

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 the projects described in Section 5.0.
- 23 “OM&R” means operation, maintenance and replacement.
- 24 “Parties” means the Navajo Nation, State, and the United States.
- 25 “Place of Use” means the location where water is beneficially used.
- 26 “Point of Diversion” means the location where water is Diverted from a river, stream,
27 well, or other source of water.
- 28 “Purpose of Use” means the purpose for which water is beneficially used.

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

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

5 Executive Order of May 17, 1884;

6 Executive Order 324A of May 15, 1905;

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

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

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

10 Act of Sept 2, 1958, Pub. L. 85-868, 72 Stat. 1686-1690, as amended by Act of
11 May 17, 1968, Pub. L. 90-306, 82 Stat. 121;

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

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

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

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

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

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

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

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

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

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 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 PROJECTS**

6 Water development projects provided for in this Agreement include (1) the Utah
7 Navajo Water Supply System, (2) the Utah Navajo Water Distribution System consisting
8 of a capital improvement plan to upgrade Navajo public water systems and completion of
9 projects that are identified in the inventory for the IHS Sanitation Deficiency System for
10 Navajo Nation lands in Utah, and (3) the Agricultural Water Conservation and
11 Management Program. To help ensure that the Utah Navajo Water Supply System can be
12 successfully developed and transitioned to a user-supported system, the Agreement also
13 includes a Utah Navajo OM&R Trust Account.

14 **5.1 Project Planning, Design and Construction**

15 The Secretary, acting through the Commissioner of Reclamation, shall plan, design,
16 and construct the water diversion, delivery and conservation features of the Navajo Water
17 Development Projects. The Secretary may enter into intergovernmental agreements with
18 other federal, state or Navajo agencies as necessary or appropriate to implement this
19 Section.

20 **5.2 Lead Agency**

21 Reclamation, or any agency with an intergovernmental agreement with the
22 Secretary pursuant to subsection 5.1, shall serve as the lead agency with respect to any
23 activity to plan, design and construct the water diversion, delivery and conservation
24 features of any Navajo Water Development Project to be constructed by that agency.

25 **5.3 Scope of Projects**

26 5.3.1 Utah Navajo Water Supply System. Documents entitled “Draft San Juan –
27 Mexican Hat to Kayenta Regional Water Supply Study” (June 2014), and “Draft San Juan
28 – Mexican Hat to Kayenta Regional Water Supply Report” (March 2015) prepared by
29 Reclamation; “Navajo Utah Chapters Regional Water Plans and Analysis of the Existing

1 Public Water System Upgrade Project” (Phase 1: Hydraulic Engineering Analysis and
2 Capital Improvements Plan (May 2010); Phase 2: Utah Chapters Water Plan (August
3 2010)), prepared by Brown and Caldwell; and the “Navajo Nation/State of Utah Water
4 Rights Settlement Projects: White Paper” (June 6, 2014), prepared by the Navajo Nation
5 Department of Water Resources, describe the water supply needs of the Reservation and
6 propose a range of alternatives for addressing those needs. Regional systems providing
7 water supply trunk lines were determined to be the most cost effective means for meeting
8 water demands. However, the Parties acknowledge that there are a number of variables
9 that are subject to change in the future with the potential to affect the determination of
10 which water delivery alternative is most cost effective. The final design of the Utah
11 Navajo Water Supply System shall consist of those components or features determined by
12 the Nation to best meet the water supply needs of the Reservation. This determination
13 shall be made in consultation with the Secretary pursuant to Subsection 5.4.

14 5.3.2 Utah Navajo Water Distribution System. The water distribution system shall
15 consist of:

16 i) a capital improvement plan including, but not limited to,
17 approximately fifty short-term public water system upgrades as generally described in the
18 documents referenced in Subsection 5.3.1;

19 ii) a remote community water development plan to improve sanitation
20 facilities for rural homes and communities, which may include in-home sanitation
21 facilities, and including, but not limited to, approximately thirty projects on the IHS
22 sanitation deficiency list as generally described in the documents referenced in Subsection
23 5.3.1.

24 5.3.3 Agricultural Water Conservation and Management Program. The
25 Agricultural Water Conservation and Management Program includes improvements to
26 approximately 2,400 acres of historically irrigated Navajo lands. Problems to be
27 addressed include wind and water erosion, noxious weeds, pest control, soil texture and
28 nutrient issues. Practices to be implemented include sprinklers and drip irrigation

1 systems, land leveling, construction of pipelines and pumping stations, stream bank
2 stabilization, pasture seeding and management, and construction of fencing and wind
3 breaks.

4 **5.4 Utah Navajo Water Supply System Final Project Design**

5 5.4.1. Design Review. Prior to beginning construction activities for the Utah
6 Navajo Water Supply System described in Subsection 5.3.1, the Secretary shall review the
7 proposed design and perform value engineering analyses.

8 5.4.2 Negotiation with the Navajo Nation. On the basis of the review described in
9 Subsection 5.4.1, the Secretary shall negotiate and reach agreement with the Navajo
10 Nation regarding appropriate changes to the final design so that the final design meets
11 applicable industry standards, as well as changes, if any, that would allow the projects to
12 be constructed for the funding amounts made available pursuant to Subsection 5.5, and
13 improve the cost-effectiveness of the projects.

14 5.4.3 Project Management Committee. The Secretary shall facilitate the
15 formation of a project management committee composed of representatives of: (a) the
16 Navajo Nation; (b) Reclamation, the Bureau of Indian Affairs, and/or IHS, as appropriate;
17 and (c) the State—

18 i) to review cost factors and budgets for construction, operation and
19 maintenance activities;

20 ii) to improve management of inherently governmental activities
21 through enhanced communication; and

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

23 **5.5 Project Funding**

24 5.5.1 Federal Obligation. The total amount of obligations incurred by the
25 Secretary to plan, design and construct the Utah Navajo Nation Water Development
26 Projects shall not exceed \$ 198,300,000, except that the total amount of \$198,300,000
27 shall be increased or decreased, as appropriate, based on ordinary fluctuations from June
28 2014, in construction cost indices applicable to the types of construction involved in the

1 design and construction of the Utah Navajo Water Development Projects. Funding shall
2 be allocated as set forth in Table 1.

3 **Table 1 Utah Navajo Water Development Project Funding**

Water Project	Settlement Cost (\$ Million) (June 2014)
1. Utah Navajo Water Supply System	\$147.9
2. Utah Navajo Water Distribution System	\$45.4
3. Agricultural Water Conservation and Management Program	\$5.0
TOTAL CAPITAL COST	\$198.3

4
5 5.5.2. State Cost Share. The State shall contribute \$8,000,000, payable to the
6 Secretary in installments in each of the three years following the execution of the
7 Agreement by the Secretary on behalf of the United States, for planning, design and
8 construction of the Utah Navajo Water Development Projects.

9 5.5.3 Transfers to Navajo OM&R Trust Account. Monies made available for the
10 Utah Navajo Water Development Projects but not used for that purpose may, at the
11 discretion of the Navajo Nation, be transferred to the Utah Navajo OM&R Trust Account
12 established by Subsection 5.6.

13 **5.6 Navajo Nation OM&R Trust Account**

14 The United States shall establish a trust account in the amount of \$10,000,000 in
15 the Treasury of the United States for the operation, maintenance, and replacement of the
16 Utah Navajo Water Supply System described in Subsection 5.3.1.

17 **5.7 Applicability of the Indian Self-Determination Act**

18 5.7.1 Utah Navajo Water Development Projects Contractible. At the request of
19 the Navajo Nation, and in accordance with the Indian Self-Determination and Education
20 Assistance Act (25 U.S.C. §§ 459 *et seq.*), the Secretary, or any other federal agency

1 engaged in planning, design or construction activities pursuant to an intergovernmental
2 agreement authorized by Subsection 5.2, shall enter into one or more agreements with the
3 Navajo Nation to carry out the activities authorized by this Section.

4 5.7.2 Oversight Costs. Reclamation and the Navajo Nation shall negotiate the
5 cost of any oversight activities carried out by Reclamation for each agreement under this
6 Section, provided that the total cost for that oversight shall not exceed four percent of the
7 total project costs.

8 **5.8 Conveyance of Title to Utah Navajo Water Development Projects**

9 5.8.1 Project Completion. The Secretary shall convey title to the Navajo Water
10 Development Projects authorized in Subsections 5.3.1 and 5.3.2 to the Navajo Nation
11 when construction of each project is complete and the project is operating and, if
12 applicable, delivering potable water.

13 5.8.2 Limitation of Liability. Effective on the date of the conveyance authorized
14 by Subsection 5.8.1, the United States shall not be held liable by any court for damages
15 arising out of any act, omission, or occurrence relating to the facilities conveyed pursuant
16 to this Subsection, other than damages caused by any intentional act or act of negligence
17 committed by the United States, or by employees or agents of the United States, prior to
18 the date of conveyance.

19 5.8.3 OM&R Obligation of United States. The United States shall have no
20 obligation to pay for the operation, maintenance, or replacement costs of any Utah Navajo
21 Water Development Project beginning on the date on which—

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

25 5.8.4. Technical Assistance. The Secretary shall provide technical assistance to
26 prepare the Navajo Nation for operation of the Utah Navajo Water Development Projects,
27 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 State
28 law, federal law, interstate compacts, and international treaties applicable to the Colorado

1 River and its tributaries, including but not limited to the use, development, storage,
2 regulation, allocation, conservation, exportation, or quality of such waters.

3 **9.3 Limitation on Transfers to Lower Colorado River Basin**

4 Except as provided in Section 4.0 of this Agreement, none of the Navajo Nation's
5 Water Rights recognized in this Agreement may be sold, exchanged, leased, used, or
6 otherwise disposed of into or in the Lower Colorado River Basin, below Lee Ferry, unless
7 Water Rights within the Upper Colorado River Basin in Utah held by non-federal, non-
8 Indian users could be so sold, exchanged, leased, used, or otherwise disposed of under
9 State law, federal law, interstate compacts, or international treaties pursuant to a final,
10 non-appealable order of a federal court or pursuant to an agreement of the seven states
11 signatory to the Colorado River Compact. Provided, however, that in no event shall such
12 transfer of any of the Navajo Nation's Water Rights take place without the filing and
13 approval of the appropriate change or export applications in accordance with Subsection
14 9.1 of this Agreement.

15 9.3.1 Nothing in this Agreement shall:

- 16 i) constitute specific authority for the sale, exchange, lease, use or other
17 disposition of any Navajo Nation Water Right outside of Utah;
- 18 ii) be deemed or construed as a congressional determination that any
19 holders of Water Rights do or do not have authority under existing law to sell, exchange,
20 lease, use, or otherwise dispose of such water or Water Rights outside of Utah; or,
- 21 iii) be deemed or construed to establish, address, or prejudice whether, or
22 the extent to which, or to prevent any party from litigating whether, or the extent to which,
23 any of the aforementioned laws do or do not permit, govern or apply to the use of the
24 Navajo Nation's Water Rights water outside of Utah.

25 **SECTION 10.0**
26 **ADMINISTRATION FOR COMPACT COMPLIANCE**

27 The Navajo Nation and the United States agree that the State may administer in
28 priority Water Rights in the Southeastern Colorado River Basin in Utah, including Water

1 Rights of the Navajo Nation, as may be necessary for the State to comply with its
2 obligations under interstate compacts and other applicable laws relating to the Colorado
3 River.

4 **SECTION 11.0**
5 **ENFORCEABILITY DATE AND CONDITIONS PRECEDENT**

6 **11.1 Secretary's Statement of Findings**

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

10 11.1.1 to the extent that the Agreement conflicts with the Act, the Agreement has
11 been revised to conform with the Act;

12 11.1.2 the Agreement, so revised, including waivers and releases of claims set
13 forth in Section 12.0, has been executed by the Parties, including the United States;

14 11.1.3 Congress has fully appropriated, or the Secretary has provided from other
15 authorized sources, all funds agreed to in Subsections 4.54 and 5.5;

16 11.1.4 the State has enacted all necessary legislation and provided the funding
17 agreed to in Subsection 5.5; and

18 11.1.5 the court has entered a judgment and decree confirming the water rights of
19 the Navajo Nation in the general stream adjudication pursuant to Utah Rule of Civil
20 Procedure 54(b), that confirms the water rights of the Navajo Nation and is final as to all
21 parties to the general stream adjudication and from which no further appeals may be
22 taken, which the parties find is consistent in all material respects with the Agreement and
23 with the proposed judgment and decree agreed to by the parties to the Agreement.

24 **11.2 Failure of Conditions**

25 If the Secretary does not publish the statement of findings pursuant to Subsection
26 11.1 by [date to be determined by agreement], then this Agreement shall be null and void.

27 **11.3 Extension**

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

4 **SECTION 12.0**
5 **WAIVERS AND RELEASES OF CLAIMS**

6 **12.1 Waiver and Release of Claims by the Navajo Nation and the United States**
7 **Acting in its Capacity as Trustee for the Nation**

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

13 12.1.1 All claims for Water Rights within the boundaries of Utah based on any and
14 all legal theories that the Navajo Nation, Allottees, or the United States Acting in Its Trust
15 Capacity, asserted, or could have asserted, at any time in any proceeding, including but
16 not limited to the pending proceedings in the General Stream Adjudication, up to and
17 including the Enforceability Date, except to the extent that such Rights are recognized in
18 this Agreement;

19 12.1.2 All claims for damages, losses, or Injuries to Water Rights or claims of
20 interference with, Diversion, or taking of Water Rights (including but not limited to
21 claims for injury to lands resulting from such damages, losses, injuries, interference with,
22 Diversion, or taking of Water Rights) within Utah against the State, or any person, entity,
23 corporation or municipality, that accrued at any time up to and including the
24 Enforceability Date.

25 **12.2 Waiver and Release of Claims by the Navajo Nation Against the United States**

26 The Navajo Nation waives and releases:

27 12.2.1 All claims the Navajo Nation may have against the United States relating in
28 any manner to claims for Water Rights in or water of Utah that the United States Acting in

1 Its Trust Capacity asserted, or could have asserted, in any proceeding, including but not
2 limited to the pending proceedings in the General Stream Adjudication.

3 12.2.2 All claims the Navajo Nation may have against the United States relating in
4 any manner to damages, losses, or injuries to water, Water Rights, land, or other resources
5 due to loss of water or Water Rights (including but not limited to damages, losses, or
6 injuries to hunting, fishing, gathering or cultural rights due to loss of water or Water
7 Rights; claims relating to interference with, Diversion or taking of water; or claims
8 relating to failure to protect, acquire, replace, or develop water or Water Rights) within
9 Utah that first accrued at any time up to and including the Enforceability Date.

10 12.2.3 All claims the Navajo Nation may have against the United States relating in
11 any manner to the litigation of claims relating to the Nation's Water Rights in proceedings
12 in Utah; and

13 12.2.4 All claims the Nation may have against the United States relating in any
14 manner to the negotiation, execution, or the adoption of this Agreement.

15 **12.3 Waiver and Release of Claims by the State**

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

19 12.3.1 Past and present claims for Injury to Water Rights resulting from the
20 Diversion or use of water on or for: the Reservation; Navajo trust land in Utah; Navajo
21 fee land in Utah; or Allotments, arising from time immemorial through the Enforceability
22 Date;

23 12.3.2 Claims for injury to Water Rights arising after the Enforceability Date
24 resulting from the Diversion or use of water on or for: the Reservation; Navajo trust land
25 in Utah; Navajo fee land in Utah; or Allotments, in a manner not in violation of this
26 Agreement or applicable law; and

27 12.3.3 Past, present and future claims arising out of or related in any manner to the
28 negotiation or execution of this Agreement, or the negotiation or enactment of the Act.

1 **12.4 Reservation of Rights and Retention of Claims by the Navajo Nation and**
2 **United States Acting in Its Trust Capacity**

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

5 12.4.1 All claims for the enforcement of this Agreement and the final or
6 interlocutory decree entered in the General Stream Adjudication, through such legal and
7 equitable remedies as may be available in the decree court or the Federal District Court for
8 the District of Utah;

9 12.4.2 All rights to use and protect Water Rights acquired after the Enforceability
10 Date of this Agreement;

11 12.4.3 All claims relating to activities affecting the quality of water including but
12 not limited to any claims under the Comprehensive Environmental Response,
13 Compensation, and Liability Act, 42 U.S.C. §§ 4321 *et seq.* (including but not limited to
14 claims for damages to natural resources), the Safe Drinking Water Act, 42 U.S.C. §§ 300f
15 *et seq.*, and the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the regulations
16 implementing those Acts; and

17 12.4.4 All rights, remedies, privileges, immunities, and powers not specifically
18 waived and released pursuant to this Agreement.

19 **12.5 Reservations of Rights and Retention of Claims by the State**

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

22 12.5.1 Assert claims for injuries to, and seek enforcement of, the State's rights
23 under the Agreement in any State or Federal court of competent jurisdiction;

24 12.5.2 Assert claims for injury to and seek enforcement of the State's rights under
25 the judgment and decree entered by the court in the General Stream Adjudication, as
26 described in Subsection 11.1.5;

1 12.5.3 Assert past, present and future claims to water that are subject to the General
2 Stream Adjudication or other applicable law, and that are not inconsistent with the
3 Agreement; and

4 12.5.4 Assert any claims for Injury to Water Rights not specifically waived herein.

5 12.5.5 Further, nothing in Subsection 12.3 shall preclude the State from taking any
6 action, including environmental actions, under any laws (including regulations and the
7 common law) relating to human health, safety or the environment.

8 **12.6 Effect of Section**

9 Nothing in this Agreement—

10 12.6.1 Affects the ability of the United States acting in its sovereign capacity to
11 take actions authorized by law, including any laws relating to health, safety, or the
12 environment, including the Comprehensive Environmental Response, Compensation, and
13 Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §§ 300f
14 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, the Solid
15 Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, the regulations implementing those laws,
16 and the common law;

17 12.6.2 Affects the ability of the United States to take actions acting in its capacity
18 as trustee for any other Indian tribe or allottee; or

19 12.6.3 Confers jurisdiction on any State court to:

- 20 i) interpret Federal law regarding health, safety, or the environment or
21 determine the duties of the United States or other parties pursuant to such Federal law; or
22 ii) conduct judicial review of Federal agency action.

23 **12.7 Delay Not a Waiver**

24 No delay or failure by any Party to exercise any right under this Agreement, and no
25 partial or single exercise of that right, shall constitute waiver of that or any other right,
26 unless expressly provided herein. No waiver by a Party under this Agreement shall affect
27 or alter the remainder of this Agreement, and each and every covenant, duty, and

1 condition hereof shall continue in full force and effect with respect to any other then
2 existing and subsequently occurring breach.

3 **12.8 Claims Waived or Released**

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

6 **SECTION 13.0**
7 **ENFORCEMENT**

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

22 **SECTION 14.0**
23 **CAPACITIES IN WHICH AGREEMENT IS EXECUTED**

24
25 **14.1 Navajo Nation**

26 This Agreement is executed by the Navajo Nation, acting through its President or
27 its Attorney General.

28 **14.2 United States**

1 This Agreement is executed by the United States Acting in Its Trust Capacity,
2 acting through the Secretary.

3 **14.3 State of Utah**

4 This Agreement is executed by the State, acting through its Executive Director of
5 the Department of Natural Resources.

6 **SECTION 15.0**
7 **RATIFICATION AND AMENDMENT**

8 **15.1 Ratification**

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

16 **15.2 Amendments**

17 Any amendments or modifications of this Agreement shall be binding only if
18 evidenced in writing and signed by each Party or the authorized representative of each
19 Party.

20 **SECTION 16.0**
21 **EVIDENTIARY EFFECT OF NEGOTIATIONS**

22 **16.1 No Admission Against Interest**

23 This Agreement has been arrived at in process of good faith negotiations for the
24 purpose of resolving legal disputes, including any pending litigation. All Parties agree
25 that no offers and/or compromises made in the course of this process shall be construed as
26 admissions against interests or be used in any legal proceeding other than ones for
27 approval, confirmation, interpretation, or enforcement of this Agreement.

28 **16.2 Voluntary Compromise**

1 This Agreement is the result of a voluntary compromise settlement reached among
2 the Parties. Accordingly, no provision of this Agreement or its adoption as part of any
3 General Stream Adjudication shall be construed as altering or affecting the determination
4 of any issues relating to any other reserved water rights claims that may belong to other
5 Indian tribes within or outside of Utah.

6 **16.3 Construction and Effect**

7 This Agreement is to be construed fairly and reasonably in its entirety. The Section
8 and Subsection titles used in this Agreement are for convenience only and shall not be
9 considered in the construction of this Agreement. Each of the Parties has been fully
10 represented in connection with the preparation of this Agreement and, as such, this
11 Agreement shall be neutrally interpreted and shall not be construed in favor of any Party
12 or against any Party.

13 **SECTION 17.0**
14 **RIGHTS AND REMEDIES**

15 The Parties shall have all rights and remedies provided under applicable federal or
16 State law for a breach or threatened breach of this Agreement; provided, however, that
17 because this Agreement is intended to supply water in perpetuity to the Navajo Nation in
18 lieu of the Water Rights claims that could have been filed by the United States on behalf
19 of the Navajo Nation in the General Stream Adjudication, termination of this Agreement
20 for breach of this Agreement is not a permitted or authorized right or remedy under this
21 Agreement. These rights and remedies shall not be mutually exclusive, and the exercise
22 of one or more of these rights and remedies shall not preclude the exercise of any other
23 rights and remedies. Each Party confirms that damages at law may be an inadequate
24 remedy for the breach or threatened breach of any provision hereof and the respective
25 rights and obligations of the Parties hereunder shall be enforceable by specific
26 performance, injunction, or other equitable remedy. Subject to the provisions of Section
27 13.0, nothing in this Agreement shall be construed to waive the sovereign immunity of the

1 United States, except as to the General Stream Adjudication under the McCarran
2 Amendment, 43 U.S.C. § 666.

3 **SECTION 18.0**
4 **OBTAINING COURT DECREE**
5 **IN GENERAL STREAM ADJUDICATION**

6 **18.1 Proposed Determination of Rights**

7 Upon ratification of this Agreement pursuant to Subsection 15.1 herein, this
8 Agreement and its exhibits or attachments will be incorporated into a Proposed
9 Determination of Rights issued by the State Engineer in the General Stream Adjudication.
10 The Parties will cooperate to obtain an interlocutory decree covering the same.

11 **18.2 Joinder of the United States**

12 The United States Acting in Its Trust Capacity consents to its joinder in that limited
13 capacity as a party in the General Stream Adjudication upon the ratification of this
14 Agreement and execution of the Agreement, as it may be amended to conform to the Act,
15 by the Secretary on behalf of the United States.

16 **18.3 Binding Effect**

17 If the Parties are unsuccessful in securing an interlocutory decree, this Agreement
18 shall remain binding upon the Parties until a final decree is issued in the General Stream
19 Adjudication covering the Navajo Nation's Water Rights as set forth in this Agreement
20 and its attachments or until the Agreement becomes null and void pursuant to Subsection
21 11.2.

22 **SECTION 19.0**
23 **NECESSARY ACTS AND COOPERATION**

24 **19.1 Acts Necessary to Effectuate Agreement**

25 The Parties shall do any act or thing and execute any and all instruments required
26 by this Agreement and which are necessary and proper to make effective the provisions of
27 this Agreement; provided, however, that the United States, shall not be required to do any
28 act or thing that is not authorized by law and for which funds have not been appropriated
29 by Congress; provided, further, that the State shall not be required to do any act or thing

1 that is not authorized by law and for which funds have not been appropriated by the State
2 legislature; and provided, further, that the Navajo Nation shall not be required to do any
3 act or thing that is not authorized by law and for which funds have not been appropriated
4 by the Navajo Nation Council.

5 **19.2 Application Necessary to Effectuate Agreement**

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

8 **19.3 Proposed Determinations Necessary to Effectuate Agreement**

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

13 **19.4 Proposed Judgment and Decree**

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

17 **19.5 Filings in General Stream Adjudication**

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

22 **SECTION 20.0**
23 **CONTINGENT ON APPROPRIATION**
24 **OF FUNDS**

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

**SECTION 21.0
OTHER PROVISIONS**

21.1 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.

21.2 Entire Agreement

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

21.3 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

21.4 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.

21.5 Persons Bound by Agreement

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

1 21.5.2 The signature of each Party to this Agreement shall be non-revocable from
2 the date of the signature through the Enforceability Date of this Agreement.

3 **21.6 No Benefit to Third Party**

4 Except as expressly stated herein, this Agreement is not intended to be for the
5 benefit of any third party, and shall not be deemed to confer any rights or cause of action
6 upon any person or entity other than the Parties to this Agreement, nor create any
7 obligations of the Parties to third persons or entities.

8 **SECTION 22.0**
9 **SIGNATURE AUTHORITY**

10 The undersigned representative of each Party to this Agreement certifies that he or
11 she is fully authorized to enter into the terms and conditions of this Agreement, to execute
12 it and to bind the Party each person represents to this Agreement.

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

15 **THE NAVAJO NATION**

16 By: _____
17 Its: _____
18 Date: _____

19 **STATE OF UTAH**

20 By: _____
21 Its: _____
22 Date: _____

23 **UNITED STATES OF AMERICA**

24 By: _____
25 Its: _____
26 Date: _____