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DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

LYNETTE MEYERS, by and through)
her natural mother and general)
guardian Lena Meyers, LENA MEYERS;)
MELVIN HOLGATE, and EUGENE HOLGATE,)
by and through their natural)
father JAMIE R. HOLGATE;)
JAMIE R. HOLGATE; LEONARDO)
BOB MANHEIMER, by and through)
his natural parents,)
LEO MANHEIMER and SARA MANHEIMER;)
LEO MANHEIMER and SARA MANHEIMER,)
LENORA MANHEIMER; ROSITA JOHNSON)
and ROBERT JOHNSON; and THE NAVAJO)
NATION,)
Plaintiffs,)
and,)
THE UNITED STATES OF AMERICA,)
Plaintiff-Intervenor,)
v.)
BOARD OF EDUCATION OF THE SAN)
JUAN SCHOOL DISTRICT, PRESTON)
NIELSON, BILL TODACHENNIE, FRANCIS)
SHORTY, PAUL MANTZ, PETE BLACK,)
Defendants.)

AGREEMENT OF PARTIES

No. 93-C-1080 J

Judge Bruce S. Jenkins

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The parties wish to resolve this litigation by entering into this Agreement and Consent Decree. It is therefore agreed and stipulated to as follows:

1. The parties to this Agreement are: Defendant Board of Education and the Juan School District and its board members (hereafter District); The Utah State Board of Education and the Superintendent of Public Instruction as amicus curiae (hereafter State); Plaintiffs Meyers et al. (hereafter plaintiffs); Plaintiff Navajo Nation (hereafter Nation); and Plaintiff-intervenor United States of America (hereafter United States).

2. This is an action brought pursuant to 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1362. Venue lies in this District pursuant to 28 U.S.C. § 1391.

3. Plaintiffs, the Nation and the United States allege that the District has violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d and its implementing regulations; and Title IV of the 1964 Civil Rights Act, 42 U.S.C. § 2000c-6. The District denies these allegations. There is a real and actual controversy between the parties with respect to plaintiffs' claims.

4. Plaintiffs elect not to proceed with their claim for damages and will provide notice of the non-pursuit of these claims to all potential class members.

5. In its April 7, 1995, Memorandum Opinion and Order (See Meyers, et al. v. Board of Education of the San Juan School District, et al., 905 F.Supp. 1544 (D. Utah 1995)) this Court determined that the District, the State, the United States, and the Nation each has a duty with respect to providing education to the children of the Navajo Mountain community. The nature and scope of these duties were not fully set forth in that Order.

6. The District shall establish and operate a temporary 9-12 secondary education program at Navajo Mountain by the beginning of the 1997-1998 school year. The District shall provide

educational services reasonably comparable to those offered to similar student populations and locations elsewhere in the State. The parties will use their best efforts to assist the District in establishing and operating such a program. The parties acknowledge that the District cannot, without the cooperation, aid, and assistance of all other parties, put a 9-12 program in place. The parties shall establish the temporary high school facility and program in the following manner:

- a. The facility shall be located within the current land withdrawal in which the present Bureau of Indian Affairs Elementary School facility at Navajo Mountain is located. The United States, through the Bureau of Indian Affairs, and the District, shall, by January 15, 1997, enter into an agreement for the use of such land by the District.
- b. The Nation and the United States shall do all in their power to expedite and aid in the securing of any and all permits or clearances necessary to begin construction or placement of temporary facilities, including the placement of a distance learning tower.
- c. The Nation and the District shall negotiate an agreement by January 31, 1997 to provide and pay for access to a water supply, including necessary extension of water lines, for the temporary facility. Thereafter, the District shall pay user fees on the same basis as other customers.
- d. The Nation, the United States, through the Bureau of Indian Affairs, and the District shall negotiate an agreement by January 31, 1997 to provide and pay for access to, and if necessary, expansion of, existing sewer facilities. Thereafter, the District shall pay user fees on the same basis as other customers.
- e. The Nation, in cooperation with the Navajo Tribal Utility Authority (NTUA), and the District shall negotiate an agreement by January 31, 1997 to provide and pay for extension of the existing power lines to the temporary facility. Thereafter, the District shall pay user fees on the same basis as other customers.

f. The State, the District, and the United States, through the Bureau of Indian Affairs, shall negotiate an agreement by April 1, 1997 concerning the transportation of students to the temporary facility, including issues of fuel and liability insurance.

g. The State and the District shall, by April 1, 1997, negotiate for the provision of liability insurance with respect to the operation of the temporary facility. The Bureau of Indian Affairs shall be responsible for liability related to its students, teachers, and guests, and their use of the school facilities.

h. The District and the United States, through the Bureau of Indian Affairs, shall enter into an agreement by January 15, 1997 for the use of the existing cafeteria and gymnasium facilities at the Bureau of Indian Affairs Elementary School at Navajo Mountain. The District shall provide all other temporary facilities.

i. The District and the United States, through the Bureau of Indian Affairs, shall enter into an agreement by January 31, 1997 for access to and use of the existing water filtration system used by the Bureau of Indian Affairs Elementary School at Navajo Mountain. The Bureau of Indian Affairs may charge the District a reasonable fee for its use of the system.

7. The District shall establish and operate on a continuing basis a permanent 9-12 secondary education facility at Navajo Mountain. The District shall provide educational services reasonably comparable to those offered to similar student populations and locations in the State. Such facility shall accommodate, without overcrowding, all Utah resident students in the Navajo Mountain community based on a reasonable projection of student enrollment. The parties recognize the importance of completing the construction work and having the facility available at the earliest possible date. The District, the State, the United States, and the Nation therefore pledge their best efforts to complete the facility in time for use by the beginning of the 1999-2000 school year. In conjunction with the establishment of permanent facilities, all parties agree to consider, negotiate,

and discuss the joint use or operation of programs and services, including, but not limited to, transportation, and facilities if deemed appropriate, as well as the potential joint use of distance learning equipment and other facilities. As circumstances change, the parties shall leave open the possibility and option at a future date of negotiating the expansion of programs or the realigning of responsibilities.

a. For the District, such best efforts shall consist of, but not be limited to, the following:

(1) Conducting a bond election in May, 1997, and from the bond issue committing such funds as are necessary to construct the permanent secondary facility at Navajo Mountain to serve grades 9-12. The District shall have the discretion to determine the terms upon which the bond issues will be presented to the voters, but a primary consideration in the presentation of the bond issue shall be for the construction of the permanent facility at Navajo Mountain. The District and its agents, the State, the Nation, and the plaintiffs commit themselves to using their utmost diligence and good faith in attempting to seek the passage of the bond issue. If the bond election fails, and if the District is unable, within a reasonable time, to secure appropriate financing from other sources to complete the permanent facility in accordance with the above provisions, the parties reserve the right to apply directly to the Court for any relief necessary to provide a permanent facility, notwithstanding any other language in this Agreement.

(2) Negotiating with the United States and the Nation to ensure the provision of water, sewage facilities, and electricity for the temporary and permanent facilities.

(3) Involving the community members of Navajo Mountain in the planning, site design, and curriculum development of the high school.

(4) Cooperating with the State, the United States, through the Bureau of Indian Affairs, the Nation, and the plaintiffs in seeking appropriate funding from Congress and other federal sources, including funding for the exploration and development of water resources at Navajo Mountain.

b. For the United States, acting through the Bureau of Indian Affairs, such best efforts shall consist of, but not be limited to, the following:

(1) Relinquishing a portion of land at Navajo Mountain withdrawn by the Nation for use by the Bureau of Indian Affairs back to the Nation for the purpose of the Nation's leasing such land to the District for the permanent facility.

(2) Reviewing and approving, consistent with federal regulatory leasing provisions at 25 C.F.R. Part 162, the lease between the Nation and the District.

(3) Allowing the District access to and use of the existing water filtration system used by the Bureau of Indian Affairs Elementary School at Navajo Mountain. The Bureau of Indian Affairs may charge the District a reasonable fee for its use of the system.

(4) Cooperating with the State, Nation, District, and plaintiffs in seeking appropriate funding from Congress and other federal sources, including funding for the exploration and development of water resources at Navajo Mountain.

c. For the Nation, such best efforts shall consist of, but not be limited to, the following:

(1) Leasing sufficient land to the District on a long-term basis at a nominal fee.

(2) Assuring a sufficient supply of water for the permanent facility, contingent upon availability of funding as set forth in this Agreement.

(3) Negotiating with the District to provide for access to water, sewage facilities, and electricity, with rate payments by the District to be made on the same basis as other customers.

(4) Cooperating with the State, District, the United States, through the Bureau of Indian Affairs, and plaintiffs in seeking appropriate funding from Congress and other federal sources, including funding for the exploration and development of water resources at Navajo Mountain.

d. For the State, such best efforts shall include, but not be limited to, the following:

(1) Undertaking appropriate action to ensure the expenditure of all funds appropriated by the Utah State legislature for use at the Navajo Mountain facility, including the current appropriation of 2 million dollars.

(2) Ensuring that any type of general review conducted by the State of the District's operations include a review of this Agreement for compliance by the District.

(3) Cooperating with the District, Nation, United States, and plaintiffs in seeking appropriate funding from Congress and other federal sources, including funding for the exploration and development of water resources at Navajo Mountain.

8. The Court shall retain jurisdiction over this action to enforce the terms of this agreement until such time as the parties agree or the Court determines that the parties have completed their obligations under the agreement.

a. If any party, or their successors in interest believes that another party or parties are not complying with any provision of this Agreement, such party shall notify the other party or parties in writing of the alleged violation. The complaining party shall give a reasonable time, not to exceed 120 days, in which to cure or otherwise respond to the alleged violation. If the notified party does not resolve the matter, the complaining party may petition the Court

for enforcement of the Agreement. The Court shall conduct appropriate proceedings to determine whether the notified party has complied with the Agreement; if not, the Court shall grant such relief as is appropriate to enforce the Agreement.

b. The Court shall retain full authority to enforce compliance with the Agreement. Under this authority, however, the Court is not authorized by this Agreement to order any remedial action different from that set forth in this Agreement. The defendants have not admitted liability by entering into the Agreement, and defendants are entitled to due process on the issues of liability and remedy before any obligation not assumed in this Agreement can be imposed on the defendants.

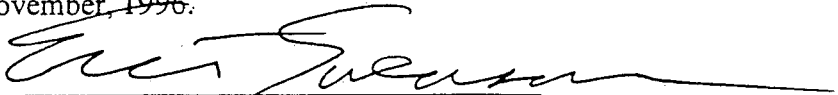
9. The plaintiffs, the Nation, and defendants shall negotiate an agreement concerning costs and attorneys fees. If they are unable to reach an agreement, any party may file and serve an appropriate motion for costs and attorneys fees by July 1, 1997 and the matter shall be submitted to the Court for resolution after appropriate briefing and any further proceedings deemed necessary by the Court.

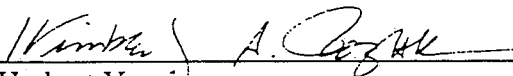
10. The parties agree that in implementing the Agreement they will communicate and cooperate in addressing issues as they arise using the utmost diligence and good faith. They likewise agree to exchange reasonable information for monitoring and compliance.

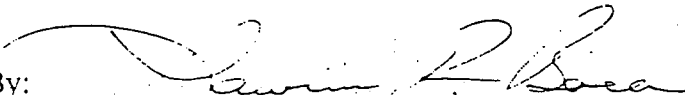
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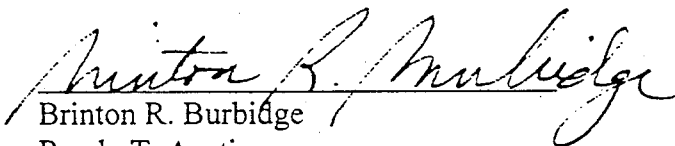
The foregoing is agreed to:

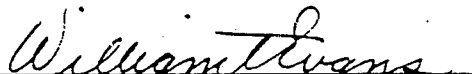
DATED this 22nd day of November, 1996.

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