

RESOLUTION OF THE UPPER COLORADO RIVER COMMISSION

Regarding the Availability of Water from Navajo Reservoir for Navajo Nation Uses
within the State of New Mexico

WHEREAS, the State of New Mexico has proposed the Navajo-Gallup Water Supply Project to provide a needed renewable water supply from the San Juan River for municipal and domestic uses for Indian and non-Indian communities located within New Mexico in both the Upper Basin and the Lower Basin; and

WHEREAS, the State of New Mexico and the Navajo Nation on April 19, 2005, executed the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (the "Settlement Agreement"), which is conditioned upon, among other things, the implementation of the Navajo Nation components of the Navajo-Gallup Water Supply Project within New Mexico; and

WHEREAS, the source of water supply for the proposed Navajo-Gallup Water Supply Project would be Navajo Reservoir and the San Juan River in New Mexico; and

WHEREAS, water from Navajo Reservoir and the San Juan River would be delivered to the proposed Navajo-Gallup Water Supply Project to meet the water demands of Navajo Nation communities in New Mexico through a proposed Settlement Contract between the United States, acting through the Secretary of the Interior, and the Navajo Nation (Appendix 4 to the Settlement Agreement); and

WHEREAS, Public Law 87-483 at section 11(a) requires that no new long-term contracts "... shall be entered into for the delivery of water stored in Navajo Reservoir or any other waters of the San Juan River and its tributaries, as aforesaid, until the Secretary has determined by hydrologic investigations that sufficient water to fulfill said contract is reasonably likely to be available for use in the State of New Mexico during the term thereof under the allocations made in articles III and XIV of the Upper Colorado River Basin compact, and has submitted such determination to the Congress of the United States and the Congress has approved such contracts"; and

WHEREAS, pursuant to Public Law 87-483, and in furtherance of the Jicarilla Apache Tribe Water Rights Settlement Act of 1992 and the Navajo Reservoir water supply contract approved by said Act, the Secretary of the Interior on February 2, 1989, approved the report on "Hydrologic Determination, 1988, Water Availability from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico" (the "1988 Hydrologic Determination"); and

WHEREAS, the 1988 Hydrologic Determination evaluated the availability of water from the Navajo Reservoir supply for uses in New Mexico through the 2040 planning horizon; and

WHEREAS, an update and extension to the 1988 Hydrologic Determination is needed to evaluate the availability of water from the Navajo Reservoir supply through a 2060 planning horizon under the allocation of water made to the State of New Mexico by the Upper Colorado River Basin Compact for the purpose of furthering Congressional legislative approval of the Settlement Agreement, the authorization of the proposed Navajo-Gallup Water Supply Project, and the legislative approval of the proposed Settlement Contract for the Navajo Nation's project uses in New Mexico; and

WHEREAS, the proposed Settlement Contract between the United States and the Navajo Nation would provide water supplies for Navajo Nation uses in New Mexico under both the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project which was authorized by Public Law 87-483, and would supersede the existing Navajo Reservoir water supply contract for the Navajo Indian Irrigation Project; and

WHEREAS, the US Bureau of Reclamation has presented to the Upper Colorado River Commission for its consideration a draft hydrologic determination, dated May 2006, that evaluates the availability of water from the Navajo Reservoir supply through 2060 and shows: (1) at least 5.76 million acre-feet of water is reasonably available annually for use by the Upper Basin, exclusive of reservoir evaporation at Lake Powell, Flaming Gorge Reservoir and the Aspinall Unit reservoirs of the Colorado River Storage Project; and (2) sufficient water is reasonably likely to be available from the Navajo Reservoir supply to fulfill the proposed Settlement Contract for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project, in addition to existing Navajo Reservoir water supply contracts for other uses, under the allocations made to New Mexico in Articles III and XIV of the Upper Colorado River Basin Compact; and

WHEREAS, the Settlement Agreement would provide at subparagraph 9.3.1: "The Navajo Nation and the United States agree that the State of New Mexico may administer in priority water rights in the San Juan River Basin in New Mexico, including rights of the Navajo Nation, as may be necessary for New Mexico to comply with its obligations under interstate compacts and other applicable law"; and

WHEREAS, the Upper Colorado River Commission supports water resource development in the Upper Colorado River Basin to enable the Upper Division States to fully develop their compact apportionments of Colorado River water while meeting compact obligations relating to the flow of the Colorado River at Lee Ferry; and

WHEREAS, it is the position of the Upper Colorado River Commission and the Upper Division States that, with the delivery at Lee Ferry of 75 million acre-feet of water in each period of ten consecutive years, the water supply available in the Colorado River

System below Lee Ferry is sufficient to meet the apportionments to the Lower Basin provided for in Articles III (a) and III (b) of the Colorado River Compact; and

WHEREAS, it is the position of the Upper Colorado River Commission and the Upper Division States that the obligation of the Upper Basin under Article III(c) of the Colorado River Compact to deliver water toward the Mexican Treaty obligation does not require the delivery at Lee Ferry of 0.75 million acre-feet of water annually; and

WHEREAS, the Upper Colorado River Commission anticipates that the Upper Division States will take all actions necessary to ensure that all Upper Basin States have access to their respective apportionments as specified in the Upper Colorado River Basin Compact; and

WHEREAS, the Upper Colorado River Commission on June 19, 2003, resolved that: (1) "the States of Colorado, New Mexico, Utah and Wyoming, support and to the extent necessary consent to the diversion of water from the Upper Basin for use in the Lower Basin solely within New Mexico via the proposed Navajo-Gallup Water Supply Project; provided, that any water so diverted by said project to the Lower Basin portion of New Mexico, being a depletion of water at Lee Ferry, shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III (a) of the Upper Colorado River Compact;" and (2) "the Upper Colorado River Commission supports such Congressional action as may be necessary to authorize the Navajo-Gallup Water Supply Project."

NOW, THEREFORE, BE IT RESOLVED by the Upper Colorado River Commission, that the Commission supports Congressional action to: (1) approve the Settlement Agreement; (2) authorize the proposed Navajo-Gallup Water Supply Project; and (3) approve the proposed Settlement Contract for the Navajo Nation's uses in New Mexico from the Navajo Reservoir supply under the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project.

BE IT FURTHER RESOLVED, that while the Upper Colorado River Commission does not endorse all of the study assumptions used by the Bureau of Reclamation in its May 2006 draft hydrologic determination, including an assumption of a 6 percent allowable overall shortage, and specifically disagrees with the modeling assumption of a minimum Upper Basin delivery of 8.25 million acre-feet annually at Lee Ferry, the Commission supports a determination by the Secretary of the Interior that at least 5.76 million acre-feet of water is available annually for use by the Upper Basin, exclusive of reservoir evaporation at Lake Powell, Flaming Gorge Reservoir and the Aspinall Unit reservoirs of the Colorado River Storage Project.

BE IT FURTHER RESOLVED, that the Upper Colorado River Commission supports a determination by the Secretary of the Interior that sufficient water is reasonably likely to be available to fulfill the proposed Settlement Contract for the Navajo Nation's uses in New Mexico from the Navajo Reservoir supply under the Navajo-Gallup Water Supply Project and the Navajo Indian Irrigation Project, in addition

to existing Navajo Reservoir water supply contracts for other uses, under the allocations made to New Mexico in Articles III and XIV of the Upper Colorado River Basin Compact.

BE IT FURTHER RESOLVED, that nothing in this Resolution, or resulting from the adoption of this Resolution, shall limit the right or ability of any Upper Basin State to develop the full apportionment made to it under the Colorado River Compact and the Upper Colorado River Basin Compact.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the Regional Director, Upper Colorado Region, Bureau of Reclamation, Salt Lake City, Utah.

CERTIFICATE

I, Don A. Ostler, Executive Director and Secretary of the Upper Colorado River Commission, do hereby certify that the Upper Colorado River Commission adopted the above Resolution at its regular meeting held in Jackson Hole, Wyoming, on June 5, 2006.

WITNESS my hand this 9th day of June 2006.


DON A. OSTLER
Executive Director and Secretary