



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
Attorney General

HEATHER CLAH
Deputy Attorney General

DEPARTMENT OF JUSTICE
INITIAL ELIGIBILITY DETERMINATION
FOR NAVAJO NATION FISCAL RECOVERY FUNDS

RFS/HK Review #: _____

Date & Time Received: _____

Date & Time of Response: _____

Entity Requesting FRF: _____

Title of Project: _____

Administrative Oversight: _____

Amount of Funding Requested: _____

Eligibility Determination:

- ☐ FRF eligible
☐ FRF ineligible
☐ Additional information requested

FRF Eligibility Category:

- ☐ (1) Public Health and Economic Impact
☐ (2) Premium Pay
☐ (3) Government Services/Lost Revenue
☐ (4) Water, Sewer, Broadband Infrastructure

U.S. Department of Treasury Reporting Expenditure Category: _____

- ☐ Missing Form
- ☐ Supporting documentation missing
- ☐ Project will not be completed by 12/31/2026
- ☐ Ineligible purpose
- ☐ Submitter failed to timely submit CARES reports
- ☐ Additional information submitted is insufficient to make a proper determination
- ☐ Expenditure Plan incomplete
- ☐ Funds will not be obligated by 12/31/2024
- ☐ Incorrect Signatory
- ☐ Inconsistent with applicable NN or federal laws

[illegible]

Name of DOJ Reviewer: _____

Signature of DOJ Reviewer: _____

If additional information has been requested and you wish to provide it, please resubmit all the required forms updated to include the additional information. Full resubmission will expedite the Initial Eligibility Determination process. Therefore, please include a new RFS form indicating resubmission, revised Appendix A, Budget Form 1, and other supporting documents. **Please email your resubmission to arpa@nndoj.org.** Please be aware that under Resolution BFS-31-21 a Project or Program can only be reviewed twice, therefore it is critical that you include all the requested additional information for your second submission.

Page 2 of 2

To'Hajiilee
Chapter
Water Supply
Pipeline

THE NAVAJO NATION
FISCAL RECOVERY FUNDS **REQUEST FORM & EXPENDITURE PLAN**
FOR NON-GOVERNANCE CERTIFIED CHAPTERS

Part 1. Identification of parties.

Non-Governance Certified Chapter requesting FRF: To'Hajiilee Navajo Chapter Date prepared: 09/08/2022

Chapter's mailing address: PO Box 3398 phone/email: 505-908-2732/2730

To'Hajiilee, New Mexico 87026 website (if any): tohajiilee@navajochapters.org

This Form prepared by: Jimmy R Secatero phone/email: 505-288-6525 / jsecatero@naataanii.org

Sherrilyn Apache / CSC 505-908-2732/2730 sapache@nnchapters.org

CONTACT PERSON'S name and title CONTACT PERSON'S info

Title and type of Project: To'Hajiilee - Albuquerque Water Supply Pipeline (Drinking Water Transmission) Project

Chapter President: Jimmy R Secatero phone & email: 505-288-6525 jsecatero@naataanii.org

Chapter Vice-President: Nora J Morris phone & email: 505-415-2700 nmorris@naataanii.org

Chapter Secretary: Francesca Abeita phone & email: 505-321-2925 fabeita@navajochapters.org

Chapter Treasurer: Francesca Abeita phone & email: 505-321-2925 fabeita@navajochapters.org

Chapter Manager or CSC: Sherrilyn Apache phone & email: 505-908-2732 sapache@nnchapters.org

DCD/Chapter ASO: Gurena Adeky phone & email: 505-488-8476 gadeky@nndcd.org

List types of Subcontractors or Subrecipients that will be paid with FRF (if known): _____ ☐ document attached

Amount of FRF requested: 2,500,000 FRF funding period: 1/1/23 - 12/31/2024

indicate Project starting and ending/deadline date

Part 2. Expenditure Plan details.

(a) Describe the Program(s) and/or Project(s) to be funded, including how the funds will be used, for what purposes, the location(s) to be served, and what COVID-related needs will be addressed:

This Project will construct a new water transmission pipeline from the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) to To'Hajiilee Chapter to replace the Chapter's failing Well No. 5. During the past six years, this well, which is the Chapter's only water source, failed four times, including one time during the pandemic. When the well fails, it leaves the entire community without water for days or weeks at a time. Even when it works, the existing well produces poor quality water that is brown or black and smells bad. The Project will provide a reliable, long-term source of high-quality drinking water for the entire Chapter of To'Hajiilee. Pipeline will run from ABQ Tank 7W to To'hajiilee Tanks 4&5. Reliable, quality drinking water is essential for human health. ☐ document attached

(b) Explain how the Program or Project will benefit the Navajo Nation, Navajo communities, or the Navajo People:

This project will provide a reliable source of clean, drinkable water for all 1,600 Navajo people living in To'Hajiilee Chapter. Our current water source is poor quality, smells bad, corrodes pipes, and is subject to outages that leave our community high and dry. The project will solve all of these problems.

☐ document attached

(c) Provide a prospective timeline showing the estimated date of completion of the Project and/or each phase of the Project. Disclose any challenges that may prevent you from incurring costs for all funding by December 31, 2024 and/or fully expending funds and completing the

Program(s) or Project(s) by December 31, 2026:

Engineering funds will be encumbered by January 2023 and fully expended by December 2024.
Construction funds will be encumbered by June 2023 and fully expended by December 2026.
Design is already 95% complete and will be construction ready within 6 months.

☐ document attached

(d) Identify who will be responsible for implementing the Program or Project

Jason John, Director, NDWR

☐ document attached

(e) Explain who will be responsible for operations and maintenance costs for the Project once completed, and how such costs will be funded prospectively:

The Project will be operated and maintained by the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) under an MOU between the Navajo Nation and ABCWUA (see attached). NNDOJ is currently working with ABCWUA's attorneys to negotiate a detailed Rate Agreement (draft attached).

☒ document attached

(f) State which of the 66 Fiscal Recovery Fund expenditure categories in the attached U.S. Department of the Treasury Appendix 1 listing the proposed Program or Project falls under, and explain the reason why:

5.11 - Drinking Water: Transmission and Distribution

This project will design and construct a water transmission pipeline to convey drinking water to To'Hajiilee Chapter.

☐ document attached

Part 3. Additional documents.

List here all additional supporting documents attached to this FRF Expenditure Plan (or indicate N/A):

MOU between Navajo Nation and ABCWUA for operation and maintenance of To'Hajiilee Water Supply Pipeline Project.

DRAFT Rate Agreement between Navajo Nation and ABCWUA for payment for water service.

☒ Chapter Resolution attached

Part 4. Affirmation by Funding Recipient.

Funding Recipient affirms that its receipt of Fiscal Recovery Funds and the implementation of this FRF Expenditure Plan shall be in accordance with Resolution No. CJY-41-21, the ARPA, ARPA Regulations, and with all applicable federal and Navajo Nation laws, regulations, and policies:

Chapter's
Preparer:

James P. Secrest
signature of Preparer/CONTACT PERSON

Approved by:

David H. H. H.
signature of Chapter President (or Vice-President)

Approved by:

Shane
signature of CSC

Approved by:

COB
signature of Chapter ASO

Approved to submit
for Review:

Lisa J. J. J.
signature of DCD Director

FY 2023

**THE NAVAJO NATION
PROGRAM BUDGET SUMMARY**

Page 1 of 3
BUDGET FORM 1

PART I. Business Unit No.: <u>new</u>		Program Title: <u>To'Hajiilee Chpater <i>Waterline</i></u>		Division/Branch: <u>DCD/ASC</u>	
Prepared By: <u>Jimmy Secatero</u>		Phone No.: <u>505-908-2731</u>		Email Address: <u>jsecatero@naataanii.org</u>	

PART II. FUNDING SOURCE(S)	Fiscal Year /Term	Amount	% of Total	PART III. BUDGET SUMMARY	Fund Type Code	(A) NNC Approved Original Budget	(B) Proposed Budget	(C) Difference or Total
CJY-41-21 ARPA NNFRF	1/1/23-12/31/24	<i>2,500,000</i>	100%	2001 Personnel Expenses				
				3000 Travel Expenses				
				3500 Meeting Expenses				
				4000 Supplies				
				5000 Lease and Rental				
				5500 Communications and Utilities				
				6000 Repairs and Maintenance				
				6500 Contractual Services	6		2,500,000	2,500,000
				7000 Special Transactions				
				8000 Public Assistance				
				9000 Capital Outlay				
				9500 Matching Funds				
				9500 Indirect Cost				
				TOTAL		\$0.00	2,500,000.00	2,500,000

PART IV. POSITIONS AND VEHICLES	(D)	(E)
Total # of Positions Budgeted:		
Total # of Vehicles Budgeted:		

PART V. I HEREBY ACKNOWLEDGE THAT THE INFORMATION CONTAINED IN THIS BUDGET PACKAGE IS COMPLETE AND ACCURATE.	
SUBMITTED BY: <u>Sonlatsa Jim-Martin</u> <div style="text-align: center;"> <u><i>Sonlatsa Jim</i></u> Program Manager's Printed Name <u><i>Sonlatsa Jim</i></u> Program Manager's Signature and Date </div>	APPROVED BY: <u>Dr. Pearl Yellowman, Division Director</u> <div style="text-align: center;"> <u><i>Pearl Yellowman</i></u> Division Director / Branch Chief's Printed Name <u><i>12.5.22</i></u> Division Director / Branch Chief's Signature and Date </div>

FY 2023

**THE NAVAJO NATION
PROGRAM PERFORMANCE CRITERIA**

Page 2 of 3
BUDGET FORM 2

PART I. PROGRAM INFORMATION:Business Unit No.: new

Program Name/Title:

To'Hajiilee Chapter Waterline**PART II. PLAN OF OPERATION/RESOLUTION NUMBER/PURPOSE OF PROGRAM:**

Pursuant to RDCO-79-16: A) The Department of Water Resources shall provide stewardship to manage, provide comprehensive water planning, compile information on existing surface and groundwater resources, coordination of the development and utilization of the Navajo Nation's waters to manage existing uses and to plan for future adequate water resources for domestic, industrial, agricultural, recreation, wildlife, aquatic life and other beneficial uses for maximum beneficial use to enhance the natural and human environment and exercise the sovereignty of the Navajo Nation over its waters; etc.

PART III. PROGRAM PERFORMANCE CRITERIA:

FY2023		FY2024					
Goal	Actual	Goal	Actual	Goal	Actual	Goal	Actual

1. Goal Statement:To construct a new water supply line for To'Hajiilee**Program Performance Measure/Objective:**To construct a new water supply line for To'Hajiilee

X		X					
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2. Goal Statement:**Program Performance Measure/Objective:**

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3. Goal Statement:**Program Performance Measure/Objective:**

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4. Goal Statement:**Program Performance Measure/Objective:**

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5. Goal Statement:**Program Performance Measure/Objective:**

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PART IV. I HEREBY ACKNOWLEDGE THAT THE ABOVE INFORMATION HAS BEEN THOROUGHLY REVIEWED.Sonlatsa Jim-Martin**Program Manager's Printed Name**

Program Manager's Signature and Date
Dr. Pearl Yellowman, Division Director**Division Director/Branch Chief's Printed Name**

Division Director/Branch Chief's Signature and Date

FY2023

THE NAVAJO NATION
DETAILED BUDGET AND JUSTIFICATIONPage 3 of 3
BUDGET FORM 4

PART I. PROGRAM INFORMATION:			
Program Name/Title: _____		To'Hajilee Chpater <u>Waterline</u> Business Unit No.: _____ new	
PART II. DETAILED BUDGET:			
(A)	(B)	(C)	(D)
Object Code (LOD 6)	Object Code Description and Justification (LOD 7)	Total by DETAILED Object Code (LOD 6)	Total by MAJOR Object Code (LOD 4)
6500 Contractual Services Construction of water supply line		2,500,000	\$ 2,500,000
TOTAL		\$ 2,500,000	\$ 2,500,000

FOR OMB USE ONLY: Resolution No: _____ FMIS Set Up Date: _____ Company No: _____ OMB Analyst: _____

TO'HAIJILEE NAVAJO CHAPTER

Canoncito Band of Navajos

PO Box 3398 To'Hajiilee, New Mexico 87026

Phone: (505) 908-2732/2730 Email: To'hajiilee@Navajochapters.org

Jimmy R. Secatero, President
Nora J. Morris, Vice-President
Francesca Abeita, Secretary/Treasurer
Evangeline Willie, Land Board
Jamie Henio, Council Delegate
Sherrilyn Apache, Community Service Coordinator

RESOLUTION: TNC-22-11-054

RESOLUTION OF THE TO'HAIJILEE NAVAJO CHAPTER/CANONCITO BAND OF NAVAJOS TO -APPROVE AND SUPPORT ARPA FUNDING FOR TO'HAIJILEE - ALBUQUERQUE SUPPLY PIPELINE AND AFFIRMING COMPLIANCE WITH ARPA AND OTHER APPLICABLE LAWS AND REGULATIONS

WHEREAS:

1. To'Hajiilee Navajo Chapter/Canoncito Band of Navajos is a certified government, pursuant to 26 N.N.C., Section 3 (A) of the Navajo Nation Government, as listed as 11 N.N.C., Part 1, section 10, and delegated government authority with respect to local matters consistent with Navajo Law, including customs, traditions and fiscal matter; and
2. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos is empowered, pursuant to 26 N.N.C., Section 1 (B) is vested with authority to review all matters affecting the community and to make favorable decision when necessary and make recommendation(s) to Navajo Nation and other in the best interest of the community membership for appropriate actions; and
3. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos currently manages and protects 77,899 acres of Canoncito Band Land and provides services to 2,832 enrolled members of the Canoncito Band, who are experiencing significant hardship due to COVID-19 pandemic; and
4. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos finds that one the most critical needs facing our community is the lack of adequate water supply, which affects our public health, safety, and welfare; and
5. The Indian Health Service, Navajo Nation Department of Water Resources, and other authorities have investigated numerous alternatives and determined that the only feasible way to provide an adequate water supply to our community is by building a pipeline from Albuquerque; and
6. The Navajo Nation has received funds from the American Rescue Plan Act (ARPA) which may be used for water infrastructure that meets the urgent public health and safety needs of the community; and
7. The ARPA funds come with strict rules and regulations that must be complied with and the funding being requested is supplementing existing funding provided via CJN-29-22 legislation.

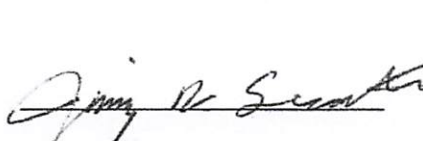
RESOLUTION: TNC-22-11-054

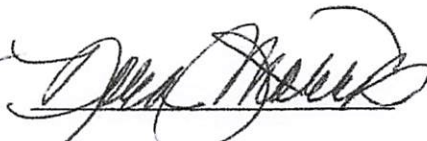
NOW, THEREFORE, BE IT RESOLVED THAT:

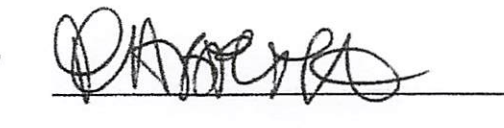
1. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos supports and requests ARPA funding for the To'Hajiilee – Albuquerque Water Supply Pipeline Project to mitigate the impact of COVID -19 in the community.
2. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos affirms that the Chapter will only use awarded funds in compliance with the ARPA, the ARPA regulations, and all other applicable Navajo Nation and Federal laws and regulations.

CERTIFICATION

We hereby certify that this forgoing resolution was duly considered by the To'Hajiilee Chapter Membership at a duly called virtual meeting at which a quorum was present and that an approval was passed with a vote of 09 IN FAVOR, 00 OPPOSED and 01 ABSTENTION this 15th day of November 2022, Motion by: Nora J. Morris Second by: Evangeline Willie


President, Jimmy R. Secatero


Vice President, Nora J. Morris


Secretary/Treasurer Francesca Abeita

RESOLUTION: TNC-22-11-054

**MEMORANDUM OF UNDERSTANDING BETWEEN
BERNALILLO COUNTY, ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY AND THE NAVAJO NATION**

PREAMBLE

This Memorandum of Understanding ("MOU") is entered into with an effective date of October 6, 2020 as agreed to among the Parties by and between the County of Bernalillo ("Bernalillo County" or the "County"), a New Mexico political subdivision whose address is One Civic Plaza NW, 10th Floor, Albuquerque, New Mexico 87102; Albuquerque Bernalillo County Water Utility Authority ("Water Authority"), a New Mexico political subdivision whose address is P.O. Box 568, One Civic Plaza NW, 5th Floor, Room 5012, Albuquerque, New Mexico 87102; and the Navajo Nation ("Nation"), on behalf of its To'Hajiilee Chapter, and through its Department of Water Resources whose address is P.O. Box 678, Fort Defiance, AZ 86504. The County, Water Authority and Nation may be referred to jointly herein as the "Parties" or each individually as a "Party."

RECITALS

WHEREAS, the To'Hajiilee Chapter has had recurring potable water supply problems over a number of years that have prevented residents of To'Hajiilee from having a safe healthy and sustainable water supply from any source; and

WHEREAS, the water produced by the To'Hajiilee well does not meet potable standards; and

WHEREAS, in the last five years To'Hajiilee's well has failed three times. Each well failure results in the entire community being without water service for five to ten days; and

WHEREAS, during the times of outage To'Hajiilee's residents are forced to travel significant distances to obtain potable water; and

WHEREAS, recently the Department of Homeland Security and Emergency Management and the Albuquerque Bernalillo County Water Utility Authority have sent tanker trucks to the community for residents to line up and fill water containers for personal use; and

WHEREAS, because of the existing COVID-19 pandemic having large numbers of people congregating at a central tap to obtain drinking water could lead to increased risk of COVID-19 transmission; and

WHEREAS, because of the existing COVID-19 pandemic having large numbers of people travel to other parts of the state for purposes of obtaining water could lead to increased risk of COVID-19 transmission; and

WHEREAS, To'Hajiilee's residents are thus forced to either haul water from untreated water sources such as livestock ponds, purchase bottled water in Albuquerque, or visit neighbors to share water; and

WHEREAS, the use of non-potable water for domestic water needs can expose users to waterborne diseases and keeps residents from observing COVID safe social distancing practices; and

WHEREAS, the community's health care facility is also at risk for shutting down given the lack of a clean potable water supply; and

WHEREAS, a safe and readily available water supply is important for public health, whether it is used for sanitation, drinking, domestic use, or food production; and

WHEREAS, there is an urgent need to resolve the To'Hajiilee water crisis, which has been more acute during the COVID-19 pandemic; and

WHEREAS, the Water Authority is willing and able to treat water that is provided by the Nation and convey said water through a dedicated transmission line to the distribution system within the To'Hajiilee Chapter once easements and right-of-ways are obtained from private owners and construction is completed (the "Project"); and

WHEREAS, both water and financial resources for the Project are immediately available requiring the Parties to work together; and

WHEREAS, the County has approved proceeding with the Project and obtaining easements and rights of way by a unanimous vote of the Commissioners on April 14, 2020; and

WHEREAS, the County and the Water Authority will work with the Nation and its To'Hajiilee Chapter and Department of Water Resources to develop MOU's/MOA's (Memorandum of Agreements) or other agreements with the Nation and other Parties to this MOU to finalize all requirements for Project completion; and

WHEREAS, consistent with that Cooperative Agreement dated August 28, 2006 by and between the Navajo Nation, the Water Authority and To'Hajiilee Chapter, the Water Authority is prepared and willing to facilitate and manage the construction of the necessary infrastructure as described in this MOU but under no circumstance will the Water Authority incur any net new expenses for such construction or provide water rights for the Project; and

WHEREAS, the Project will ultimately be owned and operated by the Water Authority up to the connection with the To'Hajiilee Chapter water distribution system; and

WHEREAS, the County is prepared, upon completion of construction of the necessary infrastructure and the approval of all easements and right of ways consistent with this MOU, to grant title and easements to the Water Authority to operate and maintain the infrastructure up to the point of the To'Hajiilee Chapter distribution.

NOW THEREFORE, the County, the Water Authority and the Nation agree to the following terms and conditions:

TERMS AND CONDITIONS

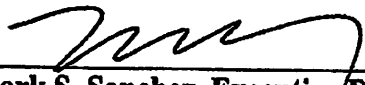
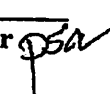
The aforementioned Preamble and Recitals are incorporated herein and are given the same weight as each of the additional terms and conditions listed below.

1. The County shall be responsible for obtaining all easements from the connection point of the Water Authority's existing infrastructure to the boundary of To'Hajiilee Chapter.
2. The Nation shall supply surveys and valuations for the following easements from the connection point of the Water Authority to the boundary of To'Hajiilee Chapter:
 - a. Lands of Caroline Armijo Butler, as described in attached Exhibit A;
 - b. Lands of Sunset Ranch Partners, as described in attached Exhibit B; and
 - c. Lands of Western Albuquerque Land Holdings, as described in attached Exhibit C.
3. As may be necessary to acquire the above identified easements, the County shall be responsible for pursuing and completing an eminent domain action, including the posting of any necessary funds, subject to reimbursement for such postings by the Nation.
4. The Water Authority will be responsible for construction of the necessary infrastructure up to the connection with the water distribution system at To'Hajiilee Chapter using the Water Authority's on-call vendors available at the time of this MOU, provided that all costs of such construction and design thereof shall be at no net expense to the Water Authority and its ratepayers.
5. The Parties agree that the Water Authority shall not provide or subsidize the funding necessary for the Project; however, the Water Authority agrees to assist in pursuing outside funding sources where available, such as the New Mexico Water Trust Board or other similar programs.
6. The Water Authority will enter into the appropriate agreement with the Nation for construction, operation and maintenance of the dedicated water line and transmission of Navajo Nation water supplied for the benefit of To'Hajiilee Chapter, which water supply will be expressly limited to meet current To'Hajiilee demands of 135,000 gallons per day and a maximum amount of 350,000 gallons per day in the next 40-year period, to be implemented on an agreed-upon schedule.
7. The Water Authority's commitment to deliver any water to To'Hajiilee Chapter under this MOU is expressly conditioned upon all such water being provided by the Navajo Nation for said delivery in a method acceptable to the Water Authority.
8. The Water Authority will be the ultimate owner of any easements obtained over private properties to accommodate the dedicated water line to convey water to To'Hajiilee Chapter.

9. The Nation will be responsible for the distribution of water within To'Hajiilee Chapter.
10. The Nation, through its Department of Water Resources, will advance sums for construction, transmission and right-of-way acquisition costs using Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funds, Navajo Nation budgeted appropriations, grants, or other sources of funds.
11. The Nation ensure compliance with Navajo Nation laws and other requirements.
12. All Parties will coordinate with New Mexico's Congressional delegation for federal support.
13. This MOU cannot be amended or modified except by a written instrument executed by all Parties.
14. In the event that one or more of the provisions contained in this MOU or any application thereof shall be found to be invalid, illegal or unenforceable in any respect, the validity legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.
15. By entering into this MOU, the Parties do not intend to create any right, title or interest in or for the benefit of any person or entity other than the Parties to this MOU. No person or entity shall claim any right, title or interest under this MOU or seek to enforce this MOU as a third-party beneficiary of this MOU.

WHEREFORE, the Parties hereby execute and enter into this MOU on the dates entered below, with the effective date being October 6, 2020 as agreed to by the Parties.

Albuquerque Bernalillo County Water Utility Authority

By: 
Mark S. Sanchez, Executive Director 

Navajo Nation President

By: 
Jonathan Nez

County of Bernalillo

By: 
Julie Morgas Baca, County Manager

Approved as to Form


W. Ken Martinez, County Attorney

**INTERGOVERNMENTAL RATE AGREEMENT
BETWEEN
THE NAVAJO NATION
AND
THE ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY
FOR THE
TREATMENT AND DELIVERY OF WATER TO TO'HAIJILEE**

PREAMBLE

This Intergovernmental Rate Agreement ("Agreement") is entered into by and between the Navajo Nation ("Nation"), on behalf of its To'Hajiilee Chapter, and through its Department of Water Resources whose address is P. O. Box 678, Fort Defiance, AZ 86504 and the Albuquerque Bernalillo County Water Utility Authority ("Water Authority"), a New Mexico political subdivision whose address is P. O. Box 568, One Civic Plaza NW, 5th Floor, Room 5012, Albuquerque, New Mexico 87102. The Water Authority and Nation may be referred to jointly herein as the "Parties" or each individually as a "Party."

RECITALS

WHEREAS, the To'Hajiilee Chapter has had recurring potable water supply problems over a number of years that have prevented residents of To'Hajiilee from having a safe, healthy and sustainable potable water supply; and

WHEREAS, a safe and readily available water supply is important for public health, whether it is used for sanitation, drinking, domestic use, or food production; and

WHEREAS, for the health and safety of the To'Hajiilee Chapter, there is an urgent need to resolve the To'Hajiilee water crisis, particularly because the need has been more acute during the recent COVID-19 pandemic; and

WHEREAS, the Water Authority is able and willing to treat raw water that is conveyed to the Water Authority by the Nation and deliver the resulting potable water through a dedicated transmission line terminating at a bulk water wholesale meter connected to the distribution system within the To'Hajiilee Chapter (the Project); and

WHEREAS, the Project will ultimately be owned and operated by the Water Authority up to the connection to the Water Authority's bulk water meter with the To'Hajiilee Chapter water distribution system; and

WHEREAS, the Nation has both the water and financial resources to complete the Project; and

WHEREAS, in support of the Project, the Bernalillo County Commission, by a unanimous vote of the Commissioners on April 14, 2020, approved proceeding with the Project and has obtained the appropriate easements and rights-of-way for the transmission line from private owners and transferred same to the Water Authority as necessary; and

WHEREAS, consistent with that Cooperative Agreement dated August 28, 2006 by and between the Navajo Nation, the Water Authority and To' Hajiilee Chapter, the Water Authority is prepared and willing to facilitate and manage the construction of the necessary infrastructure as described in this Agreement. The Parties agree that under no circumstance will the Water Authority incur any new net expenses for construction of the Project or provide water rights for the Project; and

WHEREAS, To'Hajiilee shall share in Water Authority system costs to the extent the Water Authority incurs costs to treat and deliver finished water to the To'Hajiilee bulk water meter, as determined by an independent rate consultant. To'Hajiilee shall not be responsible for and shall not share in Water Authority system costs which do not benefit To'hajiilee.

NOW THEREFORE, the Water Authority and the Nation agree to the following terms and conditions:

TERMS AND CONDITIONS

The Preamble and Recitals are incorporated herein and are given the same weight as each of the additional terms and conditions listed below.

1. **Authority of the Contracting Parties.** It is the understanding of each of the Parties, that other than their respective governing bodies, no other party is required to authorize the execution of this Agreement.
2. **Term.** This Agreement shall not become effective until executed by the President of the Navajo Nation and the Executive Director of the Water Authority. This Agreement shall expire on June 30, 2042, unless earlier terminated pursuant to Section(s) 7 and/or 11 herein.
3. **The Water Authority will treat and deliver potable water to To'Hajiilee.** Subject to the terms and conditions herein, the Water Authority shall operate and maintain the Project consisting of a dedicated water line to transmit a peak day design flow of 360,000 gallons per day (gpd) of treated potable water to To'Hajiilee. The Water Authority's commitment to deliver potable water to To'Hajiilee is expressly conditioned upon the Nation providing to the Water Authority treatable raw water in a quantity equal to the amount required to deliver potable water to To'Hajiilee including applicable conveyance losses.
4. **The Nation will provide raw water sufficient to produce the quantity of potable**

water delivered. The Water Authority's commitment to deliver potable water to To'Hajiilee is expressly conditioned upon the Nation conveying raw water to the Water Authority by a method acceptable to the Water Authority in sufficient quantity to produce the amount of potable water served at the bulk water meter maintained at entrance to the To'Hajiilee Chapter water distribution system including annual conveyance losses.

- a. Annually, in February of each year, the Nation shall cause 200 acre feet of San Juan-Chama water in Abiquiu Reservoir to be assigned to the Water Authority's Abiquiu Reservoir to meet the Nation's raw water delivery obligation under this Agreement.
- b. If, at any time, for any reason, the Nation learns that it may not be able to assign a sufficient quantity of San Juan-Chama water in Abiquiu Reservoir to meet its obligations under this Agreement, the Nation shall immediately notify the Water Authority and commence reasonable best efforts including the purchase or lease of water from alternative water sources to cure the deficiency and repay any water owed to the Water Authority.
- c. After assignment, the assigned raw water in Abiquiu Reservoir will be solely owned by the Water Authority and at any time may be released from or retained in Abiquiu Reservoir at the sole discretion of the Water Authority.
- d. The Water Authority shall keep an annual accounting of the amount of raw water received from the Nation and the amount of potable water delivered to the bulk water meter at To'Hajiilee Chapter. If the annual 200 acre feet of San Juan-Chama water in Abiquiu Reservoir assigned by the Nation to the Water Authority exceeds the quantity of potable water delivered, after accounting for annual evaporation and conveyance losses, the excess shall be carried over to offset bulk water deliveries in subsequent years. If potable water deliveries to the bulk water meter at the To'Hajiilee Chapter exceed the raw water delivery in any year, the raw water deficit will be accounted for in subsequent years.
- e. Conveyance losses from Abiquiu Reservoir to the Water Authority's point of diversion will be proportional to the total annual conveyance loss rates incurred by the Water Authority in the previous year.

5. **Rates to be Paid by To'Hajiilee for Water Service; Fixed Charges.** The Parties agree that To'Hajiilee is a wholesale water customer of the Water Authority and shall pay the water monthly fixed charge per section 1-1-3 (C) of the Water and Sewer Rate Ordinance, as the rate may change from time to time. The monthly fixed charge rate for To'Hajiilee will be adjusted only as a result of a rate study performed by an independent rate consultant qualified to determine which Water Authority system costs benefit To'Hajiilee.

6. **Commodity Charges.** The Nation and To'Hajiilee Chapter shall also be responsible for

any water commodity charges for water delivered to the Water Authority's bulk water meter per section 1-1-3 (F) of the Water and Sewer Rate Ordinance, as that rate may change from time to time. The Nation will be solely responsible for the distribution of the potable water delivered by the Water Authority at the bulk water meter to all points within To'Hajiilee Chapter.

7. **Availability of Funds.** The Water Authority is facilitating and managing the construction of the necessary infrastructure to serve treated potable water to the To'Hajiilee bulk water meter based on funding sources provided in partnership with the Nation. The Parties agree that under no circumstance will the Water Authority incur any unreimbursed expenses for construction of the Project or provide water rights for the Project. The Nation's obligation to pay for all aspects of the construction of the infrastructure and pay the monthly fixed charge and any water commodity charges, in full or any portion thereof, is contingent upon the availability of appropriations made by the Navajo Nation Council. In the event of early termination pursuant to this Section 7, the Nation shall be responsible to pay the Water Authority for all expenses and services incurred by the Water Authority up to the date of termination.
8. **Maintenance and Operations Costs.** The Water Authority shall have sole responsibility at its own cost to design, construct, operate and maintain the entirety of the Project up to and including the bulk water meter located at To'Hajiilee Chapter.
9. **Amendments.** This Rate Agreement may be amended, in writing, upon written agreement of both Parties, approved by their respective governing bodies, provided no amendment may supersede the Water Authority's Water and Sewer Rate Ordinance. A bi-annual adjustment to the calculated Fixed Charge as set by the Water Authority's Water and Sewer Rate Ordinance shall not be considered an amendment to this Rate Agreement.
10. **Assignment.** This Rate Agreement shall not be assignable without the express written consent of the Parties hereto, and if so assigned, shall extend to and be binding upon the successors and assigns of the Parties hereto.
11. **Default; Termination.**

Events of Default. Any of the following shall constitute an event of default upon its occurrence and no cure period shall apply, unless otherwise stated:

- a. The Nation fails to pay any amount due under this Rate Agreement and such failure has not been cured after completion of the Dispute Resolution proceedings contained in this Rate Agreement; or
- b. The Nation fails for thirteen (13) consecutive months to convey raw water equal to the amount of potable water the Water Authority has delivered to To'Hajiilee as required by this Agreement and such failure has not been cured after completion of the Dispute Resolution proceedings contained in this Agreement; or

c. The Water Authority dissolves or liquidates; provided, however, that division of the Water Authority into multiple entities shall not constitute dissolution or liquidation; or

d. The Water Authority breaches, or fails to perform or comply with, any material term of this Agreement if the Water Authority has not cured the breach after completion of the Dispute Resolution proceedings contained in this Agreement.

If an event of default shall have occurred and be continuing beyond the cure periods set out in Section 15, the non-defaulting Party may suspend performance under this Agreement and terminate this Agreement upon written notice to the defaulting Party.

12. **Parties Not Engaged in Joint Venture.** The Parties are not engaged in a joint venture, they are not agents for one another and neither Party is holding itself out as an agent or as being Party to a joint venture, partnership, or other legal relationship other than water supplier and a customer.
13. **Force Majeure.** Neither Party shall be considered to be in default in respect to any obligation hereunder if its delay in performing or failure to perform shall be due to a Force Majeure Event. "**Force Majeure Event**" means an event that is beyond the control of the Party affected that by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, including, without limitation, acts of God, flood, earthquake, storm, fire, lightning, pandemic, war, riot, civil disturbance, sabotage, or strikes. The Party whose performance hereunder is so affected shall immediately notify the other Party in writing of the pertinent facts and take all reasonable steps to promptly and diligently prevent such causes, if feasible to do so, or to minimize or eliminate the effects thereof.
14. **Indemnification.** Each Party agrees to assume all liabilities, losses, costs, damages, or expenses arising out of, or connected with, each Party's performance or obligations undertaken pursuant to this Agreement, including but not limited to any accident or injury to persons or property.
15. **Dispute Resolution.**
- a. Any dispute arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual claims) will be resolved as follows: The Party will deliver notice of the dispute, including a detailed description of the dispute, together with relevant supporting documents. Senior officials of each Party will then attempt to resolve the dispute. If the Parties do not resolve the dispute within thirty (30) calendar days of the occurrence of the dispute notice, either Party may deliver notice to the other Party of a demand for mediation. The Parties will then try to resolve the dispute with a mediator chosen jointly by the Parties. If the Parties do not resolve the dispute within sixty (60) days of the mediation demand, each Party may begin litigation.

- b. Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
- c. If possible, using reasonable best efforts, the Water Authority shall continue providing potable water to the To'Hajiilee Chapter during the dispute resolution process described in this Dispute Resolution section.
16. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not alter, define, or be used to construe the text hereof.
17. **Governing Law.** The Parties shall comply with all applicable state, Navajo Nation, and federal laws and regulations pertaining to the performance of all obligations governed by this Agreement.
18. **Severability Clause.** If any provision of this Agreement is determined to be contrary to law or otherwise legally invalid, the provision shall be severed from this Rate Agreement, and the remaining provisions of this Agreement shall remain valid and binding on the Parties.
19. **Notices.** All required written notice(s) shall be provided by personal delivery or certified U.S. mail, return receipt requested. Notice by certified mail is effective upon mailing. The following addresses shall be used for notice:

Navajo Nation:

To'hajiilee Chapter
[Mailing Address]

Department of Water Resources – Water Management Branch
P.O. Box 678
Fort Defiance, AZ 86504

Department of Justice – Natural Resources Unit
P.O. Box 2010
Window Rock, AZ 86515

Water Authority:

IN WITNESS WHEREOF, the Parties have entered into this Rate Agreement with an effective date as stated in Section 2 herein.