

RESOLUTION OF THE  
NAABIK'ÍYÁTI' STANDING COMMITTEE  
24<sup>th</sup> NAVAJO NATION COUNCIL -- Fourth Year, 2022

AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND THE NAABIK'ÍYÁTI' COMMITTEE; OPPOSING THE UNITED STATES SECRETARY OF THE INTERIOR'S EFFORTS TO ASSESS OPERATIONS AND MAINTENANCE USER FEES ON THE NAVAJO AGRICULTURAL PRODUCTS INDUSTRY (NAPI) AND WATER USERS FOR THE NAVAJO INDIAN IRRIGATION PROJECT (NIIP)

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee is the oversight committee for the Navajo Agricultural Products Industry, Inc. 5 N.N.C. § 500; 5 N.N.C. § 1604.
- B. The Navajo Nation Council established the Naabik'íyáti' Committee as a standing committee authorized to coordinate with all committees and branches of the Navajo Nation the appearance and testimony before federal entities to provide the most efficient delivery of services to the Navajo Nation. 2 N.N.C. §§ 700(A), 701(A)(4).

SECTION TWO. FINDINGS

- A. The Navajo Nation Council's Naabik'íyáti' Committee through resolution NABIAP-38-17 established the Navajo Indian Irrigation Project Negotiation Subcommittee to negotiate with the United States to develop a Memorandum of Agreement regarding the funding and completion of the Navajo Indian Irrigation Project (NIIP), advocate for funding for the operation and management of the NIIP, advocate for funding for NIIP under the Water Infrastructure Improvements for the Nation Act and lobby in the interest of the NIIP. Resolution NABIAP-38-17 is attached as Exhibit 1.
- B. The Navajo Agricultural Products Industry (NAPI) is a wholly-owned enterprise of the Navajo Nation charged with operating and managing a commercial farm on land held in trust by the United States for the Navajo Nation under an Act of Congress enacted in 1962 authorizing the Navajo Indian Irrigation Project.


- C. The NIIP is an irrigated agriculture project in northwest New Mexico located on Navajo tribal lands just south of the city of Farmington.
- D. On October 1, 1985, the Bureau of Reclamation transferred responsibility of the operations and maintenance (O&M) for the NIIP to NAPI under the Indian Self-Determination and Education Assistance Act, Indian Self-Determination Act, Pub. L. 93-638, as amended.
- E. Navajo Agricultural Products Industry Management reports that it has incurred a total loss of \$4.3 million for paying the O&M shortfall from 2013 to the present. See **Exhibit 2**, NAPI Board of Directors Resolution, BDD-31-21, paragraph 20.
- F. On January 23, 2020, the NAPI Board approved Resolution No. BDJA-02-20, which outlined the history, purpose and intent of seeking reimbursement of the O&M shortfall for the NIIP and proposed that the Navajo Nation petition the Secretary of Interior to seek reimbursement of the O&M shortfall of \$4.4 million from 2013 to the present. See **Exhibit 2**, NAPI Board of Directors Resolution, BDD-31-21, paragraph 21.
- G. During a Navajo Indian Irrigation Project Negotiation Subcommittee Work Session on September 26, 2020, the BIA Regional Director confirmed BIA's position on the O&M user fee rates and responsibilities and BIA's intention to assess rates against NAPI and its users." See **Exhibit 2**, NAPI Board of Directors Resolution, BDD-31-21, paragraph 27.
- H. The Navajo Agricultural Products Industry Board of Directors requests and recommends that the NIIP Negotiation Subcommittee oppose the United States Secretary of the Interior's efforts to assess operations and maintenance user fees on the Navajo Agricultural Products Enterprise (NAPI) and water users for the Navajo Indian Irrigation Project (NIIP). The NAPI Board of Directors Resolution, BDD-31-21 is attached as **Exhibit 2**.
- I. It is in the best interests of the Navajo Nation that Navajo Indian Irrigation Project Negotiation Subcommittee oppose the United States Secretary of the Interior's efforts to assess O&M user fees on NAPI and water users of NIIP.

SECTION THREE. OPPOSING THE UNITED STATES SECRETARY OF THE INTERIOR'S EFFORTS TO ASSESS O&M USER FEES ON NAPI AND WATER USERS OF NAVAJO INDIAN IRRIGATION PROJECT (NIIP)

The Navajo Indian Irrigation Project Negotiation Subcommittee of the Naabik'íyáti' Committee of the Navajo Nation Council opposes the United States Secretary of the Interior's efforts to assess Operation and Maintenance user fees on NAPI and water users of Navajo Indian Irrigation Project (NIIP).

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 24<sup>th</sup> Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 17 in Favor, and 01 Opposed, on this 9<sup>th</sup> day of June 2022.

  
Honorable Seth Damon, Chairman  
Naabik'íyáti' Committee

6.10.22

Date

Motion: Honorable Vince R. James  
Second: Honorable Pernell Halona

Chairman Seth Damon not voting



RESOLUTION OF THE  
NAABIK'ÍYÁTI' COMMITTEE OF THE  
NAVAJO NATION COUNCIL

23<sup>RD</sup> Navajo Nation Council - Third Year, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND  
NAABIK'ÍYÁTI' COMMITTEE; ESTABLISHING A NAABIK'ÍYÁTI' COMMITTEE  
NEGOTIATION SUBCOMMITTEE FOR THE COMPLETION OF THE NAVAJO INDIAN  
IRRIGATION PROJECT

Section One. Authority

- A. The Resources and Development Committee of the Navajo Nation Council is the legislative oversight authority for the Navajo Agricultural Products Industry. 2 N.N.C. § 500, 5 N.N.C. § 1604.
- B. The Navajo Nation Council established the Naabik'íyáti' Committee as a standing committee authorized to coordinate with all committees and branches of the Navajo Nation the appearance and testimony before federal entities to provide the most efficient delivery of services to the Navajo Nation. 2 N.N.C. §§ 700 (A), 701 (A)(4).
- C. Each Committee may establish subcommittees consisting of committee members selected by the Committee; the subcommittee shall exist until its assigned tasks are completed and a report and recommendation is made to the Committee. 2 N.N.C. § 186.

Section Two. Findings

- A. Navajo Agricultural Products Industry is an enterprise of the Navajo Nation charged with operating a commercial farm on land held in trust by the United States for the Navajo Nation under federal legislation authorizing the Navajo Indian Irrigation Project (NIIP). 5 N.N.C. § 1602; Public Law 87-483, signed on June 13, 1962, amended by Public Law 91-416 on September 25, 1970; NIIP authorized by Acts of Congress approved April 11, 1956 (70 Stat. 105); June 13, 1962 (76 Stat. 96); and August 4, 1977 (91 Stat. 565).
- B. The Navajo Agricultural Products Industry (NAPI) was originally established.. primarily to plan, develop, and

promote the use of agricultural, water and related resources for the use of Navajo Agricultural Products Industry and the Navajo Indian Irrigation Project resulting in a profit to Navajo Agricultural Products Industry and to prevent waste of valuable resources. See CJY-60-01.

- C. Public Law 87-483 passed by Congress on June 13, 1962 authorized "the Secretary of the Interior to construct, operate, and maintain the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama project as participating projects of the Colorado River Storage Project, and for other purposes." The authorization was amended September 25, 1970, by Public Law 91-416. To date the construction of the San Juan-Chama Project is completed while construction of the Navajo Indian Irrigation Project is only approximately 70% complete.
- D. The Bureau of Indian Affairs, Navajo Area Office, and Farmington Construction Office have overall responsibility for the development of the NIIP, but in 2002 the Bureau of Indian Affairs supported a reduction of NIIP funding from \$24 million to \$12 million per year under the reasoning that such temporary funding reduction was necessitated by the costs of the United States war in Afghanistan.
- E. The reduction of funding from \$24 million to \$12 million has not been temporary, but has continued in each funding year from Federal Fiscal Year 2002 through Federal Fiscal Year 2010.
- F. The lack of funding for NIIP has delayed and prevented the development of NAPI Block 9, which limits NAPI to cultivation of only 73,000 of the 110,630 acres authorized by the federal legislation.
- G. The Navajo Nation authorized NAPI to contract under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 et seq. (P.L. 93-638, as amended) to include the remaining construction of the NIIP and to otherwise support Navajo Agricultural Products Industry's efforts to develop Blocks 9, 10, and 11 of the Navajo Indian Irrigation Project at the sole cost and expense of the United States. See NABID-82-15.
- H. The Navajo Agricultural Products Industry Board of Directors recommends the re-establishment of a subcommittee to advocate for the completion of the NIIP, advocate for funding for the

operation and management of the NIIP, advocate for funding for NIIP under the Water Infrastructure Improvements for the Nation Act (S. 612, 2016) and lobby in the interest of the NIIP. NAPI Board of Directors Resolution, BDMA-09-17 attached as Exhibit A.

### **Section Three. Establishing the Naabik'iyáti' NIIP Negotiation Subcommittee**

- A. The Navajo Nation establishes the Naabik'iyáti' NIIP Negotiation Subcommittee to negotiate with the United States to develop a Memorandum of Agreement regarding the funding and completion of the NIIP, advocate for funding for the operation and management of the NIIP, advocate for funding for NIIP under the Water Infrastructure Improvements for the Nation Act and lobby in the interest of the NIIP.
- B. The Naabik'iyáti' NIIP Negotiation Subcommittee shall consist of five (5) members who are from the Navajo Nation Council Standing Committees. The Naabik'iyáti' Committee shall appoint the subcommittee members. The appointed Delegates serve at the pleasure of the Naabik'iyáti' Committee. The Naabik'iyáti' Committee appoints the following delegates to the subcommittee:
  - 1. Steven Begay, Health, Education and Human Services Committee
  - 2. Benjamin Bennett, Resources and Development Committee
  - 3. Kee Allen Begay, Law and Order Committee
  - 4. Leonard Tsosie, Budget and Finance Committee
  - 5. LoRenzo C. Bates, Naabik'iyáti' Committee

### **Section Four. Subcommittee Term**

The Naabik'iyáti' NIIP Negotiation Subcommittee shall exist until their assigned tasks are completed and shall report their recommendations to the Naabik'iyáti' Committee. 2 N.N.C. § 186.


### **Section Five. Directives**

- A. The Speaker's Chief of Staff shall assign one policy analyst to assist the Naabik'iyáti' NIIP Negotiation Subcommittee.
- B. The Legislative Services' Executive Director shall assign two Office of Legislative Services staffers to assist the Naabik'iyáti' NIIP Negotiation Subcommittee.

- C. The Naabik'iyáti' Committee directs the Department Water Resources and other Navajo Nation Departments or Programs, as deemed necessary by the Negotiation Subcommittee, to serve as technical support for the Negotiation Subcommittee.
- D. The Speaker shall determine a Subcommittee budget and identify the funds.
- E. Subcommittee shall submit reports to Naabik'iyáti' Committee on a quarterly basis

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 11 in favor and 01 oppose, this 13<sup>th</sup> day of April, 2017.



Honorable Jonathan L. Hale, Pro Tem Chairperson  
Naabik'iyáti' Committee

Motion: Honorable Benjamin Bennett  
Second: Honorable Otto Tso



BDMA-09-17

**RESOLUTION OF THE  
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY  
BOARD OF DIRECTORS**

**Requesting that the Speaker of the Navajo Nation Council Reestablish a Subcommittee of the Navajo Indian Irrigation Project.**

**WHEREAS:**

1. The Navajo Agricultural Products Industry ("NAPI") is a wholly owned enterprise of the Navajo Nation charged with operating and managing a commercial farm on land held in trust by the United States for the Navajo Nation under legislation authorizing the Navajo Indian Irrigation Project ("NIIP"); and

2. Pursuant to the Plan of Operation, the NAPI Board of Directors is delegated authority and responsibility for the management, direction and operation of NAPI; to direct officers of NAPI in the execution of their duties; and to perform such acts as are necessary, proper and lawful to accomplish the purposes of NAPI; and

3. In furtherance of its farming and related activities and of the federal and Navajo policy favoring Navajo Nation self-determination, NAPI contracts with the United States under the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, to perform federal responsibilities related to the NIIP; and

4. NAPI manages 72,000 acres of commercial farm lands known as the Navajo Indian Irrigation Project ("NIIP"); and

5. The Navajo Nation Council previously established an Intergovernmental Relations Committee Subcommittee on the NIIP Memorandum of Agreement that was to be developed regarding the funding and completion of the NIIP; and

6. The Subcommittee on the NIIP Memorandum of Agreement has since been disbanded; and

7. The NAPI Board of Directors now finds that it is necessary and in the best interest of NAPI and the Navajo Nation that a subcommittee regarding the NIIP be reestablished for the purposes of: 1) advocating for funding for the completion of the NIIP, 2) advocating for funding for operations and management of the NIIP, 3) advocating for funding for the NIIP under the Water Infrastructure Improvements for the Nation Act, and 4) lobbying in the interest of the NIIP.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The NAPI Board of Directors hereby requests that the Speaker of the Navajo Nation Council establish a subcommittee of the Navajo Nation Council for purposes of: 1) advocating for funding for the completion of the NIIP, 2) advocating for funding for operations and management of the NIIP, 3) advocating for funding for the NIIP under the Water Infrastructure Improvements for the Nation Act, and 4) lobbying in the interest of the NIIP.

2. The NAPI Board of Directors hereby directs the Chief Executive Officer and staff to take all actions necessary to carry out the purpose and intent of this resolution.

**CERTIFICATION**

I hereby certify that the foregoing resolution was considered by the Navajo Agricultural Products Industry Board of Directors at a regularly called meeting at which a quorum was present at the Navajo Agricultural Products Industry Main Office near Farmington, New Mexico, and that the same was passed by vote of 3 in favor, 0 opposed, and 0 abstained, this 10th day of March, 2017.

Motion: Peter Deswood, III  
Second: Veronica D. Tso

  
Lorenzo J. Begay, Chairperson  
NAPI Board of Directors



BDD-31-21

**RESOLUTION OF THE  
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY  
BOARD OF DIRECTORS**

**Requesting and Recommending that the Resources and Development Committee and the Navajo Indian Irrigation Project (NIIP) Negotiation Subcommittee of the Navajo Nation Council, in a unified effort with the Navajo Nation Council and the Office of the President and Vice President (OPVP), Oppose the United States Secretary of the Interior's Efforts to Assess Operations and Maintenance User Fees on NAPI and Water Users for the NIIP.**

**WHEREAS:**

1. The Navajo Agricultural Products Industry ("NAPI") is a wholly owned enterprise of the Navajo Nation charged with operating and managing a commercial farm on land held in trust by the United States for the Navajo Nation under an Act of Congress enacted in 1962 authorizing the Navajo Indian Irrigation Project ("NIIP"), Public Law No. 87-483, see 5 N.N.C. § 1601 *et seq.* (2005); and
2. The NIIP is an irrigated agriculture project in northwest New Mexico located on Navajo tribal lands just south of the city of Farmington; and
3. The NIIP was created in exchange for the operation of the San Juan-Chama Diversion Project ("SJCDP"), which required the Navajo Nation to relinquish a substantial portion of its historic water rights and relinquish its priority rights during shortages in the San Juan River Basin; and
4. The Navajo Nation negotiated with the United States and the State of New Mexico for more than ten years before reaching an agreement to develop 110,630 acres (11 blocks) of irrigated farmland at the NIIP, in exchange for the Navajo Nation's agreement that 110,000 acre-feet per year of water from the San Juan Basin (water that the Navajo Nation might otherwise assert a valid claim to) could be diverted to the Rio Grande Basin by way of the SJCDP; and
5. The United States also agreed to provide for the Operations and Maintenance ("O&M") of the NIIP during the construction period until the Navajo Nation assumed full ownership and control over the NIIP upon the project's completion; and
6. The 1962 NIIP Act contemplated that the SJCDP and the NIIP would be constructed and completed by 1976, but only the SJCDP was completed on schedule (in 1971) and the NIIP remains incomplete today; and
7. The NIIP has been subject to numerous delays and currently serves NAPI operations at just 66% of its originally planned size with Blocks 1-8 completed, Block 9 remains largely incomplete (the Gallegos pumping station is complete, but irrigation infrastructure has no laterals for the on-farm development), and Blocks 10-11 not yet under construction; and
8. On October 1, 1985, the Bureau of Reclamation ("BOR") transferred responsibility for the O&M for the NIIP to NAPI under Pub. L. 93-638 ("638"); and
9. Since that time, the Bureau of Indian Affairs ("BIA") has received significantly less than the necessary funding for NAPI through Congressional appropriations to fulfill the 638 obligations; and

10. The O&M expenses for the NIIP have increased since 1985 and will continue to increase as additional acreage is added to the NIIP and as the existing infrastructure deteriorates; and

11. Although NAPI has repeatedly submitted annual budget increase requests to BIA to meet the rising costs for managing the O&M for the NIIP, the BIA has not changed the budget amount since 1994 and O&M funding has fallen short of the amount necessary to manage the O&M, which continues to jeopardize the overall structural integrity of the NIIP project and caused substantial loss to NAPI and its contractors as demonstrated by the May 13, 2016, Kutz Siphon breach failure, in which NAPI sustained a total net revenue loss in crops of \$6,769,303; and

12. If BIA does not provide the necessary funding to cover the O&M shortfall for the NIIP immediately, another siphon breach failure is inevitable; and

13. In an effort to cover the most pressing needs of the NIIP, beginning in 2013, NAPI started using NAPI's funds to cover the O&M shortfall to keep the NIIP running once annual 638 contract funds ran out and repaid itself the following funding year as outlined in the 638 Shortfall Timeline, attached hereto as "Exhibit A"; and

14. BIA was fully aware of this action by NAPI and did not dispute the process that NAPI implemented until May 30, 2017, when the BIA issued a letter to NAPI stating that "NAPI should not use the CY 2017 funds to cover its shortfall", see Letter from Awarding Official, BIA – Navajo Regional Office, to Wilton Charley, CEO of NAPI (May 30, 2017), attached hereto as "Exhibit B"; and

15. On November 2, 2017, NAPI issued a response to the BIA's letter dated May 30, 2017, reaffirming its position that it was entitled to reimbursement of approximately \$3,390,409, which included all costs incurred by NAPI to cover the O&M's shortfall, see Letter from Darryl Multine, CFO of NAPI to Jeanette Quintero, Indian Self-Determination Specialist, BIA – Navajo Regional Office (Nov. 2, 2017), attached hereto as "Exhibit C"; and

16. On December 13, 2017, Jeanette Quintero, Indian Self-Determination Specialist, BIA – Navajo Regional Office sent a letter to NAPI stating that NAPI could not reimburse itself for paying the O&M shortfall from 2013 to 2017 as such reimbursement are not permitted under the 638 Contract, see Letter from Jeanette Quintero, Indian Self-Determination Specialist, BIA – Navajo Regional Office to Wilton Charley, CEO of NAPI (Dec. 13, 2017), attached hereto as "Exhibit D"; and

17. On February 6, 2018, the Navajo Nation President Russell Begay sent a letter to Sharon Pinto, Regional Director of the BIA – Navajo Regional Office urging the BIA to allow NAPI to reimburse itself for paying the O&M shortfall, see Letter from Navajo Nation President Russell Begay, to Sharon Pinto, Regional Director, BIA – Navajo Regional Office (Feb. 6, 2017), attached hereto as "Exhibit E"; and

18. On September 28, 2018, Navajo Nation Council Speaker Lorenzo Bates, James Davis with the Office of the President and Vice President, the NAPI Board of Directors Chairperson Peter Deswood, III and NAPI Interim CEO Darryl Multine, met with Bartholomew Stevens, the newly appointed Regional Director of the BIA – Navajo Regional Office and inquired about the status of the BIA's response to President Begay's letter dated February 6, 2018. During that meeting, Regional Director Stevens confirmed that BIA acknowledges the NIIP O&M shortfall and the problems associated with it and that if he could find funds that they could possibly make payments to NAPI to cover some of the O&M shortfall. Speaker Lorenzo Bates directed the BIA to work with NAPI to resolve the reimbursement request; and

19. On October 11, 2018, BIA Regional Director Bartholomew Stevens met with Interim CEO Darryl Multine and NAPI management and informed them that the BIA did not have the funds available to reimburse NAPI for the O&M shortfall and recommended that NAPI revise its budget for the NIIP to remain within the limits of the amounts allocated each year under the 638 Contract; and

20. NAPI Management reports that it has incurred a total loss of \$4.3 Million for paying the O&M shortfall from 2013 to the present; and

21. On January 3, 2020, the NAPI Board approved Resolution No. BDJA-02-20, which outlined the history, purpose and intent of seeking reimbursement of the O&M shortfall for the NIIP and proposed that the Navajo Nation petition the Secretary of Interior to seek reimbursement of the O&M shortfall of \$4.4 Million from 2013 to the present, attached hereto as "Exhibit F"; and

22. On January 23, 2020, during a Project Management Team meeting with BIA to discuss the O&M rate for the NIIP, NAPI representatives learned that BIA Director Darryl LaCounte sent a letter to BIA Regional Director Bartholomew Stevens regarding implementation of an O&M user fee rate for NIIP to cover the O&M shortfall; and

23. During the meeting, the BIA representatives further requested that Lionel Haskie, the NIIP O&M Manager, attend an in-person meeting on February 19, 2020, in Lakewood, Colorado, with Dave Fisher and Roland Becenti to determine what information BIA would need to start calculating the O&M user fee rate for NIIP and for NIIP to begin reimbursement of O&M costs in 2021; and

24. On March 27, 2020, NAPI Chief Executive Officer ("CEO") Dave Zeller sent a letter to BIA Regional Director Bartholomew Stevens requesting clarification of BIA's position concerning the O&M cost responsibilities for the NIIP and whether the BIA intends to notify the Navajo Nation leadership of the requests that have been communicated to NAPI to seek reimbursable federal charges for O&M beginning in 2021, attached hereto as "Exhibit G"; and

25. With the assistance of the NIIP Negotiation Subcommittee Chairperson and Vice Chairperson, NAPI was able to get the draft letter to the Secretary of the Interior seeking reimbursement of the O&M shortfall signed and issued by President Nez on July 9, 2020, attached hereto as "Exhibit H"; and

26. On September 1, 2020, BIA Regional Director Bartholomew Stevens sent a letter to the NAPI CEO, stating that "BIA does not propose to charge full O&M assessment rates at this time and will continue to provide funding as available through appropriations" and "[a]bsent sufficient appropriations, however, BIA will pursue assessment of lands in production to make up the difference in order to operate and maintain NIIP's facilities", attached hereto as "Exhibit I"; and

27. During a NIIP Negotiation Subcommittee Work Session on September 26, 2020, BIA Regional Director Bartholomew Stevens confirmed BIA's position on the O&M user fee rates and responsibilities and BIA's intention to assess rates against NAPI and its users; and

28. In August 2021, NAPI Management met with Assistant Secretary of Indian Affairs Bryan Newland to discuss O&M user fee rates and during the meeting the Assistant Secretary inquired as to whether NAPI and the Navajo Nation would explore NIIP user fees to fund O&M costs for the NIIP; and

29. In response to the Assistant Secretary's request, NAPI Management determined what amount would need to be set for user fee rates to fully fund the O&M costs for the NIIP and how such user fee rates would affect NAPI's revenues; and

30. NAPI Management reported to the NAPI Board that it would cost \$148.76 per acre to keep the NIIP fully operational and would create a significant loss to NAPI's overall revenue with a profit margin of -10% if it had to pay user fee rates for the water used on the NAPI Farm; and

31. Due to the United States' failure to complete the NIIP and failure to reimburse NAPI for the O&M shortfall, NAPI Management recommends that the NAPI Board request that the Navajo Nation leadership oppose the implementation of an O&M user fee on NAPI and its water users within the NIIP; and

32. The NAPI Board of Directors has received the recommendations of NAPI Management and has determined that it is in the best interest of NAPI and the Navajo Nation to request and recommend that the Resources and Development Committee and the NIIP Negotiation Subcommittee of the Navajo Nation Council, in a unified effort with the Navajo Nation Council and the Office of the President and Vice President, oppose the United States Secretary of the Interior's efforts to assess O&M user fees on NAPI and water users for the NIIP.

**NOW THEREFORE BE IT RESOLVED THAT:**

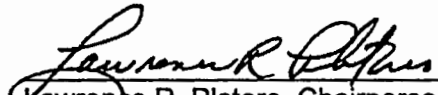
1. The NAPI Board of Directors respectfully requests and recommends that the Resources and Development Committee and the NIIP Negotiation Subcommittee of the Navajo Nation Council, in a unified effort with the Navajo Nation Council and the Office of the President and Vice President, oppose the United States Secretary of the Interior's efforts to assess O&M user fees on NAPI and water users for the NIIP.

2. The Chief Executive Officer is authorized and directed to communicate this resolution to the appropriate officials of the Navajo Nation and to take any and all actions necessary to carry out the purpose and intent of this resolution.

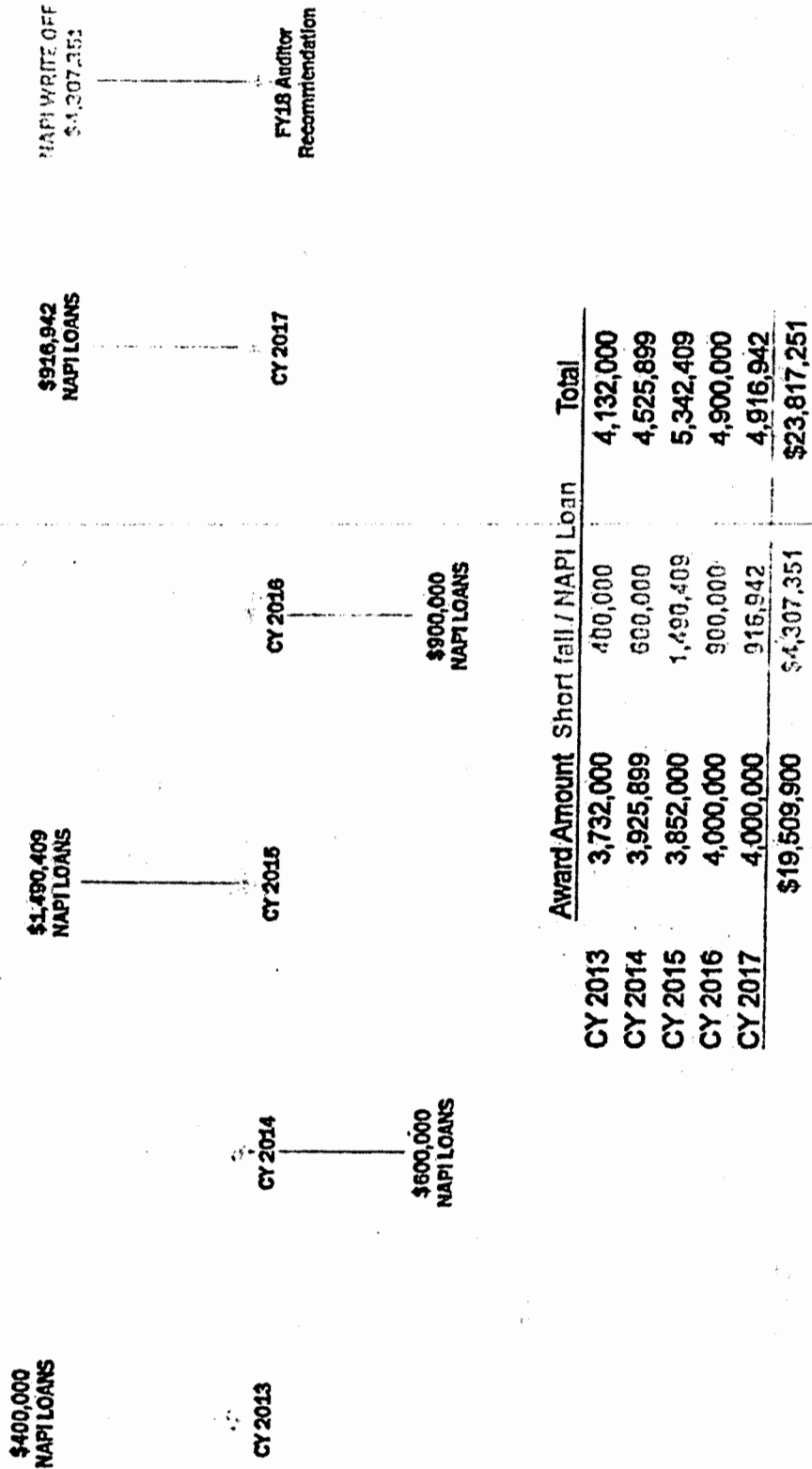
**CERTIFICATION**

I hereby certify that the foregoing resolution was considered by the Navajo Agricultural Products Industry Board of Directors at a special meeting at which a quorum was present at NAPI Headquarters near Farmington, New Mexico, and that the same was passed by vote of 4 in favor, 0 opposed, and 0 abstained, this 3rd day of December, 2021.

Motion: Peter Deswood, III  
Second: Danny Simpson

  
Lawrence R. Platero, Chairperson  
NAPI Board of Directors

# 638 Shortfall Timeline



	Award Amount	Short fall / NAPI Loan	Total
CY 2013	3,732,000	400,000	4,132,000
CY 2014	3,925,899	600,000	4,525,899
CY 2015	3,852,000	1,490,409	5,342,409
CY 2016	4,000,000	900,000	4,900,000
CY 2017	4,000,000	916,942	4,916,942
	\$19,509,900	\$4,307,351	\$23,817,251



United States Department of the Interior  
BUREAU OF INDIAN AFFAIRS  
Navajo Regional Office  
P.O. Box 1060  
Gallup, New Mexico 87305

IN REPLY REFER TO:  
N303 - Branch of Indian Self-Determination Services

MAY 30 2017

Wilton Charley, Chief Executive Officer  
Navajo Agricultural Products Industry  
P. O. Box 1318  
Farmington, New Mexico 87499-1318

Dear Mr. Charley:

Reference is made to the Navajo Agricultural Products Industry's (NAPI) May 19, 2017 letter for Public Law (Pub. L.) 93-638 Contract No. A16AV00382 for Irrigation Operation, Maintenance and Replacement (O/M); On-Farm Development (OFD); and Agricultural Testing, Research, and Laboratory (ATRL) Programs.

NAPI's May 19, 2017 letter is requesting to use Calendar Year 2017 funds to reimburse CY 2016's shortfall of \$558,245. The Awarding Official and Awarding Official's Technical Representative (AOTR) have noted in previous review of contracts and meeting, that NAPI would take out loans to cover its O/M cost depending on future funding from BIA.

During the AOTR's discussion with NAPI, it was explained that NAPI and BIA negotiate an Annual Funding Agreement every year for this five year contract and is based on funding availability. In CY 2016, NAPI spent more than the funding made available for the year and then took out a loan to cover the balance and now is requesting reimbursement. The AOTR explained she cannot commit the government beyond the funding available and NAPI should have contacted BIA it was going to fall short prior to taking out the loan and modified the contract to do only the work that would be covered by the funds available. Please refer to your 108 Contract Agreement under (b) Terms, Provisions, and Conditions (5) Limitation of Costs (section enclosed).

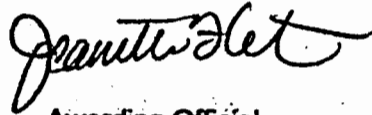
The option to take out a loan was an internal NAPI decision. No BIA funds are available for the contract negotiated for CY 2016 work and NAPI should not use the CY 2017 funds to cover its shortfall.

The BIA requests to meet with NAPI on June 21, 2017 at 10:00 am at NAPI Headquarters to determine the work for CY 2017 and review the contract again to determine if there are any chances of spending beyond the allocated amount and we can revise the scope of the work for work that would be covered by the funds available for CY 2017.

If you have any questions please contact Ms. Pearl Chamberlin, Awarding Official's Technical Representative (AOTR), at (505) 863-8393 or me at (505) 863-8401.

EXHIBIT B

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeanette Helt".

Awarding Official  
BIA-2017-L1-000098

cc: N480/NIIP, Pearl Chamberlin, AOTR  
NAPI/O&M, Lionel Haskie, O&M Manager  
NAPI/638, Jeremy Yazzie, Program Analyst

**CONTRACT NO. A16AV00382**  
**Renewal/Recontract Contract**

**AGREEMENT BETWEEN THE SECRETARY AND THE NAVAJO AGRICULTURAL  
PRODUCTS INDUSTRY**

**(a) AUTHORITY AND PURPOSE -**

- (1) **AUTHORITY** - This agreement, denoted a Self-Determination Contract (referred to in this agreement as the "Contract"), is entered into by the Secretary of the Interior (referred to in this agreement as the "Secretary"), for and on behalf of the United States pursuant to Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and by the authority of the *Navajo Agricultural Product Industry (NAPI)* (referred to in this agreement as the "Contractor"). The provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.
- (2) **PURPOSE** - Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractible under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor:

**PROGRAM:** Operation Maintenance and Replacement; On-farm Development;  
and Agricultural Testing and Research Laboratory Programs

**(b) TERMS, PROVISIONS, AND CONDITIONS-**

- (1) **TERM** -Pursuant to section 105(c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(1)), the term of this contract shall be a **Mature Definite Term of Five-Years beginning January 1, 2016, through December 31, 2020 on the basis of Calendar Year.** Pursuant to section 105(d)(1) of such Act (25 U.S.C. 450j(d)), upon the election by the Contractor, the period of this Contract shall be determined on the basis of a **Fiscal Year**, unless the Secretary and the Contractor agree on a different period in the annual funding fiscal year agreement incorporated by reference in subsection (f)(2).
- (2) **EFFECTIVE DATE** - This Contract shall become effective upon the date of the approval and executive by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph.

- (3) **PROGRAM STANDARD** - The Contractor agrees to administer the program, services, functions and activities (or portions thereof) listed in subsection (a)(2) of the Contract in conformity with the following standards:

**Irrigation Operations and Maintenance on Indian Lands:** [25 USC 13, 25 USC 450; 31 USC 63; Indian Dams Safety Act of 1994, Pub. L. 103-1560, 108 Stat. 1560; American Indian Agriculture Resource Management, Publ. L. 103-177, 107 Stat 2011, 25 USC 3701; Act of November 4, 1983, Pub. L. 98-140; Pub. L. 103-301, 60 STAT 895, 25 USC 162a; and 76 Stat. 96] The Programs to conserve water and operate and maintain the irrigation water delivery systems on Indian irrigation projects and maintain the dams in a safe economical, beneficial, and equitable manner, including the follows:

1. American Society of Agricultural Engineers (ASAE) Standard S-376;
2. ASAE Standard S376;
3. North American Proficiency Testing;
4. National forage Testing Association;

- (4) **FUNDING AMOUNT** - Subject to the availability of appropriations, the Secretary shall make available to the Contractor the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j-1).

- (5) **LIMITATION OF COSTS** - The Contractor shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the Contractor has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the Contractor shall provide reasonable notice to the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary to increase the amount of funds awarded under this Contract, the Contractor may suspend performance of the Contract until such time as additional funds are awarded.

- (6) **PAYMENT** -

- (A) **IN GENERAL** - Payments to the Contractor under this Contract.

- (i) be made as expeditiously as practicable; and
- (ii) include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.

- (B) **QUARTERLY, SEMIANNUAL, LUMP-SUM, AND OTHER METHODS OF PAYMENT**



EXHIBIT C

P (505) 566-2600 • F (505) 960-9458 • P.O. Drawer 1318 • Farmington, NM 87499 • [www.navajopride.com](http://www.navajopride.com)

November 2, 2017

17-CFO-050

Jeanette Quintero  
Indian Self-Determination Specialist  
U.S. Department of Interior  
Bureau of Indian Affairs  
Navajo Regional Office  
P.O. Box 1060  
Gallup, NM 87305-1060

**RE: Funding Shortfall for the Navajo Indian Irrigation Project**

Dear Ms. Quintero,

The Navajo Agricultural Products Industry ("NAPI") is in receipt of the Bureau of Indian Affairs ("BIA") letter dated May 30, 2017, stating NAPI should not use the CY 2017 funds to cover its shortfall for operation and maintenance costs incurred in CY 2016. As you are aware, NAPI's 638 contracts do not provide adequate funding to cover all of NIIP's operation and maintenance costs.

Since 2013, in order to keep the project running, NAPI has always funded shortfalls of NIIP's O&M Cost and that the BIA is aware of this practice including NAPI reimbursing itself from the following year's contract award.

As detailed above, NAPI has the right and obligation to seek reimbursement for the costs NAPI has fronted to pay the unfunded operation and maintenance cost for fiscal year 2016. Therefore, NAPI is seeking reimbursement from the BIA in the amount of \$3,390,409.00 which includes all costs incurred to cover O&M's shortfall. Enclosed you will find an invoice for reimbursement from the BIA.

If you should have any questions on this matter, please contact me at (505) 566-2600 or email [dmultine@navajopride.com](mailto:dmultine@navajopride.com).

Sincerely,

Darryl Multine, Chief Financial Officer  
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY  
Enclosure: Invoice to U.S. Dept. of Interior – BIA Navajo Regional Office

c. Wilton Charley, NAPI CEO  
Lionel Haskie, O&M Manager  
file

NAPI - 638 Company  
P.O. Drawer 1318  
Farmington, NM 87499

EXHIBIT C

# INVOICE

Invoice #: 100486  
Invoice: 05/31/2017  
Ship: 05/31/2017  
Pay Terms: NET 30

Sold To: Jeanette Quintero  
Indian Self Determination Specialist  
US Dept. of Interior-BIA Navajo Regional Office  
PO Box 1060  
Gallup, NM 87305-1060

Ship To: BIA TREASURY  
BIA TREASURY DEPT.

Page 1 of 1

Sale Terms: CASH  
Order: 05/31/2017  
Cust PO: FY17 Audit Leads

Salesperson: Jeremy Yazzie  
Via:  
Currency: USD

Carrier:  
Trailer lic: St:  
Broker:

Description	Quantity	UOM	Price	Amount
Due from BIA				3,390,409.00
INVOICE TOTAL:				3,390,409.00

**Please return a copy of this invoice with your remittance - Thank You**

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Navajo Regional Office

P.O. Box 1060

Gallup, New Mexico 87305

IN REPLY REFER TO:  
N303 - Branch of Indian Self-Determination Services

DEC 13 2017

Wilton Charley, Chief Executive Officer  
Navajo Agricultural Products Industry  
P. O. Box 1318  
Farmington, New Mexico 87499-1318

Dear Mr. Charley:

This is in response to Navajo Agricultural Products Industries' (NAPI) November 2, 2017 letter responding to the Bureau of Indian Affairs (BIA) May 30, 2017 letter regarding the use of Calendar Year (CY) 2017 funds to cover CY 2016 over expenditures for Public Law 93-638 Contract No. A16AV00382 Navajo Indian Irrigation Project's Operation and Maintenance (O&M) costs.

In the BIA's May 30, 2017 letter we requested a meeting with NAPI on June 21, 2017 to determine the work for CY 2017 and review the contract. During the meeting, the BIA explained the Annual Funding Agreement is negotiated every year for the five-year Contract No. A16AV00382 and is based on approved appropriation. In CY 2016, NAPI expended more than the awarded amount and then took out a loan to cover the difference and requested reimbursement. The Awarding Official's Technical Representative explained no one is authorized to commit the government beyond the appropriated funds and NAPI should have not expended more than the awarded amount and took out the loan. NAPI should have requested to modify the contract to do only the work that would be covered by the awarded amount. The Awarding Official's Technical Representative requested NAPI to revise the scope of work and identify which work would be suspended if there was a shortage of funds. NAPI has not provided a response.

In addition, the practice of using current funds to cover prior years over-expenditures were not noted in NAPI's 2013, 2014 and 2015 quarterly Federal Financial Status (SF-425) reports for Contract No. A10AV00796. However, when NAPI entered into the new Contract No. A16AV00382, over expending "practices" became evident.

Again, the funds received under Public Law 93-638 Contract No. A10AV00796 and A16AV00382 for the operation and maintenance activities are subject to funding availability. The BIA Central Office provided the Fiscal Year 2017 funds of \$4 million for O&M, excluding the Gallegos Pumping Plant. The Navajo Region sought for additional funds for the shortfall, there were no additional funds available.

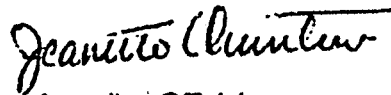
The contract states "The contractor shall not be obligated to performance that requires an expenditure of funds in excess of the amount." Instead NAPI made a decision to cover the \$3,390,409 over expenditure for O&M internally without notifying BIA which is almost as much as the year-long contract amount. The BIA recommends reviewing the O&M scope of work and aligned with the cost. The O&M cost should be similar to what was contracted in previous

**EXHIBIT D**

years. The BIA also recommends reviewing of how the contract support costs (direct and indirect) is used.

If you have any questions please contact Ms. Pearl Chamberlin, Awarding Official's Technical Representative (AOTR) 505-863-8393 or contact me at (505) 863-8401.

Sincerely,

A handwritten signature in cursive script, reading "Jeanette Quintana".

Awarding Official  
BIA-2017-L2-000039

cc: N480 Pearl Chamberlin, AOTR  
NAPI, Darryl Multine, Chief Financial Officer  
NAPI, Lionel Haskie, O&M Manager



## THE NAVAJO NATION

RUSSELL BEGAYE  
JONATHAN NEZ

EXHIBIT E

February 6, 2018

Ms. Sharon Pinto, Regional Director  
Navajo Region  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, New Mexico 87305

**Re: Funding Shortfall for the Navajo Indian Irrigation Project**

Dear Regional Director Pinto,

This letter is in response to the Bureau of Indian Affairs- Navajo Region's letters dated May 30, 2017, and December 13, 2017, enclosed, stating that the Navajo Agricultural Products Industry ("NAPI") cannot use Calendar Year ("CY") 2017 funds to cover operation and maintenance costs for the Navajo Indian Irrigation Project ("NIIP") incurred for CY 2016. As explained below, the United States is still obligated to pay for all operation and maintenance costs for the NIIP, and the Bureau of Indian Affairs ("BIA") must reimburse NAPI for all funds it expended in order to cover CY 2016's funding shortfall for NIIP operation and maintenance expenses.

The NIIP was authorized in 1962 through Pub. L. No. 87-483 ("Initiating Act"). Pub. L. No. 87-483, 76 Stat. 96 (June 13, 1962). The Initiating Act "authorize[d] the Secretary of the Interior to construct, operate, and maintain" the NIIP to irrigate 110,630 acres of land. *Id.* at § 1-2. In exchange for the NIIP, the Navajo Nation relinquished a significant portion of its historic water rights in the San Juan River Basin. *Id.* at § 2. Specifically, the Navajo Nation agreed to limit its annual water diversion of water from the NIIP to 508,000 acre-feet of water per year, and allowed 110,000 acre-feet per year of water to be diverted to the Rio Grande Basin to largely non-Indian users. *Id.* Although the NIIP was supposed to be completed in the 1970s, as of 2013, the NIIP was only 66 percent completed.

The BIA and Bureau of Reclamation initially operated and maintained the NIIP, but since 1985, NAPI has performed the federal operation and maintenance duties for the NIIP through an Indian Self-Determination and Education Assistance Act of 1975 contract ("638 Contract"). Between 2013 and 2017, the BIA provided roughly \$3 to \$4 million to NAPI each fiscal year through 638 Contract No. A16AV00382 at Exhibit C, Chart C-2, Exhibit D, chart D-1.

## EXHIBIT E

Since CY 2013, NAPI has used its own funds to keep the project running once annual 638 Contract funding was depleted because the 638 Contracts invariably do not provide enough funds for NAPI to cover the NHP's operation and maintenance costs. In the most-recent 638 Contract, the BIA acknowledges that "[t]he actual funding amounts have been *substantially less* than the amounts requested for a *proper OM&R program* and the appropriated amounts have not kept pace with continuing development of the project." Contract No. A16AV00382 at 83 (emphasis added). Since CY 2014, NAPI has used funds from the following year's 638 Contract to reimburse itself for the funds it expended to cover the previous year's shortfall. Though NAPI has reimbursed itself this way since 2014, the BIA has never denied NAPI any 638 Contract funds for the subsequent year for this reason. The BIA's May 30, 2017 letter, however, states that "NAPI should not use the CY 2017 funds to cover its shortfall." *Letter from Awarding Official, Bureau of Indian Affairs - Navajo Regional Office, to Wilton Charley, Chief Executive Officer of NAPI* (May 30, 2017).

The United States has a duty to the Navajo Nation to pay for all operation and maintenance costs related to the NHP for ten years following the NHP's completion. An October 1957 Report, expressly referred to in the Initiating Act, states that the Navajo Nation would not be required to make payments for reimbursable federal charges until "completion of the project development period." H.R. Doc. No. 424, at 357 (1960) ("Reimbursable Federal charges assessable against project lands would be paid to the Treasury, in accordance with existing laws, following completion of the project development period"). The legislative history of the Initiating Act shows that the development period of the NHP would take place for ten years after completion of the 110,630-acre project. *Hearing Before the Subcomm. on Irrigation and Reclamation of the Comm. on Interior and Insular Affairs, 86th Cong.* 190 (1960) ("The total subsidy on the part of the taxpayers and Colorado River storage project power users for the benefit of the 1,100 Indian families, calculated as of the end of the construction and development period or the beginning of project operation, may be conservatively estimated at \$266 million, which is the total construction cost plus interest during a 12-year construction period and 10-year development period at 3 percent."); *Id.* at 205 ("The Federal Investment thus proposed, including interest on funds advanced during the construction and development periods, would amount to more than a quarter of a billion dollars by the time the project would be in full operation.").

Because the NHP is not completed, the United States continues to have an obligation to pay for the operation and maintenance costs of the NHP. As the BIA has acknowledged, the 638 Contracts have provided *substantially less* than the amounts requested for a *proper OM&R program*." Contract No. A16AV00382 at 83 (emphasis added). The United States cannot avoid its obligations under the Initiating Act by continually underfunding the NHP and leaving NAPI with the bill. We, therefore, urge the BIA to allow NAPI to use its current 638 Contract funds to cover last year's shortfall for operation and maintenance costs, as NAPI has done since 2014.


## EXHIBIT E

Finally, as noted above, the construction phase of the NHP is still ongoing, and title of the NHP remains with the United States. From 2003 through 2006, the United States was "negotiating with the Navajo Nation to establish a memorandum of understanding (MOU) identifying activities and addressing responsibilities to initiate the turnover of completed Blocks to the Navajo Nation." DOI BIA, Budget Justifications, Fiscal Year 2007, BIA-CON-RM-3. Negotiations failed in part because NAPI refused to accept transfer of Blocks of the NHP unless and until the entire NHP was completed. THE NAVAJO NATION NHP COMPLETION PLAN, 19 (2005). The BIA was so focused on entering into a MOU with the Navajo Nation to transfer ownership of certain NHP blocks, that in its 2006 Budget Justification, the BIA stated that "[c]onstruction of additional [NHP] facilities are being deferred until the MOU is finalized and signed." *Id.* As NAPI stated in a 2003 Resolution, however, "[t]here is nothing in the law that [] allows the Department of the Interior to condition completion of the NHP on any memorandum of understanding." The United States has delayed completion of the NHP for over forty years. The United States has a duty to complete the NHP so that the Navajo Nation can fully profit from the completed project.

If you have any questions please feel free to contact Karis N. Begaye, Legal Counsel, Office of the President and Vice President at (928) 871-7812 or [knbegaye@navajo-nsn.gov](mailto:knbegaye@navajo-nsn.gov).

Sincerely,

THE NAVAJO NATION



Russell Begaye, *President*

Cc Speaker 23<sup>rd</sup> Navajo Nation Council  
Resources and Development Committee  
NAPI Board of Directors



**NAVAJO  
PRIDE**

**RESOLUTION OF THE  
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY  
BOARD OF DIRECTORS**

Requesting that the Resources and Development Committee and the Navajo Indian Irrigation Project (NIIP) Negotiation Subcommittee of the Navajo Nation Council, in a unified effort with the Navajo Nation Council and the Office of the President and Vice President (OPVP), to Petition the United States Secretary of the Interior to Reimburse the Navajo Agricultural Products Industry (NAPI) for \$4,307,351.00 Spent to Cover the Annual Shortfall of the Operations and Maintenance for the NIIP under its Pub. L. 93-638 Contract, from 2013 to the Present.

**WHEREAS:**

1. The Navajo Agricultural Products Industry ("NAPI") is a wholly owned enterprise of the Navajo Nation charged with operating and managing a commercial farm on land held in trust by the United States for the Navajo Nation under an Act of Congress enacted in 1962 authorizing the Navajo Indian Irrigation Project ("NIIP"), Public Law No. 87-483, see 5 N.N.C. § 1601 *et seq.* (2005); and
2. The NIIP is an irrigated agriculture project in northwest New Mexico located on Navajo tribal lands just south of the city of Farmington; and
3. The NIIP was created in exchange for the operation of the San Juan-Chama Diversion Project ("SJCDP"), which required the Navajo Nation to relinquish a substantial portion of its historic water rights and relinquish its priority rights during shortages in the San Juan River Basin; and
4. The Navajo Nation negotiated with the United States and the State of New Mexico for more than ten years before reaching an agreement to develop 110,630 acres (11 blocks) of irrigated farmland at the NIIP, in exchange for the Navajo Nation's agreement that 110,000 acre-feet per year of water from the San Juan Basin (water that the Navajo Nation might otherwise assert a valid claim to) could be diverted to the Rio Grande Basin by way of the SJCDP; and
5. The United States also agreed to provide for the Operations and Maintenance ("O&M") of the NIIP during the construction period until the Navajo Nation assumed full ownership and control over the NIIP upon the project's completion; and
6. The 1962 NIIP Act contemplated that the SJCDP and the NIIP would be constructed and completed by 1976, but only the SJCDP was completed on schedule (in 1971) and the NIIP remains incomplete today; and
7. The NIIP has been subject to numerous delays and currently serves NAPI operations at just 66% of its originally planned size with Blocks 1-8 completed, Block 9 remains largely incomplete (the Gallegos pumping station is complete, but irrigation

infrastructure has no laterals for the on-farm development), and Blocks 10-11 not yet under construction; and

8. On October 1, 1985, the Bureau of Reclamation ("BOR") transferred responsibility for the O&M for the NIIP to NAPI under Pub. L. 93-638 ("638") and the Bureau of Indian Affairs ("BIA") through Congressional appropriations has provided significantly less than the necessary funding for NAPI to fulfill the 638 obligations; and

9. The O&M expenses for the NIIP have increased since 1985 and will continue to increase as additional acreage is added to the NIIP and as the existing infrastructure deteriorates; and

10. Although NAPI has repeatedly submitted annual budget increase requests to BIA to meet the rising costs for managing the O&M for the NIIP, the BIA has not changed the budget amount since 1994 and O&M funding has fallen short of the amount necessary to manage the O&M, which continues to jeopardize the overall structural integrity of the NIIP project and caused substantial loss to NAPI and its contractors as demonstrated by the May 13, 2016, Kutz Siphon breach failure, in which NAPI sustained a total net revenue loss in crops of \$6,769,303; and

11. If BIA does not provide the necessary funding to cover the O&M shortfall for the NIIP immediately, another siphon breach failure is inevitable; and

12. In an effort to cover the most pressing needs of the NIIP, beginning in 2013, NAPI started using NAPI's funds to cover the O&M shortfall to keep the NIIP running once annual 638 contract funds ran out and repaid itself the following funding year as outlined in the 638 Shortfall Timeline, attached hereto as "Exhibit A"; and

13. BIA was fully aware of this action by NAPI and did not dispute the process that NAPI implemented until May 30, 2017, when the BIA issued a letter to NAPI stating that "NAPI should not use the CY 2017 funds to cover its shortfall", see Letter from Awarding Official, BIA – Navajo Regional Office, to Wilton Charley, CEO of NAPI (May 30, 2017), attached hereto as "Exhibit B"; and

14. On November 2, 2017, NAPI issued a response to the BIA's letter dated May 30, 2017, reaffirming its position that it was entitled to reimbursement of approximately \$3,390,409, which included all costs incurred by NAPI to cover the O&M's shortfall, see Letter from Darryl Multine, CFO of NAPI to Jeanette Quintero, Indian Self-Determination Specialist, BIA – Navajo Regional Office (Nov. 2, 2017), attached hereto as "Exhibit C"; and

15. On December 13, 2017, Jeanette Quintero, Indian Self-Determination Specialist, BIA – Navajo Regional Office sent a letter to NAPI stating that NAPI could not reimburse itself for paying the O&M shortfall from 2013 to 2017 as such reimbursement are not permitted under the 638 Contract, see Letter from Jeanette Quintero, Indian Self-Determination Specialist, BIA – Navajo Regional Office to Wilton Charley, CEO of NAPI (Dec. 13, 2017), attached hereto as "Exhibit D"; and

16. On February 6, 2018, the Navajo Nation President Russell Begay sent a letter to Sharon Pinto, Regional Director of the BIA – Navajo Regional Office urging the BIA to allow NAPI to reimburse itself for paying the O&M shortfall, see Letter from Navajo Nation President Russell Begay, to Sharon Pinto, Regional Director, BIA – Navajo Regional Office (Feb. 6, 2017), attached hereto as “Exhibit E”; and

17. On September 28, 2018, Navajo Nation Council Speaker Lorenzo Bates, James Davis with the Office of the President and Vice President, the NAPI Board of Directors Chairperson Peter Deswood, III and NAPI Interim CEO Darryl Multine, met with Bartholomew Stevens, the newly appointed Regional Director of the BIA – Navajo Regional Office and inquired about the status of the BIA’s response to President Begay’s letter dated February 6, 2018. During that meeting, Regional Director Stevens confirmed that BIA acknowledges the NIIP O&M shortfall and the problems associated with it and that if he could find funds that they could possibly make payments to NAPI to cover some of the O&M shortfall. Speaker Lorenzo Bates directed the BIA to work with NAPI to resolve the reimbursement request; and

18. On October 11, 2018, Regional Director Bartholomew Stevens met with Interim CEO Darryl Multine and NAPI management and informed them that the BIA did not have the funds available to reimburse NAPI for the O&M shortfall and recommended that NAPI revise its budget for the NIIP to remain within the limits of the amounts allocated each year under the 638 Contract; and

19. In November 2018, the NAPI Board of Directors was advised of the BIA’s position and directed its legal counsel, the law firm of Fredericks Peebles & Patterson, LLP to determine what other claims NAPI and/or the Navajo Nation may assert to obtain reimbursement of the O&M shortfall amounts spent in preparation for the NIIP Negotiation Subcommittee regular meeting scheduled for November 30, 2018; and

20. The Naabik’iyáti’ Committee of the Navajo Nation Council formally established the NIIP Negotiation Subcommittee on April 13, 2017, by Resolution No. NABIAP-38-17 to negotiate with the United States to develop a Memorandum of Agreement regarding the funding and completion of the NIIP, advocate for funding for the operation and management of the NIIP, advocate for funding for NIIP under the Water Infrastructure Improvements for the Nation Act and lobby in the interest of the NIIP; and

21. On November 30, 2018, NAPI management and NAPI’s legal counsel provided an update to the NIIP Subcommittee during a regular meeting of the NIIP Negotiation Subcommittee of the options for NAPI and the Navajo Nation to seek reimbursement for the NIIP O&M shortfall and the potential for the Navajo Nation to pursue a breach of trust lawsuit against the United States for failure to complete the NIIP pursuant to the 1962 NIIP Act; and

22. On December 7, 2018, NAPI management and NAPI’s legal counsel provided an update to the Resources and Development Committee during a Leadership meeting of the options for NAPI and the Navajo Nation to seek reimbursement for the NIIP O&M shortfall and the potential for the Navajo Nation to pursue a breach of trust lawsuit against the United States for failure to complete the NIIP pursuant to the 1962 NIIP Act; and

23. On December 31, 2018, the Naabik'iyáti' Committee passed Resolution No. NABID-99-18, which formally supports the NAPI Board's request for the Navajo Nation to petition the Secretary of the Interior for reimbursement of all funds spent by NAPI to cover the annual shortfall of the O&M of the NIIP and supports the NAPI Board's request that the current and incoming Navajo Nation leadership direct the Navajo Nation Department of Justice to review and evaluate the viability of a claim against the United States regarding the failure to comply with the 1962 NIIP Act; and

24. On July 22, 2019, the NAPI Management and several NAPI Board members met with President Jonathan Nez and discussed the need to petition the Secretary of the Interior for reimbursement of all funds spent by NAPI to cover the annual shortfall of the O&M of the NIIP and direct the Navajo Nation Department of Justice to review and evaluate the viability of a claim against the United States regarding the failure to comply with the 1962 NIIP Act; and

25. Following the meeting and at the President's request, NAPI Management sent to the President's staff on July 25, 2019, a draft letter to the Secretary of the Interior for the President's review and signature and draft talking points for the Office of the President to deliver to the Secretary of the Interior; and

26. Since that time, NAPI has not been able to confirm whether the draft letter was signed and sent to the Secretary of the Interior or if the talking points were discussed with the Secretary of the Interior; and

27. The NIIP Subcommittee was re-established on June 13, 2019, by Resolution No. NABIJN-32-19; and

28. The NAPI Board has met with the NIIP Subcommittee on three occasions on October 26, 2019, November 9, 2019, and December 14, 2019; and has provided an update on the status of NAPI's priorities to the NIIP Subcommittee; and

29. During a Work Session of the NIIP Subcommittee held on November 9, 2019, Stanley Pollock, the Navajo Nation Water Rights Attorney reported on the history of the NIIP and opined that he did not believe that filing a lawsuit against the United States for failure to comply with the 1962 NIIP Act would be successful and noted that the Navajo Nation Department of Justice had not received a copy of Resolution No. NABID-99-18, and therefore, had not reviewed and evaluated the viability of a claim against the United States regarding the failure to comply with the 1962 NIIP Act; and

30. During a Special Meeting of the NIIP Subcommittee held on December 14, 2019, the NIIP Subcommittee recommended that the NAPI Board approve a resolution outlining the history, purpose and intent of seeking reimbursement of the O&M shortfall for the NIIP and a resolution outlining a proposed Navajo Nation strategy for NAPI and the NIIP; and

31. NAPI Management reports that it has incurred a total loss of \$4.3 Million for paying the O&M shortfall from 2013 to the present, which are itemized in the report attached hereto as "Exhibit F", causing more deferred maintenance, risk of further

deterioration to the NIIP infrastructure, and uncertainty for NAPI's operations and profitability in the future; and

32. The United States' failure to complete the NIIP by 1976, as anticipated in the 1962 NIIP Act, has imposed significant costs and created substantial losses for the Navajo Nation and NAPI; and

33. Based on the Navajo Nation's standing, the Navajo Nation is the only party that can petition the United States Secretary of the Interior to reimburse NAPI for the O&M shortfall from 2013 to the present; therefore, NAPI management recommends that the NAPI Board request that the actions of the Navajo Nation leadership to pursue these actions be paid at the sole expense of the Navajo Nation, including any and all legal fees of the Navajo Nation associated therewith; and

34. Due to the United States Secretary of the Interior's failure to reimburse NAPI for the O&M shortfall, NAPI management recommends that the NAPI Board of Directors request that the Navajo Nation leadership petition the Secretary of the Interior to reimburse NAPI for the O&M shortfall from 2013 to the present by utilizing funds from the Bureau of Reclamation Fund established to pay O&M for irrigation projects, including NIIP pursuant to Section 6 of the Reclamation Act, 57-161, § 6, ch. 1093, 32 Stat. 389 (1902), codified in 43 U.S.C. § 491, funds from the Upper Colorado River Basin Fund established to carry out the provisions of the Colorado River Storage Project Act (Storage Act), Pub. L. No. 84-485, § 5, ch. 203, 70 Stat. 105, 107 (1956), codified in 43 U.S.C. § 620d for participating projects, including NIIP, and from such other funds that may be available to reimburse NAPI for the NIIP O&M shortfall; and

35. The NAPI Board of Directors has received the recommendations of NAPI management and has determined that it is in the best interest of NAPI and the Navajo Nation to request that the Resources and Development Committee and the NIIP Negotiation Subcommittee of the Navajo Nation, in a unified effort with the Navajo Nation Council and the Office of the President and Vice President, to petition the United States Secretary of the Interior to reimburse NAPI for \$4,307,351.00 spent to cover the annual shortfall of the operations and maintenance for the NIIP under its Pub. L. 93-638 Contract, from 2013 to the present; and

36. The NAPI Board of Directors has determined that it is in the best interest of NAPI and the Navajo Nation to request that the Navajo Nation leadership request that the Secretary of Interior authorize that any future deficiencies in annual appropriations for the operations and maintenance for the NIIP under its Pub. L. 93-638 Contract be drawn from the Bureau of Reclamation Fund established to pay O&M for irrigation projects, including NIIP pursuant to Section 6 of the Reclamation Act, 57-161, § 6, ch. 1093, 32 Stat. 389 (1902), codified in 43 U.S.C. § 491, funds from the Upper Colorado River Basin Fund established to carry out the provisions of the Colorado River Storage Project Act (Storage Act), Pub. L. No. 84-485, § 5, ch. 203, 70 Stat. 105, 107 (1956), codified in 43 U.S.C. § 620d for participating projects, including NIIP, and from such other funds that may be available to pay for the NIIP operations and maintenance costs; and

37. The NAPI Board of Directors has also determined that it is in the best interest of NAPI to request that the actions of the Navajo Nation leadership be paid at the sole expense of the Navajo Nation, including any and all legal fees of the Navajo Nation associated with petitioning the United States Secretary of the Interior to reimburse NAPI for all monies spent to cover the annual shortfall of the operations and maintenance for the NIIP under its Pub. L. 93-638 Contract.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The NAPI Board of Directors respectfully requests that the Resources and Development Committee and the NIIP Negotiation Subcommittee of the Navajo Nation Council, in a unified effort with the Navajo Nation Council and the Office of the President and Vice President, to petition the United States Secretary of the Interior to reimburse NAPI for \$4,307,351.00 spent to cover the annual shortfall of the operations and maintenance for the NIIP under its Pub. L. 93-638 Contract, from 2013 to the present, by utilizing funds from the Bureau of Reclamation Fund established to pay O&M for irrigation projects, including NIIP pursuant to Section 6 of the Reclamation Act, Pub. L. No. 57-161, § 6, ch. 1093, 32 Stat. 389 (1902), codified in 43 U.S.C. § 491, funds from the Upper Colorado River Basin Fund established to carry out the provisions of the Colorado River Storage Project Act (Storage Act), Pub. L. No. 84-485, § 5, ch. 203, 70 Stat. 105, 107 (1956), codified in 43 U.S.C. § 620d for participating projects, including NIIP, and from such other funds that may be available to reimburse NAPI for the NIIP O&M shortfall.

2. The NAPI Board of Directors respectfully requests that in addition to seeking reimbursement of the NIIP O&M shortfall that the Navajo Nation leadership request that the Secretary of Interior authorize that any future deficiencies in annual appropriations for the operations and maintenance for the NIIP under its Pub. L. 93-638 Contract be drawn from the Bureau of Reclamation Fund established to pay O&M for irrigation projects, including NIIP pursuant to Section 6 of the Reclamation Act, 57-161, § 6, ch. 1093, 32 Stat. 389 (1902), codified in 43 U.S.C. § 491, funds from the Upper Colorado River Basin Fund established to carry out the provisions of the Colorado River Storage Project Act (Storage Act), Pub. L. No. 84-485, § 5, ch. 203, 70 Stat. 105, 107 (1956), codified in 43 U.S.C. § 620d for participating projects, including NIIP, and from such other funds that may be available to pay for the NIIP operations and maintenance costs.

3. The NAPI Board of Directors respectfully requests that the actions of the Navajo Nation leadership be paid at the sole expense of the Navajo Nation, including any and all legal fees of the Navajo Nation associated with petitioning the United States Secretary of the Interior to reimburse NAPI for all monies spent to cover the annual shortfall of the operations and maintenance for the NIIP under its Pub. L. 93-638 Contract.

4. The Chief Executive Officer is authorized and directed to communicate this resolution to the appropriate officials of the Navajo Nation and to take any and all actions necessary to carry out the purpose and intent of this resolution.

**CERTIFICATION**

I hereby certify that the foregoing resolution was considered by the Navajo Agricultural Products Industry Board of Directors at an annual meeting at which a quorum was present at NAPI Headquarters near Farmington, New Mexico, and that the same was passed by vote of 3 in favor, 0 opposed, and 0 abstained, this 3rd day of January, 2020.

Motion: Delane Atcitty  
Second: Danny Simpson



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Peter Deswood, III, Chairperson  
NAPI Board of Directors



**EXHIBIT G**  
**NAVAJO AGRICULTURAL PRODUCTS INDUSTRY**  
P.O. Drawer 1318  
Farmington, NM 87499  
Telephone: (505) 566-2600  
Fax: (505) 960-9458  
[www.navajopride.com](http://www.navajopride.com)

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March 27, 2020  
20-HQ-24

**Email: Bartholomew.Stevens@bia.gov**

Regional Director Bartholomew Stevens  
Navajo Regional Office  
Bureau of Indian Affairs  
301 West Hill Avenue, Room 262  
Gallup, NM 87301

**Re: Operations and Maintenance Cost Responsibilities for Navajo Indian Irrigation Project**

Dear Regional Director Stevens:

I write to you on behalf of the Navajo Agricultural Products Industry ("NAPI") regarding the United States' continuing obligation to pay Operation and Maintenance ("O&M") costs for the Navajo Indian Irrigation Project ("NIIP"). In light of recent meetings involving NAPI and Bureau of Indian Affairs ("BIA") representatives, NAPI seeks clarification from you regarding the United States' position on this matter.

After a January 23, 2020, Project Management Team meeting with BIA to discuss the O&M rate for the NIIP, NAPI representatives learned that BIA Director Darryl LaCounte sent you a letter regarding implementation of an O&M rate for NIIP to cover the O&M shortfall. During this meeting, the BIA representatives further requested that Lionel Haskie, the NIIP O&M Manager, attend an in-person meeting on February 19, 2020, in Lakewood, Colorado with Dave Fisher and Roland Becenti to determine what information BIA would need to start calculating the O&M rate for NIIP and for NIIP to begin reimbursement of O&M costs in 2021.

Mr. Haskie attended the meeting and provided requested information to BIA, however, NAPI's position is that the United States is obligated to pay O&M charges for the NIIP presently, and until 10 years after the completion of the NIIP. A joint report by Reclamation and Indian Affairs, referenced in the 1962 legislation authorizing the NIIP, makes clear that the Navajo Nation's repayment of O&M charges would not begin until 10 years after the NIIP is fully developed.<sup>1</sup> Given that the NIIP has not been completed, NAPI and the Navajo Nation do not have a current obligation to pay O&M charges for the NIIP.

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<sup>1</sup> Pub. L. 87-483, 76 Stat. 96 (June 13, 1962); 1957 Joint Report at 346, 356-57.

## EXHIBIT G

In light of the foregoing, please clarify BIA's position concerning the O&M cost responsibilities for the NIIP and inform NAPI whether the BIA intends to notify the Navajo Nation leadership of the requests that have been communicated to NAPI to seek reimbursable federal charges for O&M beginning in 2021.

We look forward to your response to this letter. If you have any questions regarding this request, please contact me at the phone number referenced above. Thank you.

Sincerely,



David Zeller Chief Executive Officer  
**NAVAJO AGRICULTURAL PRODUCTS INDUSTRY**

cc. Darryl LaCounte, BIA Director  
NAPI Board of Directors  
file

# THE NAVAJO NATION

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JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



July 9, 2020

The Honorable David Bernhardt  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

**Re: Request for Reimbursement of Expenses Incurred Due to Emergency Shortfall for the Navajo Indian Irrigation Project Operations and Maintenance Costs**

Dear Secretary Bernhardt:

The Navajo Nation requests that you reimburse our Navajo Agricultural Products Industry ("NAPI") for \$4,307,351.00 that NAPI spent on operation and maintenance costs for the Navajo Indian Irrigation Project ("NIIP") in CY 2016. As explained below, the Department of the Interior is currently required to pay for all operation and maintenance costs for the NIIP. However, Interior's funding shortfall forced NAPI to spend its own funds to keep the NIIP in operation to avoid shutting down the project and devastating crop loss. Under the law, NAPI must be reimbursed for the funds used to cover NIIP operation and maintenance costs in CY 2016. Under the 1962 Act, which authorized and funded the Secretary of the Interior to construct, operate and maintain the NIIP, Interior is required to pay for all operation and maintenance costs related to the NIIP for a 10-year development period following completion of construction. Public Law No. 87-483 in 1962 ("the 1962 Act"), as amended by Pub. Law 91-416, September 1970. The NIIP is still not completed. The NIIP was supposed to be completed in the 1970s, but as of 2013, the NIIP was only 66 percent completed. As a result, Interior is still required to pay for all operation and maintenance costs for the NIIP.

The 1962 Act and its legislative history make clear Interior's ongoing obligation to pay for the operation and maintenance of the NIIP. First, the 1962 Act specifically approved the NIIP as set out in an October 1957 Coordinated Report provided under Section 9(a) of the Reclamation Act of 1939 and approved by the Secretary of the Interior. The 1957 Coordinated Report provided for a 10-year development period before charges would be assessed to the Navajo Nation. H.R. Doc. No. 424, at 346 (1960). This development period was specifically included in the Coordinated Report's conclusions that were approved by the Secretary. The Coordinated Report concluded that the Navajo Nation would not be required to make payments for reimbursable federal charges until "following completion of the project development period." *Id.* at 357 (1960).

Interior's obligation to fund NIIP operation and maintenance is further described in the legislative history of the 1962 Act. Hearings on the NIIP indicated that the development period of the NIIP would take place for 10 years after completion of the 110,630-acre project and that Interior would cover operation and maintenance costs over this development period. *Hearing*

*Before the Subcomm. on Irrigation and Reclamation of the Comm. on Interior and Insular Affairs, 86th Cong. 190 (1960) The hearing record states that:*

The total subsidy on the part of the taxpayers and Colorado River storage project power users for the benefit of the 1,100 Indian families, calculated as of the end of the construction and development period or the beginning of project operation, may be conservatively estimated at \$266 million, which is the total construction cost plus interest during a 12-year construction period and 10-year development period at 3 percent.

*Id.* at 205. The hearing record also made clear that, [t]he Federal Investment thus proposed, including interest on funds advanced during the construction and development periods, would amount to more than a quarter of a billion dollars by the time the project would be in full operation."

Reimbursement of NAPI for operation and maintenance of the NIIP did not become an issue until CY 2013. At first, the Bureau of Indian Affairs ("BIA") and Bureau of Reclamation ("BOR") operated and maintained the NIIP, but since 1985, NAPI has performed federal operation and maintenance duties through an Indian Self-Determination and Education Assistance Act of 1975 contract ("638 Contract"). Between 1990 and 2017, the BIA provided roughly \$3 to \$4 million to NAPI each fiscal year through 638 Contract No. A16AV00382 at Exhibit C, Chart C-2, Exhibit D, chart D-1.

It was in CY 2013 that annual 638 Contract funding was depleted before the end of the year. NAPI requested additional funding from the BIA to continue NIIP operations and winter maintenance for the rest of the year, but was informed that additional funds were not available and that if NAPI wanted to keep the project going, it would need to pay for the operation and maintenance costs itself. The depletion of 638 Contract funding in CY 2013 created an emergency situation for NAPI that required immediate action to avoid NIIP infrastructure damage and the total and devastating loss of NAPI's crops.

To avoid this emergency situation, beginning in CY 2014, NAPI has used funds from the following year's 638 Contract to reimburse itself for the funds it expended to cover the previous year's shortfall. Though NAPI has reimbursed itself this way since 2014, the BIA has never denied NAPI any 638 Contract funds for the subsequent year for this reason. In fact in the most-recent 638 Contract, the BIA acknowledges that "[t]he actual funding amounts have been *substantially less* than the amounts requested for a *proper OM&R program* and the appropriated amounts have not kept pace with continuing development of the project." Contract No. A16AV00382 at 83 (emphasis added).

However, in a May 30, 2017 letter, BIA states that "NAPI should not use the CY 2017 funds to cover its shortfall." *Letter from Awarding Official, Bureau of Indian Affairs – Navajo Regional Office, to Wilton Charley, Chief Executive Officer of NAPI* (May 30, 2017). Given this letter, the Navajo Nation requested direct reimbursement from the BIA in 2018. *Letter from President Russell Begaye to Sharon Pinto, Regional Director, Bureau of Indian Affairs, Re: Funding Shortfall for the Navajo Indian Irrigation Project* (Feb. 6, 2018). The BIA informed us that it lacks the funding necessary to reimburse NAPI for the shortfall and that due to the Anti-Deficiency Act, federal officers cannot allocate more funds than what is appropriated by Congress. 31 U.S.C. § 1341(a).

BIA's position is incorrect as it assumes that the only funds available for meeting the NIIP operation and maintenance costs are those funds appropriated to BIA. In fact, the NIIP is a Reclamation project and part of the Upper Colorado River Basin and the Secretary of the Interior has a statutory duty to use the Reclamation Fund and the Upper Colorado River Basin Fund for the operation and maintenance of NIIP. Such funds can and should be utilized to reimburse NAPI for the operation and maintenance shortfall for the NIIP and to also provide additional funding for the NIIP.

Pursuant to the 1962 Act, Congress authorized the Secretary of the Interior to construct, operate and maintain the NIIP for the principal purpose of furnishing irrigation water to approximately 110,630 acres of land using an average annual diversion of 508,000 acre-feet of water in accordance with the Colorado River Storage Project Act ("Storage Act"). Act of April 11, 1956, 70 Stat. 105, as amended, 43 U.S.C. §§ 620-620o. In the Storage Act, Congress classified both NIIP and the San Juan-Chama Project ("SJCP") as "participating projects" pursuant to Section 1 of that Act. 43 U.S.C. § 620.

In Section 1 of the Storage Act, Congress authorized the Secretary of Interior to construct, operate, and maintain participating projects of the Upper Colorado Basin. 43 U.S.C. § 620. NIIP is a participating project of the Upper Colorado Basin. When carrying out duties of constructing, operating and maintaining these participating projects, the Secretary is governed by the Reclamation Act of 1902. 43 U.S.C. § 620c (citing Act of June 17, 1902, 32 Stat. 388). Within the Reclamation Act, Congress directs the Secretary "to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed (emphasis added)" under the Reclamation Act. 43 U.S.C. § 491. Accordingly, Congress delegated an affirmative duty to the Secretary to use the Reclamation Fund for the operation and maintenance of irrigation works constructed under the provisions of the Reclamation Act, which includes NIIP.

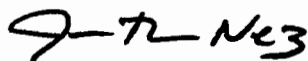
In Section 5 of the Storage Act, Congress also authorized the creation of a separate fund in the Treasury of the United States—the Upper Colorado River Basin Fund ("Basin Fund")—to be made available "until expended...for carrying out the provisions of [the Storage] Act." 43 U.S.C. § 620d. Concurrently, the Secretary also has a duty to use funds from the Basin Fund for operation and maintenance of the NIIP, based on Sections 4 and 5 of the Storage Act and the Commission's annual report.

Notably, the Commission report says that participating projects develop water in the Upper Colorado River system and participate in the use of revenues from the Basin Fund to help repay the costs of irrigation features that are beyond the ability of the water users to repay. Sixty-Ninth Annual Report of the Upper Colorado River Commission at 45. Because NAPI is the sole water user of the NIIP, and because NAPI does not have the ability to repay costs of irrigation features of the NIIP, revenues from the Basin Fund should be used to repay operation and maintenance costs incurred by NAPI. Accordingly, as a participating project of the Storage Act and a qualifying Reclamation project, the Secretary has a duty to use the Reclamation Fund and the Basin Fund to reimburse NAPI for the operation and maintenance costs and to cover future operation and maintenance costs of the NIIP.

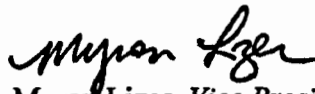
Because the NIIP is not completed, the United States continues to have an obligation to pay for the operation and maintenance costs of the NIIP. As the BIA has acknowledged, the 638 Contracts have provided *substantially less* than the amounts requested for a *proper OM&R program*." Contract No. A16AV00382 at 83 (emphasis added). The United States cannot avoid its obligations under the 1962 Act by continually underfunding the NIIP and leaving NAPI with the bill.

We urge the Secretary of the Interior to reimburse NAPI for the shortfall for operation and maintenance costs, which is \$4,307,351.00. We also urge the Secretary to identify viable sources of funding, as discussed in this letter, for future operation and maintenance of the NIIP. If you have any questions please feel free to contact Paulson Chaco, Office of the President and Vice President Chief of Staff, [paulsonchaco@navajo-nsn.gov](mailto:paulsonchaco@navajo-nsn.gov) or 928-871-7000.

Sincerely,



Jonathan Nez, President  
THE NAVAJO NATION



Myron Lizer, Vice President  
THE NAVAJO NATION



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Navajo Regional Office

P.O. Box 1060

Gallup, New Mexico 87305

September 1, 2020

Honorable Jonathan Nez  
President, Navajo Nation  
Post Office Box 7440  
Window Rock, Arizona 86515

Mr. David Zeller  
Chief Executive Officer  
Navajo Agricultural Products Industry  
Post Office Box 1318  
Farmington, New Mexico 87499

Dear President Nez and Mr. Zeller:

I write in response to Mr. Zeller's letter dated March 27, 2020, regarding Operations and Maintenance (O&M) Cost Responsibilities for the Navajo Indian Irrigation Project (NIIP). In particular, your letter expressed NAPI's position that "the United States is obligated to pay O&M charges for the NIIP presently, and until 10 years after the completion of the NIIP." Your letter referenced the 1962 Act of Congress that authorized NIIP<sup>1</sup> and a related report as the basis of your position and further noted that NIIP had not yet been completed. Accordingly, your letter requested clarification of the Bureau of Indian Affairs' (BIA) position on this matter.

After reviewing the relevant authorities, BIA has a different interpretation from the one proposed in your letter. With respect to O&M assessments specifically, Section 5 of the 1962 Act states that payment of NIIP O&M charges "shall be in accordance with the provisions of . . . 25 U.S.C. 385[.]" Section 385, in turn, authorizes the Secretary of the Interior to assess O&M charges on Indian irrigation projects, and as delegated BIA sets O&M rates in accordance with regulations governing its irrigation projects found at 25 CFR Part 171. Neither the 1962 Act nor Section 385 limits the Secretary or the BIA's authority to set and assess O&M charges at NIIP.

As to the related issues, BIA also has a different view. Your letter references the coordinated report published as House Document No. 424,<sup>2</sup> adopted by Section 1 of the 1962 Act, which incorporated both a 1955 feasibility report and a 1957 plan of development for NIIP. But the report's recommendation for a 10-year development period related to the assessment of *construction* costs for NIIP, not the assessment or timing of O&M charges.<sup>3</sup> Section 6 of the 1962 Act has an express prohibition related to the 10-year period after NIIP construction, but that

<sup>1</sup> Act of June 13, 1962, Pub. L. No. 87-483, 76 Stat. 96 (codified as amended at 43 U.S.C. §§ 615ii-615zz) (omitted).

<sup>2</sup> H.R. Doc. No. 86-424 (1960).

<sup>3</sup> *Id.* at 346, 356-57.

prohibition only relates to the delivery of water for the production of certain commodities on "newly irrigated lands." Conversely, Section 5 of the 1962 Act specifically covers O&M charges, as noted above, and that section has no reference or connection to such time period. Accordingly, we find no support for the conclusion that the 1962 Act or related materials require that NIIP be fully constructed or that a 10-year period lapse before O&M assessments begin. BIA appreciates that assessing O&M charges at NIIP may present challenges. Accordingly, BIA does not propose to charge full O&M assessment rates at this time and will continue to provide funding as available through appropriations. Absent sufficient appropriations, however, BIA will pursue assessment of lands in production to make up the difference in order to operate and maintain NIIP's facilities.

If you have any questions, please contact Mr. Roland Becenti, Supervisory Civil Engineer, Navajo Indian Irrigation Project, at (505) 325-1864 or Mr. Rudy Keedah, Branch Chief, Branch of Engineering, at (505) 863-8230.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Stevens', with a long horizontal flourish extending to the right.

Bartholomew Stevens  
Regional Director

# NAVAJO NATION

1279

Naa'bik'iyati' Committee Regular Meeting

6/9/2022

06:26:53 PM

Amd# to Amd#

CONSENT AGENDA: Item A.

PASSED

MOT James, V

-Legislations: 0062-22,0097-22,

SEC Halona, P

0040-22, 0074-22, 0083-22,

0088-22, & 0090-22

Yeas : 17

Nays : 1

Excused : 3

Not Voting : 2

Yea : 17

Begay, K

Daniels

James, V

Tso, O

Begay, P

Freeland, M

Slater, C

Walker, T

Brown

Halona, P

Tso, D

Wauneka, E

Charles-Newton

Henio, J

Tso, E

Yellowhair

Crotty

Nay : 1

Smith

Excused : 3

Stewart, W

Tso, C

Nez, R

Not Voting : 2

Yazzie

Begay, E

Presiding Speaker: Damon