

RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE
24th NAVAJO NATION COUNCIL -- Third Year, 2021

AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, AND
NAABIK'ÍYÁTI' COMMITTEE; APPROVING THE PROPOSED CONSENT DECREE
REGARDING THE CLOSED FORT WINGATE DEPOT ACTIVITY

BE IT ENACTED:

SECTION ONE. AUTHORITIES

- A. The Resources and Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 500(C), exercises oversight authority over environmental protection for the Navajo Nation and People, now and for future generations.
- B. The Naabik'íyáti' Committee of the Navajo Nation Council is established as a standing committee and it shall use Nitsáhákees, Nahat'á, Iiná and Síhasin in exercising oversight authority.
- C. The Naabik'íyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §§ 701(A)(4), (6), (7) and (9), coordinates all federal, county and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to the Navajo Nation; to review and continually monitor the programs and activities of federal and state departments; to assist development of such programs designed to serve the Navajo People and Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments; to assist and coordinate all request for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation; and to coordinate with all committees, Chapters, branches and entities concerned with all Navajo appearances and testimony before Congressional committees, departments of the United States government, state legislatures and departments and county and local governments.

SECTION TWO. FINDINGS

- A. The Consent Decree is to be filed with the United States District Court for the District of New Mexico. The parties to the Consent Decree are (i) the United States of America, on behalf of the United States Department of the Army, (ii) the State of New Mexico, acting through the New Mexico Natural

Resources Trustee and the New Mexico Office of Natural Resources Trust, and the New Mexico Attorney General and the New Mexico Attorney General's Office, (iii) the Pueblo of Zuni, and (iv) the Navajo Nation. The Proposed Fort Wingate Depot Activity Draft Consent Decree Clean Draft 5-31-2021 ("Consent Decree") is attached as **Exhibit A**.

- B. The full text of the Consent Decree is attached as **Exhibit A** and includes the topics: I. Jurisdiction, at pages 3 and 4; II. Parties Bound, at page 4; III. Definitions, at pages 6 through 8; IV. Statement of Purpose, at page 8; V. Payment by the United States, at pages 8 through 11; VI. Release and Covenant Not to Sue, at pages 11 and 12; VII. Effect of Settlement; Contribution Protection, at pages 12 and 13; VIII. Notices and Submissions, at page 13 and 14; IX. Dispute Resolution, at pages 14 and 15; X. Effective Date and Retention of Jurisdiction, at page 15; XI. Integration, at page 15; XII. Inadmissibility and Privilege, at page 15 and 16; XIII. Modification, page 16; XIV. Signatures and Counterparts, at page 16; and XVIII. Final Judgment, at page 16.
- C. The Consent Decree concerns the Fort Wingate Depot Activity Depot ("Depot"), a federal facility located in McKinley County, New Mexico, which occupies 24 square miles and is almost entirely surrounded by federally-owned or administered lands, including both national forest and tribal lands. **Exhibit A**, page 2.
- D. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), environmental remediation of the Depot began in 1980 with the New Mexico Environmental Department as the lead regulatory agency. **Exhibit A**, page 2.
- E. "[A]fter land parcels within the Depot that are not designated to remain under U.S. Army control have met all applicable environmental requirements, such parcels have been or will be transferred to the Department of the Interior-Bureau of Indian Affairs, in trust of the benefit or either the Pueblo of Zuni or the Navajo Nation." **Exhibit A**, page 2.
- F. "[T]he State [of New Mexico] the Pueblo of Zuni, and the Navajo Nation (collectively, 'the Plaintiffs'), have filed a Complaint asserting a claim against the United States under CERCLA for alleged damages for injury to, destruction of, or loss of natural resources belonging to, managed by, or controlled by the Plaintiffs, resulting from the releases of hazardous substances at or from the Depot, including the costs

of assessing such injury, destruction, or loss[.] **Exhibit A**, page 3.

- G. "The mutual objectives of the Parties in entering into this Consent Decree are to: (i) restore, replace, or acquire the equivalent of the Natural Resources injured, destroyed, or lost as a result of hazardous substances released at or from the Depot; (ii) reimburse Past Costs incurred by the State and Tribal Trustees prior to the Effective Date of this Consent Decree; (iii) resolve the United States' liability for Natural Resource Damages as provided herein; and (iv) avoid potentially costly and time-consuming litigation." **Exhibit A**, page 8.
- H. "Natural Resources Damages" shall mean any damages recoverable by the State and the Tribal Trustees on behalf of the public for injury to, destruction of, loss or impairment of Natural Resources as set forth in CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), as a result of hazardous substance releases at or from the Depot, including but not limited to: (i) the costs of assessing such injury, destruction, loss of use, or impairment; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of identifying, planning, implementing, and monitoring such restoration, rehabilitation, replacement or acquisition activities; (iv) compensation for injury, destruction, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.14 and/or the NMNRTA. For purposes of this Consent Decree, Natural Resources Damages shall include Future Costs and Past Costs as defined in this Consent Decree." **Exhibit A**, page 6.
- I. The United States is to pay sums to the State of New Mexico, Pueblo of Zuni and the Navajo Nation to reimburse for Past Costs, to settle Plaintiffs' claims for Future Costs of natural resource restoration activities, in addition to other sums. **Exhibit A**, pages 8 through 11.

SECTION THREE. APPROVING THE PROPOSED CONSENT DECREE REGARDING THE CLOSED FORT WINGATE DEPOT ACTIVITY

The Navajo Nation Council hereby approves the Proposed Fort Wingate Depot Activity Draft Consent Decree Clean Draft 5-31-2021 in the form of or substantially similar to the form of **Exhibit A** as attached, and authorizes the President of the Navajo Nation to execute the same.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 20 in Favor, and 00 Opposed, on this 9th day of December 2021.

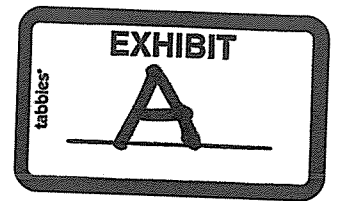

Honorable Seth Damon, Chairman
Naabik'íyáti' Committee

Dec 14, 2021
Date

Motion: Honorable Eugenia Charles-Newton

Second: Honorable Edison J. Wauneka

Chairman Seth Damon not voting



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THE STATE OF NEW MEXICO, §
THE NAVAJO NATION, and THE PUEBLO OF §
ZUNI, §

Plaintiffs, §

v. §

THE UNITED STATES AND THE UNITED §
STATES ARMY §

Defendants §

Case No. _____

[PROPOSED] CONSENT DECREE

This Consent Decree is made and entered into by and among (i) the United States of America (“United States”), on behalf of the United States Department of the Army (“Army”), (ii) the State of New Mexico (“State”), acting through the New Mexico Natural Resources Trustee and the New Mexico Office of Natural Resources Trustee (jointly “ONRT”), and the New Mexico Attorney General and the New Mexico Attorney General’s Office (jointly “AGO”), (iii) the Pueblo of Zuni, and (iv) the Navajo Nation.

WHEREAS, the site that is the subject of this Consent Decree is the closed Fort Wingate Depot Activity (“the Depot”), located in McKinley County, New Mexico, whose former mission was to receive, store, maintain, and ship materials, primarily explosives and military munitions, and to dispose of obsolete or deteriorated explosives and military munitions;

WHEREAS, the active mission of the Depot ceased and the installation closed in January 1993;

WHEREAS, the Depot currently occupies approximately 24 square miles, and is almost entirely surrounded by federally-owned or administered lands, including both national forest and tribal lands;

WHEREAS, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. §§ 9601-9675, environmental remediation of the Depot began in 1980;

WHEREAS, in 1996, the New Mexico Environment Department became the lead regulatory agency at the Depot pursuant to the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 et seq., as amended, and remediation activities are currently being performed under RCRA Permit No. NM6213820974 issued by the New Mexico Environment Department;

WHEREAS, after land parcels within the Depot that are not designated to remain under U.S. Army control have met all applicable environmental requirements, such parcels have been or will be transferred to the Department of the Interior-Bureau of Indian Affairs, in trust for the benefit of either the Pueblo of Zuni or the Navajo Nation;

WHEREAS, ONRT, the Navajo Nation, the Pueblo of Zuni, and the Army have worked cooperatively to evaluate potential injuries to all Natural Resources caused by known activities at the Depot, as well as the Natural Resource Damages potentially associated with such injuries;

WHEREAS, pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300, the President has designated certain federal officials, including the Secretary of Defense, to act as federal trustees for natural resources within their trusteeship;

WHEREAS, the State, acting through ONRT and the AGO, is authorized to seek Natural Resource Damages pursuant to, among other authorities, the New Mexico Natural Resources Trustee Act (“NMNRTA”), N.M. Stat. Ann. Section 75-7-1 through -5 (1978);

WHEREAS, ONRT has been delegated authority to act as State Trustee for Natural Resources impacted by the release of hazardous substances at or from the Depot;

WHEREAS, pursuant to CERCLA Section 107(f), 42 U.S.C. § 9607(f), and the National Contingency Plan, 40 C.F.R. Part 300, the Pueblo of Zuni and the Navajo Nation have the authority to act as Tribal Trustees for Natural Resources impacted by the release of hazardous substances at or from the Depot and to seek Natural Resource Damages;

WHEREAS, the State, the Pueblo of Zuni, and the Navajo Nation (collectively, “the Plaintiffs”), have filed a Complaint asserting a claim against the United States under CERCLA for alleged damages for injury to, destruction of, or loss of natural resources belonging to, managed by, or controlled by the Plaintiffs, resulting from the releases of hazardous substances at or from the Depot, including the costs of assessing such injury, destruction, or loss;

WHEREAS, this Consent Decree resolves all claims by the Plaintiffs against the United States for Covered Matters as defined in this Consent Decree; and

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm’s length, fully resolves the Covered Matters, will expedite the restoration of allegedly injured natural resources, and will avoid prolonged and complicated litigation between the Parties. The Court finds that this Consent Decree is fair, reasonable, lawful and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 9613. The Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge this Court's jurisdiction to enter or enforce this Consent Decree.

II. PARTIES BOUND

2. This Consent Decree binds the United States, the State, the Pueblo of Zuni, and the Navajo Nation. There are no third-party beneficiaries of this Consent Decree.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA, or in regulations promulgated under CERCLA, shall have the meaning assigned to them therein. When terms listed below are used in this Consent Decree, the following definitions apply:

(a) "AGO" means the New Mexico Attorney General, the New Mexico Attorney General's Office and any successor officers, departments or agencies.

(b) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

(c) "Consent Decree" shall mean this Consent Decree.

(d) "Consensus" shall mean that all Trustees agree with or do not object to a proposed recommendation or action.

(e) "Covered Matters" shall mean Natural Resources Damages for any injury to any Natural Resource resulting in whole or in part from any known release or threatened

release of any hazardous substance, pollutant or contaminant at or from the Depot, provided that such release or threatened release occurred or commenced prior to the Effective Date of this Consent Decree.

(f) “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

(g) “Depot” shall mean the Fort Wingate Depot Activity, a federal facility located in McKinley County, New Mexico, as described more specifically in the Complaint.

(h) “Effective Date” shall mean the effective date of this Consent Decree as provided by Paragraph 18.

(i) “Escrow Account” shall mean the escrow account as defined in Paragraph 8 of this Consent Decree, which shall be used and managed in accordance with that Paragraph.

(j) “Future Costs” shall mean the costs that the State and the Tribal Trustees will incur after the entry of the Consent Decree in connection with planning, implementing, monitoring, and completing the restoration activity or activities funded through this Consent Decree.

(k) “Natural Resources” shall have the meaning provided in CERCLA § 101(16), 42 U.S.C. § 9601(16).

(l) “Natural Resource Damages” shall mean any damages recoverable by the State and the Tribal Trustees on behalf of the public for injury to, destruction of, loss or impairment of Natural Resources as set forth in CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), as a result of hazardous substance releases at or from the Depot, including but not limited to: (i) the costs of assessing such injury, destruction, loss of use, or impairment; (ii)

the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of identifying, planning, implementing, and monitoring such restoration, rehabilitation, replacement or acquisition activities; (iv) compensation for injury, destruction, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and/or the NMNRTA. For purposes of this Consent Decree, Natural Resources Damages shall include Future Costs and Past Costs as defined in this Consent Decree.

(m) “Past Costs” shall mean all costs incurred by the State and Tribal Trustees prior to entry of the Consent Decree in identifying and quantifying injuries to Natural Resources, and Natural Resource Damages potentially associated with such injuries, as a result of hazardous substance releases at or from the Depot.

(n) “ONRT” means the New Mexico Natural Resources Trustee, the New Mexico Office of Natural Resources Trustee and any successor officers, departments, or agencies.

(o) “Parties” shall mean the United States, the State, the Pueblo of Zuni, and the Navajo Nation.

(p) “Plaintiffs” shall mean the State, the Pueblo of Zuni, and the Navajo Nation.

(q) “Relevant Administrative Record” shall include any documents maintained in the Army’s Public Information Repository for the Depot¹ as well as any Trustee Administrative Record pertaining to the Depot.

¹ This Repository includes publicly available documents archived in accordance with: (1) Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), and 40 C.F.R. 300.800; (2) records management requirements found in DoDM 4715.20 Encl. 3, Sec. 7; (3) applicable RCRA permit requirements

(r) “Restoration Plan” shall mean a Restoration Plan as provided in 43 C.F.R. § 11.93 which will describe how the payments for Future Costs will be used to address natural resources, specifically what restoration, rehabilitation, replacement, or acquisition of the equivalent resources will occur.

(s) “Restoration Project” shall mean any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planned or implemented by the Trustees pursuant to this Consent Decree and the Restoration Plan.

(t) “State” shall mean the State of New Mexico and its agencies, subdivisions, departments, instrumentalities, and their officers, employees, and agents, including ONRT and the AGO.

(u) “State and Tribal Trustees” shall mean, collectively, ONRT, the Pueblo of Zuni, and the Navajo Nation.

(v) Trustee Administrative Record shall mean any publicly available records pertaining to the Depot that are compiled or maintained by or on behalf of a Trustee pursuant to CERCLA or its implementing regulations, RCRA or its implementing regulations, or any other applicable records retention requirement under federal, state or tribal law, including but not limited to the laws of the Navajo Nation and the Pueblo of Zuni.

(w) “Trustees” shall mean, collectively, ONRT, the Pueblo of Zuni, the Navajo Nation, and the Army. When used in the singular, “Trustee” shall mean any of those entities.

to compile and maintain a publicly available record; and (4) other federal or state requirements to collect and retain information pertaining to the Depot. Such documents may be accessed in person by public visitors to the Repository or through www.ftwingate.org

(x) “United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities, and their officers, employees, and agents.

IV. STATEMENT OF PURPOSE

4. The mutual objectives of the Parties in entering into this Consent Decree are to:

(i) restore, replace, or acquire the equivalent of the Natural Resources injured, destroyed, or lost as a result of hazardous substances released at or from the Depot; (ii) reimburse Past Costs incurred by the State and Tribal Trustees prior to the Effective Date of this Consent Decree; (iii) resolve the United States’ liability for Natural Resource Damages as provided herein; and (iv) avoid potentially costly and time-consuming litigation.

V. PAYMENT BY THE UNITED STATES

5. As soon as reasonably practicable after the Effective Date of this Consent Decree, the United States, on behalf of the Army, shall pay the sum of \$103,210.00 to the State to reimburse the State’s Past Costs. Payment to the State shall be in the form of an electronic funds transfer per instructions that the State shall provide to the United States no later than 30 days following the Effective Date.

6. As soon as reasonably practicable after the Effective Date of this Consent Decree, the United States, on behalf of the Army, shall pay the sum of \$37,567.00 to the Pueblo of Zuni to reimburse the Pueblo of Zuni’s Past Costs. Payment to the Pueblo of Zuni shall be in the form of an electronic funds transfer per instructions that the Pueblo of Zuni shall provide to the United States no later than 30 days following the Effective Date.

7. As soon as reasonably practicable after the Effective Date of this Consent Decree, the United States, on behalf of the Army, shall pay the sum of \$19,993.84 to the Navajo Nation to reimburse the Navajo Nation’s Past Costs. Payment to the Navajo Nation shall be in the form

of an electronic funds transfer per instructions that the Navajo Nation shall provide to the United States no later than 30 days following the Effective Date.

8. As soon as reasonably practicable after the Effective Date of this Consent Decree, the United States, on behalf of the Army, shall pay the sum of \$1,290,299.00 in settlement of Plaintiffs' claims for Future Costs. Payment shall be in the form of an electronic funds transfer into an Escrow Account identified in Attachment [X]. The use of the funds provided by the United States pursuant to this Paragraph shall be subject to the following conditions:

(a) All funds disbursed from the Escrow Account shall be used to pay for the Future Costs of natural resource restoration activities sponsored by the State and Tribal Trustees in accordance with this Consent Decree and applicable law. All such funds shall be used to plan and implement projects to restore, rehabilitate, replace and/or acquire the equivalent of injured Natural Resources as a result of the release of hazardous substances at or from the Depot, including but not limited to any administrative costs and expenses necessary for and incidental to restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken. The funds disbursed from the Escrow Account shall not be used for any other purposes.

(b) The following sums shall be disbursed from the Escrow Account to reimburse the following Trustees for the costs and expenses of their anticipated future Restoration Project planning activities: to ONRT, \$ 92,987.00 (of which the State presently anticipates that it will spend approximately \$ 56,987.00 to retain the services of a consultant to assist with these activities); to Pueblo of Zuni, \$16,000.00; and to Navajo Nation, \$44,162.00. The Army shall not receive any reimbursement of costs or expenses from the Escrow Account.

(c) Unless the Trustees otherwise agree in writing by Consensus, and consistent with the limitations in Paragraph 8(a) above, the remaining funds in the Escrow Account shall be allocated to Restoration Projects design and implementation as follows: for upland/lowland damages (including groundwater), \$1,020,150.00; for cultural services damages, \$117,000.00.

(d) Any interest earned on the Escrow Account shall be allocated to Restoration Projects design and implementation in the same proportion as the funds subject to Subparagraph 8(c).

(e) Unless the Trustees otherwise agree in writing by Consensus, funds subject to Subparagraphs 8(c) and (d) shall not be disbursed prior to the Trustees' approval of the Restoration Plan and the completion of any public notice and comment period applicable to that plan.

(f) Any Restoration Projects performed with funds disbursed from the Escrow Account pursuant to this Consent Decree shall not be performed on land within the jurisdiction of the Army.

(g) Any amount disbursed to the State under subparagraph 8(b) that is determined to be in excess of necessary consultant service fees shall be allocated to Restoration Projects design and implementation in the same proportion as the funds subject to Subparagraph 8(c).

9. If any payment by the United States required pursuant to Paragraph 5, 6, 7 or 8 above is not made in full within 120 days after the Effective Date of this Consent Decree, then interest on the unpaid balance of such payment shall be paid, and shall begin to accrue commencing on the 121st day after the Effective Date and continuing to accrue through the date

payment is made in full. Interest shall accrue at the same rate as is specified for interest on investments of the Hazardous Substances Superfund established under subchapter A of Chapter 98 of Title 26 of the U.S. Code.

10. Payment by the United States is subject to the availability of funds appropriated for such purpose. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42 and 1511-19, or any other provision of law.

VI. RELEASE AND COVENANT NOT TO SUE

11. Effective upon the date of completion of the payments by the United States that are required by Paragraphs 5, 6, 7 and 8 above, the Plaintiffs hereby release, discharge, and covenant not to sue or take administrative action against the United States (including the Department of the Army and any other department, agency or instrumentality of the United States), or any past or present official, officer, director, employee, agent or contractor of the United States (or any past or present official, officer, director, employee, agent or subcontractor of such contractor), pursuant to CERCLA or any other federal, state, or tribal statutory or common law, including but not limited to the laws of the Navajo Nation and Pueblo of Zuni, for Covered Matters.

12. Notwithstanding any other provision of this Consent Decree, each of the Plaintiffs reserves the right to initiate a new action against the United States seeking recovery of Natural Resources Damages, based on: (i) conditions with respect to the Depot, unknown to the Plaintiff as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that cause or contribute to injury to, destruction of, or loss of Natural Resources (“Unknown Conditions”); or (ii) information received by the Plaintiff after the date of lodging of this

Consent Decree which indicates that there is injury to, destruction of, or loss of Natural Resources of a type that was unknown to the Plaintiff as of the date of lodging of this Consent Decree (“New Information”). For purposes of this Paragraph 12, the information and conditions known to a Plaintiff shall include any information or conditions listed in or identified in any records or documents relating to the Depot that were publicly available as of the date of lodging of this Consent Decree, or that were in the possession or under the control of that Plaintiff prior to that date. Publicly available records include, but are not limited to, Relevant Administrative Records.

13. The United States reserves any and all defenses or counterclaims it may have with respect to the claims reserved in Paragraph 12, except that the United States shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting or other defense based upon any contention that the claims reserved in Paragraph 12 were or should have been brought in the instant case; provided, however, that nothing in this Paragraph 13 affects the enforceability of the covenants by Plaintiffs that are set forth in Paragraph 11.

VII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

14. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Depot against any person not a Party hereto.

15. The Parties agree, and by entering this Consent Decree this Court finds, that the United States is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims for the matters addressed in this Consent Decree, as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). The “matters addressed” in this Consent Decree are the Covered Matters defined in Paragraph 3(e) above.

16. The Parties agree that upon the entry of this Consent Decree, the United States has “resolved its liability” for Covered Matters within the meaning of CERCLA § 113(f)(2) and (3), 42 U.S.C. § 9613(f)(2) and (3).

17. Nothing in this Consent Decree shall be construed to be a waiver of the sovereign immunity of any Party.

18. Nothing in the Consent Decree is intended or should be construed to alter: (a) any right to withdraw and use water, (b) any ownership of water, (c) the legal standards that govern any right to withdraw, use, or own water, (d) the adjudication of any such rights, or (e) any other authority to manage or control water.

VIII. NOTICES AND SUBMISSIONS

19. All notices and written communications pertaining to this Consent Decree shall be sent to the Parties at the addresses specified in this Paragraph.

As to the United States:

[CONTACT]

As to the State of New Mexico:

Maggie Hart Stebbins
Trustee
Office of Natural Resources Trustee
121 Tijeras Avenue, NE, Suite 1000
Albuquerque, New Mexico 87102

Bill Grantham
Assistant Attorney General
New Mexico Office of the Attorney General
201 3rd Street NW, Suite 300
Albuquerque, New Mexico 87102

As to the Pueblo of Zuni:

Governor Val R. Panteah, Sr.
Tribal Administrator, Pueblo of Zuni
P.O. Box 339
Zuni, NM 87327

David C. Mielke
Sonosky, Chambers, Sachse, Mielke & Brownell, LLP
500 Marquette Avenue, NW, Suite 660
Albuquerque, NM 87102

As to the Navajo Nation:

Jason John, Director
Navajo Department of Water Resources
PO Box 678, Fort Defiance, AZ 86504

Dr. Rudy Shebala
Director,
Division of Natural Resources
PO Box 9000
Window Rock, Arizona 86515

IX. DISPUTE RESOLUTION

20. In the event of any dispute regarding the Consent Decree arising after its final approval by the Court, the Parties shall attempt to resolve such dispute through negotiation, mediation, non-binding arbitration or any other form of alternative dispute resolution as may be agreed to by the Parties at the time the dispute arises.

21. In the event that the Parties fail to resolve a dispute pursuant to the preceding Paragraph within sixty (60) days or such longer period as the Parties may agree upon, any Party

may seek to enforce such rights and remedies as may be available to such Party, including but not limited to petitioning the Court to interpret or enforce any term of this Consent Decree.

X. EFFECTIVE DATE AND RETENTION OF JURISDICTION

22. The Effective Date of this Consent Decree shall be the date upon which it is entered by the Court as an order and final judgment.

23. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate to construe, modify, implement, terminate, reinstate or enforce compliance with the terms of this Consent Decree or for any further relief as the interest of justice may require.

XI. INTEGRATION

24. This Consent Decree constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement of claims embodied herein. The Parties acknowledge that there are no representations, agreements or understandings between the Parties relating to the settlement between them other than those expressly contained in this Consent Decree.

XII. INADMISSIBILITY AND PRIVILEGE

25. Other than in a proceeding to enforce the terms of this Consent Decree, nothing in this Consent Decree shall be admissible as evidence to prove liability for or invalidity of any claim or defense in this matter or the amount of any such claim. No Party is making any admission of fact or law by entering into this Consent Decree.

26. Nothing in this Consent Decree, nor any actions taken in accordance with this Consent Decree, shall be construed as a waiver of the attorney-client privilege, work-product immunity or any other privilege or immunity that has been or may be asserted in this or any other matter.

XIII. MODIFICATION

27. This Consent Decree shall not be modified or amended except by mutual written consent of the Parties and Order of the Court.

28. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

XIV. SIGNATURES AND COUNTERPARTS

29. Each undersigned representative of a signatory to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such signatory to this document. This Consent Decree may be executed in multiple counterparts, each one of which shall be deemed an original, but all of which constitute one and the same Consent Decree.

XVIII. FINAL JUDGMENT

30. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the Parties. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

SO ORDERED this ____ day of _____, 20__

United States District Judge
District of New Mexico

THE UNDERSIGNED PARTIES enter into this Consent Decree in State of New Mexico et al. v.
The United States:

FOR THE UNITED STATES OF AMERICA:

THE UNDERSIGNED PARTIES enter into this Consent Decree in State of New Mexico et al. v.
The United States:

FOR THE STATE OF NEW MEXICO:

Date: _____

William Grantham
Assistant Attorney General
New Mexico Office of the Attorney
General
201 Third St. NW, Suite 300
Albuquerque, NM 87102
Telephone: (505) 717-3520
E-Mail: wgrantham@nmag.gov

Date: _____

Maggie Hart Stebbins
Trustee
New Mexico Office of Natural
Resources Trustee
121 Tijeras Avenue, NE Suite 1000
Albuquerque, NM 87102

THE UNDERSIGNED PARTIES enter into this Consent Decree in State of New Mexico et al. v.
The United States:

FOR THE NAVAJO NATION

Date: _____

Harrison Karr, Attorney
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
Email HKarr@NNDOJ.org
Phone 928-871-6347
Fax 928-871-6177

Date: _____

The Honorable Jonathan Nez
President

THE UNDERSIGNED PARTIES enter into this Consent Decree in State of New Mexico et al. v. The United States:

FOR THE PUEBLO OF ZUNI

Date: _____

David C. Mielke
Sonosky, Chambers, Sachse,
Mielke & Brownell, LLP
500 Marquette Avenue, NW,
Suite 660
Albuquerque, NM 87102
Phone (505) 247-0147
Email dmielke@abqsonosky.com

Date: _____

The Honorable Val R. Panteah, Sr.
Governor, Pueblo of Zuni

NAVAJO NATION

1148

12/9/2021

Naa'bik'iyati' Committee Regular Meeting

11:11:42 AM

Amd# to Amd#

Consent Agenda

PASSED

MOT Charles-Newton

Legislations: 0195-21,

SEC Wauneka, E

0228-21, 0243-21, 0254-21

Yeas : 20

Nays : 0

Excused : 1

Not Voting : 2

Yea : 20

Begay, E

Crotty

Nez, R

Tso, E

Begay, K

Daniels

Slater, C

Tso, O

Begay, P

Freeland, M

Stewart, W

Wauneka, E

Brown

Henio, J

Tso, C

Yazzie

Charles-Newton

James, V

Tso, D

Yellowhair

Nay : 0

Excused : 1

Smith

Not Voting : 2

Walker, T

Halona, P

Presiding Speaker: Damon