

**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0412-15

**DATE:** December 16, 2015

**TITLE OF RESOLUTION:** PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, AND NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; APPROVING THE PROPOSED NAVAJO UTAH WATER RIGHTS SETTLEMENT AGREEMENT

**PURPOSE:** The purpose of the resolution is to approve the proposed Utah Water Rights Settlement Agreement, to authorize the Navajo Nation President to execute the Settlement Agreement, and, in the event the United States Congress approves the proposed Settlement Agreement with substantial differences than what is approved by the Navajo Nation Council, to delegate to a standing committee of the Navajo Nation Council the authority to approve the proposed Utah Water Rights Settlement Agreement with those changes. The Finding listed in Letter "I" summarizes the Proposed Settlement Agreement. The proposed Settlement Agreement "would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, and members of the Navajo residing in the Utah portion of the Navajo Nation."

**This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.**

5-DAY BILL HOLD PERIOD: Kathryn Prubak  
Website Posting Time/Date: \_\_\_\_\_  
Posting End Date: 12/26/15  
Eligible for Action: 12/27/15

Resources & Development Committee

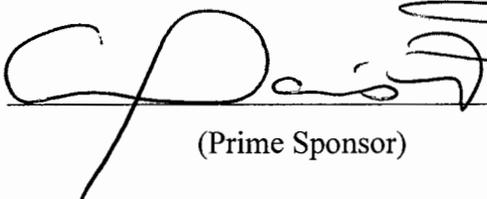
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PROPOSED NAVAJO NATION COUNCIL RESOLUTION

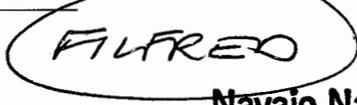
23<sup>rd</sup> NAVAJO NATION COUNCIL – First Year, 2015

INTRODUCED BY

Naa'biik'iyáti' Committee

  
(Prime Sponsor)

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Navajo Nation Council

TRACKING NO. 0412-15

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, AND  
NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL;  
APPROVING THE PROPOSED NAVAJO UTAH WATER RIGHTS  
SETTLEMENT AGREEMENT

BE IT ENACTED:

**Section One. Findings**

- A. In recognition of Tó'éí'iiiná (water is life) the Navajo Nation Council has determined that water is essential "to provide for a permanent homeland for the Navajo People." 22 N.N.C. § 1101.
- B. Navajo communities in Utah have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015).
- C. The Resources and Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 500(C), exercises oversight authority over water to protect this resource for the Navajo Nation and People, now and for future generations.
- D. The Naabik'iyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 164(A)(9), reviews proposed legislation which requires final action by the Navajo Nation Council.

- 1 E. The Navajo Nation Water Rights Commission was established by the Navajo  
2 Nation Council “to ensure that the water rights of the Navajo Nation are  
3 vigorously pursued, effectively coordinated, and to enhance the communication  
4 between all entities engaged in water rights efforts on behalf of the Navajo  
5 Nation.” 2 N.N.C. § 1552.
- 6 F. By Resolution IGRAP-60-3, the former Intergovernmental Relations Committee  
7 of the Navajo Nation Council approved a *Memorandum of Agreement Between*  
8 *the Navajo Nation and the State of Utah to Commence Discussions to Determine*  
9 *the Water Rights of the Navajo Nation in Utah* to determine if the water rights  
10 claims of the Navajo Nation in Utah could be resolved through a negotiated  
11 settlement rather than through litigation. The Memorandum was executed by the  
12 Navajo Nation and the State of Utah in August 2003, and the two sovereigns  
13 entered into settlement negotiations shortly thereafter.
- 14 G. After numerous requests from the Navajo Nation and the State of Utah, the  
15 Department of the Interior appointed a Federal Indian Water Rights Negotiation  
16 Team in January 2013, to assist the Navajo Nation in settling its water rights  
17 claims within the State of Utah.
- 18 H. Representatives of the Navajo Nation (including staff from the Departments of  
19 Water Resources and Justice, together with the Navajo Nation Water Rights  
20 Commission) and the State of Utah have reached agreement as to the  
21 quantification and settlement of the Navajo Nation’s water rights claims in the  
22 State of Utah, reflected in the proposed Navajo Nation / State of Utah Water  
23 Rights Settlement Agreement (December 14, 2015) (“Settlement Agreement”),  
24 attached as “Exhibit A.”
- 25 I. The proposed Settlement Agreement, if approved and ratified by Congress, would  
26 recognize the water rights of the Navajo Nation in Utah and provide funding for  
27 infrastructure development, and members of the Navajo residing in the Utah  
28 portion of the Navajo Nation, and the proposed Settlement Agreement is  
29 summarized here:  
30 a. Section 1.0 - Purpose. The purpose of the Agreement is to provide a  
permanent settlement of the water rights of the Navajo Nation in the State

1 of Utah and to avoid future controversy over the quantification of such  
2 rights,

3 b. Section 2.0 - Legal Basis for Agreement. This section affirms that the  
4 Agreement is made in accordance with the Constitution and laws of the  
5 United States and the State, and the treaties and laws of the Navajo  
6 Nation,

7 c. Section 3.0 - Definitions. This section defines key terms to avoid future  
8 controversy concerning the interpretation of the Agreement,

9 d. Section 4.0 - Quantification of Navajo Nation Water Rights. This section  
10 describes and quantifies the Navajo Nation's water rights, including:

11 i. the right to deplete a total of 81,500 acre-feet from all water  
12 sources within the Upper Colorado River Basin in Utah on the  
13 Navajo Nation,

14 ii. the right to divert and store up to 435 cubic feet per second from  
15 the San Juan River, so long as the annual depletion limit of 81,500  
16 acre-feet is not exceeded,

17 iii. the right to unlimited diversions from groundwater and from Lake  
18 Powell, so long as the annual total depletion limit of 81,500 acre-  
19 feet is not exceeded,

20 iv. the right to market or lease these water rights to the same extent as  
21 other water rights holders in Utah, and

22 v. the priority date for most of the water would be May 17, 1884;  
23 however, the Navajo right would be subordinated to existing uses  
24 but senior to any non-Navajo use that may be developed in the  
25 future. In other words, during times of physical shortage of water  
26 in the river or its tributaries, the Navajo Nation's subordinated  
27 right means it could not seek to curtail non-Navajo rights existing  
28 as of the Enforceability Date, but could seek to curtail all rights  
29 developed thereafter. Nevertheless, this early priority date protects  
30 Navajo water in Utah from being cut off in the event that the State  
of Utah is forced to curtail water uses throughout the state in order

1 to comply with its downstream delivery obligations pursuant to  
2 interstate compacts,

- 3 e. Section 5.0 - Utah Navajo Water Development Fund. This section  
4 describes the obligation of the United States to provide: (1) \$198.3M  
5 (2014\$) for the purpose of creating a trust fund for the construction of  
6 various water development projects to meet the water needs of Navajo  
7 communities in Utah and (2) to create an Operation, Maintenance and  
8 Replacement (“OM&R”) Trust Account in the amount of \$11.1M (2014\$)  
9 to help defray the operation, maintenance and replacement costs of the  
10 water development projects. The level of funding was determined based  
11 on costs of projects described in the “Navajo Nation/State of Utah Water  
12 Rights Settlement Projects: White Paper” (June 6, 2014), prepared by the  
13 Navajo Nation Department of Water Resources; however, providing a  
14 fund will allow the Nation the flexibility to meet these needs in the most  
15 efficient manner and adapt to possible changes in both the needs and  
16 technologies to meet them in the future,
- 17 f. Section 6.0 - Rights of Members and Allottees. This section explains that  
18 the Agreement does not quantify the rights of allottees but requires such  
19 rights to be satisfied out of the rights of the Navajo Nation as described in  
20 the Agreement,
- 21 g. Section - 7.0 Identification of Existing On-Reservation State  
22 Appropriative Water Rights. This section describes how existing state  
23 rights will be converted into on-Reservation Navajo rights,
- 24 h. Section 8.0 - Water Administration. This section describes how the  
25 Navajo Nation and the State of Utah will administer the water rights under  
26 the Agreement,
- 27 i. Section 9.0 - Transfers Off the Reservation. This section describes how  
28 the Navajo Nation can use its water rights off of the Navajo Reservation,  
29 including water marketing,
- 30 j. Section 10.0 - Administration for Compact Compliance. This section  
describes how the State may administer, in priority, water rights in the

1 Southeastern Colorado River Basin in Utah, where Navajo Utah lands are  
2 located, for purposes of complying with interstate compacts relating to the  
3 Colorado River,

4 k. Section 11.0 - Enforceability Date. This section describes the conditions  
5 that must be met for the Agreement to be final and enforceable,

6 l. Section 12.0 - Waivers and Releases of Claims. This section describes the  
7 waivers that the Navajo Nation, the State of Utah and the United States  
8 (the "Parties") must enter into in order for the Agreement to be considered  
9 binding on the parties. Generally, the waivers and releases require each  
10 Party to waive claims concerning damages, losses or injuries to the water  
11 rights of that Party and release the other Parties from liability for any such  
12 claims. The United States, as the trustee of tribal lands, has required  
13 similar waiver and release provisions in all recent Indian water rights  
14 settlements approved by Congress. The Navajo Nation Council  
15 understands that upon the Enforceability Date, the Agreement becomes a  
16 final, binding and permanent quantification of the water rights of the  
17 Navajo Nation in the State of Utah, and that the Navajo Nation cannot  
18 claim water rights in addition to those described in the Agreement,  
19 however, nothing in the Agreement prevents the Nation from acquiring  
20 additional water rights by purchase in the future. The Navajo Nation  
21 Council further understands that the Navajo Nation will retain all claims  
22 relating to activities affecting the quality of water, such as the Gold King  
23 Mine spill that occurred in August of 2015,

24 m. Section 13.0 - Enforcement. This section describes how the Agreement  
25 shall be enforced, including how actions against the Parties to the  
26 Agreement, to enforce the Agreement may be brought in federal court, and  
27 reiterates that the Agreement is intended to provide water in perpetuity to  
28 the Navajo Nation by way of settlement in lieu of water rights claims that  
29 could be asserted in the General Stream Adjudication,  
30

- 1 n. Section 14.0 - Ratification and Amendment. This section acknowledges  
2 that Congress must ratify the Agreement and that the Parties must agree to  
3 any amendments to the Agreement in writing,
- 4 o. Section 15.0 - Evidentiary Effect of the Negotiations. This section states  
5 that the Agreement was the result of a good faith negotiation; therefore, no  
6 offers or compromises made during the course of those negotiations will  
7 be used in Court to interpret or enforce the Agreement,
- 8 p. Section 16.0 - Obtaining Court Decree in General Stream Adjudication.  
9 This section describes how the rights of the Navajo Nation in the  
10 Agreement will be incorporated into a final decree to be filed with the  
11 court in the General Stream Adjudication,
- 12 q. Section 17.0 - Necessary Acts and Cooperation. This section commits the  
13 Parties to cooperate, including the cooperation necessary to obtain a final  
14 binding decree,
- 15 r. Section 18.0 - Contingent on the Appropriation of Funds. This section  
16 clarifies that the performance of any obligations of the United States under  
17 the Agreement are contingent on the availability of funds. The Navajo  
18 Nation Council understands that if Congress does not appropriate the  
19 funds for the purposes described in Section 5.0, the Enforceability Date  
20 described in Section 11.0 will not occur and the Agreement is not  
21 enforceable,
- 22 s. Section 19.0 - Other Provisions. This section describes miscellaneous  
23 provisions such as the addresses for notices to be sent pursuant to the  
24 Agreement,
- 25 t. Section 20.0 - Signature Authority. This section requires the signatories to  
26 the Agreement to be authorized to bind the Party each person represents to  
27 the Agreement.

28 J. The Navajo Nation Water Rights Commission, with technical assistance from the  
29 Department of Water Resources, gave numerous presentations on the Settlement  
30 Agreement in the Utah portion of the Navajo Nation, including seven chapters,

1 and all seven chapters passed resolutions endorsing the Settlement Agreement as  
2 follows:

- 3 a. Red Mesa Chapter Resolution # RMC 006-092115 *Endorsing the*  
4 *Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement*  
5 (September 21, 2015), attached as "Exhibit B" (internal attachments  
6 omitted),
- 7 b. Resolution of TeeNosPos Chapter TNPCH 10-032-015 *Endorsing the*  
8 *Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement*  
9 (October 5, 2015), attached as "Exhibit C" (internal attachments omitted),
- 10 c. Resolution of the Aneth Chapter ACOCT-16-005 *Endorsing the Proposed*  
11 *Navajo Nation/State of Utah Water Rights Settlement Agreement* (October  
12 11, 2015), attached as "Exhibit D" (internal attachments omitted),
- 13 d. Mexican Water Chapter Resolution MWCOCT14-032 *Approve to endorse*  
14 *the proposed Navajo Nation / State of Utah water rights settlement*  
15 *agreement* (October 14, 2015), attached as "Exhibit E" (internal  
16 attachments omitted),
- 17 e. Resolution of Dennehotso Chapter DCHOCT-06-2015 *Endorsing the*  
18 *Proposed Navajo Nation / State of Utah Water Rights Settlement*  
19 *Agreement* October 15, 2015, attached as "Exhibit F" (internal  
20 attachments omitted),
- 21 f. Resolution of Oljato Chapter OLJ11-01-2015 *Endorsing the Proposed*  
22 *Navajo Nation / State of Utah Water Rights Settlement Agreement*  
23 November 8, 2015, attached as "Exhibit G" (internal attachments omitted),
- 24 g. Resolution of the Naatsis'aaan (Navajo Mountain) Chapter of the Navajo  
25 Nation Resolution No. NM11/009-2016 *Endorsing the Proposed Navajo*  
26 *Nation / State of Utah Water Rights Settlement Agreement* November 13,  
27 2015, attached as "Exhibit H" (internal attachments omitted).

28 K. The Navajo Nation Water Rights Commission has provided periodic reports to the  
29 Navajo Utah Commission concerning the status of those negotiations since the  
30 commencement of negotiations with the State of Utah, by Resolution NUCNOV-  
659-15 is attached as "Exhibit I," (internal attachments omitted), the Navajo Utah

1 Commission endorsed the Settlement Agreement and encouraged the Navajo  
2 Nation Council to expeditiously approve the Settlement Agreement.

3 L. On March 26, 2015, Utah Governor Herbert signed S.C.R. 2, attached as “Exhibit  
4 J”, a concurrent resolution of the Utah Legislature and Governor, which “declares  
5 support for the negotiated settlement of federal reserved water rights between the  
6 Navajo Nation and representatives of the state of Utah.”

7 M. The presentations made by the Navajo Nation Water Rights Commission to the  
8 public, to the chapters, and to the Navajo Utah Commission were based on a July  
9 17, 2015 draft of the Settlement Agreement. Since the time of those  
10 presentations, minor changes have been made to the Settlement Agreement to  
11 clarify, but not change the terms of the proposed settlement. Those changes are  
12 described in the list attached as “Exhibit K.”

13 N. Consistent with the concept of Tó’ée’iiná, the Navajo Nation Council has  
14 determined that the proposed Settlement Agreement is in the best interests of  
15 Navajo chapters in Utah, the Navajo People in Utah, and the Navajo Nation.

16 **Section Two. Approving the Proposed Utah Water Rights Settlement Agreement**

17 The Navajo Nation Council hereby approves the proposed Navajo Utah Water Rights  
18 Settlement Agreement in the form of or substantially similar to the form of “Exhibit  
19 A” as attached, and authorizes the President of the Navajo Nation to execute the  
20 same.

21  
22 **Section Three. Procedures for Approving Changes in the Settlement Agreement**

23 In the event changes are made to the Navajo Utah Water Rights Settlement  
24 Agreement as a result of actions taken by Congress, such that the form of the  
25 Settlement Agreement is not substantially similar to the Settlement Agreement  
26 attached as “Exhibit A,” the Navajo Nation Council delegates to the Naabik’íyáti’  
27 Committee the authority to approve the revised settlement agreement, and authorizes  
28 the President of the Navajo Nation to execute the same.

**FOR SETTLEMENT DISCUSSION ONLY**

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

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

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

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

**SECTION 1.0  
PURPOSE**

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

**SECTION 2.0  
LEGAL BASIS FOR AGREEMENT**

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

**SECTION 3.0  
DEFINITIONS**

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

“AFY” means acre-feet per year.

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

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

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

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

“CFS” means cubic feet per second.

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

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

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

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

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

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

4 “Reservation” means, for purposes of this Agreement, that part of the Navajo Nation  
5 Reservation located within the boundaries of Utah and established by  
6 Executive Order of May 17, 1884;  
7 Executive Order 324A of May 15, 1905;  
8 Act of March 1, 1933, Ch. 160, 47 Stat. 1418, 1419;  
9 Act of April 28, 1948, Ch. 238, 62 Stat. 203, 204;  
10 Act of Sept. 7, 1949, Ch. 567, 63 Stat. 698; and  
11 Act of Sept 2, 1958, Pub. L. 85-868, 72 Stat. 1686-1690, as amended by Act of  
12 May 17, 1968, Pub. L. 90-306, 82 Stat. 121;

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

10 **4.3 Beneficial Use**

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

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

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

18 **4.5 Accounting for Depletion**

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

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

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

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

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

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

#### 21 **4.6 Development of Water Sources**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **5.3 Lead Agency**

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

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

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

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

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

- 1           i) to review cost factors and budgets for construction, operation and  
2 maintenance activities;
- 3           ii) to improve management of inherently governmental activities  
4 through enhanced communication; and
- 5           iii) to seek additional ways to reduce overall costs.

6       **5.5 Project Funding**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**SECTION 6.0**  
**RIGHTS OF MEMBERS AND ALLOTTEES**

**6.1 On-Reservation Uses**

There are approximately 73 Allotments located within the Reservation. Any entitlement to water of any Member, including any Allottee, for lands within the Reservation shall be satisfied out of the Water Rights recognized in this Agreement. Nothing in this Agreement shall be deemed to recognize or establish any right of a Member of the Navajo Nation to water on the Reservation.

**6.2 Off-Reservation Allotments**

There is approximately 1 Allotment outside the Reservation in Utah. The Water Rights of any Allottee for an Allotment located outside the boundaries of the Reservation shall be satisfied out of the Water Rights recognized in this Agreement. The historic and existing uses for such Allotments shall be determined by the Bureau of Indian Affairs and described in abstracts attached hereto as Exhibit B.

**6.3 Application of Navajo Nation Water Code**

The entitlements and rights described in Subsections 6.1 and 6.2 shall be administered pursuant to the Navajo Nation Water Code, 22 N.N.C. §§ 1101 *et seq.*

**SECTION 7.0**  
**STATE APPROPRIATIVE WATER**  
**RIGHTS ON RESERVATION**

**7.1 Identification of Existing On-Reservation State Appropriative Water Rights**

There are approximately 54 State Appropriative Water Rights with a place of use located on the Navajo Reservation. The Navajo Nation Water Rights described in Subsection 4.1.1 include all uses of water on the Reservation, including those State Appropriative Water Rights that list as the place of use lands which are part of the Reservation. The Parties agree to work cooperatively to identify all of the State Appropriative Water Rights with uses on the Reservation, and the State will provide such information from their records as may be necessary to facilitate the management and

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

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

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

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

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

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

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

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

24 **8.1 Role of State Engineer**

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

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

4 **8.2 Role of Navajo Nation**

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

10 **8.3 Change in Water Use**

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

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

18 **9.1 Change Application Required**

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

25 **9.2 Applicable Law**

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **11.2 Failure of Conditions**

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

6 **11.3 Extension**

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

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

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

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

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

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

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

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

4 The Navajo Nation waives and releases:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **12.6 Effect of Section**

14          Nothing in this Agreement—

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

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

24          12.6.3 Confers jurisdiction on any State court to:

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

1 **12.7 Delay Not a Waiver**

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

8 **12.8 Claims Waived or Released**

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

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

13 **13.1 Enforcement**

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

1     **13.2   Rights and Remedies**

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

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

20     **14.1   Ratification**

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

1 **14.2 Amendments**

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

5 **SECTION 15.0**  
6 **EVIDENTIARY EFFECT OF NEGOTIATIONS**

7 **15.1 No Admission Against Interest**

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

13 **15.2 Voluntary Compromise**

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

19 **15.3 Construction and Effect**

20 This Agreement is to be construed fairly and reasonably in its entirety. The Section  
21 and Subsection titles used in this Agreement are for convenience only and shall not be  
22 considered in the construction of this Agreement. Each of the Parties has been fully  
23 represented in connection with the preparation of this Agreement and, as such, this  
24 Agreement shall be neutrally interpreted and shall not be construed in favor of any Party  
25 or against any Party.  
26



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

3 **17.2 Application Necessary to Effectuate Agreement**

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

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

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

11 **17.4 Proposed Judgment and Decree**

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

15 **17.5 Filings in General Stream Adjudication**

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

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

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



1 19.5.2 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 **19.6 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 20.0**  
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 **20.1 Navajo Nation**

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

16 **20.2 United States**

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

19 **20.3 State of Utah**

20 This Agreement is executed by the State, acting through its Executive Director of  
21 the Department of Natural Resources.  
22

DRAFT For Settlement Purposes Only

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

3   **THE NAVAJO NATION**  
4 By: \_\_\_\_\_  
5 Its: \_\_\_\_\_  
6 Date: \_\_\_\_\_

7   **STATE OF UTAH**  
8 By: \_\_\_\_\_  
9 Its: \_\_\_\_\_  
10 Date: \_\_\_\_\_

11   **UNITED STATES OF AMERICA**  
12 By: \_\_\_\_\_  
13 Its: \_\_\_\_\_  
14 Date: \_\_\_\_\_

DRAFT - For Settlement Purposes Only



**RED MESA CHAPTER**  
Red Mesa, Navajo Nation

Resolution# RMC 006-092115



EXHIBIT

**B**

**ENDORING THE PROPOSED NAVAJO NATION/STATE OF UTAH WATER RIGHTS SETTLEMENT AGREEMENT.**

**WHEREAS:**

1. The Red Mesa Chapter (Łichíí'da'askáni) is a duly recognized and certified chapter of the Navajo Nation Government pursuant to 11 N.N.C. §10; and
2. The Navajo Nation Council has declared that water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. §1101; and
3. Navajo communities in Utah, including Red Mesa Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation/State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The Navajo Nation Water Rights Commission held public meetings at Red Mesa Chapter on June 9, 2014, and September 21, 2015, concerning the proposed Settlement Agreement; and
7. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development; including
  - a) The right to deplete a total of 81,500 acre feet from all water sources within Upper Colorado River Basin in Utah on the Navajo Nation;
  - b) The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
  - c) The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
  - d) The right to market or lease these water rights to the same extent as other water rights holders in Utah;
  - e) A trust fund in the amount of \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future;
  - f) A trust fund in the amount of \$11.1M (2014\$) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the "White Paper"; and
8. Red Mesa Chapter believes that the proposed Settlement Agreement is in the best interests of Red Mesa Chapter, the Navajo People in Utah, and the Navajo Nation.

**NOW THEREFORE BE IT RESOLVED THAT:**

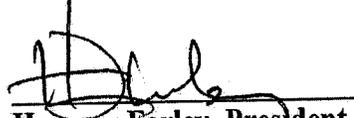
- A. The Red Mesa Chapter hereby endorses the proposed Navajo/ State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
- B. The Red Mesa Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation/ State of Utah Water Rights Settlement Agreement as expeditiously as possible.

**CERTIFICATION:**

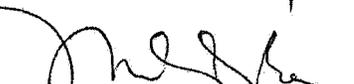
We hereby certify that the foregoing resolution was duly considered by the Red Mesa Chapter of the Northern Agency at a duly called meeting in Red Mesa, Utah, Navajo Nation, at which a quorum was present and that same passed by a vote of 48 FAVORED, 00 OPPOSED, and 01 ABSTAINED on this 21<sup>st</sup> day of SEPTEMBER 2015.

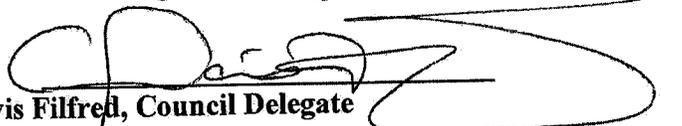
Motioned by: Mr. Edward Tapaha

Seconded by: Mr. Floyd Tsinnijinnie

  
\_\_\_\_\_  
Herman Farley, President

  
\_\_\_\_\_  
Doris J. Tsinnijinnie, Vice-President

  
\_\_\_\_\_  
Marlene Dee Ben, Secretary/Treasurer

  
\_\_\_\_\_  
Davis Filfred, Council Delegate



# TEEC NOS POS CHAPTER

P. O. Box 106, Teec Nos Pos, Arizona, Navajo Nation 86514  
 Highway 160 BIA School Road #5114 Chapter Government Building  
 Telephone #928-656-3662 Facsimile #928-656-3661

RESOLUTION OF TEECNOSPOS CHAPTER

TNPCH 10-032-015

## ENDORING THE PROPOSED NAVAJO NATION AND STATE OF UTAH WATER RIGHTS SETTLEMENT AGREEMENT.

### WHEREAS:

1. The TeecNosPos Chapter is a duly recognized and certified chapter of the Navajo Nation government pursuant to 11 N.N.C. 10; and
2. The TeecNosPos Chapter is part of the decision the Navajo Nation council declared that water is essential "to provide for a permanent homeland for the Navajo people," 22 N.N.C. 1101; and
3. The TeecNosPos Chapter is part of the Navajo community in Utah and have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. The TeecNosPos Chapter knows in 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussion of Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. The TeecNosPos Chapter is aware of the representative of the Navajo Nation and the State of Utah who have reached agreement as to the quantification and settlement of the Navajo Nation water rights claims in the State of Utah, reflected in the proposed Navajo Nation/State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The TeecNosPos Chapter were informed of the Navajo Nation Water Rights Commission public meeting concerning the proposed Settlement Agreement; and
7. The TeecNosPos Chapter is made aware of the proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development including:
  - a. *The right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;*
  - b. *The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81, 500 acre feet is not exceeded;*
  - c. *The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;*

#### CHAPTER OFFICERS

Alfred L. Jiro  
President

Arnold L. Bitah  
Vice President

Verna Francisco  
Secretary/Treasurer

Herman Lee  
Grazing Officer

Davis Filfred  
Council Delegate

#### ADMINISTRATION:

Steven Bepally  
Chapter Coordinator

Matilda Begay  
Office

- d. The right to market or lease these water rights to the same extent as other water rights holders in Utah;
  - e. A trust fund in the amount of \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/Utah Water Rights Settlement Projects: White Paper" (June 06, 2014) ("White Paper), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future; and
  - f. A trust fund in the amount of \$11.1M (2014\$) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the White Paper; and
8. The TeecNosPos Chapter believes that the proposed Settlement Agreement is in the best interests of TeecNosPos Chapter, the Navajo People in Utah, and the Navajo Nation.

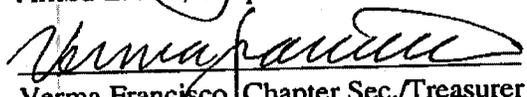
**NOW THEREFORE BE IT RESOLVED THAT:**

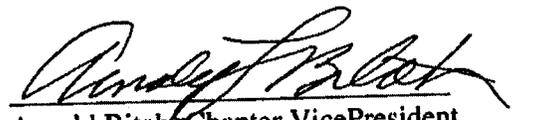
1. The TeecNosPos Chapter hereby respectfully endorsed Navajo Nation/State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
2. The TeecNosPos Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation/State of Utah Water Rights Settlement Agreement as expeditiously as possible.

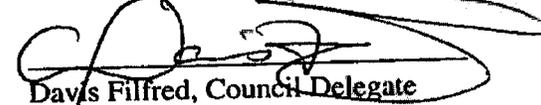
**C E R T I F I C A T I O N**

We, hereby, certify, that the foregoing resolution was duly considered by the TeecNosPos Chapter at a duly called Regular Chapter Meeting in TeecNosPos, Navajo Nation, Arizona, at which a quorum was present and that same was passed by a vote of 25 infavor, 0 opposed 02 abstain, on this 08th day of October, 2015; motioned by Juanita Woodis, seconded by John MacDonald, Sr.

  
Alfred L. Jim, Chapter President

  
Verma Francisco, Chapter Sec./Treasurer

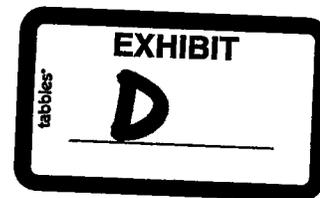
  
Arnold Bitah, Chapter VicePresident

  
Davis Filfred, Council Delegate

**THE ANETH CHAPTER**  
ANETH, NAVAJO NATION (UTAH)



DARRELL WILLIAMS PRESIDENT  
BILL TODACHENNIE VICE PRESIDENT  
BRENDA BROWN SECRETARY/TREASURER



**RESOLUTION OF  
THE ANETH CHAPTER**

ACOCT-16-005

**ENDORING THE PROPOSED NAVAJO NATION /STATE OF UTAH WATER RIGHTS  
SETTLEMENT AGREEMENT**

**WHEREAS:**

1. Pursuant to Navajo Tribal Council Resolution No. CMY-23-79, the Aneth Chapter is duly certified and recognized as an official local unit of the Navajo Nation Government with all duties, responsibilities, and authorities conferred according to 26 N.N.C. § 1 et seq. and has the power and authority to enact plans and development goals that are in the best interest of the community and to recommend, support, and approve community related projects); and
2. The Navajo Nation Council has declared that water is essential “to provide for a permanent homeland for the Navajo People, “22 N.N.C. §1101; and
3. Navajo communities in Utah, including Aneth Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, Water Resource Development Strategy for the Navajo Nation (July 2000) and the Bureau of Reclamation, Draft Rural Water Supply Appraisal Report (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation’s water rights claims in the State of Utah, reflected in the proposed Navajo nation/State of Utah Water Rights Settlement Agreement (July 17, 2015) (“Settlement Agreement), attached as Exhibit A; and
6. The Navajo Nation Water Rights Commission held a public meeting at Aneth Chapter on September 23, 2015, concerning the proposed Settlement Agreement; and
7. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, including:
  - a. The right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin In Utah on the Navajo Nation;

- b. The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
- c. The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
- d. The right to market or leased these water rights to the same extent as other water rights holders in Utah;
- e. A trust fund in the amount of \$198.3M (2014\$ for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future; and
- f. The trust fund in the of \$11.1M (2014\$) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the White Paper; and
- g. Aneth Chapter believes that the proposed Settlement Agreement is in the best interests of Aneth Chapter, the Navajo People in Utah, and the Navajo Nation.

**NOW, THEREFORE BE IT RSOLVED THAT:**

1. The Aneth Chapter hereby endorses, the proposed Navajo Nation /State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
2. The Aneth Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation /State of Utah Water Rights Settlement Agreement as expeditiously as possible.

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

I hereby certify that this forgoing resolution was duly considered by the Aneth Chapter Membership at a duly called meeting at which a quorum was present and that the same was passed with a vote of 14 in favor, 1 opposed and 2 abstained this 11th day of October, 2015.

  
Darrell Williams, *President*  
**ANETH CHAPTER**

Motioned by: Helen Archie  
Seconded by: Harriett Lansing



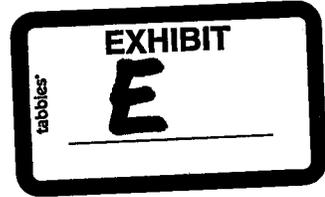
# MEXICAN WATER CHAPTER



Red Mesa TP#1019, HC 61 Box 38 • Teec Nos Pos, AZ 86514 • (928) 429-0986

## Mexican Water Chapter

**MWCOCT14-032**



### RESOLUTION OF MEXICAN WATER CHAPTER

#### Approve to endorse the proposed Navajo Nation / State of Utah water rights settlement agreement

#### WHEREAS:

1. Pursuant to 26 N.N.C., Section 102 (B); which permits Mexican Water Chapter to exercise local governance authorities contained within 26 N.N.C. Section 103, with the exception of land administration authority pursuant to 26 N.N.C. Section (D) (1); and
2. Pursuant to 26 N.N.C., Section 3 (A) the Mexican water Chapter is a recognized certified Chapter of the Navajo Nation government, as listed at 11 N.N.C. part 1, section 10; and
3. Pursuant to CAP-34-98, the Navajo Nation Council adopted the Navajo Nation Local Governance Act (LGA); and
4. Pursuant to Mexican Water Chapter resolution , the Mexican Water Chapter has approved its Five Management System Policies and Procedures Manuals; and
5. Pursuant to the Resources and Development Committee certifying Mexican Water Chapter having met requirement under 26 N.N.C. & 102 (A) on February 07, 2012; and
6. The Navajo Nation Council has declared that water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
7. Navajo communities in Utah, including Mexican Water Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, Water Resource Development Strategy for the Navajo Nation (July 2000) and the Bureau of Reclamation, Draft Rural Water Supply Appraisal Report (March 2015); and
8. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
9. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
10. The Navajo Nation Water Rights Commission held a public meeting at Mexican Water Chapter concerning the proposed Settlement Agreement; and
11. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, including:
  - a. The right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;

.....

- b. The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
  - c. The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
  - d. The right to market or lease these water rights to the same extent as other water rights holders in Utah;
12. A trust in the amount of \$198.3M (2014) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future; and
13. A trust fund in the amount of \$11.1M (2014) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the White Paper; and
14. Mexican Water Chapter believes that the proposed Settlement Agreement is in the best interests of Mexican Water Chapter, the Navajo People in Utah, and the Navajo Nation.

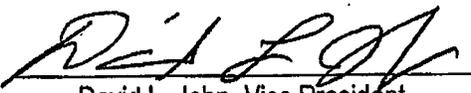
**NOW THEREFORE IT BE RESOLVED THAT:**

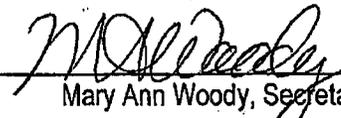
- 1. The Mexican Water Chapter hereby endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
- 2. The Mexican Water Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement as expeditiously as possible.

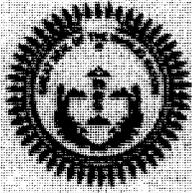
**CERTIFICATION**

We hereby certify that the foregoing resolution was duly considered at a duly called meeting at Mexican Water Chapter, (Navajo Nation), Utah at which a quorum was present and that same was passed by a vote of 21 in favor and 00 opposed, 02 abstained on the 14th day of October 2015.

  
Jerry Tsosie, President

  
David L. John, Vice President

  
Mary Ann Woody, Secretary/Treasurer



## DENNEHOTSO CHAPTER

Western Navajo Agency  
P.O. Box 2301  
Dennehotso, Arizona 86535  
928.658.3300/3301  
Fax: 928.658.3304

tabbiter

EXHIBIT

**F**

Frank C Yazzie  
President

Martha Littleman  
Vice-President

Nancy Tsosie  
Secretary/Treasurer

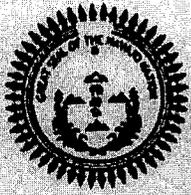
Nathaniel Brown  
Council Delegate

### RESOLUTION OF DENNEHOTSO CHAPTER DCHOCT-06-2015

#### ENDORISING THE PROPOSED NAVAJO NATION / STATE OF UTAH WATER RIGHTS SETTLEMENT AGREEMENT

##### WHEREAS:

1. Dennehotso (Dennahootsoh) Chapter is a duly recognized and certified chapter of the Navajo Nation government pursuant to 11 N.N.C. § 10; and
2. The Navajo Nation Council has declared that water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
3. Navajo communities in Utah, including Dennehotso Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The Navajo Nation Water Rights Commission held a public meeting at Dennehotso Chapter on October 15, 2015, concerning the proposed Settlement Agreement; and



## DENNEHOTSO CHAPTER

Western Navajo Agency  
P.O. Box 2301  
Dennehotso, Arizona 86535  
928.658.3300/3301  
Fax: 928.658.3304

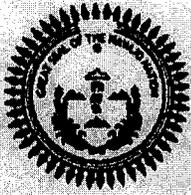
Frank C Yazzie  
President

Martha Littleman  
Vice-President

Nancy Tsosie  
Secretary/Treasurer

Nathaniel Brown  
Council Delegate

7. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, including:
  - a. The right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;
  - b. The right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
  - c. The right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
  - d. The right to market or lease these water rights to the same extent as other water rights holders in Utah;
  - e. A trust fund in the amount of \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah. The amount of the fund was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future; and
  - f. A trust fund in the amount of \$11.1M (2014\$) for the purpose of partially funding the operation, maintenance and replacement costs of the various water development projects described in the White Paper; and
  
8. Dennehotso Chapter believes that the proposed Settlement Agreement is in the best interests of Dennehotso Chapter, the Navajo People in Utah, and the Navajo Nation.



## DENNEHOTSO CHAPTER

Western Navajo Agency  
P.O. Box 2301  
Dennehotso, Arizona 86535  
928.658.3300/3301  
Fax: 928.658.3304

Frank C Yazzie  
President

Martha Littleman  
Vice-President

Nancy Tsosie  
Secretary/Treasurer

Nathaniel Brown  
Council Delegate

### NOW THEREFORE BE IT RESOLVED THAT:

- A. The Dennehotso Chapter hereby endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.
- B. The Dennehotso Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement as expeditiously as possible.

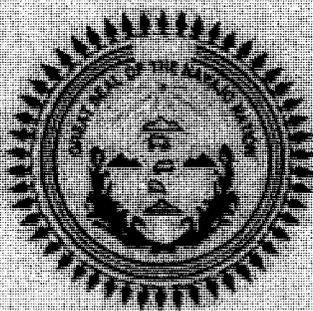
### CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered at a duly called meeting of the Dennehotso Chapter, Navajo Nation, at which a quorum was present and that the same was passed by a vote of 25 in favor; 0 opposed and 3 abstained on this 15th day of October, 2015.

Motion by: Andrew Tso  
Second by: Chester V. Haskan

  
Frank C. Yazzie, President  
Dennehotso Chapter - WNA

James Adakai, President  
 Albert Holiday, Vice President  
 LaNell Menard-Pamish, Secretary/Treasurer  
 Shirice A. Bedonie, CSC



Herman Daniels Jr., Council Delegate  
 Benedict Daniels, Grazing Official  
 Peggy Abrigo, AMS  
 Phone: 435-727-5650 Fax: 5852

Oljato Chapter, PO Box 360455, Monument Valley, Utah 84536

RESOLUTION OF OLJATO CHAPTER  
 Resolution No. \_\_\_\_\_

**ENDORISING THE PROPOSED NAVAJO NATION / STATE OF UTAH  
 WATER RIGHTS SETTLEMENT AGREEMENT**

**WHEREAS:**

1. Oljato (Ool jée'tó) Chapter is a duly recognized and certified chapter of the Navajo Nation government pursuant to 11 N.N.C. § 10; and
2. Water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
3. Navajo communities in Utah, including Oljato Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The Navajo Nation Water Rights Commission held a public meeting at Oljato Chapter on November 8, 2015, concerning the proposed Settlement Agreement; and
7. The proposed Settlement Agreement is summarized here:
  - a. Section 1.0 Purpose. The purpose of the Agreement is to provide a permanent settlement of the water rights of the Navajo Nation in the State of Utah and to avoid future controversy over the quantification of such rights.
  - b. Section 2.0 Legal Basis for Agreement. This section affirms that the 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.

c. Section 3.0 Definitions. This section defines key terms to avoid future controversy concerning the interpretation of the Agreement.

d. Section 4.0 Quantification of Navajo Nation Water Rights. This section describes and quantifies the Navajo Nation's water rights, including:

- i. the right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;
- ii. the right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
- iii. the right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
- iv. the right to market or lease these water rights to the same extent as other water rights holders in Utah; and
- v. the priority date for most of the water would be May 17, 1884; however, the Navajo right would be subordinated to existing uses but senior to any non-Navajo use that may be developed in the future. In other words, during times of physical shortage of water in the river or the tributaries, the Navajo Nation's subordinated right means it could not seek to curtail non-Navajo rights existing as of the Enforceability Date, but could seek to curtail all rights developed thereafter. Nevertheless, this early priority date protects Navajo water in Utah from being cut off in the event that the State of Utah is forced to curtail water uses throughout the state in order to comply with its downstream delivery obligations pursuant to interstate compacts.

e. Section 5.0 Utah Navajo Water Development Projects. This section describes the obligation of the United States to provide: (1) \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah and (2) to create an OM&R Trust Account in the amount of \$11.1M (2014\$) to help defray the operation, maintenance and replacement costs of the water development projects. The level of funding was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future.

f. Section 6.0 Rights of Members and Allottees. This section explains that the Agreement does not purport to quantify the rights of allottees but requires such rights to be satisfied out of the rights of the Navajo Nation as described in the Agreement.

g. Section 7.0 Identification of Existing On-Reservation State Appropriative Water Rights. This section describes how existing state rights will be converted into on-Reservation Navajo rights.

h. Section 8.0 Water Administration. This section describes how the Navajo Nation and the State of Utah will administer the water rights under the Agreement.

i. Section 9.0 Transfers Off the Reservation. This section describes how the Navajo Nation can use its water rights off of the Navajo Reservation.

j. Section 10.0 Administration for Compact Compliance. This section describes how the State may administer, in priority, water rights in the Southeastern Colorado River Basin in Utah, where Navajo Utah lands are located, for purposes of complying with interstate compacts relating to the Colorado River.

k. Section 11.0 Enforceability Date. This section describes the conditions that must be met for the Agreement to be final and enforceable.

l. Section 12.0 Waivers and Releases of Claims. This section describes the waivers that the Navajo Nation, the State of Utah and the United States (the "Parties") must enter into in order for the Agreement to be considered binding on the parties. Generally, the waivers and releases require each Party to waive claims concerning damages, losses or injuries to the water rights of that Party and release the other Parties from liability for any such claims. The United States, as the trustee of tribal lands, has required similar waiver and release provisions in all recent Indian water rights settlements approved by Congress. Members of the Oljato Chapter understand that upon the Enforceability Date, the Agreement becomes a final, binding and permanent quantification of the water rights of the Navajo Nation in the State of Utah, and that the Navajo Nation cannot claim water rights in addition to those described in the Agreement, however, nothing in the Agreement prevents the Nation from acquiring additional water rights by purchase in the future. Members of the Oljato Chapter further understand that the Navajo Nation will retain all claims relating to activities affecting the quality of water, such as the Gold King Mine spill that occurred in August of 2015.

m. Section 13.0 Enforcement. This section describes how the Agreement shall be enforced, including how actions against the Parties to the Agreement, to enforce the Agreement may be brought in federal court.

n. Section 14.0 Capacities in Which Agreement is Executed. This section describes the capacities of the persons signing the Agreement on behalf of the Parties.

o. Section 15.0 Ratification and Amendment. This section acknowledges that Congress must ratify the Agreement and that the Parties must agree to any amendments to the Agreement in writing.

p. Section 16.0 Evidentiary Effect of the Negotiations. This section states that the Agreement was the result of a good faith negotiation; therefore, no offers or compromises made during the course of those negotiations will be used in Court to interpret or enforce the Agreement.

q. Section 17.0 Rights and Remedies. This section describes the rights and remedies of the Parties to enforce the Agreement and reiterates that the Agreement is intended to provide water in perpetuity to the Navajo Nation by way of settlement in lieu of water rights claims that could be asserted in the General Stream Adjudication.

r. Section 18.0 Obtaining Court Decree in General Stream Adjudication. This section describes how the rights of the Navajo Nation in the Agreement will be incorporated into a final decree to be filed with the court in the General Stream Adjudication.

s. Section 19.0 Necessary Acts and Cooperation. This section commits the Parties to cooperate, including the cooperation necessary to obtain a final binding decree.

t. Section 20.0 Contingent on the Appropriation of Funds. This section clarifies that the performance of any obligations of the United States under the Agreement are contingent on the availability of funds. Members of the Oljato Chapter understand that if funds are not available for the purposes

described in Section 5.0, the Enforceability Date described in Section 11.0 will not occur and the Agreement is not enforceable.

ii. Section 21.0 Other Provisions. This section describes miscellaneous provisions such as the addresses for notices to be sent pursuant to the Agreement.

v. Section 22.0 Signature Authority. This section requires the signatories to the Agreement to be authorized to bind the Party each person represents to the Agreement.

8. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, and members of the Oljato Chapter believe that the proposed Settlement Agreement is in the best interests of Oljato Chapter, the Navajo People in Utah, and the Navajo Nation.

**NOW THEREFORE BE IT RESOLVED THAT:**

A. The Oljato Chapter hereby endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.

B. The Oljato Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement as expeditiously as possible.

**CERTIFICATION**

I, hereby certify that the foregoing resolution was duly considered at a duly called meeting of the Oljato Chapter, Navajo Nation, at which a quorum was present and that the same was passed by a vote of 33 in favor, 1 opposed and 0 abstained on this 8 day of **NOVEMBER 2015**.

1<sup>st</sup> Motion: Nelson Yellowman

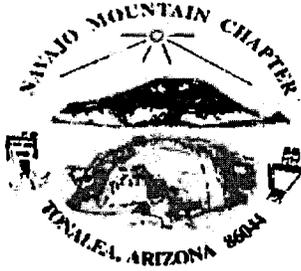
2<sup>nd</sup> Motion: Shirlee Bedonio

[Signature]  
James Adakai, President

[Signature]  
Albert Holiday, Vice President

[Signature]  
LaNell Menard-Parrish, Secretary/Treasurer

[Signature]  
Benedict Daniels, Grazing Officer



**RESOLUTION OF THE  
Naatsis'aan (NAVAJO MOUNTAIN)  
CHAPTER OF THE NAVAJO NATION**

**RESOLUTION NO:** NM11/009-2016

**ENDORISING THE PROPOSED NAVAJO NATION / STATE OF UTAH  
WATER RIGHTS SETTLEMENT AGREEMENT**

**WHEREAS:**

1. Pursuant to 26 N.N.C., Section 3 (A), the Navajo Mountain Chapter is a duly recognized certified Chapter of the Navajo Nation Government, as listed at 11 N. N. N., Part 1, Section 10; and
2. The Navajo Mountain Chapter is a recognized Chapter of the Navajo Nation government, vested with authority and responsibilities consider and take actions on matters of local concern that are in the best interest of the health, safety, and welfare of its chapter members and residents; and
3. Navajo Mountain (Naatsis'aán) Chapter is a duly recognized and certified chapter of the Navajo Nation government pursuant to 11 N.N.C. § 10; and
4. Water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
5. Navajo communities in Utah, including Navajo Mountain Chapter, have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
6. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
7. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State

of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and

8. The Navajo Nation Department of Justice gave a presentation at Navajo Mountain Chapter concerning the proposed Settlement Agreement on June 14, 2014 and the Navajo Nation Water Rights Commission gave a similar presentation on November 13, 2015; and
9. The proposed Settlement Agreement is summarized here:
  - a. Section 1.0 Purpose. The purpose of the Agreement is to provide a permanent settlement of the water rights of the Navajo Nation in the State of Utah and to avoid future controversy over the quantification of such rights.
  - b. Section 2.0 Legal Basis for Agreement. This section affirms that the 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.
  - c. Section 3.0 Definitions. This section defines key terms to avoid future controversy concerning the interpretation of the Agreement.
  - d. Section 4.0 Quantification of Navajo Nation Water Rights. This section describes and quantifies the Navajo Nation's water rights, including:
    - i. the right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation;
    - ii. the right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded;
    - iii. the right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded;
    - iv. the right to market or lease these water rights to the same extent as other water rights holders in Utah; and
    - v. the priority date for most of the water would be May 17, 1884; however, the Navajo right would be subordinated to existing uses but senior to any non-Navajo use that may be developed in the future. In other words, during times of physical shortage of water in the river or the tributaries, the Navajo Nation's subordinated right means it could not seek to curtail non-Navajo rights existing as of the Enforceability Date, but could seek to curtail all rights developed thereafter. Nevertheless, this early priority

date protects Navajo water in Utah from being cut off in the event that the State of Utah is forced to curtail water uses throughout the state in order to comply with its downstream delivery obligations pursuant to interstate compacts.

e. Section 5.0 Utah Navajo Water Development Projects. This section describes the obligation of the United States to provide: (1) \$198.3M (2014\$) for the purpose of funding the construction of various water development projects to meet the water needs of Navajo communities in Utah and (2) to create an OM&R Trust Account in the amount of \$11.1M (2014\$) to help defray the operation, maintenance and replacement costs of the water development projects. The level of funding was determined based on costs of projects described in the "Navajo Nation/State of Utah Water Rights Settlement Projects: White Paper" (June 6, 2014) ("White Paper"), prepared by the Navajo Nation Department of Water Resources, attached as Exhibit B, however, providing a fund will allow the Nation the flexibility to meet these needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future.

f. Section 6.0 Rights of Members and Allottees. This section explains that the Agreement does not purport to quantify the rights of allottees but requires such rights to be satisfied out of the rights of the Navajo Nation as described in the Agreement.

g. Section 7.0 Identification of Existing On-Reservation State Appropriative Water Rights. This section describes how existing state rights will be converted into on-Reservation Navajo rights.

h. Section 8.0 Water Administration. This section describes how the Navajo Nation and the State of Utah will administer the water rights under the Agreement.

i. Section 9.0 Transfers Off the Reservation. This section describes how the Navajo Nation can use its water rights off of the Navajo Reservation.

j. Section 10.0 Administration for Compact Compliance. This section describes how the State may administer, in priority, water rights in the Southeastern Colorado River Basin in Utah, where Navajo Utah lands are located, for purposes of complying with interstate compacts relating to the Colorado River.

k. Section 11.0 Enforceability Date. This section describes the conditions that must be met for the Agreement to be final and enforceable.

l. Section 12.0 Waivers and Releases of Claims. This section describes the waivers that the Navajo Nation, the State of Utah and the United States (the "Parties") must enter into in order for the Agreement to be considered binding on the parties. Generally, the waivers and releases require each Party to waive claims concerning

damages, losses or injuries to the water rights of that Party and release the other Parties from liability for any such claims. The United States, as the trustee of tribal lands, has required similar waiver and release provisions in all recent Indian water rights settlements approved by Congress. Members of the Navajo Mountain Chapter understand that upon the Enforceability Date, the Agreement becomes a final, binding and permanent quantification of the water rights of the Navajo Nation in the State of Utah, and that the Navajo Nation cannot claim water rights in addition to those described in the Agreement, however, nothing in the Agreement prevents the Nation from acquiring additional water rights by purchase in the future. Members of the Navajo Mountain Chapter further understand that the Navajo Nation will retain all claims relating to activities affecting the quality of water, such as the Gold King Mine spill that occurred in August of 2015.

m. Section 13.0 Enforcement. This section describes how the Agreement shall be enforced, including how actions against the Parties to the Agreement, to enforce the Agreement may be brought in federal court.

n. Section 14.0 Capacities in Which Agreement is Executed. This section describes the capacities of the persons signing the Agreement on behalf of the Parties.

o. Section 15.0 Ratification and Amendment. This section acknowledges that Congress must ratify the Agreement and that the Parties must agree to any amendments to the Agreement in writing.

p. Section 16.0 Evidentiary Effect of the Negotiations. This section states that the Agreement was the result of a good faith negotiation; therefore, no offers or compromises made during the course of those negotiations will be used in Court to interpret or enforce the Agreement.

q. Section 17.0 Rights and Remedies. This section describes the rights and remedies of the Parties to enforce the Agreement and reiterates that the Agreement is intended to provide water in perpetuity to the Navajo Nation by way of settlement in lieu of water rights claims that could be asserted in the General Stream Adjudication.

r. Section 18.0 Obtaining Court Decree in General Stream Adjudication. This section describes how the rights of the Navajo Nation in the Agreement will be incorporated into a final decree to be filed with the court in the General Stream Adjudication.

s. Section 19.0 Necessary Acts and Cooperation. This section commits the Parties to cooperate, including the cooperation necessary to obtain a final binding decree.

t. Section 20.0 Contingent on the Appropriation of Funds. This section clarifies that the performance of any obligations of the United States under the

Agreement are contingent on the availability of funds. Members of the Navajo Mountain Chapter understand that if funds are not available for the purposes described in Section 5.0, the Enforceability Date described in Section 11.0 will not occur and the Agreement is not enforceable.

u. Section 21.0 Other Provisions. This section describes miscellaneous provisions such as the addresses for notices to be sent pursuant to the Agreement.

v. Section 22.0 Signature Authority. This section requires the signatories to the Agreement to be authorized to bind the Party each person represents to the Agreement.

10. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, and members of the Navajo Mountain Chapter believe that the proposed Settlement Agreement is in the best interests of Navajo Mountain Chapter, the Navajo People in Utah, and the Navajo Nation.

**NOW, THEREFORE BE IT RESOLVED THAT:**

A. The Navajo Mountain Chapter hereby endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.

B. The Navajo Mountain Chapter urges the Navajo Nation Council to approve the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement as expeditiously as possible.

**CERTIFICATION**

We, hereby certify that the foregoing resolution was considered at a duly called Chapter meeting at Navajo Mountain Chapter (Navajo Nation) in Navajo Mountain, Utah at which a quorum present and the same was passed by a vote of 24 in favor 00 opposed and 00 abstained on the 13<sup>th</sup> day of November.

Motion: Willie Coreveys

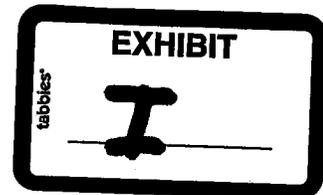
Second: Ella Jensen

Alex Bitsinnie  
Alex Bitsinnie, President

Ella J. Badoni  
Ella J. Badoni, Secretary / Treasurer

Jamie Holgate  
Jamie Holgate, Vice- President

Lucille Krause, Grazing Member



**LoRenzo Bates**  
Speaker of the 23<sup>rd</sup> Navajo Nation Council

**RESOLUTION OF THE  
NAVAJO UTAH COMMISSION  
OF THE NAVAJO NATION COUNCIL**

**NUCNOV-659-15**

**ENDORISING THE PROPOSED NAVAJO NATION / STATE OF UTAH  
WATER RIGHTS SETTLEMENT AGREEMENT**

**Whereas:**

1. The Navajo Utah Commission is a governmental subdivision of the Navajo Nation and is subject to oversight by the Navajo Nation Council Naabik'iya'ti' Committee pursuant to resolution no. NABIAP-21-15; and
2. Water is essential "to provide for a permanent homeland for the Navajo People," 22 N.N.C. § 1101; and
3. Navajo communities in Utah have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people, as recognized by the Navajo Nation Department of Water Resources, *Water Resource Development Strategy for the Navajo Nation* (July 2000) and the Bureau of Reclamation, *Draft Rural Water Supply Appraisal Report* (March 2015); and
4. In 2003, the Navajo Nation and the State of Utah entered into settlement negotiations pursuant to a *Memorandum of Understanding Between the Navajo Nation and the State of Utah to Commence Discussions to Determine the Water Rights of the Navajo Nation in Utah* to determine if the water rights claims of the Navajo Nation in Utah could be resolved through a negotiated settlement rather than through litigation; and
5. Representatives of the Navajo Nation and the State of Utah have reached agreement as to the quantification and settlement of the Navajo Nation's water rights claims in the State of Utah, reflected in the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015) ("Settlement Agreement"), attached as Exhibit A; and
6. The Navajo Utah Commission has received numerous periodic reports concerning the status of those negotiations from the Department of Justice, the Department of Water Resources and the Navajo Nation Water Rights Commission, including a work session on January 17, 2013 for newly elected Navajo Utah Chapter

Officials and an additional extensive briefing on July 28, 2015, concerning the terms of the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement; and

7. The proposed Settlement Agreement, if approved, would recognize the water rights of the Navajo Nation in Utah and provide funding for infrastructure development, and members of the Navajo residing in the Utah portion of the Navajo Nation, and the proposed Settlement Agreement is summarized here:

a. Section 1.0 Purpose. The purpose of the Agreement is to provide a permanent settlement of the water rights of the Navajo Nation in the State of Utah and to avoid future controversy over the quantification of such rights,

b. Section 2.0 Legal Basis for Agreement. This section affirms that the 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,

c. Section 3.0 Definitions. This section defines key terms to avoid future controversy concerning the interpretation of the Agreement,

d. Section 4.0 Quantification of Navajo Nation Water Rights. This section describes and quantifies the Navajo Nation's water rights, including:

i. the right to deplete a total of 81,500 acre-feet from all water sources within the Upper Colorado River Basin in Utah on the Navajo Nation,

ii. the right to divert and store up to 435 cubic per second from the San Juan River, so long as the annual depletion limit of 81,500 acre-feet is not exceeded,

iii. the right to unlimited diversions from ground water and from Lake Powell, so long as the annual total depletion limit of 81,500 acre-feet is not exceeded,

iv. the right to market or lease these water rights to the same extent as other water rights holders in Utah, and

v. the priority date for most of the water would be May 17, 1884; however, the Navajo right would be subordinated to existing uses but senior to any non-Navajo use that may be developed in the future. In other words, during times of physical shortage of water in the river or its tributaries, the Navajo Nation's subordinated right means it could not seek

to curtail non-Navajo rights existing as of the Enforceability Date, but could seek to curtail all rights developed thereafter. Nevertheless, this early priority date protects Navajo water in Utah from being cut off in the event that the State of Utah is forced to curtail water uses throughout the state in order to comply with its downstream delivery obligations pursuant to interstate compacts,

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k. Section 11.0 Enforceability Date. This section describes the conditions that must be met for the Agreement to be final and enforceable,

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m. Section 13.0 Enforcement. This section describes how the Agreement shall be enforced, including how actions against the Parties to the Agreement, to enforce the Agreement may be brought in federal court,

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of settlement in lieu of water rights claims that could be asserted in the General Stream Adjudication,

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t. Section 20.0 Contingent on the Appropriation of Funds. This section clarifies that the performance of any obligations of the United States under the Agreement are contingent on the availability of funds. The Navajo Utah Commission understands that if Congress does not appropriate the funds for the purposes described in Section 5.0, the Enforceability Date described in Section 11.0 will not occur and the Agreement is not enforceable,

u. Section 21.0 Other Provisions. This section describes miscellaneous provisions such as the addresses for notices to be sent pursuant to the Agreement,

v. Section 22.0 Signature Authority. This section requires the signatories to the Agreement to be authorized to bind the Party each person represents to the Agreement; and

8. On July 25, 2015, The Navajo Utah Commission advised the Nation Water Rights Commission that it would not take official action to endorse the Settlement Agreement until public meetings were held to educate the Navajo People living in the seven chapters on the Navajo Nation in Utah concerning the terms of the Settlement Agreement; and

9. The Navajo Nation Water Rights Commission gave numerous presentations on the Settlement Agreement in Utah, including seven chapter meetings, and all seven chapters passed resolutions endorsing the Settlement Agreement as follows:

a. Red Mesa Chapter Resolution # RMC 006-092115 *Endorsing the Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement* (September 21, 2015),

b. Resolution of TeecNosPos Chapter TNPCH 10-032-015 *Endorsing the Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement* (October 5, 2015),

c. Resolution of the Aneth Chapter ACOCT-16-005 *Endorsing the Proposed Navajo Nation/State of Utah Water Rights Settlement Agreement* (October 11, 2015),

d. Mexican Water Chapter Resolution MWCOCT14-032 *Approve to endorse the proposed Navajo Nation / State of Utah water rights settlement agreement* (October 14, 2015),

e. Resolution of Dennehotso Chapter DCHOCT-06-2015 *Endorsing the Proposed Navajo Nation / State of Utah Water Rights Settlement Agreement* October 15, 2015,

f. Resolution of Oljato Chapter OLJ11-01-2015 *Endorsing the Proposed Navajo Nation / State of Utah Water Rights Settlement Agreement* November 8, 2015,

g. Resolution of the Naatsis'aaan (Navajo Mountain) Chapter of the Navajo Nation Resolution No. NM11/009-2016 *Endorsing the Proposed Navajo Nation / State of Utah Water Rights Settlement Agreement* November 13, 2015;  
and

10. The Navajo Utah Commission has determined that the proposed Settlement Agreement is in the best interests of Navajo chapters in Utah, the Navajo People in Utah, and the Navajo Nation.

**NOW THEREFORE BE IT RESOLVED THAT:**

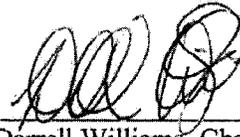
The Navajo Utah Commission hereby:

1. Endorses the proposed Navajo Nation / State of Utah Water Rights Settlement Agreement (July 17, 2015), attached as Exhibit A.

2. Encourages the Navajo Nation Council to take steps to expeditiously approve the Navajo Nation / State of Utah Water Rights Settlement Agreement.

**CERTIFICATION**

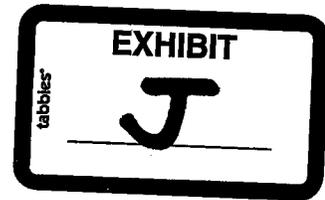
We, hereby certify that the foregoing resolution was duly considered by Navajo Utah Commission at a duly called meeting at Naa'Tsis'Aan , Utah at which a quorum was present and the same was passed by a vote of 5 in favor, 0 opposed, and 1 abstentions, this 19<sup>th</sup> day of November, 2015.



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Darrell Williams, Chairperson  
NAVAJO UTAH COMMISSION

MOTION: Davis Filfred  
SECOND: Herman Farley



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S.C.R. 2

1 CONCURRENT RESOLUTION REGARDING NAVAJO WATER  
2 RIGHTS SETTLEMENT

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: David P. Hinkins

6 House Sponsor: Jack R. Draxler

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8 LONG TITLE

9 General Description:

10 This concurrent resolution of the Legislature and the Governor declares support for the  
11 negotiated settlement of federal reserved water rights between the Navajo Nation and  
12 representatives of the state of Utah.

13 Highlighted Provisions:

14 This resolution:

15 ▶ declares support for the negotiated settlement of federal reserved water rights,  
16 particularly the state of Utah/Navajo Nation Reserved Water Rights Settlement  
17 proposed by a negotiating committee composed of the Navajo Nation and Utah  
18 representatives and currently being considered by a United States negotiating team.

19 Special Clauses:

20 None

---

22 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

23 WHEREAS, the Governor of Utah and the President of the Navajo Nation, by a  
24 memorandum of understanding dated August 13, 2003, agreed to jointly explore settlement of  
25 federal reserved water right claims for the portion of the Navajo Nation located in southeastern  
26 Utah;

27 WHEREAS, representatives of the state of Utah and the Navajo Nation have negotiated  
28 a proposed settlement in good faith;

29 WHEREAS, the proposed agreement identifies projects to be built that will provide

30 drinking water to portions of the Navajo Nation located within Utah;

31 WHEREAS, the proposed settlement involves an amount of water and other provisions  
32 to minimize the impact of the settlement on Utah water rights, particularly municipal rights,  
33 and to assure that the water needed for the settlement fits within Utah's allocation from the  
34 Colorado River;

35 WHEREAS, the United States has appointed a federal negotiating team to represent its  
36 interest as trustee for the Navajo Nation;

37 WHEREAS, the federal negotiating team is currently evaluating the proposed  
38 settlement agreement;

39 WHEREAS, in exchange for providing most of the funds for construction of the  
40 drinking water projects that the agreement contemplates, the United States receives a valuable  
41 waiver of claims related to lands located within Utah;

42 WHEREAS, when the settlement is ratified by the Utah Legislature, the Navajo Nation,  
43 and the United States Congress, it will have the effect of law to resolve all controversies with  
44 regard to water right claims by the Navajo Nation and its members in Utah;

45 WHEREAS, in consideration of the promises made in and the value received from the  
46 settlement agreement, the state of Utah will be required to contribute to the construction of  
47 projects identified in the agreement;

48 WHEREAS, the amount is currently projected to be approximately \$8 million;

49 WHEREAS, the state of Utah has established a Navajo Water Right Settlement Fund,  
50 into which money has been deposited in anticipation of the agreement's ratification;

51 WHEREAS, at the present time, the Utah Legislature prefers not to encumber  
52 additional funds for the settlement, recognizing these funds will likely not be expended during  
53 the upcoming fiscal year; and

54 WHEREAS, the state of Utah maintains a rainy day fund that contains sufficient money  
55 that could be used to fulfill its settlement obligations, if necessary:

56 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the  
57 Governor concurring therein, declares support for the negotiated settlement of federal reserved

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**S.C.R. 2**

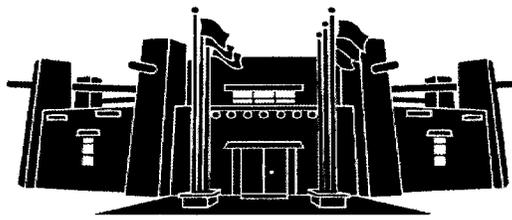
58 water rights, particularly the state of Utah/Navajo Nation Reserved Water Rights Settlement  
59 proposed by a negotiating committee composed of Navajo Nation and Utah representatives and  
60 currently being considered by a United States negotiating team.

61 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of  
62 the United States, the Majority Leader of the United States Senate, the Speaker of the United  
63 States House of Representatives, the President of the Navajo Nation, the Navajo Nation  
64 Council, the Navajo Nation Department of Justice, and the members of Utah's congressional  
65 delegation.



**Revisions made to the July 17, 2015  
Navajo Nation/State of Utah Water Rights Settlement Agreement  
Reflected in the December 14, 2015 Settlement Agreement**

- Section 3.0 – DEFINITIONS. The definition of “Utah Navajo Water Development Projects” has been clarified.
- Subsection 4.5 – Accounting for Depletion. The phrase “within the Colorado River System” was added. It is possible that as the State of Utah develops water, such that it gets closer to fully utilizing its Colorado River apportionment, it may adopt a depletion accounting methodology that may result in greater overall water uses in the State of Utah. If that happens, the depletions on the Navajo Nation should be accounted for in a similar manner so that the Nation may realize greater overall water uses as well.
- Section 5.0 – UTAH NAVAJO WATER DEVELOPMENT FUND. The title has been changed and the section revised to clarify that the settlement would create a fund to assist the Navajo Nation in addressing the water needs of the Utah portion of the Reservation, rather than require the construction of any particular water project. This gives the Nation the flexibility to meet its needs in the most efficient manner and adapt to possible changes in both the needs and technologies to meet them in the future. The revisions to Section 5 better reflect how the Settlement Agreement was explained to the Chapters and to the Navajo Utah Commission. Subsection 5.6 includes additional language to reflect that monies that are put into the OM&R Trust Account should be indexed to June 2014 dollars, so the Navajo Nation will not be “penalized” for any inflation that occurs after June 2014.
- Section 9.0 – TRANSFERS OFF THE RESERVATION. The language contained in the July 17 draft placed numerous restrictions on the Navajo Nation’s ability to transfer water to the Lower Colorado River Basin. The State of Arizona indicated it would seek additional limitations on the Navajo Nation. The language of Subsection 9.2 was revised, and Subsection 9.3 was deleted, to reflect that the Navajo Nation would be treated the same as any other water user in the State of Utah, thereby simplifying this section and making it less objectionable to Arizona or any other Colorado River Basin State.
- Section 13.0 – ENFORCEMENT. This section now includes subsection headings, but the text remains the same, with the exception that the provisions of Section 17.0 from the July 17 draft (RIGHTS AND REMEDIES) have been moved to this section and are now subsection 13.2 (Rights and Remedies).
- Section 20.0 – SIGNATURE AUTHORITY. The provisions of Section 14.0 from the July 17 draft (CAPACITIES IN WHICH AGREEMENT IS EXECUTED) have been incorporated here.



## MEMORANDUM

To : Honorable Davis Filfred  
Mexican Water, To'likan, Teenospos, Aneth, Red Mesa Chapters

From : Mariana Kahn  
Mariana Kahn, Attorney  
Office of Legislative Counsel

Date : December 16, 2015

Re : PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION  
RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, AND  
NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL;  
APPROVING THE PROPOSED NAVAJO UTAH WATER RIGHTS  
SETTLEMENT AGREEMENT

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

Thank you for your service to the Navajo Nation.

16-107-1

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0412-15\_

SPONSOR: Davis Filfred

TITLE: An Action Relating To Resources And Development Committee, And NAABIK'IYATI' Committee And The Navajo Nation Council; Approving The Proposed Navajo Utah Water Rights Settlement Agreement

*Date posted:* December 21, 2015 at 3:18PM

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*