

IGRMY-92-03

**RESOLUTION OF THE  
INTERGOVERNMENTAL RELATIONS COMMITTEE  
OF THE NAVAJO NATION COUNCIL**

Endorsing the Principles For Implementation of the Recommendations  
For the San Juan River Operations and Administration For 2003

**WHEREAS:**

1. By Resolution IGRAP-74-03, attached hereto as "Exhibit A", the Intergovernmental Relations Committee endorsed the Recommendations, subject to the caveat that the reference related to making additional water available to other entities "from within the Navajo Indian Irrigation Projects' diversion amounts" be deleted from the Recommendations, and subject to the additional caveat that the other parties to the Recommendations "reaffirm their commitment to the recommendations...and that in the event compensation is made available, the traditional Navajo farmers are to be included."
2. The Recommendations protect the water supply for the Navajo Irrigation Project (NIIP) by: (a) utilizing the minimum probable water supply as the basis for shortage determinations instead of the most probable water supply criteria currently utilized by the Bureau of Reclamation; (b) prohibiting depletions during the irrigation season that would cause the active storage of Navajo Reservoir to fall below the minimum level that water can be delivered to NIIP; and (3) reducing the level of diversions by the major water users on the San Juan River in the event that the minimum probable water supply is not projected to provide 204,000 acre-feet of water for NIIP, the projected diversion for NIIP in 2003; and
3. The Recommendations benefit the Navajo farmers on the San Juan River by: (a) insuring that water is available from Navajo Reservoir for use by the Navajo Farmers, and other run-of-the-river diverters, even if inflows into the reservoir are less than the water diverted and (b) by providing a limit to the amount of water that can be diverted upstream of the Navajo Farmers by the non-Indian water users in the event of shortage; and
4. The Bureau of Reclamation currently estimates that there is a twenty percent (20%) chance of some shortage to water supplies from Navajo Reservoir in 2003 utilizing the most probable water supply data; in other words, there is an eighty percent (80%) chance that no shortage of any amount will occur; and
5. However, if the Recommendations are implemented, there is a greater risk that Reclamation will declare a shortage early in the irrigation season because the Recommendations are based on the minimum probable water supply, a much more conservative standard, which increases the risk that the major water users will not be able to make full diversions in 2003; and

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6. If the Recommendations are adopted and a shortage is declared, all of the major water users must proportionately reduce their diversions; and

7. The agricultural water users have the flexibility to reduce their diversions by a variety of measures, including shortening the irrigation season by not taking water every day; however, the two power plants, the San Juan Generating State and the Four Corners Powerplant, do not have as much flexibility to significantly reduce their water uses; and

8. The companies operating the powerplants, the Public Service Company of New Mexico (PNM) and the Arizona Public Service Company (APS) seek a more assured water supply to offset the risk that a shortage will be declared during the irrigation season if the Recommendations are adopted; and

9. PNM, APS and BHP, the fuel supplier for the powerplants (collectively, "the Companies") have entered into subcontract for up to 25,000 acre-feet of delivery of water from the Jicarilla Apache Nation, which has authority, by virtue of its water rights settlement, to subcontract up to 33,500 acre-feet of diversion from Navajo Reservoir; and

10. The Companies and the other major water users, assisted by the Bureau of Reclamation and the New Mexico Interstate Stream Commission, have developed proposed Principles for Implementation of the Recommendations, April 30, 2003 (Principles), attached hereto as "Exhibit B", in an effort to provide a mechanism whereby the Companies can support the Recommendations endorsed by the Intergovernmental Relations Committee of the Navajo Nation Council; and

11. The Principles include the following criteria:

- a. The Companies will reduce their diversion levels, described in section 1 of the Recommendations, by five percent (5%) in 2003.
- b. The Companies will limit their diversion under the subcontracts with the Jicarilla Apache Nation to 16,000 acre-feet of water, allowing the Companies to make up water otherwise unavailable by operation of the Recommendations.
- c. Because the subcontracts could reduce the amount of water available to the other water users in the event that a shortage is declared, the Companies will contribute to funds to mitigate the impacts to the other water users attributable to the subcontracts.

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- d. The Companies will contribute \$120,000 to the mitigation fund when the Principles are adopted and up to an additional \$1,000,000 if the make up water is actually taken by the Companies after the first ten percent (10%) of diversions under the subcontracts.
- e. The mitigation fund will be disbursed to the agricultural water users in proportion to the diversion requirements described in section 1 of the Recommendations.

12. Under the proposed Principles, the Dine Water Users Association would receive 7.9% of the mitigation fund and the Navajo Agricultural Products Industry would receive 79.3% of the mitigation fund; however, the Resources Committee of the Navajo Nation Council recommends that the mitigation fund be modified to provide for a greater up-front payment as described below; and

13. The proposed Principles, if modified as described below, are beneficial to the water users of the Navajo Nation by providing a source of revenue even if no shortage is declared and provide mitigation in the event that a shortage is declared and water is taken by the Companies through the subcontracts with the Jicarilla Apache Nation; and

14. The proposed subcontracts between the Companies and the Jicarilla Apache Nation would decrease the amount of water available to all of the major water users in the event that a shortage is declared; however the subcontracts are also beneficial to the Navajo Nation by insuring that water is made available to the powerplants, which employ Navajo workers and utilize Navajo coal that provides royalty income to the Navajo Nation; and

15. The Resources Committee determined that an appropriate balance can be struck between the various impacts attributable to the proposed Principles, by modifying several provisions as follows:

- a. Paragraph 7 of the Principles should be amended so that the up-front payment to the mitigation fund is increased to \$240,000, which will be paid out in proportional shares regardless of whether the companies use water from the Jicarilla subcontracts.
- b. Paragraph 8 of the Principles should be amended so that the additional payment to the mitigation fund is reduced to \$880,000, which will be paid out in proportional shares for water from the Jicarilla subcontracts actually used by the companies over the ten percent (10%) paid for up front.

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- c. Paragraph 3 of the Principles should be amended to clarify that all of the signatory parties to the Recommendations support the proposed subcontract between the Jicarilla Apache Nation and PNM/APS/BHP.
- d. Monies to be paid to the entities of the Navajo Nation pursuant to paragraphs 7 and 8 of the Principles of Agreement shall not be distributed to those entities without an agreement to be negotiated between the NAPI and the Diné Water Users Association as to the distribution of those funds. Upon such agreement, funds made available to the Diné Water Users Association shall be distributed in order to benefit the Fruitland, Gadii' áhi and Hogback Irrigation projects.

16. The proposed Principles are beneficial to the water users of the Navajo Nation by providing a mechanism to implement the Recommendations which are beneficial to the Navajo Indian Irrigation Project and the Navajo farmers for reasons described in paragraphs 2 and 3 above; and

17. Implementation of the Recommendations is beneficial to the major water users in the San Juan River Basin by providing a mechanism for the cooperative sharing of the limited water resources in the basin in 2003; and

18. The success of any proposed water rights settlement for the Navajo Nation in the San Juan River Basin will require the political support of the major water users in the basin; therefore, the implementation of the Recommendation through the endorsement of the proposed Principles is consistent with the efforts of the Navajo Nation to settle its water rights in the basin; and

19. By Resolution RCMY-55-03, attached hereto as "Exhibit C", the Resources Committee determined that the proposed Principles for Implementation of the Recommendations are beneficial to the water resources of the Navajo Nation and consistent with "insuring the optimum utilization of the resources of the Navajo Nation and People"; and

20. The Intergovernmental Relations Committee concurs with the findings of the Resources Committee as expressed in RCMY-55-03.

**NOW THEREFORE BE IT RESOLVED THAT:**

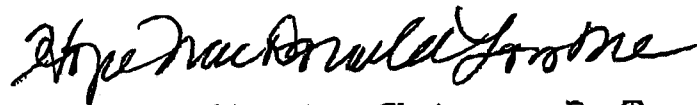
1. The Intergovernmental Relations Committee of the Navajo Nation Council hereby endorses the Principles for Implementation of the Recommendations for San Juan River Operation and Administration for 2003, attached hereto as "Exhibit B", subject to the modifications described in paragraph 15 above.

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2. The Intergovernmental Relations Committee of the Navajo Nation Council further directs the Navajo Nation Department of Justice and the Division of Natural Resources to take whatever steps are necessary to ensure that Principles for Implementation of the Recommendations for San Juan River Operation and Administration for 2003 are modified consistent with the terms of this resolution.

**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 at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 9 in favor, 0 opposed, and 0 abstained, this 19th day of May, 2003.



Hope MacDonald-Lonetree, Chairperson Pro Tem  
Intergovernmental Relations Committee

Motion: Larry Anderson, Sr.  
Second: Duane Tsinigine



IGRAP-74-03

**RESOLUTION OF THE  
INTERGOVERNMENTAL RELATIONS COMMITTEE  
OF THE NAVAJO NATION COUNCIL**

**Endorsing the Recommendations For the San Juan River Operations and  
Administration For 2003**

**WHEREAS:**

1. Pursuant to 2 N.N.C §824 (b)(6), the Intergovernmental Relations Committee of the Navajo Nation Council is empowered to authorize, review, approve and accept agreements, including contracts and grants, between the Navajo Nation and any federal, state, or regional authority upon the recommendation of the standing committee which has oversight of the division, department or program which has applied for the agreement; and
2. Pursuant to 2 N.N.C. §695 (B)(14), the Resources Committee of the Navajo Nation Council is the legislative oversight authority for the Division of Natural Resources, including the Department of Water Resources, which has worked with the major water users in the San Juan River Basin to develop the proposed Recommendations for the San Juan River Operations and Administration for 2003, attached hereto as Exhibit "A"; and
3. The Navajo Nation Council has declared, pursuant to Section 101 of the Navajo Nation Water Code, 22 N.N.C. §1301 (7), that the water resources of the Navajo Nation are essential to provide a permanent homeland for the Navajo people; and protection of such water resources is essential in order to protect the health, the welfare and economic security of the citizens of the Navajo Nation; and
4. Congress approved the Navajo Indian Irrigation Project Act of June 13, 1962, Public Law 87-483, which authorized the construction of the Navajo Indian Irrigation Project; and
5. Pursuant to Section 11 of Public Law 87-483, contracts for water from Navajo Reservoir include provisions that require the sharing of shortages during water short years; and
6. On April 10, 1976, G.G. Stamm, Commissioner, Bureau of Reclamation and Peter MacDonald, Chairman, Navajo Tribal Council entered into the Agreement Between the United States and the Navajo Tribe of Indians for Delivery of Water from Navajo Reservoir, Contract Number 14-06-W-269 for the delivery of water for the Navajo Indian Irrigation Project; and

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7. Article III of that Contract requires that whenever the Secretary of the Interior anticipates a shortage of the available water in storage at Navajo Reservoir, the contractors must share in the available water in proportion to the other contractors based on the "normal division requirement" of each contractor; and

8. Due to extreme drought conditions during the 2002 irrigation season, the President of the Navajo Nation sent a letter dated September 5, 2002 (attached within Exhibit "B") to the Regional Director, Upper Colorado Region, Bureau of Reclamation requesting that a shortage condition be declared at Navajo Reservoir and that Reclamation should implement four (4) steps to reduce the risk of shortage at Navajo Reservoir:

- a. Work with the San Juan River recovery Implementation Program and other parties to reduce the target flows at Bluff necessary to protect endangered fish to 350 cubic feet per second through the Winter of 2002 and to forego the Spring 2003 high flow releases,
- b. Modify the stipulation of October 29, 1996 in San Juan Fly Fishing Federation, et al. v. United States, et al., CIV 956-1476 JP U.S. Dist. Ct., New Mexico that requires Reclamation to make minimum releases of 500 cfs from Navajo Dam,
- c. Work with the New Mexico State engineer to ensure that releases from Navajo Reservoir storage made for the protection of the endangered fish are not utilized by water users that do not have a right to water stored behind the reservoir, and
- d. Establish shortage sharing criteria for the Navajo Reservoir contractors that provides protection for the Navajo Indian Irrigation Project; and

9. The Secretary of the Interior declined to declare a shortage; however, the Navajo Nation has taken the following action to ensure that the four (4) steps to reduce the risk of shortage for the Navajo Indian Irrigation Project are implemented:

- a. At the September 25, 2002 meeting of the Coordination Committee for the San Juan River Recovery Implementation Program, the Navajo Nation obtained the consent of the Program to reduce the Winter flow releases from a minimum of 500 to 350 cubic feet per second,

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- b. **At the urging of the Navajo Nation, in October 2002, the Bureau of Reclamation obtained the consent of the fly-fishing groups to reduce the minimum level of releases from Navajo reservoir required by the stipulation to 350 cubic feet per second thus reducing reservoir releases prior to the 2003 irrigation season by more than 50,000 acre-feet,**
  - c. **At the urging of the Navajo Nation, the State Engineer began to install flumes and other water metering devices on the major diversions from the San Juan River in New Mexico; however, the State engineer is currently ill-equipped to administer diversions from the San Juan River during periods of shortage because: (a) not all of the diversions from the river have measuring devices to precisely determine if appropriators are exceeding their water rights, and (b) the water rights of all of the parties in the San Juan River basin have not been fully and finally adjudicated,**
  - d. **The Navajo Nation took the lead in working with the major water users on the San Juan River, the New Mexico Interstate Stream Commission, and the Bureau of Reclamation to develop a shortage sharing criteria for the Navajo Reservoir contractors that provides protection for the Navajo Indian Irrigation project; and**
10. **The proposed Recommendations for San Juan River Operations and Administration for 2003 (Shortage Recommendations, attached as Exhibit "A") were developed with input from 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, Farmer's Mutual Ditch, Jewett Valley Ditch, the New Mexico Interstate Stream commission and the Bureau of Reclamation; and**
11. **The proposed Shortage Recommendations establish a cooperative approach to the distribution of water supplies among the major users of water from the San Juan river in New Mexico, only for 2003, in order to avoid counterproductive litigation and chaos among the water users if shortages occur; and**
12. **The Navajo Nation may be seeking the support of the major water users in the near future for a San Juan River water rights settlement; and**
13. **The proposed Shortage Recommendations include a shortage criteria that are beneficial to NIIP because:**



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- a. **It utilizes the Minimum Probably Water Supply as a basis for shortage determination by the Secretary, a much more conservative standard for determining conditions that could trigger a shortage, than the Most Probably Water Supply which is ordinarily used by the Bureau of Reclamation,**
- b. **It designates the 5,990 foot elevation at Navajo Reservoir as the threshold for calculating the active storage in Navajo Reservoir, and prohibits any depletions that would cause the level of the reservoir from falling below the 5,990 foot mark during the irrigation season, and**
- c. **The major diverters would voluntarily reduce their diversions providing additional protection for NIIP's water supply without litigation; and**

**14. The Shortage Recommendations provide an appropriate mechanism for all water users with Secretarial contracts for Navajo Reservoir storage water, including NIIP, to share water as required by federal law; and**

**15. The Shortage Recommendations are beneficial to NIIP because it provides a mechanism to administer the flows in the San Juan River, which was a required component of NIIP's successful 1999 Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service; and**

**16. The Shortage Recommendations are beneficial to Navajo farmers at the Hogback, Cudeii and Fruitland Irrigation Projects because it provides for the limited use of Navajo Reservoir storage water for use by the direct flow diverters, and the Shortage Recommendations create limits on the non-Indian irrigation diversions upstream; and**

**17. On February 20, 2003, the permittees attending the annual meeting of the San Juan River Dine Water Users Association voted to support a resolution endorsing the Shortage Recommendations; and**

**18. On February 23, 2003, the Shiprock Chapter voted to support a resolution endorsing the Shortage Recommendations; and**

**19. On February 25, 2003, the San Juan River Farmboard voted to support a resolution endorsing the Shortage Recommendations; and**

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20. By Resolution RCMA-32-03, attached here as Exhibit "B", the Resources Committee made a finding in that the execution of the proposed Shortage Recommendations by the Navajo Nation is consistent with "insuring the optimum utilization of all resources of the Navajo Nation and People" and recommended that the Intergovernmental Relations Committee endorse the Shortage Recommendations.

21. By Resolution BDMA-06-03, attached hereto as Exhibit "C", the NAPI Board stated NAPI's position on the proposed recommendations for operations and administration of the San Juan River for 2003; by Resolution BFMA-07-03, attached hereto as Exhibit "D", the NAPI Board requested the appropriate committees and officials of the Navajo Nation: to ensure the federal agencies begin to fulfill the government's trust, statutory, contractual and treaty-based duties to the Navajo Nation concerning Navajo water resources of the San Juan River; to administer and operate the Navajo Dam consistent with those duties and with the interests of NAPI; to restore federal funding for NIP construction to at least \$26 million; and to issue a letter of intent for the Navajo Nation to contract additional federal functions related to the Navajo Indian Irrigation Project; and by Resolution EDCAP-31-03, attached hereto as Exhibit "E", the Economic Development Committee of the Navajo Nation Council recommended to the Intergovernmental Relations Committee of the Navajo Nation Council the endorsement of the recommendations for the San Juan River operation and administration for 2003; and

22. The Intergovernmental Relations Committee concurs with the findings of the Resources Committee and determines that execution of the Shortage Recommendations is in the best interests of the Navajo Nation.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Intergovernmental Relations Committee of the Navajo Nation Council hereby approves the February 20, 2003 Recommendations for San Juan River Operation and Administration for 2003, attached hereto as Exhibit "A", with the directive to delete the paragraph beginning on page five and continuing on page six (related to making additional water available to other entities "from within the Navajo Indian Irrigation Project's diversion amounts").

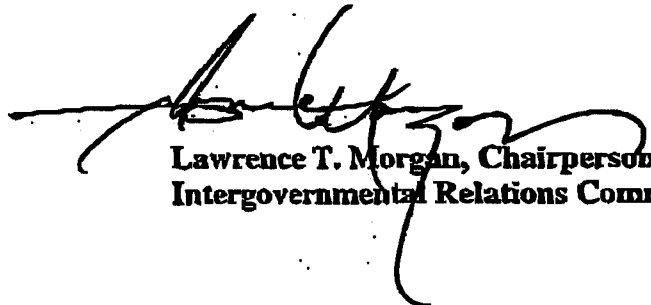
2. The Intergovernmental Relations Committee and the Resources Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute the proposed Recommendations for San Juan River Operation and Administration for 2003 and to take such other action necessary to implement this resolution.

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3. The Intergovernmental Relations Committee of the Navajo Nation Council directs that the other parties reaffirm their commitment to the recommendations approved herein within five working days; that Reclamation provide assurance that traditional Navajo farmers have access to storage made available by the contractors; and that in the event compensation is made available, the traditional Navajo farmers are to be included.

### 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 at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 3 opposed, and 0 abstained, this 17<sup>th</sup> day of April, 2003.



Lawrence T. Morgan, Chairperson  
Intergovernmental Relations Committee

Motion: Larry Anderson  
Second: Leonard Chee

**D R A F T**

**Principles for Implementation of the Recommendations  
April 30, 2003**

1. **These principles are to implement the recommendations as modified by resolution of April 17, 2003, of the Intergovernmental Relations Committee of the Navajo Nation.**
2. **PNM/APS/BHP will reduce the diversion demand amounts recognized in section 1 of the recommendations for the San Juan Generating Station and the Four Corners Power Plant by 5 percent utilizing conservation measures.**
3. **The subcontracts between PNM/APS/BHP and the Jicarilla Apache Nation for delivery to the San Juan Generating Station, the Four Corners Power Plant and the related mines (collectively, the power plants) of supplemental water to mitigate any shortages to their water supply can be utilized for delivery of up to 16,000 acre-feet of supplemental water consistent with the recommendations.**
4. **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 of the recommendations and up to the diversion demand amounts for the power plants recognized in section 1 of the recommendations; provided, that the delivery of supplemental water under the subcontracts does not exceed an aggregate of 16,000 acre-feet.**
5. **Incremental impacts to the water supply of the San Juan River caused by implementation of the recommendations and deliveries of supplemental water to the power plants under the subcontracts can be offset by reductions in other users' diversion limitations in a manner which maintains consistency with the provisions of section 3 of the recommendations.**
6. **Offset reductions will be determined by application of an additional increment of percentage shortage to the water diversion demands for the irrigation uses specified in section 1 of the recommendations, 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.**
7. **PNM/APS/BHP will provide funds to mitigate the effects to the river 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. The mitigation fund will initially be funded in the amount of \$120,000.**
8. **PNM/APS/BHP will provide additional funding to the mitigation fund of up to \$1,000,000 based on the amount of the supplemental water actually used by the power plants under the subcontracts, and will distribute said funds directly to representative**

**DRAFT**

bodies for the specified irrigation projects in percentages determined by pro-rata distribution of added shortages to depletions in the following percentages:

- 79.3% to the Navajo Agricultural Products Industry
- 4.4% to the Hammond Conservancy District
- 3.6% to the Bloomfield Irrigation District
- 3.5% to the Farmers Mutual Ditch
- 1.3% to the Jewett Valley Ditch
- 7.9% to the Dine Water Users Association

9. PNM/APS/BHP will provide any required funds to the representative bodies for the specified irrigation uses or projects no later than December 31, 2003, 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.

10. Neither the recommendations nor these principles for implementation of the recommendations shall be construed to establish any requirement on behalf of PNM/APS/BHP, 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 2003 or succeeding years.

11. The amount of diversion by the Hammond Irrigation Project that is chargeable or accountable against its diversion demand amount recognized in section 1 of the recommendations will be computed as the measured diversion amount by the project less the measured returns to the San Juan River on the Armenta wasteway.

**D R A F T**

**Statement of Further Understandings**

1. The deadline to complete endorsements of the recommendations was extended by the endorsing parties and Reclamation will implement the recommendations and these principles.

2. Reclamation will maintain the minimum release rate from Navajo Dam at 350 cfs through May 31, 2003.

3. Reclamation will use in the computations of any shortage amounts the 90-percentile exceedence inflow to Navajo Reservoir for the August-December period distributed monthly using the long-term average monthly percentage distribution.



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RESOLUTION  
OF THE RESOURCES COMMITTEE  
OF THE NAVAJO NATION COUNCIL

Recommending to the Intergovernmental Relations Committee of the Navajo Nation Council  
its Endorsement of the Principles for Implementation of the Recommendations for the San  
Juan River Operations and Administration for 2003

WHEREAS:

1. Pursuant to 2 N.N.C. § 693, the Resources Committee of the Navajo Nation Council is charged with "insuring the optimum utilization of all resources of the Navajo Nation and to protect the rights, interests, and freedoms of the Navajo Nation and People"; and
2. As acknowledged in Section 101 of the Navajo Nation Water Code, 22 N.N.C. § 1301 (7) (1995), the water resources of the Navajo Nation are essential to provide a permanent homeland for the Navajo People; and protection of such water resources is essential in order to protect the health, the welfare and the economic security of the citizens of the Navajo Nation; and
3. By Resolution RCMA-32-03, attached hereto as Exhibit "A", the Resources Committee determined that the proposed *Recommendations for San Juan River Operations and Administration for 2003 (Recommendations)*, is consistent with "insuring the optimum utilization of the resources of the Navajo Nation and People" and recommended that the Intergovernmental Relations Committee endorse said *Recommendations*; and
4. By Resolution IGRAP-74-03, attached hereto as Exhibit "B", the Intergovernmental Relations Committee endorsed the *Recommendations*, subject to the caveat that the reference related to making additional water available to other entities "from within the Navajo Indian Irrigation Project's diversion amounts" be deleted from the *Recommendations*, and subject to the additional caveat that the other parties to the *Recommendations* "reaffirm their commitment to the recommendations...and that in the event compensation is made available, the traditional Navajo farmers are to be included"; and
5. The *Recommendations* protect the water supply for the Navajo Indian Irrigation Project (NIIP) by: (a) utilizing the minimum probable water supply as the basis for shortage determinations instead of the most probable water supply criteria currently utilized by the Bureau of Reclamation; (b) prohibiting depletions during the irrigation season that would cause the active storage of Navajo Reservoir to fall below the minimum level that water can be delivered to NIIP; and (c) reducing the level of diversions by the major water users on the San Juan River in the event that the minimum probable water supply is not projected to provide 204,000 acre-feet of water for NIIP, the projected diversion for NIIP in 2003; and

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6. The *Recommendations* benefit the Navajo farmers on the San Juan River by: (a) insuring that water is available from Navajo Reservoir for use by the Navajo Farmers, and other run-of-the-river diverters, even if inflows into the reservoir are less than the water diverted and (b) by providing a limit to the amount of water that can be diverted upstream of the Navajo Farmers by the non-Indian water users in the event of shortage; and
7. The Bureau of Reclamation currently estimates that there is a twenty percent (20%) chance of some shortage to water supplies from Navajo Reservoir in 2003 utilizing the most probable water supply data; in other words, there is an eighty percent (80%) chance that no shortage of any amount will occur; and
8. However, if the *Recommendations* are implemented, there is a greater risk that Reclamation will declare a shortage early in the irrigation season because the *Recommendations* are based on the minimum probable water supply, a much more conservative standard, which increases the risk that the major water users will not be able to make full diversions in 2003; and
9. If the *Recommendations* are adopted and a shortage is declared, all of the major water users must proportionately reduce their diversions; and
10. The agricultural water users have the flexibility to reduce their diversions by a variety of measures including shortening the irrigation season by not taking water every day; however, the two power plants, the San Juan Generating Station and the Four Corners Power Plant, do not have as much flexibility to significantly reduce their water uses; and
11. The companies operating the power plants, the Public Service Company of New Mexico (PNM) and the Arizona Public Service Company (APS), seek a more assured water supply to offset the risk that a shortage will be declared if the *Recommendations* are adopted; and
12. PNM, APS, and BHP, the fuel supplier for the power plants (collectively, "the Companies") have entered into subcontracts for up to 25,000 acre-feet of delivery of water from the Jicarilla Apache Nation which has authority, by virtue of its water rights settlement, to subcontract up to 33,500 acre-feet of diversion from Navajo Reservoir; and
13. The Companies and the other major water users, assisted by the Bureau of Reclamation and the New Mexico Interstate Stream Commission, have developed a proposed *Principles for Implementation of the Recommendations*, April 30, 2003 (*Principles*), attached hereto as Exhibit "C", in an effort to provide a mechanism whereby the Companies can support the *Recommendations* endorsed by the Intergovernmental Relations Committee of the Navajo Nation Council; and
14. The *Principles* include the following criteria:



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- a. The Companies will reduce their diversions levels, described in section 1 of the *Recommendations*, by five percent (5%) in 2003.
  - b. The Companies will limit their diversions under the subcontracts with the Jicarilla Apache Nation to 16,000 acre-feet of water, allowing the Companies to make up water otherwise unavailable by operation of the *Recommendations*.
  - c. Because the subcontract could reduce the amount of water available to the other water users in the event that a shortage is declared, the Companies will contribute to funds to mitigate the impacts to the other water users attributable to the subcontract.
  - d. The Companies will contribute \$120,000 to the mitigation fund when the *Principles* are adopted and up to an additional \$1,000,000 if the make up water is actually taken by the Companies after the first ten percent (10%) of diversions under the subcontracts.
  - e. The mitigation fund will be disbursed to the agricultural water users in proportion to the diversion requirements described in section 1 of the *Recommendations*; and
15. Under the proposed *Principles*, the Dine Water Users Association would receive 7.9% of the mitigation fund and the Navajo Agricultural Products Industry would receive 79.3% of the mitigation fund; however, the Resources Committee recommends that the mitigation fund be modified to provide for a greater up-front payment as described below; and
16. The proposed *Principles*, if modified as described below, are beneficial to the water users of the Navajo Nation by providing a source of revenue even if no shortage is declared and provide mitigation in the event that a shortage is declared and water is taken by the Companies through the subcontract with the Jicarilla Apache Nation; and
17. The proposed subcontract between the Companies and the Jicarilla Apache Nation would decrease the amount of water available to all of the major water users in the event that a shortage is declared; however, the subcontracts are also beneficial to the Navajo Nation by insuring that water is made available to the power plants which employ Navajo workers and utilize Navajo coal that provides royalty income to the Navajo Nation; and
18. The Resources Committee believes that an appropriate balance can be struck between the various impacts attributable to the proposed *Principles*, by modifying several provisions as follows:

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- a. Paragraph 7 of the *Principles* should be amended so that the up-front payment to the mitigation fund is increased to \$240,000 and will be paid out in proportional shares regardless of whether the companies use water from the Jicarilla subcontracts.
  - b. Paragraph 8 of the *Principles* should be amended so that the additional payment to the mitigation fund is reduced to \$880,000, which will be paid out in proportional shares for water from the Jicarilla subcontracts actually used by the companies over the ten percent (10%) paid for up front.
  - c. Paragraph 3 of the *Principles* should be amended to clarify that all of the signatory parties to the *Recommendations* support the proposed subcontract between the Jicarilla Apache Nation and PNM/APS/BHP; and
  - d. Monies made available through the mitigation fund to the Nation shall be provided in its entirety to the Fruitland Project, Hogback Project and the Cudeii Project. This decision is in accordance with NAPI Resolution BDMA-06-03, Resolved paragraph 3, which defers the decision to the Navajo Nation Resources Committee.
19. The proposed *Principles* are beneficial to the water users of the Navajo Nation by providing a mechanism to implement the *Recommendations* which are beneficial to the Navajo Indian Irrigation Project and the Navajo Farmers for reasons described in paragraphs 5 and 6 above; and
20. Implementation of the *Recommendations* is beneficial to the major water users in the San Juan River Basin by providing a mechanism for the cooperative sharing of the limited water resources in the basin in 2003; and
21. The success of any proposed water rights settlement for the Navajo Nation in the San Juan River Basin will require the political support of the major water users in the basin; therefore, the implementation of the *Recommendations* through the endorsement of the proposed *Principles* is consistent with the efforts of the Navajo Nation to settle its water rights in the basin; and
22. The Resources Committee determines that the proposed *Principles for Implementation of the Recommendations* are beneficial to the water resources of the Navajo Nation and consistent with "insuring the optimum utilization of the resources of the Navajo Nation and People".

NOW, THEREFORE, BE IT RESOLVED THAT:

The Resources Committee of the Navajo Nation Council hereby recommends that the

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Intergovernmental Relations Committee of the Navajo Nation Council endorse the *Principles for Implementation of the Recommendations for San Juan River Operations and Administration for 2003*, attached hereto as Exhibit "C", subject to the modifications proposed in Paragraph 18 above.

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 4 in favor, 1 opposed and 0 abstained, this 12<sup>th</sup> day of May, 2003.



George Arthur, Chairperson  
Resources Committee

Motion: Harry Goldtooth  
Second: Amos Johnson