

FOR SETTLEMENT DISCUSSION ONLY

THIS SETTLEMENT AGREEMENT HAS NOT BEEN FORMALLY APPROVED BY ANY OF THE PARTIES.

THE UNITED STATES HAS NOT REVIEWED OR COMMENTED ON THE TERMS OF THE AGREEMENT AND RESERVES ALL RIGHTS TO OBJECT TO OR PROPOSE CHANGES TO THE AGREEMENT. Importantly, the United States has not agreed to any funding amounts or projects as part of the settlement and is currently engaged in a technical review of the settlement and has made no decisions concerning the settlement whatsoever.

**NAVAJO NATION / STATE OF UTAH
WATER RIGHTS SETTLEMENT AGREEMENT**

The State of Utah, Navajo Nation and the United States of America, acting through their respective representatives, agree to this Navajo Nation/State of Utah Water Settlement Agreement as follows:

**SECTION 1.0
PURPOSE**

The Parties have reached this Agreement after government-to-government good faith negotiations by the Navajo Nation and the State. Through this Agreement, the Parties intend to recognize and protect the reserved Water Rights of the Navajo Nation as described herein, and all those possessing Water Rights derived by or through the Nation. The purpose of this Agreement is to remove the causes of present and future controversy over the quantification, allocation, distribution, and use of all waters derived by or through the Navajo Nation pursuant to any and all legal theories. The Parties also intend to protect State Appropriative Water Rights, and to provide Navajo and non-Indian citizens in the Upper Colorado River Basin in Utah with certainty regarding Water Rights, water management, and administration that will allow them to plan their futures.

**SECTION 2.0
LEGAL BASIS FOR AGREEMENT**

This Agreement is made in accordance with the Constitution and laws of the United States and the State, and the treaties and laws of the Navajo Nation.

SECTION 3.0
DEFINITIONS

As used in this Agreement, these terms, when capitalized in this Agreement, shall have the following meaning:

“AFY” means acre-feet per year.

“Act” means the Navajo Nation/State of Utah Water Rights Settlement Act of 2012.

“Agreement” means this Settlement Agreement, including and incorporating all exhibits hereto, and as it may be revised pursuant to the terms of this Settlement Agreement.

“Allottee” means individual Members of the Navajo Nation for whom the United States holds in trust title to an allotment.

“Allotment” means (i) a parcel of land located within the exterior boundaries of the Reservation; or (ii) Bureau of Indian Affairs parcel number 792 634511 in San Juan County, Utah consisting of 160 acres located in Township 41S, Range 20E, sections 11, 12 and 14, originally set aside by the United States for the benefit of an individual identified in the allotting document as a Navajo Indian and held in trust by the United States.

“CFS” means cubic feet per second.

“Colorado River System” means that portion of the Colorado River and its tributaries within the United States of America.

“Deplete” or “Depletion” means the use of water that renders it no longer available because it has been evaporated, transpired by plants, incorporated into products or crops, consumed by people or livestock, consumed by industrial processes, or otherwise permanently removed from the Upper Colorado River drainage.

“Divert” or “Diversion” means removing water from its natural course or location, or controlling water in its natural course or location, by means of a control structure, ditch, canal, flume, reservoir, pipeline, conduit, well, pump, or other structure or device.

- 1 “Effective Date” means the date upon which this Agreement has been ratified by both the
2 Navajo Nation and the State of Utah.
- 3 “Enforceability Date” means the date on which the Secretary publishes in the Federal
4 Register the statement of findings described in Section 11.0 of this Agreement.
- 5 “Existing and Developed” means that the owners of Water Rights have Diverted water
6 and put the water to beneficial use.
- 7 “General Stream Adjudication” means the adjudication currently pending in the Seventh
8 Judicial District in and for Grand County, State of Utah, commonly known as the
9 Southeastern Colorado River General Adjudication, Civil No. 810704477,
10 conducted pursuant to State law.
- 11 “IHS” means the Indian Health Service within the United States Department of Health and
12 Human Services.
- 13 “Injuries to Water Rights” means the loss, deprivation, or diminution of Water Rights.
- 14 “Member” means any person who is a duly enrolled member of the Navajo Nation.
- 15 “Navajo Nation” or “Nation” means a body politic and federally-recognized Indian nation
16 as provided for in Section 101(2) of the Federally Recognized Indian Tribes List
17 Act of 1994 (Public Law 103-454, 108 Stat. 4791), 79 Federal Register 4748
18 (January 29, 2014)), also known variously as the “Navajo Nation,” the “Navajo
19 Nation of Arizona, New Mexico & Utah,” and the “Navajo Nation of Indians” and
20 other similar names, and includes all bands of Navajo Indians and chapters of the
21 Navajo Nation and all divisions, agencies, officers, and agents thereof.
- 22 “Utah Navajo Water Development Projects” means water supply, distribution and
23 conservation projects constructed pursuant to this Agreement.
- 24 “OM&R” means operation, maintenance and replacement.
- 25 “Parties” means the Navajo Nation, State, and the United States.
- 26 “Place of Use” means the location where water is beneficially used.
- 27 “Point of Diversion” means the location where water is Diverted from a river, stream,
28 well, or other source of water.

1 “Purpose of Use” means the purpose for which water is beneficially used.

2 “Reclamation” means the Bureau of Reclamation within the United States Department of
3 the Interior.

4 “Reservation” means, for purposes of this Agreement, that part of the Navajo Nation
5 Reservation located within the boundaries of Utah and established by

6 Executive Order of May 17, 1884;

7 Executive Order 324A of May 15, 1905;

8 Act of March 1, 1933, Ch. 160, 47 Stat. 1418, 1419;

9 Act of April 28, 1948, Ch. 238, 62 Stat. 203, 204;

10 Act of Sept. 7, 1949, Ch. 567, 63 Stat. 698; and

11 Act of Sept 2, 1958, Pub. L. 85-868, 72 Stat. 1686-1690, as amended by Act of

12 May 17, 1968, Pub. L. 90-306, 82 Stat. 121;

13 as further depicted by the map attached hereto as Exhibit A.

14 “Secretary” means the Secretary of the United States Department of the Interior or a duly
15 authorized representative thereof.

16 “State” means the State of Utah and all officers, agents, departments, and political
17 subdivisions thereof.

18 “State Appropriative Water Rights” means a State appropriative water right or approved
19 water right application obtained pursuant to the laws of the State.

20 “State Engineer” means the State Engineer for the State as defined in Utah Code
21 Annotated, Section 73-2-1 (2004), as it may be amended.

22 “Store” means to artificially impound water under a Water Right’s respective priority date
23 for future use in accordance with the Right.

24 “United States” means the United States of America and all departments, agencies,
25 bureaus, officers, and agents thereof.

26 “United States Acting in Its Trust Capacity” means the United States acting for the benefit
27 of the Navajo Nation or for the benefit of Allottees.

28 “Water Right” or “Right” means a right under tribal, state and federal law to Divert,
29 pump, impound, Store, use or reuse water.

30

SECTION 4.0
QUANTIFICATION OF NAVAJO NATION WATER RIGHTS

4.1 Navajo Nation Reserved Water Rights

4.1.1 Quantification. The Navajo Nation shall have the right to use water from the Colorado River System located within Utah and adjacent to or encompassed within the boundaries of the Navajo Reservation resulting in Depletions not to exceed 81,500 AFY. The Navajo Nation's Water Rights shall be held in trust by the United States for the use and benefit of the Navajo Nation.

4.1.2 Diversion Rate. From the San Juan River located on or adjacent to the Reservation, the Navajo Nation has the right to Divert and Store up to 435 CFS of water for beneficial purposes resulting in total Depletions not to exceed 81,500 AFY. The Nation shall have the right to Divert additional quantities of water so long as the Nation can demonstrate that such additional Diversions do not impair any State Appropriative Water Rights Existing and Developed prior to the date notice is provided pursuant to Subsection 4.2.5 for the additional Diversion, and provided that such Diversions do not exceed the Depletion limit established in Subsection 4.1.1. Groundwater withdrawals from any source and Diversions from Lake Powell are not subject to the limitations established in this Subsection 4.1.2, however the Depletion limit established in Subsection 4.1.1 shall apply.

4.2 Navajo Nation Water Rights Priority

4.2.1 Priorities. The priority date of the Navajo Nation's Water Rights will be as set forth below:

	Priority Date	Allowable Depletion of Water (Units: AFY)
Block 1	May 17, 1884	69,275
Block 2	May 15, 1905	4,480
Block 3	March 1, 1933	3,670
Block 4	September 2, 1958	4,075

1 4.2.2 Subordination. Existing Navajo Nation Water Rights identified by and
2 quantified pursuant to Subsection 4.5.4 shall not be subordinated and shall have a priority
3 date determined by the Executive Order establishing that part of the Reservation where
4 water is Diverted. As additional Navajo Nation Water Rights described in Subsection 4.1
5 are developed and put to beneficial use:

6 i) On tributaries north of the San Juan River draining from lands that
7 are not part of the Reservation in Utah, the development of Navajo Nation Water Rights
8 shall not impair or interfere with State Appropriative Water Rights with a priority date
9 prior to the new use, and the Navajo Nation may not request a priority call on the tributary
10 against such rights in order to satisfy the water requirements of the new Navajo uses;

11 ii) On the San Juan River, the development of Navajo Nation Water
12 Rights shall not impair or interfere with State Appropriative Water Rights Existing and
13 Developed on the Effective Date and the Navajo Nation may not request a priority call on
14 the River against such rights in order to satisfy the water requirements of Navajo uses
15 developed after the Effective Date.

16 4.2.3 Physical Shortages. The subordination described in Subsection 4.2.2 will
17 apply when there are physical shortages to the supply of water available for use in the San
18 Juan River Basin in Utah. Physical shortages are shortages not attributable to Compact
19 curtailment as described in Subsection 4.2.4.

20 4.2.4 Compact Curtailment. If the State is required to curtail its consumptive uses
21 because it is determined that the consumptive use of water in Utah from the Upper
22 Colorado River Basin exceeds the State's Upper Colorado River Basin Compact Article
23 III(a) apportionment or if the Upper Colorado River Commission determines pursuant to
24 Article IV of the Upper Colorado River Basin Compact that the State must curtail its
25 consumptive uses of water for some period of time to allow the Upper Basin to comply
26 with Article III of the Colorado River Compact, the subordination described in
27 Subsections 4.2.2 and 4.2.3 shall not apply, and the State may curtail the consumptive

1 uses of the Navajo Nation only to the extent the Navajo Nation Diversions would require
2 curtailment under a system of priority administration.

3 4.2.5 Notice. To allow the State Engineer to track and account for general water
4 usage, as the Nation places to use water not put to use prior to the Effective Date, it shall
5 provide the State a written notice at least 90 days before the water is Diverted and put to
6 use. The notice shall denote the source of supply, Point of Diversion, proposed use of the
7 water, the period of time during the year when the water will be used, and other related
8 information about the proposed water use. The State Engineer shall place such notice on
9 its web page for informational purposes.

10 **4.3 Beneficial Use**

11 The Navajo Nation may use its Water Rights for any beneficial use permitted by
12 Tribal, federal or State law, anywhere within Utah. After the water is Diverted from the
13 source, the use shall not be subject to State law, regulation or jurisdiction, except as set
14 forth in this Section and in Section 9.0, addressing off-Reservation uses.

15 **4.4 Water Rights Not Subject to Loss**

16 The Navajo Nation's Water Rights shall not be subject to loss by abandonment,
17 forfeiture or non-use.

18 **4.5 Accounting for Depletion**

19 4.5.1 Accounting Methodology. The Depletions allowed for under this
20 Agreement derive from the water apportioned to the State under the Colorado River
21 Agreement (1922), the Upper Colorado River Compact (1948) and other existing laws
22 governing the administration of the Colorado River. Navajo Depletions described in this
23 Agreement will be accounted for using the same methodology applied to all other
24 comparable uses within the Colorado River System in the State.

25 4.5.2 Out-of-State Deliveries. Any water Diverted in Utah and delivered across
26 the Utah state line for consumptive use in another state will be accounted for as Navajo
27 Nation Depletions allocated for the Navajo Nation in the state where the water is used.
28 The right of the Navajo Nation to Divert water for consumptive use in another state shall

1 be subject to State Appropriative Water Rights with a priority date prior to the date notice
2 is provided pursuant to Subsection 4.2.5 for a new Navajo Nation Diversion.

3 4.5.3 Reporting. All such uses and Depletions within the calendar year shall be
4 accounted for using sound engineering practices and reported annually to the State on or
5 before April 30 of the following year.

6 4.5.4 Hydrographic Survey. The Parties shall complete a detailed hydrographic
7 survey of all historic and existing water uses on the Reservation within four years of the
8 Enforceability Date. The costs of preparing a hydrographic survey in the amount of
9 \$1,000,000 shall be part of the federal obligation in this Agreement. The Navajo Nation
10 shall be responsible to lead the survey effort and perform or contract for such survey. The
11 approach, and method to be used, shall be reviewed with and approved by the State and
12 the United States. The survey shall document all available water measurements and the
13 Parties shall develop Depletion estimates where actual measurements are not available.
14 The Navajo Nation shall report to the State annually as to the progress of the survey effort.

15 4.5.5 Monitoring Diversions. All uses of water that have associated Depletions of
16 greater than 100 AFY shall be metered from the source where water is Diverted and
17 records of Diversions shall be kept by the Nation. All water Diverted and used for
18 domestic water purposes and supplying more than 25 families shall be metered and water
19 use records maintained. Such Diversion records shall be maintained in perpetuity and
20 made available to the State Engineer upon request.

21 **4.6 Development of Water Sources**

22 The Navajo Nation may develop and use ground water sources located on the
23 Reservation and surface water sources flowing through or adjacent to the Reservation.

24 **4.7 Use of Water for Religious and Cultural Purposes**

25 The Navajo Nation and its Members shall have the right to withdraw water by
26 traditional methods from the streams and springs on the Reservation for religious and
27 cultural purposes. The Parties agree that such public uses are insignificant, shall not be

1 part of the Water Rights described in Subsection 4.1.1, and shall not be subject to the
2 subordination provisions of this Agreement.

3
4 **SECTION 5.0**
5 **UTAH NAVAJO WATER DEVELOPMENT FUND**

6 This Agreement provides for the Utah Navajo Water Development Fund. This
7 Agreement contemplates a comprehensive approach to addressing Reservation water
8 needs by including costs for domestic and municipal water supply and distribution
9 infrastructure and agricultural water conservation. To allow the Navajo Nation flexibility
10 in meeting the needs of its people over time as both circumstances and technologies
11 evolve, this Agreement uses the costs to meet Reservation water needs determined in the
12 studies referenced in Subsection 5.1 to establish the dollar amount of the Navajo Utah
13 Water Development Fund. To help ensure that water supply systems constructed pursuant
14 to the Agreement can be successfully developed and transitioned to be user-supported
15 systems, the Agreement also includes a Utah Navajo OM&R Trust Account. The monies
16 from these funds is to be used only for the benefit of Members within the Reservation in
17 Utah

18 **5.1 Investigations Supporting Utah Navajo Water Development Fund**

19 Documents entitled “San Juan – Mexican Hat to Kayenta Regional Water Supply
20 Study” (June 2014), and “Draft San Juan – Mexican Hat to Kayenta Regional Water
21 Supply Report” (March 2015) prepared by Reclamation; “Navajo Utah Chapters Regional
22 Water Plans and Analysis of the Existing Public Water System Upgrade Project” (Phase 1:
23 Hydraulic Engineering Analysis and Capital Improvements Plan (May 2010); Phase 2:
24 Utah Chapters Water Plan (August 2010)), prepared by Brown and Caldwell; and the
25 “Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper” (June 6,
26 2014), prepared by the Navajo Nation Department of Water Resources, describe the water
27 supply needs of the Reservation and propose a range of alternatives for addressing those
28 needs.

1 5.1.1. Water Supply. Regional systems providing water supply trunk lines were
2 determined to be the most cost effective means for meeting water demands. However, the
3 Parties acknowledge that there are a number of variables that are subject to change in the
4 future with the potential to affect the determination of which water delivery alternative is
5 most cost effective. The final design of any water supply system or project shall consist
6 of those components or features determined by the Nation to best meet the water supply
7 needs of the Reservation. This determination shall be made in consultation with the
8 Secretary pursuant to Subsection 5.4.

9 5.1.2 Water Distribution. The Navajo Nation looked to the investigations
10 performed by the IHS to identify deficiencies in the Reservation water distribution system.
11 Costs in the Utah Navajo Water Development Fund for a water distribution system were
12 derived from the costs associated with:

13 i) a capital improvement plan including, but not limited to,
14 approximately fifty short-term public water system upgrades as generally described in the
15 documents referenced in Subsection 5.1;

16 ii) a remote community water development plan to improve sanitation
17 facilities for rural homes and communities, which may include in-home sanitation
18 facilities, and including, but not limited to, approximately thirty projects on the IHS
19 sanitation deficiency list as generally described in the documents referenced in Subsection
20 5.1.

21 5.1.3 Agricultural Water Conservation and Management. The Navajo Nation
22 investigated methods for better managing and conserving water for agricultural uses on
23 the Reservation. The Utah Navajo Water Development Fund includes costs for
24 improvements to avoid water shortages to approximately 2,400 acres of historically
25 irrigated Navajo lands. Practices to be implemented include sprinklers and drip irrigation
26 systems, land leveling, construction of wells, pipelines, pumping stations and storage,
27 stream bank stabilization, pasture seeding and management, and construction of fencing

1 and wind breaks. No more than \$5 million (2014\$) of the Utah Navajo Water
2 Development Fund shall be used for this purpose.

3 **5.2 Project Planning, Design and Construction**

4 The Secretary, acting through the Commissioner of Reclamation, shall plan, design,
5 and construct the water diversion, delivery and conservation features of the Utah Navajo
6 Water Development Projects. The Secretary may enter into intergovernmental agreements
7 with other federal, state or Navajo Nation agencies as necessary or appropriate to
8 implement this Section.

9 **5.3 Lead Agency**

10 Reclamation, or any agency with an intergovernmental agreement with the
11 Secretary pursuant to subsection 5.2, shall serve as the lead agency with respect to any
12 activity to plan, design and construct the water diversion, delivery and conservation
13 features of any Utah Navajo Water Development Project to be constructed by that agency.

14 **5.4 Water Supply System Final Project Design**

15 5.4.1. Design Review. Prior to beginning construction activities for any water
16 supply system constructed pursuant to this Agreement, the Secretary shall review the
17 proposed design and perform value engineering analyses.

18 5.4.2 Negotiation with the Navajo Nation. On the basis of the review described in
19 Subsection 5.4.1, the Secretary shall negotiate and reach agreement with the Navajo
20 Nation regarding appropriate changes to the final design so that the final design meets
21 applicable industry standards, as well as changes, if any, that would allow the projects to
22 be constructed for the funding amounts made available pursuant to Subsection 5.5, and
23 improve the cost-effectiveness of the projects.

24 5.4.3 Project Management Committee. The Secretary shall facilitate the
25 formation of a project management committee composed of representatives of: (a) the
26 Navajo Nation; (b) Reclamation, the Bureau of Indian Affairs, and/or IHS, as appropriate;
27 and (c) the State—

1 i) to review cost factors and budgets for construction, operation and
2 maintenance activities;

3 ii) to improve management of inherently governmental activities
4 through enhanced communication; and

5 iii) to seek additional ways to reduce overall costs.

6 **5.5 Project Funding**

7 5.5.1 Federal Obligation. The total amount of obligations incurred by the
8 Secretary to plan, design and construct the Utah Navajo Nation Water Development
9 Projects shall not exceed \$198,300,000, except that the total amount of \$198,300,000 shall
10 be increased or decreased, as appropriate, based on ordinary fluctuations from June 2014,
11 in construction cost indices applicable to the types of construction involved in the design
12 and construction of the Utah Navajo Water Development Projects.

13 5.5.2. State Cost Share. The State shall contribute \$8,000,000, payable to the
14 Secretary in installments in each of the three years following the execution of the
15 Agreement by the Secretary on behalf of the United States, for planning, design and
16 construction of the Utah Navajo Water Development Projects.

17 5.5.3 Transfers to Navajo OM&R Trust Account. Monies made available for the
18 Utah Navajo Water Development Fund but not used to construct water supply, distribution
19 and conservation projects may, at the discretion of the Navajo Nation, be transferred to the
20 Utah Navajo OM&R Trust Account established by Subsection 5.6.

21 **5.6 Navajo Nation OM&R Trust Account**

22 The United States shall establish a trust account in the amount of \$11,100,000,
23 indexed to June 2014 dollars in the Treasury of the United States for the operation,
24 maintenance, and replacement of any water supply system constructed pursuant to this
25 Agreement.

26 **5.7 Applicability of the Indian Self-Determination Act**

27 5.7.1 Utah Navajo Water Development Projects Contractible. At the request of
28 the Navajo Nation, and in accordance with the Indian Self-Determination and Education

1 Assistance Act (25 U.S.C. §§ 459 *et seq.*), the Secretary, or any other federal agency
2 engaged in planning, design or construction activities pursuant to an intergovernmental
3 agreement authorized by Subsection 5.2, shall enter into one or more agreements with the
4 Navajo Nation to carry out the activities authorized by this Section.

5 5.7.2 Oversight Costs. Reclamation and the Navajo Nation shall negotiate the
6 cost of any oversight activities carried out by Reclamation for each agreement under this
7 Section, provided that the total cost for that oversight shall not exceed four percent of the
8 total project costs.

9 **5.8 Conveyance of Title to Utah Navajo Water Development Projects**

10 5.8.1 Project Completion. The Secretary shall convey to the Navajo Nation title
11 to any water supply system or project constructed pursuant to this Agreement when
12 construction of each project is complete and the project is operating and, if applicable,
13 delivering potable water.

14 5.8.2 Limitation of Liability. Effective on the date of the conveyance authorized
15 by Subsection 5.8.1, the United States shall not be held liable by any court for damages
16 arising out of any act, omission, or occurrence relating to the facilities conveyed pursuant
17 to this Subsection, other than damages caused by any intentional act or act of negligence
18 committed by the United States, or by employees or agents of the United States, prior to
19 the date of conveyance.

20 5.8.3 OM&R Obligation of United States. The United States shall have no
21 obligation to pay for the operation, maintenance, or replacement costs of any Utah Navajo
22 Water Development Project beginning on the date on which—

- 23 i) title to the project is conveyed to the Navajo Nation; and
24 ii) the amounts required to be deposited in the Navajo OM&R Trust
25 Account pursuant to Subsection 5.6 have been deposited in that account.

26 5.8.4. Technical Assistance. The Secretary shall provide technical assistance to
27 prepare the Navajo Nation for operation of the Utah Navajo Water Development Projects,
28 including operation and management training.

1 reporting of uses of these Water Rights by the Navajo Nation as further described in
2 Section 4.5.

3 **7.2 Change to Off-Reservation Use**

4 When any State Appropriative Water Right is moved pursuant to a change
5 application approved by the State Engineer from the Reservation to lands outside the
6 Reservation, only uses remaining on the Reservation will be counted as part of the Water
7 Rights described in Subsection 4.1.1.

8 **7.3 New Applications to the State Engineer for On-Reservation Uses**

9 After the Effective Date, the State Engineer will reject any application that seeks to
10 use water upon the Reservation; provided, however, that should a court of competent
11 jurisdiction finally determine that the Navajo Nation lacks jurisdiction to regulate water
12 use on non-Indian owned fee lands within the Reservation, the State Engineer may accept
13 an application to put water to use on such lands. Applications filed with the State
14 Engineer after the Effective Date that seek to Divert water on the Reservation for use
15 outside the Reservation will be approved by the State Engineer only on the condition that
16 a permit is also secured from the Navajo Nation for the Diversion and for conveyance
17 works located on the Reservation.

18 **7.4 Permitting of On-Reservation Uses Pursuant to Navajo Law**

19 Any person who has a State Appropriative Water Right on the Reservation may
20 seek to have the water use associated with that right permitted pursuant to Navajo law, and
21 the State will not object to such a permit.

22 **SECTION 8.0**
23 **WATER ADMINISTRATION**

24 **8.1 Role of State Engineer**

25 The State Engineer shall have authority, in cooperation with the Navajo Nation, to
26 monitor the Navajo Nation's Diversion and use of water from the Upper Colorado River
27 Basin in Utah to ensure that the waters are being beneficially used in compliance with this
28 Agreement and the decree, and shall have authority to request the Navajo Nation to make

1 any appropriate adjustments to its Diversions as necessary to comply with the provisions
2 of this Agreement and the proper administration of diversions from the Upper Colorado
3 River Basin in Utah.

4 **8.2 Role of Navajo Nation**

5 The Navajo Nation shall have jurisdiction, authority and responsibility to measure,
6 distribute, administer and regulate the use of the Navajo Nation's Water Rights beginning
7 at the Point of Diversion, subject to the terms and conditions set forth in this Agreement.
8 After water is Diverted from the source, use thereof shall not be subject to State law,
9 regulation or jurisdiction, except as set forth in Section 4.0.

10 **8.3 Change in Water Use**

11 The Navajo Nation shall administer and regulate changes in the Point of Diversion,
12 Place of Use, Purpose of Use, and period of use of water uses located on the Reservation,
13 except for applications to move the Navajo Nation's Water Rights off the Reservation as
14 set forth in Section 9.0. The Navajo Nation shall provide information to the State
15 Engineer documenting any such changes in water use as provided in Subsection 4.2.5.

16 **SECTION 9.0** 17 **TRANSFERS OFF THE RESERVATION**

18 **9.1 Change Application Required**

19 The Nation must apply for a change application consistent with State law and
20 secure the State Engineer's approval prior to the Diversion or use of the Navajo Nation's
21 Water Rights outside the Reservation within Utah. An application for change, and any
22 action taken on any such application, affects only the Nation's right to Divert and use
23 water off the Reservation and does not otherwise diminish, constrain or negate such Water
24 Rights as confirmed in Subsection 4.3 of this Agreement.

25 **9.2 Applicable Law**

26 If the Navajo Nation elects to transfer any of its Water Rights off the Reservation,
27 during the period of use off the Reservation, such Water Rights shall be subject to the
28 same restrictions applicable to other Water Rights in the State of Utah. Nothing in this

1 Agreement shall constitute specific authority for the sale, exchange, lease, use or other
2 disposition of any Navajo Nation Water Right outside of Utah.

3 **SECTION 10.0**
4 **ADMINISTRATION FOR COMPACT COMPLIANCE**

5 The Navajo Nation and the United States agree that the State may administer in
6 priority Water Rights in the Southeastern Colorado River Basin in Utah, including Water
7 Rights of the Navajo Nation, as may be necessary for the State to comply with its
8 obligations under interstate compacts and other applicable laws relating to the Colorado
9 River.

10 **SECTION 11.0**
11 **ENFORCEABILITY DATE AND CONDITIONS PRECEDENT**

12 **11.1 Secretary's Statement of Findings**

13 The Enforceability Date shall occur, and the waivers and release contained in
14 Section 12.0 of this Agreement shall become effective, as of the date the Secretary causes
15 to be published in the Federal Register a statement of findings that—

16 11.1.1 to the extent that the Agreement conflicts with the Act, the Agreement has
17 been revised to conform with the Act;

18 11.1.2 the Agreement, so revised, including waivers and releases of claims set
19 forth in Section 12.0, has been executed by the Parties, including the United States;

20 11.1.3 Congress has fully appropriated, or the Secretary has provided from other
21 authorized sources, all funds agreed to in Subsections 4.54 and 5.5;

22 11.1.4 the State has enacted all necessary legislation and provided the funding
23 agreed to in Subsection 5.5; and

24 11.1.5 the court has entered a judgment and decree confirming the water rights of
25 the Navajo Nation in the general stream adjudication pursuant to Utah Rule of Civil
26 Procedure 54(b), that confirms the water rights of the Navajo Nation and is final as to all
27 parties to the general stream adjudication and from which no further appeals may be

1 taken, which the parties find is consistent in all material respects with the Agreement and
2 with the proposed judgment and decree agreed to by the parties to the Agreement.

3 **11.2 Failure of Conditions**

4 If the Secretary does not publish the statement of findings pursuant to Subsection
5 11.1 by [date to be determined by agreement], then this Agreement shall be null and void.

6 **11.3 Extension**

7 The expiration date set forth in Subsection 11.2 may be extended if the Navajo
8 Nation, the State and the United States (acting through the Secretary) agree that an
9 extension is reasonably necessary.

10 **SECTION 12.0**
11 **WAIVERS AND RELEASES OF CLAIMS**

12 **12.1 Waiver and Release of Claims by the Navajo Nation and the United States**
13 **Acting in its Capacity as Trustee for the Nation**

14 In return for recognition of the Navajo Nation's Water Rights, the Water Rights or
15 rights to use water of Allottees, and other benefits set forth in this Agreement, and in
16 return for a waiver of claims by the State against the Nation and the United States Acting
17 in Its Trust Capacity, the Nation and the United States Acting in Its Trust Capacity hereby
18 waive and release:

19 12.1.1 All claims for Water Rights within the boundaries of Utah based on any and
20 all legal theories that the Navajo Nation, Allottees, or the United States Acting in Its Trust
21 Capacity, asserted, or could have asserted, at any time in any proceeding, including but
22 not limited to the pending proceedings in the General Stream Adjudication, up to and
23 including the Enforceability Date, except to the extent that such Rights are recognized in
24 this Agreement;

25 12.1.2 All claims for damages, losses, or Injuries to Water Rights or claims of
26 interference with, Diversion, or taking of Water Rights (including but not limited to
27 claims for injury to lands resulting from such damages, losses, injuries, interference with,
28 Diversion, or taking of Water Rights) within Utah against the State, or any person, entity,

1 corporation or municipality, that accrued at any time up to and including the
2 Enforceability Date.

3 **12.2 Waiver and Release of Claims by the Navajo Nation Against the United States**

4 The Navajo Nation waives and releases:

5 12.2.1 All claims the Navajo Nation may have against the United States relating in
6 any manner to claims for Water Rights in or water of Utah that the United States Acting in
7 Its Trust Capacity asserted, or could have asserted, in any proceeding, including but not
8 limited to the pending proceedings in the General Stream Adjudication.

9 12.2.2 All claims the Navajo Nation may have against the United States relating in
10 any manner to damages, losses, or injuries to water, Water Rights, land, or other resources
11 due to loss of water or Water Rights (including but not limited to damages, losses, or
12 injuries to hunting, fishing, gathering or cultural rights due to loss of water or Water
13 Rights; claims relating to interference with, Diversion or taking of water; or claims
14 relating to failure to protect, acquire, replace, or develop water or Water Rights) within
15 Utah that first accrued at any time up to and including the Enforceability Date.

16 12.2.3 All claims the Navajo Nation may have against the United States relating in
17 any manner to the litigation of claims relating to the Nation's Water Rights in proceedings
18 in Utah; and

19 12.2.4 All claims the Nation may have against the United States relating in any
20 manner to the negotiation, execution, or the adoption of this Agreement.

21 **12.3 Waiver and Release of Claims by the State**

22 Except as provided in Subsection 12.5, the State waives and releases any claims
23 that the State may have against the Navajo Nation, Allottees, and the United States Acting
24 in Its Trust Capacity, under federal, State or other law for:

25 12.3.1 Past and present claims for Injury to Water Rights resulting from the
26 Diversion or use of water on or for: the Reservation; Navajo trust land in Utah; Navajo
27 fee land in Utah; or Allotments, arising from time immemorial through the Enforceability
28 Date;

1 12.3.2 Claims for injury to Water Rights arising after the Enforceability Date
2 resulting from the Diversion or use of water on or for: the Reservation; Navajo trust land
3 in Utah; Navajo fee land in Utah; or Allotments, in a manner not in violation of this
4 Agreement or applicable law; and

5 12.3.3 Past, present and future claims arising out of or related in any manner to the
6 negotiation or execution of this Agreement, or the negotiation or enactment of the Act.

7 **12.4 Reservation of Rights and Retention of Claims by the Navajo Nation and**
8 **United States Acting in Its Trust Capacity**

9 Notwithstanding the waivers and releases authorized in this Agreement, the Navajo
10 Nation and the United States Acting in Its Trust Capacity retain:

11 12.4.1 All claims for the enforcement of this Agreement and the final or
12 interlocutory decree entered in the General Stream Adjudication, through such legal and
13 equitable remedies as may be available in the decree court or the Federal District Court for
14 the District of Utah;

15 12.4.2 All rights to use and protect Water Rights acquired after the Enforceability
16 Date of this Agreement;

17 12.4.3 All claims relating to activities affecting the quality of water including but
18 not limited to any claims under the Comprehensive Environmental Response,
19 Compensation, and Liability Act, 42 U.S.C. §§ 4321 *et seq.* (including but not limited to
20 claims for damages to natural resources), the Safe Drinking Water Act, 42 U.S.C. §§ 300f
21 *et seq.*, and the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the regulations
22 implementing those Acts; and

23 12.4.4 All rights, remedies, privileges, immunities, and powers not specifically
24 waived and released pursuant to this Agreement.

25 **12.5 Reservations of Rights and Retention of Claims by the State**

26 Notwithstanding the waivers of claims and releases described in this Section, the
27 State shall retain any right to:

1 12.5.1 Assert claims for injuries to, and seek enforcement of, the State's rights
2 under the Agreement in any State or Federal court of competent jurisdiction;

3 12.5.2 Assert claims for injury to and seek enforcement of the State's rights under
4 the judgment and decree entered by the court in the General Stream Adjudication, as
5 described in Subsection 11.1.5;

6 12.5.3 Assert past, present and future claims to water that are subject to the General
7 Stream Adjudication or other applicable law, and that are not inconsistent with the
8 Agreement; and

9 12.5.4 Assert any claims for Injury to Water Rights not specifically waived herein.

10 12.5.5 Further, nothing in Subsection 12.3 shall preclude the State from taking any
11 action, including environmental actions, under any laws (including regulations and the
12 common law) relating to human health, safety or the environment.

13 **12.6 Effect of Section**

14 Nothing in this Agreement—

15 12.6.1 Affects the ability of the United States acting in its sovereign capacity to
16 take actions authorized by law, including any laws relating to health, safety, or the
17 environment, including the Comprehensive Environmental Response, Compensation, and
18 Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §§ 300f
19 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, the Solid
20 Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, the regulations implementing those laws,
21 and the common law;

22 12.6.2 Affects the ability of the United States to take actions acting in its capacity
23 as trustee for any other Indian tribe or allottee; or

24 12.6.3 Confers jurisdiction on any State court to:

25 i) interpret Federal law regarding health, safety, or the environment or
26 determine the duties of the United States or other parties pursuant to such Federal law; or

27 ii) conduct judicial review of Federal agency action.

1 **12.7 Delay Not a Waiver**

2 No delay or failure by any Party to exercise any right under this Agreement, and no
3 partial or single exercise of that right, shall constitute waiver of that or any other right,
4 unless expressly provided herein. No waiver by a Party under this Agreement shall affect
5 or alter the remainder of this Agreement, and each and every covenant, duty, and
6 condition hereof shall continue in full force and effect with respect to any other then
7 existing and subsequently occurring breach.

8 **12.8 Claims Waived or Released**

9 Nothing herein acknowledges the existence or validity of any claims that are being
10 waived or released.

11 **SECTION 13.0**
12 **ENFORCEMENT**

13 **13.1 Enforcement**

14 For purposes of compelling compliance with the terms of this Agreement, each
15 Party waives the defense of sovereign immunity only as to claims brought by any other
16 Party to enforce the terms of this Agreement, including any defense under the Eleventh
17 Amendment to the United States Constitution. A Party's claim that any other Party, or its
18 officials are acting to impair or violate any right or privilege recognized in this
19 Agreement, shall be brought in the United States District Court for the District of Utah.
20 The federal court jurisdiction provided for herein shall not be diminished by reason of a
21 related State court proceeding. While the primary responsibility for protecting and
22 preserving the Navajo Nation's Water Rights rests with the United States and the Navajo
23 Nation, the State, through the State Engineer, shall use its best efforts to see that the
24 Navajo Nation's Water Rights secured in this Agreement are protected from impairment;
25 provided however, that nothing herein shall subject the State, its officers, or employees to
26 a claim for monetary damages in its efforts to so administer and protect the Navajo
27 Nation's Water Rights.

1 **13.2 Rights and Remedies**

2 The Parties shall have all rights and remedies provided under applicable federal or
3 State law for a breach or threatened breach of this Agreement; provided, however, that
4 because this Agreement is intended to supply water in perpetuity to the Navajo Nation in
5 lieu of the Water Rights claims that could have been filed by the United States on behalf
6 of the Navajo Nation in the General Stream Adjudication, termination of this Agreement
7 for breach of this Agreement is not a permitted or authorized right or remedy under this
8 Agreement. These rights and remedies shall not be mutually exclusive, and the exercise
9 of one or more of these rights and remedies shall not preclude the exercise of any other
10 rights and remedies. Each Party confirms that damages at law may be an inadequate
11 remedy for the breach or threatened breach of any provision hereof and the respective
12 rights and obligations of the Parties hereunder shall be enforceable by specific
13 performance, injunction, or other equitable remedy. Subject to the provisions of
14 Subection 13.1, nothing in this Agreement shall be construed to waive the sovereign
15 immunity of the United States, except as to the General Stream Adjudication under the
16 McCarran Amendment, 43 U.S.C. § 666.

17
18 **SECTION 14.0**
19 **RATIFICATION AND AMENDMENT**

20 **14.1 Ratification**

21 The Parties acknowledge that this Agreement must be ratified by Congress and the
22 Navajo Nation and the State shall use their best cooperative efforts to secure that
23 ratification. The Parties shall take all appropriate actions necessary to implement this
24 Agreement. Upon the occurrence of the Enforceability Date, the terms of this Agreement
25 will have the force and effect of law and the Parties agree to adopt all statutes, regulations,
26 ordinances, and codes that are or may be necessary to harmonize the same with the terms
27 of this Agreement.

1 act or thing that is not authorized by law and for which funds have not been appropriated
2 by the Navajo Nation Council.

3 **17.2 Application Necessary to Effectuate Agreement**

4 The Parties shall not protest any application filed with the State Engineer in
5 furtherance of or as needed to effectuate the provisions of this Agreement.

6 **17.3 Proposed Determinations Necessary to Effectuate Agreement**

7 The Parties shall not file any objection or protest to any proposed determination(s)
8 that may be issued by the State Engineer in furtherance of or as needed to effectuate this
9 Agreement, except to the extent that such proposed determination(s) may be inconsistent
10 with this Agreement.

11 **17.4 Proposed Judgment and Decree**

12 The Parties shall not file any objection or protest to the proposed judgment and
13 decree described in Subsection 11.1.5 that is filed by stipulation of the Parties in the
14 General Stream Adjudication.

15 **17.5 Filings in General Stream Adjudication**

16 The Parties shall file in the General Stream Adjudication those documents required
17 to obtain a decree(s), pursuant to Utah Rule of Civil Procedure 54(b), that is final as to all
18 Parties to the General Stream Adjudication and from which no further appeals may be
19 taken, which confirms the State Engineer's proposed determination.

20 **SECTION 18.0**
21 **CONTINGENT ON APPROPRIATION**
22 **OF FUNDS**

23 The expenditure or advance of any money or the performance of any obligation by
24 the United States under this Agreement shall be contingent upon appropriation of funds
25 therefore. No liability shall accrue to the United States or to any other Party in the event
26 that funds are not appropriated.

**SECTION 19.0
OTHER PROVISIONS**

19.1 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

19.2 Entire Agreement

This Agreement, including its Appendices, supersedes any prior understanding, representation, or agreement of the Parties regarding the subject matter hereof.

19.3 Notices

Any notice to be given hereunder shall have been properly given when hand delivered to the officer or manager designated in this Subsection, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

President
Navajo Nation
P.O. Box 9000
Window Rock, AZ 86515

Regional Director
Bureau of Reclamation
Upper Colorado Region
125 South State Street, Room 6107
Salt Lake City, UT 84138-1147

Executive Director
Utah Department of Natural Resources
P. O. Box 145610
Salt Lake City, UT 84114-5610

19.4 Officials Not to Benefit

No member of or delegate to Congress or the Utah Legislature shall be admitted to any share of this Agreement or to any benefit that may arise here from.

19.5 Persons Bound by Agreement

19.5.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective employees, representatives, successors, and assigns.

1 IN WITNESS WHEREOF, the Parties have executed this Agreement dated on the
2 day and year first above written.

3 **THE NAVAJO NATION**

4 By: _____

5 Its: _____

6 Date: _____

7 **STATE OF UTAH**

8 By: _____

9 Its: _____

10 Date: _____

11 **UNITED STATES OF AMERICA**

12 By: _____

13 Its: _____

14 Date: _____

DRAFT - For Settlement Purposes Only