

**SETTLEMENT AGREEMENT BETWEEN  
THE CITY OF GALLUP AND THE NAVAJO NATION  
REGARDING APPLICATION NO. G-80 AND SJ-1491**

This Settlement Agreement (“Settlement Agreement”) is made by and between the City of Gallup (“Gallup” or “City”) and the Navajo Nation (collectively the “Parties”) this \_\_\_\_\_ day of June, 2019.

WHEREAS, on October 14, 1981, Gallup filed Application No. G-80 and SJ-1491 to appropriate 5,600 afy of groundwater, which water is intended to be produced from the Dakota Sandstone and/or Westwater Canyon Member of the Morrison Formation;

WHEREAS, on October 14, 1981, the City filed Application No. G-79 to appropriate 2,000 acre-feet per year (“afy”) of groundwater, which water is intended to be produced from the Entrada Sandstone;

WHEREAS, on November 20, 1981, the U.S. Department of the Interior, Bureau of Indian Affairs (“BIA”), protested Application No. G-80 and SJ-1491 and Application No. G-79;

WHEREAS, on November 21, 1981, the Navajo Nation protested Application No. G-80 and SJ-1491 and Application No. G-79;

WHEREAS, Gallup has proposed reducing Application No. G-80 and SJ-1491 from 5,600 afy to 2,600 afy as part of a Joint Motion to Dismiss and Remand Application No. G-22 *et al.*, which includes a Proposed Permit No. G-22 *et al.* with Conditions of Approval, which matter is pending before the New Mexico Office of the State Engineer;

WHEREAS, Gallup has proposed withdrawing Application No. G-79 as part of a Joint Motion to Dismiss and Remand Application No. G-22 *et al.*, which includes a Proposed Permit No. G-22 *et al.* with Conditions of Approval, which matter is pending before the New Mexico Office of the State Engineer and the City is willing to withdraw Application No. G-79 in conjunction with this Settlement Agreement;

WHEREAS, on April 19, 2005, the State of New Mexico, through the New Mexico State Engineer, signed the "San Juan River Basin in New Mexico, Navajo Nation Water Rights Settlement Agreement" ("NN Settlement Agreement");

WHEREAS, an important component of the NN Settlement Agreement is the construction of the Navajo-Gallup Water Supply Project (“NGWSP”) as authorized in the Northwestern New Mexico Rural Water Projects Act, PL 111-11, title X, subtitle B (“Settlement Act”);

WHEREAS, the NGWSP as set forth in the Settlement Act includes 7,500 afy of capacity for the City;

WHEREAS, the Gallup/Navajo Rural Regional Water System ("Regional System"), is a component of the NGWSP; the Regional System is designed to deliver NGWSP project water to the City and to the NTUA service area within Breadsprings, Chichiltah, Church Rock, Iyanbito, Mariano Lake, Pinedale, Red Rock, and Manuelito Chapters through a system of pipelines, tanks and pumping stations interconnected with the City's existing water supply system, portions of which are in service and others scheduled to be constructed;

WHEREAS, the City and the Navajo Nation have developed inter-ties between the Navajo Tribal Utility Authority ("NTUA") and City facilities as part of the Regional System;

WHEREAS, on October 30, 2007, the Navajo Nation and the City of Gallup entered into a Memorandum of Understanding Concerning Water Supplies for the NGWSP;

WHEREAS, the City and the Navajo Nation entered into a Stipulation Resolving Navajo Protest to G-22-PR in which the Navajo Nation agreed to withdraw its protest to Gallup's Application No. G-22 *et al.* and the City agreed to provide the Navajo Nation up to 20% of the amount of water produced on an annual basis, without carryover, pursuant to Permit No. G-22 *et al.* within the service area of the Regional System;

WHEREAS, the purpose of the Stipulation Resolving Navajo Protest to G-22-PR was, among other reasons, to provide an interim regional water supply prior to the delivery of NGWSP water, to provide a "groundwater reserve" for occasions in which NGWSP water is not available due to drought or other conditions, and to settle disputes between the Parties;

WHEREAS, Application No. G-80 and SJ-1491 have similar benefits to Application No. G-22 *et al.* and the City and Navajo Nation desire to settle under the same general terms and conditions;

WHEREAS, the Navajo Nation and City agree that approving Application No. G-80 and SJ-1491 consistent with this Settlement Agreement is in the best interest of the City and the Navajo Nation and that the application should be approved; and

NOW THEREFORE, IN CONSIDERATION HEREOF, THE PARTIES AGREE AS FOLLOWS:

1. The Navajo Nation will have the right to use up to 20% of the amount of water produced on an annual basis, without carryover, pursuant Permit No. G-80 and SJ-1491 within the service area of the Regional System. The City may provide the

required quantity of water from wells associated with Permit No. G-80 and SJ-1491 or any other well or water source within the City's water supply system. The cost of such water charged to NTUA shall be limited to the cost to develop, produce, treat, deliver, and convey such water from the G-80 and SJ-1491 Well Field to NTUA or similarly calculated cost that is associated with the water source used.

2. The City will construct all wells necessary to pump water under Permit No. G-80 and SJ-1491 at its expense.
3. Recognizing that the San Juan River is a renewable water source, when the San Juan Lateral of the NGWSP becomes operational, the City and the Navajo Nation will utilize surface water within the Regional System as their principal source of water supply. Groundwater produced from wells associated with Permit No. G-80 and SJ-1491 will only be utilized for seasonal peaking, during times when the pipeline is not able to operate at its design capacity, for well maintenance, during droughts when surface water supplies in the San Juan River basin are reduced, when water supplies are reduced during shortages caused by provisions of law or other regulations or as reasonably necessary to protect the City's or Navajo Nation's groundwater rights from loss due to non-use as applicable.
4. The Navajo Nation agrees to withdraw its protest to Application No. G-80 and SJ-1491 within 14 days of the final signature on this Settlement Agreement and waive any potential impairment to its water rights and water sources.
5. The Navajo Nation will assist the City in resolving BIA's protest to Application No. G-80 and SJ-1491.
6. The Navajo Nation agrees to support Application No. G-80 and SJ-1491 through witness and factual support at hearing before the New Mexico State Engineer and in any subsequent proceedings including trial *de nova* before the district court and through *amicus* briefs at the New Mexico Court of Appeals and the New Mexico Supreme Court and in any remanded proceedings. The City and the Navajo Nation shall cooperate in good faith in the prosecution of Application No. G-80 and SJ-1491, but decisions of the City, as applicant, concerning the prosecution of the application shall be final and shall be made consistent with this Settlement Agreement.
7. The City and the Navajo Nation agree to good faith efforts to comply with and enforce this Settlement Agreement. In the event of disputes, the City and the Navajo Nation agree to non-binding mediation, by a mediator acceptable to both Parties, to construe and implement the provisions of this Settlement Agreement through appropriate measures. Notwithstanding the foregoing, neither the City of Gallup nor the Navajo Nation waives its sovereign immunity.

8. The goal of the parties in this Settlement Agreement is to obtain the permitting and implementation of Application No. G-80 and SJ-1491 consistent with the provisions of this Settlement Agreement and desire that it be construed to that end.
9. The Parties may amend the terms of this Settlement Agreement at any time by mutual consent.

Dated this \_\_\_\_\_ day of June, 2019.

Signatures:

Navajo Nation

City of Gallup

\_\_\_\_\_  
Doreen Nanibaa McPaul, Attorney General

\_\_\_\_\_  
Jackie McKinney, Mayor

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date: