

December 5, 2003, Discussion Draft - Navajo Nation Water Rights Settlement

*Disclaimer. It is expressly understood that the governing bodies or authorities of the proposed signatories have not approved this draft settlement agreement, including the draft partial final decree, draft settlement act, draft settlement contract and draft executive summary. The New Mexico Interstate Stream Commission staff prepared the draft depletion schedule. These draft documents are provided for discussion purposes only.*

**APPENDIX 1**

ELEVENTH JUDICIAL DISTRICT  
 COUNTY OF SAN JUAN  
 STATE OF NEW MEXICO

STATE OF NEW MEXICO ex rel.       )  
 State Engineer,                        )  
   )  
   Plaintiff,                        )  
   )  
   v.    )  
   )  
 UNITED STATES OF AMERICA, et al.,    )  
   )  
   Defendants.                                )  
   )  
 \_\_\_\_\_)                                )

No. CIV 75-184

SAN JUAN RIVER  
 ADJUDICATION SUIT

PARTIAL FINAL JUDGMENT AND DECREE  
 OF THE WATER RIGHTS OF THE  
NAVAJO NATION

THIS CASE is a general adjudication of the surface and underground water rights within the San Juan River Basin in New Mexico authorized by NMSA Sections 72-4-13 through -19. All rights of the Navajo Nation to divert, impound or use the surface and underground waters within the San Juan River Basin, including the San Juan River and its tributaries, in New Mexico are decreed herein.

This matter comes before the Court on a Joint Motion for the Entry of a Partial Final Judgment and Decree (decree) filed by the United States, the State of New Mexico, and the Navajo Nation represented by signing counsel. The Court finds that the proposed decree is the product of a negotiated settlement by the aforesaid parties. Notice of the deadline for filing and serving objections to the water rights described in this decree was served on the parties to this case and potential water right claimants. The Court has considered the motion, the Joint Hydrographic Survey Report, the water rights to be adjudicated in this decree, and the objections thereto. See the Joint Hydrographic Survey Report attached to the motion as Exhibit \_\_. Upon consideration of the motion, the evidence in support thereof, and for good cause shown, the Court finds that the motion should be granted. In accordance with Rule 1-054(C) NMRA 1996, the Court further finds that there is no just reason for delay and directs the entry of this decree adjudicating all the water rights of the Navajo Nation within the San Juan River Basin.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Jurisdiction. The Court has jurisdiction over the subject matter and the parties in this case.

2. Reserved 1868 Priority Water Rights for Specified Diversions. The Navajo Nation has the right, subject to the limitations set forth in paragraph 4 of this decree, to divert the waters of the San Juan River Basin in New Mexico, with a priority of June 1, 1868, in quantities not to exceed:

(a) an average diversion of 508,000 acre-feet per year, or the quantity of water necessary to supply an average depletion of 267,000 acre-feet per year from the San Juan River, whichever is less, of surface water at Navajo Reservoir during any period of ten

consecutive years for irrigation of 110,630 acres of land on the Navajo Indian Irrigation Project generally located as described in the Act of June 13, 1962, Public Law 87-483 (76 Stat. 96), and for other purposes as authorized by section 203 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_), with a maximum diversion flow rate of 1,200 cubic feet per second;

(b) a diversion of 22,650 acre-feet, or the quantity of water necessary to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is less, of surface water from Navajo Reservoir and the San Juan River, in combination, in any one year at the points of diversion and for the purposes of the Navajo-Gallup Water Supply Project as authorized by section 104 the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_) for municipal, industrial, commercial and domestic uses, including residential agricultural uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 48.1 cubic feet per second;

(c) a diversion of 4,680 acre-feet, or the quantity of water necessary to supply a depletion of 2,340 acre-feet from the San Juan River system, whichever is less, of surface water from the Animas River in any one year at the point of diversion for the Navajo Nation Municipal Pipeline and for purposes of the Animas-La Plata Project as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258) for municipal, industrial, commercial and domestic uses, including residential agricultural uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the

Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 12.9 cubic feet per second;

(d) a diversion of 2,000 acre-feet, or the quantity of water necessary to supply a depletion of 1,000 acre-feet from the San Juan River, whichever is less, of surface water from the direct flow of the San Juan River in any one year at any location below the confluence of the San Juan and La Plata rivers for municipal, industrial, commercial and domestic purposes, including residential agricultural uses such as yard and stock watering, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum diversion flow rate of 2.8 cubic feet per second, provided that a permit is obtained from the New Mexico State Engineer if diversion of this water is to be made on non-Navajo lands;

(e) an average diversion of 42,200 acre-feet per year, or the quantity of water necessary to supply an average depletion from the San Juan River of 21,100 acre-feet per year, whichever is less, from the direct flow of the San Juan River at the diversion dam for the Hogback-Cudei Irrigation Project during any period of ten consecutive years for irrigation of 8,830 acres of land on the project generally located along the north and south sides of the San Juan River in the vicinity of the community of Shiprock, New Mexico, and between the diversion dam for the project and Four Corners, as described by the Bureau of Indian Affairs' Crop Utilization Study for the Hogback and Cudei irrigation projects dated September 1993, with a maximum diversion flow rate of 225 cubic feet per second, to include any diversions from an alternate point of diversion at the historic Cudei ditch diversion heading;

(f) an average diversion of 15,940 acre-feet per year, or the quantity of water necessary to supply an average depletion from the San Juan River of 7,970 acre-feet per year, whichever is less, from the direct flow of the San Juan River at the diversion dam for the Fruitland-Cambridge Irrigation Project during any period of ten consecutive years for irrigation of 3,335 acres of land on the project generally located along the south side of the San Juan River in the vicinity of the community of Fruitland, New Mexico, and between the City of Farmington and the diversion dam for the Hogback-Cudei Irrigation Project, as described by the Bureau of Indian Affairs' Crop Utilization Study for the Fruitland Irrigation Project dated 1993, with a maximum diversion flow rate of 100 cubic feet per second, to include any diversions from an alternate point of diversion at the historic Cambridge ditch diversion heading; and

(g) a diversion of 2,000 acre-feet in any one year of groundwater that is tributary to the San Juan River for municipal, industrial, commercial and domestic purposes, including residential agricultural uses such as yard and stock watering and domestic well uses that are not connected to public water supply systems, on lands in New Mexico that are held by the United States in trust for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the Navajo Nation, or on other lands if approved by permit of the New Mexico State Engineer.

The term "depletion" means the depletion caused by a particular use of water, including any depletion incident to the use.

3. Supplemental 2004 Priority Water Rights for Specified Uses. The Navajo Nation has the right, subject to the limitations set forth in paragraph 4 of this decree, to divert the direct flow of the

San Juan River, with a priority of January 1, 2004, to supplement specified diversions in quantities not to exceed:

(a) a diversion of 14,500 acre-feet in any one year, or 40 cubic feet per second, below the confluence of the San Juan and La Plata rivers as may be necessary to fully develop the depletions for the uses specified by subparagraphs 2(b), 2(c) and 2(d); and

(b) a diversion of 14,500 acre-feet in any one year, or 55 cubic feet per second, at the points of diversion for the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project as may be necessary to fully develop the depletions for the uses specified by subparagraphs 2(e) and 2(f); provided, that the diversion flow rate for the Hogback-Cudei Irrigation Project shall not exceed a total of 260 cubic feet per second and the diversion flow rate for the Fruitland-Cambridge Irrigation Project shall not exceed a total of 140 cubic feet per second.

4. Limitations. The Navajo Nation has the right to divert, impound, or use the water rights described in paragraphs 2 and 3; provided, that:

(a) The Navajo Nation's reserved water rights described in subparagraphs 2(a), 2(b) and 2(c) are subordinated, as provided in subparagraph (b) below, to the rights of the Nation to the delivery of 535,330 acre-feet of water per year for uses in New Mexico under the terms of the Contract dated \_\_\_\_\_ (the Settlement Contract) between the Secretary of the Interior and the Navajo Nation, authorized and approved by the United States Congress in section 303 of the San Juan River Basin in New Mexico Water Projects and Settlement Act, \_\_\_ Stat. \_\_\_\_; provided, however, that nothing herein is intended to confer jurisdiction on this Court over any action to enforce or challenge the Settlement Contract or over any action

for breach thereof. The Navajo Nation's contract rights for the uses described in subparagraphs 2(a) and 2(b) are based on, and shall be fulfilled or serviced under, the water rights acquired by the Secretary of the Interior and held by the United States pursuant to New Mexico State Engineer File Nos. 2848, 2849, 2873, 2917 combined, and 3215, and are subject to the sharing of shortages as provided in section 11 of the Act of June 13, 1962, 76 Stat. 96. The term "shortages" includes a decrease in water availability caused by requirements of Federal law, including the Endangered Species Act. The Navajo Nation shall not have the right to recoup the quantities of water not delivered under the Settlement Contract due to shortages. The right under subparagraph 2(a) to divert and use water for the Navajo Indian Irrigation Project during any period of ten consecutive years shall be reduced by the amounts of any shortages to the Project during the ten consecutive years. The Nation's contract rights for the uses specified in paragraph 2(c) are based on, and shall be fulfilled or serviced under, the water rights for the Animas-La Plata Project acquired by the Secretary of the Interior and held by the United States pursuant to New Mexico State Engineer File No. 2883, and are subject to Article I of the Animas-La Plata Project Compact approved by subsection 501(c) of the Colorado River Basin Project Act, 82 Stat. 898, and subsections 4(b), 4(i) and 8(b) of the Settlement Contract approved by section 303 of the San Juan River Basin in New Mexico Water Projects and Settlement Act, \_\_\_ Stat. \_\_\_\_.

(b) The subordination of the reserved water rights provided in subparagraph (a) above requires that the reserved right to each acre-foot of water per year under subparagraphs 2(a), 2(b) and 2(c) shall be subordinated to the Navajo Nation's contract right to each acre-foot of water per year, so that on the entry of this decree the Navajo Nation may exercise its

535,330 acre-feet of reserved water rights under subparagraphs 2(a), 2(b) and 2(c) if, and only if, all or part of the Navajo Nation's rights to divert water under the Settlement Contract are irretrievably lost. The irretrievable loss of the contractual right to the delivery or diversion of water will terminate the subordination of the Navajo Nation's rights under subparagraphs 2(a), 2(b) and 2(c). The temporary loss of the use of part or all of the Navajo Nation's right to divert water under the contract because of a judicial determination that a particular use is speculative or constitutes waste, or because a particular use proposed by a subcontract is denied or prohibited by applicable law, shall not constitute the irretrievable loss which will terminate the subordination of the Navajo Nation's rights under subparagraphs 2(a), 2(b) and 2(c).

(c) The Navajo Nation's rights to divert water under subparagraphs 2(e), 2(f) and 3(b) shall be subject to the annual diversion limits specified only if the Court adjudicates and requires enforcement of annual diversion limits for all irrigation uses in the San Juan River Basin in New Mexico, but shall at all times be subject to the annual depletion amounts for the specified uses.

(d) The Navajo Nation's rights under paragraph 3 may be exercised only to the extent that such additional amounts of water are necessary to fully develop the depletions for the corresponding uses specified under paragraph 2, may not be transferred to other uses notwithstanding the provisions of paragraph 15, and may be exercised only if such diversion does not impair, directly or indirectly, other water uses in New Mexico.

(e) The Navajo Nation's rights to fill and refill re-regulation storage reservoirs on the Navajo Indian Irrigation Project distribution system shall be limited to the filling and refilling



of the existing Cutter Reservoir, with a storage capacity of 1,793 acre-feet, and the proposed Gallegos Reservoir substantially as described in the February 1995 technical memorandum on Gallegos Dam Reconnaissance Design Summary prepared by the United States Bureau of Reclamation. The Gallegos Reservoir right shall not be effective unless and until Gallegos Dam is constructed by the United States for purposes of the Navajo Indian Irrigation Project as authorized by the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_). Cutter Dam and Reservoir and Gallegos Dam and Reservoir are Navajo Indian Irrigation Project facilities, and the rights to store water in the reservoirs shall not be transferable to other uses notwithstanding the provisions of paragraph 15. Water diverted from Navajo Reservoir into storage in either Cutter Reservoir or Gallegos Reservoir, and associated depletions caused by reservoir evaporation or seepage losses, shall be accounted within the Navajo Nation's rights to divert water for the purposes of the Navajo Indian Irrigation Project described in subparagraph 2(a). The re-regulating reservoirs also may retain and store water originating in the physical drainages above Cutter and Gallegos dams for use on the Project; provided, that the rights of the Navajo Nation to divert water under subparagraph 2(a) shall be reduced for any retention and storage of such water, and that such retention and storage of water shall be serviced under the rights acquired by the United States pursuant to New Mexico State Engineer File No. 3215.

5. Diversions for Navajo-Gallup Water Supply Project Uses in Arizona. The United States shall have the right to divert 6,410 acre-feet in any one year of surface water from the San Juan River in New Mexico for uses on Navajo lands, including lands held by the United States in trust for the Navajo Nation or members of the Navajo Nation and lands held in fee ownership by the Navajo

Nation, within the State of Arizona solely for purposes of the Navajo-Gallup Water Supply Project as authorized by section 104 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_), with a maximum diversion flow rate of 17.7 cubic feet per second; provided, that a water delivery contract between the Navajo Nation and the United States is executed to provide for the diversion of water in New Mexico for delivery to uses in Arizona consistent with section 104 of the Act. The United States' right to divert water in New Mexico for Navajo-Gallup Water Supply Project uses in Arizona shall be serviced under the rights acquired by the United States pursuant to New Mexico State Engineer File Nos. 2848, 2849, 2873, 2917 combined, and 3215, shall continue only so long as the water delivery contract remains in effect, shall be consistent with the provisions of the Upper Colorado River Basin Compact and the San Juan River Basin in New Mexico Water Projects and Settlement Act, shall not be transferable to other uses, and shall not be leased or otherwise subcontracted to third parties.

6. Joint Hydrographic Survey – Reserved Water Rights. The Navajo Nation has reserved water rights for the historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held in trust for the Navajo Nation by the United States, including lands allotted to individual members that are a part of Navajo Indian Reservation lands, as described in this decree and in the Joint Hydrographic Survey Report, which rights have a priority date of June 1, 1868; except, that water rights for historic and existing uses that are included within the rights described in paragraph 3 have a priority date of January 1, 2004. The reserved water rights for historic and existing irrigation and related purposes on the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-Cambridge Irrigation Project are included in the reserved water right amounts specified by subparagraphs 2(a), 2(e) and 2(f), respectively. Reserved water rights for

historic, existing and future municipal, industrial, commercial and domestic uses, including residential agricultural uses such as yard and stock watering, are included in the water right amounts specified by subparagraphs 2(b), 2(c), 2(d) and 2(g). The total annual quantities of water to which the Navajo Nation has a reserved water right for historic and existing uses and which are not included in paragraphs 2 and 3 shall not exceed an annual diversion of \_\_\_\_\_ acre-feet, or the quantity of water necessary to supply an annual depletion at the places of use of \_\_\_\_\_ acre-feet (including depletions caused by the particular uses of water and depletions that are incident to the uses of water), whichever is less, and a net evaporation from stockponds and reservoirs of \_\_\_\_\_ acre-feet. These water rights are described below. The following descriptions are not intended to prohibit changes in the point of diversion, or purpose or place of water use of the Navajo Nation's reserved water rights under Federal law. The conditions, if any, under which the Navajo Nation may make such changes are reserved for the Court's continuing jurisdiction to administer and enforce this decree, as provided in paragraph 13.

SAN JUAN RIVER BASIN

A. LIVESTOCK WATER USE

1. STOCK PONDS

<u>PLACE OF USE</u>		<u>SURFACE AREA</u> <u>(acres)</u>	<u>VOLUME</u> <u>(acre-feet)</u>	<u>NET EVAPORATION</u> <u>(acre-feet)</u>
All stock ponds described in the U.S. Hydrographic Survey Report.	Totals:	_____	_____	_____

The location, source, surface area, volume and net evaporation of each stock pond are identified and described in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit \_\_. The

Navajo Nation has the right to fill and refill each identified stock pond to its full capacity as often as water is available.

2. STOCK USE

<u>PLACE OF USE</u>	<u>NO. OF ANIMAL UNITS</u>	<u>AMOUNT OF WATER</u>	
		<u>DIVERSION (acre-feet)</u>	<u>DEPLETION (acre-feet)</u>
At stock wells and springs described below and in stock ponds described in the U.S. Hydrographic Survey Report.	_____	_____	_____

The foregoing diversion and depletion amounts are the amounts of water consumed by stock from the stock wells and springs listed below and stock ponds identified and described in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit \_.

(a) STOCK WELLS

<u>POINT OF DIVERSION</u>				<u>MAP</u>	<u>ID-NO.</u>	<u>SOURCE</u>
<u>T</u>	<u>R</u>	<u>SEC</u>	<u>1/4</u>			
___N	___W	___	___	___	___	___
___N	___W	___	___	___	___	___

(b) STOCK SPRINGS

<u>POINT OF DIVERSION</u>				<u>MAP</u>	<u>ID-NO.</u>	<u>SOURCE</u>
<u>T</u>	<u>R</u>	<u>SEC</u>	<u>1/4</u>			
___N	___W	___	___	___	___	___
___N	___W	___	___	___	___	___

B. RECREATION WATER USE

1. RECREATION LAKES

LOCATION						SURFACE	VOLUME	NET
T	R	SEC	1/4	MAP	ID-NO.	AREA	(acre-feet)	EVAPORATION
						(acres)		(acre-feet)
__	N	__	W	__	__	__	__	__
__	N	__	W	__	__	__	__	__
TOTALS								

The Navajo Nation has the right to fill and refill the lakes described above to their full capacity as often as water is available.

2. RECREATION USE

POINT OF DIVERSION					AMOUNT OF WATER	
T	R	SEC	SOURCE	MAP	DIVERSION	DEPLETION
					(acre-feet)	(acre-feet)
__	N	__	W	__	__	__
__	N	__	W	__	__	__
TOTALS						

The foregoing depletion amounts include the depletion at the places of use caused by the recreation use of water and any depletion incident to the use.

C. IRRIGATION WATER USE

1. IRRIGATION DIVERSION

POINT OF DIVERSION						AMOUNT OF WATER		
T	R	SEC	1/4	SOURCE	MAP	ACRES	DIVERSION	DEPLETION
							(acre-feet)	(cfs)
							(acre-feet)	(acre-feet)
__	N	__	W	__	__	__	__	__
__	N	__	W	__	__	__	__	__

TOTALS

The foregoing depletion amounts include the depletion at the places of use caused by the irrigation use of water and any depletion incident to the use. No more than \_\_\_\_\_ acres may be irrigated in any one calendar year within the \_\_\_\_\_ acres with irrigation water rights from tributaries to the San Juan River or from underground water sources within said tributary drainage areas. The amounts of water for the irrigation of \_\_\_\_\_ acres from said tributary areas and underground water sources shall not exceed an annual diversion of \_\_\_\_\_ acre-feet per year, or the quantity of water necessary to supply an annual depletion at the places of use of \_\_\_\_\_ acre-feet per year, whichever is less. The Navajo Nation's diversion rights for the irrigation water uses described above shall be subject to the annual diversion limits specified only if the Court adjudicates and requires enforcement of annual limits for all irrigation uses in the San Juan River Basin in New Mexico.

2. IRRIGATION RESERVOIR STORAGE

LOCATION						SURFACE	VOLUME	NET
T	R	SEC	1/4	MAP	ID-NO.	AREA	(acre-feet)	EVAPORATION
						(acres)		(acre-feet)
__	N	__	__	__	__	__	__	__
__	W	__	__	__	__	__	__	__
__	N	__	__	__	__	__	__	__
__	W	__	__	__	__	__	__	__
<u>TOTALS</u>								

The Navajo Nation has the right to fill and refill the reservoirs described above to their full capacity as often as water is available.

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7. Water Rights Acquired under State Law. The Navajo Nation has water rights acquired under New Mexico state law pursuant to rights or permits issued by the New Mexico State Engineer

that have been acquired by the Navajo Nation, and has water rights acquired under state law for historic and existing water uses on lands in the San Juan River Basin in New Mexico that are held in fee ownership by the Navajo Nation unless the rights for such uses have been retained by the previous landowner. These rights are described in this decree and in the Joint Hydrographic Survey Report, and exclude rights to the use of water historically made by non-Navajo entities on Navajo lands under permits issued by the New Mexico State Engineer that have not been acquired from said entities by the Navajo Nation. Water rights for historic municipal, industrial, commercial or domestic uses, except for *de minimus* uses under paragraph 9, that have been made on lands which are held in fee ownership by the Navajo Nation and that have not been made pursuant to permit or license issued by the New Mexico State Engineer are included in the total water right amounts specified by subparagraphs 2(b), 2(c), 2(d) and 2(g). The total annual quantities of water to which the Navajo Nation has a water right under state law as of the date of enactment of this decree amounts to an annual diversion of \_\_\_\_\_ acre-feet, or the quantity of water necessary to supply an annual depletion at the places of use of \_\_\_\_\_ acre-feet (including depletions caused by the particular uses of water and depletions that are incident to the uses of water), whichever is less, and a net evaporation from stockponds of \_\_\_\_\_ acre-feet. These water rights and the priority dates are described below. The following descriptions are not intended to prohibit changes in the point of diversion or purpose or place of use of the Navajo Nation's water rights under Federal and state law, nor are they intended to limit in any way the right and ability of the Navajo Nation to acquire and transfer additional water rights perfected under state law. The conditions, if any, under which the Navajo Nation may make such changes are reserved for the Court's continuing jurisdiction to administer and enforce this decree, as provided in paragraph 13.

SAN JUAN RIVER BASIN

A. LIVESTOCK WATER USE

1. STOCK PONDS

<u>PLACE OF USE</u>		<u>SURFACE AREA (acres)</u>	<u>VOLUME (acre-feet)</u>	<u>NET EVAPORATION (acre-feet)</u>	<u>PRIORITY</u>
All stock ponds described in the U.S. Hydrographic Survey Report.	Totals:	_____	_____	_____	_____

The location, source, surface area, volume and net evaporation of each stock pond are identified and described in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit \_\_. The Navajo Nation has the right to fill and refill each identified stock pond to its full capacity as often as water is available.

2. STOCK USE

<u>PLACE OF USE</u>	<u>NO. OF ANIMAL UNITS</u>	<u>AMOUNT OF WATER DIVERSION (acre-feet)</u>	<u>DEPLETION (acre-feet)</u>	<u>PRIORITY</u>
At stock wells and springs described below and in stock ponds described in the U.S. Hydrographic Survey Report.	_____	_____	_____	_____

The foregoing diversion and depletion amounts are the amounts of water consumed by stock from the stock wells and springs listed below and stock ponds identified and described in the Joint Hydrographic Survey Report attached to the joint motion as Exhibit \_\_.



(a) STOCK WELLS

POINT OF DIVERSION				MAP	ID-NO.	SOURCE	PRIORITY
T	R	SEC	1/4				
___	N	___	W	___	___	___	___
___	N	___	W	___	___	___	___

(b) STOCK SPRINGS

POINT OF DIVERSION				MAP	ID-NO.	SOURCE	PRIORITY
T	R	SEC	1/4				
___	N	___	W	___	___	___	___
___	N	___	W	___	___	___	___

B. IRRIGATION WATER USE

POINT OF DIVERSION				SOURCE	MAP	ACRES	AMOUNT OF WATER		PRIORITY
T	R	SEC	1/4				DIVERSION (acre-feet) (cfs)	DEPLETION (acre-feet)	
___	N	___	W	___	___	___	___	___	___
___	N	___	W	___	___	___	___	___	___
<hr/> TOTALS									

The foregoing depletion amounts include the depletion at the places of use caused by the irrigation use of water and any depletion incident to the use. The Navajo Nation's diversion rights for the irrigation water uses described above shall be subject to the annual diversion limits specified only if the Court adjudicates and requires enforcement of annual limits for all irrigation uses in the San Juan River Basin in New Mexico.

C. MUNICIPAL, INDUSTRIAL, COMMERCIAL AND DOMESTIC USE

POINT OF DIVERSION				SOURCE	PERMIT NO.	AMOUNT OF WATER		PRIORITY
T	R	SEC	1/4			DIVERSION (acre-feet)	DEPLETION (cfs)	
<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>
<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>	<u>  </u>
<hr/>								
TOTALS								

The foregoing depletion amounts include the depletion at the places of use caused by the use of water and any depletion incident to the use.

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8. Non-Tributary Groundwater. If the Navajo Nation can demonstrate that a specific water development on Navajo lands in New Mexico, including lands held by the United States in trust for the Navajo Nation and lands held in fee ownership by the Navajo Nation, would be from an underground water source that is not tributary to the San Juan River even though located within the physical drainage of the San Juan River and its tributaries, and that such development would not impair the exercise of non-Navajo water rights, then the Navajo Nation may file application with the State Engineer to appropriate non-tributary groundwater or may petition this Court for a water right for the specific future development of non-tributary groundwater. Water rights obtained pursuant to this paragraph shall not be accounted against, and would be in addition to, the water rights described in paragraphs 2 through 7.

9. *De minimus* uses. The Navajo Nation shall have the right to allow members of the Navajo Nation to divert and use surface water from springs and use groundwater in the San Juan River Basin in New Mexico without regard to the limitations and quantities of water rights described in

paragraphs 2 through 7 solely for indoor residential domestic uses on Navajo lands, including lands held by the United States in trust for the Navajo Nation and lands held in fee ownership by the Navajo Nation; provided, that such diversion and use of water does not involve the diversion and use of water under the water rights described in paragraphs 2 through 7, the diversion or conveyance of water by the project facilities authorized by the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_ Stat. \_\_\_) and preceding Acts of Congress, or the diversion and delivery of water by public water supply systems.

10. Allottees. Individual members of the Navajo Nation that have been allotted lands, by the United States by public land orders or otherwise, outside the exterior boundaries of lands held in trust for the benefit of the Navajo Nation in the San Juan River Basin in New Mexico may have reserved water rights. This decree does not quantify the nature, extent, or priority of such rights. Notwithstanding the foregoing, the historic and existing water uses on such allotted lands shall be described in the Joint Hydrographic Survey Report. Any water rights for such allotted lands that are adjudicated by the Court and that are in excess of the uses on those lands that are described in the Joint Hydrographic Survey Report shall be fulfilled or serviced by transfers of water rights of the Navajo Nation quantified in this decree or shall be offset by a corresponding and equivalent reduction of use of water rights of the Navajo Nation quantified in this decree. All water uses by allottees that have been allotted lands, by the United States by public land orders or otherwise, within the exterior boundaries of lands held in trust for the benefit of the Navajo Nation in the Basin in New Mexico shall be fulfilled or serviced by transfers of water rights of the Navajo Nation quantified in this decree or shall be offset by a corresponding and equivalent reduction of use of water rights of the Navajo Nation quantified in this decree.

11. Conditions. The Navajo Nation is hereby enjoined from the diversion or depletion of the surface or underground waters within the San Juan River Basin in New Mexico except in accordance with the rights described in this decree or any supplemental decrees adjudicating water rights acquired by the Navajo Nation after entry of this decree, or in accordance with state permits acquired after the date of this decree. In all instances, beneficial use shall be the limit of the right to use water adjudicated to the Navajo Nation by this decree. The Navajo Nation shall not be entitled to receive, nor shall the United States or the State of New Mexico be required to deliver, nor shall non-Navajo water users be required to curtail water uses to provide to the Navajo Nation, any water not then necessary for beneficial consumptive use under the rights adjudicated herein. This decree is binding upon political subdivisions, utilities, agencies, and other entities and officials of the Navajo Nation and the United States, and on successors and assigns.

12. Disclaimers. Nothing contained in this decree is intended to confer jurisdiction on the New Mexico State Engineer to administer or regulate the use of federally reserved water rights on lands held in trust for the Navajo Nation by the United States, nor does this decree limit the authority of the State Engineer to administer public waters of the San Juan River Basin on lands other than those held in trust for the Navajo Nation by the United States. Because the description of the Navajo Nation's water rights adjudicated in this decree is based upon a negotiated settlement, the procedures and methods used to quantify and describe the Navajo Nation's water rights in this decree shall not be binding under the law of the case doctrine upon any other water right claimant, the State, or the United States in the adjudication of other water rights in this case and should not be relied upon as precedent under the *stare decisis* doctrine in any other water right adjudication suit. Nothing herein is intended to adjudicate or encumber the water rights in New Mexico State Engineer File Nos. 2883,

2847, 3215 or combined permits 2848, 2849, 2873 and 2917, except for the amounts and uses of water specifically adjudicated to the Navajo Nation in subparagraphs 2(a), 2(b) and 2(c) and the right to divert water adjudicated to the United States in paragraph 5.

13. Retained jurisdiction. This decree is a final order under Rule 1-054(C) NMRA 200\_\_, and it may be modified only pursuant to Rule 1-060(B) NMRA 200\_\_. This Court retains jurisdiction for the administration and enforcement of the rights adjudicated in this decree, including entry of such supplemental orders as are necessary for the administration of this decree.

14. Records of water use. The Navajo Nation shall within six years from the date of entry of this decree, and annually thereafter, prepare and maintain detailed and accurate records of the acreages of all Navajo lands in the San Juan River Basin in New Mexico irrigated each year from the San Juan River, its tributaries or underground water sources, and of the annual diversions and consumptive uses of water in the San Juan River Basin in New Mexico from the San Juan River, its tributaries and underground water sources for all uses, all stated separately as to each source of water. The Navajo Nation shall prepare and submit to the Secretary of the Interior and the New Mexico State Engineer on or before October 1 of each year a report of its records and calculations of actual acreage irrigated and diversions and depletions of San Juan River Basin waters for the previous calendar year. The records and calculations shall be segregated by each use specified in paragraphs 2 through 10 of this decree. Diversions and depletions for livestock water uses pursuant to subparagraphs 6.A and 7.A, and for other uses to be reported under this paragraph, may be estimated using technically sound methodologies where actual measurement of uses is not practical for technical or economic reasons.

15. Administration. The Navajo Nation shall have jurisdiction to administer and regulate the

use and transfer of reserved water rights adjudicated by this decree and not subordinated pursuant to paragraph 4 on lands held by the United States in trust for the Navajo Nation in New Mexico; provided, that the Navajo Nation shall not allow changes in the exercise of rights that would impair non-Navajo Nation water rights. The Navajo Nation shall have jurisdiction to administer and regulate the use of water pursuant to water rights acquired under state law or the Settlement Contract approved by section 303 of the San Juan River Basin in New Mexico Water Projects and Settlement Act, \_\_\_ Stat. \_\_\_; provided, that such use of water complies with the rights adjudicated by this decree or is approved by the New Mexico State Engineer. The Navajo Nation may acquire and transfer, in accordance with state and federal law, the use of water rights that are not included in this decree and that are acquired under state law; provided, that such rights retain the priority date of the decreed, licensed or permitted right so acquired, and that the New Mexico State Engineer shall retain jurisdiction to administer and regulate the use and transfer of water rights which are acquired under state law. The Navajo Nation may also change the point of diversion or place of use of a water right adjudicated to it by this decree to a location outside the boundaries of Navajo lands in New Mexico, including lands held by the United States in trust for the Navajo Nation and lands held in fee ownership by the Navajo Nation, in accordance with state law. The Navajo Nation's water rights adjudicated herein shall not be leased, exchanged, forborne or otherwise transferred for use directly or indirectly outside the boundaries of the State of New Mexico without the consent of the State of New Mexico acting through the New Mexico Interstate Stream Commission and unless in compliance with applicable law. Nothing in this decree shall be construed to establish, address, prejudice or prevent any party from litigating whether or to what extent any law or compact does or does not permit, govern, or apply to the lease, exchange, forbearance or transfer of the Navajo

Nation's water rights for use directly or indirectly in an area outside the State of New Mexico.

16. Notice. In addition to any notice provisions under applicable law, at least 10 days prior to any change in the place or purpose of use or point of diversion in the exercise of the water rights identified herein or any withdrawal of groundwater above the amounts set forth herein, the Navajo Nation, acting through the Department of Water Resources, shall give notice of such change or withdrawal by publication in a newspaper of general circulation within the San Juan River Basin in New Mexico once per week for three consecutive weeks and by letter to the New Mexico State Engineer; except, that *de minimus* uses are exempt from this notice requirement.

17. San Juan-Chama Project. Nothing in this decree shall be construed to prohibit the Navajo Nation from acquiring the use of water diverted to the Rio Grande Basin via the San Juan-Chama Project authorized by the Act of June 13, 1962 (76 Stat. 96); provided, that the acquisition of such water is made by subcontract with existing contractors of said Project or by reallocation of Project water and subsequent contract with the Secretary of the Interior, subject to approval of the New Mexico Interstate Stream Commission and the United States; and provided further, that the acquisition of such water does not result in an increase in the amount of water required to be diverted by the Project from the San Juan River Basin to supply a Project yield of 96,200 acre-feet per year at Heron Dam.

18. Revocability. Notwithstanding the provisions of paragraph 13, this decree may be revoked upon a showing by the Navajo Nation that the conditions set forth at section 308 of the San Juan River Basin in New Mexico Water Projects and Settlement Act (\_\_\_\_ Stat. \_\_\_\_ ) have not been substantially satisfied or that deposits into the Navajo Nation Water Resources Development Trust Fund have not been substantially made pursuant to paragraph 6.0 of the San Juan River Basin in New

Mexico Navajo Nation Water Rights Settlement Agreement, signed by the State of New Mexico and the Navajo Nation on \_\_\_\_\_ and executed by the Secretary of the Interior on \_\_\_\_\_. If this decree is revoked, the parties shall not be bound by it or the Settlement Agreement, including any waivers and releases of claims provided pursuant to this decree, the Settlement Agreement or the San Juan River Basin in New Mexico Water Projects and Settlement Act, and the Navajo Nation may petition the Court to proceed with the determination of its rights in this case. The Navajo Nation's right to present to the Court cause to revoke this decree under this paragraph shall expire on December 31, 2020.

DATED: \_\_\_\_\_

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Judge Pro Tempore