

RESOLUTION OF THE  
NAABIK'ÍYÁTI' COMMITTEE OF THE  
NAVAJO NATION COUNCIL

23<sup>RD</sup> Navajo Nation Council---First Year, 2015

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING NAVAJO AGRICULTURAL PRODUCTS INDUSTRY'S EFFORTS TO CONTRACT THE REMAINING CONSTRUCTION OF THE NAVAJO INDIAN IRRIGATION PROJECT UNDER THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, 25 U.S.C. § 450 *ET SEQ*, (P.L. 93-638, AS AMENDED) AND TO DEVELOP BLOCKS 9, 10, AND 11 OF THE NAVAJO INDIAN IRRIGATION PROJECT AT THE SOLE COST AND EXPENSE OF THE UNITED STATES; AND AUTHORIZING THE NAVAJO AGRICULTURAL PRODUCTS INDUSTRY TO SUBMIT A PROPOSAL TO THE UNITED STATES' SECRETARY OF INTERIOR TO EXPAND ITS EXISTING PUBLIC LAW 93-638 CONTRACT TO INCLUDE THE REMAINING CONSTRUCTION OF THE NAVAJO INDIAN IRRIGATION PROJECT AND DEVELOPMENT OF BLOCKS 9, 10, AND 11

WHEREAS:

- A. Navajo Agricultural Products Industry is an enterprise of the Navajo Nation charged with operating a commercial farm on land held in trust by the United States for the Navajo Nation under federal legislation authorizing the Navajo Indian Irrigation Project (NIIP). 5 N.N.C. § 1602; Public Law 87-483, signed on June 13, 1962, amended by Public Law 91-416 on September 25, 1970; NIIP authorized by Acts of Congress approved April 11, 1956 (70 Stat. 105); June 13, 1962 (76 Stat. 96); and August 4, 1977 (91 Stat. 565).
- B. The Resources and Development Committee of the Navajo Nation Council is the legislative oversight authority for the Navajo Agricultural Products Industry. 5 N.N.C. § 1604.
- C. The Navajo Nation Council established the Naabik'íyáti' Committee as a standing committee authorized to coordinate with all committees and branches of the Navajo Nation the appearance and testimony before federal entities to provide the most efficient delivery of services to the Navajo Nation. 2 N.N.C. §§ 700 (A), 701 (A)(4); see also CO-45-12.

- D. The Naabik'íyáti' Committee was delegated the responsibility and authority to authorize Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 et seq. (P.L. 93-638, as amended) contracts and grants with the United States Department of the Interior. 2 N.N.C. § 701(A)(12).
- E. Navajo Nation Council Resolution CJY-60-01 Whereas Section Number Two states: *"The Navajo Agricultural Products Industry (NAPI) was originally established... primarily to plan, develop, and promote the use of agricultural, water and related resources for the use of Navajo Agricultural Products Industry and the Navajo Indian Irrigation Project resulting in a profit to Navajo Agricultural Products Industry and to prevent waste of valuable resources."*
- F. The Navajo Agricultural Products Industry, Plan of Operation Article 3 (A), approved by CJY-60-01 states one of the purposes for which NAPI was organized: *"The purpose for which NAPI is organized is to operate a profitable commercial farm, separate and distinct from the Navajo Indian Irrigation Project, in accordance with this plan of operation and applicable laws and regulations and, to carry out this purpose, shall: A. Plan, develop, and promote the use of agricultural and related resources, including water in compliance with the Navajo Nation Water Code, or shall be available for use by NAPI through the Navajo Indian Irrigation Project."*
- G. The Navajo Agricultural Products Industry, Plan of Operation Article 7 (L), approved by CJY-60-01 states a of duty of the Board of Directors is *"[t]o utilize, improve, manage, or operate Navajo Nation lands withdrawn for NIIP pursuant to a master agricultural lease agreement."*
- H. Public Law 87-483 passed by Congress on June 13, 1962 authorized *"the Secretary of the Interior to construct, operate, and maintain the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama project as participating projects of the Colorado River Storage Project, and for other purposes."* The authorization was amended September 25, 1970, by Public Law 91-416. To date the construction of the San Juan-Chama Project is completed while construction of the Navajo Indian Irrigation Project is only approximately 70% complete. BDJN-16-15.

- I. The Navajo Agricultural Products Industry, Plan of Operation Article 7(S), approved by CJY-60-01, states that *"NAPI shall work with the Navajo Indian Irrigation Project, the Department of the Interior, Bureau of Indian Affairs, and the appropriate Navajo Nation programs, departments and divisions, to maximize the potential profit and sustainable operation of the NAPI commercial farm."*
- J. NAPI is also authorized "to assume full and complete jurisdiction and control over all properties, both real and personal belonging to or used for the benefit of the Navajo Indian Irrigation Project, and in addition, such properties as may subsequently be acquired or used by or for the benefit of said project... in accordance with its plan of operation and other applicable Tribal and Federal laws and regulations pertaining to the Navajo Indian Irrigation Project." Advisory Committee Resolution No. ACD-517-73, December 13, 1973.
- K. Navajo Agriculture Products Industry currently has a mature Public Law 93-638 contract with the United States Secretary of the Interior under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* (P.L. 93-638, as amended) for Operations and Maintenance, On-Farm Development, and the Agricultural Testing and Research Laboratory, such contracting authority having been granted to Navajo Agricultural Products Industry by the Navajo Nation. See, IGRO-169-10.
- L. The Navajo Agricultural Products Industry Board of Directors recommends to the Navajo Nation Council that Navajo Agricultural Products Industry's authorization to contract under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* (P.L. 93-638, as amended) be expanded to include the remaining construction of the NIIP and to otherwise support Navajo Agricultural Products Industry's efforts to develop Blocks 9, 10, and 11 of the Navajo Indian Irrigation Project at the sole cost and expense of the United States. BDJN-16-15 is attached as Exhibit "A."
- M. The Navajo Nation Council finds that expanding the Navajo Agricultural Products Industry's Public Law 93-638 contract with the Secretary of the Interior to include the remaining construction of the Navajo Indian Irrigation Project and development of Blocks 9, 10, and 11 is consistent with and supports Navajo Agricultural Product Industry's

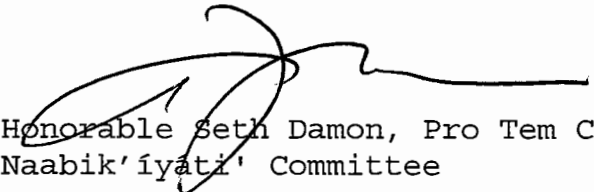
responsibility to "maximize the potential profit and sustainable operation of the commercial farm" and furthers the purposes for which Navajo Agricultural Products Industry was established.

**NOW, THEREFORE BE IT RESOLVED:**

- A. The Navajo Nation hereby supports the Navajo Agricultural Product Industry's efforts to contract the remaining construction of the Navajo Indian Irrigation Project under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* (P.L. 93-638, as amended) and to develop Blocks 9, 10, and 11 of the Navajo Indian Irrigation Project at the sole cost and expense of the United States, in accordance with Public Law 87-483, the 1962 Act of Congress, amended by Public Law 91-416.
- B. The Navajo Nation hereby authorizes the Navajo Agricultural Product Industry to submit a proposal to the United States' Secretary of Interior to expand its existing Public Law 93-638 contract to include the remaining construction of the Navajo Indian Irrigation Project and develop Blocks 9, 10, and 11.
- C. This resolution is intended to and does satisfy the Indian Self-Determination Education and Assistance Act's and 25 CFR § 900.8 (d)'s requirement that a Public Law 93-638 contract proposal include an authorizing resolution from the Indian Tribe to be served.
- D. The Navajo Nation hereby authorizes the Navajo Agricultural Project Industry's Board of Directors and its management, the Speaker of the Navajo Nation Council, and the President of the Navajo Nation and their designees to advocate for and implement the intent and purposes of this resolution and its included authorizations.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Twin Arrows Casino & Resort, Leupp (Arizona), at which a quorum was present and that the same was passed by a vote of in 15 favor and 0 oppose, this 3<sup>rd</sup> Day of December, 2015.



Honorable Seth Damon, Pro Tem Chairperson  
Naabik'iyáti' Committee

Motion : Dwight Witherspoon  
Second : Jonathan L. Hale



**RESOLUTION OF THE  
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY  
BOARD OF DIRECTORS**

**Requesting the Resources and Development Committee of the Navajo Nation Council to Recommend to the Navajo Nation Council that the Navajo Agricultural Products Industry ("NAPI") Be Authorized to Expand its PL93-638 Contracting Authority to Include Construction of the Navajo Indian Irrigation Project ("NIIP") and to Otherwise Support NAPI's Efforts to Develop Blocks 9, 10 and 11 of the NIIP at the Sole Cost and Expense of the United States, in Accordance with the 1962 Act of Congress Authorizing the NIIP and Memorializing the Agreement Among the Navajo Nation, the State of New Mexico, and the United States, and that the Navajo Nation Council Grant Such Authorization and Provide Such Support**

**WHEREAS:**

1. The Navajo Agricultural Products Industry ("NAPI") is a wholly owned enterprise of the Navajo Nation charged with operating and managing a commercial farm on land held in trust by the United States for the Navajo Nation under legislation authorizing the Navajo Indian Irrigation Project ("NIIP"); and

2. The NAPI Board of Directors is specifically authorized "to perform such acts as are necessary, proper and lawful to accomplish the business purposes of NAPI," Plan of Operation Art. 7(A), and to engage in lobbying efforts to achieve the purposes of NAPI, *id.* Art. 7(B); and

3. NAPI's Enabling Legislation provides that NAPI's purposes include the promotion of the use of agricultural and related resources and of agribusiness development and the multiplier effect. 5 N.N.C. § 1603(A), (C) (2005); and

4. The Navajo Nation Council has authorized NAPI "to assume full and complete jurisdiction and control over all properties, both real and personal belonging to or used for the benefit of the Navajo Indian Irrigation Project ["NIIP"] and in addition, such properties as may subsequently be acquired or used by or for the benefit of said project . . . in accordance with its plan of operation . . .," Resolution No. ACD-517-73 (Dec. 13, 1973); and

5. This Board is empowered to "exercise full power and have ultimate responsibility for the . . . maintenance of all NAPI property, facilities, and special utilities" and to "plan, construct and operate all facilities" and to "utilize, improve, manage or operate Navajo Nation lands withdrawn for NIIP . . .," NAPI Plan of Operation, Art. 7(D), (L); and

6. After a decade of negotiations, the Navajo Nation agreed to permit valuable San Juan River water to which the Nation had strong claims to be transported across the Continental Divide to provide water to the Rio Grande basin via the San Juan-Chama Diversion Project in exchange for a 110,630-acre irrigated farm, the NIIP; and

7. Although Congress intended and expected that the NIIP would be completed at approximately the same time as the San Juan-Chama Diversion Project, the NIIP is only about 70% complete and the San Juan-Chama Diversion Project was completed decades ago, on schedule; and

8. As a result of the extraordinary delay in the United States completing the NIIP, NAPI and the Navajo Nation have lost up to \$5 billion in revenues and business opportunities according to a 2013 study performed by Compass Lexecon; and

9. The NIIP was planned to consist of eleven blocks of which eight have been completed; and

10. Work on Block 9 has been commenced but is proceeding at a snail's pace because of insufficient federal appropriations; and

11. NAPI management has presented various plans to assist the Bureau of Indian Affairs ("BIA") in planning and accomplishing the work to complete Block 9 in three stages, but the BIA has been unable to effect any such plans; and

12. NAPI has a longstanding contractual relationship with the United States under the Indian Self-Determination and Education Assistance Act, Pub.L. 93-638, 25 U.S.C. §§ 450, 450a *et seq.*, for Operations and Maintenance ("O&M"), On-Farm Development ("OFD"), and the Agricultural Testing and Research Laboratory, such contracting authority having been granted to NAPI by the Navajo Nation Council; and

13. NAPI has demonstrated its capacity to perform such contracts, even as the United States has failed to provide adequate funding, including Contract Support Cost funding, *see Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012); and

14. NAPI management recommends that this Board request the Navajo Nation Council to expand NAPI's PL 93-638 contracting authority to include the remaining construction of the NIIP and related activities, and/or to facilitate the construction of the unfinished portion of the NIIP (including OFD and O&M of the same under NAPI's present PL 93-638 contract, as it may be extended) strictly conditioned upon the Nation and/or NAPI obtaining an enforceable agreement from the United States to reimburse to NAPI all of its costs and expenses of any kind for such construction and related activities

15. The Board of Directors has considered the recommendations of management and has determined that the recommendation of NAPI management should be adopted and approved in a formal resolution.

**NOW THEREFORE BE IT RESOLVED THAT:**

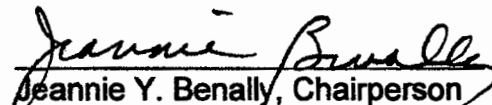
1. The NAPI Board of Directors hereby requests the Resources and Development Committee of the Navajo Nation Council to recommend to the Navajo Nation Council that the Navajo Agricultural Products Industry be authorized to expand its PL 93-638 contracting authority to include construction of the Navajo Indian Irrigation Project and to otherwise support NAPI's efforts to develop Blocks 9, 10, and 11 of the NIIP at the sole cost and expense of the United States, in accordance with the 1962 Act of Congress authorizing the NIIP and memorializing the agreement among the Navajo Nation, the States of New Mexico, and the United States, and that the Navajo Nation Council grant such authorization and provide such support.

2. The CEO and such management as he deems appropriate are hereby authorized and directed to take any and all reasonable and proper steps to effectuate the letter and intent of this Resolution, and to periodically report to this Board as to the progress and activities related to this Resolution.

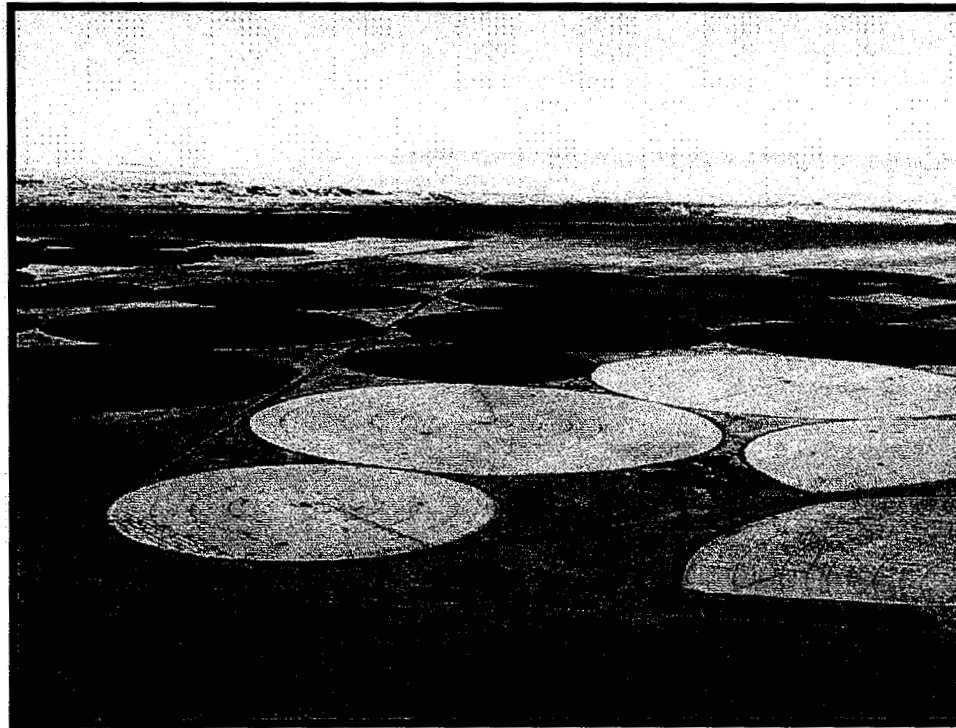
**CERTIFICATION**

I hereby certify that the foregoing resolution was considered by the Navajo Agricultural Products Industry Board of Directors at a regularly called meeting at which a quorum was present at NAPI headquarters near Farmington, New Mexico, and that the same was passed by vote of 4 in favor, 0 opposed, and 0 abstained, this 26th day of June, 2015.

Motion: Kyril Calsoyas  
Second: Lawrence R. Platero

  
Jeannie Y. Benally, Chairperson  
Board of Directors





**NAVAJO  
PRIDE**

**NAVAJO  
AGRICULTURAL  
PROJECT  
INDUSTRY**

## **Block 9 - Stages 2 and 3**

**Proposed PL 93-638 Build Out**

- **Tsosie Lewis, Chief Executive Officer**
- **Lionel Haskie, Operations & Maintenance Manager**

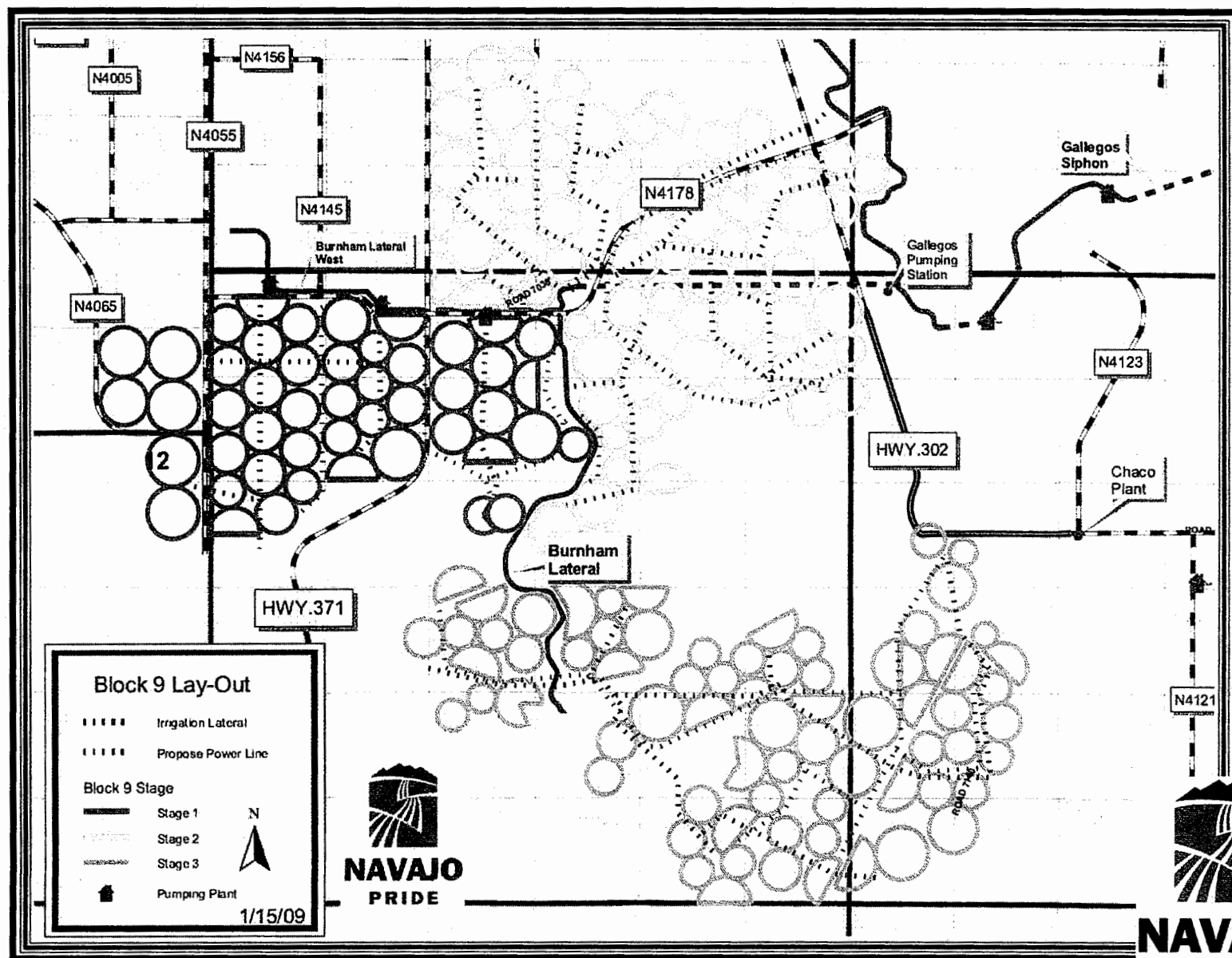
**May 13, 2015**



## **OVERVIEW**

- **1962 Legislation - Federal Project**
- **US Bureau of Reclamation**
  - **Block 9 Stage 2 Final Design – Estimate to finish**
  - **Block 9 Stage 3 Conceptual – Estimate to finish**
  - **USBR Design Approach - discussion**
- **Reclamation Construction Schedule**
  - **Construction & Design are Suspended due to funding levels (current annual funding at \$3.388 m)**

# BLOCK 9 MAP



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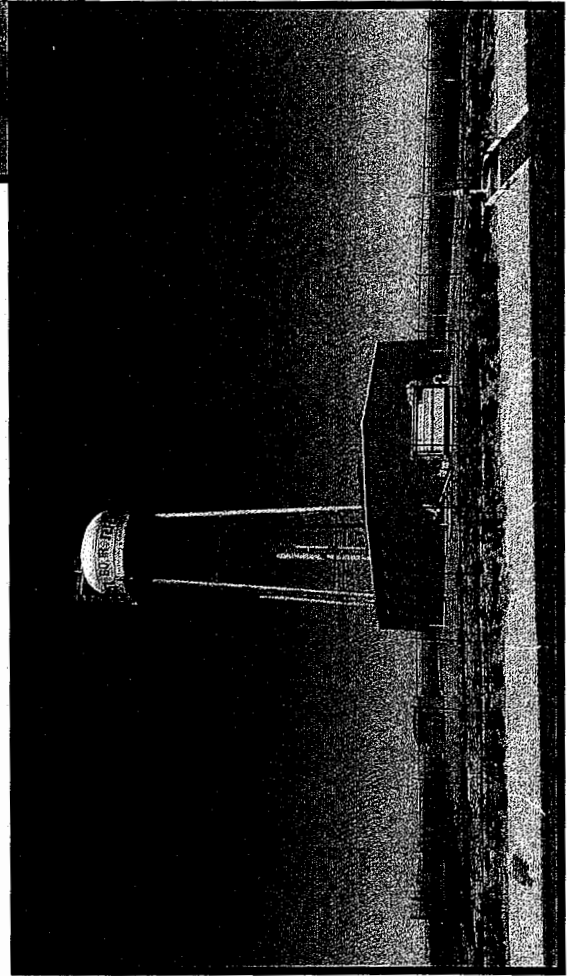
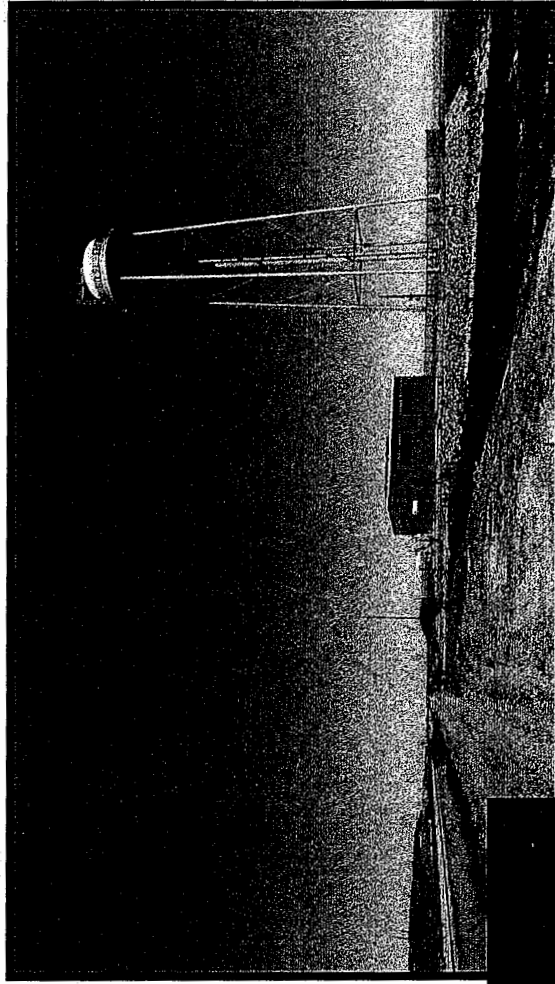
## **BLOCK 9 COMPLETED STRUCTURES**

- **Stage 2 – NIIP Project only**
  - **Burnham Canal**
  - **Pumping Plants B0.1R and B0.9L**
    - **Capacity: 54.6 cfs**
  - **Overhead Power Lines (to B0.1R & B0.9L)**
- **Stage 3 – NIIP Project only**
  - **Burnham Canal**
- **Assets under utilized**
  - **Burnham Canal**
  - **B0.1R and B0.9L Pumping Plants**
  - **Gallegos Pumping Plant**



# BLOCK 9 COMPLETED STRUCTURES

**B0.9L PUMPING PLANT**



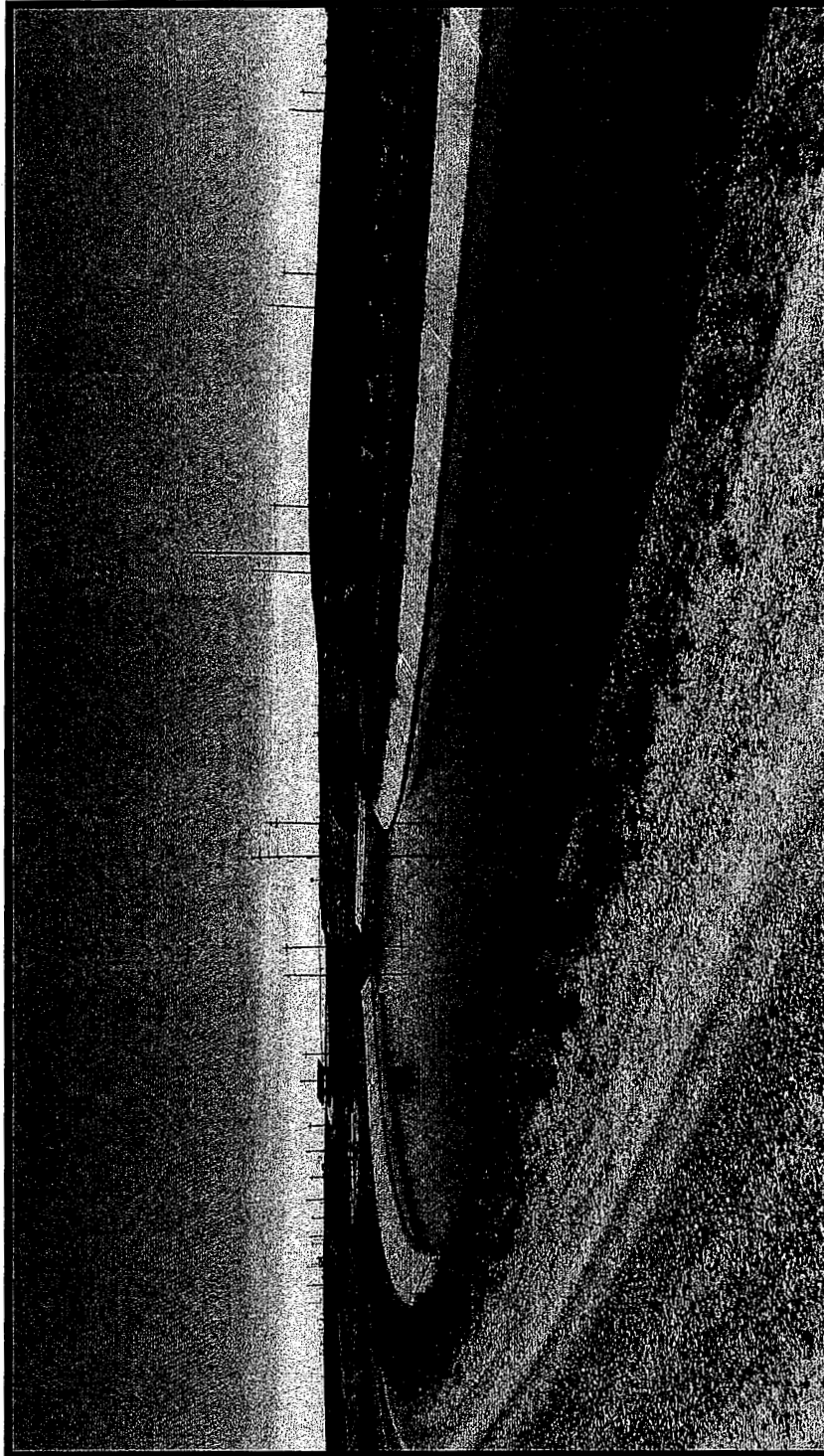
**B0.1R PUMPING PLANT**



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# BLOCK 9 COMPLETED STRUCTURES



**BURNHAM LATERAL**



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# **BLOCK 9 FUTURE STRUCTURES**

## **○ Stage 2**

- **Electrical Lines (Service & Distribution)**
- **Laterals (NIIP/ NAPI)**
- **Pivots & Land Smoothing**

## **○ Stage 3**

- **Electrical Lines (Service & Distribution)**
- **Pumping Plant (B4.6L&R)**
  - **Capacity: 87.00 cfs**
- **Laterals (NIIP/ NAPI)**
- **Pivots & Land Smoothing**

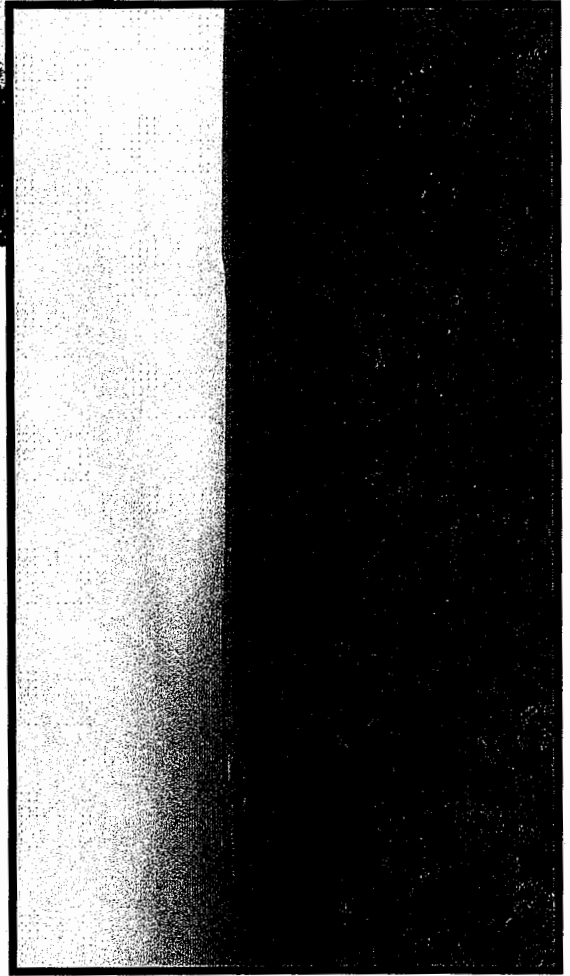
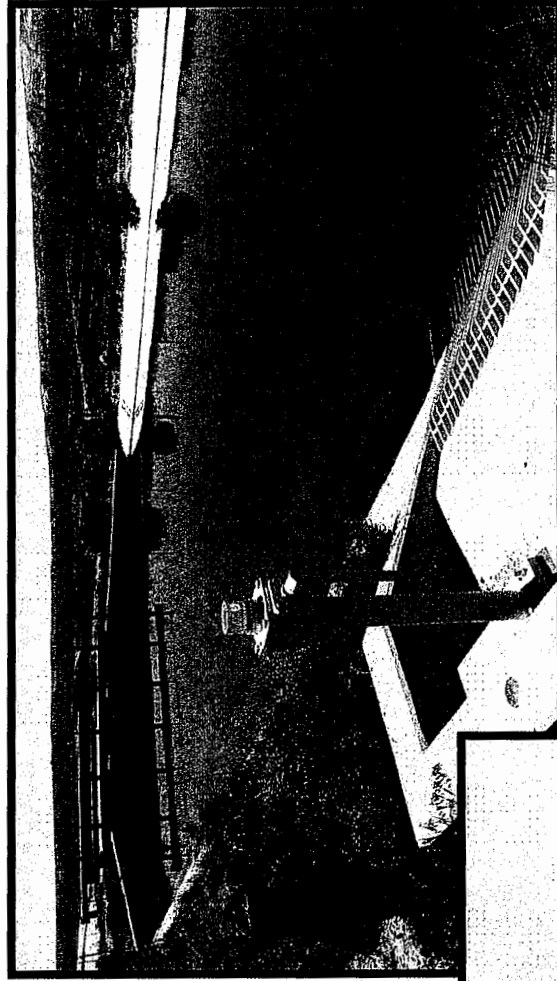






# BLOCK 9 FUTURE STRUCTURES

## B4.6L&R SITE



## FARMLAND



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# 3<sup>RD</sup> PARTY - NIIP & OFD COST ESTIMATE

**Table 1 - Cost Estimate for Navajo Indian Irrigation Project Block 9 Stages 2 and 3\***

Items	Percentage	Cost	
		Block 9-2	Block 9-3
Power Facilities		\$ 3,825,028	\$ 21,993,508
Pumping Station		\$ -	\$ 3,529,697
Pipeline		\$ 9,956,300	\$ 8,846,728
Roads		\$ 6,440,000	\$ 4,830,000
On Farm Development		\$ 5,658,349	\$ 5,065,161
<b>Cost for Listed Items</b>		<b>\$ 25,879,677</b>	<b>\$ 44,265,094</b>
Unlisted Items	20%	\$ 5,175,935	\$ 8,853,019
Gas Well and Pipeline Relocation	5%	\$ 1,293,984	\$ 2,213,255
Design Cost	15%	\$ 3,881,952	\$ 6,639,764
Construction Management	3%	\$ 776,390	\$ 1,327,953
<b>Subtotal Construction Cost</b>		<b>\$ 37,007,938</b>	<b>\$ 63,299,084</b>
Contingency	25%	\$ 9,251,985	\$ 15,824,771
<b>Project Cost</b>		<b>\$ 46,259,923</b>	<b>\$ 79,123,856</b>
<b>2011 Project Cost for Blocks 9-2 and 9-3</b>			<b>\$ 125,383,778</b>
<b>2013 Index Project Cost**</b>			<b>\$ 134,805,681</b>

\*Costs were prepared by Franzoy Consulting, Inc. (March 24, 2011)

\*\*Index cost coefficients are determined by the Bureau of Reclamation Construction Cost Trends

Costs reflect Design and Construction estimates for Navajo Indian Irrigation Project Block 9, Stage 2 & 3

Total Navajo Indian Irrigation Project Block 9, Stage 2 & 3 Acreage = 9,873

## TOTAL = \$134,805,681



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# RECLAMATION NIIP & NAPI OFD COST ESTIMATE (MINUS ROADS)

**Table 2 - US Bureau of Reclamation Construction Cost Estimate for Navajo Indian Irrigation Project  
(Block 9 - Stages 2 & 3)**

Item	Cost (Million)
Block 9, Stage 2 Laterals*	\$ 26.40
Block 9, Stage 3 B4.6L&R, B4.6R-1.05R&L Pumping Plants and Power Lines*	\$ 12.90
Block 9, Stage 3 Laterals*	\$ 42.50
Block 9 Surface Drains*	\$ 9.90
<b>2013 Reclamation Total Project Cost</b>	<b>\$ 91.70</b>

\* Cost Estimates were provided by the Bureau of Reclamation - Farmington Office on May 29, 2013

**Table 3 - Cost estimate for OFD to construct Block 9 - Stages 2 & 3 Center Pivots and Fields\***

Description	Stage 2	Stage 3	Total
Number of Fields	77	72	149
Acres	5235	4638	9873
Center Pivots	\$ 4,327,455.50	\$ 4,593,051.05	\$ 8,920,506.55
Below Ground	\$ 1,812,251.92	\$ 1,866,780.30	\$ 3,679,032.22
Above Ground	\$ 968,416.15	\$ 972,176.88	\$ 1,940,593.03
Land Smoothing	\$ 2,178,870.76	\$ 4,909,846.64	\$ 7,088,717.40
General & Administration	\$ 1,750,000.00	\$ 1,875,750.00	\$ 3,625,750.00
Labor	\$ 1,856,889.00	\$ 2,008,384.00	\$ 3,865,273.00
Power Line Distribution	\$ 1,574,650.00	\$ 2,375,000.00	\$ 3,949,650.00
<b>Estimated Total</b>	<b>\$ 14,468,533.33</b>	<b>\$ 18,600,988.87</b>	<b>\$ 33,069,522.20</b>

\* Cost Estimates were calculated by NAPI Engineer - January 2013

\*\*Index cost coefficients are determined by the Bureau of Reclamation Construction Cost Trends

**TOTAL = \$124,800,000**



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# CROP RETURN

Table 2 - Estimated Net Revenue on Crops Planted for Block 9, Stage 2 & 3

	Percent of Total Acreage	Acres	Yield	Yield Total	Crop Market Value (\$/yield)	Crop Input Costs (\$/acre)	Revenue	Total Input Cost	Net
<b>Stage 2</b>		<b>5,495</b>							
Tablestock (Potatoes)	50%	2,747.50	450 CWT/acre	1236375 CWT	\$ 10.00	\$ 4,149.53	\$ 12,363,750.00	\$ 11,400,833.68	\$ 962,916.33
Wheat	50%	2,747.50	80 BU/acre	219800 BU	\$ 7.50	\$ 520.19	\$ 1,648,500.00	\$ 1,429,222.03	\$ 219,277.98
<b>Stage 2 Total</b>							<b>\$ 14,012,250.00</b>	<b>\$ 12,830,055.70</b>	<b>\$ 1,182,194.30</b>
<b>Stage 3</b>		<b>4,552</b>							
Tablestock (Potatoes)	50%	2,276	450 CWT/acre	1024200 CWT	\$ 10.00	\$ 4,149.53	\$ 10,242,000.00	\$ 9,444,330.28	\$ 797,669.72
Wheat	50%	2,276	80 BU/acre	182080 BU	\$ 7.50	\$ 520.19	\$ 1,365,600.00	\$ 1,183,952.44	\$ 181,647.56
<b>Stage 3 Total</b>							<b>\$ 11,607,600.00</b>	<b>\$ 10,628,282.72</b>	<b>\$ 979,317.28</b>
<b>Total Block 9, Stage 2 &amp; 3 Acreage</b>		<b>10,047</b>				<b>Total</b>	<b>\$ 25,619,850.00</b>	<b>\$ 23,458,338.42</b>	<b>\$ 2,161,511.58</b>



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# **NEXT STEPS**

## **○ FINALIZE LAND ENTITLEMENTS**

- **Withdraw grazing permits in Block 9**
- **Secure Block 9 farmlands with BIA & Navajo Nation**

## **○ FINALIZE BLOCK 9 DESIGN**

- **Stage 2 OFD Design**
- **Value Engineer Stage 2 NIIP Design**
- **Stage 3 – Finalize NIIP & OFD Designs**

## **○ BLOCK 9 CONSTRUCTION**

- **Stage 2 Laterals and OFD**
- **Stage 3 Pumping Plants, Laterals, and OFD**
- **Gallegos Pumping Plant**

