple Temporary Construction Easements (TCE) over the subject Navajo Nation Tribal Fee Lands, to be effective for a term of forty-eight months from the date granted, for the following purposes and reasons:

**The Purpose of the Proposed Action:** The Omnibus Public Land Management Act of 2009, Title X, Part III (Public Law 111-11) (Act) authorizes the Bureau of Reclamation to construct the Navajo-Gallup Water Supply Project (NGWSP) that includes water treatment plants, pipeline, several pumping stations and ancillary facilities. Once completed, the NGWSP will deliver a reliable source of potable water, sourced from the San Juan River, to Navajo communities in northwestern New Mexico, the City of Gallup, NM, and the southwest portion of the Jicarilla Apache Reservation for municipal and industrial use. The NGWSP will connect to existing and future water distribution systems operated on the reservation by the Navajo Tribal Utility Authority (NTUA) and in Gallup, by the City of Gallup. The high quality treated water provided by the NGWSP will bring immediate benefits, including improved health and wellbeing to the individuals on the reservation and to those living in the greater Gallup area.

**Authorization:** Reclamation is authorized by the Act, under Part III, Section 10602, Subsection (c)(1) and (2) which states : "As a condition of construction of the facilities authorized under this part, the Project Participants shall provide all land or interest in land, as appropriate, that the Secretary identifies as necessary for acquisition under this subsection at no cost to the Secretary". Reclamation hereby respectfully requests that this application be processed so as to acquire TCE's that are deemed

necessary and appropriate in order to accommodate the construction, operation, maintenance, and replacement of the main and ancillary facilities of the NGWSP Reach 12.1.

The NGWSP will be constructed in segments identified by Reach. Reach 12.1 of the NGWSP will begin at Station 121020+80.00 and will terminate at Station 121631+67.92 where it will be joined to the Reach 12.2 pipeline. Plan and Profile Drawings No.'s 1695-D-XX1 through 1695-D-X13 illustrate the Reach 12.1 pipeline route and the locations of ancillary appurtenances.

**TCE Type, Size and Purpose:**

**(1) TCE - Parcel No. Rch 12.1-02 - ROW Drawing No. 1695-529-421.**

A Parcel of Navajo Nation Tribal Fee Land lying in the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) of Section 05, Township 16 North of Range 18 West, New Mexico Principle Meridian, McKinley County, New Mexico.

The TCE will overlay and supplement the working space of the ROW acreage, which is 0.88 acres, by an additional 0.77 acres. Therefore, the TCE hereby requested will contain a total of 1.65 acres, more or less.

Reclamation hereby requests that the Navajo Nation grant a TCE - Parcel No. Rch 12.1-02 containing 1.65 acres, over, across, and through Navajo Nation Tribal Fee Land located in the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) of Section 5, Township 16 North of Range 18 West, New Mexico Principle Meridian, McKinley County, New Mexico, to be effective for a term of forty-eight months from the date granted, in accordance with 25 CFR, Ch.1, Subchapter H, Part 169 § 169.18, as applicable.

Said TCE being a parcel of land approximately 479-feet in length and 150-feet in width, centered on the Reach 12.1 pipeline centerline, and lying approximately 75-feet each side, over, across and through, from Station 121022+01.74 to Station 121026+80.58, as illustrated on ROW Drawing No. 1695-529-421, and Plan and Profile Drawing No. 695-D-XX1, to supplement the ROW during the construction of a 36 inch I.D. or smaller water pipeline with appurtenances thereto. No structure will be constructed inside the TCE, and all construction related activities will be confined to the TCE boundary.

The TCE will overlay and extend 35-feet beyond the ROW boundary on each side, as illustrated on ROW Drawing No. 1695-529-421, and will total 1.65 acres. That part of the TCE that that extends beyond the ROW will contain 0.77 acres, more or less, as shown on said drawing.

This acreage, being duly calculated, does not appear on ROW Drawing No. 1695-529-421 due to drawing directives and standards to which Reclamation must adhere. Therefore, Reclamation respectfully requests your consideration and acceptance of the calculated TCE acreage.

**Description of the TCE – Parcel No. Rch 12.1-02:** The Point of Beginning being said Reach 12.1 Station 121022+01.74, a point lying on the boundary of Parcel No. 07 of the Tohlakai Pumping Plant as illustrated on Drawing No. 1695-529-407, as approved November 19, 2013, from which the Northwest corner of said Section 05 bears North 05°02'27" West a distance of 3361.18-feet; Thence from the Point of Beginning, South 35°36'47" West a distance of 326.35-feet to Station 121025+28.09; Thence South 44°46'11" West a distance of 152.49-feet to Station 121026+80.58, a point on the West line of said Section 05 and the point of terminus from which the Southwest corner of said Section 05 bears South 01°37'07" West a distance of 2107.17-feet. The sidelines of said strip shall be extended or shortened to said boundary of Parcel No. 7 and to the West line of said Section 5. Parcel No. Rch 12.1-02 will contain 1.65 acres, more or less.



**(2) TCE - Parcel No. Rch 12.1-04 - ROW Drawing No. 1695-529-422:**

A Parcel of Navajo Tribal Fee Land lying in the North Half (N1/2) of Section 11, Township 16 North of Range 19 West, New Mexico Principle Meridian, McKinley County, New Mexico.

The TCE will overlay and supplement the working space of the ROW acreage, which is 10.46 acres, by an additional 9.15 acres. Therefore, the TCE hereby requested will contain a total of 19.61 acres, more or less.

Reclamation hereby requests that the Navajo Nation grant TCE - Parcel No. Rch 12.1-04 containing 19.61 acres, over, across, and through Navajo Nation Tribal Fee Land located in the North Half (N1/2) of Section 11, Township 16 North of Range 19 West, New Mexico Principle Meridian, McKinley County, New Mexico, to be effective for a term of forty-eight months from the date granted, in accordance with 25 CFR, Ch.1, Subchapter H, Part 169 § 169.18, as applicable.

Said TCE being a parcel of land approximately 5695 feet in length and 150 feet in width, centered on the Reach 12.1 pipeline centerline, and lying approximately 75 feet each side, over, across and through, from Station 121147+24.14 to Station 121204+18.60, as illustrated on ROW Drawing No. 1695-529-422, and Plan and Profile Drawing No. 695-D-XX3, 695-D-XX4, and 695-D-XX5, to supplement the ROW during the construction of a 36 inch I.D. or smaller water pipeline with appurtenances thereto. No structure will be constructed inside the TCE, and all construction related activities will be confined to the TCE boundary.

The TCE will overlay and extend 35-feet beyond the ROW, on each side, as illustrated on ROW Drawing No. 1695-529-422, and will total 19.61 acres. That part of the TCE that that extends beyond the ROW will contain 9.15 acres, more or less, as shown on said drawing.

This acreage, being duly calculated, does not appear on ROW Drawing No. 1695-529-422 due to drawing directives and standards to which Reclamation must adhere. Therefore, Reclamation respectfully requests your consideration and acceptance of the calculated TCE acreage.

**Description of the TCE – Parcel No. Rch 12.1-04:** The Point of Beginning being said Reach 12.1 Station 121147+24.14, a point on the East line of said Section 11, from which the Northeast corner of said Section 11 bears North 00°33'36" East a distance of 1725.17 feet; Thence, from the Point of Beginning North 81°29'52" West a distance of 3.80 feet to Station 121147+27.94; Thence North 78°32'13" West a distance of 3933.29 feet to Station 121186+61.23; Thence South 60°17'05" West a distance of 678.19 feet to Station 121203+45.44; Thence South 86°22'33" West a distance of 73.16 feet to Station 121204+18.60, a point on the West line of said Section 11 and the point of terminus from which the West Quarter corner of said Section 11 bears South 01°16'44" East a distance of 1779.56 feet. The sidelines of said strip shall be extended or shortened to East and West line of said Section 11. The Temporary Construction Easement described herein, Parcel No. Rch 12.1-04 contains 19.61 acres, more or less.

**(3) TCE: Parcel No. Rch 12.1-06 - ROW Drawing No. 1695-529-423:**

A Parcel of Navajo Nation Tribal Fee Land lying in the South Half of the Northeast Quarter, the Southeast Quarter of the Northwest Quarter, and the North Half of the Southwest Quarter (S1/2NE1/4, SE1/4NW1/4, N1/2SW1/4), Section 12, Township 16 North of Range 20 West, New Mexico Principle Meridian, McKinley County, New Mexico.

The TCE will overlay and supplement the working space of the ROW acreage, which is 10.57 acres, by an additional 9.25 acres. Therefore, the TCE hereby requested will contain a total of 19.82 acres, more or less.

Reclamation hereby requests that the Navajo Nation grant TCE - Parcel No. Rch 12.1-06 containing 19.82 acres, over, across, and through Navajo Nation Tribal Fee Land located in the South Half of the Northeast Quarter, the Southeast Quarter of the Northwest Quarter, and the North Half of the Southwest Quarter (S1/2NE1/4, SE1/4NW1/4, N1/2SW1/4), Section 12, Township 16 North of Range 20 West, New Mexico Principle Meridian, McKinley County, New Mexico, to be effective for a term of forty-eight months from the date granted, in accordance with 25 CFR, Ch.1, Subchapter H, Part 169 § 169.18, as applicable.

Said TCE being a parcel of land approximately 5757-feet in length and 150-feet in width, centered on the Reach 12.1 pipeline centerline, and lying approximately 75-feet each side, over, across and through, from Station 121415+29.96 to Station 121472+86.93, as illustrated on ROW Drawing No. 1695-529-423, and Plan and Profile Drawing No. 695-D-XX9 and 695-D-X10, to supplement the ROW during the construction of a 36 inch I.D. or smaller water pipeline with appurtenances thereto. No structure will be constructed inside the TCE, and all construction related activities will be confined to the TCE boundary.

The TCE will overlay and extend 35-feet beyond the ROW, on each side, as illustrated on ROW Drawing No. 1695-529-423, and will total 19.82 acres. That part of the TCE that that extends beyond the ROW will contain 9.25 acres, more or less, as shown on said drawing.

This acreage, being duly calculated, does not appear on ROW Drawing No. 1695-529-423 due to drawing directives and standards to which Reclamation must adhere. Therefore, Reclamation respectfully requests your consideration and acceptance of the calculated TCE acreage.

**Description of the TCE – Parcel No. Rch 12.1-06:** The Point of Beginning being said Reach 12.1 Station 121415+29.96, a point on the East line of Section 12, from which the East Quarter corner of said Section 12 bears South 00°39'22" West a distance of 590.07 feet; Thence, from the Point of Beginning South 79°43'54" West a distance of 1328.72 feet to Station 121428+58.68; Thence South 80°31'44" West a distance of 2547.92-feet to Station 121454+06.60; Thence South 88°50'22" West a distance of 1206.59-feet to Station 121466+13.20; Thence South 80°33'43" West a distance of 673.73 feet to Station 121472+86.93, a point on the West line of said Section 12 and the point of terminus from which the West Quarter corner of said Section 12 bears North 00°52'37" East a distance of 192.72-feet. The sidelines of said strip shall be extended or shortened to the East and West lines of said Section 12. Parcel No. Rch 12.1-06 contains 19.82 acres, more or less.

**Total TCE Requested:** The total TCE requested in this application, over, under and through the aforementioned Navajo Nation Tribal Fee Lands crossed by the Reach 12.1 alignment contains 41.08 acres, more or less.

**Environmental Clearance:** The Record of Decision (ROD) and Final Environmental Impact Statement (FEIS) (Bureau of Reclamation 2009, can be viewed on the world-wide web at: <http://www.usbr.gov/uc/envdocs/eis/navgallup/FEIS/index.html>.

Subsequently, Reclamation conducted an additional Environmental Assessment (EA) over Reach 12.1, Dated 05-30-14, and a Final NEPA Sufficiency Report over Reaches 12.1 and 12.2, Dated 08-2014 to determine if any changes had occurred since the FEIS and ROD finalized in 2009 that would require additional action. Review of the most recent EA has determined that no additional action is necessary.

**Biological Resource Compliance:** Please see attached BRCF – NNDFW Review No. 13NC-08, that documents the approval by the NNDFW that the NGWSP Reach 12.1 proposed to be constructed in the area of the Rock Springs Chapter is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. The NNDFW

concurs with the mitigation recommendations outlined in the BE, Section 6.5 and is approved by Ms. Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife by the duly inscribed signature thereto, dated August 15, 2014.

**Cultural Resource Compliance:** Please see attached letter referring to NNHPD – HPD-15-116, and dated February 19, 2015, that includes the Class III Survey and Concurrence of Eligibility Determinations Report prepared by Paleo West for the NGWSP Reach 12.1 pipeline and the proposed Black Hat Water Storage Tank Facility. The survey was conducted under the authority of General Archaeological Investigation Permit No. NM-13-210-S, and Navajo Nation Cultural Resources Permit No. B13543. Twenty-five cultural resource sites are located within the proposed Reach 12.1 ROW. The report also locates and documents nine sites located on private lands within the project area. The archaeological resources survey also located twenty-five archaeological sites including eight previously recorded sites, and seventeen newly recorded sites that may be affected by the construction of the Reach 12.1 segment of the NGWSP.

Reclamation submitted said report to the Navajo Nation Tribal Historic Preservation Officer and requested concurrence of eligibility determinations, which was obtained as is evidenced by his duly subscribed signature on the second page of the report. The report was also consulted upon with all NGWSP signatory and consulting parties in compliance with the programmatic agreement for the NGWSP. Reclamation has requested a Cultural Resource Clearance Form, which is in process of being issued.

Please see the enclosed Letter of Agreement countersigned by officials from Reclamation and the BIA that established a NEPA Sufficiency Review Process for long-term implementation of the NGWSP. Also enclosed is a memorandum (29 October, 2015) issued by BIA-Navajo Region that provides guidance concerning the various compliance documents that are considered to be acceptable in satisfaction of NEPA and NHPA regulations. The letter referenced above, being prepared by Reclamation and approved by NNHPD, complies with NHPA, and the enclosed FONSI satisfies NEPA requirements under guidance provided in said memorandum.

**Reclamation and Revegetation of the ROW:** Once Reach 12.1 construction is completed, Reclamation will reclaim the ROW and TCE using a seed mixture appropriate to the area in compliance with the requirements of Departmental Regulations 25 CFR, Ch.1, Subchapter H, Part 169 § 169.5 and the NGWSP Revegetation Plan. Construction of Reach 12.1 is anticipated to begin in September of 2016 and be completed in April of 2018.

**Waiver of Title 25, Code of Federal Regulations, Part 169.4:** The Bureau of Reclamation, an agency of the Federal Government, is prohibited by the Anti-deficiency Act (31 C.F.R. § 1341) from obligating government funds by agreeing to open-ended indemnification, or to depositing government funds for payment of claims that have not been made. Therefore, Reclamation requests a waiver of said regulation, as is provided for in Title 25, *Code of Federal Regulations*, Part 169.4. Reclamation hereby assures that it will pay damages promptly, when they are sustained, under the provisions of the Federal Tort Claims Act (June 25, 1948, Ch. 646, Title IV, 62 Stat. 982, "28 U.S.C. Pt. VI Ch.171" and 28 U.S.C. Part 1346(b)).

**SAID APPLICANT UNDERSTANDS AND EXPRESSLY AGREES TO THE FOLLOWING STIPULATIONS:**

1. To construct and maintain the right-of-way in a workmanlike manner.



2. ~~To pay all damages and compensation, in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction and maintenance of the right-of-way.~~
3. ~~To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.~~
4. To restore the lands as nearly as may be possible to their original condition upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted.
5. To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during construction and maintenance of the project.
6. To take soil and resource conservation protection measures, including weed control, on the land covered by the right-of-way.
7. To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
8. To build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.
9. That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.
10. To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.
11. The applicant will not interfere with the use of the lands by or under the authority of the landowners, for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.
12. During the term of this Grant of Easement, if any previously unidentified cultural resources are discovered within the easement area, work should be halted immediately and the BIA and/or Tribal Contractor should be contacted immediately.

**THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:**

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.



IN WITNESS WHEREOF, Barry Longwell has caused this instrument to be  
executed this 21<sup>st</sup> day of January, 2016.

Witness

Barry Longwell  
Construction Engineer  
U.S. Bureau of Reclamation  
Four Corners Construction Office  
1235 La Plata Hwy.  
Farmington, NM, 87401

Required Supporting Documents:

1. ( ) ~~Form 5-104b - Signed Statement of Owners of Allotted Indian Lands~~
2. ( ) ~~Evidence of Authority of Officers to execute Papers (ROW Form 94-4).~~
3. ( ) ~~Evidence of good faith and financial responsibility.~~
4. ( ) ~~Double estimated damages (deposit - 25 CFR 169.4).~~
5. ( ) ~~State certified corporate charter or articles of incorporation.~~
6. ( ) ~~Certified copy of resolution or by laws of the corporation authorizing the filing of the application.~~
7. ( ) ~~State certification that the applicant is authorized to conduct business in the State of xxx.~~
8. ( ) ~~Certified copy of the articles of partnership or association.~~
9. (X) **Other attachments:**
  - (X) ROW and TCE Summary Spread Sheet - Tribal Fee Land
  - (X) Application for Grant of Temporary Construction Easement
  - (X) ROW Drawing No. 1695-529-421
  - (X) ROW Drawing No. 1695-529-422
  - (X) ROW Drawing No. 1695-529-423
  - (X) ROW Description - Drawing No. 1695-529-421
  - (X) ROW Description - Drawing No. 1695-529-422
  - (X) ROW Description - Drawing No. 1695-529-423
  - (X) Feasibility Map - Reach 12.1 - Dated 08-19-2014
  - (X) Project Map - No. 1695-529-537 - Dated 04-28-2015
  - (X) Plan and Profile Drawings No's. 1695-D-XX1 through 1695-D-X13
  - (X) Final Environmental Impact Statement and Record of Decision can be viewed at:  
<http://www.usbr.gov/uc/envdocs/eis/navgallup/FEIS/index.html>.
  - (X) FEIS - Record of Decision (ROD) - Dated September 2009
  - (X) Final ESA - Phase I Site Assessment - Dated 05-30-14
  - (X) NEPA Sufficiency Report - Rch 12.1 and Reach 12.2 - Dated 08-2014
  - (X) Cultural Compliance - NNHP - HPD-15-116 - Class III Survey and Concurrence of Eligibility Determinations - Dated 12-30-14
  - (X) Memorandum - NEPA Sufficiency and BIA Cultural Compliance - Dated 10-29-15
  - (X) BRCF - Biological Resource Compliance Form No. 13NC-08 - Approved 08-15-14
  - (X) Executive Order No. 03-2012 in Support of the NGWSP
  - (X) Chapter Resolution in Support the NGWSP - Rock Springs
  - (X) Chapter Resolution in Support the NGWSP - Twin Lakes
  - (X) Chapter Resolution in Support the NGWSP - Tsayatoh



# United States Department of the Interior

BUREAU OF RECLAMATION  
Upper Colorado Region  
Four Corners Construction Office  
1235 La Plata Highway  
Farmington, NM 87401

**JAN 21 2016**



IN REPLY REFER TO:  
FCCO-202  
LND-3.00

HAND DELIVERED

Mr. Howard P. Draper  
Program and Projects Specialist  
Navajo Land Department  
Project Review Section  
Navajo Nation Division of Natural Resources  
P.O. Box 2249  
Window Rock, AZ 86515

Subject: Application – Request for a Grant of Right-of-Way (ROW) and Temporary Construction Easement (TCE) - Navajo Nation Tribal Fee Lands - Reach 12.1 - San Juan Lateral - Navajo-Gallup Water Supply Project (NGWSP), McKinley County, New Mexico

Dear Mr. Draper:

The Bureau of Reclamation hereby requests a grant of ROW and TCE over, across, and through the subject Navajo Nation Tribal Fee Lands located in the area of the Twin Lakes, Rock Springs, and Tsayatoh Chapters in McKinley County, New Mexico. Enclosed are the applications requesting said consent and pertinent documents that are respectfully submitted for your review and processing.

Authorized under Title X, Part 111 (Public Law 111-11) of the Omnibus Public Land Management Act of 2009 (Act), the NGWSP will, when completed, deliver a reliable source of potable water from the San Juan River Basin to Navajo communities in the eastern portion of the Navajo Reservation, including Window Rock, Arizona. On October 11, 2011, the Obama Administration announced the selection of the NGWSP as one of fourteen (14) Federal Infrastructure projects to be expedited through the permitting and environmental review process.

On January 3, 2012, Navajo Nation President Ben Shelly issued *Executive Order No. 03-2012*, that proclaimed the NGWSP as a priority project of the Navajo Nation, directing the programs within the Navajo Nation's Executive Branch to "promptly process all necessary permits, contracts, and any related matters to this Project for its successful coordination, implementation, and construction."

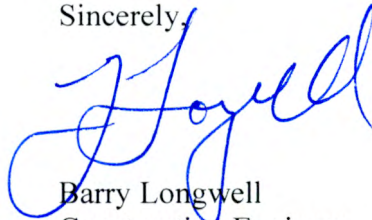
In order to maintain the Congressionally-mandated schedule included in the Act, it is imperative that the grant of ROW and TCE be issued in a timely manner so that construction can continue;

Subject: Application – Request for a Grant of Right-of-Way (ROW) and Temporary Construction

therefore, Reclamation respectfully requests that the enclosed applications be assigned appropriate priority so that the subject grants can be awarded by July 6, 2016.

If you have any questions, please contact Mike Braman at 505-324-5024.

Sincerely,



Barry Longwell  
Construction Engineer

Enclosures

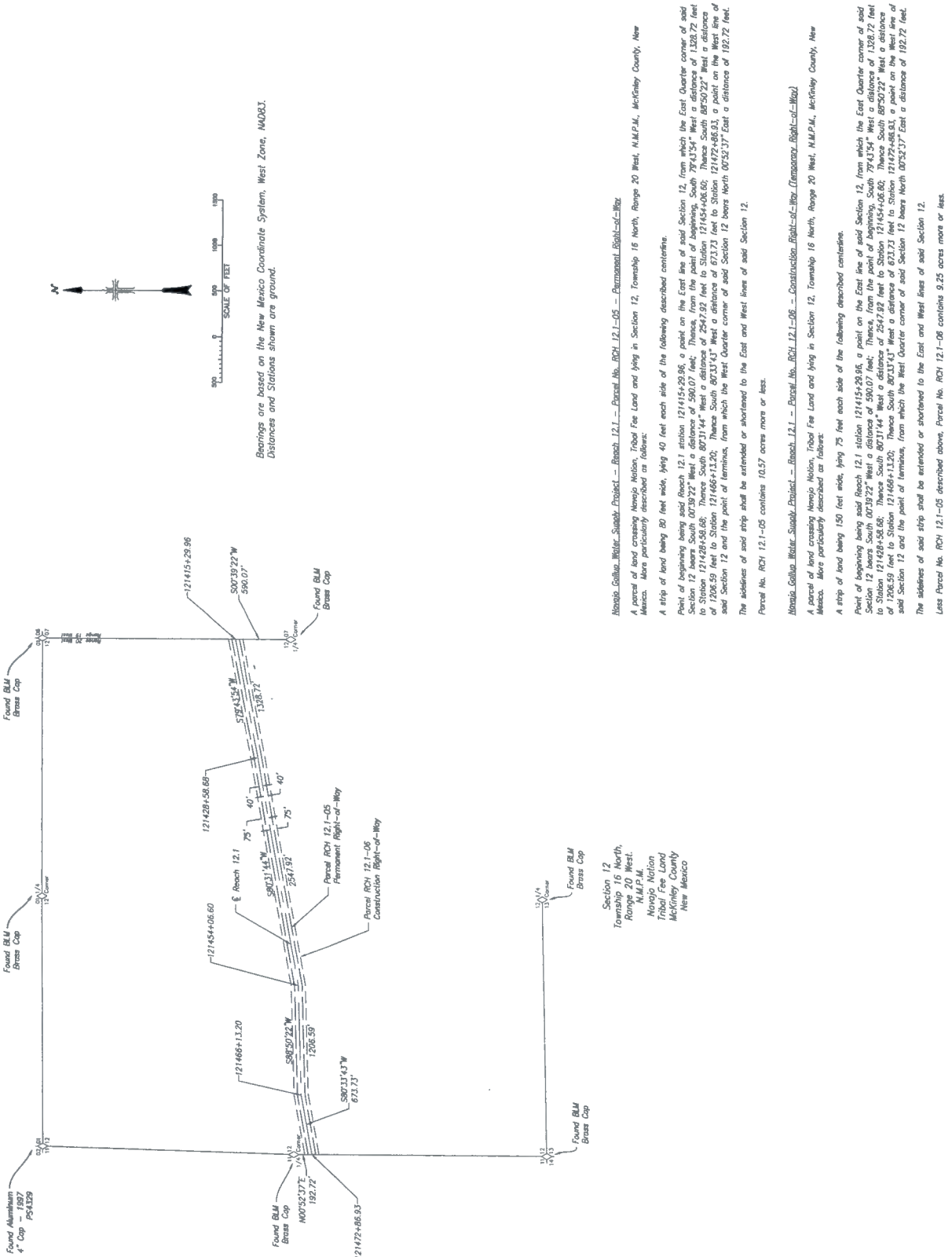
cc: Ms. Bidtah Becker  
Executive Director  
Navajo Nation Division of Natural Resources  
P.O. Box 9000  
Window Rock, AZ 86515

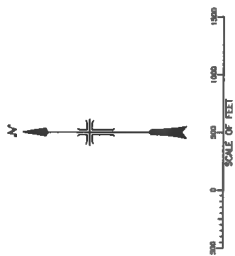
Mr. Ray Benally  
Director  
Navajo Nation Department of Water Resources  
P.O. Box 678  
Ft. Defiance, AZ 86504

Mr. Jason John  
Branch Director  
Navajo Nation Department of Water Resources  
Water Management Branch  
P.O. Box 678  
Ft. Defiance, AZ 86504  
(w/o encls to ea)









*Bearings are based on the New Mexico Coordinate System, West Zone, NAD83. Distances and Stations shown are ground.*

Navajo-Gallup Water Supply Project ~ Reach 12.1 ~ Part 1 No. RCH 12.1-01 ~ Permanent Right-of-Way

A parcel of land crossing Navajo Nation, Tribal Fee Land and lying in the Northwest Quarter of the Southwest Quarter of Section 5, Township 18 North, Range 18 West, N.M.P.M., McKinley County, New Mexico, more particularly described as follows:

A strip of land being 80 feet wide, lying 40 feet each side of the following described centerline.

Part of beginning being sold Record 12-1 station 121022+67.4, a point lying on the boundary of Parcel No. 7 for Tobacco Pumping Plant as shown on Tax Map showing parcels owned by City of Bismarck, North Dakota, dated August 9, 2011; from the Northwest corner of Station 5 bears North 05°23'27" West a distance of 326.35 feet to Station 121028+262.08; Thence South 44°45'11" East a distance of 189.78 feet to the Northeast corner of Station 3; S35°48'37" West a distance of 326.35 feet to Station 121028+262.08; Thence South 44°45'11" East a distance of 152.49 feet to Station 121028+80.58; From the Southeast corner of Station 5 and the point of termination, from which the Southwest corner of Station 5 bears South 01°37'07" West a distance of 2107.17 feet.

The sidelines of said strip shall be extended or shortened to said boundary of Parcel No. 7 and the West line of said Section 5.

Parcel No. RCH 12.1-01 contains 0.88 acres more or less.

*Navajo-Gallup Water Supply Project - Reach 12.1 - Parcel No. RCH 12.1-02 - Construction Right-of-Way (Temporary Right-of-Way)*

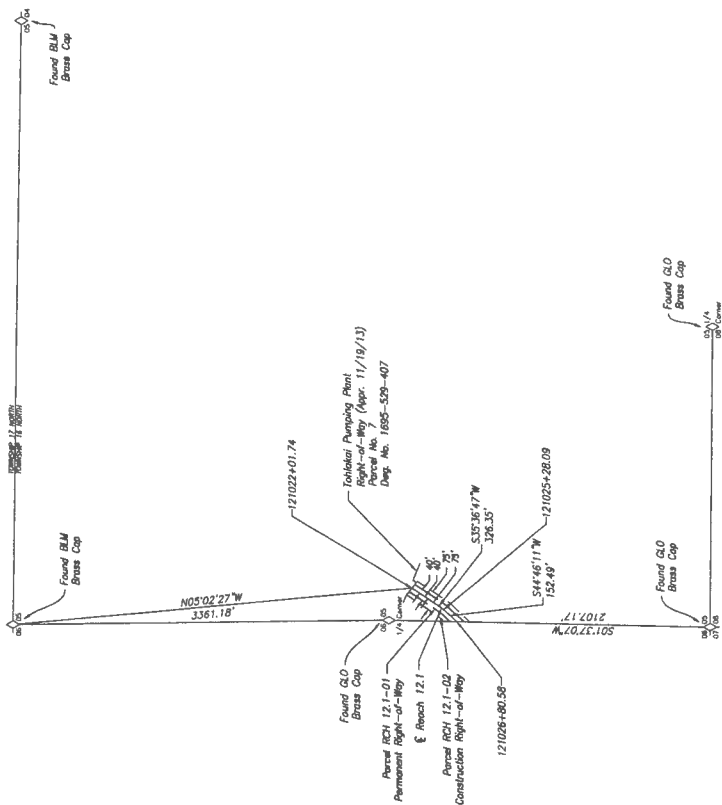
A parcel of land crossing Navajo Nation, Tribal Fee Land and lying in the Northwest Quarter of Section 5, Township 16 North, Range 18 West, N.M.P.M., McKinley County, New Mexico. More particularly described as follows:

A strip of land being 150 feet wide, lying 75 feet each side of the following described centerline.

Point of beginning being and Reach 12.1 station 121022+01.74, a point lying on the boundary of Parcel No. 7 for Tobacco Pumping Plant as shown on the map of the County of Santa Clara, California, and approved November 19, 2013, from which the Northwest corner of Section 5 bears North 65°02'27" West a distance of 3361.18 feet; Thence, from the point of beginning, South 35°34'47" West a distance of 326.35 feet to Station 121022+28.08; Thence South 44°46'11" West a distance of 152.49 feet to Station 121028+00.58; then on the West line of Section 5 and the point of terminus, from which the Northwest corner of said Section 5 bears South 101°37'07" West a distance of 2107.17 feet.

The sidelines of said strip shall be extended or shortened to said boundary of Parcel No. 7 and the West line of said Section 5.

Less Parcel No. RCH 12.1-01 described above, Parcel No. RCH 12.1-02 contains 0.77 acres more or less.



Section 5  
Township 16 North  
Range 18 West.  
N.M.P.M.  
Navajo Nation  
Tribal Fee Land  
McKinley County  
New Mexico



# *Bureau of Reclamation*

## **Navajo Gallup Water Supply Project Tribal Fee Land Reach 12.1 - San Juan Lateral**

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- 3. Application for Grant of Temporary Construction Easement**
- 4. ROW Drawing No. 1695-529-421**
- 5. ROW Drawing No. 1695-529-422**
- 6. ROW Drawing No. 1695-529-423**
- 7. ROW Description - Drawing No. 1695-529-421**
- 8. ROW Description - Drawing No. 1695-529-422**
- 9. ROW Description - Drawing No. 1695-529-423**
- 10. Feasibility Map - Reach 12.1 – Dated 08-19-2014**
- 11. Project Map – No. 1695-529-537 – Dated 04-28-2015**
- 12. Plan and Profile Drawings No's. 1695-D-XX1 through 1695-D-X13**
- 13. FEIS – Record of Decision (ROD) – Dated September 2014**
- 14. Final ESA – Phase I Site Assessment – Dated 05-30-14**
- 15. NEPA Sufficiency Report – Rch 12.1 and Reach 12.2 – Dated 08-2014**
- 16. Cultural Compliance – NNHP – HPD-15-116 – Class III Survey and Concurrence of Eligibility Determinations - Dated 12-30-14**
- 17. Memorandum – NEPA Sufficiency and BIA Cultural Compliance Dated 10-29-2015**
- 18. BRCF – Biological Resource Compliance Form No. 13NC-08 – Approved 08-15-14**
- 19. Executive Order No. 03-2012 in Support of the NGWSP**
- 20. Chapter Resolution in Support the NGWSP - Rock Springs**
- 21. Chapter Resolution in Support the NGWSP – Twin Lakes**
- 22. Chapter Resolution in Support the NGWSP – Tsayatoh**

**Navajo Nation Fee Lands – Reach 12.1  
NW1/4SW1/4, Sec. 5, T16N, R18W, NMPM  
Drawing No. 1695-529-421**

**Navajo-Gallup Water Supply Project - Reach 12.1 - Parcel No. Rch 12.1-01 - Permanent Right-of-Way**

A parcel of land crossing Navajo Nation Tribal Fee Land and lying in the Northwest Quarter of the Southwest Quarter of Section 5, Township 16 North, Range 18 West, N.M.P.M., McKinley County, New Mexico. More particularly described as follows:

A strip of land being 80 feet wide, lying 40 feet each side of the following described centerline.

The Point of Beginning being said Reach 12.1, Station 121022+01.74, a point lying on the boundary of Parcel No. 7 for Tohlokai Pumping Plant as shown on drawing 1695-529-407 as approved November 19, 2013, from which the Northwest corner of said Section 5 bears North 05°02'27" West a distance of 3361.18 feet: Thence from the Point of Beginning South 35°36'47" West a distance of 326.35 feet to Station 121025+28.09: Thence South 44°46'11" West a distance of 152.49 feet to Station 121026+80.58, a point on the West line of said Section 5 and the point of terminus, from which the Southwest corner of said Section 5 bears South 01°37'07" West a distance of 2107.17 feet. The sidelines of said strip shall be extended or shortened to said boundary of Parcel No. 7 and the West line of Section 5.

Parcel No. Rch 12.1-01 contains 0.88 acres more or less.

**Navajo-Gallup Water Supply Project - Reach 12.1 - Parcel No. Rch 12.1-02 – Temporary Construction Easement**

A parcel of land crossing Navajo Nation Tribal Fee Land and lying in the Northwest Quarter of the Southwest Quarter of Section 5, Township 16 North, Range 18 West, N.M.P.M., McKinley County, New Mexico. More particularly described as follows:

A strip of land being 150 feet wide, lying 75 feet each side of the following described centerline.

The Point of Beginning being said Reach 12.1, Station 121022+01.74, a point lying on the boundary of Parcel No. 7 for Tohlokai Pumping Plant as shown on drawing 1695-529-407 as approved November 19, 2013, from which the Northwest corner of said Section 5 bears North 05°02'27" West a distance of 3361.18 feet: Thence from the Point of Beginning South 35°36'47" West a distance of 326.35 feet to Station 121025+28.09: Thence South 44°46'11" West a distance of 152.49 feet to Station 121026+80.58, a point on the West line of said Section 5 and the point of terminus, from which the Southwest corner of said Section 5 bears South 01°37'07" West a distance of 2107.17 feet. The sidelines of said strip shall be extended or shortened to said boundary of Parcel No. 7 and the West line of Section 5.

Less Parcel No. Rch 12.1-01 described above, Parcel Rch 12.1-02 contains 0.77 acres, more or less.

**Navajo Nation Fee Lands – Reach 12.1**  
**N1/2, Sec. 11, T16N, R19W, NMPM**  
**Drawing No. 1695-529-422**

**Navajo-Gallup Water Supply Project - Reach 12.1 - Parcel No. Rch 12.1-03 - Permanent Right-of-Way**

A parcel of land crossing Navajo Nation Tribal Fee Land and lying in the North Half of Section 11, Township 16 North, Range 19 West, N.M.P.M., McKinley County, New Mexico. More particularly described as follows:

A strip of land being 80 feet wide, lying 40 feet each side of the following described centerline.

The Point of Beginning being said Reach 12.1, Station 121147+24.14, a point on the East line of said Section 11, from which the Northeast corner of said Section 11 bears North 00°33'36" East a distance of 1725.17 feet; Thence from the Point of Beginning North 81°29'52" West a distance of 3.80 feet to Station 121147+27.94; Thence North 78°32'13" West a distance of 3933.29 feet to Station 121186+61.23; Thence North 46°04'22" West a distance of 679.95 feet to Station 121193+41.18; Thence North 89°45'43" West a distance of 326.07 feet to Station 121196+67.25; Thence South 60°17'05" West a distance of 678.19 feet to Station 121203+45.44; Thence South 86°22'33" West a distance of 73.16 feet to Station 121204+18.60, a point on the West line of said Section 11 and the point of terminus from which the West Quarter corner of said Section 11 bears South 01°16'44" East a distance of 1779.56 feet. The sidelines of said strip shall be extended or shortened to the East and West lines of Section 11.

Parcel No. Rch 12.1-03 contains 10.46 acres more or less.

**Navajo-Gallup Water Supply Project - Reach 12.1 - Parcel No. Rch 12.1-04 - Temporary Construction Easement**

A parcel of land crossing Navajo Nation Tribal Fee Land and lying in the North Half of Section 11, Township 16 North, Range 19 West, N.M.P.M., McKinley County, New Mexico. More particularly described as follows:

A strip of land being 150 feet wide, lying 75 feet each side of the following described centerline.

The Point of Beginning being said Reach 12.1, Station 121147+24.14, a point on the East line of said Section 11, from which the Northeast corner of said Section 11 bears North 00°33'36" East a distance of 1725.17 feet; Thence from the Point of Beginning North 81°29'52" West a distance of 3.80 feet to Station 121147+27.94; Thence North 78°32'13" West a distance of 3933.29 feet to Station 121186+61.23; Thence North 46°04'22" West a distance of 679.95 feet to Station 121193+41.18; Thence North 89°45'43" West a distance of 326.07 feet to Station 121196+67.25; Thence South 60°17'05" West a distance of 678.19 feet to Station 121203+45.44; Thence South 86°22'33" West a distance of 73.16 feet to Station 121204+18.60, a point on the West line of said Section 11 and the point of terminus from which the West Quarter corner of said Section 11 bears South 01°16'44" East a distance of 1779.56 feet. The sidelines of said strip shall be extended or shortened to the East and West lines of Section 11.

Parcel No. Rch 12.1-04 contains 9.15 acres more or less.



**Navajo Nation Fee Lands – Reach 12.1**  
**S1/2NE1/4, SE1/4NW1/4, N1/2SW1/4, Sec. 12, T16N, R19W, NMPM**  
**Drawing No. 1695-529-423**

Navajo-Gallup Water Supply Project - Reach 12.1 - Parcel No. Rch 12.1-05 - Permanent Right-of-Way

A parcel of land crossing Navajo Nation Tribal Fee Land and lying in the South Half of the Northeast Quarter, the Southeast of the Northwest Quarter, and the North Half of the Southwest Quarter of Section 12, Township 16 North, Range 19 West, N.M.P.M., McKinley County, New Mexico. More particularly described as follows:

A strip of land being 80 feet wide, lying 40 feet each side of the following described centerline.

The Point of Beginning being said Reach 12.1, Station 121415+29.96, a point on the East line of said Section 12, from which the East Quarter corner of said Section 12 bears South 00°39'22" West distance of 590.07 feet; Thence from the Point of Beginning South 79°43'54" West a distance of 1328.72 feet to Station 121428+58.68; Thence South 80°31'44" West a distance of 2547.92 feet to Station 121454+06.60; Thence South 88°50'22" West a distance of 1206.59 feet to Station 121466+13.20; Thence South 80°33'43" West a distance of 673.73 feet to Station 121472+86.93, a point on the West line of said Section 12 and the point of terminus from which the West Quarter corner of said Section 12 bears North 00°52'37" East a distance of 192.72 feet. The sidelines of said strip shall be extended or shortened to the East and West lines of Section 12.

Parcel No. Rch 12.1-05 contains 10.57 acres more or less.

Navajo-Gallup Water Supply Project - Reach 12.1 - Parcel No. Rch 12.1-06 - Temporary Construction Easement

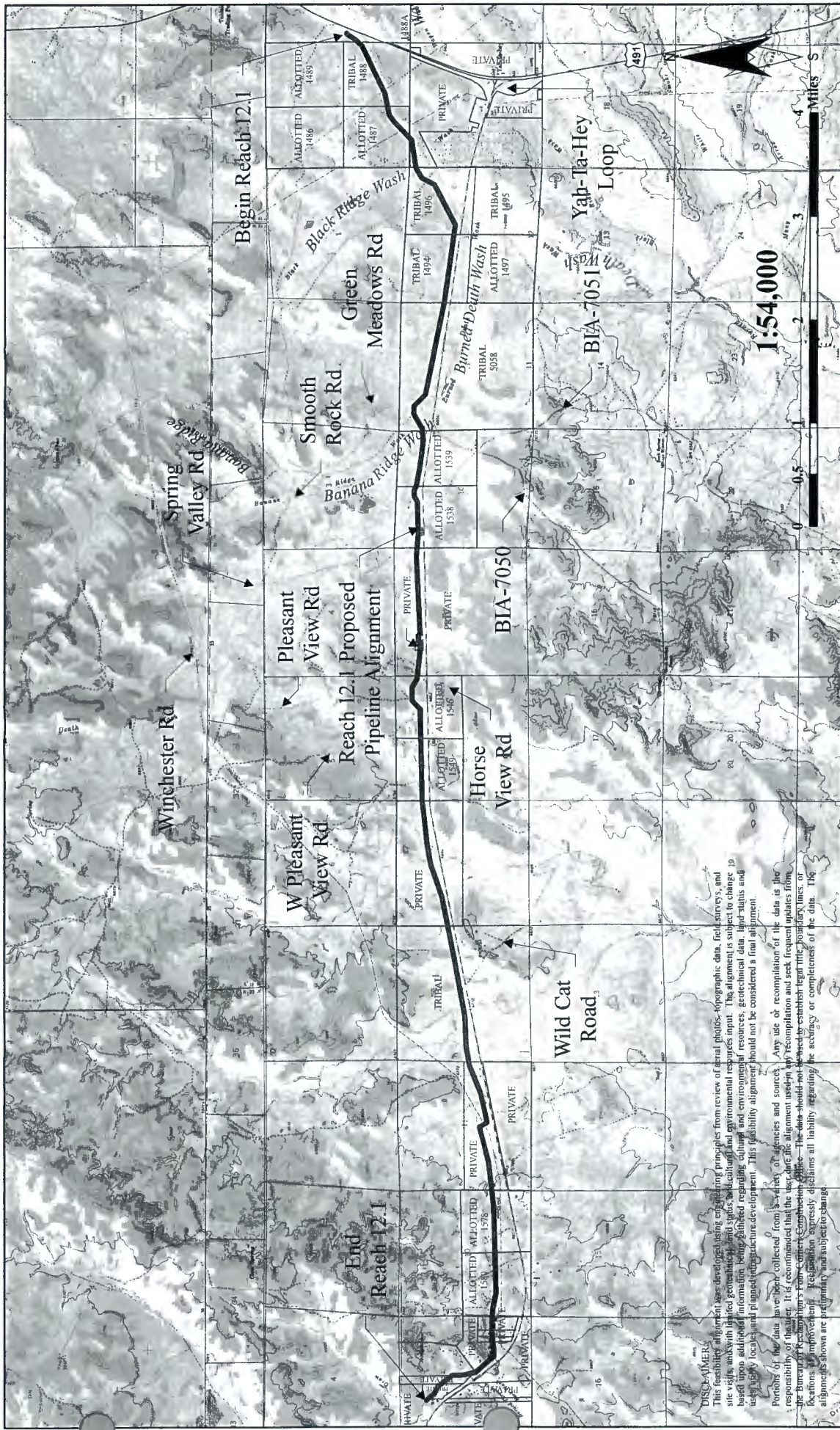
A parcel of land crossing Navajo Nation Tribal Fee Land and lying in the South Half of the Northeast Quarter, the Southeast of the Northwest Quarter, and the North Half of the Southwest Quarter of Section 12, Township 16 North, Range 19 West, N.M.P.M., McKinley County, New Mexico. More particularly described as follows:

A strip of land being 150 feet wide, lying 75 feet each side of the following described centerline.

The Point of Beginning being said Reach 12.1, Station 121415+29.96, a point on the East line of said Section 12, from which the East Quarter corner of said Section 12 bears South 00°39'22" West distance of 590.07 feet; Thence from the Point of Beginning South 79°43'54" West a distance of 1328.72 feet to Station 121428+58.68; Thence South 80°31'44" West a distance of 2547.92 feet to Station 121454+06.60; Thence South 88°50'22" West a distance of 1206.59 feet to Station 121466+13.20; Thence South 80°33'43" West a distance of 673.73 feet to Station 121472+86.93, a point on the West line of said Section 12 and the point of terminus from which the West Quarter corner of said Section 12 bears North 00°52'37" East a distance of 192.72 feet. The sidelines of said strip shall be extended or shortened to the East and West lines of Section 12.

Parcel No. Rch 12.1-06 contains 9.25 acres more or less.





# Navajo-Gallup Water Supply Project Reach 12.1 Feasibility Map

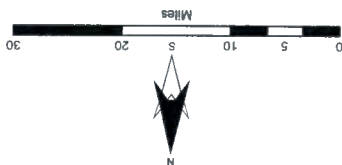
RECLAMATION  
 Managing Water in the West  
 Date: 8/19/2014

**Legend**  
 — Reach 12.1 Proposed Pipeline Alignment

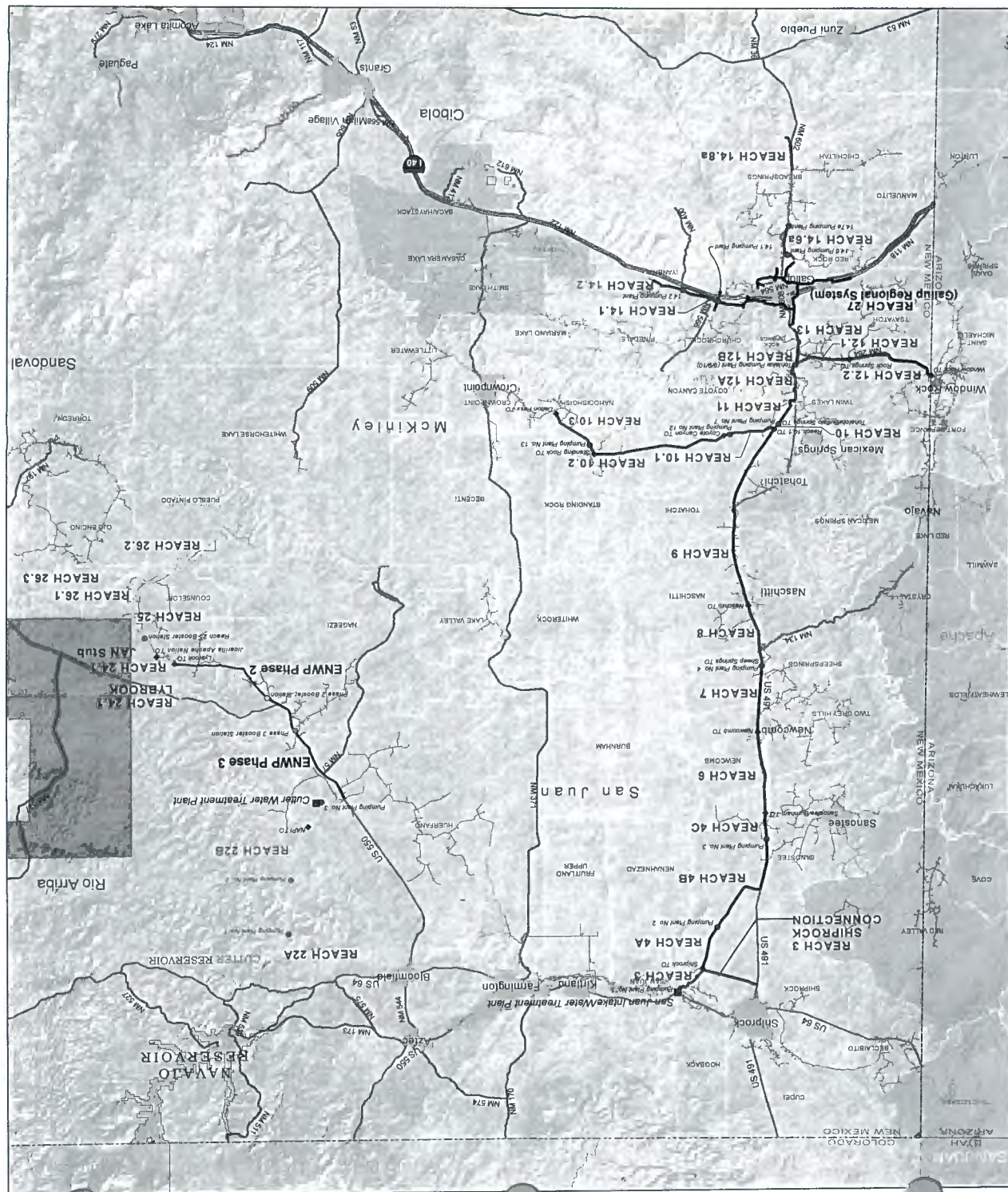
**DISCLAIMERS**  
 This feasibility alignment was developed using engineering principles from review of aerial photos, topographic data, field surveys, and site visits and with limited geotechnical and structural data and cultural and environmental resources input. The alignment is subject to change based upon additional information being gathered regarding cultural and environmental resources, geotechnical data, land status and utility facility locations and planned infrastructure development. This feasibility alignment should not be considered a final alignment.  
 Portions of the data have been collected from a variety of agencies and sources. Any use or recompilation of the data is the responsibility of the user. It is recommended that the user, before the alignment is used, seek frequent updates from the Bureau of Reclamation's Construction Office. The data should not be used to establish legal title, boundary lines, or locations for improvements. Reclamation expressly disclaims all liability regarding the accuracy or completeness of the data. The alignments shown are preliminary and subject to change.



Disclaimer: Not for construction purposes. Alignment may be refined as designs and field reviews are completed.



- LEGEND**
- |   |  |
|---|--|
| ◆ | Turnout                                      |
| ● | Pumping Plant                                |
| ■ | Water Treatment Plant                        |
| — | Eastern Navajo Water Pipeline (ENWP) Phase 3 |
| — | Eastern Navajo Water Pipeline (ENWP) Phase 2 |
| — | Cutler Lateral                               |
| — | Gallup Regional System                       |
| — | San Juan Lateral                             |
| — | Navajo Nation Non-Serviced Chapters          |
| — | Navajo Nation Serviced Chapters              |
| — | Jicarilla Apache Nation (JAN)                |
| — | Navajo Tribal Utility Distribution System    |



RECLAMATION

Design C 60%  
Status Set  
1/25

ALWAYS THINK SAFETY  
SAN JUAN LATERAL - REACH 12.1  
TERRAIN PUMPED MAIN TO BLACK HILL  
STA 121020+00 TO 121050+00  
PLAN AND PROFILE

NOT FOR CONSTRUCTION

1695-D-301  
STA 121020+00  
STA 121050+00  
1695-D-301  
SHEET 1 OF 12

GENERAL NOTES

1. General Notes, Symbols, Abbreviations, and Pipe Classification apply to all plan and profile drawings.
2. At angle points that do not require miter bends, long radius curves (vertical and horizontal) shall be used.
3. Shifts are approximate and may be varied as directed.
4. Each pipe shall be 3.0 feet outside the top of the pipe.
5. When the line pipe crosses over an existing water, or a roadway, and then the line pipe crosses under an existing water, a minimum clear distance of 2 feet outside the outside between the pipe and existing pipe shall be maintained.
6. Between the crossing pipelines shall be compacted as stated in the specifications.
7. Unknown elevations and diameters of existing pipelines shall be determined by the contractor and reported to the CDD in writing before scheduled grades and design if required before scheduled construction.
8. Stationing is given in stationing near gas lines, see specifications.
9. Grid based on New Mexico State Coordinate System, Zone 14N 83, vertical datum based on NAD 83.
10. Ground to grid conversion factor: 1.0
11. For pipe trench inspection see (1695-D-40)
12. Connected backfill shall be used at all road crossings and locations shown.
13. Topography provided by Four Corners Construction, Inc. (1695-D-301).
14. Computer version reflects best coordinate system.
15. Contour interval = 3 feet, BM 1400.

GEOLOGIC NOTE

For General Geologic Map (Discontinuity and Notes, see (1695-D-301-12)

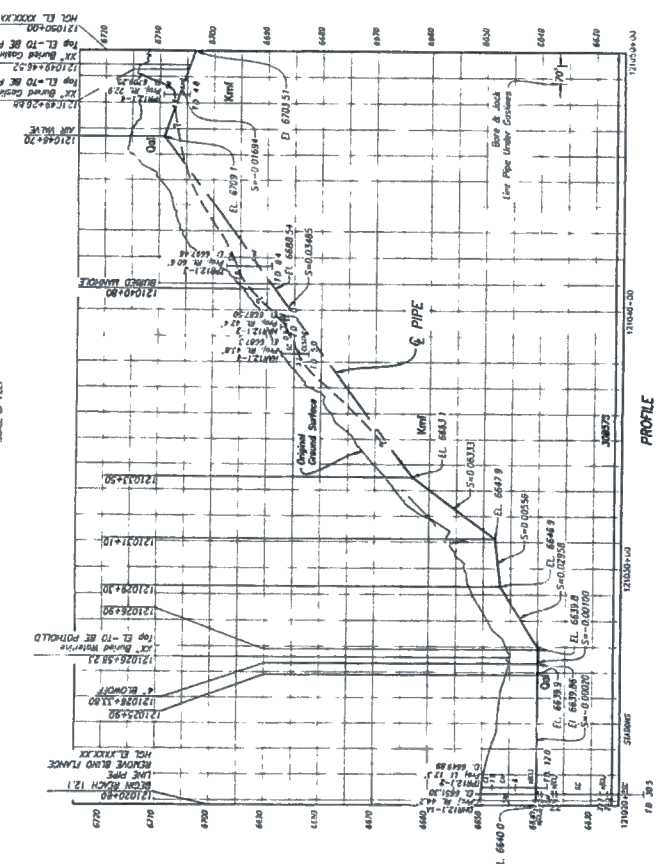
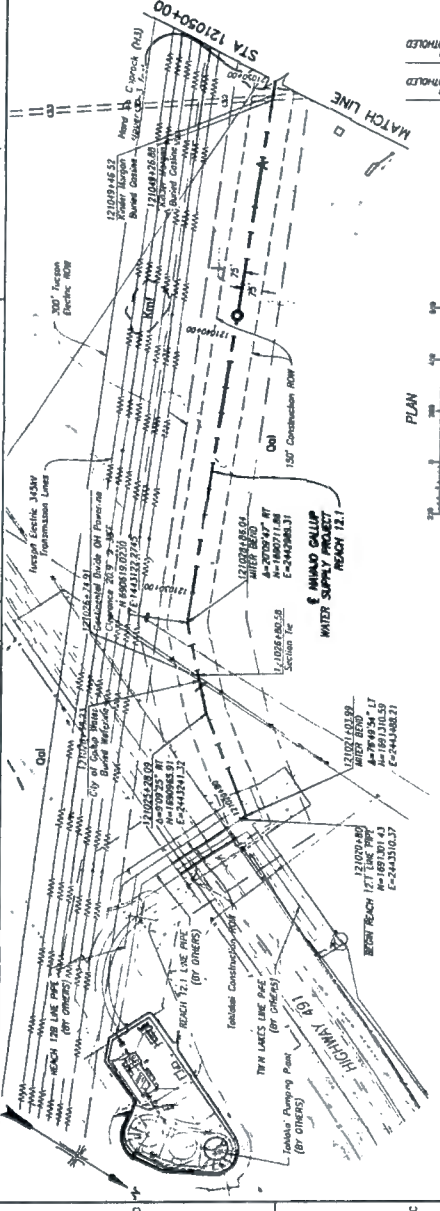
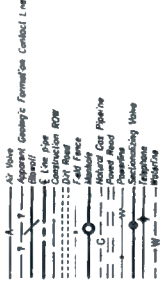
PIPE CLASSIFICATIONS

The line pipe is designated as 10850, 10C130  
40, 3D and carries the nominal pipe diameter  
of 10, 15, 20 and 25 feet respectively of  
design earth cover over the top of the pipe. The  
hydraulic pressure head in feet measured at the  
centerline of the pipe.

ABBREVIATIONS

- AP - Agency
- CR - County Road
- DF - Ductile Iron
- EL - Elevation
- MD - Municipal District
- MTA - Municipal Utility Authority
- OW - Over Head
- PR - Public Service Company of New Mexico
- RP - Right of Way
- TP - Test Pit

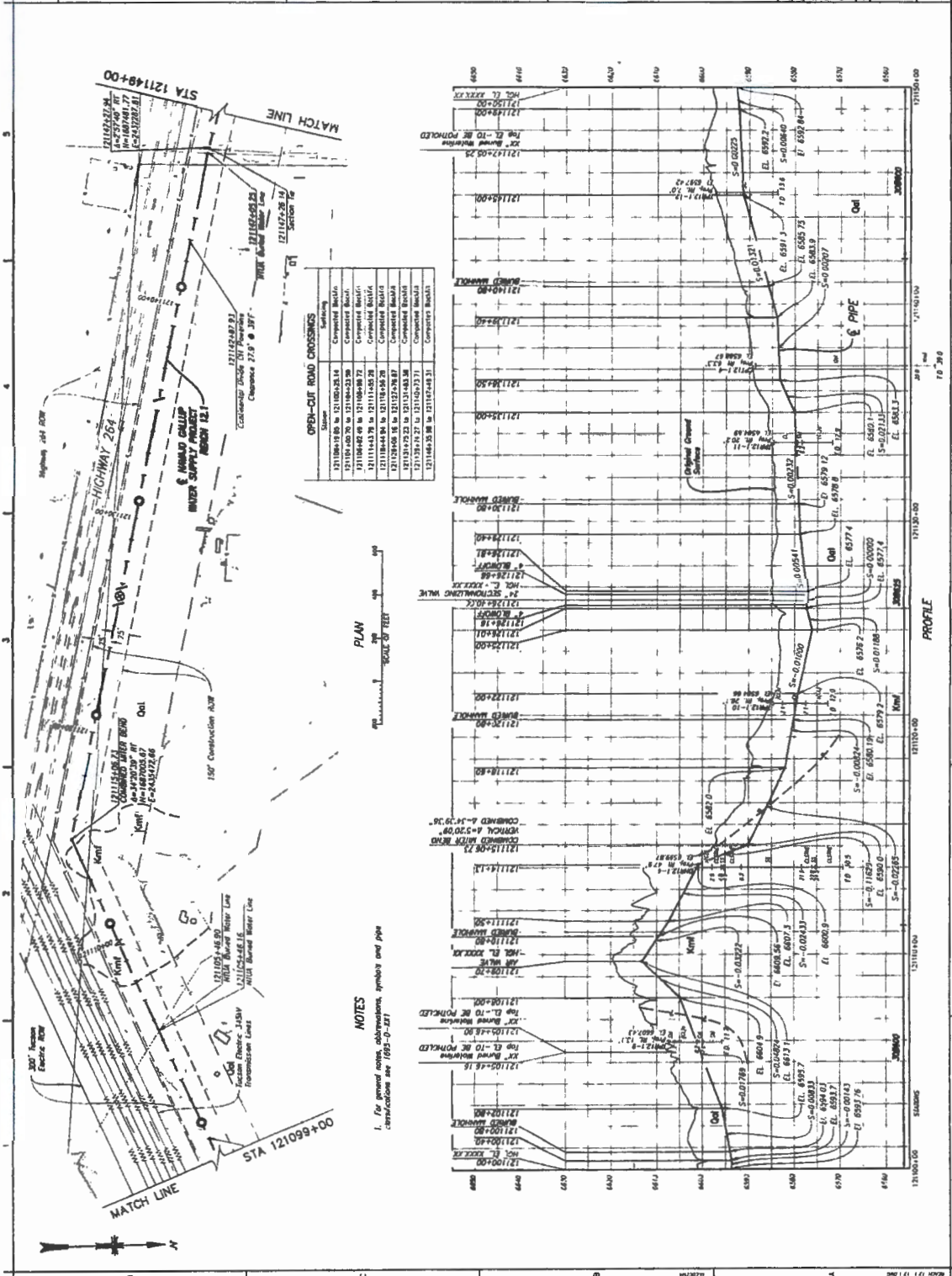
SYMBOLS

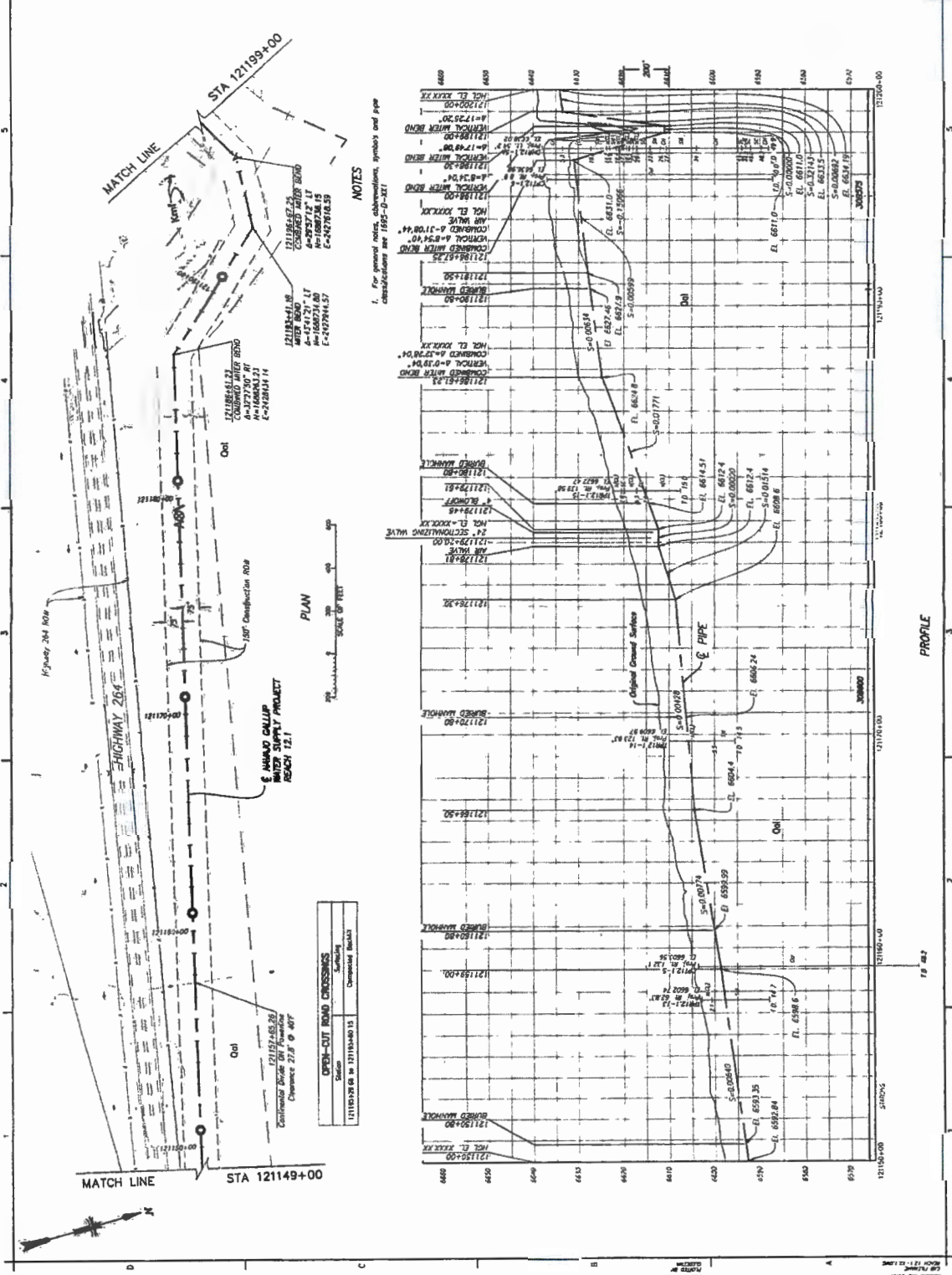


OPEN-CUT ROAD CROSSINGS			
Station	Structure	Comments	Notes
121020+00 to 121040+00	Compacted Backfill		
121040+00 to 121050+00	Compacted Backfill		
121050+00 to 121060+00	Compacted Backfill		















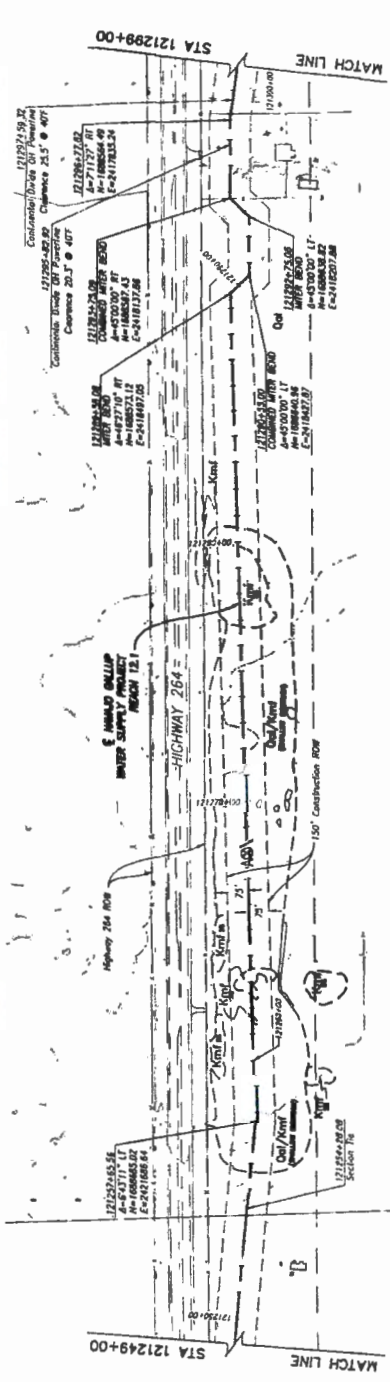
RECLAMATION  
Engineering Division

Design C 60%  
Status Set  
6/25  
FEE 3 6 015

ALWAYS THINK SAFETY  
SAN JUAN LATERAL - REACH 12.1  
REACH 12.1  
REACH 12.1  
REACH 12.1

NOT FOR  
CONSTRUCTION

1695-D-X16  
STA 121250+00  
STA 121300+00  
DATE 6.18.12



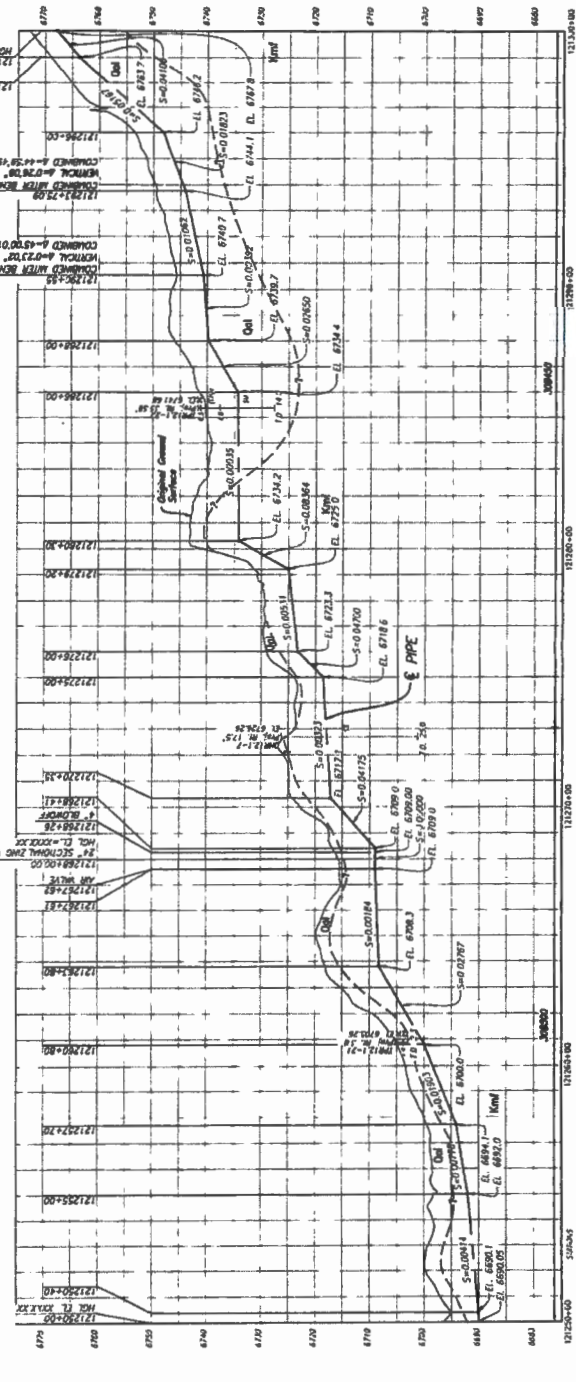
NOTES

1. For general notes, abbreviations, symbols and pipe  
connections see 1695-D-101

PLAN

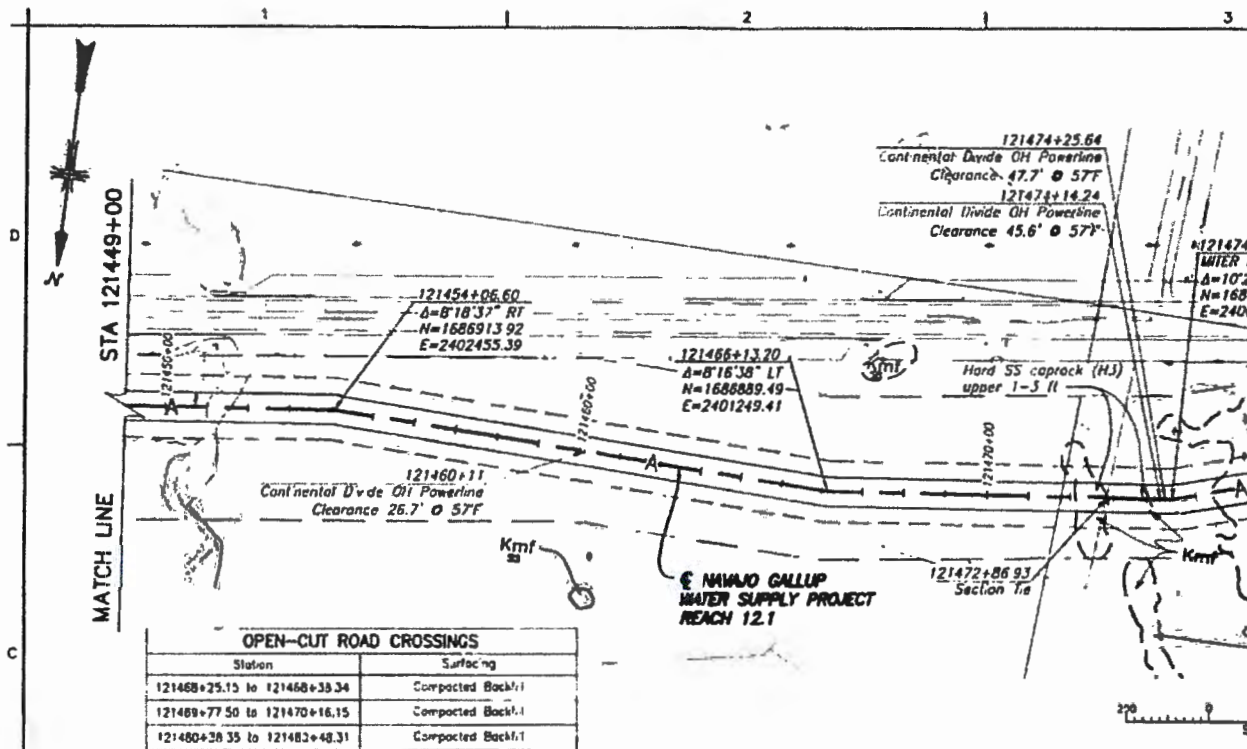
SCALE 1" = 100'

OPEN-CUT ROAD CROSSINGS		
Station	Substation	Point
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121251+00	121251+00	121251+00
121252+00	121252+00	121252+00
121253+00	121253+00	121253+00
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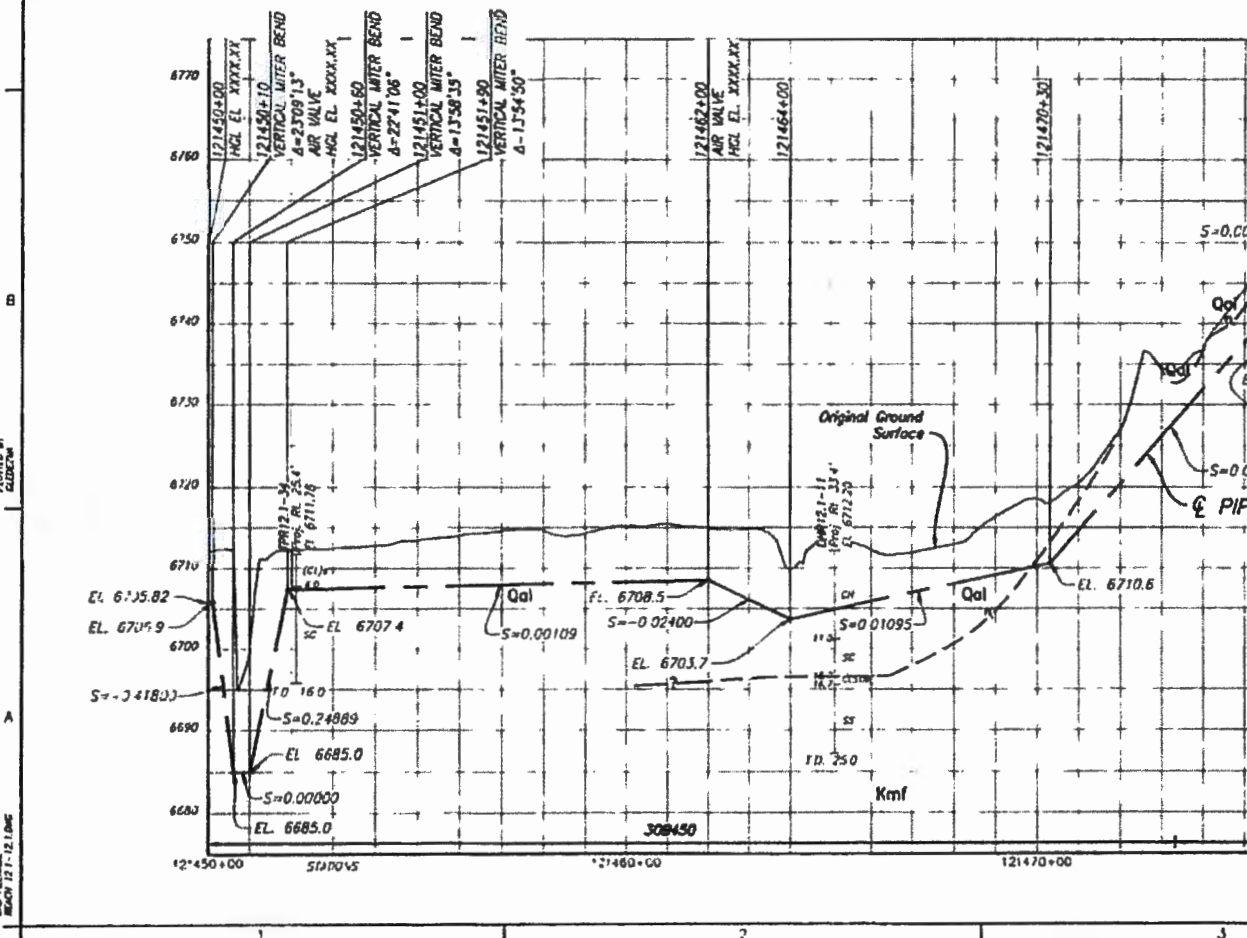
PROFILE

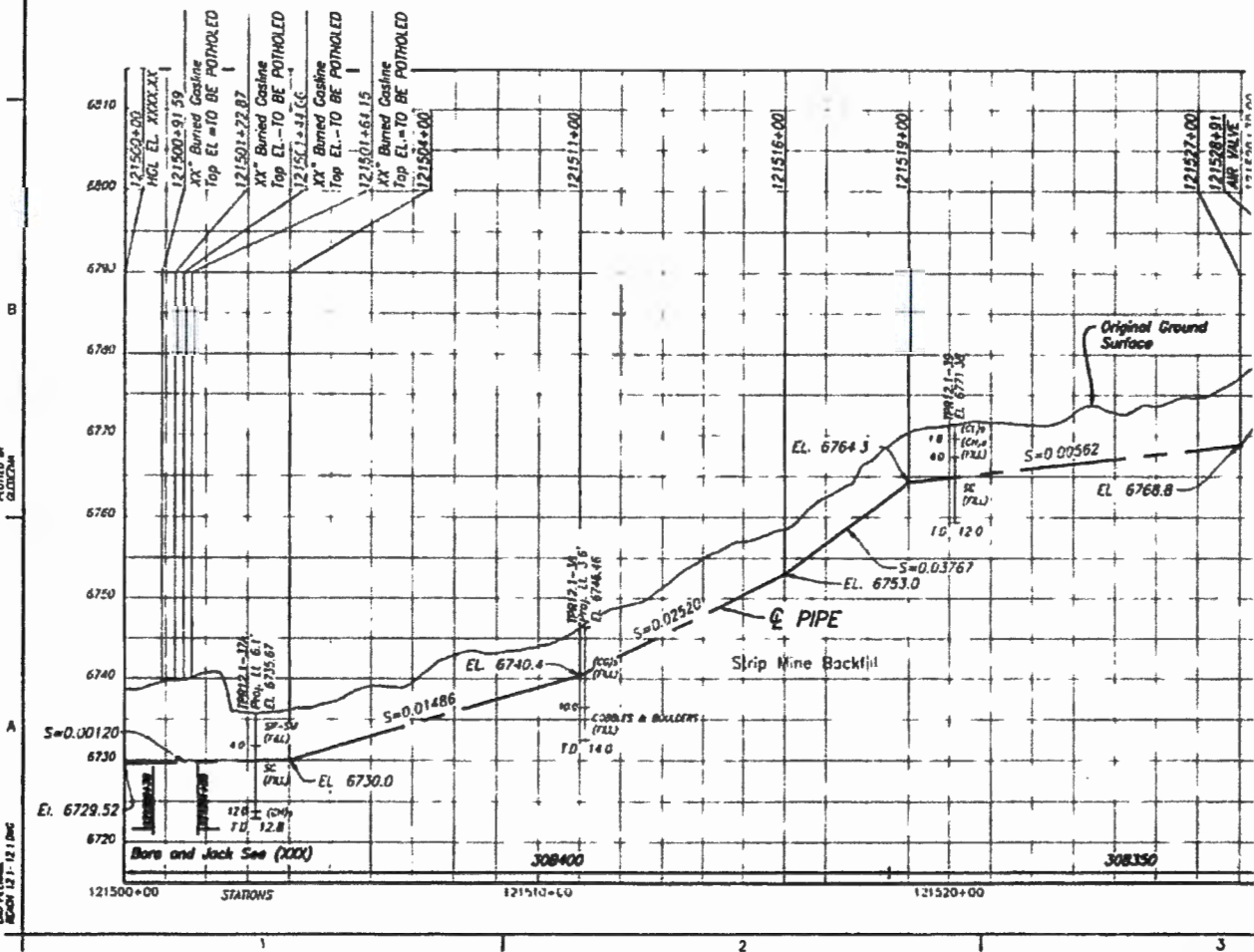




Station	Surface
121468+25.15 to 121468+38.34	Compacted Backfill
121469+77.50 to 121470+16.15	Compacted Backfill
121480+28.35 to 121482+48.31	Compacted Backfill

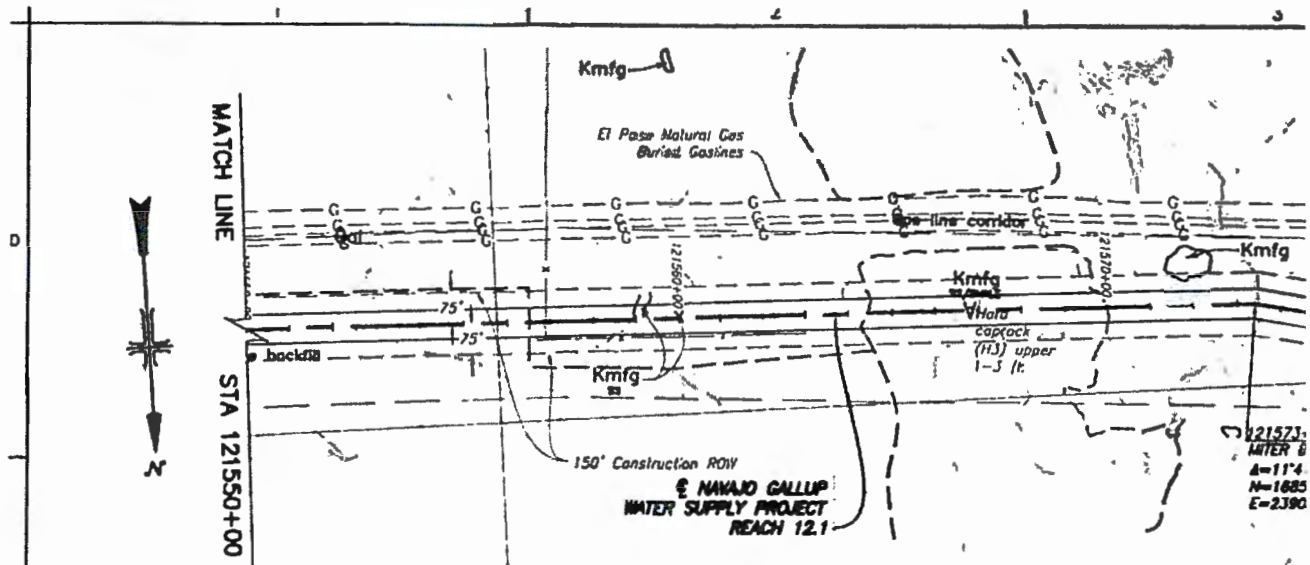
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 FEBRUARY 3, 2013 12:14  
 PLOTTED BY  
 CLOUTIER



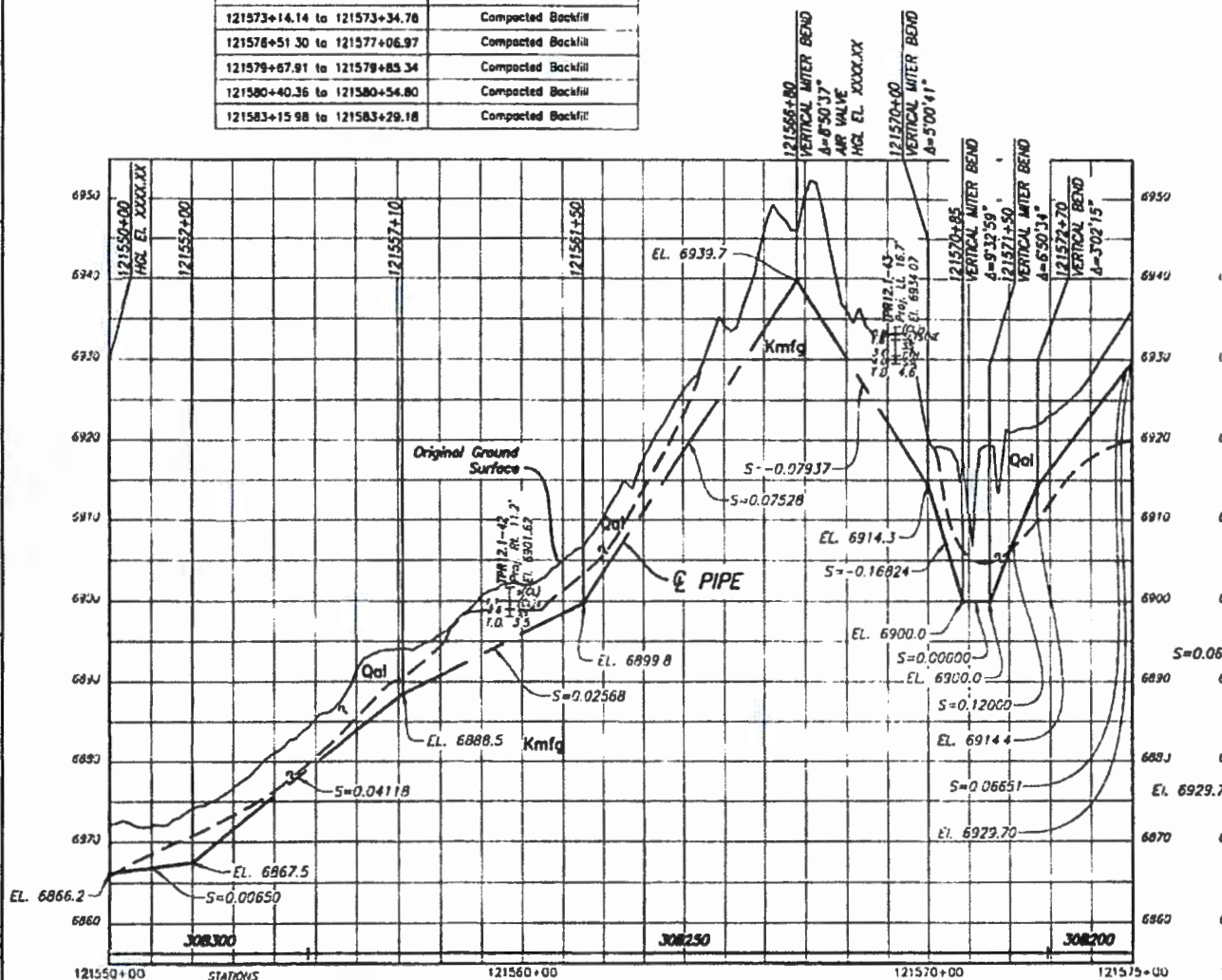




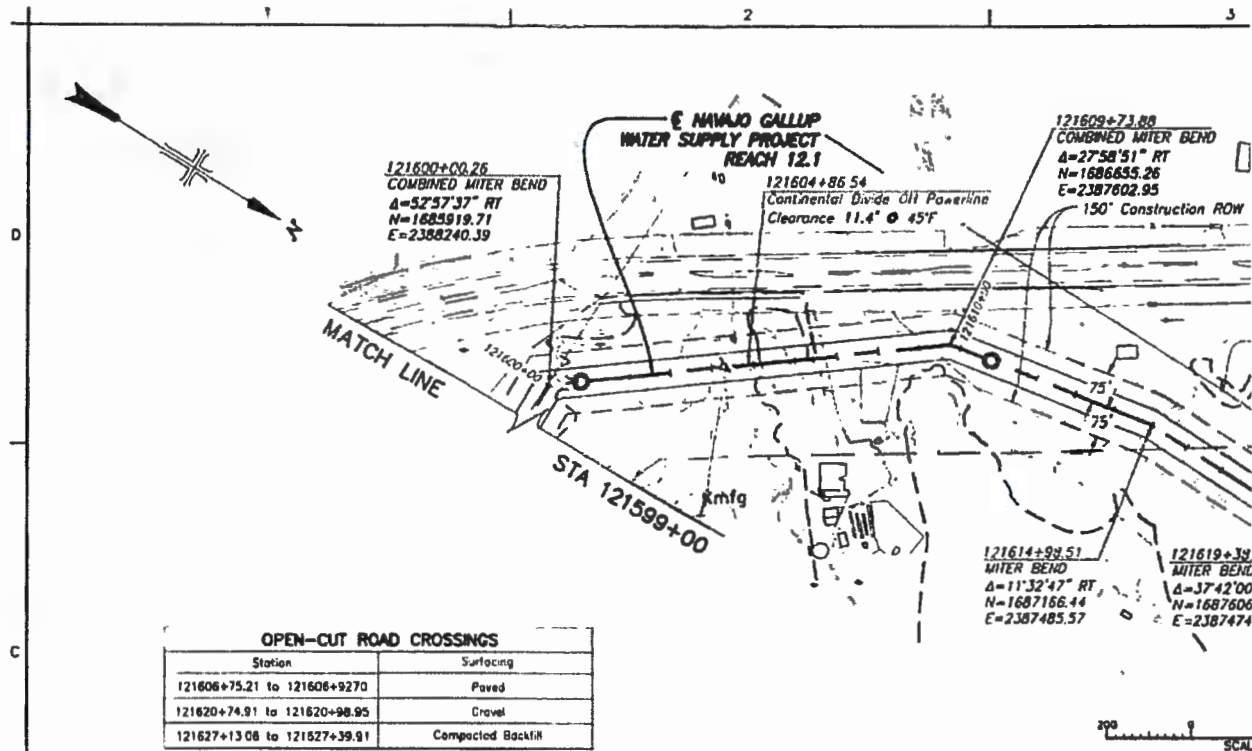
DATE AND TIME PLOTTED  
FEBRUARY 5, 2015 12:15  
BY  
C. D. DAVIS  
C.D. DAVIS  
NAVAJO N.W. 2146  
REACH 12.1-12.100



OPEN-CUT ROAD CROSSINGS	
Station	Surfacing
121563+71.40 to 121564+39.11	Compacted Backfill
121573+14.14 to 121573+34.76	Compacted Backfill
121576+51.30 to 121577+06.97	Compacted Backfill
121579+67.91 to 121579+83.34	Compacted Backfill
121580+40.35 to 121580+54.80	Compacted Backfill
121583+15.98 to 121583+29.18	Compacted Backfill

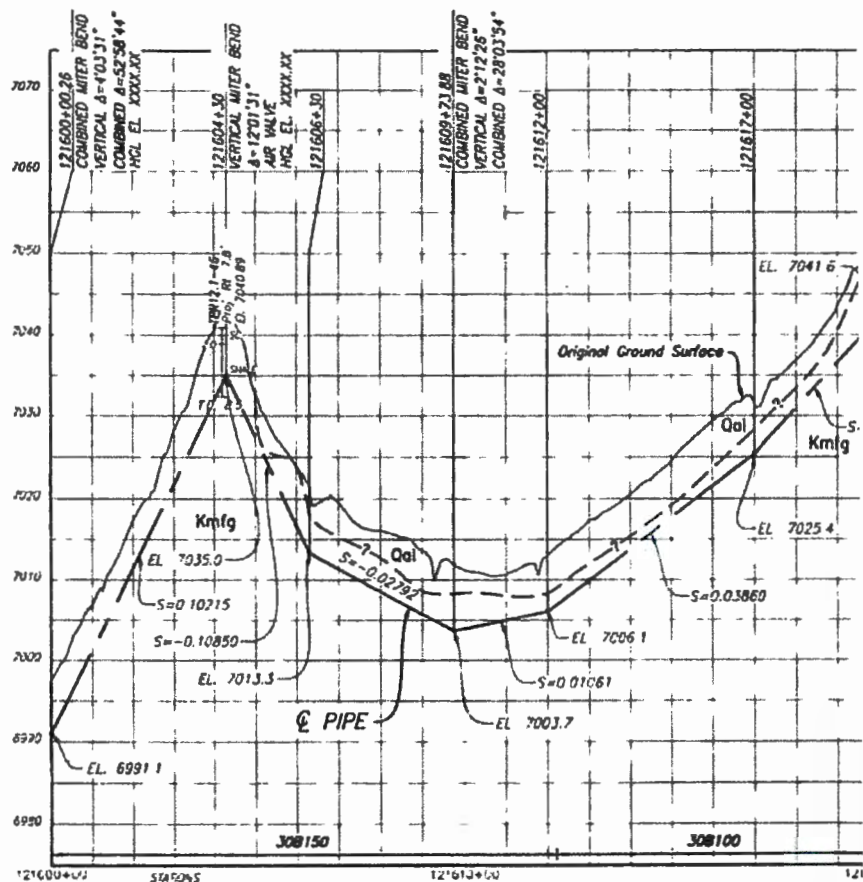


PROF



DATE: 10/14/14  
 DRAWN BY: J. L. LANE  
 PROJECT: RT  
 CLIENT: KMFQ

DATE: 10/14/14  
 DRAWN BY: J. L. LANE  
 PROJECT: RT  
 CLIENT: KMFQ



# RECLAMATION

*Managing Water in the West*

## **Record of Decision for the Navajo-Gallup Water Supply Project Planning Report and Final Environmental Impact Statement**



## SUMMARY OF ACTION

The U.S. Bureau of Reclamation, Upper Colorado Region (Reclamation) has published a planning report/final environmental impact statement (PR/FEIS) for the Navajo-Gallup Water Supply Project (Project). Reclamation is lead agency for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA), as amended for the development and implementation of the Project. Cooperating agencies for this EIS are the Navajo Nation, Jicarilla Apache Nation, Bureau of Indian Affairs, Indian Health Service, Navajo Tribal Utility Authority (NTUA), Northwest New Mexico Council of Governments, City of Gallup, and State of New Mexico.

Congress authorized Reclamation to complete feasibility studies for the Project to transport San Juan River water to the City of Gallup, New Mexico (P.L. 92-199, December 15, 1971). In 1975, NTUA requested that the investigations be expanded to include municipal/industrial (M&I) water supplies for various Navajo communities in the eastern part of the Navajo Reservation. A memorandum of understanding between Reclamation and NTUA to include Navajo Nation communities was executed on August 12, 1975.

The proposed action is to convey an M&I water supply to the eastern section of the Navajo Nation, the southwestern part of the Jicarilla Apache Nation, and the City of Gallup, New Mexico, via diversions from the San Juan River in northern New Mexico.

The PR/FEIS was prepared by Reclamation to address the need for a sustainable water supply to serve a future population of approximately 250,000 people by the year 2040. Existing groundwater supplies are dwindling, have limited capacity, and are of poor quality. More than 40 percent of Navajo households rely on water hauling to meet daily water needs. The City of Gallup's groundwater levels have dropped approximately 200 feet over the past 10 years, and the supply is not expected to meet current water demands within the decade. The Jicarilla Apache people are currently not able to live and work in areas of the Jicarilla Apache Reservation other than Dulce, New Mexico because of a lack of water supply. The final EIS was prepared by Reclamation to address these needs.

Before Reclamation finalized the PR/FEIS, Congress passed the Omnibus Public Land Management Act of 2009, Title X, Part III, (P.L. 111-11) which authorizes Reclamation, with delegated authority from the Secretary of the Interior, to: 1) construct, operate, and maintain the Project; 2) allocate the capacity of the Project among the Navajo Nation, Jicarilla Apache Nation, and the City of Gallup; and 3) enter into repayment contracts with the City of Gallup and the Jicarilla Apache Nation, subject to compliance with NEPA and other relevant laws.

The PR/FEIS and this record of decision (ROD) have been prepared in accordance with NEPA, the Council on Environmental Quality's NEPA regulations (40 CFR 1500-1508), and the Department of the Interior regulations for implementing NEPA (43 CFR 46). The decision made here is based on the PR/FEIS filed with the Environmental Protection



Agency (EPA) as FES 09-10 on July 6, 2009. A Notice of Availability was also published in the *Federal Register* on July 6, 2009 by Reclamation, and the EPA on July 17, 2009.

## ALTERNATIVES CONSIDERED

The PR/FEIS includes the planning process that led to the selection of three alternatives evaluated in detail: No Action, the San Juan River-Public Service Company of New Mexico (SJRPNM) Alternative, and the Navajo Indian Irrigation Project-Amarillo (NIIP-Amarillo) Alternative. The SJRPNM is the preferred alternative and the environmentally preferable alternative, for reasons discussed in this document.

### No Action Alternative

Under the No Action Alternative, M&I supplies and delivery systems would not be constructed on the eastern side of the Navajo Nation, for the City of Gallup, or for the southwestern area of the Jicarilla Apache Nation.

The No Action Alternative assumes that water development in the San Juan River Basin (Basin) will continue for projects with completed Endangered Species Act (ESA) Section 7 compliance. It also assumes that Reclamation will continue to operate Navajo Dam to attempt to meet ESA-related Flow Recommendations<sup>1</sup> to assist in conserving endangered fish in the San Juan River and to continue Basin water development. The No Action Alternative would not meet the conditions for settlement of the Navajo Nation water rights within the San Juan River Basin in New Mexico. Uncertainty regarding water rights and uses in the Basin would continue and potential adverse impacts to other water users could occur with litigation of the Navajo Nation's water rights.

### SJRPNM Alternative

The SJRPNM Alternative is the preferred alternative in the PR/FEIS and consists of two separate lateral systems—the San Juan and Cutter laterals. The San Juan Lateral will divert water from the San Juan River downstream of Fruitland, New Mexico, and treat and deliver the water west along Navajo Nation Highway N36 and south along US Highway 491 to communities in the western portion of the Navajo Nation in New Mexico and the City of Gallup. This lateral also uses sub-laterals to service Window Rock, Arizona and Crownpoint, New Mexico areas.

The Cutter Lateral will obtain water from the Navajo Indian Irrigation Project (NIIP) system at the existing Cutter Reservoir and treat and deliver water south to

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<sup>1</sup> *Flow Recommendations for the San Juan River, 1999*. The San Juan River Basin Recovery Implementation Program flow recommendations for the native fish community, including endangered Colorado pikeminnow and razorback sucker, in the San Juan River of New Mexico, Colorado and Utah.

communities in the eastern portion of the Navajo Nation in New Mexico and the Jicarilla Apache Nation.

This is the environmentally preferable alternative because it avoids significant adverse impacts except for cultural resources. The cultural resource impacts will be avoided where possible, and mitigated through archaeological data recovery under a Programmatic Agreement described in Appendix 3.

### **NIIP-Amarillo Alternative**

The NIIP Amarillo Alternative would use the Cutter Lateral to provide water as described in the SJRPNM Alternative, but would use the NIIP Amarillo Canal to convey treated Project water to western portion of the Navajo Nation in New Mexico, the City of Gallup, New Mexico and Window Rock, Arizona. The Amarillo Canal would be winterized for year-round use and a 4,500 acre-foot lined storage pond would be constructed near the canal. The Amarillo Lateral runs west to Highway 491 and then shares a common alignment with the SJRPNM Alternative.

## **RECLAMATION'S DECISION AND RATIONALE**

Reclamation's decision is to proceed with the SJRPNM Alternative, as identified in the PR/FEIS, subject to the Secretary of the Interior's execution of the Navajo Nation settlement agreement, repayment contracts, and the New Mexico cost-share agreement required by P.L. 111-11.

In selecting the SJRPNM and complying with P.L. 111-11, Reclamation will construct, operate, and maintain two lateral delivery systems. Project facilities include: 1 river intake and pumping plant, 2 water treatment plants, an estimated 19 forebay tanks, 24 pumping plants, 5 regulating tanks, 25 community storage tanks, and 266.4 miles of pipeline.

The San Juan Lateral will divert 33,118 acre-feet per year (afy) of water from the San Juan River above the existing Public Service Company of New Mexico (PNM) diversion dam and transport M&I water to the western New Mexico portion of the Navajo Nation, the City of Gallup, New Mexico, and the Window Rock community and surrounding Navajo chapters in Arizona.

The Cutter Lateral will be constructed below Cutter Reservoir and use existing NIIP facilities in Navajo Reservoir to deliver 4,645 afy of M&I water to the eastern Navajo Reservation, including 1,200 afy to the Jicarilla Apache Nation. Full development of the Project will result in a depletion of 35,893 afy from the San Juan River Basin, of which 5,271 afy is a new depletion. The Project incorporates a maximum Navajo Depletion Guarantee of 20,782 afy from reductions in use or changes in the operation of any of the Navajo Nation's existing projects that deplete water from the San Juan River.

## ALTERNATIVE EVALUATION PROCESS

The decision to select the SJRPNM Alternative was made after carefully weighing economic, social, and technical considerations, as well as the potentially significant environmental effects and after reviewing comments and concerns of agencies, tribes, states, public and private organizations, and individuals. Particular issues of concern were wetlands, endangered species, cultural resources, the Navajo Depletion Guarantee, the Department of the Interior's trust responsibility, and the Navajo Nation's water rights settlement as described in Public Law 111-11. The decision provides the best means to minimize or avoid environmental harm while meeting the Department of the Interior's trust responsibilities. Nonetheless, certain adverse environmental effects of the Project cannot be avoided. Areas of concern are discussed below.

### Clean Water Act Compliance

Implementation of the Project is estimated to result in the permanent loss of up to 1.1 acres and temporarily impacts up to 3.6 acres of jurisdictional wetlands. Final designs will attempt to minimize these impacts as practical. Construction will create temporary turbidity and other water quality concerns, and Reclamation will obtain required permits under Section 404 of the Clean Water Act (CWA) for impacts associated with jurisdictional waters of the United States. Nationwide permits authorization under Nationwide Permits No. 12 (Utility Line Activities), No. 33. (Temporary Construction, Access and Dewatering), and No. 39 (Commercial and Institutional Developments) will be requested for temporary construction disturbances to perennial and intermittent stream pipeline crossings including the San Juan River as appropriate.

Permit conditions, including compensatory wetland mitigation requirements will be incorporated as environmental commitments. Permit requirements would include Best Management Practices to minimize and avoid impacts to water quality, wetlands and special aquatic sites.

### Endangered Species

A primary goal of the San Juan River Basin Recovery Implementation Program (Recovery Program) is to protect and recover endangered fishes in the San Juan River basin, while water development proceeds in the Basin in compliance with Federal and State laws, interstate compacts, Supreme Court decrees, and Federal trust responsibilities to the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Jicarilla Apache Nation, and Navajo Nation. In 2001, the Recovery Program adopted principles for ESA section 7 consultations in the San Juan River Basin. These principles are used as a guide to define how the Recovery Program can be used to provide ESA compliance for impacts to listed fish species in the Basin from water development and water management activities.

Reclamation consulted with the Fish and Wildlife Service (Service) on the preferred alternative. In its Biological Opinion (BO), dated February 26, 2009 (Cons. # 2-22-01-F-532), the Service concurred with the findings contained in Reclamation's Biological Assessment and included conservation measures which Reclamation has adopted.

The BO concluded that the Project, as described in the Biological Assessment and in the PR/FEIS, is not likely to jeopardize the continued existence of the Colorado pikeminnow or razorback sucker and is not likely to adversely modify their designated critical habitat. The BO contains an incidental take statement for Colorado pikeminnow and razorback sucker that may become entrained as a result of diversions from the San Juan River. Reasonable and prudent measures and non-discretionary terms and conditions were included in the incidental take statement. Mesa Verde cactus also may be directly taken during the construction of Project features. The BO incorporates conservation measures to minimize impacts to the Colorado pikeminnow, razorback sucker, and Mesa Verde cactus. Conservation measures and reasonable and prudent measures are included as Appendix 1 to this ROD.

### **Navajo Depletion Guarantee**

The BO incorporates a Navajo Depletion Guarantee, which limits new depletions associated with the Project to 5,271 afy at full development. The Navajo Depletion Guarantee is a commitment by the Navajo Nation that depletions for Navajo Nation uses under the Project will be offset by unused Navajo Nation depletions that are included in the San Juan River Basin. This includes forbearance of Navajo Nation uses on NIIP and/or Hogback and Fruitland Irrigation projects as necessary, if and when there is a need to keep the total depletions in the Basin from exceeding the depletion threshold of 752,127 afy<sup>2</sup>.

The sum of the actual annual depletions of 35,893 afy will be made without requiring any forbearance of uses in excess of the 6,740 acre-feet in change of use baseline depletions shown in tables V-5 and VI-1 of the PR/FEIS (Appendix 2). The City of Gallup may subcontract with the Jicarilla Apache Nation, the Navajo Nation, or both in combination, for the diversion of up to 7,500 afy from the Navajo Reservoir supply for its Project uses.

When comparing actual depletions against the depletion threshold, depletions for San Juan-Chama Project and any other project added to the Basin's hydrologic baseline after February 26, 2009 (the date of the Project BO) are subtracted from the actual depletions at that point in time. Baseline depletions are shown in Table V-3 of the PR/FEIS (Appendix 2).

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<sup>2</sup> The total includes 854,370 for all depletions in the hydrologic baseline, less 107,514 AFY average depletion by the San Juan -Chama Project, plus 5,271 AFY of new depletions included in the proposed project.



If the depletion threshold is reached in the future, the Navajo Nation will reduce its total depletion in the Basin so that its consumptive uses under the Project do not cause the total actual depletions in the Basin to exceed the depletion threshold. The Navajo Nation could accomplish the required reductions in use by changes in the operation of any of the Navajo Nation's projects that deplete water from the San Juan River. The maximum Navajo Depletion Guarantee requirement in any year is a reduction in Navajo Nation depletions of 20,782 afy.

When the depletion threshold condition is reached and the Navajo Depletion Guarantee must be implemented, the quantification of the threshold depletion amount will be recalculated using the baseline uses identified in the most recent San Juan Hydrology Model. Changes in either the Flow Recommendation for the San Juan River or the status of listed species may result in reduction or removal of the Navajo Depletion Guarantee based upon reconsultation.

No specific, detailed accounting of depletions will be required unless the sum of NIIP and Animas-LaPlata Project (ALP) depletions reaches 290,000 afy. This is because it is easier to track the depletions from these two projects than those of the entire Basin. Doing so will also limit monitoring requests in the Basin. If depletions reach 290,000 afy, then all the depletions listed in the baseline for the Project will be monitored and reported on a 5-year cycle to coincide with Reclamation's Consumptive Use and Loss report.

The BO, including the description of water supply scenarios in the San Juan River Basin and the Navajo Nation's depletion guarantee commitment, is not binding on the use of water by any person or entity other than the Navajo Nation and shall not affect the ability of any person or entity to fully develop and utilize their water rights. The fact that the total amount of baseline depletions in the Basin may not be used for some period of time in the future shall not be construed to diminish in any way the rights of persons or entities other than the Navajo Nation to develop their water uses in accordance with interstate compact apportionments, Federal law and state water rights.

## **Cultural Resources**

The PR/FEIS identifies approximately 104 cultural resource sites within the area of potential effect of the Project and estimates that between 80 and 90 of these resources will require data recovery as a mitigating measure. Reclamation will implement a program to avoid or mitigate for losses of resources that are adversely affected by construction and operation, maintenance, and replacement of the Project.

It is likely that Native American human remains, funerary objects, or objects of cultural patrimony may be encountered during Project construction. Therefore, prior to issuing any approvals or permits for activities related to the Project, Reclamation will ensure full compliance with the relevant sections of NAGPRA and 43 CFR 10.3.

## Department Trust Responsibility

The Project is a component necessary to implement the Navajo Settlement Agreement authorized by Congress in P.L. 111-11. The Project will also assist the Jicarilla Apache Nation in implementation of the Jicarilla Settlement Act (P.L. 102-114, 106 Stat. 2237).

There is a potential negative effect on other Indian trust assets in the San Juan Basin. Due to endangered species concerns and other complexities associated with the "Law of the Colorado River," the Project may limit the amount of water available for use by other tribes.

Section 10602 of P.L. 111-11 states that the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall not apply to the design, construction, operation, maintenance, or replacement of the Project.

## Navajo Settlement

The Project will allow the United States to resolve the Navajo Nation's water rights claims within the San Juan River Basin in New Mexico consistent with P.L. 111-11. P.L. 111-11 authorizes the Secretary, acting through the Commissioner of Reclamation, to design, construct, operate, and maintain the Project in substantial accordance with the preferred alternative in the draft EIS.

Sec. 10602 (d) of P.L. 111-11 conditions Project construction and states that the Secretary shall not commence construction of the facilities authorized until such time as:

- a) the Secretary executes the Navajo Settlement Agreement and the Settlement Contract with the Navajo Nation (no later than December 31, 2010);
- b) repayment contracts are executed with the City of Gallup, and Jicarilla Apache Nation; and
- c) the Secretary has entered into an agreement with the State of New Mexico under which the State of New Mexico will provide a share of the construction costs of the Project of not less than \$50,000,000, except that the State of New Mexico shall receive credit for funds the State has contributed to construct water conveyance facilities to the Project Participants to the extent that the facilities reduce the cost of the Project as estimated in the "Draft Impact Statement".

P.L. 111-11 also provides an exception if the Jicarilla Apache Nation elects not to enter into a Project contract. The Secretary, after consulting with the Navajo Nation, the City of Gallup, and the State of New Mexico acting through the Interstate Stream Commission, may make appropriate modifications to the scope of the Project and

proceed with Project construction if all other conditions for construction have been satisfied.

Sec. 10701 (d) provides nullification of the Navajo Settlement Agreement if the construction of all Project features is completed after December 31, 2024. This section also provides for an extension if the Navajo Nation, the Secretary, and the New Mexico Interstate Stream Commission agree that an extension is reasonably necessary.

Sec. 10603 (c) requires that Project water shall not be delivered for use by any community of the Navajo Nation located in the State of Arizona until:

- a) The Nation and the State of Arizona have entered into a water rights settlement agreement approved by an Act of Congress that settles and waives the Nation's claims to water in the Lower Basin and the Little Colorado River Basin in the State of Arizona, including those of the United States on the Navajo Nation's behalf; and
- b) The Secretary and the Navajo Nation have entered into a Navajo Reservoir water supply delivery contract for the physical delivery and diversion of water via the Project from the San Juan River system to supply uses in the State of Arizona.

## **SUMMARY OF COMMENTS ON PR/DEIS**

Reclamation received 26 comment letters on the Planning Report/Draft Environmental Impact Statement (PR/DEIS) and held five public hearings during the public comment period. Reclamation identified 280 specific comments from the letters and public hearings, including 98 comments from tribes and tribal nations (73 of those were Navajo Nation), 90 comments from State and locals governments, 36 comments from power and water interests, 10 comments from other organizations, and 45 comments from individuals. Comments on the PR/DEIS and Reclamation's responses are included as Volume III of the PR/FEIS.

## **IMPLEMENTING THE DECISION AND ENVIRONMENTAL COMMITMENTS**

The decision shall be implemented no sooner than 30 days after publication of the notice of availability in the *Federal Register*. The following mitigation, monitoring, enforcement commitments, and legal requirements will be implemented as integral parts of the decision as a means of avoiding or minimizing adverse effects.



**Navajo Settlement Agreement (P.L. 111-11)**

Subject to Public Law 111-11 as previously described, Reclamation will not commence construction of Project facilities authorized until such time as:

- a) The Secretary executes the Navajo Settlement Agreement and the Settlement Contract with the Navajo Nation;
- b) Repayment contracts are executed with the City of Gallup and Jicarilla Apache Nation; and
- c) The Secretary has entered into an agreement with the State of New Mexico under which the State of New Mexico will provide a share of the construction costs of the Project of not less than \$50,000,000, except that the State of New Mexico shall receive credit for funds the State has contributed to construct water conveyance facilities to the Project participants to the extent that the facilities reduce the cost of the Project as estimated in the Draft Impact Statement.

**Project Construction Committee**


Sec. 10604 (g) of P.L. 111-11) requires the Secretary to facilitate the formation of a project construction committee with Project participants and the State of New Mexico to:

- a) Review cost factors and budgets for construction and operation and maintenance activities;
- b) Improve construction management through enhanced communication; and
- c) Seek additional ways to reduce overall Project costs.

**Environmental Commitments**

Reclamation has used all practical means to avoid impacts or minimize environmental harm that could occur due to implementation of the preferred alternative. The mitigation measures are discussed in Chapter V of the PR/FEIS. In addition to the conservation and reasonable and prudent measures in Appendix 1, environmental commitments are included as Appendix 3.

**APPROVED:**

  
Ken Salazar  
Secretary of the Interior

Oct. 1, 2009  
Date

**APPENDIX 1**  
**February 26, 2009 Final Biological Opinion**

**Conservation Measures**

Conservation measures are actions that Reclamation agrees to implement to further the recovery of the species under review. The beneficial effects of conservation measures were taken into consideration for determining both jeopardy and incidental take analyses and all hydrology analyses considered in the Biological Opinion assume implementation of these conservation measures, including the implementation of the San Juan River Basin Recovery Implementation Program. Reclamation agrees that failure to implement the conservation measures will be grounds for reinitiation of consultation.

The following are the conservation measures incorporated in the Biological Opinion. More expanded descriptions can be found in the Biological Opinion in Volume 2 of the PR/FEIS.

Mesa Verde Cactus

- 1) Prior to completion of final design, Reclamation will complete an inventory of known populations and suitable Mesa Verde cacti habitat within 500 feet of the proposed pipeline alignment, pumping plant, and construction footprint.
- 2) Based on the inventory, Reclamation will develop a Mesa Verde Cactus Construction Plan to avoid and minimize disturbance to cacti and suitable habitat. The Plan will be submitted to the Service and Navajo Nation for review. Specific locations of cacti will be kept confidential.
- 3) Construction areas will be located in coordination with Project engineers and Reclamation resource specialists to avoid individual cactus and habitat identified during inventories. To the extent practicable, impacts to Mesa Verde cacti and/or suitable habitat will be minimized. Existing roads and previously disturbed areas will be utilized where possible, to minimize impacts. If temporary construction roads are needed that are closer than 50 feet from known cacti, these plants will be monitored during road use and the edges of the access road flagged in the field.
- 4) Temporary access roads and staging areas within suitable Mesa Verde habitat will be closed and hand-raked to remove tire tracks. No post-construction reseeding will be implemented in these areas.
- 5) Pre-construction surveys for Mesa Verde cacti will be conducted in the spring of the year preceding the initiation of construction activities to identify new cacti. Locations of any additional cacti identified in the pre-construction surveys will be incorporated into the Construction Plan and appropriate mitigation measures developed in consultation with the Service and Navajo Nation.
- 6) Reclamation will develop an education program for Reclamation field staff and all appropriate contractor employees regarding identification and conservation of the Mesa Verde cactus.

- 7) All sites where Mesa Verde cacti are present will be fenced or flagged as detailed in the Construction Plan and monitored daily. Fencing will extend 200 feet in both directions along access roads where cacti are present. Where possible, fencing will include a 50-buffer around any known cacti during construction. Any disturbed cacti will be reported immediately to Reclamation. A written account, including a map, extent of disturbance, the number of cacti, and the circumstances surrounding the disturbance, will be submitted to the Service and Navajo Nation within 48 hours.
- 8) To reduce the likelihood of noxious plants, cleaning of construction equipment will be required before entry into occupied or suitable Mesa Verde cactus habitat.
- 9) Additional surveys for Mesa Verde cacti in suitable habitat will be required prior to any ground-disturbing activity for maintenance. Survey results will be valid for 3 years.
- 10) Where features cannot be re-routed or moved to avoid impacts to an individual Mesa Verde cactus, the cactus will be transplanted in suitable habitat in cooperation with the Service and the Navajo Nation as described in the Construction Plan. Transplanted cacti will be monitored for a minimum of five years. Applicable permits from the Service and Navajo Nation will be obtained prior to transplanting Mesa Verde cactus.
- 11) Noxious weeds will be continually controlled within disturbed areas.

#### San Juan River and Other Water Crossings

- 12) Silt curtains, cofferdams, dikes, straw bales, or other suitable erosion control measures will be used to prevent erosion from entering water bodies during construction.
- 13) Water quality parameters will be monitored before, during and after construction to ensure compliance with Navajo Nation Water Quality Standards. In-water work will stop if Navajo Nation Water Quality Standards are exceeded at or below the worksite due to construction activities.
- 14) Construction of the cofferdam will be scheduled during minimal flows to avoid and minimize direct and indirect effects to fish species. River flows upstream and downstream of construction areas will be maintained and fish passage around dewatered construction areas will be maintained at all times.
- 15) A fish net barrier will be installed upstream and downstream of the construction site during construction to exclude fish from the work area during periods of in-water work.
- 16) Reclamation will coordinate with the Service to have a biologist(s) onsite to rescue any fish species stranded as a result of construction activities.

#### **Reasonable and Prudent Measures**

The following Reasonable and Prudent Measures (RPMs) were included in the incidental take statement of the Biological Opinion for the Project dated February 26, 2009 (Cons. # 2-22-01-F-532).



- 1) Reclamation will continue to support and participate in the implementation of the San Juan River Basin Recovery Implementation Program (Recovery Program).
- 2) Through the Recovery Program, Reclamation shall implement measures to create and maintain habitat complexity and to minimize loss and long-term degradation of habitat for the endangered fishes within the San Juan River.
- 3) To protect future flow regimes in the San Juan River through the Recovery Program, Reclamation will be responsible for the maintenance and application of the San Juan Hydrology Model to evaluate proposed projects on the San Juan River.

Non-discretionary Terms and Conditions described in Biological Opinion are as follows:

- 1) Reclamation will continue to seek and provide funding, as authorized, for the implementation of the Recovery Program.
- 2) To create and maintain complex habitat, Reclamation, through the Recovery Program, will:
  - a) Investigate the use of habitat manipulation such as non-native vegetation removal, mechanically opening the mouths of secondary channels, or reconnecting the river within the floodplain in appropriate sites to augment the function of high flows. Any resulting appropriate options should be implemented and funded through the Recovery Program.
  - b) Continue to monitor habitat response to the San Juan River Flow Recommendations.
  - c) Monitor the response of actions taken to increase habitat complexity.
- 3) To track potential climate changes and how these changes may affect the Colorado pikeminnow and razorback sucker and their designated critical habitats, Reclamation, in cooperation with the Recovery Program, will begin monitoring to:
  - a) Determine changes in the timing of runoff.
  - b) Determine if average annual runoff is decreasing and a timeframe in which a change may affect the ability of the Flow Recommendations to be met.
  - c) If, from monitoring activities listed above, it is determined that climate change is affecting water availability in the San Juan River, this would be considered new information that may affect listed species or designated critical habitat. Reclamation would reinitiate consultation consistent with Section 7.0 D (2) of the "Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin". Reclamation, in consultation with the Service, would evaluate the changes in water availability and determine if the changes would have an adverse effect on listed species and if the Recovery Program is sufficient to serve as the Reasonable and Prudent Alternative or RPM.

4. To ensure the integrity, consistency, and scientific rigor in regards to water project depletions, Reclamation, working through the Recovery Program, will:
  - a) Continue maintenance and upgrades of the San Juan Hydrology Model using the best available science.
  - b) Conduct project analysis for water depletion projects on the San Juan River as needed.

**APPENDIX 2**  
**Selected Tables from the Navajo-Gallup Water Supply Project PR/FEIS**

Table V-3—Baseline and current depletion summary in the Basin<sup>1</sup>

Depletion category	RiverWare baseline (acre-feet)	Estimated current (acre-feet)	Presently <sup>2</sup> unused (acre-feet)
<b>New Mexico depletions</b>			
Navajo lands irrigation depletion			
NIIP	<sup>3</sup> 280,600	160,330	120,270
Hogback	12,100	9,535	2,565
Fruitland	7,898	6,147	1,751
Cudei <sup>4</sup>	900	715	185
<b>Subtotal</b>	<b>301,498</b>	<b>176,727</b>	<b>124,771</b>
<b>Non-Navajo lands irrigation depletion</b>			
Above Navajo Dam - private	738	575	163
Above Navajo Dam - Jicarilla	<sup>5</sup> 2,190	350	1,840
Animas River	36,711	24,878	11,833
La Plata River	9,808	8,470	1,338
Upper San Juan	9,137	6,680	2,457
Hammond Area	10,268	7,507	2,761
Farmers Mutual Ditch	9,532	7,457	2,075
Jewett Valley	3,088	2,379	709
Westwater	110	110	0
<b>Subtotal</b>	<b>81,582</b>	<b>58,406</b>	<b>23,176</b>
<b>Total New Mexico irrigation depletion</b>	<b>383,080</b>	<b>235,133</b>	<b>147,949</b>
<b>Non-irrigation depletions</b>			
Navajo Reservoir evaporation	27,350	29,235	-1,885
Utah International <sup>6</sup>	39,000	31,388	7,612
San Juan Powerplant	16,200	16,200	0
Industrial diversions near Bloomfield	2,500	2,500	0
Municipal and industrial uses	8,453	7,443	1,010
Scattered rural domestic uses	<sup>7</sup> 1,400	1,400	0
Scattered stock ponds and livestock uses	2,200	2,200	0
Fish and wildlife	1,400	1,400	0
<b>Total New Mexico non-irrigation depletion</b>	<b>98,503</b>	<b>91,766</b>	<b>6,735</b>
San Juan-Chama Project exportation	107,514	107,514	0
Unspecified minor depletions	<sup>8</sup> 4,500	2,500	2,000
Jicarilla Apache Nation Navajo River Water Supply Project	<sup>9</sup> 6,570	0	6,570
<b>Total New Mexico depletions (excluding ALP)</b>	<b>600,168</b>	<b>436,914</b>	<b>163,254</b>



Table V-3—Baseline and current depletion summary in the Basin<sup>1</sup> (continued)

Depletion category	RiverWare baseline (acre-feet)	Estimated current (acre-feet)	Presently <sup>2</sup> unused (acre-feet)
<b>Colorado depletions – upstream of Navajo</b>			
Upper San Juan	10,858	9,270	1,588
Navajo-Blanco	7,865	6,972	893
Piedra	8,098	6,892	1,206
Pine River	71,671	69,775	1,886
<b>Subtotal</b>	<b>98,492</b>	<b>92,909</b>	<b>5,583</b>
<b>Colorado depletions – downstream of Navajo</b>			
Florida	28,607	27,749	858
Animas	25,119	24,099	1,020
La Plata	13,245	13,049	196
Long Hollow	1,339	0	1,339
Mancos	19,532	15,516	4,016
<b>Subtotal</b>	<b>87,842</b>	<b>80,413</b>	<b>7,429</b>
<b>Total Colorado depletions (excluding ALP)</b>	<b>186,334</b>	<b>173,322</b>	<b>13,012</b>
<b>Total Colorado and New Mexico combined depletions</b>	<b>786,502</b>	<b>610,236</b>	<b>176,266</b>
ALP	<sup>10</sup> 57,133	1,620	55,513
<b>Subtotal</b>	<b>843,635</b>	<b>611,856</b>	<b>231,779</b>
McElmo Basin imports	-11,769	-11,769	0
Utah depletions	<sup>11</sup> 9,140	9,140	0
Arizona depletions	<sup>7</sup> 10,010	10,010	0
<b>Net New Mexico, Colorado, Utah, and Arizona depletions</b>	<b>851,016</b>	<b>619,237</b>	<b>231,779</b>
<b>New Mexico off-river depletions</b>			
Chaco River	<sup>7</sup> 2,832	2,832	0
Whiskey Creek	<sup>7</sup> 523	523	0
<b>GRAND TOTAL</b>	<b>854,371</b>	<b>622,592</b>	<b>231,779</b>

<sup>1</sup> Baseline depletion values are from the Generation 2 San Juan River Basin Hydrology Model operated by the SJRBRIP and may change with new versions of the model or new basin hydrology. They are provided here as a reference point and would naturally be adjusted to match changes approved by the SJRBRIP.

<sup>2</sup> "Presently Unused" is water allocated to a specific project that is not currently developed but that is included in the baseline. Transfers of water rights within New Mexico under water subcontracts or leases are subject to State Engineer approval.

<sup>3</sup> Includes 10,600 acre-feet of annual groundwater storage. At equilibrium this drops to 270,000 acre-feet, based on irrigation of the full 110,630 acres every year. The proposed schedule of anticipated depletions prepared by the NMISC to reflect the Navajo Settlement Agreement includes an equilibrium depletion for NIIP of 256,500 acre-feet based on an average fallow acreage of 5 percent. While including fallow land in the depletion calculation is reasonable, the larger number is used here to be consistent with the NIIP section 7 consultation and the full capacity of the project.

<sup>4</sup> The Cudei diversion from the San Juan River has been removed and the Cudei area now receives water from the Hogback Project diversion.

<sup>5</sup> The Jicarilla Apache Nation recognizes this historic depletion as 2,195 acre-feet, but it was modeled as 2,190 acre-feet on average.

<sup>6</sup> The Utah International diversion/depletion is currently owned by BPH-Navajo Coal Company

<sup>7</sup> Indicates offstream depletion accounted for in calculated natural gains.

<sup>8</sup> 1,500 acre-feet of depletion from minor depletions approved of SJRBRIP in 1992. 3,000 acre-feet from 1999 intra-service consultation, a portion of which may be in Colorado.

<sup>9</sup> Biological opinion lists this depletion as 6,654 acre-feet, but model configuration shows 6,570. Model configuration used.

<sup>10</sup> Actual approved depletion is 57,100 acre-feet. Small changes in reservoir evaporation between runs results in small variation from actual project depletion. Exact match would require multiple iterations because of model limitations. The breakdown of the total project depletions between the States of Colorado and New Mexico is preliminary and approximate pending a final allocation of Nighthorse Reservoir evaporation to the States.

<sup>11</sup> 1,705 San Juan River depletion; 7,435 off-stream depletion.

Table V-5.—Summary of major existing and future Tribal uses of Basin water

Description	Diversion (AFY)	Depletion (AFY)	Included in environmental baseline <sup>1</sup> for recent ESA consultations
<b>Existing uses – Navajo Nation<sup>2</sup></b>			
NIIP (Blocks 1–8) <sup>3</sup>		160,330	Yes
Hogback Project		12,100	Yes
Cudei Irrigation Project <sup>4</sup>		900	Yes
Fruitland		7,898	Yes
<b>Existing uses – Navajo Nation (New Mexico State water rights)</b>			
Shiprock Helium Plant (permit 2472) <sup>5</sup>		1,400	Yes
Kerr McGee (uranium processing) (permit 2875) <sup>5</sup>		700	Yes
Kerr McGee (permit 2807) <sup>5</sup>		500	Yes
Navajo Methodist School (Navajo Academy)		139.5	Yes
<b>Existing uses – Jicarilla Apache Nation</b>			
Decreed for historic and existing uses, 1880 priority date	5,683	2,195	Yes
Small third-party water service contracts	770	<sup>6</sup> 770	Yes
PNM third-party water service contract (pursuant to the 1992 Jicarilla Settlement Act)	16,200	16,200	Yes
Evaporation – stock ponds and reservoirs		2,187	Yes
<b>Existing uses – Ute Mountain Ute Tribe</b>			
Dolores Project	25,100		N/A <sup>7</sup>
<b>Existing uses – Southern Ute Indian Tribe</b>			
Water allocated to the Tribe from the Florida Project	2,000		Yes
Pine River 181.7 cfs and 1/6 interest in Vallecito Reservoir			Yes
San Juan River, 5.64 cfs direct diversion rights, 1868 priority date	1,014		Yes
Piedra River, 2.0 cfs direct diversion, 1868 priority date	600		Yes

Table V-5.—Summary of major existing and future Tribal uses of Basin water (continued)

Description	Diversion (AFY)	Depletion (AFY)	Included in environmental baseline <sup>1</sup> for recent ESA Consultations
<b>Future Uses – Navajo Nation<sup>1</sup></b>			
Navajo Nation Municipal Pipeline (ALP Project)	4,680	2,340	Yes
NIIP (Blocks 9–11)		120,270	Yes
Navajo-Gallup Water Supply Project (includes 7,500 AFY for the city of Gallup)	37,764	<sup>2</sup> 27,193	No
Hogback Project restoration		16,420	No
<b>Future Uses – Jicarilla Apache Nation</b>		1,875	No
Jicarilla Settlement Act of 1992 (from San Juan-Chama Project)	6,500	6,500	Yes
Jicarilla Apache Nation Navajo River Water Supply Project (Navajo Gallup)	<sup>8</sup> 12,000	6,654	Yes
Jicarilla Settlement Act of 1992 (Remaining from Navajo Reservoir or Navajo River) (Navajo Gallup)	<sup>8</sup> 4,530	1,876	No
<b>Future Uses – Ute Mountain Ute Tribe</b> (see table I-1, ALP FSEIS for details on Colorado Ute Settlement)			
ALP Project		16,525	Yes
San Juan River, 10 cfs direct diversion rights, 1868 priority date	1,600		No
Mancos River direct diversion rights for 7,200 acres, priority date subordinated to 1985	21,000		No
Navajo Wash, 15 cfs direct diversion rights, priority date subordinated to 1985	4,800		No
Tributary groundwater, domestic and livestock wells		1,850	No



Table V-5.—Summary of major existing and future Tribal uses of Basin water (continued)

Description	Diversion (AFY)	Depletion (AFY)	Included in environmental baseline <sup>1</sup> for recent ESA consultations
<b>Future uses – Southern Ute Indian Tribe</b> (see table I-1, ALP FSEIS, p. 1-6 for details on Colorado Ute Settlement)			
ALP Project		16,525	Yes
Florida River, direct diversion rights, priority date subordinated to 1976	1,090		No
Florida River, Project water	563		Yes
Stollsteimer Creek, 1,850 AFY Pargin Reservoir storage, 5.5 cfs with 1868 priority and refill right with 1986 priority date	1,850+		Yes <sup>9</sup>
Piedra River, 8.9 cfs direct diversion, 1868 priority date	1,595		No
Devil Creek, direct flow right, 1868 priority date subordinated to 1976	183		No
San Juan River, direct diversion rights, 1868 priority date	516		No
Round Meadow Creek, direct diversion rights, 1868 priority date	975		No
Cat Creek, direct diversion, 1868 priority date	1,372		No
Tributary groundwater, domestic and livestock wells	2,000		No

Note: Blank spaces indicate information not readily available.

<sup>1</sup> The Service's biological opinions contain a baseline of depletions that are considered in recent ESA consultations. This table is not the same as the depletion table derived for this planning report and final environmental impact statement (table V-3).

<sup>2</sup> The Navajo Nation has existing unquantified uses in the Basin that are not listed in the table, including municipal water uses, irrigation on San Juan River tributaries, livestock uses, evaporation from reservoirs, and stock ponds, etc. These uses are included in the baseline table (table V-3).

<sup>3</sup> Includes 16,420 AFY from Hogback and Hogback extension.

<sup>4</sup> The Cudei diversion from the San Juan River has been removed and the Cudei area now receives water from the Hogback Project diversion.

<sup>5</sup> Once the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement has been executed, and upon completion of the Joint Hydrographic Report and subsequent applicable paragraphs in the Supplemental Partial Final Judgment and Decree, the permits and licenses for the diversion and use of water pursuant to New Mexico State Engineer File Nos. 2472, 2807 and 2875 for uses of water at the Shiprock Helium Plant and Shiprock Mill shall be cancelled, and no water rights shall be adjudicated for said permits and licenses.

<sup>6</sup> This 770 acre-foot depletion is allowed under the 3,000 acre-foot minor depletion account allowed for through ESA (section 7) consultation under the SJRBRIP.

<sup>7</sup> This 25,100 acre-feet is imported from the Dolores River Basin and consumed in the Basin.

<sup>8</sup> The proposed diversion is a variable amount up to 12,000 AFY. The maximum new diversion will depend on the available water in that year. The Nation, as a member of the Hydrology Committee, will introduce for the Hydrology Committee's consideration, a method to calculate available water. The sum of this diversion and the remaining water Jicarilla Settlement Act water supply will not exceed 16,530 AFY.

<sup>9</sup> 530.6 acre-feet of the storage right and the 2 cfs and the 3.5 cfs are included in the environmental baseline for recent ESA consultations.

Table VI-1.—Summary depletions for full proposed project development

Water provider	Change in use of baseline depletion (changed used) (acre-feet)	New depletions (approved in excess of baseline) (acre-feet)	Met within total threshold depletion for Navajo Depletion Guarantee (acre-feet)	Total (acre-feet)
<b>Scenario 1 – City of Gallup subcontract with the Jicarilla Apache Nation</b>				
Jicarilla Apache Nation	<sup>1</sup> 6,740	<sup>2</sup> 1,960	0	8,700
Navajo Nation	0	6,411	20,782	27,193
Proposed Project total	6,740	8,371	20,782	35,893
Total reduced for 3,100 acre-feet NIIP returns		<sup>3</sup> 5,271		
<b>Scenario 2 – City of Gallup subcontract with the Navajo Nation</b>				
Jicarilla Apache Nation	<sup>4</sup> 1,200	0	0	1,200
Navajo Nation	<sup>5</sup> 5,540	8,371	20,782	34,693
Proposed Project total	6,740	8,371	20,782	35,893
Total reduced for 3,100 acre-feet NIIP returns		<sup>3</sup> 5,271		

<sup>1</sup> Includes forbearance by the Jicarilla Apache Nation of 6,750 AFY of consumptive use on the Jicarilla Apache Nation Navajo River Water Supply Project (JANNRWSP) and 170 acre-feet of consumptive use under Jicarilla water rights for historic uses.

<sup>2</sup> The Final Biological Opinion for the Navajo-Gallup Water Supply Project does not establish any right in the Jicarilla Apache Nation to retain approval for 1,960 AFY of new depletions in excess of the baseline depletions listed in table V-3 should this amount of Jicarilla water rights, over and above the change in use of 6,750 acre-feet of baseline depletion, not be required for the proposed Project due to the City of Gallup subcontracting with the Navajo Nation, as shown in scenario 2.

<sup>3</sup> By the time the Navajo Nation's water demands under the proposed Project reach the full 27,193 acre-feet of depletion, the return flows from the NIIP to the San Juan River are anticipated to have increased by approximately 3,100 AFY, on average, over and above the current rate of return flow from the NIIP. This increase in return flows from the NIIP offsets an equivalent amount of new depletion by the proposed Project and reduces the net new depletion from the river in the proposed Project's biological opinion from 8,371 AFY to 5,271 AFY.

<sup>4</sup> Includes a forbearance by the Jicarilla Apache Nation of 1,200 AFY of consumptive use on the JANNRWSP.

<sup>5</sup> Includes forbearance by the Navajo Nation of 5,540 AFY of consumptive use on the NIIP or other Navajo projects for which depletions are in the baseline.

## **APPENDIX 3 ENVIRONMENTAL COMMITMENTS**

### **Record of Decision Navajo-Gallup Water Supply Project**

This appendix summarizes the environmental commitments that have been made by Reclamation during the development of the Preferred (SJRPNM) Alternative. Reclamation will have responsibility for implementing measures that will avoid or reduce potential environmental impacts of the Navajo-Gallup Water Supply Project.

Commitments for pre-construction activities will generally be completed by Reclamation or by contractors during the final design process and prior to construction activities. Wildlife, wetland, cultural resources and other mitigation will be completed by Reclamation as described in the following paragraphs. Some commitments, such as monitoring or additional studies, would continue beyond completion of construction of Project facilities.

#### **General Commitments**

1. Reclamation will prepare and implement an Environmental Commitment Plan for the Project to document and track the completion of the environmental commitments.

#### **Water Uses and Resources Commitments**

1. Until depletions in the San Juan River Basin reach the baseline depletion (Table V-3 in Volume I of Navajo-Gallup Water Supply PR/FEIS, Appendix 2 of this ROD) plus 5,270 afy added to the baseline for this Project, no specific, detailed accounting of depletions will be required.
2. If the depletion threshold of 752,127 afy of depletions is reached in the future, the Navajo Nation will reduce its total depletions in the Basin so that its consumptive uses under the Project do not cause the total depletions in the Basin to exceed the threshold depletions. The Navajo Nation could accomplish the required reductions in use by changes in the operation of any of the Navajo Nation's projects that deplete water from the San Juan River. The maximum Navajo Depletion Guarantee requirement in any year is a reduction in Navajo Nation depletions of 20,782 acre-feet.
3. Reclamation will identify the point at which ALP and NIIP annual depletions reach 290,000 afy.
4. If that target depletion is reached, Reclamation will initiate reporting of depletions for the categories listed in the hydrologic baseline for the Project (Table V-5 in the PR/FEIS) on a five-year cycle as part of the consumptive use and loss reporting procedure.



5. As a result of monitoring, Reclamation will identify the point at which the sum of actual depletions reach the depletion threshold, Reclamation will limit deliveries to Navajo projects, as directed by the Navajo Nation, to levels required by implementation of the Navajo Depletion Guarantee.
6. The Navajo Nation will limit uses as specified in the Navajo Depletion Guarantee if the conditions stated above are reached and provide to the Recovery Program and Reclamation the projects it wishes limited to reduce depletions.

### **Indian Trust Assets Commitments**

1. There is no mitigation measure proposed for Indian Trust Assets. However, one of the goals of the Recovery Program is to "...proceed with water development in the Basin in compliance with federal and state water law, interstate compacts, Supreme Court decrees, and federal trust responsibilities to the Southern Utes, Ute Mountain Utes, Jicarillas, and the Navajos".

### **Water Quality Commitments**

1. Reclamation will develop and implement a program to reduce, minimize, or eliminate temporary, short-term increase in suspended sediment loading or other water quality constituents potentially caused by Project construction through the incorporation of permits, best management practices (BMPs), and sediment control structures.

### **Vegetation Commitments**

1. Reclamation will ensure that Project construction contractors limit ground disturbance to the smallest feasible areas and that they implement BMPs along with planting or reseeding of areas disturbed by the Project using native plants to assist in the re-establishment of native vegetation.
2. Reclamation will use accepted erosion control measures during Project construction, supplement grass seeding with native shrub seed in upland areas where shrub cover is diminished due to pipeline disturbance, monitor planting to ensure establishment, and control noxious weeds in areas disturbed by the Project.
3. Reclamation will comply with Section 404 of the Clean Water Act and request and obtain authorizations for discharge of dredge and fill for the Project prior to construction.
4. Reclamation will develop and implement a plan to replace riparian and wetland habitat. The plan will include acre-per-acre replacement or enhancement of 3 acres for each acre lost. It is anticipated that compensatory mitigation will require the revegetation of 17 acres of non-native riparian (Russian olive and tamarisk), and 3.6 acres of wetlands temporarily removed during pipeline construction. Approximately 0.9 acres of non-native riparian and 1.1 acres of wetlands will be permanently removed for Project features.

**Wildlife Commitments**

1. Reclamation will minimize disturbance to raptors by restricting major construction activities along the Nutria and Defiance Monoclines, Cutter Canyon, Blanco Canyon, and the corridor from Cutter to Largo Canyons during the nesting season (January 15 to August 15). If that is not possible, extensive nest searches will be made up to three-quarters of a mile from the proposed activities immediately prior to construction and active nests avoided.
2. Reclamation will conduct extensive nest searches within one-quarter mile of the proposed activities immediately prior to construction and avoid active nests if construction activities could not be scheduled outside the January 15 to July 15 timeframe.
3. Reclamation will incorporate raptor perch guards or raptor safe configurations on all new transmission structures.
4. Reclamation will avoid removal of riparian and wetland vegetation between March 15 and August 15 to avoid potential impacts to migratory bird nesting.
5. Reclamation will trench and bury pipeline concurrently to minimize trapping of small wildlife to the extent possible. Reclamation will construct escape ramps for trenches left open overnight.

**Aquatic Resources Commitments**

1. The Navajo Depletion Guarantee will be implemented as previously described under Water Uses and Resources Commitments.
2. Reclamation will incorporate BMPs in construction contracts as previously described in the Water Quality Commitments.

**Special Status Species Commitments**

1. Reclamation will conduct surveys for ferruginous hawk and bald eagle in Project construction areas one year in advance of construction for pipeline routes and construction sites not adjacent to highways, well-traveled roads, or areas of regular human activity.
2. Reclamation will implement appropriate protective measures to avoid or minimize nest disturbance if active nests are found.
3. Reclamation will conduct surveys for Southwestern willow flycatcher in riparian and wetland habitat prior to construction within one-quarter mile of disturbed areas and avoid construction activities during the nesting season (March 15 to August 15) if active nesting is found.
4. Reclamation will delineate and avoid beautiful gila plants where possible.
5. Reclamation will implement Conservation Measures and Reasonable and Prudent Measures (RPMs) as described in Appendix 1.

**Recreation Commitments**

There are no environmental commitments for recreation resources.

**Land Use Commitments**

1. Reclamation will ensure that revegetated areas are fenced to prevent grazing activities until disturbed areas become re-established.
2. Reclamation will work with the Navajo Nation to provide temporary relocation assistance to affected livestock owners along the pipeline corridor.
3. Reclamation will provide relocation assistance to affected residences displaced by construction of the San Juan water treatment facility.

**Hazardous Materials Commitments**

1. Reclamation will contact pipeline and gas well companies prior to construction activities to identify and avoid existing and new hazards. Pipeline alignments will be adjusted, as needed to avoid impacts to other pipelines and wells.

**Soil Commitments**

1. Reclamation will mandate that construction contractors use and implement measures contained in erosion control guidelines and BMPs to control soil erosion from Project construction areas.

**Geology Commitments**

There are no environmental commitments for geological resources.

**Paleontological Commitments**

1. During Project construction activities, Reclamation will monitor areas with exposed geological units or settings that indicate a high likelihood of yielding vertebrate fossils or noteworthy occurrences of invertebrate or plant fossils. In the event of discovery, Reclamation will evaluate the significance before construction activities in the affected area could continue.
2. Reclamation will manage, on a case-by-case basis, Project construction activities adjacent to the Lynbrook and Bentonnie Tsosie Fossil areas. Reclamation will conduct paleontological clearances prior to any surface-disturbing activities along the pipeline corridor in the Lynbrook and Betonnie Tsosie Fossil areas.

**Air Quality and Noise Commitments**

1. Reclamation will require Project construction contractors to implement measures to control fugitive dust during construction.
2. There are no environmental commitments for noise abatement.



**Socioeconomic Commitments**

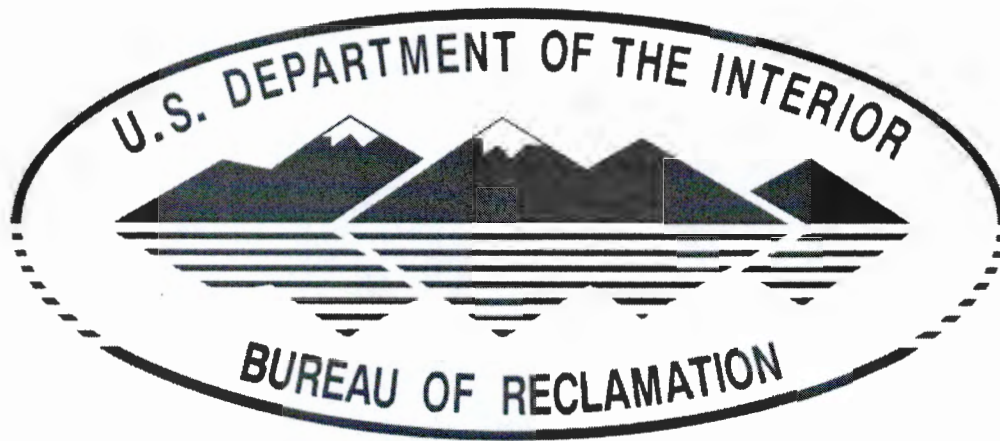
1. Reclamation will implement Land Use Commitments/ previously described to reduce socioeconomic impacts to displaced residence and livestock operators.

**Environmental Justice Commitments**

There are no environmental commitments for environmental justice.

**Cultural Resources Commitments**

1. Reclamation will implement a program to compensate for losses of archaeological sites that will occur as a result of construction, operation and maintenance of the Project.
2. Reclamation will coordinate the program with the New Mexico State Historic Preservation Officer, Navajo Nation Tribal Historic Preservation Officer, Jicarilla Apache Nation, Hopi Cultural Preservation Office, Bureau of Land Management, Bureau of Indian Affairs, City of Gallup, and the Advisory Council on Historic Preservation.
3. Reclamation will ensure compliance with mitigation measures developed in accordance with the Native American Graves Protection and Repatriation Act and Executive Order 13007.



## **PHASE I ENVIRONMENTAL SITE ASSESSMENT**

**For**

**Reach 12.1  
of the  
Navajo Gallup Water Supply Project**



**PREPARED**

**For**

**Ms. Hilda Castillo  
US Bureau of Reclamation  
220 Bloomfield Hwy.  
Farmington, New Mexico 87401**

**30 May 2014**

**PREPARED**

**By**

**HGS Engineering, Inc.  
1121 Noble Street  
Anniston, AL 36201**

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## **ACRONYMS AND ABBREVIATIONS**

ACBM	Asbestos Containing Building Materials
Assessment	Phase 1 Environmental Site Assessment
AST	Above-ground Storage Tank
BIA	Bureau of Indian Affairs
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
CRL	Confirmed Release List
DOI	Department of the Interior
ECSI	Environmental Cleanup Site Information
EDR	Environmental Data Resources, Inc.
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
LPB	Lead Based Paint
LQG	Large Quantity Generator
LUST	Leaking Underground Storage Tank
MW	Monitoring Well
NEPA	National Environmental Policy Act
NGWSP	Navajo Gallup Water Supply Project
NIIP	Navajo Indian Irrigation Project
NMENV	New Mexico Department of Environmental Quality
NPL	Superfund National Priority List
PCB	Polychlorinated Biphenals
PCE	Tetrachloroethene
PSTB	Petroleum Storage Tank Bureau
RCRA	Resources Conservation and Recovery Act
RCRIS	Resources Conservation and Recovery Information System
SHWS	State Hazardous Waste Site
SOW	Statement of Work
SQG	Small Quantity Generator
TCE	Trichloroethene
USBR	United States Bureau of Reclamation
USGS	United States Geological Survey
UST	Underground Storage Tank
VEC	Volatile Encroachment Condition
VOC	Volatile Organic Compound

## EXECUTIVE SUMMARY

HGS Engineering, Inc. was contracted by the United States Bureau of Reclamation (USBR) to conduct an environmental site assessment (Phase I) on a twelve (12) mile long stretch of proposed pipeline known as Reach 12.1 of the Navajo Gallup Water Supply Project near Yah Ta Hey, New Mexico. The property is referenced throughout this report as Reach 12.1 or the Alignment.

The purpose of this assessment is to allow the Bureau of Reclamation to identify potential environmental concerns related to present day or historical on-site chemical use, storage, handling, spillage, and/or on-site disposal, focusing on potential degradation of soil and/or ground water quality prior to the physical acquisition of the target property. This assessment will satisfy the compliance requirements of CERCLA 120(h).

This Assessment has been generated from the following sources:

- Records review – research of USBR provided documents, local, state, and federal records.
- Site reconnaissance –a visual survey conducted on 5-7 November 2013 of the impacted area supported by photographs and GPS coordinates of reference points and areas of interest.
- Interviews – as available, with current and former owners/operators, area residents, and local/state government officials to corroborate findings.

### General Observations:

1. The proposed pipe alignment is an approximately twelve (12) mile stretch from Yah Ta Hey, New Mexico and generally parallels Hwy 264 toward Window Rock, AZ. The easternmost point of the reach is located immediately north of Yah Ta Hey, New Mexico, on the east side of US 491. The westernmost terminus is located immediately north of Hwy 264, approximately five and one quarter (5.25) miles east of the Arizona/New Mexico Border.
2. During the Site Surveillance of 5-7 November, HGS created a series of Reference Points (RPs) along the proposed alignment. These Reference Points are sequential in number, starting at the Eastern Commencement with RP-1 and ending with RP-72 at its Terminus north of Hwy 264. At each reference point, the latitude and longitude was taken via hand-held GPS and the area was photo-documented for the Photo Log. These RPs are cited in this report for geographical reference. Maps of the Reference Points and the Photo log are maintained in Appendix 3.
3. Moving from East to West, alignment crosses US 491 and parallels the Tucson Electric Transmission Lines until their intersection with HWY 264. The alignment leaves the Tucson Electric parallel immediately north of Hwy 264. It follows to the north of Hwy 264 until its terminus approximately five and one quarter (5.25) miles east of the Arizona/New Mexico Border. The

land impacted includes privately owned lands used in residential and agricultural capacities, a privately owned liquor retail store, BIA administered lands, and land occupied by the Chevron/McKinley Mine, and land utilized as a Precept Job Training Center.

4. The alignment parallels and intersects numerous undeveloped roads. The named roads impacted include US 491, Hwy 264, Green Meadows Rd, Smooth Rock Rd, Spring Valley Rd, High Country Rd, Cove Rd. and Black Hat Rd. Also impacted are above ground underground utilities servicing the light residential/agricultural properties in the area.
5. The site impacts a designated 100 year floodplain as reported in the FEMA Flood Electronic Data. During its parallel of Hwy 264, the alignment impacts a flood plain in the vicinity of Banana Ridge Wash and Burned Death Wash for roughly one half mile between RP-20 and RP-23. The associated flood plain panel is 35031C1150E.
6. Present Use: Reach 12.1 impacts private property and land administered by the Bureau of Indian Affairs. Current uses include residential, agriculture and livestock grazing, and land maintained for mining operations, and light commercial. Most of the area can be described as undeveloped to underdeveloped.

#### Conclusion:

HGS Engineering, Inc. has performed a Phase I ESA in conformance with the scope and limitations of ASTM Practice E 1527-05, at the above referenced property near Yah Tah Hey, NM. Any exceptions to, or deletions from, this practice are described in this report.

This assessment has not identified any recognized environmental conditions on the property. This conclusion is based on the current site assessment, as well as a review of the Environmental Data Resources Reports, dated 30 September 2013 and 27 September 2013, HGS has identified possible environmental concerns at the site.

This Environmental Site Assessment is subject to the limitations described in Section 2.4. Investigative details are provided in the enclosed report.



## 1. INTRODUCTION

### 1.1. Purpose.

The Navajo Gallup Water Supply Project is a United States Bureau of Reclamation infrastructure initiative to provide access to a sustainable source of water for the population in Northwest New Mexico. The project as a whole consists of roughly 280 miles of pipeline as well as multiple water treatment plants and pump stations. Reach 12.1 is a twelve (12) mile stretch of proposed pipe alignment with its starting point immediately North of Yah Ta Hey, New Mexico. The alignment impacts public land administered by the Bureau of Indian Affairs, private land, and land owned by the McKinley Mine. Prior to physical acquisition of the alignment and commencement of work, the USBR has commissioned a Phase 1 Environmental Site Assessment (ESA) on the 12.1 alignment in order to identify any potential environmental hazards or liabilities.

### 1.2. Scope.

The assessment was performed in accordance with recognized and accepted environmental engineering practices (**ASTM Standard E1527-05, Standard Practices for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process**). The scope of services was limited to a routinely performed non-invasive Phase I Environmental Site Assessment (ESA). This practice is used as an 'All Appropriate Inquiry' tool for assessing possible past or present environmental impacts on a selected site prior to property transfer.

This Phase I ESA is intended to identify environmental hazards that may be present from past or current activities at the site and to determine any potential environmental liabilities. While varying techniques and levels of investigation are employed in the conduct of site assessments, a preliminary site assessment routinely involves a site visit, records review, and personal interviews. The objective is to determine if further, more extensive, investigation and/or testing is warranted. The physical survey covered all land and structures within one hundred and fifty (~150) feet of the center-line of the proposed alignment.

Distinct categories of work were performed in the execution of this assessment. The visual site-survey was conducted on 5-7 November 2013 by Messrs. Michael Summers and Shafaraz Khan of HGS Engineering, Inc. under the guidance of the certifying Environmental Professional for this Phase 1, Mr. Harry Summers, PE. The site survey was conducted in accordance with the guidelines set forth in the ASTM 1527-05. Local, state, and federal records were also reviewed. Records reviewed included historical maps, current and historic aerial photographs, regulatory databases, directories, and internal documentation regarding materials and waste storage. Both of these phases were supplemented by interviews with current owners, occupants, local officials, and state regulatory officers. Site findings, interview data, and record

investigations are provided in the following sections.

### **1.3. Significant Assumptions.**

The Certifying Environmental Professional has made the following significant assumptions regarding this assessment:

- A. This assessment will be used in determining the liability of utilizing the targeted property for the purposes conveyed by the user- the USBR.
- B. The purposes conveyed by the user entails the placement of a water-line as part of the Navajo Gallup Water Supply Project.
- C. The area impacted and investigated in support of the purposes conveyed by the user is 150 feet to the left and 150 feet to the right of the center line for the proposed pipe.
- D. The information provided for the document review and during the interview process is accurate and correct.

### **1.4. Limitations and Exceptions.**

The observations described in this report were made under the conditions stated. The conclusions presented in the report were based solely upon the services requested, and not on scientific tasks or procedures beyond the scope of the requested services.

In preparing this report, HGS Engineering, Inc. has relied on certain information provided by the state and local officials and other parties referenced in the report. Additionally, HGS Engineering, Inc. has relied on information contained in the files of state and/or local agencies available at the time of the environmental site assessment. No attempt was made to independently verify the accuracy or completeness of the information provided.

Observations were made of the site as described in the report. HGS Engineering, Inc. did not perform limited subsurface exploration and quantitative laboratory analysis to evaluate the need for more extensive sampling and testing. If discrete sampling and analysis had been necessary, the information provided would be merely representative of the site and does not definitively identify any or all potential contaminants at the site or in the environment at the site.

The conditions described in this report are valid only at the time that the observations were made. Some conditions may change with time. The findings and conclusions contained in this report are based in part on the information available at the time of the study. If additional or corrected

information becomes available, HGS Engineering, Inc. requests the opportunity to review/modify conclusions as warranted.

This Phase I Environmental Site Assessment performed by HGS Engineering, Inc. was conducted in accordance with the ASTM 1527-05 prescribed scope of work and generally accepted practices in the consulting industry. That degree of care and skill generally exercised in the industry under similar circumstances and conditions was observed. The findings and conclusions must be considered not as scientific certainties, but as probabilities based on professional judgment of the significance of the limited data gathered in the course of the site evaluation.

This report is for the exclusive use of United States Bureau of Reclamation and/or their designated agents. The inspector and HGS Engineering, Inc. undertake no responsibility for harm or damages to any party other than the principal parties. Such damages will be limited to the cost of the investigation.

#### **1.5. Special Terms and Conditions.**

No special terms or conditions were applied to the execution of this report.

#### **1.6. User Reliance.**

Information was gathered from the US Bureau of Reclamation, current site operators, occupants, neighbors, the Bureau of Indian Affairs, the New Mexico Department of Environmental Quality, and the McKinley County Fire Marshall's Office.

## **2. SITE DESCRIPTION**

### **2.1. Location and Legal Description.**

Reach 12.1 of the Navajo Gallup Water Supply Project is located on privately owned, unincorporated county land, and BIA administered land in McKinley County, New Mexico. It commences at the immediately East of US 491 to the North of Yah Tah Hey, New Mexico and proceeds in a generally westerly direction for approximately twelve (12) miles. Maps of the alignment's exact path are maintained in Appendices 1 and 2. The following are legal descriptions of parcels impacted by the alignment:

- Tracts of Land located in Sections 7 and 9, township 16 North, Range 19 West
- A Tract of land located in the E 1/2 of Section 9, township 16 North, Range 20 West, New Mexico Principal Meridian
- A Tract of Land located in the N ½ N ½ of Section 9, Township 16 North, Range 19 West, New Mexico Principal Meridian
- A Tract of Land 35.64 Acres, More or Less, AKA Parcel 1B, North of Highway 264, Located in Section 7, Township 16 North, Range 18 West, New Mexico Principal Meridian
- A Tract of Land located in the SE ¼ of Section 9, Township 16 North, Range 20 West, New Mexico Principal Meridian
- A tract of land located in the NE ½ of Section 9, Township 16 North, Range 20 West, New Mexico Principal Meridian
- A Tract of land located in the N1/2 of Section 9, Township 16 North, Range 20 West, New Mexico Principal Meridian
- Tracts of Land located in Sections 7, 9, and 11, Township 16 North, Range 20 West, and Section 7, Township 16 North, Range 21 West, New Mexico Principal Meridian
- Tracts of Land located in the W ½ of Section 9, Township 16 North, Range 20 West, New Mexico Principal Meridian
- A Tract of Land located in the SW ¼ of Section 1, Township 16 North, Range 21 West, New Mexico Principal Meridian

### **2.2. Site and Vicinity General Characteristics.**

The proposed alignment and the areas in its immediate vicinity can best be described as undeveloped to underdeveloped with vegetation consistent with desert scrubland. Major improvements in the area include the town of Yah Tah Hey, Highways 491 and 264, and the Tucson Electric Power Lines. Named topographical features impacted include Burned Death Wash and Banana Ridge Wash. The alignment also impacts unnamed washes and numerous small hills.



### **2.3. Current Use of the Property.**

The alignment will impact BIA administered and privately held land in McKinley County, New Mexico. The vast majority of the alignment will pass through undeveloped land. Current uses of the land include Livestock Grazing, commercial sales, agriculture, and residential occupation.. The Alignment intersects several unnamed roads/drives as well as several named County Roads. The alignment also impacts aboveground and underground utilities servicing the entities in the immediate area.

### **2.4. Descriptions of Structures, Roads, Other Site Improvements.**

From East to West, the Alignment's footprint commences to the North of Yah Tah Hey, New Mexico, on the Eastern side of US 491 at RP-1. The alignment parallels to the north of the Tucson Electric Power Lines and assumes a south-westerly direction. It crosses US 491 at RP-2 and for one and three quarters (1.75) miles continues its parallel of the power lines, impacting numerous paved and unpaved drives/roads. At RP-7, it impacts a plot of land that appears to have been a historic homestead. The plot in question is graded and a small amount of roofing material was still present during the site-walk. As the alignment approaches Hwy 264, it diverts from its parallel of the Tucson Electric Power Lines and assumes path which parallels to the north of Hwy 264 (starting at RP-12). After roughly one and a half (1.5) miles, the alignment impacts Green Meadows Road (RP 18). It leaves its direct parallel of Hwy 264 and follows Green Meadows Road in a north westerly for roughly one tenth (0.10) of a mile. At RP 20, the alignment again changes directions to the south west and traverses Banana Ridge Wash and Burned Death Wash. After crossing these topographical features, the alignment resumes its parallel of Hwy 264 at RP 23.

At RP-26, the Alignment impacts Smooth Rock Road. At RP-27 through RP-28, the alignment impacts a tract of unoccupied land that appears to have been graded. Continuing its parallel of Hwy 264, the alignment impacts the Sagebrush Liquor Store's paved drive at RP 29. The alignment moves up hill and High Country Road is impacted at RP-30. After cresting the hill, the alignment descends into several miles of livestock grazing land. Underground utility lines are impacted at RP-34 and the alignment comes in proximity to several apparently abandoned buildings at RP-38. Subsequent interviews revealed that one of these buildings served as a gasoline service station until 1981 and the other was a video rental store through the mid 1990s. No evidence of any underground storage tanks was observed during the site visit.

Cove Road is crossed between RP-45 and RP-46. The alignment impacts roughly two (2) miles of land owned by the Chevron McKinley Mine (RP-46 through RP-55). The lands owned by the mine, save for light overhead utilities and fencing, is largely unoccupied/undeveloped. After leaving the mine-owned land, the alignment crosses an unnamed and unpaved road and slightly diverges from its parallel of Hwy 264. It crosses Black Hat Road at RP 61 and

impacts a large concrete slab (Former Tse Bonita Elementary School) at RP-62. A former LUST site is located directly south of this RP (Wildcat Springs Trading Post). The driveway to a Precept Training Center is crossed at RP-65 and another unnamed drive is impacted at RP-66. The alignment leaves its parallel of Hwy 264 and follows this unnamed drive for roughly 500 feet, after which it resumes a westerly direction at RP-67 and impacts a former homestead at RP 70. Fencing, evidence of underground utilities, and waste building material are present at RP-70. At RP-71, the alignment passes within 200 feet to the North East of a Speedy's Gas Station (NM FID 30722). Alignment 12.1 terminates at RP-72.

## **2.5. Current Uses of the Adjoining Properties.**

Highway 264 is located immediately south of the much of the Alignment. Most of the remaining area immediately adjoining the alignment is maintained in a manner consistent with the alignment itself, i.e. BIA administered land with agricultural or residential use properties in the vicinity. Near the western terminus, a gas station is located between the alignment and Hwy 264. This gas station contains a leaking UST and is undergoing active remediation through the state of New Mexico's Environmental Department.

### **3. USER PROVIDED INFORMATION**

#### **3.1. Title Records.**

Records indicating ownership are included in Appendix 4.

#### **3.2. Environmental Liens or Activity and Use Limitations.**

There are no indications that such liens or limitations exist.

#### **3.3. Specialized Knowledge.**

The history of the investigated property was gathered through records checks provided by EDR and the Bureau of Reclamation and interviews with various private individuals and government employees.

#### **3.4. Commonly Known or Reasonably Ascertainable Information**

Prior to the physical execution of the site survey, the USBR provided the Environmental Professional and his agents with a background of the site and overall project. No mentionable commonly known or reasonably ascertainable information was relayed that could have impacted any significant aspect of this assessment.

#### **3.5. Valuation Reduction and Environmental Issues.**

Based on the current assessment, current and past on-site activities were identified which could have caused environmental impacts affecting the value of the property.

#### **3.6. Owner, Property Manager, and Occupant Information.**

The land impacted is owned/administered by a variety of entities. These include Sacred Wind Enterprises, Inc.; Sagebrush Partnership, Mrs. Shirley Sue Wilson; Lord Jesus Christ Precept Training Center; the Chevron Mining, Inc; Ms. Venus Masci, Messrs. Rick Crain and James Davis; as well as land administered by the Bureau of Indian Affairs on behalf of the Navajo Nation. Right of Way Entry Permits as well as BIA Chapter Resolutions are maintained in Appendix 4.

#### **3.7. Reason for Performing Phase I.**

Reach 12.1 is part of the larger Navajo Gallup Water Supply Project. This project is an on-going effort to proliferate a more efficient network of water resources to the Navajo Nation of Northern New Mexico. The purpose of this assessment is to allow the USBR to identify potential environmental concerns related to present day or historical on-site chemical use, storage, handling, spillage, and/or on-site disposal, focusing on potential degradation of soil and/or ground water quality prior to the physical acquisition of the target property.

## 4. RECORDS REVIEW

### 4.1. Standard Environmental Record Sources.

The Historical Research Documentation and Regulatory Records Documentation Reports (Appendices 4 and 5) were prepared by Environmental Data Resources, Inc. This data was generated in response to a request by HGS Engineering, Inc. to be included in this report. The data within the report encompasses much of the technical protocol involved in a Phase I ESA and supports observations and local data resources. The EDR map findings summary revealed three areas of concern impacted by or immediately adjacent to the Reach 12.1 alignment.

### 4.2. Additional Environmental Record Sources

**FEDERAL:** The EPA's NPL (National Priorities List) was reviewed. Of the 1,200 + sites listed and proposed as of February 2012, no NPL sites were reported within approximately 1 mile of the investigated site.

**CERCLIS:** Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) contains data on potentially hazardous waste sites that have been reported to the US EPA by states, municipalities, private companies and private persons, pursuant to Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). None are reported within ½ mile of the target property.

**RCRA:** Resource Conservation and Recovery Act (RCRA) information is the EPA's comprehensive information system. Large quantity generators (LQGs) generate over 1000 kg of hazardous waste per month. There is one RCRA-LQG directly impacted by the alignment. It's description is as follows:

Chevron's **Pittsburgh and Midway McKinley Mine** (EPA ID NN0980508022) is a Large Quantity Generator of Hazardous Waste. It is impacted by the alignment between Reference Points 46 and 55. The EDR prepared report lists four regulatory violations between 1993 and 2007. The reports states that compliance was achieved with all listed violations. EPA's ECHO (Enforcement and Compliance History Online) states that the last regulatory inspection for the site occurred in 2010 and revealed no violations. Both the EDR Report and ECHO report are contained in Appendix 5.

**DOD:** Department of Defense (DOD) sites were reviewed. There are no DOD sites reported within 1 mile of the investigated site.

**FUDS:** Formerly Used Defense Sites (FUDS) The Listing includes locations of Formerly Used Defense Sites Properties where the US Army Corps Of Engineers is actively working or will take necessary cleanup actions. A review



of the FUDS list, as provided by EDR, and dated 12/31/2009 has revealed that there are no FUDS sites within approximately 1 mile of the target property.

**FINDS:** FINDS: The Facility Index System contains both facility information and "pointers" to other sources of information that contain more detail. These include: RCRIS; Permit Compliance System (PCS); Aerometric Information Retrieval System (AIRS); FATES (FIFRA [Federal Insecticide Fungicide Rodenticide Act] and TSCA Enforcement System, FTTS [FIFRA/TSCA Tracking System]; CERCLIS; DOCKET (Enforcement Docket used to manage and track information on civil judicial enforcement cases for all environmental statutes); Federal Underground Injection Control (FURS); Federal Reporting Data System (FRDS); Surface Impoundments (SIA); TSCA Chemicals in Commerce Information System (CICS); PADS; RCRA-J (medical waste transporters/disposers); TRIS; and TSCA. The source of this database is the U.S. EPA/NTIS. There are no FINDS sites directly on or immediately adjacent to the Reach 12.1 Alignment.

**NM PSTB Active Leaking Petroleum Site:** New Mexico's Petroleum Storage Tank Bureau, a branch of the New Mexico Environmental Department, maintains a list of all active leaking petroleum sites. There is one Active Leaking Petroleum Sites in the immediate vicinity of the Reach 12.1 Alignment. It is as follows:

**Speedy's Gas Station** operated by Spartin Investments LLC is located approximately 200 feet to the southwest of the alignment near RP-71. There are three listed Underground Storage Tanks on site. The site has been listed as a Leaking UST (LUST) site since 2005 and the New Mexico Petroleum Storage Tank Board is currently conducting a Pilot Study to install an engineered system for Soil Vapor Extraction. A plume of dissolved benzene and MtBE is present above local water quality standards. The plume, however is stable and is still on site. The groundwater gradient is to the South East, generally away from the alignment.

**SHWS:** State Hazardous Waste Sites (SHWS) are hazardous substance sites which pose a threat to public health and the environment and which will be cleaned up utilizing the Hazardous Substance Cleanup Fund. There are no SHWS sites reported within 1 mile SSW of the Reach 12.1 property.

**UST:** The Underground Storage Tank (UST) list was reviewed. In addition to the Speedy's Gas Station, the EDR Reports identify is two UST Sites within one half (0.5) mile of the Reach 12.1 property. The first UST site is the Speedy's Gas Station.

The **Wildcat Springs Trading Post** is immediately south of RP-62 and RP-63. An EDR prepared report lists a Permanently Out of Use Tank and former Leaking UST on site. The tank and incident were regulated through the Navajo Nation EPA. Attempts to reach the Navajo Nation EPA to obtain clearer information on the nature of the release and the remedial activities have been

unsuccessful. EPA Region 9's Tribal Assistance Program was able to provide information on this site, including a No-Further Action (NFA) Document dated 29 February 2012. The EPA provided NFA and the EDR Report for the Wildcat Springs Trading Post are contained in Appendix 5.

A false positive for a UST was identified in the EDR Corridor Report. The report had placed the Tse Bonito Elementary School at its former location near RP 62. The Tse Bonito Elementary School is currently located several miles to the west of the 12.1 Terminus. The mapped location on the corridor report closely corresponds to the Wildcat Springs Trading Center.

#### **4.3. Physical Setting Sources.**

Site maps and site plans are maintained in Appendices 1 and 2. Detailed information regarding the geology, soil maps, and hydrogeological data is maintained in the EDR Corridor Report maintained in Appendix 4.

The United States Environmental Protection Agency (EPA) Office of Radiation and Indoor Air, in conjunction with the USGS, has prepared comprehensive studies on radon found in indoor air of homes. The study determined that McKinley County is located in Radon Zone 2. Zone 2 areas are predicted to have an average of 2 to 4 pCi/L, which is below the EPA action level of 4 pCi/L.

#### **4.4. Historical Use Information on the Property.**

The land to be impacted by Reach 12.1 appears to have been undeveloped or historically maintained in a manner consistent with its current condition. No record or evidence of habitation or industrial/commercial usage in the area impacted by or immediately surrounding the alignment was found.

***Historical Aerial Photographs*** were provided through EDR and are maintained in Appendix 4. They are summarized below:

1953: The subject site is virtually undeveloped. Hwy 264 is visible as is the old US 666. No Structures are visible in Yah Tah Hey or along the area impacted by the alignment.

1975: The roads are more clearly delineated. The O&M Road associated with the Tucson Electric Power Lines is visible as are multiple structures in the town of Yah Tah Hey. The old Tse Bonito Elementary School as well as the Wild Cat Springs Trading post are visible. A structure appears to be visible in the locations of the Speedy's Gas Station.

1991: All improvements noted during site walk appear to be present in the 1991 aerial photograph. The roads and drives and structures are consistent with current conditions.

***Historic Topographical Maps*** include symbols that represent features such as streets, buildings, streams, wells, infrastructure, and boundaries. The maps are regularly refined to better relate area conditions and changes. Therefore, historical maps may be of use in understanding a site's history. Historical Topographical Maps were ordered through EDR and are maintained in Appendix 4. They are summarized below:

1892: Area is undeveloped. No improvements or communities reflected on map.

1963: Unpaved County Roads/Service Roads are reflected. A pipeline is present. Topographical features such as Burned Death Wash and Banana Ridge Wash are identified.

1979: No noticeable differences from the 1963 and 1979 maps were observed.

#### **4.5. Historical Use Information on Adjoining Properties.**

The adjoining land appears to have remained undeveloped or maintained in a manner consistent with its current condition as long as available record and documentation show.

## **5. SITE RECONNAISSANCE**

### **5.1. Methodology and Limiting Conditions.**

This environmental site assessment is intended to identify environmental hazards that may be present from past or current activities at the property. The intent is to determine any potential environmental liabilities associated with this property. While varying techniques and levels of investigation are employed in the conduct of site assessments, a preliminary site assessment routinely involves conducting a site visit, records review, and personal interviews. The objective is to determine if further, more extensive, testing is warranted. This Phase I ESA is subject to the limitations described in Section 1.4.

The creation of the photographic log entailed the following methodology: The site survey was commenced on the easternmost point of reach. At periodic intervals and at the alignment's impact of major obstacles, Reference Points were created. Photographs to the North, South, East, and West were taken from each reference point. Latitude and Longitude were taken from each reference point via hand-held GPS. The Easternmost Point is designated as RP-1 and the Westernmost terminus is designated as RP-72

### **5.2. General Site Setting.**

Reach 12.1 is a twelve (12) mile stretch of proposed East-West running pipeline located north of Yah Tah Hey, NM and generally paralleling Hwy 264 toward the New Mexico/Arizona Border. The latitude/longitude of the easternmost and westernmost terminuses are as follows: North 35.64494, West 108.77119; North: 35.63578, West 108.96629. Photographs of the site can be found in Appendix 3.

### **5.3. Exterior Observations.**

The vast majority of the site can be classified as undeveloped to underdeveloped. The most significant activities in the general area is associated with livestock grazing, light agricultural, light commercial and residential occupancy. The major roads in the vicinity are highly trafficked with vehicles. In general, a moderate amount of refuse (mostly in the form of glass and plastic bottles) was observed throughout the the alignment.

No inhabited or occupied structures were impacted. The alignment commences North of Yah Tah Hey and East of US 491. Heading west, it crosses 491 and parallels the Tucson Electric Power Lines until it approaches Hwy 264. This segment of the alignment, despite being interspersed unpaved service roads and drives, is heavily vegetated. No overt evidence of illegal dumping was observed, although an abandoned homestead site did have some roofing material in the vicinity.



Once the alignment began its parallel of Hwy 264, very few observations were noted. From the beginning of its parallel of 264 to its terminus, the alignment impacted multiple fence lines and drives. Several miles of the alignment impact land which is actively used for livestock grazing. The land owned by the Chevron Mining Company is largely undeveloped. The driveway of one commercial entity (Sagebrush Liquors) and one religious based training center (Precept Training Center) are impacted. No evidence of a negative environmental impact was observed in the vicinity of either entity.

At RP-62, the alignment impacts the former Tse Bonito Elementary School. Although the school has been leveled, a concrete pad remains as does a service shed to the north of the alignment. No evidence of a negative environmental impact was observed in the vicinity of the former school.

One major dump site was observed at RP-56. The contents of this dump site were aged and representatives from the USBR indicated that the artifacts were of cultural significance. At RP-61, the alignment crosses Black Hat Road. Immediately to the west of Black Hat Road an old baseball field is present. A 55 gallon drum was observed next to the backstop and is used as a trash receptacle. It was unclear how long the drum has remained on site and the age of the trash within. A minor dump site was observed at RP-70. This site appeared to be a former homestead and a small amount of household refuse and building materials was observed in the area.

No other areas of note were impacted by the alignment.

#### **5.4. Interior Observations.**

No structures will be directly impacted by the alignment

## 6. INTERVIEWS

Interviews were performed in person, when possible, and telephonically. The interviewees are asked to answer to the best of their knowledge. The interviewer does not expect deceit and does not recognize liability for information supplied by interviewees. Occupants and Owners were questioned per the ASTM guidelines.

### 6.1. Interview with Owners/Occupants.

Ms. Shirley Sue Wilson- owner of several parcels of land between RP 36 and RP 40. Ms. Wilson directed her grandson, Mr. Heath Wilhelm, to answer questions on her behalf. Mr. Wilhelm has been associated with the property for thirty-five (35) years. He knows of no releases or environmental issues which could affect the alignment. When asked about the two apparently abandoned buildings on the property at or around RP-38, Mr. Wilhelm stated that one of the buildings contained an independently run gas station until 1981. To the best of Mr. Wilhelm's recollection, all the tanks were aboveground tanks. No evidence of underground storage tanks was observed. A video rental store was located in the other building through the mid 1990s.

Mr. James Maiorano-Precept Training Center. Mr. Maiorano has occupied the site for fifteen years. To the best of his knowledge, the site has been maintained in a manner consistent with this current condition for fifty years. He knows of no environmental spills or releases in the vicinity around his property or on the footprint of the alignment.

### 6.2. Interviews with Local Government Officials.

Mr. Bill Woolman. Mr. Woolman is the McKinley County Fire Department-EMS Coordinator. Mr. Woolman has worked with the local fire department for the past twenty-five (25) years. He has no knowledge of any spills or hazmat incidents along the proposed alignment.

Mr. Bill Furst-NM PSTB. Mr. Furst is an environmental specialist with the New Mexico Petroleum Storage Tank Board. He is currently the Board's Project Manager for the Active Remediation at the Speedy's Gas Station on HWY 264 (SW of RP-71). The site has been registered as having LUSTs since 2005 and is currently undergoing a pilot project to provide soil vapor extraction. The last groundwater monitoring event took place in 2012 and showed that the contaminant plume was still on site and the ground water gradient was to the South East. The Monitoring Well closest to the alignment did not show any contamination during the last monitoring event.

Ms. Rebecca Jamison-EPA Region 9 Tribal Assistance Division. Ms. Jamison was able to provide closure information on the Leaking Underground Storage Tank located at the former Wildcat Springs Trading Post.

### 6.3 Interviews with Others.

No significant or noteworthy interviews were conducted with any supplementary individuals. Unsuccessful attempts were made to contact Mrs. Rita Whitehorse Larsen-Navajo Nation EPA and Ms. Dixie Lowe-Sagebrush Partnership. Mr. Andrew Bartell-Chevron McKinley Mine initially indicated willingness to participate in the interview process but became unresponsive after questions were submitted.

## 7. ADDITIONAL SERVICES/NON SCOPE CONSIDERATIONS

No Additional Services or Non/Scope Considerations were utilized during the execution of this Report.

## 8. FINDINGS

Document Review, personnel interviews and the site survey have identified no recognized environmental conditions related to the of the target property.

## 9. OPINION.

*"I offer the following opinion as to whether the all appropriate inquiry conducted in according with 40 CFR Part 312 and/or 33 CFR 137 has identified conditions indicative of releases or threatened releases of hazardous substances, pollutants, contaminants, petroleum, and petroleum products, and controlled substances on, at, in, or to the subject property".*

The land to be impacted by the Reach 12.1 Pipe alignment is largely undeveloped, has hosted limited activities, and contains few improvements. Site Surveillance, interviews and document review eliminated most concerns regarding environmental liability. No additional investigation is recommended.

## 10. DATA GAPS

*"I am identifying the following data gaps (as defined in 40 CFR Part 312.10) in the information developed as part of the all appropriate inquiry that affects my ability as an environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, pollutants, contaminants, petroleum or petroleum products, and controlled substances on, at, in, or to the subject property. I am also including comments regarding the significance of said data gaps on my ability as an environmental professional to provide an opinion as to whether the all appropriate inquiry has identified conditions indicative of releases and threatened releases."*

- Interviews with the McKinley Mine, Navajo Nation EPA, and several impacted tenants could not be conducted. EPA Region 9 was able to provide the information that was requested from the NNEPA. Site Surveillance of McKinley Mine property and regulatory database review of the mine's compliance history help reduce the data gap created by the Mr. Bartell's unwillingness to participate in the interview process.
- No historic information on the Gas Station formerly located around RP-38 could be obtained. The Interviewee who disclosed its historic presence state it contained no underground tanks. No evidence of negative environmental impact was observed during the site surveillance and dialogue with state regulators have revealed not issues with this site.



## **11. CONCLUSIONS**

Based solely on the observations made during the site inspection, document research, and through personal interviews, HGS Engineering, Inc. makes the following conclusions:

HGS Engineering, Inc. has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM 1527-05 at the above-referenced property in McKinley County, New Mexico. Any exceptions to, or deletions from, this practice are described in this report. This assessment has not revealed the presence of any recognized environmental conditions on the property. No additional investigation is warranted.

## **12. DEVIATIONS. None**

## **13. REFERENCES.**

- ASTM Standard E 1527-05;
- EDR Aerial Photo Decade Package – 1954, 1976, 1986, 1997;
- EDR Historical Topographic Map Report dated 27 September 2013;
- EDR Corridor Map, Reach 12.1, 30 September 2013.

#### **14. SIGNATURE OF ENVIRONMENTAL PROFESSIONAL**

I declare that, to the best of my professional knowledge and belief, I meet the definition of an environmental professional as defined in 40 CFR 312.10 of this part.

I declare that, to the best of my professional knowledge, I meet the requirements under 33 CFR 137.25 for an environmental professional.

I have the specific qualifications based on education, training, and experience to assess the nature, history, and setting of a facility and the real property on which it is located. I have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312

I have the specific qualifications based on education, training, and experience to assess the nature, history, and setting of a facility and the real property on which it is located. I have developed on conducted all appropriate inquiries according with the standards and practices in 33 CFR part 137.

Harry G. Summers, PE  
President  
HGS Engineering, Inc.  
Registered Professional Engineer, State of New Mexico #22655  
MS, Environmental Engineering, UAB, Birmingham, AL  
BS, Civil Engineering, USMA, West Point, NY



# United States Department of the Interior

## BUREAU OF RECLAMATION

Western Colorado Area Office  
Durango Field Division  
185 Suttle Street, Suite 2  
Durango, Colorado 81303-7911

IN REPLY REFER TO:

WCD-ERheume  
ENV-3.00

DEC 30 2014

CERTIFIED – RETURN RECEIPT REQUESTED



Mr. Ron Maldonado  
Tribal Historic Preservation Officer  
Cultural Resources Compliance Section  
Navajo Nation Historic Preservation Department  
P.O. Box 4950  
Window Rock, AZ 86515

Subject: A Class III Cultural Resources Inventory for Navajo Gallup Water Supply Project (NGWSP)  
Reach 12.1 and the Black Hat Tank Facility, Navajo Nation, McKinley County, New Mexico

Dear Mr. Maldonado:

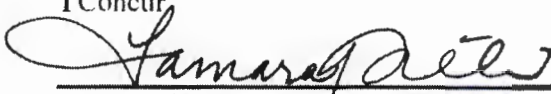
Enclosed for your review and comment is PaleoWest's Class III Inventory Report of NGWSP Reach 12.1 pipeline alignment and Black Hat tank Facility areas. The purpose of this report is to locate and document archaeological resources that have the potential to be affected by NGWSP construction activities. Reach 12.1 is comprised of 11.96 miles of linear water pipeline segments and a water storage tank facility on Black Hat hill. The Class III survey encompassed 558.43 acres on Navajo Nation and private land. The survey was conducted under the authority of General Archaeological Investigation Permit NM-13-210-S and Navajo Nation Cultural Resources Permit B13543. Reclamation is submitting this report to your office for consultation regarding concurrence of the eligibility determinations. This report is also being consulted upon with all NGWSP signatory and consulting parties in compliance with the programmatic agreement (PA) for this project.

This survey resulted in the location of twenty five archaeological sites within the project area: eight previously recorded sites, and seventeen newly recorded sites. Twenty one isolated occurrences were identified in the project area. Isolated occurrences are not considered eligible for listing on the National Register of Historic Places (NRHP) or State Register of Cultural Properties.

The nine sites located on private land in the project area are:

Site Number	Site Description	NRHP Eligibility Determination
LA 75790	An Anasazi (A.D. 800-1000) masonry pueblo. Originally recorded in 1989 and since destroyed by Highway 264.	Not Eligible
LA 55646	An Anasazi (A.D. 900-1100) artifact scatter.	Eligible under Criterion D
LA 55647	An Anasazi (A.D. 1000-1200) artifact scatter and the remains of the historic Wildcat Springs Trading Post (A.D. 1930-1951).	Prehistoric and historic components eligible under Criterion D
LA 178098	A prehistoric/historic (A.D. 1680-1800) artifact	Prehistoric and historic

I Concur

 02/19/15

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Mr. Ron Maldonado

Navajo Nation Tribal Historic Preservation Officer

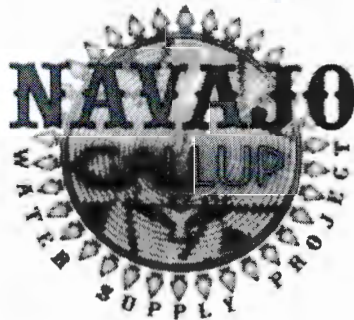
WBR:ERheaume:rjames:12/19/2014:970-385-6521: A Class III Cultural Resources Inventory for Navajo Gallup Water Supply Project (NGWSP) Reach 12.1 and the Black Hat Tank Facility, Navajo Nation, McKinley County, New Mexico:T:\ADM\AAA-Durango Typing\Rheaume\NNHPD Reach 12.1 Survey Letter.docx



# NEPA Sufficiency Report Reaches 12.1 and 12.2

## Navajo-Gallup Water Supply Project

New Mexico - Arizona



Navajo Nation



City of Gallup



Jicarilla Apache Nation



U.S. Department of the Interior  
Bureau of Reclamation

August 2014

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## **NEPA SUFFICIENCY REPORT FOR REACHES 12.1 AND 12.2 OF THE NAVAJO-GALLUP WATER SUPPLY PROJECT**

The purpose of this document is to determine if the environmental impacts and commitments relevant to the portion of the Navajo-Gallup Water Supply Project (NGWSP) under consideration for imminent construction, as described below, are sufficiently addressed in the NGWSP Final Environmental Impact Statement (FEIS) (Bureau of Reclamation [Reclamation] 2009a); or, whether changes in the action or new circumstances have arisen since completion of the FEIS, are substantial enough to warrant further assessment to determine if a Supplemental Environmental Impact Statement (EIS) may be required.

The following narratives are necessary for Reclamation and cooperating agencies to make this decision. Sections I, II, III, IV, and V have been completed as succinctly as possible. Excessive lists of species have been avoided unless relevant to the issues. Section VI was completed by Reclamation and cooperating agency environmental specialists.

### **I. PROJECT DESCRIPTION**

Reaches 12.1 and 12.2 of the NGWSP require Reclamation and the Bureau of Indian Affairs (BIA), Navajo Region, for refined pre-construction environmental compliance under the National Environmental Policy Act (NEPA). This review and compliance process is hereinafter referred to as the "Reach 12.1 and 12.2 project." Reclamation would have the pipeline installed by a private contractor; and, Reclamation will obtain the Right of Way (ROW). BIA is the cooperating agency for this NEPA action because BIA would issue ROW on Navajo tribal trust lands and on tribal allotments.

#### **IA. Preparers**

This NEPA Sufficiency Report (NSR) was prepared on behalf of the lead federal agency for this undertaking, Reclamation, Western Colorado Area Office. This analysis is based on the alignment shapefiles dated July 10, 2014 (Reach 12.1) and June 30, 2014 (Reach 12.2). The NSR was prepared by:

Nelson Consulting, Inc. (NCI)  
835 East Second Ave, Suite 250  
Durango, CO 81301  
(970) 375-9703  
Contact: Amber Ballman

SWCA Environmental Consultants (SWCA)  
130 Rock Point Drive, Suite A  
Durango, CO 81301  
(970) 385-8566  
Contact: Paige Marchus

#### **IB. Reach Description**

Reaches 12.1 and 12.2 are located in McKinley County, New Mexico. The reaches are connected, and largely parallel Highway 264 from Highway 491 west to the New Mexico/Arizona border. Reach 12.1 is 11.7 miles long and Reach 12.2 is 5.4 miles, for a total of 17.1 miles. The purpose of Reaches 12.1 and 12.2 is to connect the main north-south NGWSP alignment to the city of Window Rock, Arizona, capital of the Navajo Nation, and serve the communities located between Yah-ta-Hey, New Mexico, and Window Rock.

The alignments cross a patchwork of different landowners: tribal trust lands (Navajo Nation), tribal allotment lands, tribal fee lands, State of New Mexico, Bureau of Land Management (BLM), and private lands. Surface ownership by length of the pipeline is indicated on Table 1 & 2.



Table 1. ROW lengths by surface ownership.

Reach	Miles				
	Private	Tribal	BLM	State	Total
12.1	4.4	7.3	—	—	11.7
12.2	3.1	1.3	0.1	0.9	5.4
<b>Total</b>	<b>7.5</b>	<b>8.6</b>	<b>0.1</b>	<b>0.9</b>	<b>17.1</b>

Table 2. Disturbance acreage associated with Reaches 12.1 and 12.2.

Project Segment	Length (miles)	Width (feet)	Acreage
Reach 12.1	11.7	150	212.7
Reach 12.2	5.4	100	65.4
<b>Total</b>	<b>17.1</b>	<b>—</b>	<b>278.1</b>

Table 3. Legal locations of Reaches 12.1 and 12.2

Reach	Township	Range	Section	Reach	Township	Range	Section
12.1	16N	18W	5	12.2	16N	20W	5
	16N	18W	6		16N	20W	6
	16N	18W	7		16N	20W	7
	16N	19W	7		16N	20W	8
	16N	19W	8		16N	20W	9
	16N	19W	9		16N	21W	1
	16N	19W	10		16N	21W	2
	16N	19W	11		16N	21W	12
	16N	19W	12		17N	21W	35
	16N	20W	9				
	16N	20W	10				
	16N	20W	11				
	16N	20W	12				

## IC. Alignment Comparison

The FEIS analyzed impacts from the San Juan River Public Service of New Mexico (SJRPNM) alternative (FEIS alternative), as well as two other alternatives. The FEIS alternative was approved when the Record of Decision (ROD) for the NGWSP was signed on October 1, 2009 (Reclamation 2009b). The FEIS alternative included a segment that corresponds in size and location to the currently named Reaches 12.1 and 12.2. The current Reach 12.1 and 12.2 alignment is very similar to the corresponding FEIS alternative segment in that it largely follows the Highway 264 corridor between Yah-ta-Hey, New Mexico, and Window Rock, Arizona (Figure 1). Differences include:

- The majority of the current alignment is on the north side of the Highway 264 corridor, whereas the FEIS alignment was mostly on the south side.
- Portions of the east, middle, and west ends of the current alignment are more than 1,000 feet outside the FEIS alignment.

- Total pipeline length, which is more than 1,000 feet outside the FEIS alignment, is 5.78 miles.
- A pumping plant located on the subject reach in the FEIS alignment was deemed not necessary, and the current alignments for Reaches 12.1 and 12.2 do not include it.

#### **ID. Alternative Alignments**

The current alignment was staked with the goal of creating the least possible disturbance and environmental effect, while meeting the beginning and end points established for the reach in the FEIS alternative. A pre-construction cultural survey was conducted and the alignment was refined (shifted) where necessary to avoid disturbing cultural resources in accordance with the Programmatic Agreement (Reclamation 2011). A biological survey was conducted and no route refinements were required to avoid biological or wetland resource concerns (Nelson Consulting, Inc. [NCI] and SWCA Environmental Consultants [SWCA] 2014).

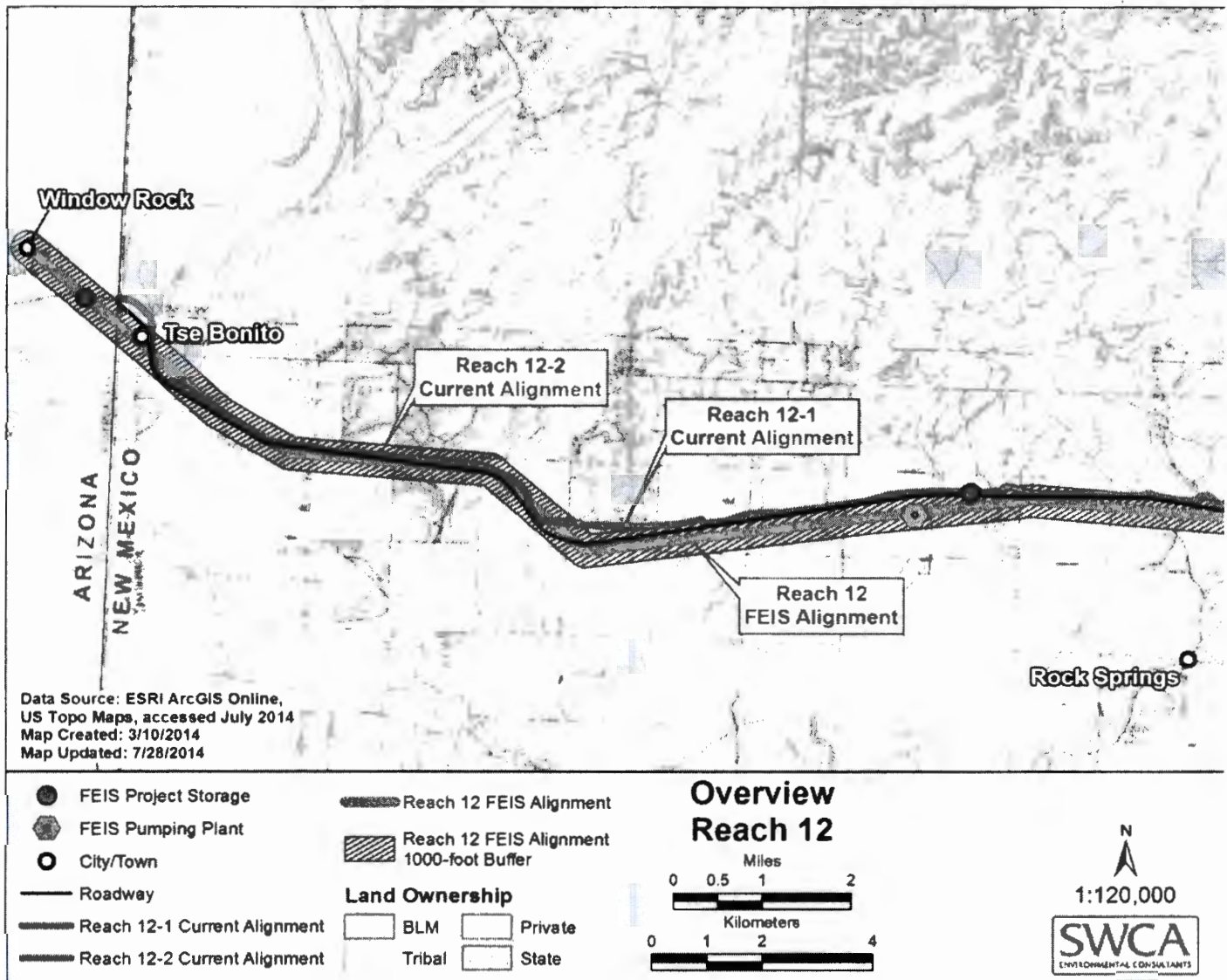


Figure 1. Alignment comparison.

## **II. ENVIRONMENTAL SETTING AND EFFECTS**

### **IIA. General Description**

The information in this section is excerpted from the biological evaluation completed for Reach 12.1 and 12.2 (NCI and SWCA 2014). The subject reaches are located within the Navajo Nation and adjacent to residential and agricultural areas that include homes, agricultural fields, residential yards, paved roads, two-track roads, power lines, and commercial facilities.

The subject reaches are located in the southeastern portion of the Colorado Plateau Province and represents an area of transition between the Plateau, Rocky Mountain, and Basin and Range Provinces. Structurally, the area includes portions of the Chaco Slope dipping into the San Juan Basin and parts of the Chuska and Zuni Mountain Uplifts (Natural Resources Conservation Service 2005)

Generally, the geology within the project area is either the Menefee Formation or Mesaverde Group. There are a few small sections within the westernmost portion of the project area that are the Morrison, Dakota Sandstone, and Mancos Shale Formations (U.S. Geological Survey 2005, n.d.).

Terrain within the project area is flat valleys with interspersed low hills. Most portions of the project area have been developed for agricultural and residential uses. The McKinley Mine area has been recontoured and revegetated; these mine reclamation practices have altered the original landform. The elevation within the project area varies between 6,568 and 7,053 feet above mean sea level.

There are approximately 14 named and unnamed drainages and numerous minor arroyos within the project area. At the time of the biological survey, none of these drainages were flowing. Many of the drainages were severely eroded with high, steep, and unstable banks.

The soils within the project area are mostly classified as loamy to sandy loamy and are well drained, with 0.45 acre of the project area classified as "coal mine lands." The National Resource Conservation Service (2005) has identified seven soil types within the project area. See the biological evaluation for Reaches 12.1 and 12.2 for soil type names and descriptions (NCI and SWCA 2014).

There are three dominant vegetation communities within the project area: desert grassland, Great Basin desert scrub, and mixed woodland (piñon-juniper series). See the biological evaluation for Reaches 12.1 and 12.2 for descriptions of vegetation communities (NCI and SWCA 2014).

### **IIB. Comparison with FEIS Analysis**

In comparing the current Reach 12.1 and 12.2 alignment with the corresponding segment analyzed in the FEIS, the only notable difference is that the current alignment departs from the FEIS alignment for more than 1,000 feet for 5.78 miles of the combined reaches. The alignment has already been refined to avoid cultural resources, and the biological survey did not result in the need for further refinements.

### **IIC. Notable Environmental Values**

The project area is partially located within a Navajo Nation Department of Fish and Wildlife (NNDFW) Wildlife Area 1 at the McKinley Mine property. The purpose of this designation is to coordinate reclamation with the mine to assure habitat improvement for mule deer (*Odocoileus hemionus*) and other wildlife (Smith 2013). See the NNDFW Sensitivity and Wildlife Commitments sections below for more information regarding mule deer and other wildlife.

### **IID. NNDFW Sensitivity**

The project area is partially located within a NNDFW Wildlife Area 1 at the McKinley Mine property. Wildlife Area 1 is classified as "highly sensitive." This area contains the best habitat for endangered and



rare plant, animal, and game species, and the highest concentration of these species on the Navajo Nation. The purpose of Wildlife Area 1 is to protect these resources to the maximum extent possible. Generally, no activity or development is allowed in Wildlife Area 1 if it will result in significant impact to wildlife resources. Non-residential/business development is allowed in Wildlife Area 1 if it is not within or close enough to species of concern habitat to cause significant impacts and if there are no reasonable alternatives outside the area. The proposed project, which is a municipal water line, is a non-residential/business development.

Prior to conducting the biological survey of Reach 12.1 and 12.2 in January 2014, the NNDFW provided Reclamation and NCI with a list of species of concern known to occur within or near the project area, known to occur within 3 miles of the project area, or with the potential to occur within the Twin Lakes and Tse Bonito, NM, Samson Lake, AZ, and Window Rock, AZ 7.5-minute U.S. Geological Survey quadrangle boundaries. This list is included in the biological evaluation (NCI and SWCA 2014). During the January 2014 biological survey, a habitat analysis was conducted to determine the potential for each species of concern to occur within the project area. As a result of the biological survey, the project area provides potential habitat for 20 species of concern. None of these species of concern or associated signs were observed during the biological survey of the project area; however, the biological survey was not conducted during the species-specific survey periods for several of these species. Due to the nature of the proposed project activities, with mitigation, no impacts to species of concern are anticipated as a result of the proposed project.

### III. ENVIRONMENTAL COMMITMENTS AND MITIGATION

#### IIIA. Water Quality Commitments

The FEIS analyzed the impacts to water quality from the SJRPNM alternative and provided mitigation measures (Reclamation 2009:V-32–V-42). For construction of Reaches 12.1 and 12.2, Reclamation would adhere to all applicable water quality commitments and mitigation described in the FEIS (Reclamation 2009:V-41, VI-6). The following mitigation measures and commitments would apply to the subject Reaches:

*Reclamation or the contractor would be required to obtain CWA discharge permits from the appropriate regulatory agency. A CWA NPDES storm water permit would also be obtained.*

*BMPs and construction schedule techniques could be implemented to minimize adverse water quality impacts.*

*Measures could be implemented to time construction activities to coincide with periods of low flow, and measures to capture sediment could be employed.*

*The duration of placement of fill materials could be minimized to shorten the period of time to reduce the duration of turbidity.*

*Temporary cofferdams/berms could be used to contain fine materials and placement of fill material during periods of low flows in the San Juan River.*

*Stockpiles of fill materials could be placed above the ordinary high water marks and protected by measures to prevent erosion of those materials into the waters of the United States.*

*Silt screens or other appropriate methods could be used in the San Juan River and at intermittent stream crossings to confine suspended particulates and turbidity to small areas where settling or removal could occur.*

*Reclamation would comply with applicable New Mexico and Navajo Nation water quality standards. Permits would be obtained as appropriate under CWA sections 401 (water quality certification), 402 (dewatering), and 404 (dredge and fill).*

*Reclamation would develop and implement a program to reduce, minimize, or eliminate temporary, short-term increases in suspended sediment loading or other water quality constituents potentially caused by project construction through the incorporation of permits, Best Management Practices (BMPs), and sediment control structures as described under mitigation measures for water quality in chapter V (listed above and in the FEIS). (Reclamation 2009:V-41,42 and VI-6)*

To implement the water quality protection measures described above, Reclamation has developed a stormwater management plan to minimize potential impacts to water quality. In addition, representatives from the U.S. Army Corps of Engineers (Corps) reviewed project documentation related to Clean Water Act compliance and inspected the applicable drainages prior to construction.

Impacts to water quality from the project are sufficiently described in the FEIS, and no new or greater impacts to water quality from the construction of Reaches 12.1 and 12.2 were identified.

### **IIIB. Vegetation Commitments**

Up to 278.1 acres of vegetation would be disturbed for construction of Reaches 12.1 and 12.2. This amount was included in the 31,686 acres of vegetation analyzed for impacts in the FEIS (Reclamation 2009a:V-46). For construction of Reaches 12.1 and 12.2, Reclamation would adhere to all applicable vegetation commitments described in the FEIS (Reclamation 2009:VI-7). All post-construction revegetation measures described in the mitigation section of the FEIS regarding successful re-establishment of native vegetation would be followed (Reclamation 2009:V-48, V-49). Applicable vegetation commitments from the FEIS include the following:

*Ensure that construction contractors limit ground disturbance to the smallest feasible areas and that they implement BMPs along with the planting or reseeding of disturbed areas using native plants to assist in the re-establishment of native vegetation as described under mitigation measures for vegetation resources in chapter V (of the FEIS).*

*Use accepted erosion control measures during construction, supplement grass seeding with native shrub seed in upland areas where shrub cover is diminished due to pipeline disturbance, monitor planting to ensure establishment, and control noxious weeds in disturbed areas. (Reclamation 2009a: VI-7).*

Impacts to vegetation from the project are sufficiently described in the FEIS, and no new or greater impacts to vegetation from the construction of Reaches 12.1 and 12.2 were identified.

### **IIIC. Wildlife Commitments**

One species of concern or sign of this species (mule deer) was observed within or surrounding the project area during the biological survey (NCI and SWCA 2014). During construction, maintenance, and final abandonment activities associated with the project, it is possible that mule deer and other wildlife could be temporarily deterred from using the project area. However, because the project area is located within and adjacent to an active residential area with ongoing human activity (including visual and audible disturbances), it is unlikely that these impacts will be substantial.

Incorporation of the applicable wildlife commitments and mitigation presented in the FEIS and stated below would reduce any impacts to this species of concern from the proposed project:

*Ensure that construction contractors limit ground disturbance to the smallest feasible areas and that they implement BMPs along with the planning or reseeding of disturbed areas using native plant species to assist in the re-establishment of native vegetation as described under mitigation measures for vegetation resources in chapter V [of the FEIS]. (Reclamation 2009a:VI-7)*

Impacts to wildlife are sufficiently described in the FEIS, and no new or greater impacts to wildlife from the construction of Reaches 12.1 and 12.2 were identified.

### IIID. Aquatic Resources Commitments

The FEIS analyzed the impacts to native fish and aquatic resources by quantifying the amount of water to be diverted to the NGWSP from the San Juan River and Navajo Reservoir. This amount would not change as a result of any differences between the FEIS alignment and the current alignment for Reaches 12.1 and 12.2. The applicable commitments for aquatic resources are described above under water quality commitments.

Impacts to aquatic resources are sufficiently described in the FEIS, and no new or greater impacts to aquatic resources from the construction of Reaches 12.1 and 12.2 were identified.

### IIIE. Special Status Species Commitments

The FEIS analyzed impacts to special status species listed by the NNDFW and the U.S. Fish and Wildlife Service (USFWS) for the entire project area of the NGWSP. The biological evaluation for Reaches 12.1 and 12.2 identified 20 special status species listed by the NNDFW and USFWS with the potential for occurrence near the project area. Only four species appear in the biological evaluation list that do not appear in the FEIS (Table 4).

Table 4. Species listed at the time of writing of the biological evaluation for Reaches 12.1 and 12.2 that do not appear in the FEIS.

Species Name	Status1	Known to Occur within 3 miles of APE	Potential to Occur within Quadrangle Boundaries	Habitat	Potential to Occur within APE
<b>Navajo bladderpod</b> ( <i>Lesquerella navajoensis</i> )	NESL Group 3		X	Primarily on windward, windswept mesa rims and nearby habitat with little vegetative cover and high insulation. Also, at the base and slopes of small hills of Chinle Formation. Piñon-juniper communities. Typically only in combination of Todilto Limestone overlaying Entrada or Chinle outcrops.	WOULD NOT OCCUR: No suitable habitat in the area of potential affect (APE). No mesa rims within or adjacent to the APE. No areas with little vegetative cover and high insulation within the APE. No Chinle, Todilto Limestone, or Entrada Formations in the APE.
<b>Blue grouse</b> ( <i>Dendragapus obscurus</i> )	NESL Group 4		X	Nests primarily in mixed-conifer stands with relatively open tree canopies. May be found in nearly all montane forest habitats, especially those dominated by Douglas-fir ( <i>Pseudotsuga menziesii</i> ) with varying amounts of aspen ( <i>Populus tremuloides</i> ) and possibly ponderosa pine ( <i>Pinus ponderosa</i> ). Winter habitat is montane conifer forests composed of fir or spruce and occasionally piñon pine ( <i>Pinus edulis</i> ).	WOULD NOT OCCUR: No montane forests found within the APE.
<b>Northern saw-whet owl</b> ( <i>Aegolius acadicus</i> )	NESL Group 4, MBTA		X	Nests in tree cavities in relatively open ponderosa pine, Douglas-fir, or mixed conifer forests; may also nest in old-growth riparian woodlands. Wintering habitat is variable but dense vegetation is critical.	WOULD NOT OCCUR: No ponderosa pine, Douglas-fir, or mixed coniferous forest or old growth riparian woodland habitats in the APE.



Tree swallow ( <i>Tachycineta bicolor</i> )	NESL Group 4 MBTA		X	Nests in existing cavities of variety of tree species (coniferous and deciduous); often uses snags in open fields near water, especially marshes and wooded ponds.	UNLIKELY: Few mature trees with nesting cavities or snags in open fields near water in the APE.
<sup>1</sup> NESL: Navajo Endangered Species List <ul style="list-style-type: none"> <li>Group 3: Species or subspecies that are considered likely to become endangered throughout all or a significant portion of their ranges on the Navajo Nation within the foreseeable future</li> <li>Group 4: Species or subspecies for which NDFW does not currently have sufficient information for inclusion in Group 2 or 3, but are being considered</li> </ul> MBTA: Protected under the Migratory Bird Treaty Act					

All four species newly analyzed either would not occur or are unlikely to occur. The biological evaluation states:

*If project activities occur outside of the breeding period for these species, no impacts to these species are anticipated. If activities are scheduled to occur during the breeding periods, the NNDFW could require formal species surveys during appropriate survey periods. Based on the results of these surveys, NNDFW could develop appropriate mitigation (following the general protocol below) to ensure that there will be no impacts to these species as a result of the proposed project. (NCI and SWCA 2014:16)*

Two special status mammal species have the potential to occur in the project area: kit fox (*Vulpes macrotis*) and mule deer (NCI and SWCA 2014). Mitigation contained in the FEIS, applicable to these species, are as follows:

*Construction could be managed to avoid intentional disturbance of dens for kit fox, as construction activities may discourage or disrupt denning activities. (Reclamation 2009a:V-7)*

Impacts to special status species from the project are sufficiently described in the FEIS and the biological evaluation for Reaches 12.1 and 12.2. Provided the mitigation and commitments contained in the biological evaluation and FEIS are implemented, no new significant impacts to special status species from the construction of Reaches 12.1 and 12.2 were identified.

### IIIF. Land Use Commitments

The FEIS analysis identified impacts to future land uses as a result of the availability of fresh water, as it is likely that schools and other infrastructure would be planned to utilize the new water source (Reclamation 2009a:V-108). Some grazing activities may be temporarily impacted during construction along the pipeline routes until vegetation is re-established. Applicable land use commitments consist of the following:

*Ensure that construction contractors limited ground disturbance to the smallest feasible area and that they implemented BMPs along with the planting or reseeded of disturbed areas to minimize impacts to existing land uses as previously described in the "Vegetation Commitments" section.*

*Ensure that construction contractors fenced revegetated areas to prevent grazing activities until disturbed areas became re-established.*

*Work with the Navajo Nation to provide temporary relocation assistance to affected livestock owners along the pipeline corridor. (Reclamation 2009a:VI-9)*

Impacts to potential future land uses from the project are sufficiently described in the FEIS, and no new or greater impacts to land uses from the construction of Reaches 12.1 and 12.2 were identified.

### IIIG. Soil Commitments



The FEIS analyzed impacts to soils from the FEIS alternative and provided mitigation measures (Reclamation 2009:V-118). Impacts to soils primarily include exposure of soils to potentially significant wind and water erosion resulting from vegetation removal and disturbance during construction. For construction of Reaches 12.1 and 12.2, Reclamation would adhere to all soils commitments and mitigation described in the FEIS (Reclamation 2009:VI-10; V-118). Applicable soils commitments are:

*Reclamation would mandate that construction contractors use and implement measures contained in erosion control guidelines and BMPs to control soil erosion from construction areas as described under mitigation measures for soils in chapter V [of the FEIS]. (Reclamation 2009a:VI-10)*

Impacts to soils from the project are sufficiently described in the FEIS, and no new or greater impacts to soils from the construction of Reaches 12.1 and 12.2 were identified.

#### **IV. PUBLIC OUTREACH**

As lead federal agency, Reclamation conducted extensive public outreach during development of the FEIS. Public scoping was initiated in early 2000 and included mailings, news releases, and five public meetings around the project area.

The Draft EIS was published in March 2007 and made available to the public as well as specific government agencies, interested groups and individuals. The official 90-day public comment period was from March 30, 2007 to June 28, 2007. Approximately 280 comments were received during the Draft release. Public Hearings on the Draft EIS were held in the same five locations as the scoping meetings. Detailed information regarding the results of the public outreach effort can be found in Volume III of the FEIS.

As part of the Reach 12.1 and 12.2 specific public outreach efforts, Reclamation staff or representatives visited applicable Chapter Houses prior to the publication of this NSR. These include Saint Michaels Chapter, Tsayatoh Chapter, and Rock Springs Chapter. No additional issues were identified through this public outreach.

## V. REFERENCES

- Bureau of Reclamation (Reclamation) 2009a. *Planning Report and Final Environmental Impact Statement. Navajo-Gallup Water Supply Project. New Mexico-Arizona*. U.S. Department of the Interior Bureau of Reclamation. July 2009.
- . 2009b. *Record of Decision for the Navajo-Gallup Water Supply Project Planning Report and Final Environmental Impact Statement*. October 2009.
- . 2011. Programmatic Agreement Among the Bureau of Reclamation, The Advisory Council on Historic Preservation, The New Mexico State Historic Preservation Officer, the Navajo Nation, the Bureau of Land Management, and the Bureau of Indian Affairs, Regarding the Consideration and Management of Effects on Historic Properties Arising from Construction of the Navajo-Gallup Water Supply Project, New Mexico.
- Natural Resources Conservation Service. 2005. Soil Survey of McKinley County Area, McKinley County and parts of Cibola and San Juan Counties, N.M.
- Nelson Consulting, Inc. (NCI), and SWCA Environmental Consultants (SWCA). 2014. *Biological Evaluation for U.S. Department of Interior – Bureau of Reclamation, Navajo-Gallup Water Supply Project, Reaches 12.1 and 12.2, Proposed Water Line*. April 2014.
- Smith, C. (Wildlife Biologist, NNDFW). 2013. Personal Communication Regarding Purpose of Area 1 Designation within the Bureau of Reclamation Navajo-Gallup Water Supply Project Area. November 11.
- U.S. Geological Survey (USGS). 2005. Shapefile of New Mexico Geology: nmgeol\_dd\_polygon. Available at: <http://mrddata.usgs.gov/geology/state/metadata/nm.html>.
- . No Date. Correlation of Map Units. Available at: <http://cogcc.state.co.us/infosys/Maps/images/Geology250MapLegends/lamarLegend.pdf>

## VI. NEPA SUFFICIENCY REVIEW PROCESS: ENVIRONMENTAL ANALYSIS DECISION FORM

- I. Potential for *Substantial Changes* to the NGWSP in this Project location which were not described in the FEIS and are relevant to environmental concerns:
  - A. The pipeline alignment for this Project, or other related appurtenance, is to be located in an area not in a general location proposed and/or evaluated in the FEIS:
    1. Yes: ☐ go to IV
    2. No: ☒ go to next
  - B. The pipeline alignment is relatively the same general location as that shown on the FEIS, but its refined alignment is often more than 1,000 ft from the FEIS alignment and/or a major project feature has substantially changed:
    1. Are environmental values within the refined alignment vicinity substantially different potentially significant impacts not discussed in the FEIS:
      - a. ☐ Yes: go to IV
      - b. ☒ No: go to next
    2. Does the refined alignment allow water distribution to locations and/or to entities not discussed in the FEIS, changing the overall purpose of the NGWSP in more than a minor manner:
      - a. ☐ Yes: go to IV
      - b. ☒ No: go to next
  - C. The pipeline alignment almost exactly (i.e., less than 1,000 feet from original) follows the alignment shown in the FEIS and no project features are substantially different from that proposed in the FEIS:
    1. Yes: ☐ go to II
    2. No: ☒ go to next
- II. Potentially *Significant New Circumstances or Information* relevant to environmental concerns that have a bearing on the Project:
  - A. Plant or animal species potentially affected by the Project not so identified in the FEIS, is now listed by FWS as TES and require amending, or revising the NGWSP FWS Biological Opinion:
    1. Yes: ☐ go to IV
    2. No: ☒ go to next
  - B. A significant cultural resource impacted by the Project may not be avoided or mitigated to less than a significant impact, except at a substantially greater cost than foreseen in the FEIS and possibly requiring an amendment to the Programmatic Agreement:
    1. Yes: ☐ go to IV
    2. No: ☒ go to next
  - C. Potentially significant changes in land use, population distribution, or water usage from the NGWSP related to the Project were not addressed in the FEIS:

1. Yes: ☐ go to IV
2. No: ☒ go to next

III. The FEIS may be outdated:

- A. It has been less than 5 years since the NGWSP FEIS and ROD were issued:
  1. Yes: ☒ go to V
  2. No: ☐ go to next
- B. Changes in Environmental conditions at this Project location since the FEIS:
  1. Change in Land Use: New, and substantial, development has occurred within the ROW of this Project and cannot be avoided (e.g., previous non-irrigated grazing lands are in a substantial portion of the ROW, and have been converted to irrigated croplands), requiring substantial mitigation actions for potentially significant impacts not envisioned in the FEIS:
    - a. Yes: ☐ go to IV
    - b. No: ☐ go to next
  2. Change in Vegetation/habitat: The vegetation/habitat has substantially changed in a manner that increases the environmental impact of construction substantially beyond those described in the FEIS (e.g., changes in habitat have created conditions favorable for TES-listed species, which are now found in Project areas not evaluated at this location in the FEIS, and requiring coordination with FWS re the Endangered Species Act):
    - a. Yes: ☐ go to IV
    - b. No: ☐ go to next
- C. The Project may have been substantially modified:
  1. A major Project component (e.g., a water intake method or location, a pumping plant location, or a new pipeline route to an area not addressed in the FEIS) has changed substantially in location, design or operating procedure within the scope of this Project:
    - a. Yes: ☐ go to IV
    - b. No: ☐ go to next
  2. The amount of water delivered to an entity, or the entity to which water is delivered, has changed from the description provided because of the Project, and this Project component or this aspect of the Project's effects was not evaluated in the FEIS:
    - a. Yes: ☐ go to IV
    - b. No: ☐ go to V



NOTES:

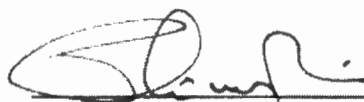


## NEPA Sufficiency Report

Reaches 12.1 and 12.2

- IV. ☐ Upon review of the { } Project described here and its relationship to the NGWSP FEIS, and including consideration of the added relevant supporting documents and the report above, I find the NGWSP FEIS potentially insufficient to ensure the policies and goals defined in NEPA are infused into this Project portion of the NGWSP. The issues supporting this decision are those as indicated above in the Sufficiency Form leading to this #IV decision. A tiered Environmental Assessment, in accordance with appropriate BOR and DOI guidelines (Reclamation 2012 § 6.1; and, 43 CFR Part 46 § 46.140), should be prepared to determine whether any substantial changes to the project or significant new circumstances or information relevant to environmental concerns, that cannot be avoided or mitigated sufficiently, create new significant environmental impacts requiring preparation of a supplemental EIS in accordance with BOR and CEQ guidelines (Reclamation 2012 § 7.11; and, 40 CFR § 1502.20) The issues checked in the Sufficiency Form should receive particular attention in this tiered EA.
- V. ☒ Upon review of the Reach 12.1 and 12.2 Project described here and its relationship to the NGWSP FEIS as well as supporting documents, I find the NGWSP FEIS is sufficient to ensure the policies and goals defined in NEPA are infused into the project. This decision is supported by a lack of sufficient evidence leading to a #IV selection through application of the Sufficiency Form above. No further NEPA actions are required for this Project portion of the NGWSP.

## APPROVED:



LEAD AGENCY PROJECT NEPA COORDINATOR  
Phillip W. Rieger  
Environmental Protection Specialist  
Western Colorado Area Office, Durango

10-10-2014

Date



COOPERATING AGENCY NEPA COORDINATOR  
Harrilene J. Yazzie  
Regional NEPA Coordinator  
Bureau of Indian Affairs – Navajo Region

10/9/2014

Date



# United States Department of the Interior

Bureau of Indian Affairs  
Navajo Region  
P. O. Box 1060  
Gallup, New Mexico 87305




11

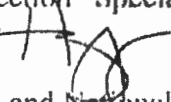
Branch of Environmental Quality Act Compliance and Review

OCT 29 2015

## MEMORANDUM

To: Supervisory Civil Engineer, Engineering & Technical Support Division

Through: Deputy Director, Trust Services 

From: Supervisory Environmental Protection Specialist, Branch of Environmental Quality Act Compliance & Review 

Subject: National Environmental Policy Act and National Historic Preservation Act Compliance Documents - Navajo Gallup Water Supply Project

This memo provides guidance to the Division, as the Regional lead for the Navajo-Gallup Water Supply Project, concerning the various compliance documents for the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

For NEPA, the following documents would be considered acceptable:

- Sufficiency Analysis (see attachment);
- "Finding of No New Significant Impact" per 43 CFR § 46.140 (c); or
- "Finding of No Significant Impact" per 40 CFR § 1508.13.

As for compliance with the NHPA, the NGWSP does have an executed Programmatic Agreement (PA) concerning historic properties between federal, tribal, and state entities regarding effects on historic and cultural properties. The PA allows for the construction activities to proceed efficiently. In addition, there may be Reach-by-Reach compliance documents considered acceptable provided that the compliance document is signed by the Navajo Tribal Historic Preservation Officer:

- Cultural Resources Compliance Form (CRCF);
- A Bureau of Reclamation letter; or
- A letter from NNHPD.

Should you have questions regarding the NHPA, please contact Mr. Terry McClung, Regional Archaeologist at ext. 8349, or Ms. Harrilene Yazzie, Supervisory Environmental Protection Specialist, at ext. 8287, regarding questions related to the NEPA.



IN REPLY REFER TO

# United States Department of the Interior

## BUREAU OF RECLAMATION

Western Colorado Area Office  
Durango Field Division  
185 Suttle Street, Suite 2  
Durango, Colorado 81303-7911

### LETTER OF AGREEMENT

Between

THE U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
And  
BUREAU OF INDIAN AFFAIRS

The U.S. Department of the Interior, Bureau of Reclamation and Bureau of Indian Affairs (BIA) are entering into this Agreement to provide an established process for National Environmental Policy Act (NEPA) compliance in support of the Navajo Gallup Water Supply Project (NGWSP). The NGWSP is a municipal and industrial water pipeline with associated infrastructure being built to provide water to the Navajo Nation, Jicarilla Apache Nation and the City of Gallup, NM.


The NGWSP is described and analyzed in the NGWSP Project Planning Report and Final Environmental Impact Statement (PR/FEIS) dated July 2009, and the subsequent Record of Decision dated October 1, 2009.


Reclamation and BIA officials in the project area offices have determined that National Environmental Policy Act (NEPA) compliance for updated project planning will be determined for independent sections of the pipeline as more refined information of the pipeline route and associated environmental studies are available. This information will be organized into the NGWSP NEPA Sufficiency Review Process (NEPA SRP) Environmental Analysis Form as found in Attachment A to this document. Development of this Form was the result of a collaborative effort between BIA and Reclamation as described in Attachment B (Development of a NEPA Sufficiency Review Process for Long-Term Implementation of the NGWSP).

The outcome of the NEPA SRP, collaboratively completed and signed by both agencies, will determine whether the existing PR/FEIS sufficiently addresses environmental impacts for a particular section of pipeline; or, if it doesn't, that further NEPA action is warranted (e.g., a tiered Environmental Assessment). The results of the NEPA SRP will be signed by appropriate representatives of both agencies with responsibility for determining the need for, and type of, further NEPA action.

If a additional NEPA action is required, Reclamation and BIA will provide joint oversight of the process, with Reclamation designated as the Lead Agency, and BIA designated as a Cooperating Agency according to Department of Interior NEPA guidelines at 43 CFR Part 46.

This Letter of Agreement becomes effective upon signature by authorized officials of Reclamation and BIA.

 5-23-13  
Ed Warner  
Manager  
Western Colorado Area Office  
Bureau of Reclamation

 6/10/13  
Sharon A. Pinto  
Director  
Navajo Regional Office  
Bureau of Indian Affairs



**BIOLOGICAL RESOURCES COMPLIANCE FORM  
NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE  
P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480**

It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

PROJECT NAME & NO.: Navajo Gallup Water Supply Project - Reach 12.1 & Reach 12.2

DESCRIPTION: The USBR proposes to construct a water line 18.3 miles in length and contains both Reaches 12.1 (218.18 acres) and 12.2 (76.36 acres). Total new disturbance for the proposed pipeline and associated infrastructure would be approximately 294.54 acres.

LOCATION: St. Michaels, Tsayatoh & Rock Springs Chapters, Apache/McKinley County, Arizona/New Mexico

REPRESENTATIVE: David Johnson, Principal Projects Manager, Nelson Consulting, Inc.

ACTION AGENCY: U.S. Department of the Interior Bureau of Reclamation (USBR) - Upper Colorado Region

B.R. REPORT TITLE / DATE / PREPARER: USDOl - Bureau of Reclamation NGWSP Reaches 12.1 & 12.2

Proposed Water Line/MAY 2012/Nelson Consulting, Inc. & SWCA Environmental Consultants

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Areas 1, 3, & 4. Suitable nesting habitat for Migratory Birds present in and adjacent to the TCE.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE / MITIGATION MEASURES: [1] The NNDFW concurs with the mitigation recommendations outlined in the BE, Section 6.5.

CONDITIONS OF COMPLIANCE\*: NA

FORM PREPARED BY / DATE: Pamela A. Kyselka/15 AUG 2014

COPIES TO: (add categories as necessary)

☐ \_\_\_\_\_ ☐ \_\_\_\_\_

B  
R  
C  
F

<p><b>2 NTC § 164 Recommendation:</b></p> <p><input checked="" type="checkbox"/> Approval</p> <p><input type="checkbox"/> Conditional Approval (with memo)</p> <p><input type="checkbox"/> Disapproval (with memo)</p> <p><input type="checkbox"/> Categorical Exclusion (with request letter)</p> <p><input type="checkbox"/> None (with memo)</p>	<p>Signature</p> <p><i>[Signature]</i></p> <p>Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife</p>	<p>Date</p> <p>8/15/14</p>
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**\*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.**

Representative's signature

Date



## EXECUTIVE ORDER NO. 03-2012

### NAVAJO-GALLUP WATER SUPPLY PROJECT IS A NAVAJO NATION PRIORITY PROJECT; THE SUCCESS OF THIS HIGH-PROFILE PROJECT WILL SHOWCASE THE NAVAJO NATION AND ITS DIVISIONS AND PROGRAMS; AND WILL PROVIDE THE OPPORTUNITY FOR ACCESSIBLE WATER TO THE EASTERN NAVAJO NATION

January 3, 2012

---

#### WHEREAS:

The Navajo Gallup Water Supply Project (Project) is one of only fourteen projects selected nationwide to be a priority of President Obama and his administration to create jobs. Bureau of Reclamation is the lead federal agency tasked to construct the Project with the assistance of the Navajo Nation, Jicarilla Apache Nation and City of Gallup. This project is an enormous challenge for the Navajo Nation and its programs. However, it is also an excellent opportunity for the Navajo Nation to showcase its programs and their coordination in order to successfully complete this high profile project to President Obama and the rest of the United States.

The Project will provide a reliable long term water supply to much of the Navajo Nation within New Mexico. The Project has an estimated construction cost of almost \$1 billion. In addition to the proposed United States' Presidential budget, the Bureau of Reclamation will receive up to \$60 million in mandatory appropriations during FY2012, FY2013 and FY2014 for a total of \$180 million that may be used for Project construction if all requirements to construction are met.

This Project continues to be a high priority for my administration as well. I would like to express my continued support for its expedited implementation and urge cooperation among all Navajo Nation programs to make this Project a reality. This Project is an example of the success brought about by years of hard work by staff and representatives of the Navajo Nation, State of New Mexico and United States.

Over the next several years the Project will be constructed in Reaches (phases). Construction may occur concurrently on several Reaches over the next several years. It is important that the Navajo Nation programs align themselves properly to coordinate information and permitting of the various Reaches of the Project. Navajo Nation Water Management Branch (NNWMB) of the Navajo Nation Department of Water Resources serves as the coordinator of

information within the Navajo Nation executive branch and the reviewer of public information, including all press releases, for the Navajo-Gallup Water Supply Project on behalf of the entire Navajo Nation. NNWMB may be reached at (928) 729-4004.

**IT IS ORDERED THAT:**

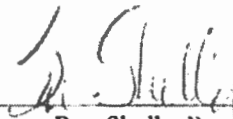
The Navajo Gallup Water Supply Project is a priority project of the Navajo Nation.

The programs within the Executive Branch are hereby directed to promptly process all necessary permits, contracts, any related matters to this Project for its successful coordination, implementation and construction. The programs and personnel are hereby directed to review and streamline their SAS review process.

**THEREFORE BE IT RESOLVED, THAT:**

I, Ben Shelly, President of the Navajo Nation, by the authority vested in the Office of the President pursuant to 2 N.N.C. §§ 1005 (A) and (C)(14), hereby direct this Executive Order shall become effective immediately and remain in effect until rescinded, to be binding upon Navajo Nation Executive Branch Directors, employees, and agents, and to be subjected to enforcement under the Navajo Nation Personnel Policies Manual.

Executed this 3<sup>rd</sup> day of January 2012.

  
\_\_\_\_\_  
Ben Shelly, President  
THE NAVAJO NATION

ATTEST:

  
\_\_\_\_\_  
Harrison Tsosie, Attorney General  
Navajo Nation Department of Justice



# ROCK SPRINGS CHAPTER

Tse'chi'izhi

P.O. Box 4608 Yahtahay, NM 87375

Phone#: (505) 371-5100 Fax#: (505) 371-5103

E-mail: rocksprings@navajochapters.org

RSC-04-20-34

## RESOLUTION OF THE ROCK SPRINGS CHAPTER

Eastern Navajo Agency District #16

### SUPPORTING THE DESIGN AND CONSTRUCTION OF THE NAVAJO GALLUP WATER SUPPLY PROJECT

#### WHEREAS:

1. Pursuant to 26 N.N.C., Section 3 and 11 N.N.C. Section 10, the Rock Springs Chapter is a recognized chapter of the Navajo Nation Government; and
2. Pursuant to Resolution No. CAP-34-98, the Navajo Nation Council adopted the Navajo Nation Local Governance Act (LGA), Title 26 of the Navajo Nation Code; and
3. Public law 111-11 Section 10601, authorized the Secretary of the Interior, acting through the commissioner of Reclamation to design and construct the Navajo Gallup Water Supply Project; and
4. The Rock Springs Chapter is one of 43 chapters identified to be served by the proposed water supply project; and
5. The Bureau of Reclamation is currently designing and preparing to begin construction of the Navajo Gallup Water Supply Project; and
6. One of the initial Project phases includes conveying ground water from Rock Springs Chapter to chapters east and west of Gallup, NM in current need of water prior to the San Juan River water delivery and to upgrade all existing waterlines within the Rock Springs Chapter area with assistance from proper entities and existing bylaws and procedures.

#### NOW THEREFORE BE IT RESOLVED THAT:

1. The Rock Springs Chapter fully supports the design, construction, and implementation of the Navajo Gallup water Supply Project; and the project is in the best interest of the Rock Springs Chapter and the Navajo Tribe; and
2. The Rock Springs Chapter recognizes that the Project Participants, including the Navajo Nation, shall provide all land or interest in land, as appropriate, at no cost (P.L. 111-11 Section 10602 (c) (2); and
3. The Rock Springs Chapter will work cooperatively with the Navajo Nation, the Bureau of Reclamation and its agents to obtain and all required approvals.

#### CERTIFICATION

We, the undersigned hereby certify that the foregoing resolution was duly considered at a duly called Rock Springs Chapter meeting, at which a quorum was present and that the same was approved by a vote of 33 in favor, 0 opposed, 10 abstained this 20th day of April, 2011.

Motioned: HELEN JONES

Seconded: MAZIE DRESSLER

Tulley Haswood

Tulley Haswood, Chapter President

Tulley Haswood  
Chapter President

Delphina Bedonie  
Chapter Vice President

Jasper Long  
Chapter Secretary Treasurer

Charles Damon  
Council Delegate

Henry Hudson  
Land Board Member

Tony K Watchman  
Chapter Coordinator

Eleanore Jones  
Office Specialist



**Bahastl'ah Chapter**  
**Post Office Box 4424**  
**Yahtahey, New Mexico 87375**  
**Office (505) 735-2600/2601**  
**Fax (505) 735-2605**

**Notah Barney,**  
President

**Randolph Lee,**  
Vice President

**Rita Silago,**  
Secretary/Treasurer

**Mel R. Begay,**  
Council Delegate

**BAHAS-11-06-03-322**

**RESOLUTION OF BAHASTL'AH CHAPTER**

**SUPPORTING THE DESIGN AND CONSTRUCTION**  
**OF THE NAVAJO GALLUP WATER SUPPLY PROJECT**

**WHEREAS:**

1. The Bahastl'ah Community Chapter is a duly certified Chapter under the Navajo Nation Government pursuant to 26 NNC, Section 3. There is a recognition of 110 Navajo Nation Chapters as being certified and enumerated at 11 NNC, Section 10 of which Bahastl'ah Chapter is included; and
2. Public Law 111-11, Section 10601, authorized the Secretary of the Interior, acting through the Commissioner of Reclamation to design and construct the Navajo Gallup Water Supply Project; and
3. The Navajo Gallup Water Supply Project will provide reliable and sustainable municipal, industrial, and domestic water supplies from the San Juan River to 43 Chapters of the Navajo Nation, the City of Gallup and the Southwest portion of the Jicarilla Apache Nation Reservation; and
4. The Bahastl'ah Chapter is one of the 43 chapters identified to be served by the proposed water supply project; and
5. The Bureau of Reclamation is currently designing and preparing to begin construction of the Navajo Gallup Water Supply Project; and
6. One of the initial Project phases includes conveying groundwater from Bahastl'ah to chapters east and west of Gallup in current need of water prior to San Juan River water delivery and to upgrade all existing water lines within Bahastl'ah area with assistance from proper entities and existing bylaws and procedures.

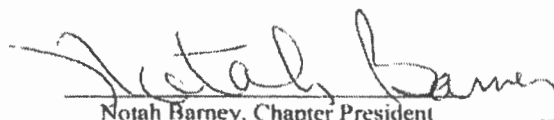
**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Bahastl'ah Chapter fully supports the design, construction and implementation of the Navajo Gallup Water Supply Project; and the project is in the best interest of the Chapter and the Tribe; and
2. The chapter recognizes that the Project Participants, including the Navajo Nation, shall provide all land or interest in land, as appropriate, at no cost (P.L. 111-11 Section 10602 (c) (2)); and
3. The chapter will work cooperatively with the Navajo Nation, the Bureau of Reclamation and its agents to obtain any and all required approvals.

**CERTIFICATION**

We, the undersigned hereby certify that the foregoing resolution was duly presented and considered at a duly called Chapter meeting, at which a quorum was present and that the same was approved by a vote of 21 in favor, 05 opposed, and 08 abstained this 06<sup>th</sup> day of March, 2011.

Motion by: Thompson Johnson  
Second by: Roy Lee Yazzie

  
Notah Barney, Chapter President



**Bahastl'ah Chapter**  
**Post Office Box 4424**  
**Yahtahey, New Mexico 87375**  
**Office (505) 735-2600/2601**  
**Fax (505) 735-2605**

**Notah Barney,**  
President

**Randolph Lee,**  
Vice President

**Rita Silago,**  
Secretary/Treasurer

**Mel R. Begay,**  
Council Delegate

**BAHAS-11-06-03-322**

**RESOLUTION OF BAHASTL'AH CHAPTER**

**SUPPORTING THE DESIGN AND CONSTRUCTION**  
**OF THE NAVAJO GALLUP WATER SUPPLY PROJECT**

**WHEREAS:**

1. The Bahastl'ah Community Chapter is a duly certified Chapter under the Navajo Nation Government pursuant to 26 NNC, Section 3. There is a recognition of 110 Navajo Nation Chapters as being certified and enumerated at 11 NNC, Section 10 of which Bahastl'ah Chapter is included; and
2. Public Law 111-11, Section 10601, authorized the Secretary of the Interior, acting through the Commissioner of Reclamation to design and construct the Navajo Gallup Water Supply Project; and
3. The Navajo Gallup Water Supply Project will provide reliable and sustainable municipal, industrial, and domestic water supplies from the San Juan River to 43 Chapters of the Navajo Nation, the City of Gallup and the Southwest portion of the Jicarilla Apache Nation Reservation; and
4. The Bahastl'ah Chapter is one of the 43 chapters identified to be served by the proposed water supply project; and
5. The Bureau of Reclamation is currently designing and preparing to begin construction of the Navajo Gallup Water Supply Project; and
6. One of the initial Project phases includes conveying groundwater from Bahastl'ah to chapters east and west of Gallup in current need of water prior to San Juan River water delivery and to upgrade all existing water lines within Bahastl'ah area with assistance from proper entities and existing bylaws and procedures.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Bahastl'ah Chapter fully supports the design, construction and implementation of the Navajo Gallup Water Supply Project; and the project is in the best interest of the Chapter and the Tribe; and
2. The chapter recognizes that the Project Participants, including the Navajo Nation, shall provide all land or interest in land, as appropriate, at no cost (P.L. 111-11 Section 10602 (c) (2)); and
3. The chapter will work cooperatively with the Navajo Nation, the Bureau of Reclamation and its agents to obtain any and all required approvals.

**CERTIFICATION**

We, the undersigned hereby certify that the foregoing resolution was duly presented and considered at a duly called Chapter meeting, at which a quorum was present and that the same was approved by a vote of 21 in favor, 05 opposed, and 08 abstained this 06<sup>th</sup> day of March, 2011.

Motion by: Thompson Johnson  
Second by: Roy Lee Yazzie

  
Notah Barney, Chapter President





BEN SHELLY  
President

REX LEE JIM,  
Vice President

CHARLES S. DAMON, II,  
Council Delegate

**Tsayatoh Chapter**  
P.O. Box 86  
Mentmore, NM 87319  
(505)905-2649 ♦ Fax: (505)905-0537  
Website: [www.tsayatoh.nndes.org](http://www.tsayatoh.nndes.org)  
E-mail: [tsayatoh@navajochapters.org](mailto:tsayatoh@navajochapters.org)

DAVID LEE,  
Chapter President  
WALTER HUDSON,  
Chapter Vice President

LUCY ANTONE,  
Secretary/Treasurer

HENRY HUDSON,  
Land Board

MATTHEW AUSTIN  
Community Services Coordinator

MICHELLE BITSIE,  
Accounts Maintenance Specialist

**RESOLUTION OF TSAYATOH CHAPTER**  
**RESOLUTION #: TSA-03-04-2013**

**TSAYATOH CHAPTER SUPPORTING THE DESIGN AND CONSTRUCTION OF THE  
NAVAJO GALLUP WATER SUPPLY PROJECT**

**WHEREAS:**

1. Pursuant to 26 N.N.C. Section 3 (A) the Tsayatoh Chapter is a duly recognized certified chapter of the Navajo Nation Government as listed at 11 N.N.C., part 1, section 10; AND
2. Pursuant to 26 N.N.C. Section 1 (B) Tsayatoh Chapter is vested with the authority to review all matters affecting the community and to make appropriate correction when necessary and make recommendation to the Navajo nation and other local agencies for appropriate; AND
3. THE Navajo-Gallup Water Supply Project will provide reliable and sustainable municipal, industrial and domestic water supplies from the San Juan River to 43 chapters of the Navajo Nation, the City of Gallup and the southwest portion of the Jicarilla Apache Nation Reservation; AND
4. Tsayatoh Chapter is one of the 43 chapters identified to be served by the Navajo-Gallup Water Supply Project; AND
5. The Bureau of Reclamation is currently conducting pre-design surveys for design work and preparing to begin construction of the Navajo-Gallup Water Supply Project in the area.

**NOW, THEREFORE, BE IT RESOLVED THAT**

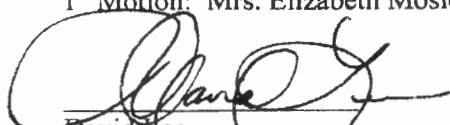
1. The Tsayatoh Chapter fully supports the design, construction and implementation of the Navajo-Gallup Water Supply Project; and recognizes that the project is in the best interest of the Chapter and the Tribe; AND

**CERTIFICATION**

We, hereby, certify that the foregoing resolution was duly considered by the Tsayatoh Chapter at a duly called meeting in Tsayatoh Chapter, Navajo Nation at which a quorum of Chapter members was present and that the same was passed by a vote of 27 in favor , 0 opposed and 2 abstained this 23<sup>rd</sup> day of April, 2013.

1<sup>st</sup> Motion: Mrs. Elizabeth Mosley

2<sup>nd</sup> Motion: Mrs. Helen Deadman

  
David Lee  
Chapter President





THE NAVAJO NATION  
ENVIRONMENTAL PROTECTION AGENCY

Public Water Systems Supervision Program  
Post Office Box 339, Window Rock, AZ 86515  
Telephone (928) 871-7755  
Fax (928) 871-7818  
[www.navajopublicwater.org](http://www.navajopublicwater.org)



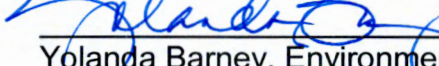
Russell Begaye  
President

Jonathan Nez  
Vice President

September 13, 2016

MEMORANDUM

TO: Rita Whitehorse-Larsen, Senior Environmental Specialist  
Office of Environmental Review  
Navajo Nation Environmental Protection Agency

FROM:   
Yolanda Barney, Environmental Program Manager  
Public Water Systems Supervision Program  
Surface and Ground Water Protection Department  
Navajo Nation Environmental Protection Agency

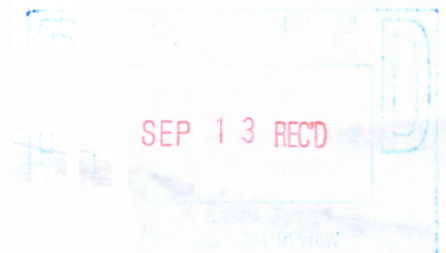
SUBJECT: DOCUMENT No. 005368

The Navajo Nation Environmental Protection Agency's Public Water Systems Supervision Program ("PWSSP") reviewed Document No. 005368: Approving Bureau of Reclamation: Right-of-Way Application and Temporary Construction Easement Application for Reach 12.1 on Navajo Nation Tribal Fee Lands, San Juan Lateral-Navajo-Gallup Water Supply Project, McKinley County, New Mexico. PWSSP recommends approval.

All proposed drinking water projects will need to be permitted by the PWSSP-NNEPA. All proposed drinking water projects (extensions, upgrades, new wells, new public water systems, etc.) must also comply with the design review and construction permit requirements of the PWSSP pursuant §§1501 and 1601 of the Navajo Nation Primary Drinking Water Regulations.

If there are any questions, please contact me at 871-7755.

xc: PWSID#NN3500302  
PWSSP files






**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

ETHEL B. BRANCH  
ATTORNEY GENERAL

RODGERICK T. BEGAY  
ACTING DEPUTY ATTORNEY GENERAL

**MEMORANDUM**

TO: ALL CONCERNED

FROM:   
Veronica Blackhat, Assistant Attorney General  
Natural Resources Unit, Department of Justice

DATE: October 4, 2016

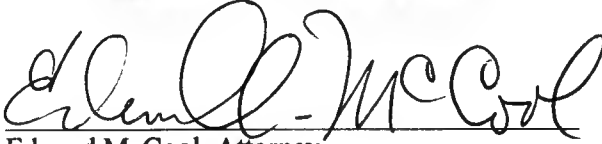
SUBJECT: **STANDING DELEGATION OF AUTHORITY**


Please be advised the personnel listed below, in order of succession, will be delegated, authority to act in the capacity of the Acting Assistant Attorney General, Natural Resources Unit during my absence from the office. Also, please be advised the personnel listed below, in order of succession, will have surname authority, unless indicated otherwise. This delegation will be effective immediately.

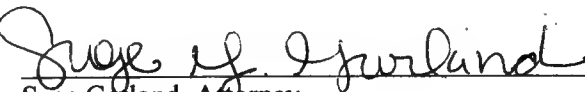
The authorized delegation will include all routine duties of the Assistant Attorney General, Natural Resources Unit. Any matters regarding personnel issues will be held for my review/decision upon my return. This Standing Delegation of Authority supersedes all delegations.

Thank you for your cooperation.


**ADMINISTRATIVE REVIEW**

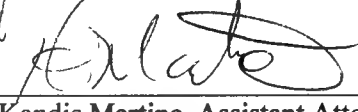
  
Edward McCool, Attorney  
Natural Resources Unit, Department of Justice


  
April Quinn, Attorney  
Natural Resources Unit, Department of Justice

  
Sage Garland, Attorney  
Natural Resources Unit, Department of Justice

**SURNAME AUTHORITY**

  
Paul Spruhart, Assistant Attorney General  
Litigation & Employment Unit, DOJ

  
Kandis Martine, Assistant Attorney General  
Human Services/Government Unit, DOJ

  
LaTonia B. Johnson, Acting Asst. Attorney General  
Economic/Community Development Unit, DOJ



THE Navajo Nation  
Navajo Land Department

P.O. Box # 2100 Window Rock, NM 86515 (505) 746-1011 FAX (505) 746-7059



MEMORANDUM

TO : Howard P. Draper, Supervisor  
Project Review Section NLD

FROM : *Esther Kee*  
Esther Kee, R/W Agent  
Project Review Section, NLD

DATE : March 14, 2016

SUBJECT: Bureau of Reclamation Right of Way and Temporary Construction Easement across Navajo Fee Lands for Reach 12.1 San Juan Lateral Navajo Gallup Water Supply Project

Bureau of Reclamation (BOR) of 1235 La Plata Highway, Farmington, New Mexico 87401, submitted an application for right of way (ROW) and temporary construction easement (TCE) for the construction, operation and maintenance of a 36 inch water transmission pipeline across Navajo Fee Lands near Rock Springs Chapter, McKinley County, New Mexico.

The right of way will be 479 feet in length, 80 feet wide, 0.88 acres, and the temporary construction easement will be 479 feet in length, 150 feet wide, 1.65 acres, in (NW/4SW/4) Section 5, T16N, R18W; the ROW will be 5,695'x80'/10.46 acres, TCE 5,695'x150'/19.61 acres, in the N/2 of Section 11, T16N, R19W; the ROW will be 5,757'x80'/10.57 acres, and the TCE will be 5,757'x150'/19.82 acres, in (S/2NE/4, SE/4NW/4, N/2SW/4) Section 12, T16N, R20W, NMPM, McKinley County, New Mexico.

The Navajo Nation is the only affected land user and provided the necessary consent from Rock Springs Chapter Officials along with the concurrence of the District 16 Land Board member, Henry Hudson.

Field clearance complete, land users consent, map and supporting documents are all attached for your information and reference.

cc: Project file

JAN 21 2017

1 3 17

Subject: Application Request for a Grant of Right-of-Way (ROW) and Temporary Construction Easement (TCE) - Navajo Nation Tribal Fee Lands - Reach 12.1 - San Juan Lateral - Navajo-Gallup Water Supply Project (NGWSP) McKinley County, New Mexico

The Bureau of Reclamation hereby requests a grant of ROW and TCE over, across, and through the subject Navajo Nation Tribal Fee Lands located in the area of the Twin Lakes, Rock Springs, and Tsayatoh Chapters in McKinley County, New Mexico. Enclosed are the applications requesting said consent and pertinent documents that are respectfully submitted for your review and processing.

On January 3, 2012, Navajo Nation President Ben Shelly issued *Executive Order No. 03-2012*, that proclaimed the NGWSP as a priority project of the Navajo Nation, directing the programs within the Navajo Nation's Executive Branch to "promptly process all necessary permits, contracts, and any related matters to this Project for its successful coordination, implementation, and construction."

In order to maintain the Congressionally-mandated schedule included in the Act, it is imperative that the grant of ROW and TCE be issued in a timely manner so that construction can continue;



therefore, Reclamation respectfully requests that the enclosed application be reviewed with appropriate priority so that the subject grant can be awarded by July 6, 2016.

If you have any questions, please contact E.460-11600 at 907-574-5034.

Sincerely,

Barry Longwell  
Construction Engineer

Enclosures

cc: Ms. Bidiah Becker  
Executive Director  
Navajo Nation Division of Natural Resources  
P.O. Box 9000  
Window Rock, AZ 86515

Mr. Ray Benally  
Director  
Navajo Nation Department of Water Resources  
P.O. Box 678  
Ft. Defiance, AZ 86504

Mr. Jason John  
Branch Director  
Navajo Nation Department of Water Resources  
Water Management Branch  
P.O. Box 678  
Ft. Defiance, AZ 86504  
(w/o encls to en)

NAVAJO TRIBAL LAND

TO WHOM IT MAY COME:

1. Carl Smith , Chapter President
2. Jasper Long , Chapter Vice President
3. Eleanore Jones , Chapter Secretary
4. Seth Damon , Chapter Council Delegate

hereby grant consent to the Navajo Nation, the Bureau of Indian Affairs, Window Rock, Arizona to permit: US Bureau of Reclamation, 1235 La Plata Highway, Farmington, New Mexico 87401 to use a portion of my (our) authorized Customary Use Area, as drawn on the back, for the following purpose(s):

Navajo Gallup Water Supply Project (NGWSP) Reach 12.1 of the San Juan Lateral ROW and TCE on Navajo Fee Lands:

Right of Way (ROW) to construct, operate & maintain Reach 12.1 water transmission pipeline approximately 479-feet in length, 80-feet in width, 0.88 acres, on Navajo Fee Land in Sec 5, T16N, R18W; 5695-feet in length, 80-feet in width, 10.46 acres on Navajo Fee in Sec 11, T16N, R19W; and 5757-feet in length, 80 feet in width, 10.57 acres, on Navajo Fee Lands in Sec 12, T16N, R20W, NMPPM, McKinley County, New Mexico.

Temporary Construction Easement (TCE) to provide additional working space during construction of NGWSP Reach 12.1 water transmission pipeline; 479-feet in length, 150-feet in width, 1.65 acres, on Navajo Fee Land in Sec 5, T16N, R18W; 5695-feet in length, 150-feet in width, 19.61 acres, on Navajo Fee Land in S11, T16N, R19W; and 5757-feet in length, 150-feet in width, 19.82 acres, on Navajo Fee Land in Sec 12, T16N, R20W, McKinley County, New Mexico.

**EXHIBIT ‘**

**NAVAJO NATION RIGHT-OF-WAY TERM & CONDITIONS:  
BUREAU OF RECLAMATION (GRANTEE)  
(Navajo Gallup Water Supply Project Reach 12.1-San Juan Lateral)**

1. The term of the permanent right-of-way shall begin on the date it is granted by the Secretary of the Interior (Secretary) and shall continue as long as the Grantee Bureau of Reclamation (BOR) or its successors, or assigns uses the right-of-way for the construction, operation, and maintenance of the Navajo Gallup Water Supply Project (Project).
2. The annual consideration for the use of land is assessed at \$102,969.13 (annually adjusted), which shall be the Navajo Nation's contribution to the Project because the Project will provide water to the Navajo Nation.

The Grantee must obtain the approval of the Navajo Nation if any portion of the right-of-way is used for any other purpose than authorized by the approval of this right-of-way.

3. The Grantee may develop, use, and occupy the right-of-way for the purpose(s) of constructing, operating, and maintaining the Navajo Gallup Water Supply Project. The Grantee may not develop, use, or occupy the right-of-way for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions, or withheld at the sole discretion of the Navajo Nation.
4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all applicable laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
  - a. Title 25, Code of Federal Regulations, Part 169;
  - b. All applicable federal and Navajo Nation antiquities laws and regulations, including compliance with the Programmatic Agreement for the Consideration and Management of Effects on Historic Properties Arising from Construction of the Navajo Gallup Water Supply Project pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's regulation, last date of execution by all signatories being November 21, 2011, and any amendments thereto.
  - c. BOR shall give employment preference to qualifying Navajos and other Indians in accordance with applicable Navajo and federal law. BOR shall utilize Navajo contractors and Navajo businesses (to purchase goods and materials) in accordance with applicable law.
  - d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq., to the extent that it is applicable. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.
6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and re-vegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and re-vegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.
10. The Grantee shall be responsible for and promptly pay all damages when they are sustained provided that nothing herein shall be deemed to increase the liability of the United States beyond the provisions of the Federal Tort Claims Act, Act of June 25, 1948, 62 Stat. 982 (28 U.S.C. § 1346(b), 2671 et seq.) or other applicable law.
11. The Grantee shall not assign, convey, or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance, or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions, or withheld at the sole discretion of the Navajo Nation. Congress has authorized BOR to transfer Project title under P.L. 111-11 1062 (f). It is anticipated that after Project title is transferred to the Navajo Nation, the Navajo Tribal Utility Authority will operate and maintain the Project. Therefore, the Grantee may assign and transfer the right-of-way to the Navajo Tribal Utility Authority as authorized by federal law without further approval of the Navajo Nation or the Secretary.
12. At the relinquishment of this right-of-way, the Grantee, other than the United States shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental site assessment of the premises at least sixty (60) days prior to delivery of the said premises. This provision 12 shall not apply to the United States as Grantee.



13. Holding over by the Grantee after the relinquishment of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any improvements located thereon. This provision 13 shall not apply to the United States as Grantee.
14. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
15. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive, or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare of the Navajo people) over all lands, persons, and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.
16. Any action or claim brought against the Navajo Nation arising out of the injury to person or property (tort) may be heard in the Courts of the Navajo Nation in accordance with applicable Navajo and federal law. No action or claim shall be brought against the Navajo Nation in any state court.
17. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
18. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance, and enforcement of the terms and conditions contained herein.
19. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees, and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees, and agents.
20. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way; and the right-of-way and all lands burdened by the right-of-way shall remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.



**EXHIBIT**

**NAVAJO NATION ROW TEMPORARY CONSTRUCTION EASEMENT  
TERMS AND CONDITIONS: BUREAU OF RECLAMATION (GRANTEE)  
(Navajo Gallup Water Supply Project Reach 12.1)**

1. The term of the ROW temporary construction easement shall begin on the date it is granted by the Secretary of the Interior (Secretary) and shall continue as long as the Grantee Bureau of Reclamation (BOR) or its successors, or assigns uses the ROW temporary construction easement for the construction, operation, and maintenance of the Navajo Gallup Water Supply Project (Project) with a maximum term of no more than four (4) years.
2. The total consideration for the use of land for the temporary construction easement is assessed at \$271,444.42, which shall be the Navajo Nation's contribution to the Project because the Project will provide water to the Navajo Nation.

The Grantee must obtain the approval of the Navajo Nation if any portion of the right-of-way is used for any other purpose than authorized by the approval of this right-of-way.

3. The Grantee may develop, use, and occupy the right-of-way for the purpose(s) of constructing, operating, and maintaining the Navajo Gallup Water Supply Project. The Grantee may not develop, use, or occupy the right-of-way for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions, or withheld at the sole discretion of the Navajo Nation.
4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all applicable laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
  - a. Title 25, Code of Federal Regulations, Part 169;
  - b. All applicable federal and Navajo Nation antiquities laws and regulations, including compliance with the Programmatic Agreement for the Consideration and Management of Effects on Historic Properties Arising from Construction of the Navajo Gallup Water Supply Project pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's regulation, last date of execution by all signatories being November 21, 2011, and any amendments thereto.
  - c. BOR shall give employment preference to qualifying Navajos and other Indians in accordance with applicable Navajo and federal law. BOR shall utilize Navajo contractors and Navajo businesses (to purchase goods and materials) in accordance with applicable law.

- d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq., to the extent that it is applicable. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.
6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and re-vegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and re-vegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.
10. The Grantee shall be responsible for and promptly pay all damages when they are sustained provided that nothing herein shall be deemed to increase the liability of the United States beyond the provisions of the Federal Tort Claims Act, Act of June 25, 1948, 62 Stat. 982 (28 U.S.C. § 1346(b), 2671 et seq.) or other applicable law.
11. The Grantee shall not assign, convey, or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance, or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions, or withheld at the sole discretion of the Navajo Nation. Congress has authorized BOR to transfer Project title under P.L. 111-11 1062 (f). It is anticipated that after Project title is transferred to the Navajo Nation, the Navajo Tribal Utility Authority will operate and maintain the Project. Therefore, the Grantee may assign and transfer the right-of-way to the Navajo Tribal Utility Authority as authorized by federal law without further approval of the Navajo Nation or the Secretary.
12. At the relinquishment of this right-of-way, the Grantee, other than the United States shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation,

the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental site assessment of the premises at least sixty (60) days prior to delivery of the said premises. This provision 12 shall not apply to the United States as Grantee.

13. Holding over by the Grantee after the relinquishment of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any improvements located thereon. This provision 13 shall not apply to the United States as Grantee.
14. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
15. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive, or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare of the Navajo people) over all lands, persons, and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.
16. Any action or claim brought against the Navajo Nation arising out of the injury to person or property (tort) may be heard in the Courts of the Navajo Nation in accordance with applicable Navajo and federal law. No action or claim shall be brought against the Navajo Nation in any state court.
17. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
18. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance, and enforcement of the terms and conditions contained herein.
19. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees, and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees, and agents.
20. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way; and the right-of-way and all lands burdened by the right-of-way shall remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.



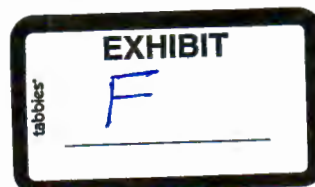


IN REPLY REFER TO:

# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, DC 20240

NOV 22 2016



## Memorandum

To: Principal Deputy Assistant Secretary – Indian Affairs

From: <sup>Acting</sup> Director, Bureau of Indian Affairs

Subject: Request for Waiver under 25 CFR § 1.2 of the 25 CFR § 169.103 Bond Requirement for Right-of-Way Applications for the Navajo-Gallup Water Supply Project

The Navajo-Gallup Water Supply Project (NGWSP) in northwest New Mexico is the cornerstone of the Northwestern New Mexico Rural Water Projects Act, Pub. L. 111-11, § 10301 *et seq.* (March 30, 2009) (the Settlement Act) and the 2010 Navajo Nation San Juan River Water Rights Settlement Agreement between the Navajo Nation (the Nation), the State of New Mexico, and the United States. The NGWSP is a major infrastructure project comprising about 280 miles of pipeline, 24 pumping plants and two water treatment plants, as well as numerous water regulation and storage facilities, that altogether will provide a long-term, sustainable and reliable municipal and industrial water supply from the San Juan River Basin to more than 43 Chapters on the Navajo Reservation, to the southwest portion of the Jicarilla Apache reservation, and to the city of Gallup, New Mexico. The Settlement Act provides that all project features are to be completed no later than December 31, 2024, mandating an aggressive construction schedule for a project of this scale.

On October 11, 2011, President Obama designated the NGWSP as one of 14 federal infrastructure projects to be expedited through permitting and environmental review processes, in order to improve the efficiency of federal reviews needed to help infrastructure projects move as quickly as possible from the drawing board to completion. NGWSP was the only project within the Department of the Interior (Department) to be designated among these priority projects, which came as a result of a Presidential Memorandum dated August 31, 2011, in which President Obama directed agencies to expedite environmental reviews and permit decisions for a select number of high priority infrastructure projects.

In accordance with the President's directive, the Department has worked diligently to advance the NGWSP from the drawing board to completion, and in 2012, the Bureau of Reclamation (Reclamation) in coordination and cooperation with the Bureau of Indian Affairs (BIA) began the process of preparing rights-of-way (ROW) applications, including seeking consent for the ROW's from individual Indian allottees and the Nation. Reclamation has received the necessary consents from individual Indian allottees on 25 allotments where ROW's are needed for the project. This represents all of the allotted land required for the project. In addition, Reclamation has received consent from the Navajo Nation for two parcels of Navajo tribal land, and will be seeking consent for approximately seven more ROW applications across Navajo tribal land over the next two to three years for the remaining portion of pipeline to be constructed (approximately 100 miles).

While all of the necessary consents on allotted lands were received prior to April 21, 2016, the date the new 25 CFR Part 169 Right of Way Regulations took effect, and not all applications for ROW's across allotted lands have been submitted to BIA. For instance, Reclamation has not yet

completed applications for four out of the 25 parcels of allotted lands for which it has obtained consents. In addition, Reclamation recently received consent from the Navajo Nation on two tribal land parcels and another one is pending, but the associated ROW applications for those parcels were not submitted to BIA before the new ROW regulations took effect.

The timing of the submission of these post-April 21, 2016, ROW applications has introduced a critical issue because the new ROW regulations differ in a significant way for purposes of NGWSP project completion from the pre-existing 25 CFR Part 169 Right of Way Regulations that had been in effect when Reclamation began seeking consents for the NGWSP Project and the President identified the NGWSP as a high-priority project.

The old ROW regulations at 25 CFR § 169.5 (2015) permitted BIA to grant waivers to federal agencies for the bond requirement for ROWs, in recognition that the Anti-Deficiency Act prohibits federal agencies from contracting to broad-based indemnification terms. (See 25 CFR § 169.5 (2015) "When the applicant is the U.S. Government or a State Government or an instrumentally thereof and is prohibited by law from executing any of the above stipulations, the Secretary may waive the requirement that the applicant agree to any stipulations so prohibited.")

The new ROW regulations omitted BIA's authority to directly waive the bond requirement in recognition of federal agencies' Anti-Deficiency Act limitations. (See 25 CFR § 169.103.) Instead, the new ROW regulations subject federal agencies to the bond requirements applicable to all other parties, and provide only two more nuanced avenues for waiver of the bond requirement; a 25 CFR § 1.2 waiver from the Assistant Secretary – Indian Affairs, or a 25 CFR § 169.103(f) waiver that requires allottees to request the waiver or for the BIA to defer to the Nation to the maximum extent possible for a determination that the waiver is in its best interest (depending upon whether the ROW is sought from allottees or the Nation). (See 25 CFR § 1.2 "[T]he Secretary retains the power to waive or make exceptions to his regulations as found in chapter 1 of title 25 CFR in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians;" and 25 CFR § 169.103(f) "We may waive the requirement for a bond, insurance, or alternative form of security: (1) For individually owned Indian land, if the Indian landowners of the majority of the interests request it and we determine, in writing, that a waiver is in the Indian landowners' best interest considering the purpose of and risks associated with the right-of-way, or ... (2) For tribal land, deferring, to the maximum extent possible, to the tribe's determination that a waiver of a bond, insurance or alternative form of security is in its best interest.")

While 25 CFR § 169.103 provides for the waiver of the requirement for a bond, insurance, or alternative form of security so long as consent for such waiver is received from the tribe (for tribal trust land) or the majority of interests of individual Indian landowners (for allotted land), this was not sought for the pending NGWSP ROW applications because the consent process was initiated well before the new rules took effect (and 25 CFR Part 169 (2016) contained clear waiver language).

Reclamation and BIA recognize that although the consent process for the NGWSP ROW's was initiated well before the new ROW regulations were proposed, the agencies could seek a determination from the Navajo Nation that waiver of the bond requirement for remaining or future trust land ROW applications would be in the Nation's best interest, and that it could seek consent from a majority of allottees for a waiver of the bond requirement for remaining or future allottee ROW applications; however, engaging in this process would result in a significant impact to the construction schedule for the NGWSP, which in turn could impact the agencies' ability to complete the project within its legislated deadline of 2024. (See Pub. L. 111 § 10701(e)(1)(A)(ix) (March 30, 2009) ("NAVAJO-GALLUP WATER SUPPLY PROJECT—Not later than December 31, 2024, the construction of all Project facilities shall be completed.")).




Reclamation and the BIA recognize the allottee consent process for these ROWs took nearly four years, and re-engaging with the allottees to obtain their recommendations for waiver of the bond requirement likely will not allow Reclamation to meet the President's directive that the NGWSP move forward apace. Furthermore, re-submitting trust land ROW applications to the Nation that have either gone through, or are in the process of going through, the Nation's consent approval process would result in direct impacts to impending construction contracts where these ROWs are required. Therefore, Reclamation and BIA respectfully submit this waiver request, seeking a waiver, under 25 CFR § 1.2, of the 25 CFR § 169.103 bond requirement for all NGWSP ROWs not issued prior to April 21, 2016, whether the ROW applicant is a federal agency, a state agency, an agency of the Nation, or an instrumentality thereof. Reclamation and BIA request that the Assistant Secretary expedite review of this request in order to aid the Department in moving the NGWSP forward in the face of the unforeseen slow-down created by the application of the new ROW regulations, which unexpectedly omitted the federal agency bond waiver provision from the 25 CFR Part 169 (2016) ROW regulations.

In the spirit of the President's initiative, and in order to meet the aggressive Congressionally mandated schedule for completing this high-priority project, we respectfully request that the Assistant Secretary waive the 25 CFR § 169.103 bond requirement for all NGWSP ROWs not issued prior to April 21, 2016, recognizing that doing so is in the best interest of the Navajo Nation, the Jicarilla Apache Nation, and their members, because it will permit NGWSP construction to proceed in accordance with a schedule that will allow the project to be completed as directed by the President of the United States and Congress and project benefits bargained for by the Tribes on behalf of their members pursuant to a negotiated water settlement to accrue to the benefit of the Tribal communities served as contemplated under the Navajo San Juan Water Rights Settlement. The Navajo Nation confirmed that the waiver was in the best interest of the Nation in the attached letter of support signed by President Begaye dated September 9, 2016.

For the reasons stated herein, we recommend approval of the Assistant Secretary to waive the regulatory requirement under 25 CFR § 169.103 for a bond for all NGWSP ROWs not issued prior to April 21, 2016, whether the ROW applicant is a federal agency, a state agency, an agency of the Nation, or an instrumentality thereof.

Concur with waiver request:

  
Director, Bureau of Indian Affairs

12/20/2016  
Date

Do not concur with waiver request:

\_\_\_\_\_  
Director, Bureau of Indian Affairs

\_\_\_\_\_  
Date

Waiver Request is approved:

  
Principal Deputy Assistant Secretary - Indian Affairs

12/14/2016  
Date

Waiver Request is denied:

\_\_\_\_\_  
Principal Deputy Assistant Secretary - Indian Affairs

\_\_\_\_\_  
Date

Attachment