

**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, the State, the United States. 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-Utah Water Rights Settlement Act, § 1102, 134 Stat. 1182, 3224-34, Pub. L. No. 116-260.

“Agreement” means this Settlement Agreement, including and incorporating Exhibit A, as revised to make this Agreement consistent with the Act.

“Allotment” means a parcel of land—

(A) Granted out of the public domain that is—

- (i) 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

(B) held in trust by the United States—

- (i) for the benefit of an individual, individuals, or an Indian Tribe other than the Navajo Nation; or
- (ii) in part for the benefit of the Navajo Nation as of the enforceability date.

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“Allottee” means an individual or Indian Tribe with a beneficial interest in an allotment held in trust by 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.

“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.

“Effective Date” means the date upon which this Agreement has been ratified by the Navajo Nation, the State of Utah, and the United States.

“Enforceability Date” means the date on which the Secretary publishes in the Federal Register the statement of findings described in Section 11.0 of this Agreement and Section 11(g) of the Act.

“Existing and Developed” means that the owners of Water Rights have Diverted water and put the water to beneficial use.

“General Stream Adjudication” means the adjudication pending, as of the date of enactment of the Act, in the Seventh Judicial District in and for Grand County, State of Utah,

commonly known as the “Southeastern Colorado River General Adjudication”, Civil No. 810704477, conducted pursuant to State law.

“IHS” means the Indian Health Service within the United States Department of Health and Human Services.

“Injury to Water Rights” means an interference with, diminution of, or deprivation of Water Rights under Federal or State law, excluding injuries to water quality.

“Member” means any person who is a duly enrolled member of the Navajo Nation.

“Navajo Nation” means a body politic and Federally-recognized Indian nation, as published on the list established under Section 104(a) of the Federally Recognized Indian Tribes List Act of 1994 (25 U.S.C. 5131(a)), also known variously as the “Navajo Nation,” the “Navajo Nation of Arizona, New Mexico, & Utah,” and the “Navajo Nation of Indians,” and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation and all divisions, agencies, officers, and agents thereof.

“Navajo Water Development Projects” means projects for domestic municipal water supply, including distribution infrastructure, and agricultural water conservation, to be constructed, in whole or in part, using monies from the Navajo Water Development Projects Account.

“Navajo Water Rights” means the Navajo Nation’s Water Rights in Utah described in this Agreement and the Act.

“OM&R” means operation, maintenance, and replacement.

“Parties” means the Navajo Nation, State, and the United States.

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“Place of Use” means the location where water is beneficially used.

“Point of Diversion” means the location where water is Diverted from a river, stream, well, or other source of water.

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

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

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

Executive Order of May 17, 1884;

Executive Order 324A of May 15, 1905;

Act of March 1, 1933, Ch. 160, 47 Stat. 1418, 1419, as amended by Act of May 17, 1968, Pub. L. 90-306, 82 Stat. 121;

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

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

Act of Sept 2, 1958, Pub. L. 85-868, 72 Stat. 1686-1690;

as further depicted on the map attached hereto as Exhibit A, including any parcel of land granted out of the public domain and held in trust by the United States entirely for the benefit of the Navajo Nation as of the Enforceability Date.

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

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

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

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

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

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

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

“Water Right” or “Right” means a right under tribal, Federal, and State law to Divert, pump, impound, Store, use or reuse water.

## **SECTION 4.0**

### **QUANTIFICATION OF NAVAJO WATER RIGHTS**

#### **4.1 Navajo Nation Reserved Water Rights**

4.1.1 Quantification. The Navajo Nation shall have the Right to use water from the Colorado River System located within Utah and adjacent to or encompassed within the boundaries of the Navajo Reservation resulting in Depletions not to exceed 81,500 AFY as described in this Agreement and as confirmed in the decree entered by the General Stream

Adjudication court. The Navajo Water Rights shall be held in trust by the United States for the use and benefit of the Navajo Nation in accordance with this Agreement and the Act.

4.1.2 Diversion Rate. From the San Juan River located on or adjacent to the Reservation, the Navajo Nation has the right to Divert and Store up to 435 CFS of water for beneficial purposes resulting in total Depletions not to exceed 81,500 AFY. The Navajo Nation shall have the right to Divert additional quantities of water so long as the Navajo Nation can demonstrate that such additional Diversions do not impair any State Appropriative Water Rights Existing and Developed prior to the date notice is provided pursuant to Subsection 4.2.5 for the additional Diversion, and provided that such Diversions do not exceed the Depletion limit established in Subsection 4.1.1. The Navajo Water Right is a right to Divert direct flow only, and does not create a right for the Navajo Nation to Divert water released from Navajo Reservoir storage absent compliance with Section 11 of the Act of June 12, 1962, 76 Stat. 96. Groundwater withdrawals from any source and Diversions from Lake Powell are not subject to the limitations established in this Subsection 4.1.2, however the Depletion limit established in Subsection 4.1.1 shall apply.

## **4.2 Navajo Water Rights Priority**

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

	Priority Date	Allowable Depletion of Water (Units: AFY)
Block 1	May 17, 1884	69,275
Block 2	May 15, 1905	4,480

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Block 3	March 1, 1933	3,670
Block 4	September 2, 1958	4,075

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

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

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

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



4.2.4 Compact Curtailment. If the State is required to curtail its consumptive uses because it is determined that the consumptive use of water in Utah from the Upper Colorado River Basin exceeds the State's Upper Colorado River Basin Compact Article III(a) apportionment or if the Upper Colorado River Commission determines pursuant to Article IV of the Upper Colorado River Basin Compact that the State must curtail its consumptive uses of water for some period of time to allow the Upper Basin to comply with Article III of the Colorado River Compact, the subordination described in Subsections 4.2.2 and 4.2.3 shall not apply, and the State may curtail the consumptive uses of the Navajo Nation only to the extent the Navajo Nation Diversions would require curtailment under a system of priority administration.

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

#### **4.3 Beneficial Use**

The Navajo Nation may use its Water Rights for any beneficial use permitted by applicable Tribal, Federal, or State law, anywhere within Utah, subject to the terms of this Agreement and the Act. After the water is Diverted from the source, the use shall not be

subject to State law, regulation, or jurisdiction, except as set forth in this Section and in Section 9.0, addressing off-Reservation uses.

#### **4.4 Navajo Water Rights Not Subject to Loss**

The Navajo Water Rights shall not be subject to loss by abandonment, forfeiture, or non-use.

#### **4.5 Accounting for Depletion**

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

4.5.2 Out-of-State Deliveries. Any water Diverted in Utah by the Navajo Nation and delivered across the Utah state line for consumptive use in another state will be accounted for as Navajo Nation Depletions allocated for the Navajo Nation in the state where the water is used. The right of the Navajo Nation to Divert water for consumptive use in another state shall be subject to State Appropriative Water Rights with a priority date prior to the date notice is provided pursuant to Subsection 4.2.5 for a new Navajo Nation Diversion.

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

4.5.4 Hydrographic Survey. The Parties shall complete a detailed hydrographic survey of all historic and existing water uses on the Reservation and Allotments within four years of the Enforceability Date. One million dollars has been authorized to be appropriated to assist the United States with costs associated with completion of this task. The United States shall be responsible to lead the survey effort and perform or contract for such survey. The survey shall document all available water measurements and the Parties shall develop Depletion estimates where actual measurements are not available.

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

4.5.6 Satisfaction of Allottee Rights. Depletions resulting from the use of water on an Allotment shall be accounted for as a Depletion by the Navajo Nation for purposes of Depletion accounting under this Agreement, including recognition of: any existing use on an Allotment as of the date of enactment of the Act and as subsequently reflected in the hydrographic survey report; reasonable domestic and stock water uses put into use on an Allotment; and any Allotment Water Rights that may be decreed in the General Stream Adjudication or other appropriate forum.

4.5.7 Satisfaction of On-Reservation State Appropriative Water Rights. Depletions resulting from the use of water on the Reservation pursuant to State Appropriative Water

Rights existing as of the date of enactment of the Act shall be accounted for as Depletions by the Navajo Nation for purposes of Depletion accounting under this Agreement.

**4.6 Development of Water Sources**

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

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

The Navajo Nation and its Members shall have the Right to withdraw water by traditional methods from the streams and springs on the Reservation for religious and cultural purposes. The Parties agree that such public uses are insignificant, shall not be part of the Navajo Water Rights described in Subsection 4.1.1, and shall not be subject to the subordination provisions of this Agreement.

**SECTION 5.0**

**UTAH NAVAJO WATER DEVELOPMENT FUND**

Consistent with the Act, this Agreement provides for the Navajo Utah Settlement Trust Fund (Trust Fund). The Trust Fund shall consist of two accounts: the Navajo Water Development Projects Account and the Navajo OM&R Account. This Agreement contemplates a comprehensive approach to addressing Reservation water needs by including costs for domestic and municipal water supply and distribution infrastructure and agricultural water conservation. To allow the Navajo Nation flexibility in meeting the needs of its people over time as both circumstances and technologies evolve, this Agreement uses the costs to meet Reservation water needs determined in the studies referenced in Subsection 5.1 to establish the dollar amount of the Trust Fund. To help ensure that water supply

systems constructed, in whole or in part, using monies from the Navajo Water Development Projects Account can be successfully developed and transitioned to be user-supported systems, this Agreement also includes a Navajo OM&R Account. The monies from these funds is to be used only for the benefit of Members within the Reservation in Utah.

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

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

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

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

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

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

5.1.3 Agricultural Water Conservation and Management. The Navajo Nation investigated methods for better managing and conserving water for agricultural uses on the Reservation. The Navajo Water Development Projects Account includes costs for improvements to avoid water shortages to approximately 2,400 acres of historically irrigated Navajo lands. Practices to be implemented include sprinklers and drip irrigation systems, land leveling, construction of wells, pipelines, pumping stations and storage, stream bank stabilization, pasture seeding and management, and construction of fencing and wind breaks. No more than \$5 million (2014\$) of the Navajo Water Development Projects Account shall be used for this purpose.

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

The Navajo Nation shall plan, design, and construct the water Diversion, delivery and conservation features of the Utah Navajo Water Development Projects. The Navajo Nation may enter into intergovernmental agreements with Federal or State agencies as necessary or appropriate to implement this Section.

## **5.3 Project Review Team**

Prior to beginning construction activities and upon the request of the Navajo Nation, the Secretary, acting through the Commissioner of Reclamation, shall facilitate the formation of a Project Review Team composed of representatives of: (a) the Navajo Nation; (b) Reclamation, the Bureau of Indian Affairs, and/or IHS, as appropriate; and (c) the State—

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

## **5.4 Project Funding**

5.4.1 Federal Obligations. Consistent with subparagraph 1102(f)(1)(A) of the Act, upon appropriation the Secretary shall deposit into the Navajo Water Development Projects Account \$198,300,000, which funds shall be retained until expended, withdrawn, or reverted to the general fund of the Treasury of the United States. The amounts authorized to be appropriated shall be increased or decreased, as appropriate, by such amounts as may

be justified by reason of ordinary fluctuations in costs occurring after the date of enactment of the Act as indicated by the Bureau of Reclamation Construction Cost Index—Composite Trend. This adjustment process shall be repeated for each amount appropriated until the total amount authorized, as adjusted, has been appropriated. The period of indexing adjustment for any increment of funding shall end on the date on which the funds are deposited into the Trust Fund. Funds deposited in the Navajo Water Development Projects Account shall be used to plan, design, and construct the Navajo Water Development Projects and for the conduct of related activities, including to comply with Federal environmental laws.

5.4.2. State Cost Share. The State shall contribute a total of \$8,000,000, payable to the Secretary in installments in each of the three years following the execution of this Agreement by the Secretary on behalf of the United States, for deposit into the Navajo Water Development Projects Account.

#### **5.5 Navajo Nation OM&R Trust Account**

Consistent with subparagraph 1102(f)(1)(B) of the Act, upon appropriation the Secretary shall deposit into the Navajo OM&R Account \$11,100,000, which funds shall be retained until expended, withdrawn, or reverted to the general fund of the Treasury of the United States. The amounts authorized to be appropriated shall be increased or decreased, as appropriate, by such amounts as may be justified by reason of ordinary fluctuations in costs occurring after the date of enactment of the Act as indicated by the Bureau of Reclamation Construction Cost Index—Composite Trend. This adjustment process shall be repeated for each amount appropriated until the total amount authorized, as adjusted, has



been appropriated. The period of indexing adjustment for any increment of funding shall end on the date on which the funds are deposited into the Trust Fund. Funds deposited in the Navajo OM&R Account may be used for the operation, maintenance, and replacement of the Navajo Water Development Projects.

## **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, including any water use existing on an Allotment as of the date of enactment of the Act and as subsequently reflected in the hydrographic survey report, reasonable domestic and stock water uses on an Allotment, and any Allotment Water Rights decreed in the General Stream Adjudication or other appropriate forum, for lands within the Reservation shall be satisfied out of the Navajo 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 the Allotment located outside the boundaries of the Reservation shall be satisfied out of the Navajo Water Rights recognized in this Agreement. The historic and existing uses for the Allotment shall be reflected in the hydrographic survey prepared pursuant to section 4.5.4 of this Agreement.

**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*, provided, however, that application of the Navajo Nation Water Code shall be consistent with applicable Federal law and does not interfere with any water use existing on an Allotment as of the date of enactment of the Act and as subsequently reflected in the hydrographic survey report, reasonable domestic and stock water uses on an Allotment, or any Allotment Water Rights decreed in the General Stream Adjudication or other appropriate forum.

**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 Reservation. The Navajo 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 Places of Use on the Reservation, and the State will provide such information from their records as may be necessary to facilitate the management and reporting of uses of these Water Rights by the Navajo Nation as further described in Section 4.5.

**7.2 Change to Off-Reservation Use**

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

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

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

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

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

## **SECTION 8.0**

### **WATER ADMINISTRATION**

#### **8.1 Role of State Engineer**

The State Engineer shall have authority, in cooperation with the Navajo Nation, to monitor the Navajo Nation's Diversion and use of water from the Upper Colorado River Basin in Utah to ensure that the waters are being beneficially used in compliance with this Agreement and the decree entered in the General Stream Adjudication, and shall have authority to request the Navajo Nation to make any appropriate adjustments to its Diversions as necessary to comply with the provisions of this Agreement and the proper administration of Diversions from the Upper Colorado River Basin in Utah.

#### **8.2 Role of Navajo Nation**

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

#### **8.3 Change in Water Use**

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

## **SECTION 9.0**

### **TRANSFERS OFF THE RESERVATION**

#### **9.1 Change Application Required**

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

#### **9.2 Applicable Law**

If the Navajo Nation elects to transfer any of its Navajo Water Rights off the Reservation, during the period of use off the Reservation, such Water Rights shall be subject to the same restrictions applicable to other Water Rights in the State of Utah. Nothing in this Agreement shall constitute specific authority for the sale, exchange, lease, use or other disposition of any Navajo Water Right outside of Utah.

#### **9.3 Secretarial Approval**

Any allocation, distribution, or lease of the Navajo Water Rights for off-Reservation use is subject to the approval of the Secretary.

## **SECTION 10.0**

### **ADMINISTRATION FOR COMPACT COMPLIANCE**

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

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

## **SECTION 11.0**

### **ENFORCEABILITY DATE AND CONDITIONS PRECEDENT**

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

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

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

11.1.2 this Agreement, so revised, including waivers and releases of claims set forth in Section 12.0 of this Agreement and Section 1102(h) of the Act, has been executed by the Parties, including the United States;

11.1.3 Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds agreed to in Subsections 4.54 and 5.5 of this Agreement and Section 1102(f)(1) of the Act;

11.1.4 the State has enacted all necessary legislation and provided the funding agreed to in Subsection 5.5 of this Agreement and described in Section 1102(f)(3) of the Act; and

11.1.5 the court in the General Stream Adjudication has entered a final or interlocutory decree that confirms the Navajo Water Rights consistent with this

Agreement and the Act, and, with respect to the Navajo Water Rights, is final and nonappealable.

### **11.2 Failure of Conditions**

If the Secretary does not publish the statement of findings pursuant to Subsection 11.1 by October 31, 2030, or such later date as agreed to by the Parties under Section 11.3, then: this Agreement, including waivers and releases of claims described in those documents, shall no longer be effective; any funds that have been appropriated pursuant to Section 1102(f) of the Act but not expended, including any investment earnings on funds that have been appropriated pursuant to such subsection, shall immediately revert to the general fund of the Treasury of the United States; and any funds contributed by the State pursuant to Section 1102(f)(3) of the Act shall be returned immediately to the State.

### **11.3 Extension**

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

## **SECTION 12.0**

### **WAIVERS AND RELEASES OF CLAIMS**

#### **12.1 Waiver and Release of Claims by the Navajo Nation and the United States**

##### **Acting in its Capacity as Trustee for the Navajo Nation**

Subject to the retention of rights set forth in Subsection 12.4, in return for confirmation of the Navajo Water Rights and other benefits set forth in this Agreement and the Act, the Navajo Nation, on behalf of itself and the members of the Navajo Nation

(other than members in their capacity as Allottees), and the United States, acting as trustee for the Navajo Nation and members of the Navajo Nation (other than members in their capacity as Allottees), waive and release—

12.1.1 all claims for Water Rights within Utah based on any and all legal theories that the Navajo Nation or the United States Acting in Its Trust Capacity for the Navajo Nation, asserted, or could have asserted, at any time in any proceeding, including to the General Stream Adjudication, up to and including the Enforceability Date, except to the extent that such rights are recognized in this Agreement and the Act; and

12.1.2 all claims for damages, losses, or Injury to Water Rights or claims of interference with, Diversion, or taking of Water Rights (including claims for injury to lands resulting from such damages, losses, injuries, interference with, Diversion, or taking of Water Rights) within Utah against the State, or any person, entity, corporation, or municipality, that accrued at any time up to and including the Enforceability Date.

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

The Navajo Nation, on behalf of itself (including in its capacity as Allottee) and its members (other than members in their capacity as Allottees), waives and releases—

12.2.1 all claims the Navajo Nation may have against the United States relating in any manner to claims for Water Rights in, or water of, Utah that the United States Acting in Its Trust Capacity for the Navajo Nation asserted, or could have asserted, in any proceeding, including the General Stream Adjudication;

12.2.2 all claims the Navajo Nation may have against the United States relating in any manner to damages, losses, or injuries to water, Water Rights, land, or other resources



due to loss of water or Water Rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or Water Rights; claims relating to interference with, Diversion, or taking of water; or claims relating to failure to protect, acquire, replace, or develop water or Water Rights) within Utah that first accrued at any time up to and including the Enforceability Date;

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

12.2.4 all claims the Navajo Nation may have against the United States relating in any manner to the negotiation, execution, or adoption of this Agreement or the Act.

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

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

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

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

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

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

Notwithstanding the waivers and releases authorized in this section, the Navajo Nation, and the United States Acting in Its Trust Capacity for the Navajo Nation, retain—

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

12.4.2 all rights to use and protect Water Rights acquired after the Enforceability Date;

12.4.3 all claims relating to activities affecting the quality of water, including any claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (including claims for damages to natural resources), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the regulations implementing those Acts, and the common law;

12.4.4 all claims for Water Rights, and claims for Injury to Water Rights, in States other than the State of Utah;

12.4.5 all claims, including environmental claims, under any laws (including

regulations and common law) relating to human health, safety, or the environment; and

12.4.6 all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Agreement and the Act.

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

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

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

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

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

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

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

**12.6 Effect**

Nothing in this Agreement or the Act:

12.6.1 affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including any laws relating to health, safety, or the

environment, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. 69015 et seq.), and the regulations implementing those laws;

12.6.2 affects the ability of the United States to take actions in its capacity as trustee for any other Indian Tribe or Allottee;

12.6.3 confers jurisdiction on any State court to—

12.6.3.1 interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law; and

12.6.3.2 conduct judicial review of Federal agency action; or

12.6.4 modifies, conflicts with, preempts, or otherwise affects—

12.6.4.1 the Boulder Canyon Project Act (43 U.S.C. 617 et seq.);

12.6.4.2 the Boulder Canyon Project Adjustment Act (43 U.S.C. 618 et seq.);

12.6.4.3 the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 et seq.);

12.6.4.4 the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.);

12.6.4.5 the Treaty between the United States of America and Mexico respecting utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington February 3, 1944 (59 Stat. 1219);

12.6.4.6 the Colorado River Compact of 1922, as approved by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000); and

12.6.4.7 the Upper Colorado River Basin Compact as consented to by the Act of April 6, 1949 (63 Stat. 31, chapter 48).

## **12.7 Delay Not a Waiver**

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

## **12.8 Claims Waived or Released**

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

## **12.9 Tolling of Claims**

12.9.1 In General—Each applicable period of limitation and time-based equitable defense relating to a claim waived by the Navajo Nation described in this section shall be tolled for the period beginning on the date of enactment of the Act and ending on the Enforceability Date.

12.9.2 Effect of Section—Nothing in this section revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of the Act.

12.9.3 Limitation—Nothing in this section precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

**12.10 Miscellaneous Provisions**

12.10.1 Precedent—Nothing in this Agreement establishes any standard for the quantification or litigation of Federal reserved Water Rights or any other Indian water claims of any other Indian Tribe in any other judicial or administrative proceeding.

12.10.2 Other Indian Tribes—Nothing in this Agreement or the Act shall be construed in any way to quantify or otherwise adversely affect the Water Rights, claims, or entitlements to water of any Indian Tribe, band, or community, other than the Navajo Nation.

**12.11 Relation to Allottees**

12.11.1 No Effect on Claims of Allottees—Nothing in this Agreement or the Act shall affect the rights or claims of Allottees, or the United States Acting in Its Trust Capacity for or on behalf of Allottees, for Water Rights or damages related to lands allotted by the United States to Allottees, except as provided in subsection 1102(d)(1)(B) of the Act.

12.11.2 Relationship of Decree to Allottees—Allottees, or the United States Acting in Its Trust Capacity for Allottees, are not bound by any decree entered in the General Stream Adjudication confirming the Navajo Water Rights and shall not be precluded from making claims to Water Rights in the General Stream Adjudication. Allottees, or the United States Acting in Its Trust Capacity for Allottees, may make claims and such claims may be adjudicated as individual Water Rights in the General Stream Adjudication.

### **12.12 Antideficiency**

The United States shall not be liable for any failure to carry out any obligation or activity authorized by the Act (including any obligation or activity under this Settlement Agreement) if adequate appropriations are not provided expressly by Congress to carry out the purposes of the Act.

## **SECTION 13.0**

### **ENFORCEMENT**

#### **13.1 Enforcement**

For purposes of compelling compliance with the terms of this Agreement, the United States' sovereign immunity is waived to the extent provided by Federal law. For purposes of compelling compliance with the terms of this Agreement, the State and the Navajo Nation each waive the defense of sovereign immunity only as to claims brought by any other Party to enforce the terms of this Agreement, including any defense under the Eleventh Amendment to the United States Constitution. A Party's claim that any other Party, or its officials, are acting to impair or violate any right or privilege recognized in this Agreement, shall be brought in the United States District Court for the District of Utah. The Federal court jurisdiction provided for herein shall not be diminished by reason of a related State court proceeding. While the primary responsibility for protecting and preserving the Navajo Water Rights rests with the United States and the Navajo Nation, the State, through the State Engineer, shall use its best efforts to see that the Navajo Water Rights secured in this Agreement are protected from impairment; provided however, that

nothing herein shall subject the State, its officers, or employees to a claim for monetary damages in its efforts to so administer and protect the Navajo Water Rights.

### **13.2 Rights and Remedies**

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



## **SECTION 14.0**

### **RATIFICATION AND AMENDMENT**

#### **14.1 Ratification**

The Parties shall take all appropriate actions necessary to implement this Agreement. Upon the occurrence of the Enforceability Date, the terms of this Agreement will have the force and effect of law and the Parties agree to adopt all statutes, regulations, ordinances, and codes that are or may be necessary to harmonize the same with the terms of this Agreement.

#### **14.2 Amendments**

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

## **SECTION 15.0**

### **EVIDENTIARY EFFECT OF NEGOTIATIONS**

#### **15.1 No Admission Against Interest**

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

**15.2 Voluntary Compromise**

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

**15.3 Construction and Effect**

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

**SECTION 16.0**

**OBTAINING COURT DECREE**

**IN GENERAL STREAM ADJUDICATION**

**16.1 Proposed Determination of Rights**

Upon ratification of this Agreement pursuant to Subsection 15.1 herein, this Agreement, including Exhibit A, will be incorporated into a Proposed Determination of Rights issued by the State Engineer in the General Stream Adjudication. The Parties will cooperate to obtain an interlocutory decree covering the same.

**16.2 Joinder of the United States**

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

**16.3 Binding Effect**

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

**SECTION 17.0**

**NECESSARY ACTS AND COOPERATION**

**17.1 Acts Necessary to Effectuate Agreement**

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

**17.2 Application Necessary to Effectuate Agreement**

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

**17.3 Proposed Determinations Necessary to Effectuate Agreement**

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

**17.4 Proposed Judgment and Decree**

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

**17.5 Filings in General Stream Adjudication**

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

**SECTION 18.0**

**CONTINGENT ON APPROPRIATION OF FUNDS**

The expenditure or advance of any money or the performance of any obligation by the United States under this Agreement shall be contingent upon appropriation of funds

therefore. No liability shall accrue to the United States or to any other Party in the event that funds are not appropriated.

## **SECTION 19.0**

### **OTHER PROVISIONS**

#### **19.1 Counterparts**

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

#### **19.2 Entire Agreement**

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

#### **19.3 Notices**

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

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

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

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

**19.4 Officials Not to Benefit**

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

**19.5 Persons Bound by Agreement**

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

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

**19.6 No Benefit to Third Party**

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

## **SECTION 20.0**

### **SIGNATURE AUTHORITY**

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

#### **20.1 Navajo Nation**

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

#### **20.2 United States**

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

#### **20.3 State of Utah**

This Agreement is executed by the State, acting through its Governor, or designee.

NAVAJO NATION / STATE OF UTAH  
WATER RIGHTS SETTLEMENT AGREEMENT

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

**THE NAVAJO NATION**

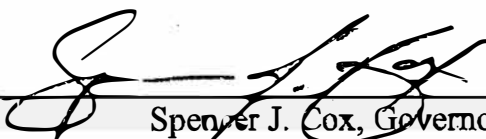
By:   
Jonathan Nez, President

Date: 05.27.2022

By: \_\_\_\_\_  
Doreen Nanibaa McPaul, Attorney General

Date: \_\_\_\_\_

**STATE OF UTAH**

By:   
Spencer J. Cox, Governor

Date: 5/27/22

**UNITED STATES OF AMERICA**

By:   
Deb Haaland, Secretary of the Interior

Date: May 27, 2022



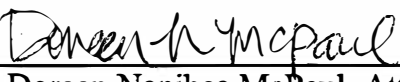
NAVAJO NATION / STATE OF UTAH  
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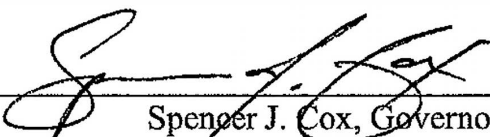
By:   
Jonathan Nez, President

Date: 05.27.2022

By:   
Doreen Nanibaa McPaul, Attorney General

Date: 06-03-2022

**STATE OF UTAH**

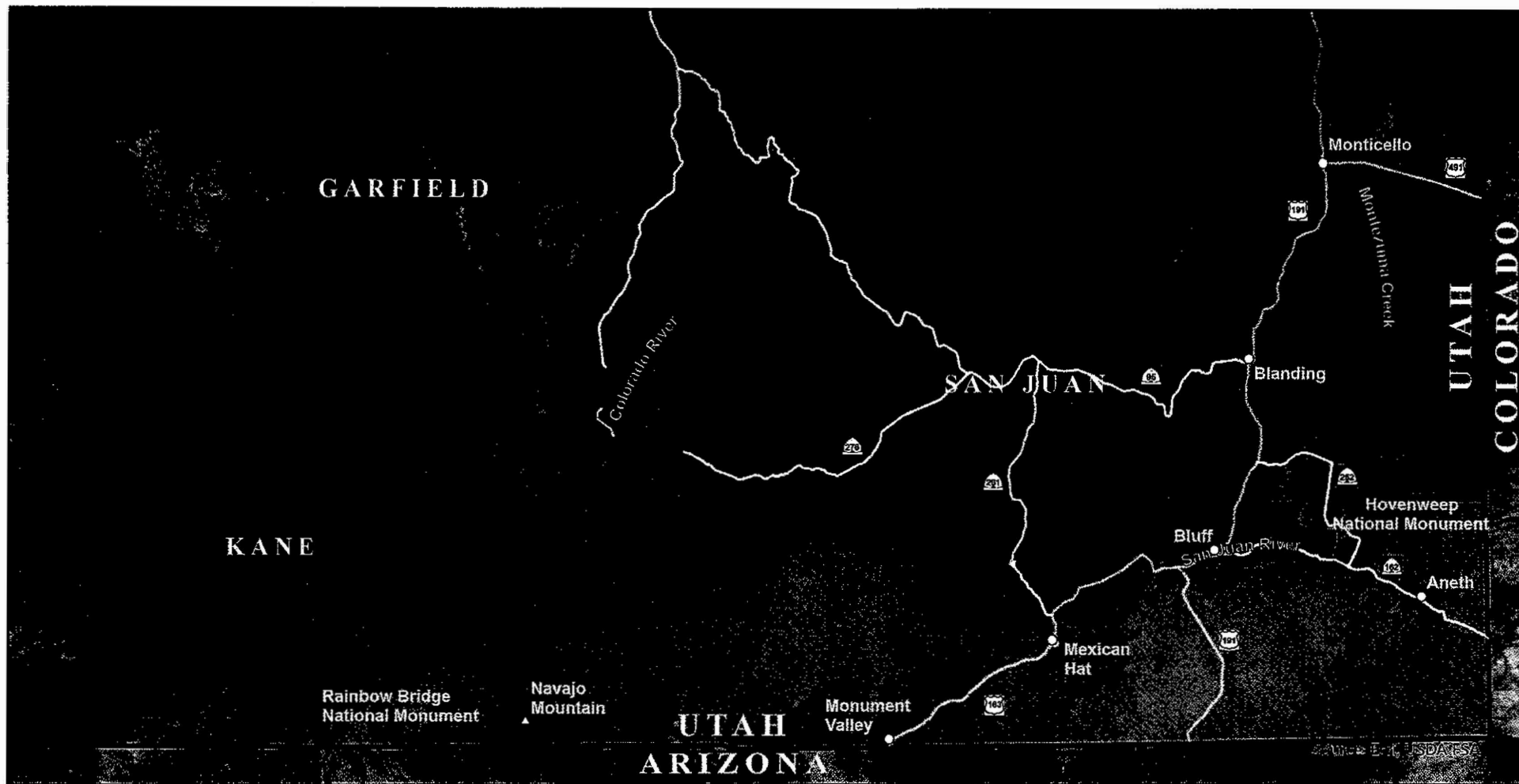
By:   
Spencer J. Cox, Governor

Date: 5/27/22

**UNITED STATES OF AMERICA**

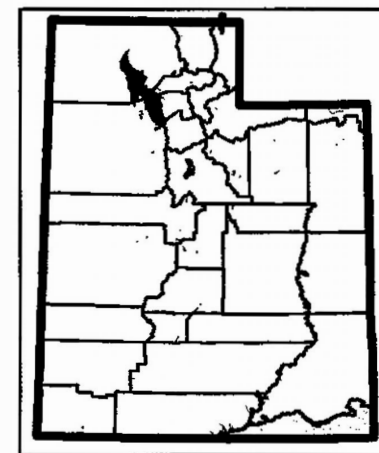
By:   
Deb Haaland, Secretary of the Interior

Date: May 27, 2022

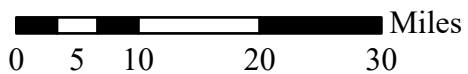
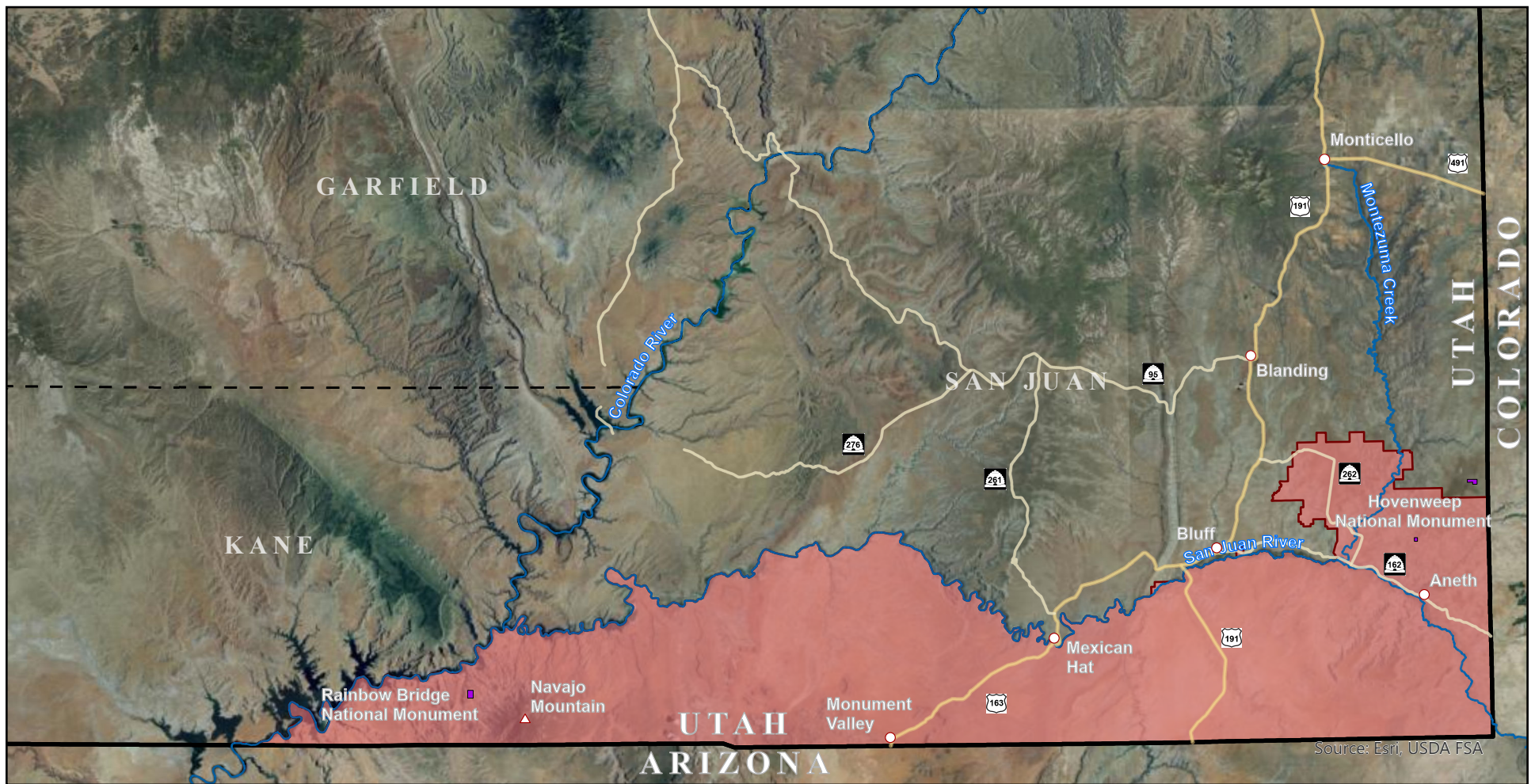


## Exhibit A

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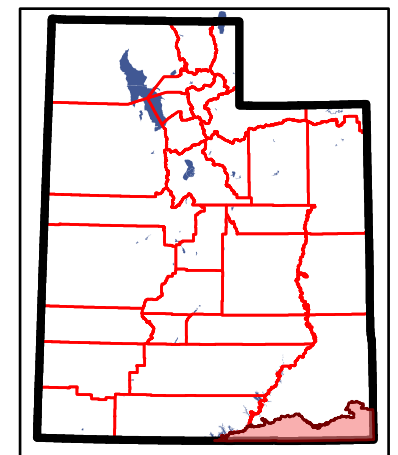


Vicinity Map



Duplicate color copy added for clarity

## Exhibit A



Vicinity Map