

**Recommendations for San Juan River Operations and Administration for 2004  
October 21, 2003**

The endorsing parties make the following recommendations for Navajo Dam operations and San Juan River administration in 2004 to the US Bureau of Reclamation and the New Mexico State Engineer for the purpose of establishing a cooperative distribution of water supplies during 2004 among users of water from the San Juan River in New Mexico. The agreement of the endorsing parties to make the recommendations, their commitment to abide by the recommendations if accepted and implemented by Reclamation and the State Engineer, and any results from the implementation of the recommendations shall not be construed to: (1) be a determination or evidence of, or to establish, any party's water rights or consumptive use of water; (2) be a precedent for Navajo Dam operations or water administration in the San Juan River Basin in New Mexico in succeeding years; (3) be an agreement as to the validity or applicability of, or to imply an accepted modification to, the San Juan River Basin Recovery Implementation Program's flow recommendations for endangered fish habitat in the San Juan River or any interpretation thereof; (4) establish any cause and effect relationships between any water uses, including water uses described in section 1 of the recommendations below and water uses not included in section 1, and streamflow impacts, water supplies or shortages; (5) establish any priorities between a given use of water from the San Juan River and other uses of water from either the San Juan River or its tributaries; (6) establish any entitlements to water, including any entitlements of fish to specific instream flows; or (7) alter or amend any pre-existing agreements between parties unless otherwise expressly agreed to by parties to said agreements. The endorsing parties further understand that Reclamation's acceptance of the recommendations may not prevent Reclamation from later implementing in 2004 different dam operating criteria than the criteria presented in the recommendations below if required by the Secretary of the Interior's Record of Decision on the Navajo Dam Operations Environmental Impact Statement currently in preparation.

**1. Water Use Demands**

The water diversion demands for specified projects or uses shown in Table 1 shall be recognized for 2004. The diversion demand amounts listed for the Hammond Irrigation Project, the San Juan Generating Station, the Four Corners Power Plant and the City of Farmington may include amounts to be diverted under contract with the Secretary of the Interior, direct flow rights, and/or subcontracts or agreements with other parties. Also, the diversion amounts listed for the San Juan Generating Station and the Four Corners Power Plant include diversions by BHP Billiton made at the power plants' diversion works for uses at the San Juan/La Plata Mines and Navajo Mines, respectively. The diversion amount for minor Jicarilla Apache Nation subcontracts does not include subcontracts with the Nation for supplemental water to mitigate any shortages in supply to the San Juan Generating Station, the Four Corners Power Plant and the mines.

Table 1. Diversion demand by project or use.

<b>Project</b>	<b>Amount (acre-feet)</b>	<b>Rate (cfs)</b>	<b>Period</b>
Navajo Indian Irrigation Project	204,000	--	3/15 – 11/15
Hammond Irrigation Project	26,700	90	4/01 – 10/31
San Juan Generating Station	24,200	--	1/01 – 12/31
Four Corners Power Plant	31,000	--	1/01 – 12/31
Minor Jicarilla subcontracts	4,670	--	1/01-12/31
City of Farmington	15,000	--	1/01 – 12/31
Citizens Ditch	--	160	4/01 – 10/31
Farmers Mutual Ditch	--	110	4/01 – 10/31
Fruitland Irrigation Project	--	100	4/01 – 10/31
Jewett Valley Ditch	--	32	4/01 – 10/31
Hogback Irrigation Project	--	170	4/01 – 10/31

The diversion demand amounts and rates in Table 1 are negotiated values that take into consideration differing opinions of the parties as to the demands and rights to divert water under existing conditions, facilities, rights, permits, contracts and applicable law; however, the diversion demand amounts and rates shown in Table 1 and recognized for implementation only during 2004 shall not be construed to be an agreement by the endorsing parties on, a determination of, or evidence of, or to establish, the specific and definitive rights of the parties to divert water for any purpose or project during any particular year or at any particular time. Nevertheless, to put aside differences and cooperate in the administration of the San Juan River during 2004 for the overall benefit of the San Juan River Basin in New Mexico, the endorsing parties agree to limit their diversion of water during 2004 from the San Juan River and/or its tributaries for the specified projects or uses to the quantities or the rates, and to the time periods, specified in Table 1. In the event that a water supply shortage is determined to exist on the San Juan River in 2004 using the shortage determination procedure set forth in section 3 below, the endorsing parties agree to further limitations on their diversion of water for the specified projects or uses in accordance with the provisions of sections 3 and 4. If a shortage is deemed to exist when applying these provisions, the San Juan Generating Station and Four Corners Power Plant diversions will be voluntarily reduced by 5% from the amounts shown in Table 1 prior to computing the shortage amount. The Navajo Nation agrees for the purposes of this recommendation to limit the NIIP diversion to the 2003 level shown in Table 1 if a shortage is determined when applying the provisions of Section 3. In the event that there is no shortage, either forecast or actual for any particular forecast period, the NIIP diversion demand may be increased to as much as 215,000 acre-feet as long as such increase does not induce a shortage. This allowed increase is in recognition of the continuing development of NIIP whereby acreage is increased each year as construction progresses. Further, in recognition of the water conservation implemented at NIIP in 2003, 20% of the water saved by NIIP in 2003 (diversion demand of 204,000 acre-feet less actual 2003 diversion) shall be added to the NIIP 2004 diversion allocation if a shortage is determined. In the event of shortage, the

NIIP diversion allocation shall be 204,000 acre-feet less the computed shortage amount plus 20% of the 2003 savings as described above.

The endorsing parties agree during 2004 only to exempt from any use reduction requirement projects or uses in the San Juan River Basin that are not included in the tabulation above and that are not otherwise contrary to adjudicated, permitted or licensed diversion rights; except, that the parties recommend that the Bureau of Reclamation's San Juan-Chama Project diversions be limited in accordance with the provisions of section 3 below.

The Bureau of Reclamation shall approve a subcontract between the Jicarilla Apache Nation and the San Juan Water Commission for delivery of up to 4,000<sup>1</sup> acre-feet of water from the Navajo Reservoir supply during 2004; provided, that the delivery of water under the subcontract shall be subject to sharing of shortages as provided in section 3, that the term of the subcontract shall expire December 31, 2004, and the San Juan Water Commission will coordinate daily operations with Reclamation to accurately determine deliveries made in accordance with the subcontract on behalf of San Juan Water Commission member entities.

Amounts diverted by Farmington that shall not be charged against the diversion demand amount listed for the City of Farmington include amounts: (1) diverted for delivery to local water users associations or to the Navajo Tribal Utility Authority-Shiprock; (2) diverted, if any, under the San Juan Water Commission's subcontract with the Jicarilla Apache Nation and so charged against the minor Jicarilla subcontracts; or (3) diverted for non-consumptive use at the Farmington hydro-electric power plant. Also, the amount of diversion by the Hammond Irrigation Project that is chargeable or accountable against its diversion demand amount shall be computed for 2004 as the measured diversion amount by the project less the measured returns to the San Juan River on the Armenta wasteway. Diversions by the Citizens Ditch for delivery of water to San Juan Water Commission member entities pursuant to the Commission's subcontract with the Jicarilla Apache Nation shall be charged against the minor Jicarilla subcontract diversion amount and shall not be charged against the diversion rate limitation for the Citizens Ditch as identified herein. Diversions by ditches for delivery to municipalities, industrial users, domestic water user associations and stock uses may continue outside the specified irrigation season.

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<sup>1</sup> This volume is included in the 4,670 acre-feet of Jicarilla minor contracts listed previously

## **2. Navajo Dam Release Demands**

The Bureau of Reclamation shall determine the quantity of water anticipated to be needed to be released from Navajo Dam during each month of 2004 in consideration of: (1) the water diversion demands specified in section 1 above and the diversion demands for water uses not included in the demands tabulated in section 1 that are to be met from diversions from Navajo Reservoir or the San Juan River below Navajo Dam; and (2) a target minimum base flow of 500 cfs in the San Juan River below its confluence with the Animas River downstream to Lake Powell<sup>2</sup>. In making said determination, Reclamation shall: (1) distribute the annual diversion demand amounts for the Hammond Irrigation Project, the San Juan Generating Station, the Four Corners Power Plant and the minor Jicarilla Apache Nation subcontracts on a monthly basis using monthly distributions specified by the contractors; and (2) assume that tributary inflow to the San Juan River below Navajo Dam and river losses occur in such amounts daily as reflected by the streamflows that occurred in the San Juan River during 2002. Reclamation shall utilize the following computational procedure in making said determination:

- (a) Compute the daily flows in the San Juan River below its confluence with the Animas River downstream to Lake Powell that occurred during 2002 as the minimum of: (1) the average of the flows in the San Juan River measured at the Shiprock, Four Corners and Bluff gages; and (2) the average of the flows in the river measured at the Farmington, Shiprock and Four Corners gages. If a daily gage record is missing, use the remaining gages in the set. Also, add 20 cfs to the Shiprock gage flows for the period April 1 through October 31 to account for anticipated changes in 2004, as compared to 2002, in the return flows from the Hogback Irrigation Project that reenter the river below the gage. The resultant daily flows shall be assumed to approximate the flow through the reach of endangered fish critical habitat under the combination of minimum probable flow conditions on the Animas River and other tributaries and 2002 San Juan River operations.
- (b) Calculate the daily differences between the approximated daily flows through the reach of critical habitat and *the target minimum base flow* for the San Juan River below its confluence with the Animas River downstream to Lake Powell. Adjust the daily Navajo Dam release rates made in 2002 for the calculated differences to indicate the daily releases that might be made in 2004 under minimum probable runoff conditions, based on a seven-day running average. Also, adjust the daily dam release rates for any significant differences in the monthly diversion demand amounts for the Hammond Irrigation Project, the San Juan Generating Station, the Four Corners Power

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<sup>2</sup> Between the November 1, 2003, and March 31, 2004, there may be a total of 8 weeks with flows below 500 cfs but not lower than 400 cfs. If the forecast or actual Navajo Reservoir content falls below 1,000,000 acre-feet on July 31, 2004, the summer (April 1 through October 31) target flow shall be 400 cfs and shortage sharing shall be calculated from this base. Under shortage sharing the flows shall not drop below 350 cfs for more than 50 days of which no more than 40 days may be below 300 cfs, with a minimum flow of 250 cfs.

Plant and the minor Jicarilla Apache Nation subcontracts in 2004 as compared to 2002.

- (c) Adjust the computed daily Navajo Dam release rates for maximum dam releases during seven-day periods in consideration of real-time dam operation practices. Also, adjust dam release rates as necessary or possible to maintain a minimum release of 250 cfs during 2004.

The determination of Navajo Dam release demands shall be updated if a change in the forecasted runoff or actual runoff for the Animas River suggests that tributary inflow to the San Juan River will be significantly different than the tributary inflow that occurred during 2002. Also, Reclamation may make adjustments to the computational procedure as necessary to incorporate the Record of Decision on the Navajo Dam Operations Environmental Impact Statement.

### **3. Shortage Determination and Sharing**

The Bureau of Reclamation shall make calculations of any water supply shortage on the San Juan River for 2004 using operations studies for Navajo Reservoir that evaluate monthly dam and reservoir operations through calendar year 2004. The operations studies shall consider: (1) the amount of water physically stored in Navajo Reservoir above elevation 5990 feet; (2) monthly evaporation from Navajo Reservoir to be estimated based on actual and projected storage levels and Navajo Dam evaporation rates; (3) anticipated monthly reservoir inflows estimated by Reclamation; (4) anticipated monthly Navajo Dam releases to meet all demands on the San Juan River below the dam as determined pursuant to section 2 above; and (5) anticipated monthly diversions to the Navajo Indian Irrigation Project. The anticipated monthly reservoir inflows shall be estimated using the National Weather Service's forecasts for minimum probable unregulated inflows to Navajo Reservoir, then adjusted by Reclamation for anticipated operations of Vallecito Dam and the San Juan-Chama Project under minimum probable runoff conditions. For periods for which reservoir inflow forecasts are not available, the anticipated monthly inflows shall be estimated as the 90-percent exceedence inflow to the reservoir as determined from the hydrologic record.

If the operational studies indicate that the reservoir water surface level would fall below elevation 5990 feet at any time during 2004 should the diversion demands at and below Navajo Dam and Reservoir be fully satisfied, then Reclamation shall calculate the amount of shortage to the diversion demands that must occur to prevent the projected water surface level in the reservoir from falling below elevation 5990 feet. Reclamation shall use iterative procedures to determine the percentage shortage that if applied uniformly to the following demands on an annual basis would result in reductions in water uses on the San Juan River in a total amount equal to that of the calculated amount of shortage: (1) the annual 2004 diversion demand amounts for the Navajo Indian Irrigation Project, the San Juan Generating Station, the Four Corners Power Plant and the

minor Jicarilla Apache Nation subcontracts as listed in section 1 above; (2) an annual irrigation depletion demand of 37,000 acre-feet in the aggregate for the Citizens Ditch, the Hammond Irrigation Project, the Farmers Mutual Ditch, the Fruitland Irrigation Project, the Jewett Valley Ditch and the Hogback Irrigation Project; and (3) the target minimum base flow in the San Juan River below its confluence with the Animas River for the period March 1 through October 31, 2004. Reclamation shall provide the results of its reservoir operations studies and calculations of any shortage to the State Engineer and the parties for their review.

The endorsing parties agree that the annual diversion amount limitations for 2004 for the Navajo Indian Irrigation Project, the San Juan Generating Station, the Four Corners Power Plant, the minor Jicarilla Apache Nation subcontracts and the City of Farmington shall be reduced from the diversion amounts identified in section 1 above by the same percentage shortage, if any, as calculated by the Bureau of Reclamation; except, that the annual diversion amount limitation for the City of Farmington shall not be reduced below 11,500 acre-feet. The water users will determine the time schedules for bearing their share of any shortage during 2004. In the event of shortage, the parties also request that Reclamation limit its annual San Juan-Chama Project diversions for 2004 to an amount equal to 107,500 acre-feet less the percentage shortage calculated by Reclamation. If the amount of water already diverted by any user during 2004 exceeds its resultant diversion limitation, then the user shall cease diverting water for the remainder of 2004; alternatively, the user may continue diverting water if it transfers water that may become available within other users' diversion amount limitations or if it acquires and transfers water under valid water rights that currently are in use.

The endorsing parties further agree that the diversions for the Citizens Ditch, the Hammond Irrigation Project, the Farmers Mutual Ditch, the Fruitland Irrigation Project, the Jewett Valley Ditch and the Hogback Irrigation Project shall be reduced to effectively short the annual irrigation depletion demand under each ditch or project by the same percentage shortage, if any, as calculated by the Bureau of Reclamation. In the event of shortage, each ditch or project shall shorten its irrigation season in order to meet its commitment to reduce irrigation depletions during 2004. The end date for the period during which the ditch or project may divert water for irrigation uses during 2004 shall be moved forward in time from October 31 until the percentage reduction in irrigation depletion matches the same percentage shortage as calculated by Reclamation. To determine a revised end date to the irrigation season, the following percentages indicating the distribution of the annual irrigation depletion by month shall be used: 5 percent for October; 12 percent for September; 19 percent for August; 22 percent for July; 19 percent for June; 13 percent for May; and 10 percent for April. The revised end date shall be adjusted further to provide credit for any irrigation depletion demand forgone as a result of delaying the start date of the irrigation season past April 1 or as a result of ceasing diversions during the irrigation season. In order for a ditch to receive credit for irrigation depletion demand foregone as a result of ceasing diversions for a period of time after starting irrigation deliveries but prior to ending irrigation deliveries, the ditch must: (1) provide Reclamation and the State Engineer with one-week advance notice of the number of days and the dates during which diversions will cease; and (2) cease all diversions for

agricultural purposes during the dates specified, for a period of not less than seven consecutive days. Irrigation depletion reductions for partial months shall be estimated assuming a constant daily irrigation depletion rate within each month. Diversions by ditches for delivery to municipalities, industrial users, domestic water user associations and stock uses may continue outside the irrigation season whether the season is shorted or not.

The endorsing parties recommend that the Bureau of Reclamation not make any spring peak flow release from Navajo Dam for endangered fish habitat purposes during 2004 unless the inflow and reservoir storage conditions that are described in the San Juan River Basin Recovery Implementation Program's flow recommendations for the San Juan River as being necessary for such a release occur. Reclamation, in consultation with the U.S. Fish & Wildlife Service, shall operate the dam during 2004 to maintain a target minimum base flow rate of 500 cfs in the San Juan River from its confluence with the Animas River downstream to Lake Powell unless the forecast July 31, 2004, Navajo reservoir content is below 1,000,000 acre-feet. In that event, the base flow rate through October 2004 shall be 400 cfs; provided, that Reclamation's operations studies for Navajo Reservoir do not result in the calculation of a water supply shortage. If Reclamation calculates a shortage in accordance with the preceding provisions, then the target minimum base flow demand amount for the period April 1 through October 31, 2004, shall be reduced by the same percentage as the percentage shortage calculated by Reclamation; provided, that the target minimum base flow rate shall not be less than 350 cfs for more than 50 days of which no more than 40 days may be below 300 cfs, with a minimum flow of 250 cfs. The base flow in the San Juan River during 2004 shall be measured as the minimum of: (1) the average of the flows in the river at the Shiprock, Four Corners and Bluff gages; and (2) the average of the flows in the river at the Farmington, Shiprock and Four Corners gages. It is recognized that the actual base flow at times may not meet the target minimum base flow for short periods of time (for example, one or more days) due to hydrologic uncertainty and operational limitations; but, Reclamation shall operate Navajo Dam to maintain the target minimum base flow on a weekly-average basis.

The endorsing parties also agree that during November and December 2004, the San Juan Generating Station, the Four Corners Power Plant, the City of Farmington and the minor Jicarilla Apache Nation subcontractors may divert water from the direct flow of the San Juan River system in excess of any shorted diversion amount limitation if: (1) the concurrent release from Navajo Dam is being maintained at the minimum release rate consistent with the then-current Navajo Dam operating criteria; and (2) the target minimum base flow in the San Juan River from its confluence with the Animas River downstream to Lake Powell is being met and will continue to be met without increasing Navajo Dam releases if the additional diversions are made.

The occurrence and amount of any shortage shall be determined or revised twice a month as runoff forecasts become available from the Colorado Basin River Forecast Center and in consideration also of actual runoff and water supply conditions. The computational procedure set forth above may be adjusted for changed water supply conditions upon

agreement of the signatory parties. Reclamation's initial calculation of any shortage shall be made on or prior to March 15 and after the March 1 snowmelt runoff forecasts for the San Juan River Basin become available; and a percentage shortage will be applied if the State Engineer concurs in Reclamation's calculations of any shortage. The last determination of any shortage shall be made on or before October 15 based on the October 1 reservoir content and streamflow forecast for the remainder of the year.

#### **4. Agreements to Transfer or Broker Water between Parties**

The Bureau of Reclamation shall approve subcontracts for delivery of water from the Navajo Reservoir supply entered between the Jicarilla Apache Nation and the Public Service Company of New Mexico, the Arizona Public Service Company and BHP Billiton; provided, that the subcontracts are limited to the delivery in the aggregate of 16,000 acre-feet of water during 2004 to the San Juan Generating Station, the Four Corners Power Plant and the related mines (collectively, the power plants), that actual delivery of water under the subcontracts shall be made only to provide supplemental water to the power plants in the event of shortage determined pursuant to section 3. In the event of shortage, the power plants under their subcontracts may divert water in excess of their resultant diversion limitations computed pursuant to section 3 and up to the diversion demand amounts for the power plants recognized in section 1; provided, that the delivery of supplemental water under the subcontracts does not exceed an aggregate of 16,000 acre-feet. The reduction in water supply caused by delivery of supplemental water to the power plants under the subcontracts shall be offset by applying an additional increment of percentage shortage to the shorted water diversion demands for the irrigation uses specified in section 1, to wit: the diversion amount limitation for the Navajo Indian Irrigation Project will be further reduced by the added increment of shortage, and the irrigation seasons for the Hammond Irrigation Project, the Citizens Ditch, the Farmers Mutual Ditch, the Fruitland Irrigation Project, the Jewett Valley Ditch and the Hogback Irrigation Project will be further reduced by the added increment of shortage.

The Public Service Company of New Mexico, the Arizona Public Service Company and BHP Billiton agree to provide funds to mitigate the effects to the water supply of any added increment of shortage that is caused by actual diversion of water under the subcontracts, with the proviso that actual shortages and deliveries of water may vary from projected shortages and deliveries. To this end, the Public Service Company of New Mexico, the Arizona Public Service Company and BHP Billiton shall provide mitigation funds of \$240,000 plus up to an additional \$880,000 based on the amounts of the supplemental water over an initial ten percent (10%) actually used by the power plants under the subcontracts, and will distribute said funds directly to representative bodies for the specified irrigation uses or projects in the following percentages: 4.4 percent to the Hammond Conservancy District, 3.6 percent to the Bloomfield Irrigation District, 3.5 percent to the Farmers Mutual Ditch, 1.3 percent to the Jewett Valley Ditch, and 87.2 percent to the Navajo Nation. The Navajo Nation may distribute its share of mitigation funds to the Navajo Agricultural Products Industry and the San Juan River Dineh Water



Users, Inc. as it deems appropriate. Any required mitigation funds shall be provided to the representative bodies no later than January 30, 2005, and the representative bodies for the specified irrigation uses or projects may utilize or dispose of said funds in a manner or manners of their choosing to the benefit of the water users under the projects. In no event shall the provisions of this section be construed to establish any requirement on behalf of the Public Service Company of New Mexico, the Arizona Public Service Company, BHP Billiton, the Jicarilla Apache Nation, the Bureau of Reclamation or any other party to mitigate any impacts to water supply on the San Juan River caused by the power plants taking delivery of water under the subcontracts, or to establish any precedent for water use arrangements between them or San Juan River operations and administration in 2004 or succeeding years.

Additional agreements to transfer or broker water between endorsing parties within the water allocations made pursuant to the recommendations provided herein may be negotiated.

## **5. Dispute Resolution**

The endorsing parties agree to cooperate fully in the implementation of the above recommendations and to abide by the diversion limitations for 2004 provided herein to the extent of their authority and ability. In the event that a dispute should arise regarding the implementation of the recommendations or the performance of an endorsing party under the recommendations, the endorsing parties commit to resolve such dispute in a cooperative, timely and effective manner. If a dispute involves only endorsing parties and cannot be resolved among themselves, the Bureau of Reclamation and the New Mexico State Engineer may be requested to hear and facilitate resolution of the dispute. The endorsing parties further request that, in order to result in an orderly distribution of water supplies on the San Juan River during 2004 in accordance with the recommendations contained herein, Reclamation and the State Engineer commit to: (1) assist in the measurement, monitoring and administration of streamflows and diversions on the San Juan River and its tributaries, in cooperation also with the Bureau of Indian Affairs; (2) work with the endorsing parties in a coordinated manner on water management and administration issues that may arise during 2004 as a result of implementing the recommendations; (3) assist as may be requested, and to the extent of their authority and ability, in the implementation of any feasible water transfer agreements that may be negotiated between the endorsing parties for 2004; and (4) resolve any disputes in a timely and effective manner, including any disputes between endorsing parties and Reclamation or the State Engineer. The endorsement of the recommendations provided herein by any and all parties shall not be construed to: (1) waive the sovereign immunity of any Indian tribe; or (2) constitute a consent to tribal jurisdiction by any party.

## **6. Cooperative Activities**

The parties request the assistance and cooperation of the Bureau of Reclamation to improve their ability to manage diversions as flow conditions change in the San Juan River. Specifically, the Bureau of Reclamation should: (1) establish and maintain a direct contact list for operations representatives for each water use or project listed in section 1; and (2) notify in a timely manner each contact representative directly as to planned or actual changes to the release rate from Navajo Dam and other information that may be pertinent to improving coordination between Bureau of Reclamation operations and water user operations. Similarly, the endorsing parties shall provide the Bureau of Reclamation with any information on their planned or actual water operations that might create opportunities for reducing Navajo Dam releases or otherwise improving water operations to help conserve water.

Further, the parties agree to provide to the Bureau of Reclamation and the State Engineer measurements of actual diversions bi-weekly, unless such information is available through an alternate source. Reclamation is requested to submit a report of all water diversions subject to this agreement to all signatories monthly unless such information is available through publicly accessible means.

## **7. Term**

The endorsing parties agree to present the recommendations provided herein to the Bureau of Reclamation and the New Mexico State Engineer as their recommendations, collectively and individually, regarding procedures for operating Navajo Dam and administering diversions in the San Juan River Basin in New Mexico during calendar year 2004. The recommendations shall be effective upon written notice to the endorsing parties that the Bureau of Reclamation and the State Engineer accept and adopt the recommendations for their implementation; provided, that all endorsing parties identified in section 9 below have endorsed the recommendations by providing original signed copies of such endorsement to Reclamation and the State Engineer. The recommendations shall be void and of no effect unless endorsed by all of the parties identified in section 9 below and accepted by Reclamation and the State Engineer. The recommendations are valid for calendar year 2004 only and shall terminate on January 1, 2005, unless terminated earlier or extended by agreement of the endorsing parties.

## **8. Waiver of Liability**

No party endorsing the recommendations shall hold another endorsing party responsible or liable for any damages or claims that may occur or arise as a result of implementing the recommendations presented herein, including as a result of analyses, decisions or operations made under the recommendations; provided, that the other endorsing party fulfills its commitments and obligations as expressed herein. In the event that an

endorsing party does not fulfill its commitments and obligations as expressed herein to the detriment of other endorsing parties and the matter cannot be resolved through dispute resolution as provided in section 5 above, the endorsing parties reserve the right to seek appropriate remedies, if any, under applicable law in state or federal court. An endorsing party's remedies shall not be limited to the enforcement of any commitment or obligation as expressed in the recommendations provided herein and may include remedies that would be available to any party that has not endorsed the recommendations. This provision shall not be construed to: (1) waive the sovereign immunity of any Indian tribe; or (2) constitute a consent to tribal jurisdiction by any party. The endorsing parties waive no rights with regard to non-endorsing water users in 2004 or thereafter.

## **9. Endorsing Parties**

The following entities are endorsing parties to the recommendations herein:

- The Navajo Nation
- The Jicarilla Apache Nation
- The City of Farmington
- Public Service Company of New Mexico
- Arizona Public Service Company
- BHP Billiton
- Hammond Conservancy District
- Bloomfield Irrigation District
- Farmers Mutual Ditch
- Jewett Valley Ditch