

Navajo Indian Irrigation Project
References to Water and Water Rights
Printed Statements Appended

1. Senate Hearings on S. 3648 - July 9 and 10, 1958
 - (a) Governor Mechem statement at page 30 - sharing of shortages
 - (b) Paul Jones, Chairman, Navajo Tribal Council, statement at page 70, 71 - sharing of shortages
2. House Hearings on H.R. 2352, H.R. 2494 and S. 72 - May 20, 1960
 - (a) Bill Palmer - statement at page 41, 42, 43, 44 - sharing of shortages
3. Senate Hearings on S. 107 - March 15, 1961
 - (a) Maurice McCabe, executive secretary, Navajo Tribe, statement at page 36 water users from Navajo Dam would have equal priority
4. House Hearings on H.R. 2552, H.R. 6541 and S. 107 - April 24, 25, 26 and June 1, 1961
 - (a) Letter to Congressman Aspinall from Secretary Udall dated April 5. At page 10 - acreage, diversion and depletion for project
 - (b) Maurice McCabe, exec. sec. Navajo Tribe statement at page 33 - same as statement in 3(a) above
 - (c) Maurice McCabe statement at page 37 and letter at page 46 winters doctrine
5. Public Law 87-483
 - Sec. 2 principle purposes of project
 - Sec. 11 water shortage sharing provisions
 - Sec. 12 preferential rights to water
6. Resolutions of the Navajo Tribe
 - (a) CD-86-57 Navajo Tribal Council Dec. 12, 1957 Favoring introduction of bill
 - (b) CAP-56-66 Navajo Tribal Council April 28, 1966 Objection to re-evaluation of the project
 - (c) CO-106-66 Navajo Tribal Council Oct. 5, 1966 Confirmed previous resolution

(d) CJA-5-67 Navajo Tribal Council Jan. 23, 1967
Request accelerated construction

Numerous meetings were held with the Navajos and their representatives in the Bureau of Indian Affairs to work out a satisfactory operating agreement for the projects.

Following a 2-day meeting at Window Rock in December 1957, the Navajo Tribal Council unanimously approved a resolution advocating equality of use of the waters of the San Juan and its tributaries above Navajo Reservoir for all future projects including the proposed Navajo irrigation project.

This action of the Navajo Tribal Council is an historic one. It recognizes that the best possible use of the available water supply involves the sharing of shortages by all water users under future projects at times of extreme drought when the runoff is inadequate for those uses.

The language of section 7 of the pending bill provides for equality of use while fully protecting the water supplies of the two projects authorized therein. This provision is important to developments in the basin which require Federal expenditure and private risk capital, and these developments will greatly benefit the Navajos. I strongly recommend this important provision to the Congress.

The State engineer in 1955 and 1956 initiated filings covering all of the unappropriated waters of the San Juan River and its tributaries above Navajo Dam. These filings were assigned to the Secretary of the Interior some months ago. The Secretary has submitted plans pursuant to these filings in compliance with New Mexico law and is, therefore, enabled not only to protect fully the water uses sought in the current legislation, but also to plan future developments so that ultimate usages will have an adequate water supply without threatening that of the earlier developments.

Under the provision of S. 3648 all uses to be made of water covered by the Secretary's filings, including the authorized Hammond project, will be served in parity. This provision does not, of course, apply to any uses existing or authorized under State or Federal law earlier than the priority date of the Secretary's filings.

I have gone into the above matters in some detail because I feel that it is important to show that the State, in cooperation with the Bureau of Reclamation, the Bureau of Indian Affairs, and the Navajo Tribe has spent a great deal of time and effort to develop a plan which will provide for the optimum use of available water supply and permit orderly planning and development of future water uses in accordance with New Mexico's compact allocation.

The plan embodied in the present bill represents the culmination of years of careful detailed planning. Because of the wisdom and statesmanship displayed by New Mexico people in both basins we have avoided the pitfalls inherent in this coordinated plan of development which involves both in-basin and out-of-basin uses.

I will not attempt to describe or comment on the technical aspects of the two projects. Firstly, I don't understand them and don't wish to confuse you thereby, but they will be detailed fully to you by engineers of the Department of Interior and will be touched upon by New Mexico's engineers.

At this time I want to discuss some of the critical comments and objections made by interested States concerning the proposed legislation.

Senate 3.3648 *Western Right - July 1958*
70 *July 7, 10, 1953 Paul Jones*

NAVAJO IRRIGATION—SAN JUAN-CHAMA DIVERSION

1(b)

Senator ANDERSON. May I go on and say, has the Navaho Indian Tribal Council or its representatives had a chance to examine the background of these tables that you have presented here?

Mr. BENNETT. Not to my knowledge. We have taken it up with the officials of the Bureau of Indian Affairs; perhaps through them they have seen it. I do not know.

Mr. PAUL JONES. It was not given to the tribe, not the way it is diagramed here.

Senator ANDERSON. Mr. Jones, I recognize that they may not have taken it table by table or one bracket by another bracket up with you. But have your people had a chance to pass on the principles that are involved in these figures?

Mr. PAUL JONES. Yes.

Senator ANDERSON. Through your proper legal representatives and engineering counsel, will you make a study of this particular table and supply for the record a comment as to whether the Navahos agree that this is a basis upon which the Secretary could administer the provisions of the bill in case it were to be enacted?

Mr. PAUL JONES. Yes, sir.

(Mr. Jones subsequently advised that he had no further comments.)

Senator ANDERSON. I would say, Mr. Dominy, that would pretty well establish how this is to be handled if the State has agreed to it and the Navaho Tribal Council officially expressed itself on it.

Mr. DOMINY. I think that is an excellent way to handle it, Mr. Chairman.

Senator ANDERSON. In the absence of complicating statements on the floor, certainly this will be legislative history.

Mr. BENNETT. It might be helpful, Mr. Chairman, if I took a minute and roughed it out for you.

Senator ANDERSON. Yes, indeed.

Mr. BENNETT. The statement itself is keyed directly to the language of the bill.

Senator ANDERSON. You mean the language of the amendment and not the language of the bill, but the language of the amendment as suggested by the Department?

Mr. BENNETT. That is right.

Senator ANDERSON. And therefore, I will put in the record at this point a redraft of section 7 (a) sent me and dated July 8 by the Department of the Interior.

DEPARTMENT OF THE INTERIOR REDRAFT OF SECTION 7 (a)

SEC. 7. (a) No person shall have or be entitled to have the use for any purpose, including uses under the Navajo Indian irrigation project and the initial stage of the San Juan-Chama project authorized by sections 2 and 6 of this Act, of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries originating above Navajo Reservoir to the use of which the United States is entitled, except under contract satisfactory to the Secretary of the Interior and conforming to the provisions of this Act. Such contracts, which, in the case of water for Indian uses, shall be executed with the Navajo Tribe, shall make provision, in any year in which the Secretary anticipates a shortage taking into account both the prospective runoff originating above Navajo Reservoir and the available water in storage in Navajo Reservoir, for a sharing of the available water in the following manner: The prospective runoff shall be apportioned between the contractors diverting above and those diverting at or below Navajo Reservoir in the proportion that the total normal diversion requirement of each group bears to the total of all normal diversion requirements. In the case of contractors diverting above Navajo Reservoir,

each such contract shall provide for a sharing of the runoff apportioned to said group in the same proportion as the normal diversion requirement under said contract bears to the total normal diversion requirements of all such contracts that have been made hereunder: *Provided*, That for any year in which the foregoing sharing procedure either would apportion to any contractor diverting above Navajo Reservoir an amount in excess of the runoff anticipated to be physically available at the point of his diversion, or would result in no water being available to one or more such contractors, the runoff apportioned to said group shall be reapportioned as near as may be among the contractors diverting above Navajo Reservoir in the proportion that the normal diversion requirements of each bears to the total normal diversion requirements of the group. In the case of contractors diverting from or below Navajo Reservoir, each such contract shall provide for a sharing of the remaining runoff together with the available storage in the same proportion as the normal diversion requirement under said contract bears to the total normal diversion requirements under all such contracts that have been made hereunder. The Secretary shall not enter into contracts beyond a total amount of water that, in his judgment, in the event of shortage will result in a reasonable amount being available for the diversion requirements for the Navajo Indian irrigation project and the initial stage of the San Juan-Chama project as specified in sections 2 and 6 of this Act.

(b) (Same as subsection (b) in S. 3648).

(c) This section shall not be applicable to the water requirements of the existing Fruitland, Hogback, Cudai, and Cambridge Indian irrigation projects, nor to the water required in connection with the extension of the irrigated acreages of the Fruitland and Hogback Indian irrigation projects in a total amount of approximately 11,000 acres.

Governor MECHEM. Senator, section 7 (c), the language of the amendment?

Mr. BENNETT. May I answer that?

Senator ANDERSON. Yes; I would rather it would be answered by the Department.

Mr. BENNETT. The section (c) is a new subsection which is the language that excludes from the application of the formula the existing four little Indian irrigation projects.

Senator ANDERSON. Which would total about 26,000 acres. They have prior established water rights, and it would be a question of whether you can go in and interfere with those water rights at a subsequent time. Is that not correct?

Mr. BENNETT. It was not our intention that those projects be subject to the sharing formula, and because of the language used in subsection 7 (a) that the formula applies to the water to which the United States is entitled, which would automatically include those four units, we had to exclude them specifically by a new subsection (c).

Senator ANDERSON. I think, Governor, it is like some of these other questions we have had up here, where you have extinguished this prior established right, and where the water has been put to beneficial use. There might be some question whether you could go back retroactively and interfere in any way with their rights. Since they involve only 11,000 acres and it is water that is already being taken, the sharing principle need not apply to those particular pieces of land, and therefore the Department of the Interior has opposed the elimination of a piece of land, so that there would be no legal question coming in at a later date over the sharing principle. It could be possible that if the bill were to be enacted into law, and someone wanted to make trouble just for the sake of making trouble, they might go and get 1 of these 4 to come in as a party to litigation and say, "I have been deprived of my rights," and that would be an unfortunate circumstance, I would think.

Statement of William Palmer
House hearings on H.R. 2352, H.R. 2494 + 572
May, 1960

Mr. ASPINALL. And has no rights to any of the funds of the Colorado storage and development basin fund?

Mr. PALMER. This I would believe would be the situation, based on the instructions of the Congress, as contained in the upper Colorado authorization and on the bills now before the committee.

Mr. ASPINALL. The reason I bring it up is that these two projects are handled so closely together here in this legislation. I think it would be far easier to explain if we had a title I for one project and title II in the same bill for the second project.

The project as contemplated by the Bureau does have a direct effect, has it not, upon the Animas-LaPlata project?

Mr. PALMER. Only to the extent of the availability of water within the basin. You have to consider the entire water supply, both that originating in the Animas-LaPlata Basin and that originating in the San Juan Basin, and how you apportion shortages, if there are any, between the various entities served under the river system.

Mr. ASPINALL. The Bureau does consider that could be an agreement arrived at between the two States and not an agreement arrived at by the Bureau or not a matter of supervision by the Bureau; is that correct?

Mr. PALMER. That is correct. Mr. Chairman, I have a prepared statement covering procedures for sharing water supply during periods of shortage in the San Juan River Basin. This goes to section 7 of the bills. You may want to include this statement in the record.

Mr. ASPINALL. Without objection, the statement referred to will be included in the record at this point.

(The statement follows:)

APPLICATION OF PROPOSED PROCEDURES FOR SHARING WATER SUPPLY DURING PERIODS OF SHORTAGE, SAN JUAN RIVER BASIN

The objective of section 7 of H.R. 2352 and 2494, broadly stated, is that during times of water shortages, water users will each assume a pro rata share of that shortage. To state this another way, each water user, in times of short supply will share that supply, rather than to rely upon a system of priorities. Adoption of this objective or principle leads to broader resource development.

The principle would apply only to water to which the United States has a right, with the exceptions of certain small existing Indian projects and extensions thereto. Valid prior existing rights to water would, of course, not come under the principle but would continue to be senior. Available inflow to be shared is then the actual, or estimated, or forecasted inflow minus sufficient water to serve diversions not subject to the sharing principle.

Operating studies made by the State officials show that the principle is workable within the limits of contracts for water which the Secretary might reasonably make. As provided in the last sentence of section 7(a), the Secretary would be precluded from making contracts in amounts such that application of the principle would create intolerable shortages.

The sharing of shortages principle is deemed essential by both the State of New Mexico and the Navajo Tribe in the interests of providing reasonable assurances of the availability of water for future municipal and industrial uses. In order to broaden the base of economic opportunity in the area both the State and the tribe wish to encourage such uses within reasonable limits that will not impair the feasibility of the irrigation developments proposed in the legislation.

The have both requested, therefore, that the Secretary of the Interior administer the available water supply in such manner as to give effect to the principle of equality in the sharing of that water. This would be accomplished through the medium of contracts covering uses hereinafter instituted embracing the sharing of water concept. Obviously, the key to assuring that the available water supply will not be overburdened by demand in the event of shortage, to

the consequent detriment of all users, lies in the determination of the total amount of water that will be placed under contract including the irrigation requirements provided for in the legislation. Section 7 contains, in that respect, an admonition to the Secretary not to enter into contracts beyond such total amount as will in his judgment, in the event of shortage, leave a reasonable amount of water available to meet the diversion requirements of the Navajo Indian irrigation project and the initial stage of the San Juan-Chama project as provided in sections 2 and 6 of the bill.

Application of the principle, in terms of procedures to be followed, is somewhat complicated. For this reason, the procedures to be followed and the steps to be taken, are hereinafter set forth in mathematical terms or formulas.

The evaporation factor E is here handled as a reduction to inflow. By this process water users above, below, and from Navajo Reservoir stand a share of the Navajo Reservoir evaporation loss. The principle could also apply if evaporation was considered as an addition to, or part of, total demand. In this latter event, it would be necessary to assign a share of the evaporation loss to the group of contractors above Navajo and to the group below such that $D_a + D_b$ would continue to equal D , even though D contained the evaporation factor E .

The results of the two methods could be the same by appropriate assignment of the evaporation factor E . For simplicity, however, the first described method has been adopted herein. Evaporation cannot here be considered a reduction in available water stored in Navajo Reservoir as to do this would require only those users from or below Navajo to stand the evaporation loss.

In those years in which a shortage is anticipated, or has been determined to exist under the terms of section 7, it will be necessary to make at least monthly estimates of inflow and storage content, with corresponding adjustments if needed in apportioned supply.

Definitions of the symbols used in the formulas are as follows:

R = Available water stored in Navajo Reservoir.

E = Estimated evaporation for year concerned.

I = Anticipated or forecasted inflow (minus uses not subject to sharing) into Navajo Reservoir for year concerned. ($I = I_a + I_b$)

I_a = Available runoff (inflow) apportioned to the group of contractors above Navajo Reservoir.

I_b = Available runoff (inflow) apportioned to the group of contractors below Navajo Reservoir.

I_p = Available runoff physically available at point of contractor's diversion.

D = Total normal diversion requirements of all contractors. ($D = D_a + D_b$)

D_a = Total normal diversion requirements of the group of contractors above Navajo Reservoir.

$D_{b1,2,3}$, etc. = Normal diversion requirement of respective contractors diverting above Navajo Reservoir.

D_b = Total normal diversion requirements of group of contractors diverting from or below Navajo Reservoir.

$D_{b1,2,3}$, etc. = Normal diversion requirements of respective contractors diverting from or below Navajo Reservoir.

Step 1. Determination of water shortage

"Such contracts shall make provision, in any year in which the Secretary anticipates a shortage taking into account both the prospective runoff originating above Navajo Reservoir and the available water in storage in Navajo Reservoir, for sharing available water. * * *"

A water shortage is determined to exist when the available water stored in Navajo Reservoir (R) and the anticipated or forecasted inflow into the reservoir (I) is less than the total normal diversion demand of all contractors, or

$$R + (I - E) < D$$

Step 2. Apportionment of available water supply between contractors above and those at or below Navajo Reservoir

In the event it is determined by step 1 that a water shortage exists, the prospective runoff, the right to which the United States is entitled as defined in the proposed amendment to section 7, would be "apportioned between the contractors diverting above and those diverting at or below Navajo Reservoir in the proportion that the total normal diversion requirement of each group bears to the total of all normal diversion requirements," or

The share of available inflow for the group of contractors above Navajo Reservoir (I_a), is

$$\frac{D_a}{D} \times (I - E)$$

The share of available inflow for the group of contractors below Navajo Reservoir, (I_b), is

$$\frac{D_b}{D} \times (I - E)$$

Step 3. Sharing of available runoff apportioned to contractors above Navajo Reservoir

"In the case of contractors diverting above Navajo Reservoir, each such contract shall provide for a sharing of the runoff apportioned to the said group in the same proportion as the normal diversion requirement under said contract bears to the total normal diversion requirements of all such contracts," or

$$\frac{D_{a1}}{D_a} \times I_a,$$

$$\frac{D_{a2}}{D_a} \times I_a,$$

and so forth, for each of those contractors.

Step 4. Reapportionment when water apportioned is in excess of runoff available to contractor above Navajo Reservoir

"Provided, That for any year in which the foregoing sharing procedure either would apportion to any contractor diverting above Navajo Reservoir an amount in excess of the runoff anticipated to be physically available at the point of his diversion, or would result in no water being available to one or more such contractors, the runoff apportioned to that group shall be reapportioned as near as may be among the contractors diverting above Navajo Reservoir in the same proportion that the normal diversion requirement of each bears to the total normal diversion requirements of the group."

Actually, the manner of handling this provision will depend upon physical factors of amount of diversion and respective locations of points of diversion of contractors to each other. In general, the provision would be accomplished in the following manner when the procedure of step 3 results in apportioning more water to contractor (D_{a1}) than is physically available at his point of diversion:

$$D_{a1} = I_p,$$

$$\frac{D_{a2}}{D_a - D_{a1}} \times (I_a - I_p)$$

$$\frac{D_{a3}}{D_a - D_{a1}} \times (I_a - I_p), \text{ and so forth,}$$

Step 5. Sharing of remaining available runoff and available stored waters among contractors at or below Navajo Reservoir

"In the case of contractors diverting from or below Navajo Reservoir each such contract shall provide for a sharing of the remaining runoff together with the available storage in the same proportion as the normal diversion requirement under said contract bears to the total normal diversion requirements under all such contracts," or

$$\frac{D_{b1}}{D_b} \times (I_b + R)$$

$$\frac{D_{b2}}{D_b} \times (I_b + R)$$

$$\frac{D_{b3}}{D_b} \times (I_b + R),$$

and so forth for each of those contractors

CONCLUSION

Application of the principle of sharing available water has been studied by State officials. The State's study covered the period 1928-54 and included a

diversion demand of some 224,000 acre-feet of water for potential municipal and industrial purposes as well as the presently authorized and contemplated developments. The study showed shortages in only 4 years which averaged about 3 percent for the total period. An extension of the State's study through 1957 resulted in an average shortage of about 6 percent for the total extended period. (Interior—Duplicating Section, Washington, D.C.)

Mr. ASPINALL. Any other questions?

(No response.)

Mr. ASPINALL. Thank you very much, gentlemen.

STATEMENT OF GLENN L. EMMONS, COMMISSIONER OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY G. P. KEESEE, LAND OPERATIONS BRANCH, BUREAU OF INDIAN AFFAIRS

Mr. ASPINALL. At this time the Chair will ask the Honorable Glenn Emmons, Commissioner of Indian Affairs, to come to the witness table. As I understand it, Mr. Emmons will be accompanied by Mr. G. P. Keesee, Land Operations Branch, Bureau of Indian Affairs. Is that correct?

Mr. EMMONS. Yes, sir.

Mr. ASPINALL. We welcome you here once again.

Mr. HALEY. Mr. Chairman, I should like just to say at this particular time that I have enjoyed the work and the cooperation of the gentleman who is now about to testify, Mr. Glenn L. Emmons. I am probably a little hard to get along with sometimes, but I have found, Mr. Chairman and members of this committee, that insofar as Mr. Emmons and his department are concerned, I have had 100 percent cooperation. I want to thank him publicly for that cooperation. I think he has performed outstandingly in a job which, as he knows, is very time consuming and has many very difficult problems.

I want to commend you, sir, for the outstanding record you have made here in behalf of the Indians of this country, and for the splendid service you have rendered not only to them but to the people of this Nation of ours.

Mr. EMMONS. I appreciate that more than I can tell you, Mr. Congressman.

Mr. Chairman, I wish also deeply to endorse the fine comments you have made about Congressman Haley. I have found that Congressman Haley in his position as chairman of the Subcommittee on Indian Affairs, with his tremendous interest in Indian affairs and his devotion to his duties in that position, has given me strength and courage to proceed on this job. I just want to make that a matter of public record, too.

Mr. Chairman and members of the committee, my purpose in coming before you here today is to give you my views both as Commissioner of Indian Affairs and as a longtime friend of the Navajo people, concerning the proposed Navajo Indian irrigation project which you have under consideration.

Although I have known the Navajo people and their problems rather intimately since 1919, the proposal to develop a large irrigable area south of the San Juan River predates me quite a bit. In fact, it goes back to the early years of the present century. During this whole period the people of northwestern New Mexico, both Indian and non-

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NAVAJO INDIAN IRRIGATION PROJECT

The CHAIRMAN. May I stop you there?
How many acres was that, again?

Mr. McCABE. 8,915.

The CHAIRMAN. So that it is proper to say that of the 110,000 acres, more than 100,000 are already in the Navajo Reservation?

Mr. McCABE. Yes, sir.

The CHAIRMAN. And you propose to put the remaining acres in, so that you have a compact unit. The Navajos will make the arrangements for this additional acreage, themselves?

Mr. McCABE. Yes, sir. And the appraisal and the inventory of those lands is presently underway, and we are hopeful that in the near future this acreage will be acquired.

The CHAIRMAN. I am glad you covered that in your statement, because I was asked that question a few days ago, as to this acreage, and I was not in a position to be able to give the information at that time. This figure corresponds with the information given me by the engineers' office at Santa Fe, and would indicate that the great bulk of this land is already reservation land.

Mr. McCABE. That is correct.

The CHAIRMAN. Thank you.

Mr. McCABE. The plan also calls for providing additional canal capacity for delivering water for industrial and municipal use from Navajo Dam, over and above the diversion requirement of the irrigation project. Such additional capacity would be paid for by the industrial and municipal water users with interests. All water users from Navajo Dam would have equal priority.

The Navajo Tribe has consented to this, and relinquished its rights under the Winters doctrine for the water necessary to irrigate the Navajo Indian irrigation project, in order to provide a practicable plan for comprehensive development of the resources and industrial potential of the San Juan Basin. We have taken this important step because such development is necessary for our very survival.

In 1868 the United States, by treaty, promised 160 acres to any Navajo Indian head of a family and 80 acres to any other Navajo Indian over 18 years old who should desire to commence farming on the Navajo Reservation. Already at that time there were about 10,000 Navajo Indians. Obviously, if the treaty obligation is to have significance, irrigation is the most practicable solution.

In the 1868 treaty we were forced to cede all but 3,500,000 acres of our original country of more than 30 million acres. At the same time we agreed to perpetual peace with the white man, and the Government agreed to make farmland available to our members, as I have stated above, and to provide a schoolroom and teacher for every 30 of our children.

Since 1868 our population has grown to over 85,000 and is currently increasing at the rate of about $2\frac{1}{4}$ percent per year. Our reservation has been increased in area to 25,000 square miles, or about 16 million acres, but the added areas, consisting largely of desert land, have not kept pace with the minimum needs of our increased population.

Federal assistance to the Navajo Indians has been invariably too little and too late. Our country is a seriously depressed area, and in its present state cannot be reasonably expected to improve. What-

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House H.R. 2552, H.R. 6541 and S. 107 April 24, 25, 26 and June 1, 1961.
April 5 letter to Approval from Sec. dated 11

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SAN JUAN-CHAMA RECLAMATION PROJECT

San Juan division and Navajo Indian Reservation lands in the Shiprock division. Section 3 of the bills would provide authority for the acquisition and addition of the off-reservation lands to the proposed project. The project's productive area, which would exclude farmsteads and other nonproductive areas within the farm units, would comprise (a) 8,018 acres served by gravity below the main canal in the South San Juan division and 70,359 acres in the Shiprock division, and (b) 25,882 acres served from the pump canals in the Shiprock division, or a total of about 105,100 acres. An average annual diversion of about 508,000 acre-feet of water from the San Juan River would be required for that purpose. This would result in an average annual stream depletion of about 252,000 acre-feet, exclusive of reservoir losses.

The estimated construction cost of the proposed Navajo Indian irrigation project is \$135 million on the basis of January 1958 prices which reflect present prices. Operation, maintenance, and replacement costs are estimated to average about \$481,000 annually at January 1958 prices. The benefit-cost ratio for the project would be 0.64 to 1 on the basis of direct irrigation benefits only, and 1.44 to 1 on the basis of total irrigation benefits. The appraisal of annual economic costs includes the \$2 per acre-foot depletion charge of the storage project assigned to all participating projects for all benefit-cost ratio purposes.

As provided by sections 4 (d) and 6 of the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105), authorizing the Colorado River storage project and participating projects, in the event the Navajo participating project is authorized, payment of costs allocated to irrigation of Indian-owned, tribal or restricted lands within, under, or served by such project within the capability of the land to repay is subject to the act of July 1, 1932 (47 Stat. 564); the costs beyond the capability of such lands to repay are to be determined and, in recognition of the fact that assistance to the Navajo Indians is the responsibility of the entire Nation, shall be nonreimbursable.

The coordinated report on these two proposed projects presents a comprehensive plan of development for the San Juan-Chama project including a plan for development of an initial stage of the project as proposed for authorization in these bills. The plan for ultimate development of the San Juan-Chama project is designed to improve and stabilize the economy of the water-deficient Rio Grande and Canadian River basis of New Mexico by providing supplemental water to meet rapidly increasing needs. This would be accomplished by diverting water from the upper tributaries of the San Juan River. The water would be used for supplemental irrigation, for replacement of watershed depletions in the Rio Grande basis, and for an additional supply for municipal, domestic, and industrial purposes. Recreation and conservation and development of fish and wildlife would also be purposes of the project. On the basis of January 1958 prices, the estimated construction cost for the project facilities studied in the plan of development is about \$149 million. The evaluated total annual benefits for such a development would exceed the estimated annual costs in a ratio of about 1.7 to 1.

The proposed plan for the initial stage development of the San Juan-Chama project, as recommended by the State of New Mexico, contemplates an average annual diversion of about 110,000 acre-feet from the San Juan River for utilization in the Rio Grande in New Mexico. The imported waters would be used for municipal and industrial water supply (57,300 acre-feet) for the city of Albuquerque; new and supplemental irrigation water supply (30,100 acre-feet) to about 39,300 acres of land in the Cerro, Taos, Llano, and Pojoaque tributary irrigation units in the Rio Grande basis, New Mexico; and supplemental water (22,600 acre-feet) for about 81,600 acres of irrigable land in the existing Middle Rio Grande Conservancy District. Recreation and conservation and development of fish and wildlife would also be purposes of the initial stage of development.

The proposed plan of development for the initial stage would involve three major elements, namely, diversion facilities (diversion dams and conduits), regulation facilities (Heron No. 4 Dam and Reservoir, and enlargement of outlet works of the existing El Vado Dam), and water use facilities (principally for the tributary irrigation units). Minimum basic recreation facilities would also be provided at the five project reservoirs.

The estimated construction cost of the project features of the proposed initial stage, on the basis of January 1958 prices that reflect current price levels, is \$86 million, which includes about \$400,000 for minimum basic recreation facilities. Project operation, maintenance, and replacement costs are estimated

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House 42552, HR 6541 and S 107 April 24, 25, 26 and June 1, 1911
Maurice McCabe

STATEMENT OF J. MAURICE McCABE, EXECUTIVE SECRETARY,
NAVAJO TRIBE

Mr. McCABE. Mr. Chairman and members of the committee, my name is J. Maurice McCabe, I reside at Window Rock, Ariz., and am appearing here today on behalf of the Navajo Tribe of Indians of which I am executive secretary.

The Navajo Tribe of Indians urges favorable consideration of legislation which would authorize the Navajo Indian irrigation project. Legislation to accomplish the authorization of the Navajo Indian irrigation project is presently before the House in H.R. 2506 and H.R. 2552, introduced by the New Mexico congressional delegation, Representatives Montoya and Morris.

I would like to state in this hearing that the Navajo Tribe sincerely appreciates the efforts of Congressmen Montoya and Morris to see this irrigation project authorized. Their concern for the Indian peoples of their State and the whole Nation has been inspiring.

The Navajo Indian irrigation project, as described in the supplemental feasibility report, would consist of 110,630 acres of irrigated land for exclusive Navajo Indian use in San Juan County, N. Mex. All of the project except 8,915 acres will be on the present Navajo Indian Reservation. The additional acreage will be placed in reservation status, and the Navajo Tribe will pay the land acquisition costs. The purpose of adding this acreage to the reservation is to make the most compact and economical project feasible for Indian use.

The plan also calls for providing additional canal capacity for delivering water for industrial and municipal use from Navajo Dam, over and above the diversion requirement of the irrigation project. Such additional capacity would be paid for by the industrial and municipal water users with interest. All water uses from Navajo Dam would have equal priority. The Navajo Tribe has consented to this, and relinquished its rights under the Winters doctrine for the water necessary to irrigate the Navajo Indian irrigation project, in order to provide a practicable plan for comprehensive development of the resources and industrial potential of the San Juan Basin of New Mexico. We have taken this important and far-reaching step because such development is necessary for our very survival.

In 1868 the United States, by treaty, promised 160 acres to any Navajo Indian head of a family and 80 acres to any other Navajo Indian over 18 years old who should desire to commence farming on the Navajo Reservation. Already at that time there were about 10,000 Navajo Indians. Obviously, if the treaty obligation is to have significance, irrigation is the most practicable solution.

Since 1868, our population has grown to over 85,000 and is currently increasing at the rate of about 2 1/4 percent per year. Our reservation has been increased in area to 25,000 square miles, or about 16 million acres, but the added areas, consisting largely of desert land, have not kept pace with the minimum needs of our increased population.

Federal assistance to the Navajo Indians has been invariably too little and too late. Navajo country is a seriously depressed area and in its present state cannot be reasonably expected to improve. Whatever improvement is effected must result from increasing the agricultural potential and industrialization.

H(6)

Winters Report House April 1961
House HR 2552, HR 6541 and S 107 Apr. 24, 25, 26 and June 1, 1961
SAN JUAN-CHAMA RECLAMATION PROJECT 37
Mr. McCabe

question, would it not be possible for the Navajo Tribe to contribute a certain amount of money, say \$2 million, to this program in order to show their own interest in the program, what would be the answer to that question?

Mr. McCABE. Mr. Chairman, I believe that the answer would be along these lines, and I believe that I can commit the Navajo Tribal Council to this extent, and that is that in the initial cost of the project that should not be charged to the Navajo Indian Tribe.

However, this project will be several years in construction if and when it is authorized, and we feel that in those years we can educate Navajo young people through our scholarship program to be engineers so that we can take over the operation and maintenance of this project.

Mr. ASPINALL. Do I understand correctly that some of the development work on these lands to make them ready for irrigation more than likely will have to be done by the tribal council at their own expense?

Mr. McCABE. Yes, sir. We do not feel that we can come to the Federal Government and ask for every aspect of development with respect to these farms that we hope to get. We will use our own funds for loans to the Navajo people who will farm these areas for development, for the purchase of equipment, and for other financing that may be required in order to bring these lands into production.

Mr. ASPINALL. Mr. McCabe, I noted in your statement your reference to the so-called Winters doctrine and your willingness to unite with the State of New Mexico and, as I understand it, with the State of Colorado, in the approval of section 8 of this bill. Does that position that you take go to the whole San Juan Basin as well as just to that part of the San Juan Basin in New Mexico?

Mr. McCABE. Mr. Chairman, I would like to state that I was not personally present at the negotiations of those meetings. We have had satisfactory exchanges since those meetings that have taken place and I would like to defer that question and I can get you specific information on that at a later time, if I may.

Mr. ASPINALL. But you do have Indian lands, do you not, in the Hammond project and in the proposed Animas-La Plata project?

Mr. McCABE. That question of Indian lands in the Hammond project or the La Plata project, if there are Navajo lands at all, it is a very small acreage. I personally doubt that there is any substantial Navajo Indian land in that project.

Mr. ASPINALL. Mr. Chairman, I shall defer asking the question relative to section 8 until it can be directed to someone who represents the State of New Mexico.

Mr. ROGERS. The gentleman from Washington, Mr. Westland.

Mr. WESTLAND. Mr. Chairman. Mr. McCabe, you said that on your experimental farmland, the 1,200 acres you have, you developed that to where you can put in two cows per acre.

Mr. McCABE. Yes.

Mr. WESTLAND. Would you anticipate that this project, if it went through, would develop lands of a similar nature that would be able to handle two cows per acre?

Mr. McCABE. Mr. Chairman, we are very hopeful that will be the case.

4(c)

Maurice McCabe

SAN JUAN-CHAMA RECLAMATION PROJECT

Mr. ASPINALL. The Chair is going to rule that Mr. Littel's request comes too late; he does not have a prepared statement conforming with our rules. We would be glad to hear from you at a later period. We would want a statement filed with the committee.

Mr. LITTEL. I meant for Mr. McCabe to do it. I think perhaps he misunderstood a bit. I think he can quite adequately make the supplemental statement which I think should be made with respect to the tribe's position.

Mr. ASPINALL. Off the record.
(Discussion off the record.)

Mr. HALEY. Mr. McCabe was on the witness stand when the committee recessed for lunch, so I did not have an opportunity to question him other than for a preliminary question or two. I would like to ask Mr. McCabe if he has from the Navajo Tribal Council any resolutions pertaining to this project and, if so, if he will make them available for the record.

Mr. ASPINALL. Without objection, you can answer the question, Mr. McCabe.

Mr. McCABE. Mr. Chairman, there are resolutions of record passed by a duly called session of the Navajo Tribal Council which I will be glad to make a part of the record.

Mr. HALEY. That is a favorable resolution for this project; is that correct?

Mr. McCABE. Yes, sir.

Mr. HALEY. I ask unanimous consent that it be included at the point in the record where Mr. McCabe's testimony appears.

Mr. ASPINALL. Together with the statement just asked, and the answers pertaining thereto, and without objection it is so ordered.

(The resolution referred to follows:)

~~The Navajo Tribe,~~
Window Rock, Ariz., April 24, 1961.

HON. WAYNE N. ASPINALL,
Chairman, Interior and Insular Affairs Committee,
House of Representatives,
Washington, D.C.

DEAR MR. ASPINALL: Please permit me to supplement my testimony of this date before the committee as follows:

In reaching an agreement with the State of New Mexico and other members of the Upper Colorado River compact, the Navajo Tribe qualified its position in respect to legal rights which the tribe enjoys under the doctrine of *Winters v. United States* (207 U.S. 564), assuring to it certain paramount rights in respect to waters of the San Juan River, among others, in order to accomplish a practical and equitable division of water among all parties concerned. This concession was only agreed to by the tribe in consideration of getting the Navajo irrigation project established in New Mexico as provided in the above bills.

It should be known to the committee and other interested parties that the Navajo Tribe will not consider itself bound by this agreement unless the irrigation project is in fact established. It is clearly understood by all interested parties, I believe, that the tribe's concession in respect to the *Winters* doctrine applies to no other situation than this one.

In answer to Congressman Haley's question after I had left the witness stand today, the resolutions adopted by the Advisory Committee of the Navajo Tribal Council and by the tribal council in support of this project are already a part of the hearings, and can be found in House Document No. 424, 86th Congress, 2d session, June 20, 1960, at pages 282 and 394, respectively.

Permit me to thank you for the courtesies extended to me while appearing as a witness before the committee today.

Sincerely yours,

J. MAURICE McCABE,
Executive Secretary.



Public Law 87-483
87th Congress, S. 107
June 13, 1962



FROM
THOMAS G. MORRIS
Congressman At Large
NEW MEXICO

An Act

76 STAT. 96.

To authorize 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of furnishing water for the irrigation of irrigable and arable lands and for municipal, domestic, and industrial uses, providing recreation and fish and wildlife benefits, and controlling silt, and for other beneficial purposes, the Congress approves as participating projects of the Colorado River storage project (Act of April 11, 1956, 70 Stat. 105, as amended, 43 U.S.C. 620-620o) the Navajo Indian irrigation project, New Mexico, and the initial stage of the San Juan-Chama project, Colorado-New Mexico. The Navajo Indian irrigation project and the initial stage of the San Juan-Chama project herein approved are substantially those described in the proposed coordinated report of the Acting Commissioner of Reclamation and the Commissioner of Indian Affairs, approved and adopted by the Secretary of the Interior on October 16, 1957, as conditioned, modified, and limited herein.

Navajo Indian
irrigation project; San Juan-Chama project.

NAVAJO INDIAN IRRIGATION PROJECT

SEC. 2. Pursuant to the provisions of the Act of April 11, 1956, as amended, the Secretary of the Interior is authorized to construct, operate, and maintain the Navajo Indian irrigation project for the principal purpose of furnishing irrigation water to approximately one hundred and ten thousand six hundred and thirty acres of land, said project to have an average annual diversion of five hundred and eight thousand acre-feet of water and the repayment of the costs of construction thereof to be in accordance with the provisions of said Act of April 11, 1956, as amended, including, but not limited to, section 4(d) thereof.

43 USC 620-620o.

SEC. 3. (a) In order to provide for the most economical development of the Navajo Indian irrigation project, the Secretary shall declare by publication in the Federal Register that the United States of America holds in trust for the Navajo Tribe of Indians any legal subdivisions or unsurveyed tracts of federally owned land outside the present boundary of the Navajo Indian Reservation in New Mexico in townships 28 and 29 north, ranges 10 and 11 west, and townships 27 and 28 north, ranges 12 and 13 west, New Mexico principal meridian, susceptible to irrigation as part of the project or necessary for location of any of the works or canals of such project: *Provided, however,* That no such legal subdivision or unsurveyed tract shall be so declared to be held in trust by the United States for the Navajo Tribe until the Navajo Tribe shall have paid the United States the full appraised value thereof: *And provided further,* That in making appraisals of such lands the Secretary shall consider their values as of the date of approval of this Act, excluding therefrom the value of minerals subject to leasing under the Act of February 25, 1920, as amended (30 U.S.C. 181-286), and such leasable minerals shall not be held in trust for the Navajo Tribe but shall continue to be subject to leasing under the Act of February 25, 1920, as amended, after the lands containing them have been declared to be held in trust by the United States for the Navajo Tribe.

43 USC 620o.

Publication
in F. R.

41 Stat. 437.

(b) The Navajo Tribe is authorized to convey to the United States, and the Secretary shall accept on behalf of the United States, title to

Land acquisition.	any land or interest in land within the above-described townships, susceptible to irrigation as part of the Navajo Indian irrigation project or necessary for location of any of the works or canals of such project, acquired in fee simple by the Navajo Tribe, and after such conveyance said land or interest in land shall be held in trust by the United States for the Navajo Tribe as a part of the project.
Capacity.	(c) The Secretary is authorized to acquire by purchase, exchange, or condemnation any other land or interest in land within the townships above described susceptible to irrigation as part of the Navajo Indian irrigation project or necessary for location of any of the works or canals of such project. After such acquisition, said lands or interest in lands shall be held by the United States in trust for the Navajo Tribe of Indians. SEC. 4. In developing the Navajo Indian irrigation project, the Secretary is authorized to provide capacity for municipal and industrial water supplies or miscellaneous purposes over and above the diversion requirements for irrigation stated in section 2 of this Act, but such additional capacity shall not be constructed and no appropriation of funds for such construction shall be made until contracts have been executed which, in the judgment of the Secretary, provide satisfactory assurance of repayment of all costs properly allocated to the purposes aforesaid with interest as provided by law.
Operation and maintenance charges.	SEC. 5. Payment of operation and maintenance charges of the irrigation features of the Navajo Indian irrigation project shall be in accordance with the provisions of the Act of August 1, 1914 (38 Stat. 582, 583), as amended (25 U.S.C. 385): <i>Provided</i> , That the Secretary may transfer to the Navajo Tribe of Indians the care, operation, and maintenance of all or any part of the project works, subject to such rules and regulations as he may prescribe and, in such event, the Secretary may transfer to the Navajo Tribe title to movable property necessary to the operation and maintenance of those works.
Water use.	SEC. 6. For the period ending ten years after completion of construction of the Navajo Indian irrigation project no water from the project shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in section 408(c) of the Agricultural Act of 1949 (63 Stat. 1056, 7 U.S.C. 1428), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938 (52 Stat. 41), as amended (7 U.S.C. 1281), unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.
7 USC 1301.	
Appropriation.	SEC. 7. There are hereby authorized to be appropriated to the Bureau of Indian Affairs such sums as may be required to construct the Navajo Indian irrigation project, including the purchase of lands under section 3, subsection (c), of this Act, but not more than \$135,000,000 (June 1961 prices) plus or minus such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein.

SAN JUAN-CHAMA RECLAMATION PROJECT (INITIAL STAGE)

43 USC 620-620o.	SEC. 8. Pursuant to the provisions of the Act of April 11, 1956, as amended, the Secretary is authorized to construct, operate, and maintain the initial stage of the San Juan-Chama project, Colorado-New Mexico, for the principal purposes of furnishing water supplies to approximately thirty-nine thousand three hundred acres of land in the Cerro, Taos, Llano, and Pojoaque tributary irrigation units in the
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58 Stat. 888.
33 USC 701-1.

determination, the State of Texas shall pay one-half of all costs of constructing and operating such additional or different devices and making such additional or different measurements which are not borne by the United States. The results of the action required by this subsection shall be incorporated in a written report transmitted to the States of Colorado, Texas, and New Mexico for comment in the manner provided in the Flood Control Act of 1944 before any appropriation shall be made for project construction;

(f) the Secretary shall operate the project so that for the preservation of fish and aquatic life the flow of the Navajo River and the flow of the Blanco River shall not be depleted at the project diversion points below the values set forth at page D2-7 of appendix D of the United States Bureau of Reclamation report entitled "San Juan-Chama Project, Colorado-New Mexico", dated November 1955;

(g) the Secretary is hereby authorized to construct the tunnel and conduit works of the initial stage of the San Juan-Chama project with sufficient capacity for future diversion of an average of two hundred and thirty-five thousand acre-feet per annum: *Provided, however,* That nothing contained in this Act shall be construed as committing the Congress of the United States to future authorization of any additional stage of the San Juan-Chama project.

7 USC 1301.

SEC. 9. For the period ending ten years after completion of construction of the initial stage of the San Juan-Chama project no water from the project shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in section 408(c) of the Agricultural Act of 1949 (63 Stat. 1056, 7 U.S.C. 1428), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938 (52 Stat. 41), as amended (7 U.S.C. 1281), unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

Appropriation.
70 Stat. 110.
43 USC 520k.

SEC. 10. The amount which section 12 of the Act of April 11, 1956, authorizes to be appropriated is hereby increased by \$85,828,000 (June 1961 prices) plus or minus such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction involved, which increase shall be available solely for construction of the San Juan-Chama project and shall not be used for any other purpose.

GENERAL

Contracts.

SEC. 11. (a) No person shall have or be entitled to have the use for any purpose, including uses under the Navajo Indian irrigation project and the San Juan-Chama project authorized by sections 2 and 8 of this Act, of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries originating above Navajo Reservoir to the use of which the United States is entitled under these projects except under contract satisfactory to the Secretary and conforming to the provisions of this Act. Such contracts, which, in the case of water for Indian uses, shall be executed with the Navajo Tribe, shall make provision, in any year in which the Secretary anticipates a shortage, taking into account both prospective runoff originating above Navajo Reservoir and the available water in storage in Navajo Reservoir, for a sharing of the available water in the following man-

preferential right in the United States or any Indian tribe to the waters impounded, diverted, or used by means of such project works or structures, other than contained in those rights to the uses of water granted to the States of New Mexico or Arizona pursuant to the provisions of the Upper Colorado River Basin compact.

(b) The projects authorized by this Act shall be so operated that no waters shall be diverted or used by means of the project works, which, together with all other waters used in or diverted from the San Juan River Basin in New Mexico, will exceed the water available to the States of New Mexico and Arizona under the allocation contained in article III of the Upper Colorado River Basin compact for any water year.

SEC. 13. (a) The use of water, including that diverted from the Colorado River system to the Rio Grande Basin, through works constructed under authority of this Act, shall be subject to and controlled by the Colorado River compact, the Upper Colorado River Basin compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act, and the Mexican Water Treaty (Treaty Series 994), and shall be included within and shall in no way increase the total quantity of water to the use of which the State of New Mexico is entitled and limited under said compacts, statutes, and treaty, and every contract entered into under this Act for the storage, use, and delivery of such water shall so recite.

(b) All works constructed under authority of this Act, and all officers, employees, permittees, licensees, and contractees of the United States and of the State of New Mexico acting pursuant thereto and all users and appropriators of water of the Colorado River system diverted or delivered through the works constructed under authority of this Act and any enlargements or additions thereto shall observe and be subject to said compacts, statutes, and treaty, as hereinbefore provided, in the diversion, delivery, and use of water of the Colorado River system, and such condition and covenant shall attach as a matter of law whether or not set out or referred to in the instrument evidencing such permit, license, or contract and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming and the users of water therein or thereunder by way of suit, defense or otherwise in any litigation respecting the waters of the Colorado River system.

(c) No right or claim of right to the use of the waters of the Colorado River system shall be aided or prejudiced by this Act, and Congress does not, by its enactment, construe or interpret any provision of the Colorado River compact, the Upper Colorado River Basin compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act, or the Mexican Water Treaty or subject the United States to, or approve or disapprove any interpretation of, said compacts, statutes, or treaty, anything in this Act to the contrary notwithstanding.

SEC. 14. In the operation and maintenance of all facilities under the jurisdiction and supervision of the Secretary of the Interior authorized by this Act, the Secretary is directed to comply with the applicable provisions of the Colorado River compact, the Upper Colorado River Basin compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act and the treaty with the United Mexican States in the storage and release of water from reservoirs in the Colorado River Basin. In the event of the failure of the Secretary of the Interior to so comply, any State of the Colorado River Basin may maintain an action in the Supreme Court of the United States to enforce the provisions of this section,

45 Stat. 1057;
54 Stat. 774;
70 Stat. 105.
43 USC 617t,
618o, 620-620o.
59 Stat. 1219.

and consent is given to the joinder of the United States as a party in such suit or suits, as a defendant or otherwise.

SEC. 15. The Secretary of the Interior is directed to continue his studies of the quality of water of the Colorado River system, to appraise its suitability for municipal, domestic, and industrial use and for irrigation in the various areas in the United States in which it is used or proposed to be used, to estimate the effect of additional developments involving its storage and use (whether heretofore authorized or contemplated for authorization) on the remaining water available for use in United States, to study all possible means of improving the quality of such water and of alleviating the ill effects of water of poor quality, and to report the results of his studies and estimates to the Eighty-seventh Congress and every two years thereafter.

Report to
Congress.

SEC. 16. (a) The diversion of water for either or both of the projects authorized in this Act shall in no way impair or diminish the obligation of the "States of the upper division" as provided in article III(d) of the Colorado River compact "not to cause the flow of the river at Lee Ferry to be depleted below an aggregate of seventy-five million acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact".

(b) The diversion of water for either or both of the projects authorized in this Act shall in no way impair or diminish the obligation of the "States of the upper division" to meet their share of the Mexican Treaty burden as provided in article III(c) of the Colorado River compact.

SEC. 17. Section 12 of the Act of April 11, 1956, shall not apply to the works authorized by this Act except as otherwise provided by section 10 of this Act.

70 Stat. 110.
43 USC 620k.

SEC. 18. The Act of April 11, 1956, as amended, is hereby further amended as follows: (i) In section 1, subsection (2), after the words "Central Utah (initial phase)" delete the colon and insert in lieu thereof a comma and the words "San Juan-Chama (initial stage)," and after the word "Lyman" insert the words "Navajo Indian,"; (ii) in section 2 delete the words "San Juan-Chama, Navajo," from the first sentence; (iii) in section 5, subsection (e), in the phrase "herein or hereinafter authorized" delete the word "hereinafter" and insert in lieu thereof the word "hereafter"; (iv) in section 7 in the phrase "and any contract lawfully entered unto under said compacts and Acts" delete the word "unto" and insert in lieu thereof the word "into".

70 Stat. 105.
43 USC 620-620o.

Approved June 13, 1962, 11:15 a. m.

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RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Urging authorization by Congress of the Navajo Indian
Irrigation Project and the San Juan-Chama Project in
New Mexico and approving in principle legislation
proposed for this purpose

WHEREAS:

1. The Congress of the United States by Public Law 485, 84th Congress, 2d Session, 43 U.S.C. § 620, has authorized the Upper Colorado River Storage Project, which includes the Navajo Dam in New Mexico, and has appropriated funds for the actual construction of this dam; but has not yet authorized the proposed Navajo Indian Irrigation Project, which, however, is listed in Public Law 485 for priority of study by the Secretary of the Interior in order to determine its feasibility for later authorization as a participating project of the Upper Colorado River Storage Project, and

2. The principal justification for construction of the Navajo Dam is to provide a water supply for the proposed Navajo Indian Irrigation Project and for industrial and municipal uses in the San Juan River basin in New Mexico, and

3. In order for the members of the Navajo Tribe, now comprising 85,000 people, to attain a standard of living equal to that enjoyed by the majority of the other American citizens, not only prompt construction of the Navajo Indian Irrigation Project, but also the greatest possible industrial development in the San Juan River Basin on and adjacent to the Navajo Indian Reservation are essential, and

4. In return for the generous support of the State of New Mexico for the proposed Navajo Indian Irrigation Project, and in recognition of the fact that the maximum economic development of all parts of New Mexico is a benefit to all citizens of New Mexico, including Navajo citizens of New Mexico, the Navajo Tribal Administration has supported authorization of the proposed San Juan-Chama Transmountain Diversion at the same time the Navajo Indian Irrigation Project is authorized, and

5. While the original Feasibility Report on the proposed Navajo Indian Irrigation Project, dated January 1955, contemplated a 137,250-acre project, 20,600 acres of which were to be for non-Indian use, further study, embodied in a supplemental report dated March 1957, has shown that reducing the total acreage to a net area of 110,600 acres making use of the best lands available for irrigation purposes under Navajo Dam, both on and off the present Navajo Indian Reservation, and reserving the entire project for exclusive Navajo Indian use, would result in a much more feasible project with a greatly improved cost-benefit ratio, in increased availability of water for industrial use in the San Juan River Basin in New Mexico, and consequently in greater over-all benefit to the Navajo people. Such plan would involve transfer of approximately 14,360 acres of Federal public domain, 960 acres of New Mexico State land, and 4,320 acres of privately-owned land of non-Indians to Indian Reservation status, so that the Project could be exclusively for Navajo use, and the provisions of Public Law 485 and the Leavitt Act would be applicable thereto. Such plan has been approved by the Advisory Committee of the Navajo Tribal Council on January 9, 1957, by Resolution No. ACJ-1-57, which contemplated an exchange of non-irrigable lands of the present Navajo Indian Reservation for the irrigable off-reservation lands needed for the Project, or in the alternative, purchase of the off-reservation lands by the Navajo Tribe and their transfer into trust status by Federal legislation. Further study, however, has shown that the plan of exchange is impractical because of the population displacement it would create but that purchase is feasible; and accordingly, the Advisory Committee has authorized initiation of a Tribal land purchase program to acquire the off-reservation portions of the proposed Navajo Indian Irrigation Project, and has authorized the expenditure of Tribal funds for that purpose, and

6. It appears feasible at this time to proceed with construction of only the initial phase of the proposed San Juan-Chama Project, with an average annual diversion requirement of 110,000 acre feet, building the tunnel to sufficient size, however, to accommodate the originally proposed annual diversion of 235,000 acre feet so that further stages of the project may be authorized without excessive cost when and if they become feasible, and

7. The Interstate Stream Commission of New Mexico approved the plan for reducing and consolidating the area of the proposed Navajo Indian Irrigation Project, and of purchase

and transfer to trust status of the off-reservation lands required therefor, and of simultaneous authorization of the initial stage of the San Juan-Chama Project, in a meeting in Farmington on October 17, 1957. At said meeting, the Interstate Stream Commission approved proposed legislation for Congress to accomplish this purpose and further to provide for equal priority of water rights for the revised Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama Project, and appointed the State Engineer and the Commission's legal advisor to work with representatives of the Navajo Tribe and the Department of the Interior to make further refinements in the proposed legislation, and

8. The State Engineer of New Mexico and the legal advisor to the New Mexico Interstate Stream Commission met in Phoenix, Arizona, on November 5, 1957, with the Solicitor of the Department of the Interior, the Field Solicitor and the Irrigation Engineer from the Gallup Area Office of the Bureau of Indian Affairs, and the Assistant General Counsel of the Navajo Tribe, and agreed on a draft of legislation to authorize simultaneously the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama Project. Such draft, with revisions in sections 4 and 7 is attached to this resolution, and

9. Subsequent to this meeting, the State Engineer of New Mexico and his advisers have met with the Chairman of the Navajo Tribal Council and his advisers and representatives of the Bureau of Indian Affairs to discuss revision of sections 4 and 7 of the proposed legislation so as to provide for the sharing of shortages by all users of water in New Mexico from the San Juan River whose uses are hereafter initiated, and the Engineer and the Chairman and representatives of the Bureau of Indian Affairs have agreed that all such uses should share proportionately in all water shortages on the basis of their respective authorized diversion requirements, rather than on the basis of priority of appropriation.

NOW THEREFORE BE IT RESOLVED THAT:

1. The attached proposed bill entitled "To authorize the Secretary of the Interior to construct, operate, and maintain in 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," consisting of the draft made in Phoenix on November 5, 1957, but containing revisions as proposed by the State

Engineer of New Mexico in sections 4 and 7 thereof, is hereby approved in principle, and the Congress of the United States is respectfully urged to enact legislation substantially similar thereto into law at the earliest practicable date, and to provide funds for early commencement of construction of the Navajo Indian Irrigation Project and initial stage of the San Juan-Chama Project.

2. The Chairman of the Tribal Council is hereby authorized to consider, and if in his discretion advisable in the interest of the Navajo Tribe to approve, further changes and modifications in such proposed legislation, provided the following principles are always adhered to:

- (1) The Navajo Indian Irrigation Project not be reduced below a net area of 110,630 acres.
- (2) The authorized average annual diversion requirement of the Navajo Indian Irrigation Project not be reduced below 508,000 acre feet.
- (3) The Project be exclusively for Indian use, and the legislation provide for acquisition and transfer into trust status of the presently off-reservation areas susceptible to irrigation as part of the Project.
- (4) No use in New Mexico of water of the San Juan River not heretofore authorized be given priority ahead of the Navajo Indian Irrigation Project.

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

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present, and that same was approved by a vote of 70 in favor and 0 opposed, this 12th day of December, 1957.

/s/ Paul Jones

Chairman
Navajo Tribal Council

A B I L L

To authorize the Secretary of the Interior to construct, operate, and maintain in 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That the Congress hereby approves as participating projects of the Colorado River Storage Project the Navajo Indian Irrigation Project as described in the Bureau of Indian Affairs report entitled "Navajo Project, New Mexico Feasibility Report, January 1955," and as modified by the Bureau of Indian Affairs Supplemental Report entitled "Navajo Project, New Mexico Supplemental Report, March 1957 to Feasibility Report, January 1955," and the San Juan-Chama Project as described in the Bureau of Reclamation report entitled "San Juan-Chama Project, Colorado-New Mexico, November, 1955," such project plans and reports having been prepared and submitted as required under the provisions of the Act of April 11, 1956, 70 Stat. 105.

Sec. 2. Pursuant to the provisions of the Act of April 11, 1956, 70 Stat. 105, the Secretary of the Interior is authorized to construct the Navajo Indian Irrigation Project to include a net area of 110,630 acres of land with an average annual diversion requirement of 508,000 acre feet of water, the repayment of the costs of construction thereof to be in accordance with the provisions of said Act of April 11, 1956, 70 Stat. 105, including, but not limited to Section 4 (d) thereof.

Sec. 3 (a) In order to provide for the most economical development of the Navajo Indian Irrigation Project, the Secretary of the Interior is hereby authorized and directed to declare by publication in the Federal Register that the United States of America holds in trust for the Navajo Tribe of Indians any legal subdivisions or unsurveyed tracts of Federally-owned land outside the present boundary of the Navajo Indian Reservation in New Mexico in Ts. 28 and 29 N., Rs. 10 and 11 W., and Ts. 27 and 28 N., Rs. 12 and 13 W., N.M:P.M., susceptible to irrigation as part of the Navajo Indian Irrigation Project or necessary for location of any of the works or canals of such project; Provided, however, That no such legal subdivision or unsurveyed tract shall be so declared to be held in trust by the United States for the

Navajo Tribe until the Navajo Tribe shall have paid the United States the full appraised value thereof; and Provided further, That in making appraisals of such lands the Secretary of the Interior shall consider their values as of the date of approval of this Act, excluding therefrom the value of all minerals subject to leasing under the Act of February 25, 1920, as amended (30 U.S.C. 181-286), and such leasable minerals shall not be held in trust for the Navajo Tribe and shall continue to be subject to leasing under the Act of February 25, 1920, as amended, after the lands containing them have been declared to be held in trust by the United States for the Navajo Tribe.

(b) The Navajo Tribe is hereby authorized to convey to the United States, and the Secretary of the Interior is hereby directed to accept on behalf of the United States, title to any land or interest in land within the above-described townships acquired in fee simple by the Navajo Tribe, and after such conveyance said land or interest in land shall be held in trust by the United States for the Navajo Tribe as a part of the Navajo Indian Irrigation Project.

(c) The Secretary of the Interior is hereby authorized and directed to acquire by purchase, exchange, or condemnation any other land or interest in land within the townships above described susceptible to irrigation as part of the Navajo Indian Irrigation Project or necessary for location of any of the works or canals of such project. After such acquisition said lands or interest in lands shall be held by the United States in trust for the Navajo Tribe of Indians and the price of such lands or interest in lands or of the land given in exchange therefor by the United States shall be charged to funds of the Navajo Tribe of Indians on deposit in the Treasury of the United States.

Sec. 4 In developing the Navajo Indian Irrigation Project, the Secretary of the Interior is hereby authorized to provide capacity for municipal and industrial water supplies or miscellaneous purposes over and above the diversion requirements for irrigation purposes stated in Section 2 of this Act. Such additional capacity shall not be constructed unless, prior to such construction, contracts shall have been executed which the Secretary finds will provide satisfactory assurance of repayment of all costs assignable to such additional capacity.

Sec. 5 The Navajo Indian Irrigation Project shall be constructed, operated, and maintained subject to the provisions of Section 4 of the Act of April 11, 1956 (43 U.S.C.

§ 620c) to the same extent as if such project were authorized by section 1 of said act (43 U.S.C. § 620). Payment of operation and maintenance charges of the irrigation features of the Navajo Indian Irrigation Project shall be in accordance with the provisions of the Act of August 7, 1946, 60 Stat. 867; Provided, That the Secretary of the Interior in his discretion may transfer to the Navajo Tribe of Indians the care, operation, and maintenance of all or any part of the Navajo Indian Irrigation Project works, subject to such rules and regulations as he may prescribe, and in such event, the Secretary may transfer to the Navajo Tribe title to movable property necessary to the operation and maintenance of project works.

Sec. 6 Pursuant to the provisions of the Act of April 11, 1956, 70 Stat. 105, the Secretary of the Interior is authorized to construct, operate and maintain an initial stage of the San Juan-Chama Project, in accordance with the Bureau of Reclamation report entitled, "Supplemental Report, San Juan-Chama Project, Colorado-New Mexico, May 1957," said initial stage to have an average annual diversion of 110,000 acre feet of water.

Sec. 7 Notwithstanding any provision of existing law, the annual water supply available from the San Juan River and its tributaries above Navajo Dam for the projects authorized herein and all other uses hereafter lawfully initiated in New Mexico shall be shared in proportion to the respective diversion requirements for said projects and uses in any year in which the Secretary of the Interior finds that the annual water supply in addition to water in storage will be inadequate for said projects and uses.

Sec. 8 Section 12 of the Act of April 11, 1956, 70 Stat. 105, shall not apply to the works authorized by this Act. There are hereby authorized to be appropriated out of any moneys in the treasury not otherwise appropriated such funds as may be required to carry out the purposes of this Act, but not to exceed \$208,000,000.

RESOLUTION OF THE
NAVAJO TRIBAL COUNCILObjecting to Proposed Re-evaluation of the Navajo Irrigation
Project

WHEREAS:

1. Senator Clinton P. Anderson of New Mexico has proposed to Secretary of the Interior Udall, and the Secretary has agreed that the Navajo Irrigation Project totalling 110,630 acres of land, as authorized by the Act of June 13, 1962, (76 Stat. 96), shall be "re-evaluated" with the objective of reducing said irrigation project to approximately 77,000 acres, in order to make available more water for municipal and industrial purposes, allegedly on the grounds of increased costs of reducing the proposed acreage.

2. Factors now relied upon in proposing such changes were well known when the said Act of June 13, 1962, was passed, and the acreage deemed feasible for irrigation purposes was changed for various reasons from the original amount of 137,250 acres in the Feasibility Report of January, 1955, to the amount of 110,630 acres for Navajos only in a Supplemental Feasibility Report of March, 1957. The project was accordingly designed, planned and authorized by Congress to provide for irrigating 110,630 acres with an average annual diversion of 508,000 acre-feet of water for this purpose -- all represented to Congress as the principal reason for passage of said Act.

3. In addition to federal lands to be embraced in the Navajo Irrigation Project, the Navajo Tribe has proceeded in good faith in reliance upon said Act in purchasing privately owned land at a substantial cost to the Tribe for inclusion in said project, in order to assure and carry out the principal objective of relocating approximately 2,000 Navajo families and offering direct and indirect employment to approximately 17,000 Navajos through direct and collateral forms of employment, all as set forth in Senate Report 83 (87th Congress, 1st Session, pages 6-10), in a letter from the then-Secretary of the Interior to Senator Anderson and in said Act of June 13, 1962 (76 Stat. 96, Sec. 2).

4. The Navajo Tribal Council endorsed and supported the passage of the Act by Resolution CD-86-57, dated December 12, 1957, and again by Resolution CMA-14-64, dated March 2, 1964, authorizing substitution of other lands more practicably usable for the irrigation project pursuant to the Act of June 13, 1962 (requesting Congress to amend said Act to include lands in Township 26 North, Ranges 11, 12, and 13 West, and Township 27 North, Range 11 West, N.M.P.M.). The Navajo Tribal Council also authorized the signing of a contract between the Navajo Tribe and the United States for delivery of water to said project, which said form of contract was signed and sent to Secretary Udall in July, 1964, but has never been acted upon by Secretary Udall.

5. Throughout said Tribal Council resolutions and at all times in supporting the passage of the Navajo Irrigation San Juan-Chama Act of June 13, 1962, the Navajo Tribe has in good faith relied upon the commitments of all parties, including the Congress of the United States, to create said Navajo Irrigation Project of 110,630 acres and commit thereto an annual diversion of 508,000 acre-feet of water, and in addition the Tribe would be entitled to apply for and receive a reasonable portion of an additional 200,000 acre-feet which Secretary Udall has found to be available for municipal and industrial purposes. Said advantages and considerations moving to the Tribe would be greatly impaired, and the principal purpose of the Act defeated, if the irrigation project is now reduced in size and the water to which the Tribe is rightfully entitled is made available for municipal and industrial purposes to the great advantage of New Mexico and Albuquerque, and industries to be served.

6. The Navajo Tribe in good faith, and in deference to its neighbors in Albuquerque, New Mexico, compromised its legal rights under the Doctrine of Winters vs. U. S., 207 U. S. 564 (see proposed contract between the Tribe and the United States, P. 10g) by agreeing to share shortages of water from the San Juan instead of insisting upon the Tribe's paramount rights, all in consideration of the foregoing and other advantages to the Tribe, such as benefits of the Levitt Act applicable to this irrigation project.

7. The Tribe now notes that the San Juan-Chama Diversion Tunnel originally planned for a capacity of 235,000 acre-feet was built to a far greater capacity, which said capacity could only be filled by diversion of water rightfully

belonging to the Navajos, pursuant to the arrangement sought by Senator Anderson and Secretary Udall in "re-evaluation" of the Navajo Irrigation Project about which the Navajos first learned by reading in the newspapers.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council reaffirms and confirms the conditions established by the Council in its Resolution of December 12, 1957 (CD-86-57), namely, the following:

- (a) The Navajo Irrigation Project not be reduced below a net area of 110,630 acres.
- (b) The authorized annual diversion requirement of the Navajo Irrigation Project not be reduced below 508,000 acre-feet.
- (c) The project be exclusively for Indian use and transfer into trust status of the presently off-Reservation areas susceptible to irrigation as part of the project.
- (d) No use in New Mexico of water of the San Juan River not heretofore authorized be given priority ahead of the Navajo Irrigation Project.

2. The Navajo Tribal Council finds that the reasons assigned by Senator Anderson and Secretary Udall for "re-evaluation" of the Navajo Irrigation Project, namely, increased cost of construction and related factors, are insincere for the following principal reasons:

- (a) The Tribe's proposed contract for receiving the water has been on the desk of Secretary Udall since July, 1964, at which time had Secretary Udall not improperly delayed his official action of approving the contract, the increased and inflated costs of today would not have been present;
- (b) All other government projects are subject to the same increased inflationary costs but such other projects are not abandoned for this reason;

- (c) Factors now relied upon in proposing this "re-evaluation" were well known when the Act was passed on June 13, 1962, and no new factors have arisen since the Act provides for covering additional costs due to changes in construction cost, based on June, 1961, construction costs (Section 61500 of the Act).
- (d) The purpose of the Act, namely, the re-settlement of 2,000 or more Navajos and employment of approximately 17,000 Navajos from a failing, grazing economy to a sustaining agricultural way of life on this irrigation project is even of greater force today than when the Act was proposed and approved by Congress.
- (e) The tunnel called for in the original San Juan-Chama diversion plan was to have a capacity of 235,000 acre-feet, however, the tunnel as actually built has a capacity for in excess of 235,000 acre-feet. The excess amount to be carried by this tunnel could be obtained from only one source: water rightfully belonging to the Navajos.

3. Unless the Navajo Irrigation Project is carried out to completion as contemplated by the Act of June 13, 1962, the Navajo Tribal Council hereby finds a complete failure of consideration and therefore revokes any past actions of the Navajo Tribal Council in compromising or in any way waiving the Winters Doctrine.

The Council hereby gives notice that the Navajo Tribe will assert any and all rights thereunder against any person or governmental bodies whatsoever who might seek to divert water from the San Juan River or its tributaries in any manner or for any purpose inconsistent with the defined objectives and purposes of said Act of June 13, 1962. The General Counsel of the Navajo Tribe in Washington, D. C., and the Tribe's Legal Department are hereby authorized and directed to take any and all steps deemed necessary, advisable or incidental to carrying out the purposes of the resolution, including the full assertion of the Winters Doctrine, under any circumstances and by any

means deemed by them appropriate in the event of any departure from the purposes of the Act of June 13, 1962, in diminution of the conditions heretofore and herein approved by the Navajo Tribal Council.

4. The Navajo Tribal Council, on behalf of the Navajo people, hereby memorializes Congress that the Navajo Tribe has complete faith that the Congress will keep faith with the commitment which it made in passing the Act of June 13, 1962, and will not allow any deviation therefrom.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of 58 in favor and 0 opposed, this 28th day of April, 1966.

Nelson Damon
Vice Chairman
Navajo Tribal Council

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Task Force Report of the Re-evaluation of the Navajo Irrigation
Project

WHEREAS:

1. The Navajo Tribal Council, by Resolution dated December 12, 1957 (CD-86-57), supported the passage of the Act of June 13, 1962 (76 Stat. 96) which provided that the Navajo Irrigation Project would divert an annual average of 508,000 acre-feet of water to irrigate approximately 110,630 acres of land on the Navajo Reservation and lying outside the Reservation to be acquired by the Secretary of the Interior and to be held in trust for the benefit of the Navajo Tribe.

2. The Navajo Tribe consented to compromise its rights under the Winters' Doctrine by agreeing to share shortages of the water from the San Juan River instead of insisting on the Tribe's right of priority to such shortages as consideration for the development of the Project, the acquisition of additional land to make up the 110,630 irrigable acres and the allocation of 503,000 acre-feet per year to the Tribe for irrigation use.

3. Notwithstanding that the said Act clearly authorized the Irrigation Project to be constructed with the capacity to irrigate 110,630 acres and to divert 503,000 acre-feet of water per year, the Secretary of the Interior first ordered the reappraisal, then the re-evaluation of the Project with the possible result that the capacity of the irrigation facilities and the acreage of the lands to be irrigated would be something less than that authorized by the Act and that it would be necessary for the municipal and industrial requirements to be taken from the said 508,000 acre-feet per year authorized by law solely for irrigation purposes.

4. The Act of June 13, 1962 authorizes the Secretary of the Interior to provide capacity for municipal and industrial water supplies over and above the diversion of 508,000 acre-feet per year for irrigating 110,630 acres of land if contracts have been executed which will assure repayment of costs attributable to that capacity for municipal and industrial requirements. Applications for such contracts have been submitted to the Secretary of the Interior but he has so far failed to approve the contract for 48,000 acre-feet per year submitted to him in May 1965 by the Utah Construction and

Mining Company and other applications for the allocation of at least 92,000 acre-feet making a total of 140,000 acre-feet for municipal and industrial purposes, as well as the contract for 508,000 acre-feet per year submitted to him in July 1964 by the Navajo Tribe of Indians.

5. The Navajo Tribal Council, by Resolution dated April 28, 1966 (CAP-56-66), opposed the re-evaluation of the Navajo Irrigation Project and reaffirmed the conditions on which the Navajo Tribe had originally agreed to participate in the Navajo Irrigation and San Juan-Chama Projects.

6. The Task Force assigned to re-evaluate the Irrigation Project published a preliminary draft of their findings in August 1966 and has submitted this report to the Navajo Tribe for its comments. Among the findings made by the Task Force were the following:

- a. It is proposed that the size of the canal coming from the Navajo Dam to the Kutz Pumping Plant be reduced from 2,100 cfs to 1,800 cfs and due to this reduction in capacity the full area of 110,630 acres cannot be irrigated unless a supplemental storage called the Gallegos Reservoir is constructed.
- b. Even if the Gallegos Reservoir is constructed, the capacity of the Project will not be sufficient to deliver water for industrial and municipal requirements during the irrigation season.
- c. The final paragraph of Appendix IV states: "Therefore it is the recommendation of this Committee that the size of the works be of such size as to permit the irrigation of not less than 90,000 acres with a potential expansion to 100,000 to 110,000 acres dependent on industrial development."
(emphasis added)
- d. With the reduced capacity of the Project tunnels and canals, industrial and municipal requirements can be satisfied only by building further supplemental storage terminals at each municipal and industrial site to be filled at times other than during the irrigation season, and even then supplemental storage terminals can supply the industrial requirements only if all thermal power plants are located in the Burnham area.

- e. The cost of Navajo Irrigation Project has increased from \$135,000,000.00 authorized in the Act to \$175,000,000.00 due partly to the adjustment between 1961 and 1966 prices and the addition of the Gallegos Reservoir.

7. While stating that municipalities and industries could not be supplied by the Project unless additional storage terminals are built, the Task Force has not found and apparently has not investigated whether or not such storage terminals, as a physical practicality, could in fact satisfy all industrial and municipal requirements and further even if it is physically practicable there has been no investigation as to the capacities required, estimated costs for construction and maintenance, resulting evaporation losses, etc., and the extent to which these increased costs and uncertainty of water supply would discourage the development of industry.

8. On June 6, 1966, Senator Clinton P. Anderson introduced Senate Bill S. 3459 to increase the authorized appropriation from \$135,000,000.00 to \$175,000,000.00 and to add more land to the Navajo Irrigation Project outside the boundary of the Navajo Reservation to be held in trust by the United States for the Navajo Tribe, but it is quite certain that this Bill will not be passed during the current session of Congress.

9. Mr. Leon Hill, the Chairman of the Task Force re-evaluating the Irrigation Project, has stated that if the current session of Congress fails to pass the said Bill it is likely that the Project will proceed under one of the alternative plans providing for the irrigation of less than 110,630 acres and delivery of less than 508,000 acre-feet per year.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council again states the conditions agreed upon with the United States established in the Council's resolutions of December 12, 1957 (CD-86-57) and of April 28, 1966 (CAP-56-66):

- a. The land area to be irrigated by the Project must not be reduced below the authorized 110,630 acres and the annual diversion from the Navajo Dam for irrigation must not be less than the authorized 508,000 acre-feet, whether the capacity to supply this quantity is provided by an increase in the size of the tunnels and canals or by the Gallegos Reservoir.
- b. The Irrigation Project must be exclusively for Indian use and there must be transferred into trust status sufficient off-reservation areas necessary to make up 110,630 irrigable

acres which will be included as part of the irrigation project.

- c. No use in New Mexico of water of the San Juan River not heretofore authorized will be given priority ahead of the Navajo Irrigation Project.
- d. All of the Irrigation Project facilities must be constructed with sufficient capacity to supply reasonably anticipated industrial and municipal needs (as evidenced by the applications for water allocations already submitted to and approval being withheld by the Secretary of the Interior) without reducing the 503,000 acre-feet authorized for irrigation and without requiring such industries and municipalities to construct supplemental storage terminals.

2. The Navajo Tribal Council declares that these conditions must be fulfilled before it waives or compromises its paramount rights to the waters of the San Juan River.

3. The Navajo Tribal Council petitions Congress to maintain the good faith of the agreement between the Navajo Tribe and the United States by providing the necessary legislation and direction to complete the Navajo Irrigation Project in accordance with the conditions expressed above.

4. The Navajo Tribal Council hereby authorizes and directs the Director of the Resources Division, with the assistance of the Legal Department and such other Tribal personnel and consultants as he may deem necessary, to draft such amendments to the proposed Re-evaluation Report, Navajo Indian Irrigation Project, New Mexico (July, 1966 - revised August, 1966), as are necessary to make said proposed Re-evaluation Project consistent with the terms of this resolution, and said Director of Resources Division is further authorized and directed to forward said amendments to the Field Task Force at the earliest possible date with the recommendation that they be included in the final Re-evaluation Report.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of 58 in favor and 0 opposed, this 5th day of October, 1966.

Nelson Korman
Vice Chairman
Navajo Tribal Council

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Recommending Legislation by the Congress of the United States
to Fully Implement the Navajo Irrigation Project

WHEREAS:

1. The Navajo Tribal Council, by resolution dated December 12, 1957 (CD-86-57), supported the passage of the Act of June 13, 1962 (76 Stat. 96) which provided that the Navajo Irrigation Project would divert an annual average of 508,000 acre-feet of water to irrigate approximately 110,630 acres of land on the Navajo Reservation and lying outside the Reservation to be acquired by the Secretary of the Interior and to be held in trust for the benefit of the Navajo Tribe, and
2. The Navajo Tribe consented to compromise its rights under the Winters Doctrine by agreeing to share shortages of the water from the San Juan River instead of insisting on the Tribe's right of priority to such shortages as consideration for the development of the Project, the acquisition of additional land to make up the 110,630 irrigable acres and the allocation of 508,000 acre-feet per year to the Tribe for irrigation use, and
3. The Navajo Irrigation Project is the most important project on the entire Navajo Reservation. It will create employment for a large portion of the Navajo Tribe and will give them permanent employment in farming and related industries. In comparison to all other programs now in progress on the Navajo Reservation, or being contemplated, the Navajo Irrigation Project holds more promise for the social and economic uplifting of the Navajo people than all of the other projects put together, and
4. Recognizing the importance of the Navajo Irrigation Project, the Navajo Tribal Council on October 5, 1966, passed Resolution CO-106-66 commenting on the Task Force Report in regard to the re-evaluation of the Navajo Irrigation Project, and
5. Recent reports have indicated that, due to the lack of appropriations to implement the Navajo Irrigation Project according to the original scheduled plan, the construction of said project is in such a stage that the delivery of water to the land will be three years later than originally anticipated, and

5. The Commissioner of Indian Affairs has requested all Indian tribes to give statements regarding what legislation they feel is important to be presented to the next session of Congress.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby declares that it considers the Navajo Irrigation Project as the most important one program being developed on the Navajo Reservation and that it considers the appropriating of sufficient money and letting of appropriate contracts to be the most important one item which the Congress can do and authorize for the benefit of the Navajo Tribe.

2. The Navajo Tribal Council again states the condition agreed upon with the United States established in the Council's resolutions of December 12, 1957 (CD-86-57) and April 28, 1966 (CAP-56-66) as restated in resolution of October 5, 1966 (CO-106-66) as follows:

- a. The land area to be irrigated by the Project must not be reduced below the authorized 110,630 acres and the annual diversion from the Navajo Dam for irrigation must not be less than the authorized 508,000 acre-feet, whether the capacity to supply this quantity is provided by an increase in the size of the tunnels and canals or by the Gallegos Reservoir.
- b. The Irrigation Project must be exclusively for Navajo Indian use and there must be transferred into trust status sufficient off-reservation areas necessary to make up 110,630 irrigable acres which will be included as part of the irrigation project.
- c. No use in New Mexico of water of the San Juan River not heretofore authorized will be given priority ahead of the Navajo Irrigation Project.
- d. All of the Irrigation Project facilities must be constructed with sufficient capacity to supply reasonably anticipated industrial and municipal needs (as evidenced by the applications for water allocations already submitted to and approval being withheld by the Secretary of the Interior) without reducing the 508,000 acre-feet authorized for irrigation and without requiring such industries and municipalities to construct supplemental storage terminals.

3. The Navajo Tribal Council, on behalf of the Navajo Tribe, hereby requests the Commissioner of Indian Affairs to draft a bill consistent with the terms of this resolution and, after consultation with the Advisory Committee of the Navajo Tribal Council, present such a bill to the 90th Congress, which bill will accomplish the following purposes:

- a. Appropriate sufficient money to complete the Navajo Irrigation Project under its original plan.
- b. Authorize the inclusion in said Project of additional land to make up the total of 110,630 irrigable acres authorized.
- c. Provide for accelerated construction and appropriation of money in order to make up the loss of three years which have been lost to date in the construction schedule.

4. The Navajo Tribal Council hereby authorizes and directs the Legislative Secretary of the Navajo Tribal Council to forward copies of this resolution to the Commissioner of Indian Affairs, the Secretary of the Interior, and to the chairmen and members of the appropriate committees of the United States Congress, and to request of the chairmen of such committees, on behalf of the Navajo Tribe, that the Navajo Tribe be given an opportunity to be heard at any hearings in which such bill is being considered, and to request that a specific invitation to attend such hearing be addressed to the Chairman of the Navajo Tribal Council, the Advisory Committee of the Navajo Tribal Council, the Director of the Resources Division of the Navajo Tribe, the Head of the Land Investigation Department, and the General Counsel of the Navajo Tribe.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of 43 in favor and 0 opposed, this 23rd day of January, 1967.

Nelson Damon
Vice Chairman
Navajo Tribal Council