

OFFICE OF THE PRESIDENT/VICE PRESIDENT

OCG Use:

THE NAVAJO NATION

SAS NO: DNR-12676

Date: _____

Window Rock, Arizona 86515

DATE: 02/18/10

Page: _____

SIGNATURE APPROVAL SHEET

(164 REVIEW PROCESS)

Administrative Review Only

DEPT: Water Resources/Technical, Construction & Operations Branch (TCOB) NAME: Marlin Saggboy/Najan H. Tariq Phone No: 928-729-4003.

Memorandum of
DOCUMENT: SAS# DNR-12676 TRI-PARTY AGREEMENT BETWEEN San Juan River Farm Board, San Juan River Dineh Water Users, Inc. and Navajo Nation Department of Water Resources, To enable the San Juan River Farm Board, with the San Juan River Dineh Water User, Inc., to carry out an Operation Maintenance and Repair Program to improve the Irrigation System for the Benefit of the San Juan River Farmers and Assist the Navajo Nation Department of Water Resources Technical, Construction & Operations Branch (TCOB) Shiprock Irrigation Field Office.

- 1. Division of Natural Resources: _____
- 2. Program/Water Resources: _____
- 3. Program/Agriculture: _____
- 4. Office of Controller: _____
- 5. Department of Justice: _____
- 6. Office of the President: _____
- 7. Legislative Counsel: _____

- DATE: 4/23/10
- DATE: 4/15/10
- DATE: 4/22/10
- DATE: 5/17/10
- DATE: 6/25/10
- DATE: 10/15/10
- DATE: _____

8. Business Regulatory: _____ Date: 4/30/10

RETURN DOCUMENTS TO WATER RESOURCES WHEN SIGNED BY PRESIDENT/VICE PRESIDENT

Marlin 505.368.1062 729.4121 Theresa Suwa

COMMENTS:

Please obtain Business Regulatory's approval signature above and return to Contract Admin. *Ruby*

APR 23 2010
DONE



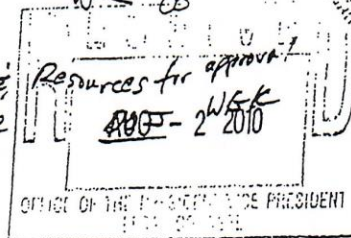
1:45am left msg. on voicemail for Theresa. *Ruby*

1:57pm left msg. on voicemail for Theresa. *Ruby*

1:15 am Talked w/ Theresa. She will come over today. *Ruby*

is being reviewed. **HOLD** *Ruby*

1:5 : Needs to go to Leg Counsel & per plan of operation before President



JUN 13 2010

RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL

21ST NAVAJO NATION COUNCIL - FOURTH YEAR, 2010

AN ACTION

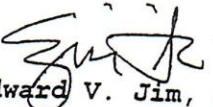
RELATING TO RESOURCES AND INTERGOVERNMENTAL RELATIONS;
APPROVING THE MEMORANDUM OF AGREEMENT BETWEEN THE NAVAJO
NATION, ON BEHALF OF THE NAVAJO NATION DEPARTMENT OF WATER
RESOURCES, THE SAN JUAN RIVER FARM BOARD AND THE SAN JUAN
RIVER DINEH WATER USERS, INC. TO CARRY OUT AN OPERATION,
MAINTENANCE AND REPAIR PROGRAM TO IMPROVE THE IRRIGATION
SYSTEM FOR THE BENEFIT OF THE SAN JUAN RIVER FARMERS AND
ASSIST THE NAVAJO NATION DEPARTMENT OF WATER RESOURCES
TECHNICAL, CONSTRUCTION AND OPERATIONS BRANCH SHIPROCK
IRRIGATION FIELD OFFICE

BE IT ENACTED:

1. The Navajo Nation hereby approves the Memorandum of Agreement between the Navajo Nation, on behalf of the Navajo Nation Department of Water Resources, the San Juan River Farm Board and the San Juan River Dineh Water Users, Inc., as set forth in the documents attached hereto as Exhibit A.
2. The Navajo Nation hereby authorizes the President of the Navajo Nation to sign this Memorandum of Agreement.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 8 in favor, 0 opposed, this 14th day of July, 2010.


Edward V. Jim, Sr., Pro Tem Chairperson
Intergovernmental Relations Committee

Motion: Larry Noble
Second: Raymond Joe

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Rescinding Resolution No. RCJN-90-01 and Approving the Policies and Procedures for the Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments

WHEREAS:

1. Pursuant to 2 N.N.C. § 691, the Resources Committee was established as a standing committee of the Navajo Nation Council; and
2. Pursuant to 2 N.N.C. § 695 (B) (7), the Resources Committee is empowered to adopt policies and procedures which may be necessary to enhance the development of natural resources; and
3. Pursuant to 2 N.N.C. § 695 (B) (13), the Resources Committee serves as the oversight committee for the Division of Natural Resources which includes the Department of Water Resources and Department of Agriculture, and Farm Boards; and
4. Pursuant to 3 N.N.C. § 61 *et seq.*, Navajo Nation Farm Boards were created to help Navajo farmers to better manage their lands by providing them with technical assistance, education and training in all aspects of agriculture, management, and to assist them in obtaining viable irrigation systems; and
5. Pursuant to 3 N.N.C. § 65 (C), Navajo Nation Farm Boards have the authority to assess and collect water service fees to fund the operation and maintenance of irrigation systems; and
6. In order to account for the collection and expenditure of water service fees, the Department of Water Resources prepared a fund management plan, which the Resources Committee approved by the adoption of Resolution No. RCJN-90-01. See Exhibit "A"; and
7. The Budget and Finance Committee declined to approve the proposed fund management plan because it did not meet the recently developed Navajo Nation Fund Management Criteria adopted and reverted this document to the Resources Committee. See Exhibit "B"; and
8. The Office of the Controller recommended the Resources Committee to rescind Resolution No. RCJN-90-01 and in the alternative adopt policy and procedures which would allow the Farm Boards to administer the collection and distribution of water service fees. See Exhibit "C"; and

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 16th day of May, 2003.



George Arthur, Chairperson
Resources Committee

Motion: Amos Johnson
Second: Harry Goldtooth

necessary to accomplish its objectives including overseeing grants and contracts which support water development, management, operation, and maintenance; and

7. Pursuant to 3 N.N.C. §§ 65-69, the Farm Boards are authorized entities within the Navajo Nation government with responsibility for recommending improvements and development of farmlands; and

8. The Navajo Nation Farm Boards' Plan of Operation was amended on August 7, 1997 by Navajo Nation Council Resolution CAU-67-97 (Exhibit "A"); and

9. The amended Plan of Operation, at 3 N.N.C. § 65 (C), allows the Farm Boards "to assess and collect fees for water assessments, which shall revert directly to the Farm Board collecting such assessments and be used to improve local operation and maintenance" or irrigation systems; and

10. The Navajo Nation Water Code exempts irrigated agriculture uses from fees and charges for use of the waters of the Navajo Nation (22 N.N.C. § 307); however, assessments may be made for the delivery of the water and for the operation and maintenance of the irrigation systems necessary to that delivery. Therefore, the terms "water assessment, irrigation assessments and assessment" as applied herein refer to fees and charges for the operation and maintenance of irrigation systems; and

11. In response to the Farm Boards' request, a Fund Management Plan for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments (Exhibit)^B has been developed to carry out the authority granted in 3 N.N.C. § 65 (C); and

12. Pursuant to 3 N.N.C. § 65 (K), the Farm Boards may enter into agreements "... with Navajo Nation, private, state and federal agencies to carry out programs for construction, rehabilitation, improvement, operation and maintenance of any irrigation structures or systems"; and

13. The U.S. Bureau of Reclamation has provided Water Management and Conservation grants to Navajo Nation Farm Boards having significant irrigation resources for the purpose of

fulfill the requirements of 3 N.N.C. § 65 (B) and § 65 (H) as well as 2 N.N.C. § 695 (B) and will allow Farm Boards to implement irrigation operation and maintenance assessment programs.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Resources Committee of the Navajo Nation Council hereby approves the "Fund Management Plan for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments" (Exhibit "B").
2. Nothing herein shall diminish or compromise the Navajo Nation's ownership and authority over its water resources as defined by the Navajo Nation Water Code at 22 N.N.C. §§ 1101-1405 and nor shall the irrigation assessment programs discussed herein effect or serve to justify a decrease in the funding and other assistance provided to the Shiprock Irrigation Office through the Navajo government.
3. Nothing herein shall diminish or compromise the Navajo Nation's ownership of the irrigation system and canals associated with any Navajo Nation Farm Board.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained, this 18th day of June, 2001.



George Arthur, Chairperson
Resources Committee

Motion: Jones Begay
Second: Herman Daniels



THE
NAVAJO NATION

P.O. BOX 3150 WINDOW ROCK, ARIZONA 86515

(520) 871-6310

"EXHIBIT C"

KELSEY BEGAYE
President

TAYLOR MCKENZIE, M.D.
Vice-President

MEMORANDUM

November 01, 2002

TO: John Leeper, Director
Water Management Department
Division of Water Resources

FROM: Pearl Lee
Pearl Lee, Accounting Manager
Office of the Controller

SUBJECT: SAS Document No. 9561
Proposed Budget & Finance Committee Resolution: Approving the Fund Management Plan for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments.

As a follow up to our meeting on Tuesday, October 29, 2002 with yourself, Teresa Showa and Michael Benson, I discussed recommended options with Martin E. Ashley, Assistant Controller regarding this proposed action. The following is provided:

- 1) As we are in agreement, the Navajo Nation Farm Board Irrigation Operation and Maintenance Assessment does not meet the requirements of a Fund Management Plan as approved by the Budget & Finance Committee via BFMY-38-02, it is recommended the following actions take place.
 - a) Rescind Resource Committee Resolution No. RCJN-90-01.
 - b) Change proposed Fund Management plan to policies and procedures for the Navajo Nation Farm Board Irrigation Operation and Maintenance Assessment pursuant to Farm Board Plan of Operation.

Management Functions.

 - H. To develop and recommend for Resources Committee approval of such policies, procedures, rules and regulation as may be required to implement the provisions of this plan of operation.

Whereby the Farm Board collects or authorizes the Water User Association to collect these assessments fees and expend those funds for irrigation operation and maintenance with periodic reporting of revenue and expenditures to the Resource Committee. Considering the minimal amount (approximately \$16,000) of funds currently being collected, it would be more cost effective if the Water Users Association be given the authorization to collect and expend these funds.
 - c) Obtain Resource Committee approval of these policies and procedures.

4. Assessment and collection of fees for water assessments; and otherwise, recommending cancellation of permits or turning off water gates.
5. Collecting water assessment fees pursuant to these Policies and Procedures. Among these duties, administration of these Policies and Procedures will provide one of the most important measures of success for the Farm Board and the water users within their jurisdictions.

C. Agreement between a Farm Board and the Navajo Nation's Department of Water Resources Regarding Operation and Maintenance Duties on Irrigation Systems

If a Farm Board elects to administer an Irrigation Operation and Maintenance Assessment, it shall enter into an agreement with the Department of Water Resources. The Director of the Department of Water Resources, in consultation with the Director of the Navajo Nation Department of Agriculture, shall draft the bipartite agreement involving any irrigation system to assure that the agreement is in compliance with these Policies and Procedures and establishes an assignment of specific irrigation operation and maintenance duties to the Water Users Association. By mutual consent, assigned responsibilities may be expanded to include water delivery record keeping, safety programs and other duties.

D. ADMINISTRATION

1. Funding Sources

Income generated will be used to reimburse certain costs of services, to improve services, and to build and maintain a base investment to support continuing revenue generating activities from year to year. Revenue to be managed through the Account will be received from a variety of sources, including, but not limited to the following items:

- a) Proceeds from retail sales of produce etc., which might be donated to the Farm Board to raise revenue for the operation and maintenance of the irrigation system(s).
- b) Annual Assessment of Agricultural Use Permittees.
- c) Designated grants, donations, monetary or negotiable gifts, contributions and bequests received from any source.

2. Assessment Rate Setting Mechanism and Collection

a) Setting the Assessment Rate

The assessment rate may be set and adjusted annually by the Farm Board after holding hearings for agricultural permit holders in the irrigation system(s) on the annual budget and

assessment rate. The Farm Board shall also consult with the Navajo Nation Department of Water Resources while making the determination of the annual rate assessment. Until uniform water measurement programs are in place, Farm Board shall charge a set amount for each acre permitted. All permitted acreage shall be assessed.

b) Collection

- 1) Assessments shall be due on the date set by the Farm Board. Late payment fees may be charged and collected, at a reasonable rate comparable to fees charged by the Navajo Loan program administered by the Credit Services Department pursuant to its Operating Policies and Guidelines approved by BFMA-19-98.
- 2) Throughout the formal collection process, every effort shall be made to contact the Agricultural Land Use Permittee responsible for the payment by personal contact, mail or telephone to encourage payment of assessments due.
- 3) Collection efforts shall be in compliance with the Federal Fair Debt Collection Practices Act and other applicable laws of the Navajo Nation.
- 4) In administering the Irrigation Operation and Maintenance Assessment Policies and Procedures, the Farm Board may interrupt the delivery of irrigation water to a permittee whose account becomes delinquent or one who diverts water in violation of his or her water rights under a water permit. Within 15 days of having his or her water delivery interrupted, the permittee may request a hearing before the Farm Board where he or she may present evidence and show cause why water delivery should not be interrupted. The permittee may appeal an adverse ruling by the Farm Board to the Resources Committee within 15 days of receiving notice of the Farm Board's ruling.
- 5) Under existing Bureau of Indian Affairs' policy, a Land Use (Agricultural) Permit may be cancelled under certain circumstances. If an account remains delinquent for three years after the collection process has been fully and fairly applied, or if a permittee continues to divert water in violation of or in the absence of a water permit, the Farm Board may recommend to the Bureau of Indian Affairs and the Resource Committee of the Navajo Nation Council that the permit be cancelled. Notice will be provided to the permittee of the Farm Board's adverse recommendation and the permittee, within 15 days of receipt of the notice, may request a hearing before the Farm Board to show cause why the Board should not recommend cancellation. Within 15 working days following the hearing, the Farm Board will provide the permittee a copy of its written decision concerning the permittee's permit. The permittee may appeal an adverse Farm Board ruling to the Resources Committee of the Navajo Nation Council. The notice of appeal must be made in writing and submitted to the Resources Committee of the Navajo Nation or subsequent authorized hearing body within 15 days of receipt the Farm Board's written decision.

3. Accounting

In managing the water assessments fund, the Farm Board must comply with the following

outline of accounting practices necessary to satisfy generally accepted accounting practices.

a) Records: A chart of accounts similar to the Navajo Nation's will be adopted. A cash receipts journal and cash disbursement journal must be kept. The journals shall be used to prepare annual reports.

b) Reports: The Farm Board will file annual financial reports with the Navajo Nation Departments of Agriculture and Water Resources and with the Resources Committee. The reports shall include a balance sheet as well as a statement of revenues, expenditures and final balances.

c) Audits: The farm Board shall hire a Certified Public Accountant to annually audit its accounts. Audit by the Navajo Nation Auditor General will be made as deemed necessary by the Navajo Nation.

4. Expenditures

a) The Farm Board will monitor revenue-generating activities on a monthly basis.

b) Water assessments must be used for the operation and maintenance of irrigation systems. More particularly, the purposes for which water assessments shall be used include, but are not limited to, the following:

- 1) To employ or train administrative, clerical and technical staff.
- 2) To employ a ditch rider, water master or maintenance staff.
- 3) To conduct repairs to the irrigation system as directed by the Department of Water Resources.
- 4) To purchase replacement parts for the irrigation system.
- 5) To pay for fuel, parts and repairs for the heavy equipment being used for the irrigation system.
- 6) To purchase office and operating supplies for the irrigation system.
- 7) To pay for contract services related to the operation and maintenance of the irrigation system.
- 8) To contribute matching funds for rehabilitation purposes.
- 9) To provide funds for canal/ditch breaches and other emergency incidents.
- 10) To provide cost share funds for water conservation purposes.

5. Checking Account

a) The Farm Board will establish a checking account in a local bank to be used for the Irrigation Water Assessment funds.

b) The checkbook for this account shall be kept in a secured area and not in the possession of any Board member.

c) Checks may be written only by the Farm Board Secretary/Treasurer.

d) Checks will require the signature of the Farm Board President or the Vice-President and the Secretary/Treasurer.

e) Monthly reconciliation will be done by the Treasurer for the entity administering the Policies and Procedures.

E. OPTION FOR A FARM BOARD TO UTILIZE A WATER USERS ASSOCIATION AS AN AUXILIARY TO CARRY OUT AN IRRIGATION OPERATION AND MAINTENANCE ASSESSMENT PROGRAM

Agreement between a Navajo Nation Farm Board, the Department of Water Resources and a Water Users Association

1. Any Navajo Nation Farm Board which desires to employ a Water Users Association for the implementation of an irrigation operation and maintenance assessment program, must develop a written agreement with the Water Users Association and the Department of Water Resources. The Resources Committee must approve all agreements between a Farm Board and a water users association. The agreement must specify that fulfillment of the requirements of these Policies and Procedures is assumed by the water users association.
2. The agreement with the water users association must assure diligent oversight by the Farm Board by including the following provisions in the agreement with the water users association:
 - a) The water users association will make a monthly report to the Farm Board.
 - b) The water users association will obtain Farm Board approval of the association's annual budget for operation and maintenance of the irrigation system(s).
3. The Water Users Association must be duly incorporated under the Navajo Nation Corporation Code as a Non-Profit Corporation. A copy of the official by-laws of the Water Users Association must also be on file with the Resources Committee.
4. The Director of the Department of Water Resources, in consultation with the Director of the Navajo Nation Department of Agriculture, shall draft the tripartite agreement involving any irrigation system to assure that the agreement is in compliance with these Policies and Procedures and establishes an assignment of specific irrigation operation and maintenance duties to the Water Users Association. By mutual consent, assigned responsibilities may be expanded to include water delivery record keeping, safety programs and other duties.

Resolution of the San Juan River Farm Board

Approving the drafted Tri-Party Agreement between the San Juan River Farm Board, San Juan River Dineh Water Users, Inc., and Navajo Nation Department of Water Resources to enable the San Juan River Farm Board, with the San Juan River Dineh Water Users, Inc., to carry out an Operation, Maintenance and Repair Program to Improve the Irrigation System for the Benefit of the San Juan River Farmers and Assist the Navajo Nation Department of Water Resources Shiprock Irrigation Office.

WHEREAS,

1. The San Juan River Farm Board (Farm Board) was established by the Navajo Nation Council Resolution CAU-51-80 and Advisory committee resolution ACJA-1-81 and the Navajo Nation Council by Resolution CAU-67-97 amended the Plans of Operation of the Farm Boards and Central Farm Board; and
2. Pursuant to Title 3 N.N.C. Section 65 (c) authority is provided for the Navajo Nation Farm Boards to assess and collect water services fees to fund the operation and maintenance of irrigation systems subject to an approved set of policies and procedures; and
3. Pursuant to Part E. Option for a Farm Board to Utilize a Water Users Association as an Auxiliary to Carry out an irrigation Operation and Maintenance Assessment Program of the Policies and Procedures for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments approved by Resolution No. RCMY-65-03 of the Resources Committee of the Navajo Nation Council, Farm Boards are authorized to develop a water users association to assist the Farm Board with the implementation of irrigation operation and maintenance assessments; and
4. The Farm Board desires to enlist the assistance of the San Juan River Dineh Water Users, Inc., which the Farm Board caused to be formed in cooperation with the permittees in the Fruitland, Hogback, and Gadiiahi irrigation system(s), to implement an irrigation operation and maintenance assessment program, pursuant to part E. Option for a Farm Board to Utilize a Water Users Association as an Auxiliary to Carry out an irrigation Operation and Maintenance Assessment Program of the Policies and Procedures for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments approved by Resolution No. RCMY-65-03 of the Resources Committee of the Navajo Nation Council; and
5. Pursuant of Part E. Option for a Farm Board to Utilize a Water Users Association as an Auxiliary to Carry out an irrigation Operation and Maintenance Assessment Program of the Policies and Procedures for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments approved by Resolution No. RCMY-65-03 of the Resources Committee of the Navajo Nation Council, the Farm Board has develop a draft agreement with the Navajo Nation Department of Water Resources and the San Juan River Dineh Water Users, Inc., which is attached as attachment "A" and entitled as the Tri-Party Agreement between the San Juan River

Resolution of the San Juan River Dineh Water Users, ^{Board} Inc.

Approving the drafted Tri-Party Agreement between the San Juan River Farm Board, San Juan River Dineh Water Users, Inc., and Navajo Nation Department of Water Resources to enable the San Juan River Farm Board, with the San Juan River Dineh Water Users, Inc., to carry out an Operation, Maintenance and Repair Program to Improve the Irrigation System for the Benefit of the San Juan River Farmers and Assist the Navajo Nation Department of Water Resources Shiprock Irrigation Office.

WHEREAS,

1. Pursuant to 5 N.N.C. § 3401-3425, the Agricultural Cooperation Act of the Navajo Nation Corporation Code authorizes the formation of non-profit agricultural cooperatives for purposes of agriculture related activities; and
2. The San Juan River Dineh Water Users, Inc., (Dineh Water Users) was established by the San Juan River Farm Board by resolution on August 24, 1999 as a non-profit organization under the Navajo Nation Corporation Code with the purpose in assisting with the operation and maintenance of the Shiprock Irrigation System which includes Fruitland, Hogback and Gadiiahi Irrigation Projects; and
3. The Farm Board desires to enlist the assistance of the San Juan River Dineh Water Users, Inc., which the Farm Board caused to be formed in cooperation with the permittees in the Fruitland, Hogback, and Gadiiahi irrigation projects, to implement an irrigation operation and maintenance assessment program, pursuant to part E. Option for a Farm Board to Utilize a Water Users Association as an Auxiliary to Carry out an irrigation Operation and Maintenance Assessment Program of the Policies and Procedures for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments approved by Resolution No. RCMY-65-03 of the Resources Committee of the Navajo Nation Council; and
5. Pursuant of Part E. Option for a Farm Board to Utilize a Water Users Association as an Auxiliary to Carry out an irrigation Operation and Maintenance Assessment Program of the Policies and Procedures for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments approved by Resolution No. RCMY-65-03 of the Resources Committee of the Navajo Nation Council, the Dineh Water Users has develop a draft agreement with the Navajo Nation Department of Water Resources and the San Juan River Dineh Water Users, Inc., which is attached as attachment "A" and entitled as the Tri-Party Agreement between the San Juan River Farm Board, San Juan River Dineh Water Users, Inc., and Navajo Nation Department of Water Resources to enable the San Juan River Farm Board, with the San Juan River Dineh Water Users, Inc., to carry out an Operation, Maintenance and Repair Program to Improve the Irrigation System for the Benefit of the San Juan River Farmers and Assist the Navajo Nation Department of Water Resources Shiprock Irrigation Office.

Resolution of the San Juan River Dineh Water Users, ^{Board} Inc.

Approving the drafted Tri-Party Agreement between the San Juan River Farm Board, San Juan River Dineh Water Users, Inc., and Navajo Nation Department of Water Resources to enable the San Juan River Farm Board, with the San Juan River Dineh Water Users, Inc., to carry out an Operation, Maintenance and Repair Program to Improve the Irrigation System for the Benefit of the San Juan River Farmers and Assist the Navajo Nation Department of Water Resources Shiprock Irrigation Office.

WHEREAS,

1. Pursuant to 5 N.N.C. § 3401-3425, the Agricultural Cooperation Act of the Navajo Nation Corporation Code authorizes the formation of non-profit agricultural cooperatives for purposes of agriculture related activities; and
2. The San Juan River Dineh Water Users, Inc., (Dineh Water Users) was established by the San Juan River Farm Board by resolution on August 24, 1999 as a non-profit organization under the Navajo Nation Corporation Code with the purpose in assisting with the operation and maintenance of the Shiprock Irrigation System which includes Fruitland, Hogback and Gadiiahi Irrigation Projects; and
3. The Farm Board desires to enlist the assistance of the San Juan River Dineh Water Users, Inc., which the Farm Board caused to be formed in cooperation with the permittees in the Fruitland, Hogback, and Gadiiahi irrigation projects, to implement an irrigation operation and maintenance assessment program, pursuant to part E. Option for a Farm Board to Utilize a Water Users Association as an Auxiliary to Carry out an irrigation Operation and Maintenance Assessment Program of the Policies and Procedures for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments approved by Resolution No. RCMY-65-03 of the Resources Committee of the Navajo Nation Council; and
5. Pursuant of Part E. Option for a Farm Board to Utilize a Water Users Association as an Auxiliary to Carry out an irrigation Operation and Maintenance Assessment Program of the Policies and Procedures for Navajo Nation Farm Board Irrigation Operation and Maintenance Assessments approved by Resolution No. RCMY-65-03 of the Resources Committee of the Navajo Nation Council, the Dineh Water Users has develop a draft agreement with the Navajo Nation Department of Water Resources and the San Juan River Dineh Water Users, Inc., which is attached as attachment "A" and entitled as the Tri-Party Agreement between the San Juan River Farm Board, San Juan River Dineh Water Users, Inc., and Navajo Nation Department of Water Resources to enable the San Juan River Farm Board, with the San Juan River Dineh Water Users, Inc., to carry out an Operation, Maintenance and Repair Program to Improve the Irrigation System for the Benefit of the San Juan River Farmers and Assist the Navajo Nation Department of Water Resources Shiprock Irrigation Office.

MEMORANDUM OF AGREEMENT
between
Navajo Nation Department of Water Resources
and
San Juan River Farm Board
and
San Juan River Dineh Water Users, Inc.



This Memorandum of Agreement (MOA) is entered into by and between the Navajo Nation, on behalf of the Navajo Nation Department of Water Resources (NNDWR) and the San Juan River Farm Board (SJRFB), and the San Juan River Dineh Water Users, Inc. (SJRDWU), a non-profit entity incorporated under the laws of the Navajo Nation, for the purpose of assigning responsibilities of the Parties for implementing an irrigation operation and maintenance assessment program, and more specifically for the assessment and administration of water service fees and to provide for the operation, maintenance, repair ("OM&R") and improvement of the Shiprock Irrigation Systems for the benefit of San Juan River farmers.

WHEREAS, the Shiprock Irrigation Systems consist of three irrigation systems: the Hogback, Fruitland, and Gadii'ahi. (According to the 1993 BIA Crop Utilization Study) the total acreage for the three systems is 13,680 acres. This acreage is served by two diversion dams, and approximately 316 miles of canals, laterals, and pipelines; and

WHEREAS, pursuant to Public Law 86-636, passed on July 12, 1960, the United States transferred the Shiprock Irrigation Systems to the Navajo Nation; and

WHEREAS, pursuant to 3 N.N.C. § 65(A) (1) to (3), the SJRFB is authorized to review, recommend and approve agricultural land use permits, with the concurrence of the Department of Agriculture and Division of Natural resources and approval of the Resources Committee, and to assess and collect water services fees, said fees which revert directly to the Farm Board, to fund the OM&R of local irrigation systems, including the Shiprock Irrigation Systems; and

WHEREAS, by Resolution RCMY-65-03, the Resources Committee established a Navajo Nation Farm Board Irrigation Operation and Maintenance Assessment Fund ("OM&R Fund"), and, as required pursuant to 3 N.N.C. § 65(B)(1), approved the Irrigation Operation and Maintenance Assessment Policies and Procedures ("OM&R Policies and Procedures"), attached hereto as Exhibit "D" and incorporated herein, for implementation of an Irrigation Operation and Maintenance Assessment Program ("OM&R Program"); and

WHEREAS, pursuant to 3 N.N.C. § 65(B)(4), the SJRFB is authorized to cooperate and enter into agreements with other Navajo Nation agencies and private entities to carry out programs for the construction, rehabilitation, improvement, operation and maintenance of any irrigation structures or systems, including the Shiprock Irrigation System; and

WHEREAS, pursuant to its Plan of Operation, the NNDWR through the TCOB oversees and is responsible for operations, maintenance and repair (OM&R) of the Shiprock Irrigation Systems using resources from the Navajo Nation General Funds, but SJRFB and/or SJRDWU are expressly authorized by Resolution RCMY-65-03 to implement an OM&R Program and assume some of NNDWR's duties pursuant to a written agreement with NNDWR; and

WHEREAS, the SJRDWU was incorporated in 1999 under Navajo Nation law as a non-profit corporation by local farmers with the support of the SJRFB and began operation in 2002 funded by a variety of grants; one of the purposes of this MOA is to authorize SJRDWU to collect and administer water use fees but SJRDWU will still to continue to seek and secure additional outside funding; and

WHEREAS, the Parties desire to enter into this MOA to implement the Shiprock OM&R Program and to administer the Shiprock OM&R Fund pursuant to Resources Committee Resolution RCMY-65-03, and supporting resolutions of SJRFB and SJRDWU are respectively attached hereto as Exhibits "A" and "B";

NOW, THEREFORE, in consideration of the mutual benefit to all Parties through execution of this MOA, the Parties hereby covenant and agree to the following:

I. **General Terms**

- A. **OWNERSHIP AND TITLE.** This Agreement sets forth the responsibility of each entity to carry out the Shiprock OM&R Program for assessment of water fees and carrying out the OM&R on the Shiprock Irrigation Systems. This Agreement shall not transfer ownership or title for any component of the Shiprock Irrigation Systems, or the rights to the water delivered by the systems, or any other trust asset of the Navajo Nation.
- B. **TERM.** This MOA shall be effective upon execution by the Parties and shall remain effective until terminated with 60 days written notice to the other Parties; provided, the Navajo Nation may terminate this MOA at any time, if after consultation between the SJRFB and the Departments of Agriculture and NNWRU, there is reason to believe that the OM&R Policies and Procedures are not being followed by SJRDWU.
- C. **AMENDMENTS AND ANNUAL POLICY REVIEW.** This MOA shall be reviewed annually. This MOA may be amended in writing with the approval of all Parties and the Resources Committee of the Navajo Nation Council. Any amendments to this MOA must be in accordance with the OM&R Policies and Procedures and other applicable laws and policies.
- D. **GENERAL RESPONSIBILITIES OF THE PARTIES.** The SJRDWU shall assume those duties and obligations for fee assessment and OM&R of the Shiprock Irrigations Systems as enumerated under this MOA. All other responsibilities and duties will be retained by either the SJRFB or the NNDWR as described in their respective Plans of Operation or in this MOA. Nothing in this MOA affects the responsibilities of permittees under any relevant Bureau of Indian Affairs Land Use Permit and permittees shall remain responsible for their on-farm operations and maintenance from their turn-out gate(s). The SJRDWU shall not be accountable for responsibilities and duties not specifically assigned to them under this MOA but shall remain accountable as a general fiduciary for all responsibilities and duties assumed under this MOA, and shall always act in a prudent and reasonable manner in executing its duties under this MOA and in a manner acceptable to both the SJRFB and the NNDWR.
- E. **BUDGET AND OVERSIGHT.**

WU MAKE FINAL APPROVAL
to be on Agenda to Amend

- 1) The SJFDWU shall make a monthly report to the SJRFB. *This*
 - 2) The SJFDWU shall submit an annual budget and OM&R assessment to the NNDWR and the SJRFB for review and approval. *Once the annual budget and OM&R assessment have been reviewed by the NNDWR and approved by the SJRFB, the SJRDWU shall be authorized to implement the OM&R Program pursuant to this MOA under the direction of its Board of Directors and its superintendent and as otherwise in accordance with its Bylaws and Articles of Incorporation.*
 - 3) SJRFB and NNDWR shall retain oversight authority for any Navajo Nation funds transferred to, collected by and/or administered by the SJRDWU, including any water assessment fees, and SJRDWU shall comply with any requests by the Navajo Nation for related documents, invoices, and information.
 - 4) SJRDWU shall be considered a Navajo Nation contractor under this MOA subject to audit by the Office of Auditor General of the Navajo Nation pursuant to 12 N.N.C. § 4, and shall at all times remain in good standing with the Business Regulatory Department as a non-profit corporation incorporated under the laws of the Navajo Nation. SJRDWU shall keep on file with the Resources Committee a current copy of its Articles of Incorporation and By-Laws.
 - 5) Oversight and review of the programmatic and fiscal responsibilities of SJRDWU under this MOA, including any financial expenditures involving Navajo Nation funds and/or water fees assessed pursuant to this MOA, shall be done annually by the SJRFB and the NNDWR based on the Navajo Nation fiscal year (October 1 to September 30), pursuant to the OM&R Policies and Procedures. The programmatic responsibilities of the SJRDWU under this MOA will be reviewed by all Parties annually after the irrigation season, and modified as required in accordance with Article I (C), above.
 - 6) SJRDWU shall comply with the accounting requirements of the OM&R Policies and Procedures, including the requirement for an annual audit by a Certified Public Accountant.
- F. LIABILITY AND INSURANCE. SJRDWU is an independent contractor and is solely responsible for any and all liabilities and/or claims for injury to persons or damage to property arising out of or connected with any work or services performed by SJRDWU pursuant to this MOA, and SJRDWU is not entitled to any right or benefit enjoyed by a Navajo Nation employee, volunteer or agent. SJRDWU shall obtain and maintain adequate and sufficient insurance, in accordance with industry standards, for all of SJRDWU's potential liabilities, against claims by any party for any injury to persons or damage to property arising out of or connected with any work performed or services provided under this MOA, and any other related activities, by SJRDWU or any of its subcontractors, agents, representatives, employees, volunteers or consultants. SJRDWU shall not assume any responsibilities or provide any work or services pursuant to this MOA until SJRDWU has provided proof of workman's compensation insurance and general liability insurance acceptable to the Navajo Nation.

- G. INDEMNIFICATION. SJRDWU agrees to hold harmless and indemnify the Navajo Nation and its divisions, departments, offices, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury to any persons or property, arising out of or connected with any work performed or services provided under this MOA, and any other related activities, by SJRDWU or any of its subcontractors, agents, representatives, employees, volunteers or consultants.
- H. SOVEREIGN IMMUNITY. Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§ 551 - 555.
- I. DISPUTE RESOLUTION. In the case of any dispute arising out of this MOA, the Parties will first use good faith efforts to resolve the dispute through informal negotiations. If the dispute cannot be resolved through informal negotiations of the Parties, the dispute will be referred to the Division Director, Division of Natural Resources, for mediation and administrative resolution. With consent of all Parties, a dispute may be handled through Navajo Peacemaking.
- J. AGREEMENT GOVERNS. The Parties hereby acknowledge and agree that the written provisions contained in this MOA, including any Exhibits or Attachments hereto, constitute the complete understanding of the Parties with respect to the subject matter of this MOA.
- K. NO THIRD PARTY RIGHTS. Notwithstanding any provision of Navajo Nation statutory law, codified or uncodified, or Navajo Nation common or fundamental law, no provision of this MOA shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any other person or party that is not one of the Parties hereto.
- L. SEVERABILITY. If any provision of this MOA is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this MOA shall nevertheless remain in full force and effect so long as the economic or legal substance of the rights, interests, and activities described herein are not affected in a materially adverse manner with respect to any Party. If such materially adverse effect results, the Navajo Nation may at its discretion terminate this MOA.
- M. LIABILITY CONTINGENT ON FUNDING. In accordance with 2 N.N.C. § 223 (A), to the extent that any responsibilities of the SJRFB or the NNDWR or the Navajo Nation under this MOA depend on the expenditure of Navajo Nation or other funds, the liability of the Navajo Nation under this MOA is expressly contingent upon the availability of appropriations by the Navajo Nation Council or other funding source to carry out same.
- II. **Responsibilities of the San Juan River Farm Board (SJRFB).**
- A. The SJRFB shall:
- 1) Carry out its authority consistent with its Plan of Operation at 3 N.N.C. §§ 61-69, and implement and enforce the OM&R Policies and Procedures under Resources Committee Resolution RCMY-65-03, and any other applicable policies, procedures,

rules and regulations as may be developed by SJRFB and approved by the Resources Committee.

2) Assist the SJRDWU with the collection of the water OM&R assessment, including recommending cancellations on delinquent permits per the OM&R Policies and Procedures, and in determining, collecting, accounting for, and expending the water assessment fees collected. In accordance with applicable law, will comply with all generally acceptable accounting practices including any requirements for audits, and will comply with and enforce applicable policies and procedures pertaining to the Land Use Permits.

Revised 3) Review and approve proposed SJRDWU budgets on an annual basis.

4) Request from the Bureau of Indian Affairs accurate, updated farm permit records to maintain Land Use Permit records and provide copies to the NNDWR.

5) Develop a written strategy and method for completing these tasks and provide a copy to NNDWR within three (3) months of the effective date of this MOA.

III. Responsibilities of the San Juan River Dineh Water Users (SJRDWU).

A. The SJRDWU shall be responsible for administering and implementing the OM&R Fund and the OM&R Program including those components of the Shiprock Irrigation Systems not enumerated in Section III (C).

B. The SJRDWU and the SJRFB will determine the strategy and methods for completing the tasks enumerated below. The SJRDWU is authorized to contract, assign, or delegate this work as required.

C. The SJRDWU shall:

1) Fulfill all requirements of the OM&R Policies and Procedures under Resolution RCMY-65-03, and shall assist SJRFB as necessary with compliance and enforcement of the OM&R Policies and Procedures.

2) Obtain a current Navajo Nation water use permit. ?

3) Collect the OM&R assessment fees throughout the three systems as delegated by SJRFB. The assessment fees will include all water users such as those for livestock uses where the water is delivered through the system.

4) Prepare an annual OM&R budget for approval by the SJRFB and review by NNDWR.

5) Be responsible for the OM&R on system components from the boundary control points to the farmers' delivery gates and will work with local farmers, and shall control sufficient right-of-way or working area clearance on each side of the canal, pipeline, or drain to permit operation of maintenance equipment and travel by

personnel from the boundary control points to the farmer's deliver gate. The boundary control points are designated on the map attached hereto as Exhibit C.

- 6) Make written recommendations to the NNDWR at the beginning and the ending dates of the annual irrigation season, and shall establish water measurement and recording systems from the boundary control points to the farmer's delivery gates. At the end of each season, the SJRDWU shall report water deliveries to the Shiprock Irrigation O&M Office.
- 7) Develop a written equitable shortage sharing criteria for the water users within three (3) months of the effective date of this MOA and shall provide a copy to the NNDWR.

IV. Responsibilities of the Navajo Nation Department of Water Resources (NNDWR) – Shiprock Irrigation O&M Office.

A. The NNDWR – Technical, Construction & Operations Branch (TCOB) Shiprock Office has the responsibility for the OM&R of all system components subject to the availability of funds. Under this agreement, the NNDWR will have the primary OM&R responsibility for the following components which establish the boundary control points (see Exhibit C):

Fruitland Canal Main Canal from the Fruitland Diversion to the end of Cambridge
 Cambridge Diversion
 Loop Lateral (turnout to end)
 Yellowman Lateral (turnout to end)
 San Juan Chapter Hogue Lateral (turnout to end)
 All existing main system drainages

Hogback Canal Main Canal from Diversion to Area 7 reservoir
 A Pump Station/Lateral (turnout to end)
 B Pump Station/Lateral (turnout to end)
 Little Mesa Lateral (turnout to end)
 Helium Siphon/Lateral (turnout to end)
 Number 9 Ditch (turnout to end)
 Bluff Lateral (turnout to end)
 All existing main system drainages

Gadii'ahi Canal Gadii'ahi Siphon/Lateral (turnout to end)
 All existing main system drainages

B. The OM&R responsibility includes the following tasks:

- 1) Operations:
 - a. Establish the beginning and the end dates for the irrigation season after receiving the SJRDWU recommendations. This includes getting the system ready to receive water, fill the system, and drain the system.

- b. Schedule the regulate water delivery to the boundary control points.
- c. Deliver and regulate water to each turnout at the OM&R boundary (defined mutually with the SJRDWU).
- d. Record water measurements throughout the system from the diversion to the boundary water control points. Receive water delivery records from outside the boundary. These records will be compiled and submitted to the SJRDWU and the NNDWR.
- e. Monitor farmer's water disposal into the drainage system.
- f. Encourage good conservation practices.
- g. Develop shortage-sharing criteria that will apply to boundary control points.

2) Maintenance & Repairs:

- a. Inspect system components with the OM&R boundary.
- b. Maintain and clean existing canals, siphons, drains, bridges, walkways, etc. as required.
- c. Inspect and rehabilitate all existing structures within the boundary as required.

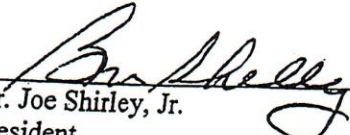
3) Control:

- a. Control sufficient right-of-way or working area clearance on each side of the canal, pipeline, or drain to permit operation of maintenance equipment and travel by personnel.
- b. Control and maintain existing fences, roads, canals, ditches, pipelines, drains, siphons, dams, and structures within the right-of-way throughout the system.
- c. Determine the strategy and methods for executing this responsibility on its side of the OM&R boundary. The NNDWR TCOB Shiprock Office may contract, assign or delegate the work as required.
- d. Notify the SJRFB and SJRDWU of capital improvement projects it is planning or undertaking.

IN WITNESS THEREOF: dully authorized officials have executed this Memorandum of Agreement on the dates affixed by their signature.

NAVAJO NATION:

SAN JUAN RIVER DINEH WATER USERS:



Dr. Joe Shirley, Jr.
President


David Shorthair
President

Date: AUG 10 2010

Date: 06-08-10

CONCURRENCE:


Philbert Johnson, President, San Juan River Farm Board

06.10.10
Date


Raymond Benally, Department Director
Navajo Nation Department of Water Resources

6/11/10
Date