

DISTRICT COURT
SAN JUAN COUNTY NM
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1 STATE OF NEW MEXICO
2 SAN JUAN COUNTY
3 THE ELEVENTH JUDICIAL DISTRICT COURT

4
5 STATE OF NEW MEXICO, *ex rel.* STATE ENGINEER,

6
7 **Plaintiff,**

8
9 **vs.**

10
11 THE UNITED STATES OF AMERICA, *et al.*,

12
13 **Defendants,**

14
15 THE JICARILLA APACHE TRIBE AND THE
16 NAVAJO NATION,

17
18 **Defendant-Intervenors.**

CV-75-184
HON. JAMES J. WECHSLER
Presiding Judge

SAN JUAN RIVER
GENERAL STREAM
ADJUDICATION

Claims of the Navajo Nation
Case No. AB-07-1

19
20 **PARTIAL FINAL JUDGMENT AND DECREE**
21 **OF THE WATER RIGHTS OF THE**
22 **NAVAJO NATION**
23

24
25 THIS CASE is a general adjudication filed pursuant to NMSA 1978, Sections 72-4-13
26 through -19 of the surface and underground water rights within the San Juan River Basin in New
27 Mexico as authorized by 43 U.S.C. Section 666. The rights of the Navajo Nation to divert, impound,
28 or use the surface waters within the San Juan River Basin, including the San Juan River and its
29 tributaries, and the underground waters underlying the surface drainage of the San Juan River Basin
30 in New Mexico, are decreed herein.

31 This matter comes before the Court on the Settlement Motion of United States, Navajo
32 Nation and State of New Mexico for the Entry of Partial Final Decrees, filed January 3, 2011. The
33 Court finds that the proposed Partial Final Judgment and Decree ("Decree") is the product of a
34 negotiated settlement by the aforesaid parties. Notice of the deadline for filing and serving

1 objections to the water rights described in this Decree was served on the parties to this case and
2 potential water right claimants pursuant to the expedited *inter se* procedures adopted by the Court.
3 The Court, having considered the parties' motion, the objections thereto, the evidence in support
4 thereof, and for good cause shown:

5 ENTERED the *Order Granting the Settlement Motion for Entry of Partial Final Decrees*
6 *Describing the Water Rights of the Navajo Nation* on August 16, 2013; and

7 FINDS that there is no just reason for delay in accordance with Rule 1-054(B) NMRA and
8 directs the entry of this Decree adjudicating the water rights of the Navajo Nation within the San
9 Juan River Basin.

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

11 **1. JURISDICTION.**

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

13 **2. RESERVED RIGHTS TO THE USE OF WATER.**

14 The Navajo Nation's reserved rights, which are held in trust by the United States on behalf of
15 the Navajo Nation, are described in paragraphs 3, 7(a), 8 and 10 of this Decree. These reserved
16 rights have a priority date of June 1, 1868 and are not subject to abandonment, forfeiture or loss for
17 non-use.

18 **3. RESERVED RIGHTS FOR SPECIFIED SURFACE WATER DIVERSIONS.**

19 The Navajo Nation has the right, subject to the limitations set forth in paragraph 5 of this
20 Decree, to divert the waters of the San Juan River Basin in New Mexico, with a priority date of June
21 1, 1868, in quantities for the following uses not to exceed:

1 (a) NAVAJO INDIAN IRRIGATION PROJECT, an average diversion of 508,000
2 acre-feet per year, or the quantity of water necessary to supply an average depletion of
3 270,000 acre-feet per year from the San Juan River, whichever is less, of surface water from
4 the San Juan River at the location of Navajo Reservoir during any period of ten consecutive
5 years for irrigation of 110,630 acres of land on the Navajo Indian Irrigation Project generally
6 located as described in Plate 1 of the Bureau of Indian Affairs' Biological Assessment for the
7 Navajo Indian Irrigation Project dated June 11, 1999, and for other purposes as authorized by
8 section 10402 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367)
9 and subparagraph 5(e) of this Decree, with a maximum diversion flow rate of 1,800 cubic
10 feet per second; provided, however, that the quantities of diversion and depletion in any one
11 year shall not exceed the aforesaid ten-year average quantities, respectively, by more than 15
12 percent;

13 (b) NAVAJO-GALLUP WATER SUPPLY PROJECT, a diversion of 22,650 acre-
14 feet, or the quantity of water necessary to supply a depletion of 20,780 acre-feet from the San
15 Juan River, whichever is less, of surface water from Navajo Reservoir and the San Juan
16 River, in combination, in any one year at the points of diversion and for the purposes of the
17 Navajo-Gallup Water Supply Project as authorized by section 10603 of the Northwestern
18 New Mexico Rural Water Projects Act (123 Stat. 1367) for municipal, industrial, commercial
19 and domestic uses, including residential outdoor uses such as yard and stock watering, on
20 lands in New Mexico that are held by the United States in trust for the Navajo Nation or
21 members of the Navajo Nation or held in fee ownership by the Navajo Nation, with a
22 maximum diversion flow rate of 41 cubic feet per second;

1 (c) ANIMAS-LA PLATA PROJECT, a diversion of 4,680 acre-feet, or the quantity
2 of water necessary to supply a depletion of 2,340 acre-feet from the San Juan River stream
3 system, whichever is less, of surface water from the Animas River in any one year at the
4 points of diversion for supplying water to the Navajo Nation Municipal Pipeline and for
5 purposes of the Animas-La Plata Project as authorized by the Colorado Ute Settlement Act
6 Amendments of 2000 (114 Stat. 2763A-258) for municipal, industrial, commercial and
7 domestic uses, including residential outdoor uses such as yard and stock watering, on lands
8 in New Mexico that are held by the United States in trust for the Navajo Nation or members
9 of the Navajo Nation or held in fee ownership by the Navajo Nation, with a maximum
10 diversion flow rate of 12.9 cubic feet per second;

11 (d) MUNICIPAL AND DOMESTIC USES, a diversion of 2,600 acre-feet, or the
12 quantity of water necessary to supply a depletion of 1,300 acre-feet from the San Juan River,
13 whichever is less, of surface water from the direct flow of the San Juan River in any one year
14 at locations below the confluence of the San Juan and La Plata rivers for municipal,
15 industrial, commercial and domestic purposes, including residential outdoor uses such as
16 yard and stock watering, on lands in New Mexico that are held by the United States in trust
17 for the Navajo Nation or members of the Navajo Nation or held in fee ownership by the
18 Navajo Nation, with a maximum diversion flow rate of 5.0 cubic feet per second, provided
19 that a permit is obtained from the New Mexico State Engineer if diversion of this water is to
20 be made off lands held in trust by the United States for the Navajo Nation or lands held in fee
21 by the Navajo Nation;

22 (e) HOGBACK-CUDEI IRRIGATION PROJECT, a diversion of 48,550 acre-feet,

1 or the quantity of water necessary to supply a depletion of 21,280 acre-feet from the San Juan
2 River, whichever is less, of surface water from the direct flow of the San Juan River in any
3 one year at the diversion dam for the Hogback-Cudei Irrigation Project for irrigation of 8,830
4 acres of land on the project generally located along the north and south sides of the San Juan
5 River in the vicinity of the community of Shiprock, New Mexico, and between the diversion
6 dam for the project and Four Corners, as described by the Bureau of Indian Affairs' Crop
7 Utilization Study for the Hogback and Cudei irrigation projects dated September 1993, with
8 a maximum diversion flow rate of 221 cubic feet per second, including any diversions from
9 an alternate point of diversion at the historic Cudei ditch diversion heading; and

10 (f) FRUITLAND-CAMBRIDGE IRRIGATION PROJECT, a diversion of 18,180
11 acre-feet, or the quantity of water necessary to supply a depletion of 7,970 acre-feet from the
12 San Juan River, whichever is less, of surface water from the direct flow of the San Juan
13 River in any one year at the diversion dam for the Fruitland-Cambridge Irrigation Project for
14 irrigation of 3,335 acres of land on the project generally located along the south side of the
15 San Juan River in the vicinity of the community of Fruitland, New Mexico, and between the
16 City of Farmington and the diversion dam for the Hogback-Cudei Irrigation Project, as
17 described by the Bureau of Indian Affairs' Crop Utilization Study for the Fruitland Irrigation
18 Project dated September 1993, with a maximum diversion flow rate of 100 cubic feet per
19 second, including any diversions from an alternate point of diversion at the historic
20 Cambridge ditch diversion heading.

21 The term "depletion" refers to the depletion caused by a particular use of water allowing for any
22 depletion incident to the use.

1 **4. SUPPLEMENTAL CARRIAGE WATER.**

2 The Navajo Nation may divert the direct flow of the San Juan River to supplement diversions
3 to provide additional carriage water for uses under the rights specified by subparagraphs 3(b) through
4 3(f) at such times and places that the New Mexico State Engineer determines there is direct flow
5 available for such diversion without impairment to water rights in New Mexico, including uses under
6 paragraph 8.0 of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement
7 Agreement (Settlement Agreement), signed by the State of New Mexico, the Navajo Nation, and the
8 Secretary of the Interior on December 17, 2010. The Navajo Nation's diversions under this
9 paragraph:

10 (a) do not constitute water rights or consumptive use rights;

11 (b) may be made only to the extent that such additional amounts of carriage water are
12 necessary to fully develop the depletion amounts for the uses specified under subparagraphs
13 3(b) through 3(f);

14 (c) may not be made to result in a depletion for any one use under subparagraphs 3(b)
15 through 3(f) that exceeds the Navajo Nation's depletion rights described for that use;

16 (d) may not be made to result in farm deliveries exceeding the farm delivery
17 requirement for the Fruitland-Cambridge and Hogback-Cudei irrigation projects described in
18 subparagraph 5(g); and

19 (e) may be made only to the extent that the additional carriage water is returned to
20 the San Juan River.

21 Any reduction in flow otherwise available for diversion by the Navajo Nation under this paragraph
22 shall not be cause to deny approval of applications to transfer water rights in the San Juan River

1 Basin in New Mexico, or to deny the allocation and use of water pursuant to paragraph 8.0 of the
2 Settlement Agreement.

3 **5. CONDITIONS.**

4 The Navajo Nation has the right to divert, impound or use the water rights described in
5 paragraph 3; provided, that:

6 (a) The Navajo Nation shall not assert or exercise the reserved rights described in
7 subparagraphs 3(a), 3(b) and 3(c) so long as the rights of the Navajo Nation to the delivery of
8 535,330 acre-feet of water per year for uses in New Mexico under the terms of the
9 Reclamation Contract No. 10-WC-40-384 (the Settlement Contract) between the Secretary of
10 the Interior and the Navajo Nation, authorized and approved by the United States Congress in
11 section 10701 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367),
12 are not irretrievably lost; provided, however, that nothing herein is intended to confer
13 jurisdiction on this Court over any action to enforce or challenge the Settlement Contract or
14 over any action for breach thereof, or to be in conflict with section 11 of the Act of June 13,
15 1962 (76 Stat. 96). The Navajo Nation may assert or exercise the reserved rights described in
16 subparagraphs 3(a), 3(b) or 3(c) if and only if the Navajo Nation's respective rights to divert
17 water under the Settlement Contract are irretrievably lost. The temporary loss of the use of
18 part or all of the Navajo Nation's right to divert water under the Settlement Contract,
19 including, but not limited to, loss resulting from a judicial determination that a particular use
20 is speculative or constitutes waste and loss because a particular use is denied or prohibited by
21 applicable law, shall not constitute irretrievable loss. Also, forbearance or reduction of
22 Navajo Nation uses pursuant to the provisions of this Decree or the Settlement Agreement

1 shall not constitute irretrievable loss.

2 (b) The Navajo Nation's rights pursuant to the Settlement Contract for the uses
3 described in subparagraphs 3(a) and 3(b) are based on, and shall be fulfilled or serviced by
4 the Secretary of the Interior under, New Mexico State Engineer File No. 2849 with a priority
5 date of June 17, 1955, for water originating in the drainage of the San Juan River above
6 Navajo Dam, and File No. 3215 with a priority date of December 16, 1968, for inflow to the
7 San Juan River arising below Navajo Dam. The Navajo Nation's contract rights for the uses
8 described in subparagraphs 3(a) and 3(b) are subject to the sharing of shortages as provided
9 in section 11 of the Act of June 13, 1962 (76 Stat. 96), and section 10402 of the
10 Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367). The Navajo Nation
11 shall not have the right to recoup the quantities of water not delivered under the Settlement
12 Contract due to shortages. The right under subparagraph 3(a) to divert water for the Navajo
13 Indian Irrigation Project during any period of ten consecutive years shall be reduced by the
14 amounts of any shortages allocated to the normal diversion requirement for the Project
15 during said period of ten consecutive years.

16 (c) The Navajo Nation's rights pursuant to the Settlement Contract for the uses
17 specified in subparagraph 3(c) are based on, and shall be fulfilled or serviced by the Secretary
18 of the Interior under, New Mexico State Engineer File No. 2883 with a priority date of May
19 1, 1956, for water from the Animas River, and are subject to Article I of the Animas-La Plata
20 Project Compact approved by subsection 501(c) of the Colorado River Basin Project Act (82
21 Stat. 898), and the Settlement Contract approved by subsection 10604(a)(2)(A)(i) of the
22 Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367).

1 (d) The Navajo Nation has the right to fill and refill re-regulation storage reservoirs
2 on the Navajo Indian Irrigation Project distribution system as follows:

3 (1) The Navajo Nation may fill and refill as often as water is available under
4 the rights described in subparagraphs 3(a) and 3(b):

5 (i) Cutter Reservoir, with an active storage capacity of 1,793 acre-
6 feet; and

7 (ii) Gallegos Reservoir, with an active storage capacity of 8,455 acre-
8 feet, substantially as described in the May 1995 Gallegos Reservoir Needs
9 and Cost Assessment prepared for the United States Bureau of Indian Affairs
10 and the Bureau of Reclamation, or suitable storage alternatives to Gallegos
11 Reservoir of equal or lesser combined capacity.

12 (2) Cutter Dam and Reservoir and Gallegos Dam and Reservoir are Navajo
13 Indian Irrigation Project facilities, and may be used also to regulate deliveries of
14 water under the Navajo-Gallup Water Supply Project authorized by Part III of the
15 Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367).

16 (3) Water diverted from Navajo Reservoir into storage in Cutter Reservoir or
17 Gallegos Reservoir, or suitable storage alternatives, for purposes of the Navajo Indian
18 Irrigation Project or for Navajo Nation uses under the Navajo-Gallup Water Supply
19 Project, and associated depletions caused by reservoir evaporation or seepage losses,
20 shall be accounted within the Navajo Nation's rights to divert and deplete water for
21 the Navajo Indian Irrigation Project described in subparagraph 3(a) or for purposes of
22 the Navajo-Gallup Water Supply Project described in subparagraph 3(b),

1 respectively.

2 (4) The re-regulating reservoirs may retain and store water originating in the
3 physical drainages above Cutter and Gallegos dams, or suitable storage alternatives,
4 for use on the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply
5 Project; provided, that the quantities of any such water retained and stored in Cutter
6 Reservoir or Gallegos Reservoir, and the associated depletions of water, for Navajo
7 Nation uses shall be accounted within the Navajo Nation's rights to divert and
8 deplete water for the Navajo Indian Irrigation Project described in subparagraph 3(a)
9 or for purposes of the Navajo-Gallup Water Supply Project described in
10 subparagraph 3(b), respectively, and that such retention and storage of water shall be
11 fulfilled or serviced by the Secretary of the Interior through the Settlement Contract
12 as water is available under New Mexico State Engineer File No. 3215 with a priority
13 date of December 16, 1968.

14 (5) The Navajo Nation's rights to store water in Cutter Reservoir and
15 Gallegos Reservoir, or suitable storage alternatives, are not separable from the rights
16 described in subparagraphs 3(a) and 3(b) or from the Navajo Indian Irrigation Project
17 facilities.

18 (6) Sediment storage capacity may be provided in Gallegos Reservoir, or
19 suitable storage alternatives; provided, that the reservoir, or suitable alternative, is
20 operated each year to maintain no more than 8,455 acre-feet of active conservation
21 storage after consideration of the amount of sediment accumulated in the reservoir
22 since completion of Gallegos Dam, or suitable alternative.

1 (c) The Navajo Nation's water rights, described in subparagraph 3(a), which are to be
2 serviced under the Settlement Contract as described in subparagraphs (a) and (b) of this
3 paragraph, may be used for non-irrigation purposes or transferred to other places of use
4 consistent with the provisions of subsection 10402(a) of the Northwestern New Mexico
5 Rural Water Projects Act (123 Stat. 1367), paragraph 17 of this Decree and the following
6 conditions:

7 (1) The Navajo Nation, without approval of the New Mexico State Engineer
8 or the Court, may change the purpose or place of use of any portion of the rights
9 described in subparagraph 3(a); provided, that:

10 (i) notice is provided of any proposed change in purpose or place of
11 use consistent with paragraph 18;

12 (ii) such changes do not involve transfers of places of use to locations
13 outside the State of New Mexico, or to lands that are not held by the United
14 States in trust for the Navajo Nation or its members as of the date of entry of
15 this Decree, unless such lands are subsequently declared by the Secretary of
16 the Interior to be held in trust by the United States for the Navajo Nation
17 pursuant to section 3 of the Act of June 13, 1962 (76 Stat. 96), as amended by
18 the Act of September 25, 1970 (84 Stat. 867);

19 (iii) the point of diversion is not changed;

20 (iv) the depletion quantities specified in subparagraph 3(a) are not
21 exceeded as a result of the changes;

22 (v) the average annual diversion during any period of ten consecutive

1 years for all uses made under the rights provided in subparagraph 3(a),
2 including uses provided under the alternate water source provisions of
3 subparagraph 9.2 of the Settlement Agreement, in the aggregate does not
4 exceed 353,000 acre-feet per year;

5 (vi) the total diversion for all uses made under the rights provided in
6 subparagraph 3(a), including uses provided under the alternate water source
7 provisions of subparagraph 9.2 of the Settlement Agreement, in the aggregate
8 does not exceed 405,950 acre-feet in any one year; and

9 (vii) no showing is made to and accepted by the Court pursuant to
10 subparagraph 5(e)(2) that a change would or does impair other water rights in
11 the San Juan River Basin in New Mexico.

12 Any change pursuant to this subsection in the purpose or place of use of a portion of
13 the rights described in subparagraph 3(a) that would result in the total annual
14 diversion or depletion amounts in the aggregate for all uses made under the rights
15 described in subparagraph 3(a) exceeding the historic aggregate diversion or
16 depletion amounts, respectively, under said rights shall not be presumed to impair
17 other water rights solely because of the increase in annual use amounts.

18 (2) The Navajo Nation shall provide an administrative process for receiving
19 from Navajo and non-Navajo water users protests of changes in purpose or place of
20 use proposed to be made pursuant to subparagraph 5(e)(1), and for reviewing and
21 considering protests and impairment issues that may arise from such changes. The
22 administrative process shall include consultation with the New Mexico State

1 Engineer on proposed changes. The Navajo Nation shall not exercise its authority
2 under subparagraph 5(e)(1) to implement a proposed change in purpose or place of
3 use until the Navajo Nation has consulted with the State Engineer and completed the
4 Navajo Nation's administrative process for the proposed change. Appeals of Navajo
5 Nation decisions or actions made pursuant to the administrative process may be
6 reviewed by the Court.

7 (3) The uses of water to make the depletions and diversions described in
8 subparagraphs 3(d), 3(e) and 3(f) that are supplied under the Settlement Contract
9 pursuant to the alternate water source provisions of subparagraph 9.2 of the
10 Settlement Agreement, and that are accounted under the rights described in
11 subparagraph 3(a) of this Decree for the Navajo Indian Irrigation Project in
12 accordance with said provisions, are hereby approved by the Court.

13 (4) The Navajo Nation may divert more than an average of 353,000 acre-feet
14 per year during any period of ten consecutive years, or more than 405,950 acre-feet in
15 any one year, for the aggregate of all uses under the rights provided in subparagraph
16 3(a), including uses provided under the alternate water source provisions of
17 subparagraph 9.2 of the Settlement Agreement, only pursuant to application with the
18 New Mexico State Engineer and subject to non-impairment of other water rights in
19 New Mexico in accordance with state law, unless the rights provided in subparagraph
20 3(a) are used solely for irrigation purposes on the Navajo Indian Irrigation Project
21 and to implement subparagraph 9.2 of the Settlement Agreement.

22 (f) If the Navajo Nation in any period of ten consecutive years inadvertently diverts

1 or depletes water in excess of the ten-year average limitations described in subparagraph
2 3(a), the Navajo Nation, in the year following the subject period, shall forego the diversion
3 and use under subparagraph 3(a) of amounts of water that are equal to the quantities of
4 excess diversion and depletion, respectively, for the subject period. If the Navajo Nation in
5 any year inadvertently diverts or depletes water in excess of the maximum allowable annual
6 quantities described in subparagraphs 3(a), 3(b) or 3(c), the Navajo Nation in the following
7 year shall forego the diversion and use under the applicable subparagraphs of amounts of
8 water that are equal to the quantities of excess diversion and depletion.

9 (g) The Navajo Nation's rights to divert water for irrigation uses under
10 subparagraphs 3(e) and 3(f) shall be subject to the maximum allowable annual diversion
11 quantities specified in the subparagraphs only if the New Mexico State Engineer or the Court
12 enforces annual diversion quantity limits on non-Navajo Nation irrigation diversions from
13 the San Juan River below Navajo Dam and the Animas River in accordance with such
14 quantities as may be adjudicated by the Court, but shall at all times be subject to:

15 (1) supplying the annual depletion quantities specified in subparagraphs 3(e)
16 and 3(f), respectively; and

17 (2) supplying a farm delivery requirement of 3.3 acre-feet per acre per year
18 for irrigation uses under the Hogback-Cudei and Fruitland-Cambridge irrigation
19 projects.

20 Those portions of the annual diversion and depletion quantities specified in subparagraphs
21 3(e) and 3(f) that are transferred to non-irrigation uses shall be administered and managed in
22 the same manner as other direct flow diversions for non-irrigation uses in the San Juan River

1 Basin in New Mexico.

2 (h) The Navajo Nation's right for the Fruitland-Cambridge Irrigation Project under
3 subparagraph 3(f) to divert at a maximum diversion flow rate of 100 cubic feet per second
4 shall not be fully exercised if the Court determines that rehabilitation and maintenance of the
5 Project has resulted in a lesser flow rate being needed to supply the peak demand of the
6 Project; provided, that the Navajo Nation shall not be required solely by virtue of the
7 rehabilitation and maintenance to forego exercise of said maximum diversion flow rate right
8 for the Project to less than 83.4 cubic feet per second. Reductions in diversions by the
9 Project below 83.4 cubic feet per second at times may be required, however, if current
10 beneficial uses require less water.

11 (i) The Navajo Nation's rights to divert and deplete water for irrigation uses under
12 subparagraphs 3(e) and 3(f) may be increased using the approach or methodology that the
13 Court adopts to determine irrigation water right amounts and diversion rates in this case if
14 application of the approach or methodology adopted would result in annual diversion and
15 depletion quantities that exceed those described herein or in an annual farm delivery
16 requirement for the Hogback-Cudei and Fruitland-Cambridge irrigation projects that exceeds
17 the amount described in subparagraph 5(g). The Navajo Nation's rights under subparagraphs
18 3(e) and 3(f), the diversion rates described in subparagraph 5(h), and the farm delivery
19 requirement described in subparagraph 5(g), shall not be recomputed if the approach or
20 methodology adopted by the Court relies on, or results in, annual per acre farm delivery
21 requirements and diversion and depletion quantities, and maximum per acre ditch diversion
22 rates, for irrigation uses that are consistent with those given in the report of Hydrographic

1 Survey approved by the decree entered April 8, 1948, by the First Judicial District Court of
2 New Mexico within and for San Juan County in the matter of *The Echo Ditch Company, et*
3 *al., v. The McDermott Ditch Company, et al.*, Cause No. 01690 (Echo Ditch Decree), for
4 those irrigation rights previously adjudicated by the Echo Ditch Decree.

5 (j) The Navajo Nation has the right under the water rights described in paragraphs 3,
6 7 and 8 to re-use tail water and waste water as follows:

7 (1) The Navajo Nation may collect tail water from an irrigation use for re-use
8 under the associated water right; provided, that the re-use is measured and the
9 depletion of water associated with the re-use is accounted against the depletion
10 quantity for the water right. For purposes of this Decree, tail water shall include:

11 (i) any water collected that has not left Navajo Nation control and
12 reached the underlying ground water table or discharged into a non-
13 constructed or natural surface drainage channel; and

14 (ii) any water that through percolation from irrigation has reached the
15 underlying ground water table and is pumped for the express purpose of
16 maintaining the water table at a sufficient distance below the root zone to
17 prevent subirrigation or waterlog damage to fields that otherwise would result
18 from the initial irrigation use.

19 (2) The Navajo Nation may collect waste water from a non-irrigation use for
20 re-use under the associated water right; provided, that the re-use is measured and the
21 depletion of water associated with the re-use is accounted against the depletion
22 quantity for the water right. For purposes of this Decree, waste water shall include

1 any water collected that has not left Navajo Nation control and reached the
2 underlying ground water table or discharged into a natural surface drainage channel.

3 (3) Re-use of water by the Navajo Nation shall not increase the depletion
4 rights or the diversion rights of the Navajo Nation.

5 **6. DIVERSIONS FOR NAVAJO-GALLUP PROJECT USES IN ARIZONA.**

6 The Navajo Nation may contract with the United States to divert up to 6,411 acre-feet in any
7 one year of surface water from the San Juan River in New Mexico for uses on Navajo lands,
8 including lands held by the United States in trust for the Navajo Nation or members of the Navajo
9 Nation and lands held in fee ownership by the Navajo Nation, within the State of Arizona solely for
10 purposes of the Navajo-Gallup Water Supply Project as authorized by section 10603 of the
11 Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), with a maximum diversion
12 flow rate of 12 cubic feet per second; provided, that the water delivery contract between the Navajo
13 Nation and the United States is executed to provide such a contract right for the diversion of water in
14 New Mexico for delivery to uses in Arizona consistent with section 10603 of the Act. The diversion
15 of water in New Mexico for Navajo-Gallup Water Supply Project uses in Arizona shall be serviced
16 under New Mexico State Engineer File Nos. 2849 and 3215, and shall be administered consistent
17 with the provisions of the Upper Colorado River Basin Compact (63 Stat. 31, chapter 48) and the
18 Northwestern New Mexico Rural Water Projects Act. Also, the diversion of water in New Mexico
19 for Project uses in Arizona shall continue only so long as the water delivery contract remains in
20 effect, shall not be transferable to other uses, including uses in New Mexico, and shall not be leased
21 or otherwise subcontracted to third parties. The contract right for the diversion of water in New
22 Mexico for delivery to uses in Arizona shall not include carry-over storage in Navajo Reservoir from

1 year to year.

2 **7. GROUND WATER RIGHTS.**

3 The Navajo Nation has the right to divert, pump or withdraw, and to consumptively use,
4 ground water on Navajo lands in New Mexico, including lands held by the United States in trust for
5 the Navajo Nation and lands held in fee ownership by the Navajo Nation, within the physical
6 drainage of the San Juan River and its tributaries and in addition to rights to divert ground water for
7 uses described by paragraphs 8, 9 and 10, subject to the following conditions:

8 (a) The Navajo Nation has a reserved right, with a priority date of June 1, 1868, to
9 divert up to 2,000 acre-feet of ground water in any one year for beneficial use, including for
10 municipal, industrial, commercial, domestic, agricultural and other purposes, on lands in
11 New Mexico that are held by the United States in trust for the Navajo Nation, or on other
12 lands if approved by the New Mexico State Engineer or the Court; except, that the Navajo
13 Nation also may use ground water diverted pursuant to this subparagraph on lands that are
14 held by the United States in trust for members of the Navajo Nation.

15 (b) The Navajo Nation has the right to divert ground water for municipal, industrial,
16 commercial, domestic or agricultural uses, in addition to the rights described in subparagraph
17 (a) of this paragraph and any ground water uses described by paragraphs 8, 9 and 10, subject
18 to the following conditions:

19 (1) The Navajo Nation has the right to make additional diversions of ground
20 water in the San Juan River Basin in New Mexico on lands held by the United States
21 in trust for the Navajo Nation as of the date of entry of this Decree and such rights
22 shall be held in trust by the United States on behalf of the Navajo Nation, provided

1 that:

2 (i) The Navajo Nation shall give notice of intent to drill or pump
3 wells to effectuate such additional diversions of ground water by publication
4 in a newspaper of general circulation within the San Juan River Basin in New
5 Mexico once per week for three consecutive weeks and by letter to the New
6 Mexico State Engineer, both such forms of notice to be completed at least 30
7 days prior to drilling new wells or to increasing pumping from existing wells,
8 and to specify the proposed purpose and place of use, point of diversion,
9 annual diversion and depletion amounts, and sources of ground water;

10 (ii) the priority dates of the additional diversions of ground water
11 under subparagraph 7(b)(1) shall be the respective dates of notice to the State
12 Engineer; except, that replacement wells shall retain the priority dates
13 associated with the wells replaced; and

14 (iii) such diversions of ground water are subject to the other
15 provisions of paragraph 7, except for subparagraphs 7(a) and 7(b)(2).

16 The Navajo Nation shall provide an administrative process for receiving from Navajo
17 and non-Navajo water users protests of additional diversions of ground water
18 proposed to be made pursuant to this subparagraph, and for reviewing and
19 considering protests and impairment issues that may arise from such additional
20 diversions. The administrative process shall include the Navajo Nation consulting
21 with the New Mexico State Engineer on proposed diversions, any necessary
22 replacement water plans that may be required as per subparagraph 7(c), and

1 impairment issues. The Navajo Nation shall not exercise its authority under this
2 subparagraph to approve or implement a proposed additional diversion of ground
3 water until it has consulted with the State Engineer and completed the administrative
4 process for the proposed diversion. The Court shall have jurisdiction to review and
5 resolve disputes, if any, between the Navajo Nation, the New Mexico State Engineer
6 or other parties to this case regarding whether additional ground water diversions
7 allowed by the Navajo Nation comply with the criteria stated in this paragraph.

8 (2) The Navajo Nation may appropriate ground water under state law for
9 additional diversions of ground water in the San Juan River Basin in New Mexico on
10 lands not held by the United States in trust for the Navajo Nation as of the date of
11 entry of this Decree.

12 (3) The additional diversions of ground water under subparagraph 7(b) shall
13 not impair the exercise of other surface water and ground water rights either within
14 the physical drainage of the San Juan River Basin or in other drainage basins.

15 (4) The additional diversions of ground water under subparagraph 7(b) may
16 supply uses on lands in New Mexico that are held by the United States in trust for the
17 Navajo Nation or members of the Navajo Nation or held in fee ownership by the
18 Navajo Nation, or on other lands if transferred in accordance with the provisions of
19 paragraph 17; except, that diversions of ground water in the San Juan River Basin in
20 New Mexico may be delivered for domestic and sanitary uses in the San Juan River
21 Basin in Arizona in accordance with the provisions of subparagraph 7(g).

22 (5) No additional diversions of ground water under subparagraph 7(b) shall

1 be made until a model of ground water flow for the physical area of the San Juan
2 River Basin in New Mexico, plus any pertinent adjoining areas, has been approved by
3 the New Mexico State Engineer or the Court to determine impacts of existing ground
4 water rights and new diversions of ground water on flow of the San Juan River for
5 the purpose of conjunctively administering surface and ground water sources. Once a
6 model is approved, a proposed additional diversion of ground water is subject to New
7 Mexico State Engineer approval of a replacement plan to offset the depletions of
8 streamflow attributable to the additional diversion, if such a plan is required pursuant
9 to subparagraph 7(c).

10 (c) The Navajo Nation each year shall offset the cumulative reduction in the flow of
11 the San Juan River during the year that is caused by all diversions and uses of ground water
12 by the Navajo Nation under the rights described in subparagraphs (a) and (b) of this
13 paragraph in the aggregate, and that is in excess of 2,000 acre-feet per year of cumulative
14 reduction, in accordance with a replacement water plan approved by the New Mexico State
15 Engineer. The replacement water plan shall specify and schedule how the Navajo Nation
16 will satisfy this offset requirement annually by forbearing use of specific surface water rights
17 to flows of the San Juan River stream system that are described by paragraph 3 in a total
18 amount of depletion equal to the amount of cumulative flow reduction for each year that is in
19 excess of 2,000 acre-feet per year, and in such a manner as to offset the river flow impacts at
20 the locations of impact. In addition, if the offset requirement necessitates a transfer or
21 dedication of Navajo Nation rights under the Settlement Contract to below Navajo Dam, the
22 State Engineer may determine conditions for dam releases to effectuate the transfer or

1 dedication. Such conditions may include exceptions for periods when replacement water, in
2 the State Engineer's judgment, is not needed to avoid impairment to other water rights or
3 interstate compact delivery requirements.

4 (d) Diversions and uses of ground water in New Mexico on lands that are held by the
5 United States in trust for the Navajo Nation, or held in fee ownership by the Navajo Nation,
6 by agencies of the United States, including the Bureau of Indian Affairs and Indian Health
7 Service, for municipal, industrial, commercial and domestic purposes for the benefit of the
8 Navajo Nation or its members shall be included within and accounted against the Navajo
9 Nation's rights to divert and use ground water under subparagraphs (a) and (b) of this
10 paragraph.

11 (e) Diversions and uses of ground water underlying the area of the Navajo Indian
12 Irrigation Project shall be included within and accounted against the Navajo Nation's rights
13 to divert and use ground water under subparagraphs (a) and (b) of this paragraph; except, that
14 any re-use of irrigation tail water that through percolation from irrigation of Project lands had
15 reached the underlying ground water table and is pumped for the purpose of maintaining the
16 water table at a sufficient distance below the root zone to prevent waterlog damage to Project
17 fields that otherwise would result from the irrigation use may be included within the Navajo
18 Nation's rights under subparagraph 5(j)(1) to re-use tail water so long as the depletion of
19 water associated with the re-use is accounted against the depletion quantity for the Project
20 described in subparagraph 3(a).

21 (f) The Navajo Nation may use ground water diverted or withdrawn from within the
22 San Juan River Basin in New Mexico in areas of the State of New Mexico located outside

1 the physical drainage of the San Juan River and its tributaries; provided, that such diversion
2 and use shall:

3 (1) be accounted against the rights of the Navajo Nation to divert ground
4 water described in subparagraphs 7(a) and 7(b); and

5 (2) comply with the other provisions of paragraph 7.

6 (g) The Navajo Nation may divert or withdraw ground water from the San Juan
7 River Basin in New Mexico for use in the San Juan River Basin in Arizona, and may use in
8 the San Juan River Basin in New Mexico ground water withdrawn from the San Juan River
9 Basin in Arizona, for domestic and sanitary purposes on lands that are held by the United
10 States in trust for the Navajo Nation or members of the Navajo Nation or held in fee
11 ownership by the Navajo Nation; provided, that:

12 (1) the depletion of the flow of the Colorado River at Lee Ferry resulting
13 from such uses made in the State of New Mexico is a part of the consumptive use
14 apportionment made to the State of New Mexico by Article III of the Upper Colorado
15 River Basin Compact, and the depletion of the flow of the Colorado River at Lee
16 Ferry resulting from such uses made in the State of Arizona is a part of the
17 consumptive use apportionment made to the State of Arizona by Article III of the
18 Upper Colorado River Basin Compact;

19 (2) such uses are not inconsistent with the rights of the Navajo Nation, or of
20 the United States as trustee for the Navajo Nation, to make such diversions and uses
21 of water within the State of Arizona;

22 (3) the total of such diversions made within the State of New Mexico and

1 delivered for uses in Arizona, plus the total of diversions made within the State of
2 Arizona and delivered for such uses in New Mexico, pursuant to subparagraph 7(g)
3 does not exceed 400 acre-feet in the aggregate;

4 (4) such diversions and uses within the State of New Mexico shall be
5 accounted against, and otherwise comply with, the rights of the Navajo Nation to
6 divert and use ground water described in subparagraphs 7(a) and 7(b); and

7 (5) the rights of the Navajo Nation to make such diversions and uses shall not
8 be leased, exchanged or otherwise transferred for use by other parties or for other
9 purposes.

10 (h) The Court retains jurisdiction to review any matter arising from the provisions of
11 paragraph 7: except, that another court may have competent jurisdiction over issues of
12 impairment to water rights in basins other than the San Juan River Basin or in other states.

13 **8. HYDROGRAPHIC SURVEY – RESERVED RIGHTS.**

14 The Navajo Nation has reserved rights for historic and existing water uses on lands in the San
15 Juan River Basin in New Mexico that are held in trust by the United States on behalf of the Navajo
16 Nation, which rights have a priority date of June 1, 1868; except, that historic and existing uses that
17 are included within the supplemental carriage water provisions described in paragraph 4 are not
18 reserved rights. The reserved rights for historic and existing irrigation uses and related purposes on
19 the Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-
20 Cambridge Irrigation Project are included in the reserved right amounts specified by subparagraphs
21 3(a), 3(e) and 3(f), respectively. Reserved rights for historic, existing and future municipal,
22 industrial, commercial and domestic uses, including residential agricultural uses such as yard and

1 stock watering, are included in the reserved right amounts specified by subparagraphs 3(b), 3(c), 3(d)
2 and 7(a). Pursuant to paragraph 20 of this Decree and paragraph 4.0 of the Settlement Agreement,
3 the Navajo Nation and the United States, acting in its capacity as Trustee for the Navajo Nation,
4 petitioned the Court for entry of the Supplemental Partial Final Judgment and Decree of the Water
5 Rights of the Navajo Nation ("Supplemental Decree") quantifying and adjudicating reserved rights of
6 the Navajo Nation for historic and existing uses that are not included in paragraph 3 or subparagraph
7 7(a), based on the United States Hydrographic Survey of Navajo Lands in the San Juan River Basin
8 in New Mexico dated December 2010 ("US Survey Report") as accepted by the State of New
9 Mexico. Entry of this Decree or the Supplemental Decree shall not be intended to prohibit changes
10 in the point of diversion or purpose or place of use of the Navajo Nation's reserved rights under
11 Federal law. Except as otherwise provided, the conditions under which the Navajo Nation may make
12 such changes are specified in paragraph 17, and are subject to the Court's continuing jurisdiction to
13 interpret and enforce this Decree as provided in paragraph 14.

14 **9. WATER RIGHTS ACQUIRED UNDER STATE LAW.**

15 The Navajo Nation has water rights acquired under New Mexico state law pursuant to
16 decreed rights or to permits or licenses issued by the New Mexico State Engineer, and for historic
17 and existing water uses on lands in the San Juan River Basin in New Mexico that are held in fee
18 ownership by the Navajo Nation, quantified and adjudicated in the Supplemental Decree. Such
19 rights exclude any rights to the use of water historically made by non-Navajo entities on Navajo
20 lands under permits issued by the New Mexico State Engineer that have not been acquired from said
21 entities by the Navajo Nation. Water rights for historic municipal, industrial, commercial or
22 domestic uses, except for *de minimis* uses under paragraph 10, that have been made on lands which

1 are held in fee ownership by the Navajo Nation and that have not been made pursuant to decreed
2 rights, or to permits or licenses issued by the New Mexico State Engineer, are included in the total
3 water right amounts specified by subparagraphs 3(b), 3(c), 3(d) and 7(a). Pursuant to paragraph 20
4 of this Decree the Navajo Nation may petition the Court for entry of a supplemental decree
5 quantifying and adjudicating additional water rights under state law, acquired after the entry of this
6 Decree and the Supplemental Decree. Entry of this Decree, the Supplemental Decree, or any
7 additional supplemental decrees shall not be intended to prohibit changes in the point of diversion or
8 purpose or place of use of the Navajo Nation's water rights under Federal and state law, nor shall
9 they be intended to limit in any way the right and ability of the Navajo Nation to acquire and transfer
10 additional water rights perfected under state law. Except as otherwise provided, the conditions under
11 which the Navajo Nation may make such changes are specified in paragraph 17, and are subject to
12 the Court's continuing jurisdiction to interpret and enforce this Decree as provided in paragraph 14.

13 **10. DE MINIMUS USES.**

14 The Navajo Nation shall have the right to allow individual members of the Navajo Nation to
15 divert and use surface water from springs and ground water in the San Juan River Basin in New
16 Mexico without regard to the limitations and quantities of water rights described in paragraphs 3
17 through 9 solely for residential domestic and stock tank uses, excluding irrigation uses and
18 stockponds, on Navajo lands, including lands held by the United States in trust for the Navajo Nation
19 and lands held in fee ownership by the Navajo Nation; provided, that such diversion and use of water
20 does not involve the diversion and use of water under the water rights described in paragraphs 3
21 through 9, the diversion or conveyance of water by the project facilities authorized by the
22 Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) and preceding Acts of

1 Congress, or the diversion and delivery of water by public water supply systems. The right under
2 this paragraph to *de minimus* uses is a reserved right of the Navajo Nation.

3 **11. ALLOTTEES.**

4 Individual members of the Navajo Nation that have been allotted lands by the United States,
5 by public land orders or otherwise, within the San Juan River Basin in New Mexico may have claims
6 to reserved rights to the use of water. This Decree does not quantify the nature, extent or priority of
7 such rights; however, historic and existing water uses on such allotted lands shall be determined by
8 the US Survey Report as accepted by the State of New Mexico. To the extent that water rights are
9 adjudicated by the Court for such allotted lands that are in excess of the historic and existing water
10 uses on those lands as described in the US Survey Report, such water rights for allotted lands shall
11 be fulfilled or serviced by rights of the Navajo Nation quantified in this Decree, or the depletions of
12 flow of the San Juan River resulting from the use of water under such rights for allotted lands shall
13 be fully offset by a forbearance of use of rights of the Navajo Nation quantified in this Decree.
14 Nothing in this paragraph shall create a right of any Allottee to delivery of water by the Navajo
15 Nation.

16 **12. LIMITATIONS.**

17 The Navajo Nation is hereby enjoined from the diversion or depletion of the surface or
18 underground waters within the San Juan River Basin in New Mexico except in accordance with the
19 rights described in this Decree, the Supplemental Decree, or any additional supplemental decrees that
20 may be entered by the Court pursuant to paragraph 20, or either decreed rights or rights under New
21 Mexico State Engineer permits or licenses that are acquired after the date of entry of this Decree and
22 the Supplemental Decree. Beneficial use shall be the limit of the rights to use water adjudicated to

1 the Navajo Nation by this Decree. The Navajo Nation shall not be entitled to receive, nor shall the
2 United States or the State of New Mexico be required to deliver, nor shall non-Navajo water users be
3 required to curtail water uses to provide to the Navajo Nation, any water not then necessary for
4 beneficial use under the rights adjudicated herein or acquired hereafter. This Decree is binding upon
5 political subdivisions, utilities, agencies and other entities of the Navajo Nation and the United
6 States, and on successors and assigns.

7 **13. DISCLAIMERS.**

8 Except as explicitly provided herein, nothing in this Decree confers jurisdiction on the New
9 Mexico State Engineer to administer or regulate the use of federally reserved rights on lands held by
10 the United States in trust for the Navajo Nation or lands allotted by the United States to members of
11 the Navajo Nation. Because the description of the Navajo Nation's water rights adjudicated in this
12 Decree is based upon a negotiated settlement, the procedures and methods used to quantify and
13 describe the Navajo Nation's water rights in this Decree shall not be binding under the law of the
14 case doctrine upon any other water right claimant, the State of New Mexico or the United States in
15 the adjudication of other water rights in this case and should not be relied upon as precedent under
16 the *stare decisis* doctrine in any other water right adjudication suit. Nothing herein is intended to
17 adjudicate or encumber water rights under New Mexico State Engineer File Nos. 2847, 2848, 2849,
18 2873, 2883, 2917 or 3215, or under Permit No. 2847, 2849, 2873, 2917 combined, except for the
19 amounts and uses of water specifically adjudicated to the Navajo Nation in subparagraphs 3(a), 3(b)
20 and 3(c) of this Decree, subject to the limitations set forth in paragraph 5, and for the amount of
21 diversion to supply a water delivery contract between the Navajo Nation and the United States for
22 Navajo-Gallup Water Supply Project uses in Arizona adjudicated in paragraph 6.

1 **14. JURISDICTION AFTER ENTRY OF DECREE.**

2 This Decree is a final order under Rule 1-054(B) NMRA, and it may be modified only
3 pursuant to Rule 1-060(B) NMRA. This Court retains jurisdiction to interpret and enforce this
4 Decree. Subject to the provisions of this Decree, the State Engineer has authority under state law to
5 administer water rights within, and to supervise the apportionment, diversion and use of the waters
6 of, the San Juan River Basin in New Mexico, including by appointment of watermasters, according
7 to the orders and decrees of the Court in this adjudication suit and the licenses and permits issued by
8 the State Engineer in the Basin.

9 **15. METERING OF WATER USES.**

10 As part of the metering and monitoring of water uses in the San Juan River Basin in New
11 Mexico, the Navajo Nation shall be responsible for metering and monitoring its uses of water under
12 this Decree as follows:

13 (a) The Navajo Nation within two years from the date of entry of this Decree shall
14 cause to be installed and maintained flumes, gages, stage recorders, totalizing meters or other
15 flow measuring devices on all surface water and ground water diversions, including re-uses
16 under subparagraph 5(j) but excluding uses under rights that may be quantified and
17 adjudicated in the Supplemental Decree, which shall be governed by the terms thereof, and
18 additional supplemental decrees pursuant to paragraphs 8 and 9, within the physical drainage
19 of the San Juan River Basin in New Mexico; except, that diversions may be estimated using
20 technically sound methodologies where actual measurement of uses is not practical for
21 technical or economic reasons. The Navajo Nation also shall cause to be installed and
22 maintained remote sensing equipment on surface water diversion gages for ditch diversions

1 under its rights from the San Juan River, including Navajo Reservoir. The Navajo Nation
2 shall be responsible for rating all gages and for collecting the data necessary to accurately
3 account diversions in the San Juan River Basin in New Mexico for administration by the
4 State Engineer of this Decree.

5 (b) The Navajo Nation within two years from the date of entry of this Decree shall
6 cause to be installed and maintained storage or water surface gages at all re-regulation
7 storage reservoirs on the Navajo Indian Irrigation Project. In addition, the Navajo Nation
8 shall cause to be installed and maintained recording or remote sensing equipment on
9 reservoir storage gages at all re-regulation storage reservoirs on the Navajo Indian Irrigation
10 Project, and shall maintain such records of inflows to and releases from reservoir storage, as
11 may be necessary to determine reservoir losses and the storage of tributary inflows to the
12 reservoirs under subparagraph 5(d)(4). The Navajo Nation shall be responsible for updating
13 and maintaining current elevation-area-capacity data for the reservoirs.

14 (c) The New Mexico State Engineer shall be granted access to diversion data, and
15 shall be allowed to inspect flow and storage measurement facilities and gages upon
16 reasonable request to the Navajo Nation, as may be necessary for the State Engineer to
17 administer the diversion and use of water from the San Juan River stream system.

18 (d) The Navajo Nation beginning the year following the date of entry of this Decree
19 shall during June or July each year conduct a field inventory of irrigated acreage on the
20 Navajo Indian Irrigation Project, the Hogback-Cudei Irrigation Project and the Fruitland-
21 Cambridge Irrigation Project, and shall provide the results of the inventory to the New
22 Mexico State Engineer within two weeks of completion of the inventory. The Navajo Nation

1 shall allow the State Engineer to participate, in cooperation with the Navajo Nation, in
2 conducting the acreage inventory. Aerial photographs, satellite imagery or other records or
3 documentation may be used in conjunction with field surveys to determine or verify lands
4 irrigated in a particular year.

5 (e) Depletions for the uses described in subparagraphs 3(b), 3(c) and 3(d) shall be
6 computed as diversion less measured return flow. The Navajo Nation shall be responsible
7 for measuring any return flows.

8 (f) The Navajo Nation shall meter farm deliveries for irrigation uses on the Hogback-
9 Cudei and Fruitland-Cambridge irrigation projects using technically sound methods if the
10 State Engineer or the Court requires the metering of farm deliveries on ditches diverting from
11 the San Juan River below Navajo Dam and from the Animas River for the State Engineer to
12 administer water rights in the San Juan River Basin in New Mexico.

13 **16. RECORDS OF WATER USE.**

14 The Navajo Nation shall within two years from the date of entry of this Decree, and annually
15 thereafter, prepare and maintain detailed and accurate records of the acreages of all Navajo lands,
16 including lands held by the United States in trust for the Navajo Nation and lands owned by the
17 Navajo Nation in fee, in the San Juan River Basin in New Mexico irrigated each year from the San
18 Juan River, its tributaries or underground water sources, and of the annual diversions and depletions
19 of water, including re-uses, for its uses in the San Juan River Basin in New Mexico from the San
20 Juan River, its tributaries and underground water sources, all stated separately as to each source of
21 water. The Navajo Nation shall prepare and submit to the Secretary of the Interior and the New
22 Mexico State Engineer on or before October 1 of each year a report of its records and calculations of

1 actual acreage irrigated and diversions and depletions, by a methodology acceptable to the State
2 Engineer, of San Juan River Basin waters for the previous calendar year. The records and
3 calculations shall be segregated by each use specified in paragraphs 3 through 10 of this Decree.
4 Diversions and depletions may be estimated using technically sound methodologies where actual
5 measurement of uses is not practical for technical or economic reasons. The reports of the Navajo
6 Nation prepared pursuant to this paragraph also shall include documentation as to which rights
7 adjudicated herein are being used, if any, to service or offset water uses by Allottees pursuant to the
8 provisions of paragraph 11 of this Decree and subparagraph 12.3.2 of the Settlement Agreement.

9 **17. ADMINISTRATION.**

10 The Navajo Nation shall have authority to administer the Navajo Nation's diversion and use
11 of water under the rights adjudicated by this Decree as follows:

12 (a) The Navajo Nation shall within two years from the date of entry of this Decree
13 cause to be installed and maintained headgates on all surface water diversions from the San
14 Juan River stream system in New Mexico; except, that no headgate will be required for a
15 diversion from a tributary to the San Juan River so long as the Navajo Nation and the State
16 Engineer agree that there will not be sufficient benefit to justify the cost of a headgate. The
17 State Engineer shall be allowed to inspect diversion headgates upon reasonable request to the
18 Navajo Nation.

19 (b) The Navajo Nation shall have jurisdiction, authority and responsibility to
20 measure, distribute, administer and regulate the use of water under the water rights that are
21 adjudicated to the Navajo Nation by this Decree beginning at the points of diversion, subject
22 to the provisions of this Decree and the Settlement Agreement. The New Mexico State

1 Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the Navajo
2 Nation's uses of water from the San Juan River stream system for compliance with this
3 Decree. The Court retains jurisdiction to review and resolve disputes, if any, between the
4 Navajo Nation, the State Engineer or other parties to this case regarding whether the Navajo
5 Nation is properly regulating use of water in compliance with the rights adjudicated by this
6 Decree, the Supplemental Decree, or supplemental decrees that may be entered by the Court
7 pursuant to paragraph 20, or with any rights acquired after the date of entry of this Decree
8 and the Supplemental Decree, or in compliance with applicable conditions of a water rights
9 transfer made in accordance with this Decree.

10 (c) The Navajo Nation shall have authority to change the purpose and place of use of
11 its reserved rights described by paragraphs 3, 7(a) and 8 and its ground water rights described
12 by subparagraph 7(b)(1) on lands held by the United States in trust for the Navajo Nation in
13 New Mexico, subject to the conditions and limitations of subsection 10603(h) of the
14 Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367) and subparagraphs
15 5(d)(5), 5(e), 7(c) and 7(g) of this Decree; provided, that:

16 (1) notice is given of any proposed change in purpose or place of use
17 consistent with paragraph 18;

18 (2) such changes do not involve transfers of places of use to locations outside
19 the State of New Mexico, or to lands that are not held by the United States in trust for
20 the Navajo Nation or its members as of the date of entry of this Decree, unless such
21 lands are subsequently declared by the Secretary of the Interior to be held in trust by
22 the United States for the Navajo Nation pursuant to section 3 of the Act of June 13,

1 1962 (76 Stat. 96), as amended by the Act of September 25, 1970 (84 Stat. 867);

2 (3) the source of water supply is not changed;

3 (4) the point of diversion is not changed if the diversion is from the San Juan
4 River or the Animas River;

5 (5) the diversion and depletion quantities specified in paragraphs 3, 7(a) and
6 8 for the subject reserved right are not exceeded as a result of such changes; and

7 (6) such changes would not impair other water rights.

8 The Navajo Nation shall provide an administrative process for receiving from Navajo and
9 non-Navajo water users protests of changes in purpose or place of use proposed to be made
10 pursuant to this subparagraph, and for reviewing and considering protests and impairment
11 issues that may arise from such changes. The administrative process shall include the Navajo
12 Nation consulting with the New Mexico State Engineer on proposed changes and potential
13 impairment. The Navajo Nation shall not exercise its authority under this subparagraph to
14 implement a proposed change in purpose or place of use until it has consulted with the State
15 Engineer and completed the administrative process for the proposed change. The Court
16 retains jurisdiction to review and resolve disputes, if any, between the Navajo Nation, the
17 New Mexico State Engineer or other parties to this case regarding whether changes allowed
18 by the Navajo Nation in the purpose and place of use of its reserved rights comply with the
19 above stated criteria. Other transfers of reserved rights or ground water rights adjudicated by
20 this Decree, including transfers that involve a change in the point of diversion on the San
21 Juan River, the Animas River or to a location off lands that are held by the United States in
22 trust for the Navajo Nation, or that involve a change in the place of use to a location off lands

1 that are held by the United States in trust for the Navajo Nation or its members, may be made
2 pursuant to application with the New Mexico State Engineer and in accordance with state
3 law.

4 (d) The following standards of review shall be recognized by the Court in its review
5 of any Navajo Nation decisions or actions made pursuant to subparagraphs 5(e), 7(b)(1) or
6 17(c), such that the Court may reverse a Navajo Nation decision only if:

7 (1) the Navajo Nation acted fraudulently, arbitrarily or capriciously;

8 (2) the decision of the Navajo Nation is not supported by substantial evidence
9 based on the whole record on appeal;

10 (3) the action of the Navajo Nation was outside the scope of its authority
11 under the Decree; or

12 (4) the action of the Navajo Nation was otherwise not in accordance with this
13 Decree or applicable law.

14 (e) The Navajo Nation may acquire, and may subsequently change the point of
15 diversion and purpose and place of use of, water rights that are not included in this Decree in
16 accordance with state law; provided, that such rights retain the priority date and other
17 elements of the decreed, licensed or permitted right so acquired. The New Mexico State
18 Engineer shall retain jurisdiction to administer and regulate the use and transfer of water
19 rights that are acquired under state law, including the rights adjudicated under subparagraph
20 7(b)(2) and rights adjudicated by the Supplemental Decree pursuant to paragraph 9 of this
21 Decree.

22 (f) The Navajo Nation shall have authority to administer and regulate the leasing and

1 contracting of the Navajo Nation's water rights adjudicated by this Decree; provided, that:

2 (1) any change in the purpose and place of use or a change in the point of
3 diversion of any of the Navajo Nation's water rights shall comply with the provisions
4 of paragraph 17;

5 (2) the provisions of section 10701(c) of the Northwestern New Mexico
6 Rural Water Projects Act (123 Stat. 1367) shall apply to any subcontract between the
7 Navajo Nation and a third party of the Navajo Nation's rights to the delivery of water
8 under the Settlement Contract between the United States and the Navajo Nation
9 referred to in subparagraph 5(a), including the requirement that the Secretary of the
10 Interior must approve such subcontracts;

11 (3) the provisions of section 10701(d) of the Northwestern New Mexico
12 Rural Water Projects Act (123 Stat. 1367) shall apply to leases, contracts or other
13 agreements that the Navajo Nation may enter to provide water for use by other parties
14 under the Navajo Nation's water rights that are not subject to the Settlement
15 Contract; and

16 (4) the development and use of ground water by the Navajo Nation shall
17 comply with the provisions of paragraph 7.

18 The non-use of the Navajo Nation's reserved rights by a leasee or contractor to the Navajo
19 Nation shall in no event result in a forfeiture, abandonment, relinquishment or other loss of
20 all or any part of the reserved rights described in paragraphs 3, 7(a), 8 and 10 of this Decree.

21 (g) The Navajo Nation's water rights adjudicated herein shall not be leased,
22 contracted, exchanged, forborne or otherwise transferred for use directly or indirectly outside

1 the boundaries of the State of New Mexico without the consent of the State of New Mexico,
2 acting through the New Mexico Interstate Stream Commission, and unless in compliance
3 with applicable law. The Navajo Nation, consistent with the Settlement Agreement and
4 section 10603(d) of the Northwestern New Mexico Rural Water Projects Act (123 Stat.
5 1367), may forbear use of a portion of its rights described in subparagraphs 3(a) or 3(b) as
6 necessary to allow Navajo Nation municipal and domestic uses to be made in Arizona under
7 the Navajo-Gallup Water Supply Project during years that the Secretary of the Interior
8 pursuant to section 10402 of the Act allocates a shortage in the Navajo Reservoir water
9 supply to the Navajo Nation's uses in Arizona under the Project. Except as provided in this
10 paragraph, nothing in this Decree shall be construed to establish, address, prejudice, or
11 prevent any party from litigating, whether or to what extent any law or compact does or does
12 not permit, govern, or apply to the lease, contract, exchange, forbearance or transfer of the
13 Navajo Nation's water rights for use directly or indirectly in an area outside the State of New
14 Mexico.

15 h) The Navajo Nation shall have the jurisdiction, authority and responsibility to
16 adjust its headgates and other diversion works to ensure that its diversions of water comply
17 with the Navajo Nation's rights to divert as adjudicated by this Decree, the Supplemental
18 Decree, or any supplemental decrees that may be entered by the Court pursuant to paragraph
19 20. During times when the Secretary of the Interior has determined and allocated shortages
20 pursuant to subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96), and section 10402 of
21 the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367), or times when a
22 priority call on the San Juan River or its tributaries is in effect or would have been in effect

1 but for the provisions of subparagraph 9.2 of the Settlement Agreement, the New Mexico
2 State Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the
3 Navajo Nation's diversion and use of water from the San Juan River stream system to ensure
4 that the waters are being beneficially used in compliance with this Decree, and shall have
5 authority to request the Navajo Nation to make any appropriate adjustments to its diversions
6 as necessary to comply with the provisions of this Decree and the proper administration of
7 diversions in the San Juan River Basin in New Mexico. The Navajo Nation shall maintain its
8 diversion, conveyance and storage facilities in good repair so as to prevent waste.

9 (i) The Navajo Nation shall drill, maintain and abandon ground water diversion wells
10 in a manner consistent with public health and safety and applicable laws and regulations.
11 The Navajo Nation shall require that well completion logs be prepared for all newly drilled
12 wells. Copies of well completion reports and well drilling logs shall be provided to the New
13 Mexico State Engineer on a quarterly basis.

14 (j) The Navajo Nation shall construct and maintain, and breach if necessary, storage
15 dams and reservoirs in a manner consistent with public health and safety and applicable laws
16 and regulations. The Navajo Nation shall require that as built drawings be prepared for all
17 newly constructed or rehabilitated dams; except, that dams that are 10 feet or less in height as
18 measured from the downstream toe to the dam crest and dams that impound 10 acre-feet or
19 less of water as measured by the volume of water stored at the spillway crest are exempt from
20 such requirement for purposes of this Decree. Copies of as built drawings for dams, and
21 copies of dam inspection reports on both newly constructed dams and existing dams, shall be
22 provided to the New Mexico State Engineer on an annual basis.

1 **18. NOTICE.**

2 In addition to any notice provisions under applicable law, at least 30 days prior to any change
3 in the place or purpose of use or point of diversion in the exercise of the water rights identified
4 herein, the Navajo Nation, acting through the Department of Water Resources, shall complete notice
5 of such change by publication in a newspaper of general circulation within the San Juan River Basin
6 in New Mexico once per week for three consecutive weeks and by letter to the New Mexico State
7 Engineer; except, that *de minimus* uses described in paragraph 10 are exempt from this notice
8 requirement, and emergency replacement wells and emergency transfers for domestic and sanitary
9 purposes may be made with less than 30 days notice. Both such forms of notice shall specify the
10 proposed purpose and place of use, point of diversion, diversion rate, annual diversion and depletion
11 amounts, and source of water. Uses of water to make the depletions and diversions described in
12 subparagraphs 3(d), 3(e) and 3(f) that are supplied under the Settlement Contract pursuant to the
13 alternate water source provisions of subparagraph 9.2 of the Settlement Agreement, and that are
14 accounted under the rights described in subparagraph 3(a) for the Navajo Indian Irrigation Project,
15 also shall be exempt from this notice requirement. Any use of water for non-irrigation purposes
16 under the rights associated with the Navajo Indian Irrigation Project is subject to the notice
17 provisions of this paragraph notwithstanding the authorized uses of Project water specified at section
18 10402(a) of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367); except, that
19 no such notice shall be required to implement the alternate water source provisions of subparagraph
20 9.2 of the Settlement Agreement to make the depletions and diversions described in subparagraphs
21 3(d), 3(e) and 3(f) regardless of whether part or all of the irrigation rights for the Hogback-Cudei and
22 Fruitland-Cambridge irrigation projects have been transferred to non-irrigation uses.

1 **19. SAN JUAN-CHAMA PROJECT.**

2 Nothing in this Decree shall be construed to prohibit the Navajo Nation from acquiring the
3 use of water diverted to the Rio Grande Basin via the San Juan-Chama Project authorized by the Act
4 of June 13, 1962 (76 Stat. 96); provided, that the acquisition of such water:

5 (a) is made by subcontract with existing contractors of said Project or by reallocation
6 of Project water and subsequent contract with the Secretary of the Interior, subject to
7 approval of the New Mexico Interstate Stream Commission; and

8 (b) does not result in an increase in the amount of water required to be diverted by
9 the Project from the San Juan River Basin.

10 Nothing in this paragraph shall be construed to abrogate the Secretary of the Interior's obligations
11 under existing water delivery and repayment contracts for the San Juan-Chama Project or under
12 existing reservations or allocations of Project water.

13 **20. SUPPLEMENTAL DECREES.**

14 The Navajo Nation and the United States, acting in its capacity as Trustee for the Navajo
15 Nation, may petition this Court for supplemental decrees to adjudicate rights pursuant to:

16 (a) appropriations it may make or rights it may acquire after entry of this Decree; or

17 (b) rights that may derive from additional allocations of water made to the Navajo

18 Nation pursuant to paragraph 8.0 of the Settlement Agreement.

19 The Navajo Nation also may petition this Court to re-adjudicate the priority date for the reserved
20 rights described in paragraphs 3, 7(a), 8 and 10 if the Court adjudicates a priority date earlier than

21 June 1, 1868, to another party in this case.

1 **21. INCORPORATION OF SETTLEMENT AGREEMENT.**

2 The terms and conditions of the San Juan River Basin in New Mexico Navajo Nation Water
3 Rights Settlement Agreement, signed by the State of New Mexico, the Navajo Nation, and the
4 Secretary of the Interior on December 17, 2010, excluding Appendices 1 and 2 thereto, are
5 incorporated as though fully set forth herein. By this Decree, the Court takes no action and makes no
6 determination to approve or disapprove the Northwestern New Mexico Rural Water Projects Act
7 (123 Stat. 1367) or the Settlement Contract. Any amendments to the Settlement Agreement made
8 pursuant to subparagraph 14.7 of that agreement and subsequent to entry of this Decree shall be
9 binding as between the parties to the Settlement Agreement, but shall not be binding on other parties
10 unless approved by the Court.

11 **22. REVOCABILITY.**

12 Notwithstanding the provisions of paragraph 14, this Decree may be revoked by the Court if
13 the Settlement Agreement is terminated or upon a showing by the Navajo Nation that the conditions
14 set forth at section 10701(e)(1) of the Northwestern New Mexico Rural Water Projects Act (123
15 Stat.1367) have not been substantially satisfied. If this Decree is revoked, the parties shall not be
16 bound by it or the Settlement Agreement, including any agreements of the Navajo Nation or the
17 United States relating to the settlement of claims provided pursuant to this Decree, the Settlement
18 Agreement or the Northwestern New Mexico Rural Water Projects Act, and the Navajo Nation may
19 petition the Court to proceed with the determination of its rights in this case. Nothing in this
20 paragraph prohibits the Navajo Nation from seeking other remedies for performance or relief to
21 accomplish the purposes of the Settlement Agreement and the Act. The Navajo Nation's right to
22 present to the Court cause to revoke this Decree and the Supplemental Decree under this paragraph

1 shall expire on December 31, 2025, unless the deadlines set forth in paragraph 5.2 of the Settlement
2 Agreement are extended. in which case, this right shall expire one year following the date of the last
3 deadline, including extensions pursuant to paragraph 5.2.2 of the Settlement Agreement.

4
5 **IT IS SO ORDERED.**

6
7 
8 James J. Wechsler
9 Presiding Judge