CONTRACT
AMONG THE
NAVAJO NATION,
U.S. BUREAU OF RECLAMATION,
U.S. FISH AND WILDLIFE SERVICE, AND
PUBLIC SERVICE COMPANY OF NEW MEXICO
CONCERNING FISH WEIR FACILITIES
AT THE HOGBACK DIVERSION DAM TO
FACILITATE RECOVERY OF ENDANGERED FISH SPECIES IN THE
SAN JUAN RIVER BASIN

THIS CONTRACT, made this 27th day of April, 2016, pursuant to the
Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary
thereto, particularly the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105);
Sections 2(c)(2), 4(f), 6, and 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.); Section 2
of the Fish and Wildlife Coordination Act (16 U.S.C. 661-667); Executive Order No. 13175:
Consultation and Coordination with Indian Tribal Governments; Secretarial Order No. 3206:
American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered
Species Act; and the Act to Authorize the Bureau of Reclamation to Provide Cost Sharing for the
Endangered Fish Recovery Implementation Programs for the Upper Colorado and San Juan
(Public Law 106-392), among the UNITED STATES BUREAU OF RECLAMATION
(Reclamation); the UNITED STATES FISH AND WILDLIFE SERVICE (Service); the
NAVAJO NATION (Nation); and PUBLIC SERVICE COMPANY OF NEW MEXICO
(PNM), a New Mexico corporation;

WITNESSETH, that:

WHEREAS, pursuant to Public Law 86-636, dated July 12, 1960, and as evidenced by
the Transfer of Certain Irrigation Project Works on the Navajo Reservation executed by the
Secretary of the Interior on April 26, 2006, the United States transferred all of the right, title, and
interest of the United States to the Hogback Irrigation Project to the Navajo Nation, a federally
recognized Indian tribe; and

WHEREAS, the Nation historically owned, operated, and maintained the Original
Hogback and Cudei Diversion Dams (as hereinafter defined) and appurtenant facilities for the
purpose of diverting and conveying water under the Nation’s water rights from the San Juan
River to the Nation’s water users; and

WHEREAS, the San Juan River above its confluence with the Colorado River has been
designated critical habitat for two endangered fish species (Colorado pikeminnow and razorback
sucker), and the Original Hogback and Cudei Diversion Dams are situated within this critical
Contract No. 10-WC-40-372

habitat; and

WHEREAS, the San Juan River Basin Recovery Implementation Program for Endangered Fish Species in the San Juan River Basin, dated November 1, 1992 (Recovery Program, as hereinafter defined), was implemented by a Cooperative Agreement signed by the Secretary of the Department of the Interior, the Governors of Colorado and New Mexico, the Presidents of the Navajo Nation and the Jicarilla Apache Nation, and the Chairmen of the Southern Ute and Ute Mountain Ute Indian Tribes. The goal of the Recovery Program is to recover populations of the Colorado pikeminnow and razorback sucker within the San Juan River Basin consistent with the goals established under the Endangered Species Act (ESA), while allowing development to proceed consistent with all applicable federal and state laws, interstate compacts, Supreme Court decrees and federal trust responsibilities to the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, the Jicarilla Apache Nation and the Navajo Nation; and

WHEREAS, Reclamation and the Service are entering into this Contract as agents for the Recovery Program pursuant to the 1992 Cooperative Agreement for the San Juan River Basin Recovery Implementation Program and Public Law 106-392; and

WHEREAS, Public Law 106-392 authorizes Reclamation to, among other things, provide cost sharing for capital construction projects under the Recovery Program. Public Law 106-392 also authorizes Reclamation to use power revenues to provide up to $2 million per year (indexed for inflation from date of enactment) to fund recovery monitoring and research, and operation, maintenance, replacement, and modification of capital project features through Federal fiscal year 2011. Furthermore, Public Law 106-392 provides for monitoring, operation, maintenance and replacement funding beyond 2011; and

WHEREAS, the Hogback Diversion Dam and Canal Improvements (as hereinafter defined) (Contract No. 01-CC-40-4290 and Contract No. 01-PC-40-0096, respectively) were constructed in 2002 and 2001 respectively, to replace the Original Hogback and Cuedi Diversion Dams, to provide for improved irrigation system reliability and fish passage at the Original Hogback and Cuedi Diversion Dams, and are owned, Operated, Maintained, and Modified by the Nation and are part of the Navajo Nation Facilities (as hereinafter defined). The total cost associated with these contracts was approximately $4,800,000 of which the Recovery Program, in recognition of the benefits to endangered fish and under the authority of Public Law 106-392, provided $3,350,000; and

WHEREAS, Reclamation, on behalf of the Recovery Program, desires to minimize the potential for Incidental Take (as hereinafter defined) by constructing a Fish Weir and associated facilities ("Fish Weir" as hereinafter defined) as outlined in the Recovery Implementation Program’s Long Range Plan with funds authorized by Public Law 106-392. The Recovery Program has approved the construction of the Fish Weir at the Hogback Diversion Dam and Canal Improvements; and
WHEREAS, following the completion of construction of the Fish Weir, the Fish Weir shall become part of the Navajo Nation Facilities, and the Nation will own and be responsible for Operation, Maintenance, and Modification(s) of the Fish Weir pursuant to the terms and conditions of this Contract as set forth herein; and

WHEREAS, PNM is willing to perform Extraordinary Maintenance (as hereinafter defined) on the Fish Weir at the request of the Nation, consistent with the terms and conditions of this Contract.

NOW, THEREFORE, for the promises set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. As used in this Contract (including the Recitals):

   (a) “Recovery Program” shall mean the San Juan River Basin Recovery Implementation Program, as authorized by Public Law 106-392 and as defined in the November 1, 1992 Cooperative Agreement entitled Cooperative Agreement of the San Juan Basin Recovery Implementation Program, the term of which was subsequently extended to September 30, 2022.

   (b) “Original Hogback and Cudei Diversion Dams” shall mean the original Hogback and Cudei Diversion Dams and appurtenant facilities which were constructed for the purpose of diverting and conveying water under the Nation’s water rights from the San Juan River to its water users.

   (c) “Hogback Diversion Dam and Canal Improvements” shall mean the facilities constructed under Contract No. 01-CC-40-4290 and Contract No. 01-PC-40-0096, primarily consisting of a diversion dam, integrated fish passage, and the Cudei siphon to replace the Original Hogback and Cudei Diversion Dams.

   (d) “Fish Weir” shall mean the structure to be constructed under a separate contract between Reclamation and the Navajo Engineering and Construction Authority pursuant to Public Law 93-638.

   (e) “Navajo Nation Facilities” shall mean the Hogback Diversion Dam and Canal Improvements and the Fish Weir.

   (f) “Modification” or “Modify” shall mean any major change, alteration, or addition to or removal from the Hogback Diversion Dam and Canal Improvements and/or Fish Weir as originally constructed that shall accomplish at least one of the following: 1) Improve fish passage; 2) Reduce Incidental Take; 3) Decrease injury to fish; 4) Reduce long-term operation and maintenance expenses; 5) Improve water flows; 6) Improve personal safety; 7) Restore or improve the proper and/or efficient Operation of the structure; and/or 8) Increase security.
(g) "Designer’s Operating Criteria" shall mean the document prepared by Reclamation which provides technical criteria and recommendations concerning the Operation of the Fish Weir.

(h) "Operation" or "Operate" shall mean the day-to-day control and operation of the Hogback Diversion Dam and Canal Improvements and/or Fish Weir necessary to ensure that these facilities function as intended and designed.

(i) "Maintenance" or "Maintain" shall mean reasonable and necessary care, repair and/or replacement that are necessary for long-term Operation of the Hogback Diversion Dam and Canal Improvements, and to ensure that they remain in good and efficient condition for the purposes for which they were constructed.

(j) "Ordinary Maintenance" shall mean day-to-day reasonable and necessary care, repair, and/or replacement associated with the Fish Weir to ensure it remains in good and efficient condition for the purposes for which it was constructed.

(k) "Extraordinary Maintenance" shall mean major maintenance activities, including unanticipated, extraordinary or emergency care, repair, and/or replacement, associated with the Fish Weir, and requiring specialized expertise or equipment. The determination of whether maintenance activities are Ordinary Maintenance or Extraordinary Maintenance shall be made by the mutual agreement of the Nation and PNM through the Scopes of Work identified in Paragraphs 7 and 8 herein.

(l) "Operation and Maintenance Year" shall mean October 1 of each year through the following September 30.

(m) "Biological Opinion" shall mean the final Biological Opinion document which shall include: 1) the opinion of the Service as to whether or not the Federal action of constructing or funding the construction of the Fish Weir and its operation is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat; 2) a summary of the information on which the opinion is based; 3) a detailed discussion of the effects of the action on listed species or designated critical habitat and any associated incidental take of listed species. [50 CFR §402.02, 50 CFR §402.14(h)]

(n) "Incidental Take" shall mean the take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or applicant. [50 CFR §402.02]

(o) "Contracting Officer" shall mean the Reclamation employee authorized to oversee this Contract.

2. Right of Reasonable Access to the Navajo Nation Facilities.
(a) The Nation hereby grants to PNM, its representatives, employees, contractors, agents, successors, and/or assigns, the right of reasonable ingress to and egress from the Navajo Nation Facilities as depicted in Exhibit A, not to exceed the term of this Contract, to perform its duties under this Contract, as provided for in Paragraph 8 herein.

(b) The Nation hereby grants to Reclamation, its representatives, employees, contractors, agents, successors, and/or assigns, the right of reasonable ingress to and egress from the Navajo Nation Facilities as depicted Exhibit A, not to exceed the term of this Contract, to perform its duties under this Contract, as provided for in Paragraph 5 herein.

(c) If determined necessary by the Service in order to fulfill its obligations, as provided for in Paragraph 6 herein, under the ESA, the Fish and Wildlife Coordination Act, or the Recovery Program, the Nation shall grant the Service, its representatives, employees, contractors, agents, successors and/or assigns, the right of reasonable ingress to and egress from the Navajo Nation Facilities, not to exceed the term of this Contract, to install, operate, maintain, repair and/or replace fish monitoring and/or tracking instrumentation on the Navajo Nation Facilities. In such case, location and access for the instrumentation shall be coordinated with and approved by the Nation.

(d) In the event of any situation that may interfere with any party’s reasonable access to the Navajo Nation Facilities, the party with knowledge of the situation shall contact all of the parties within twenty-four (24) hours by telephone to notify them of the situation. All parties agree to cooperate with each other to resolve the situation and restore access to the Navajo Nation Facilities.

3. Reimbursement of Operation, Ordinary Maintenance, Extraordinary Maintenance, and/or Modification Expenses.

(a) Upon completion of construction of the Fish Weir, Reclamation, the Nation, and PNM shall prepare initial Operation and Maintenance Scopes of Work to cover the Nation’s short-term expenses for its initial Operation, Ordinary Maintenance, and Modification(s) of the Fish Weir and Modification(s) of the Hogback Diversion Dam and Canal Improvements, and PNM’s expenses associated with its Extraordinary Maintenance of the Fish Weir incurred prior to submission and approval of the initial Scopes of Work as identified in Paragraphs 7 and 8 herein. The Recovery Program shall reimburse the Nation and PNM in accordance with the initial Scopes of Work subject to the terms of Standard Article B.

(b) It is expressly acknowledged that all costs associated with Operation and Maintenance of the Hogback Diversion Dam and Canal Improvements shall be the responsibility of the Nation. However, approved Modification(s) to the Hogback Diversion Dam and Canal Improvements shall be funded by the Recovery Program.

(c) Upon written notification to the Nation and PNM by the Recovery Program of its approval of the initial Scopes of Work or approval of the annual Scopes of Work as identified
Paragraphs 7 and 8, Reclamation, acting on behalf of the Recovery Program, shall reimburse the Nation and PNM for their Operation, Ordinary Maintenance, Extraordinary Maintenance and/or Modification(s) of the Fish Weir and Modification(s) of the Hogback Diversion Dam and Canal Improvements as follows:

(1) Quarterly, the Nation and PNM shall prepare and submit to Reclamation their itemized bills including, but not limited to, copies of all invoices, bills, and receipts for their expenditures under this Contract.

(2) Within sixty (60) days of its receipt of the quarterly itemized bills, the Recovery Program shall reimburse the Nation and PNM.

4. Interruption in Operation of Fish Weir.

(a) The parties agree to temporarily discontinue the Operation of the Fish Weir if any one of the following conditions occurs:

(1) There is insufficient flow in the San Juan River to operate the Fish Weir and allow the Nation to utilize its water rights.

(2) Mechanical, electrical or structural failure of the Fish Weir.

(3) The Fish Weir becomes blocked by ice, vegetation, silt, trash, or other cause to the extent that the Nation cannot divert its water rights.

(4) As necessary during Operation, Ordinary Maintenance, Extraordinary Maintenance, and Modification activities for the Fish Weir.

(b) In the event that Operation of the Fish Weir is temporarily discontinued pursuant to Paragraph 4(a) herein, the parties agree to resume Operation when the flows have increased and/or the condition causing the temporary cessation in Operation has been corrected.

(c) The Nation shall notify all the parties by telephone no later than the next working day of any activity adversely affecting the Operation of the Fish Weir for periods of four (4) hours or greater to consult regarding the nature and duration of the activity so that the Operation of the Fish Weir can be resumed as soon as possible. The Nation shall keep a log of any activity adversely affecting the Operation of the Fish Weir for periods of four (4) hours or greater and provide this information annually to Reclamation.

5. Reclamation's Duties and Responsibilities.

(a) Reclamation, as a federal agency participating in the Recovery Program, shall work on behalf of the Recovery Program to implement this Contract.
6. The Service’s Duties and Responsibilities.

(a) The Service shall be responsible to ensure that the Operation of the Fish Weir shall be conducted in a manner that is in compliance with the Biological Opinion and Incidental Take Statement set forth in the Biological Opinion and this Contract. The Service shall work on behalf of the Recovery Program to implement this Contract.

(b) If the Service determines that fish monitoring and/or tracking instrumentation equipment is needed on any of the Navajo Nation Facilities, the Service shall so notify the Nation in writing. The notice shall include a description of the equipment that the Service believes is needed and when it intends to install the equipment. The Service shall coordinate the locations of the equipment and the access routes to such locations with the Nation, and such locations and access routes shall be subject to the approval of the Nation. The Service shall purchase, install, operate, maintain, repair and replace all of such equipment at no expense to the Nation. The Service shall exercise its access rights and perform all activities relating to the installation, operation, maintenance and repair of the equipment in a manner that does not interfere with the Operation, Ordinary Maintenance, and Extraordinary Maintenance of the Navajo Nation Facilities. The Service shall contact the Nation by telephone prior to undertaking any activities relating to the installation, operation, maintenance and repair of the equipment. The Service shall be responsible for acquiring any necessary access.

(c) If the Service reasonably determines that any Modification(s) to the Navajo Nation Facilities is necessary to protect the two endangered species and/or to improve personal safety, the Service shall provide any such recommended Modification(s) to the Nation prior to the preparation of the Nation’s annual Scopes of Work as set forth in Paragraph 9 herein.

(d) The Service and its representatives, employees, contractors, agents, successors, and/or assigns shall take all reasonable precautions not to disturb or damage the Navajo Nation Facilities, and the Service will not interfere with the Operation, Ordinary Maintenance, and Extraordinary Maintenance of the Navajo Nation Facilities. The Service shall act in good faith to repair any damages to real property and personal property of the Nation resulting from its activities under or pursuant to this Contract, contingent upon appropriation or allotment of funds.

(e) The Service shall assist Reclamation in seeking and obtaining long-term funding for the Recovery Program to fulfill the funding obligations under this Contract.
7. The Nation's Duties and Responsibilities.

(a) The Nation shall be responsible for Operation and Maintenance and/or Modification(s) of the Hogback Diversion Dam and Canal Improvements and shall ensure that they remain in good and efficient condition for the purposes for which they were constructed. Approved Modification(s) to the Hogback Diversion Dam and Canal Improvements shall be funded by the Recovery Program.

(b) The Nation owns and is responsible for Operation, Ordinary Maintenance, and/or Modification(s) of the Fish Weir in compliance with the Biological Opinion and Incidental Take Statement and shall ensure that the Fish Weir remains in good and efficient condition for the purposes for which it was constructed with funding provided by the Recovery Program.

(c) Annually, the Nation shall prepare and submit to the Recovery Program for review and approval a Scope of Work and any funding requests for such Scope of Work relating to the Operation, Ordinary Maintenance, and Modification(s) of the Fish Weir, and the Modification(s) to the Hogback Diversion Dam and Canal Improvements. Upon request, Reclamation shall assist the Nation in preparing this Scope of Work. Each annual Scope of Work shall show the Nation's anticipated Operation, Ordinary Maintenance and/or Modification(s) of the Fish Weir and Modification(s) of the Hogback Diversion Dam and Canal Improvements for the following Operation and Maintenance Year. The annual Scope of Work shall include estimated labor, materials, equipment, utility, and any other costs necessary for such Operation, Maintenance, Ordinary Maintenance, and/or Modification(s). Also included in the annual Scope of Work shall be the Nation's incremental cost, if any, of adding the Fish Weir Operation, Ordinary Maintenance, and Modification work to the Nation's insurance policy. Attached hereto as Exhibit B is a sample Scope of Work containing: a spreadsheet, a labor-rate spreadsheet, and a sample list of work activities and items that may be used by the Nation in preparing its Scope of Work. Preparation of the annual Scope of Work shall include the following steps:

(1) Prior to the Nation's and PNM's preparation and submission of their respective annual Scopes of Work to the Recovery Program, the Nation shall inform and, if necessary, schedule a meeting with the parties hereto to discuss and coordinate with each other their respective Operation, Maintenance, Ordinary Maintenance, Extraordinary Maintenance and/or Modification plans and activities for the following Operation and Maintenance Year.

(2) The Nation shall submit the Scope of Work to the Coordinator, San Juan River Recovery Implementation Program, on or before April 30 or within forty-five (45) days of the Coordinator's request for submittal, whichever is later.

(3) The Recovery Program Coordination Committee shall review the work plan between May 1 and August 31.

(4) The Coordinator of the Recovery Program shall issue his/her approval of the work plan on or before September 10.
(5) If the Recovery Program requests revisions to the proposed Scope of Work, the Nation shall review the requested revisions and revise the Scope of Work. Upon request, Reclamation shall assist the Nation with the requested revisions. If the Nation disagrees with any revisions requested by the Recovery Program, it shall negotiate with the Recovery Program to attempt to reach agreement on the disputed revisions.

(6) If the Recovery Program does not approve and fund the Scope of Work by the time the work is scheduled to be done, the Nation shall not be required to make any expenditures, or perform Operation, Ordinary Maintenance, or Modification(s) of the Fish Weir, or Modify the Hogback Diversion Dam and Canal Improvements until such time as the Scope of Work is approved and funded by the Recovery Program.

(d) The Nation shall request additional funding from the Recovery Program in the event the Nation’s actual costs exceed the Scope of Work estimates. Except for emergency situations, the Nation shall request additional funds from the Recovery Program prior to incurring expenditures.

(e) The Nation shall obtain written approval from the Recovery Program prior to making any Modification(s) to the Navajo Nation Facilities that the Nation reasonably determines are necessary to keep these facilities in good and efficient condition for the purposes for which they were constructed. The Nation may request funding for any approved Modification(s) through its annual Scope of Work.

(f) The Nation, in coordination with PNM, shall prepare and submit to the Recovery Program and the other parties hereto an annual Fish Weir Operation and Maintenance report on or before December 31 of each year hereafter, covering the Operation and Maintenance Year that ended on the preceding September 30. An example of an annual Operation and Maintenance Report is attached hereto as Exhibit C.

(g) In the event that PNM does not agree to be responsible for Extraordinary Maintenance of the Fish Weir, the Nation shall assume all responsibilities identified in Paragraph 8.

8. PNM’s Duties and Responsibilities.

(a) As requested by the Nation and agreed by PNM, PNM shall be responsible for Extraordinary Maintenance of the Fish Weir with funding provided by the Recovery Program.

(b) Annually, PNM shall prepare and submit to the Recovery Program for review and approval a Scope of Work and any funding requests for such Scope of Work relating to the Extraordinary Maintenance of the Fish Weir. The annual Scope of Work shall show PNM’s anticipated Extraordinary Maintenance of the Fish Weir for the following Operation and Maintenance Year. The annual Scope of Work shall include estimated labor, materials,
equipment, utility, subcontracting and any other costs necessary for such Extraordinary Maintenance. Also included in the annual Scope of Work shall be PNM’s incremental cost, if any, of adding the Fish Weir Extraordinary Maintenance work to PNM’s insurance policy. Attached hereto as Exhibit B is a sample Scope of Work containing: a spreadsheet, a labor-rate spreadsheet, and a sample list of work activities and items that may be used by PNM in preparing its Scope of Work. Preparation of the annual Scope of Work shall include the following steps:

(1) Prior to the Nation’s and PNM’s preparation and submission of their respective annual Scopes of Work to the Recovery Program, the Nation shall inform and, if necessary, schedule a meeting with the parties hereto to discuss and coordinate with each other their respective Operation, Maintenance, Ordinary Maintenance, Extraordinary Maintenance and/or Modification plans and activities for the following Operation and Maintenance Year.

(2) PNM shall submit the Scope of Work to the Coordinator, San Juan River Recovery Implementation Program, on or before April 30 or within forty-five (45) days of the Coordinator’s request for submittal, whichever is later.

(3) The Recovery Program Coordination Committee shall review the work plan between May 1 and August 31.

(4) The Coordinator of the Recovery Program shall issue his/her approval of the work plan on or before September 10.

(5) If the Recovery Program requests revisions to the proposed Scope of Work, PNM shall review the requested revisions and revise the Scope of Work. Upon request, Reclamation shall assist PNM with the requested revisions. If PNM disagrees with any revisions requested by the Recovery Program, it shall negotiate with the Recovery Program to attempt to reach agreement on the disputed revisions.

(6) If the Recovery Program does not approve and fund the Scope of Work by the time the work is scheduled to be done, PNM shall not be required to make any expenditures, or perform Extraordinary Maintenance of the Fish Weir, until such time as the Scope of Work is approved and funded by the Recovery Program.

(c) PNM shall request additional funding from the Recovery Program in the event PNM’s actual costs exceed the Scope of Work estimates. Except for emergency situations, PNM shall request additional funds from the Recovery Program prior to incurring expenditures.

(d) PNM, in coordination with the Nation, shall prepare and submit to the Recovery Program and the other parties hereto an annual Fish Weir Operation and Maintenance report on or before December 31 of each year hereafter, covering the Operation and Maintenance Year that ended on the preceding September 30. An example of an annual Operation and Maintenance Report is attached hereto as Exhibit C.
9. **Resolution of Disagreements.** In the event of a disagreement among the parties involving the application or interpretation of any provision of this Contract, any determination or finding made by a party under this Contract, or any performance hereunder, the matters involved in the disagreement shall, upon demand of any party, be discussed at a meeting between the parties to be held within forty-five (45) days of the date the demand is made. Attempted resolution of the disagreement through such a meeting shall be a condition precedent to any party’s effort to have the disagreement resolved through alternative dispute resolution or other proceedings. In the event the parties are unable to resolve their disagreement following such meeting or meetings, any party may request that the matter be submitted to alternative dispute resolution or seek resolution by any means legally available. Each party shall bear its own costs and expenses incurred in this process.

10. **Funding.** The performance by the Nation and PNM of their respective duties and obligations under this Contract shall be contingent upon funding from the Recovery Program or other available sources and upon those funds being made available to the Nation and PNM as provided in this Contract. If a duty or obligation of the Nation and/or PNM is only partially funded, the Nation and/or PNM shall be obligated to perform the duty or obligation only to the extent of the available funds. In addition, if a bill is not timely paid as provided in Paragraph 3(c) herein, the Nation shall be entitled to discontinue Operation, Ordinary Maintenance, and Modification(s) of the Fish Weir and Modification(s) of the Hogback Diversion Dam and Canal Improvements, and PNM shall be entitled to discontinue Extraordinary Maintenance of the Fish Weir until the bill is paid in full.

11. **Term of Contract.**

   (a) This Contract shall be effective upon execution by all the parties and shall remain in effect for a period of twenty-five (25) years from the date hereof unless earlier terminated in writing (i) by mutual agreement of the parties; or (ii) by a party giving a minimum of one year’s prior notice of termination.

   (b) Prior to the expiration of its term, this Contract may be renewed, or amended and renewed, for an additional period of up to twenty-five (25) years upon written agreement by all the parties, subject to the policies and laws in effect at that time.

   (c) In the event the Service provides a written determination that the Hogback Diversion Dam and Canal Improvements and Fish Weir are no longer needed, the Nation may elect to keep the facilities in place with the option to remove or make adjustments to the facilities as deemed necessary by the Nation. Upon any such determination by the Service, all parties are released from all further obligations under this Contract.

   (d) Upon termination of this Contract, the Nation may, at its option, continue or discontinue Operation, Ordinary Maintenance, and Modification(s) of the Fish Weir and Modification(s) of the Hogback Diversion Dam and Canal Improvements, and PNM may, at its discretion, enter into a new contractual arrangement with the Nation for the continued
12. **Entire Contract.** This Contract constitutes the entire agreement between the parties and supersedes any prior understanding, representation, or agreement of the parties regarding the subject matter hereof, and may not be amended or terminated except by an instrument in writing signed by the parties hereto.

13. **Binding Contract.** This Contract shall inure to the benefit of and be binding upon the parties hereto and their employees, contractors, agents, successors, and/or assigns.

14. **No Waiver.** No waiver of any provision of this Contract shall be deemed to constitute or shall constitute a waiver of any other provisions hereof, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

15. **Rights and Remedies.** The parties shall have all rights and remedies provided under law for a breach or threatened breach of this Contract. Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. § 1540(g), this Contract shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damages pursuant to the provisions of this Contract.

16. **Necessary Acts and Cooperation.** The parties hereby agree to do any lawful act and to execute any and all instruments required by this Contract and which are necessary and proper to make effective the provisions of this Contract.

17. **Execution of Contract.** This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Contract.

18. **Standard Articles.** The standard agreement articles applicable to this Contract are listed below. The full text of these standard articles is attached hereto as Addendum "A" and by this reference made a part hereof.

A. **NOTICES**
B. **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**
C. **OFFICIALS NOT TO BENEFIT**
D. **ASSIGNMENT LIMITED-SUCCESSIONS AND ASSIGNS OBLIGATED**
E. **BOOKS, RECORDS, AND REPORTS**
F. **CLEAN AIR AND WATER**
G. **INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY**
H. **COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS**
I. **CERTIFICATION OF NONSEGREGATED FACILITIES**
J. **CONTRACT DRAFTING CONSIDERATIONS**
ADDENDUM “A”

A. NOTICES.

(a) Except for the notice by telephone provided for in Paragraphs 2(d) and 4(c) herein, any notice, demand, or request authorized or required by this Contract shall be deemed to have been given on behalf of all parties to this Contract when mailed first class, postage prepaid, to the following:

Coordinator, San Juan River Recovery Implementation Program
US Fish and Wildlife Service
2135 Osuna Road NE
Albuquerque, New Mexico 87113
Telephone: (505) 761-4745 Facsimile: (505) 346-2535

Mr. Ray Benally, Director
Navajo Nation Department of Water Resources
P.O. Box 678
Fort Defiance, AZ 86504
Telephone: (928) 729-4004 Facsimile: (928) 729-4126

Public Service Company of New Mexico
Attn: Plant Manager, San Juan Generating Station
P.O. Box 227
Waterflow, New Mexico 87421
Telephone: (505) 598-7200 Facsimile: (505) 598-7926

Area Manager
Bureau of Reclamation
2764 Compass Drive, Suite 106
Grand Junction, Colorado 81506
Telephone: (970) 248-0600 Facsimile: (970) 248-0601

(b) The designation of the respective addressee, address, telephone and/or facsimile number may be changed by written notice given in the same manner as provided herein.

B. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

C. OFFICIALS NOT TO BENEFIT. No Member of or Delegate to the Congress, Resident Commissioner, or official of the Nation shall benefit from this Contract other than as a water
user or landowner: in the same manner as other water users or landowners.

D. ASSIGNMENT LIMITED-SUCCESSIONS AND ASSIGNS OBLIGATED.
Notwithstanding any other provisions of this Contract, it is understood and agreed by the parties hereto that Reclamation, the Service, PNM, and the Nation may each, at their sole discretion, transfer, delegate or assign, in whole or in part, their respective duties and responsibilities under this Contract to a willing federal, state, or other entity who, in their judgment is qualified to fulfill said responsibilities; provided, however, that any such transfer or assignment shall not be effective until it is approved in writing by the other parties hereto, which approval shall not be unreasonably withheld or delayed.

E. BOOKS, RECORDS, AND REPORTS. The Nation shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, as related to the Fish Weir. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other parties' books and records relating to matters covered by this Contract.

F. CLEAN AIR AND WATER.

(a) The Nation agrees as follows:

1. To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 7414), and Section 308 of the Federal Water Pollution Control Act, as amended by Public Law 92-500 (33 U.S.C. 1318), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 of the Air Act and Section 308 of the Water Act, respectively, and all regulations and guidelines issued thereunder before the execution of this Contract.

2. That no portion of the work required by this Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was executed unless and until the Environmental Protection Agency eliminates the name of such facility or facilities from such listing.

3. To use its best efforts to comply with clean air standards and clean water standards at the facility where the contract work is being performed.

4. To insert the substance of the provisions of this article into any nonexempt subcontract, including this paragraph (a)(4).

(b) The terms used in this article have the following meanings:

1. The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

2. The term "Water Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

3. The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order
11738, an applicable implementation plan as described in Section 110 of the Air Act (42 U.S.C. 7410), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or (d)), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 7412(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a state under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "comply" means compliance with clean air or water standards. Comply shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or supervised by a contractor or subcontractor to be utilized in the performance of an agreement or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

G. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY.

(a) In accordance with the provisions of Title 42 U.S.C. 2000-e-2(i), the Nation shall give preference in employment to Indian residents of the Navajo Nation Indian Reservation. The Bureau of Indian Affairs Office of Employment Assistance shall be notified of employment opportunities 48 hours before any positions are advertised to the general public. Nothing in this section shall be read as prohibiting the Nation from giving preferential employment to members of the Navajo Nation.

(b) Except as provided above, during the performance of this Contract the Nation agrees as follows:

(1) The Nation will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Nation will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, disability, or national origin. Such action shall include, but not be limited to, the following: employment; upgrading; demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Nation agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Nation will, in all solicitations or advertisements for employees placed by
or on behalf of the Nation, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

(3) The Nation will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Nation's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Nation will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Nation will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Nation's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended, in whole or in part, and the Nation may be declared ineligible for further Government contracts or agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoke as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Nation will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Nation will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Nation becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Nation may request the United States to enter into such litigation to protect the interests of the United States.

(c) The Nation further agrees that it will be bound by the above Equal Employment Opportunity (Federally Assisted Construction) clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the Nation so participating is a state or local government, the above Equal Employment Opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work or under the Contract.

(d) The Nation agrees that it will assist and cooperate actively with the Contracting Officer and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Employment Opportunity (Federally Assisted Construction) clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Contracting Officer and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Contracting Officer in the discharge of his
primary responsibility for securing compliance.

(e) The Nation further agrees that it will refrain from entering into any agreement/contract or agreement/contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to said amended Executive Order and will carry out such sanctions and penalties for violation of the Equal Employment Opportunity (Federally Assisted Construction) clause as may be imposed upon contractors and subcontractors by the Contracting Officer or the Secretary of Labor pursuant to Part II, Subpart D, of Executive Order 11246 of September 24, 1965. In addition, the Nation agrees that if it fails or refuses to comply with these undertakings, the Contracting Officer may take any or all of the following actions: cancel, terminate, or suspend, in whole or in part, this Contract; refrain from extending any further assistance to the Nation under the program with respect to which its failure or refusal occurred until satisfactory assurance of future compliance has been received from such contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

H. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS.

(a) The Nation shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), Title III of the Americans with Disabilities Act of 1990, and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Reclamation.

(b) These statutes require that no person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, the Nation agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Nation makes this Contract in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Nation by Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Nation recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

(d) Complaints of discrimination against the Nation shall be investigated by the Contracting Officer’s Office of Civil Rights.

I. CERTIFICATION OF NONSEGREGATED FACILITIES. The Nation hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not
maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Nation agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. The Nation further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

J. CONTRACT DRAFTING CONSIDERATIONS. Paragraphs 1 through 17 of this Contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated paragraphs.
IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Contract as of the day and year first above written.

THE NAVAJO NATION

By: Joe Shirley Jr., President, Navajo Nation

PUBLIC SERVICE COMPANY OF NEW MEXICO,
a New Mexico corporation

By: Vice President

UNITED STATES
FISH AND WILDLIFE SERVICE

Regional Director, Region 2

UNITED STATES
BUREAU OF RECLAMATION

Regional Director, Upper Colorado Region

List of Exhibits:
Exhibit A - Map Showing Fish Weir and Associated Facilities
Exhibit B - Scope of Work Example
Exhibit C - Operation and Maintenance Report Example

Approved
Office of the Regional Solicitor

Contract No. 10-WC-40-372
EXHIBIT B

Format for Scopes of Work for San Juan River Basin Recovery Implementation Program
(Use Times New Roman, 12 pt and MS Word)

Title of Proposal
Fiscal Year XXXX Project Proposal

Principal Investigator: Name
Agency/Company
Address,
City, State, Zip Code
Phone number email address

Background *(Times New Roman 11 pt)*
Include a brief synopsis of the need for this Scope of Work and refer to sections of the Long Range Plan that this Scope of Work addresses. Give general description of the proposal.

Description of Study Area
Include River Miles as appropriate.

Objectives
Include measurable outcomes.

1.)

2.)

Products/Schedule
Include expected due dates and products anticipated.
**Budget Fiscal Year**

Use a table similar to this.

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<tr>
<th>Personnel</th>
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<tr>
<td>Laborer</td>
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<tr>
<td>Equipment Operator, etc.</td>
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<td>Subtotal $ XX,XXX</td>
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<td>X # of trips (field work)</td>
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</tr>
<tr>
<td>X # of trips (meeting attendance) (if necessary)</td>
<td>$ XXX</td>
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<tr>
<td></td>
<td>Subtotal $</td>
</tr>
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<tr>
<th>Equipment and Supplies</th>
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<td>Be specific on equipment, tools, etc.</td>
<td>$ X,XXX</td>
</tr>
<tr>
<td>Supplies</td>
<td>$ XXX</td>
</tr>
<tr>
<td></td>
<td>Subtotal $ X,XXX</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Utilities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical, telephone, etc.</td>
<td></td>
</tr>
</tbody>
</table>

| Total                      | $ XX,XXX |
| Administrative Overhead (X %) | $ X,XXX |

| GRAND TOTAL                | $ XXX,XXX |
Exhibit C - Operation and Maintenance Report

SAN JUAN RECOVERY PROGRAM
FY 200 EXAMPLE ANNUAL PROJECT REPORT

I. Project Title: Operation and Maintenance of the Fish Screen and Maintenance of the Fish Passage Facility at the Redlands Water And Power Company Diversion Dam

II. Prepared by: Name:
Address:
Phone:
Email:

III. Project Summary: The Redlands Water and Power Diversion, located on the Gunnison River near Grand Junction, CO, diverts water into the Redlands Power Canal. A fish passage structure was constructed around the diversion dam in 1996. A fish screen and fish return pipeline was constructed in the canal in 2004. The fish passage is operated by the US Fish and Wildlife Service. Redlands operates and maintains the fish screen and performs maintenance on the fish passage.

VI. Accomplishment of FY 200 Tasks and Deliverables, Discussion of Findings and Shortcomings:

The following major maintenance activities were completed on the fish barrier:

The following improvements were made to the fish passage:

The fish barrier was operated/not operated during the following periods:

The following major maintenance activities were completed on the fish barrier:

The following improvements were made to the fish screen:

VII. Recommendations:
VIII.  Project Status:

IX.  FY 200_ Budget Status

A.  Funds Provided:
B.  Funds Expended:

See attached FY200_ Invoice summary for detail of expenditures by activity.

XI.  Signed: ____________________________  Date ____________________________