

## Intergovernmental Compact

This Intergovernmental Compact is made as of the 3rd day of November, 2006, by and between the Navajo Nation and the Hopi Tribe.

### RECITALS:

The Navajo Nation and the Hopi Tribe are federally recognized, sovereign nations, empowered to control and regulate their affairs in the manner set forth in this Compact.

The Navajo and Hopi peoples are and shall remain neighbors, and desire to live in harmony and with mutual respect for each other for all future generations. One important aspect of such mutual respect is consideration for the religious beliefs and practices of the other.

Access to and use of certain places and natural resources are essential to the traditional religious practices of the Navajo and Hopi peoples. Some such places and resources are on land controlled by the other party, and some of those places are on land that has been involved in litigation since 1974, pending in the United States District Court for the District of Arizona (No. 74-842-PCT-EHC) (the "Litigation").

The parties desire to resolve both the disputes involved in the Litigation and others, and further to establish and protect the rights of their members to engage in traditional religious practices where those practices involve access to and use of the other party's lands. The parties also wish to provide for the maintenance and protection of religious sites on their lands for the use and benefit of their members now and in the future. To that end, the parties have agreed to certain grants, covenants, undertakings, and waivers as set forth herein.

### AGREEMENTS:

**Now, therefore**, in consideration of the grants, covenants, undertakings, and waivers set forth below, the parties agree and are bound as follows:

#### Article 1: Definitions

- 1.1 "The parties" means the Navajo Nation and the Hopi Tribe, while "party" means either the Navajo Nation or the Hopi Tribe individually.
- 1.2 "The Navajo Lands" means all lands held in trust by the United States for the benefit of the Navajo Nation or the Navajo people as a whole, including such lands partitioned and awarded in the Litigation pursuant to the District Court's orders and judgments reported at 816 F. Supp. 1387 (1992).
- 1.3 "The Hopi Lands" means all lands in Arizona held in trust by the United States for the benefit of the Hopi Tribe or the Hopi people as a whole, including such lands partitioned and awarded in the Litigation pursuant to the District Court's orders and judgments reported at 816 F. Supp. 1387 (1992).

- 1.4 "Hopi Religious Practices" means: (a) the gathering or collection of certain minerals and plant materials, and the gathering of young Golden Eagles and hawks, for religious purposes; (b) the visitation of certain sites, including places where hawks and eagles nest, shrines, and sacred springs, for religious purposes; (c) rituals conducted at such sites; (d) pilgrimages to and from and between shrines, including those on the Hopi Salt Trail from the Hopi villages to the Grand Canyon; and (e) other traditional Hopi ceremonies or rituals.
- 1.5 "Navajo Religious Practices" means: (a) conducting healing ceremonies, blessing ceremonies, and other traditional Navajo ceremonies or rituals at various places; (b) constructing shelters and other structures as a part of such ceremonies and rituals; (c) gathering or collecting various minerals, plant materials and animal parts for religious purposes; (d) visiting sacred sites, including but not limited to sacred springs, for placing offerings, conducting blessings, and reciting prayers; and (e) travel to and from and between sacred places.
- 1.6 "Landowner Tribe" means the Navajo Nation with respect to the Navajo Lands and the Hopi Tribe with respect to the Hopi Lands.
- 1.7 "Effective Date" means the date on which the United States District Court for the District of Arizona enters the Order described in Section 7.4.
- 1.8 "Extended family" means persons who are related to an enrolled member of the Navajo Nation or the Hopi Tribe by blood or marriage.

## **Article 2: Rights of Access and Use; Easements and Other Interests**

- 2.1 The Hopi Tribe grants to the Navajo Nation, for the use and benefit of all current and future enrolled members of the Navajo Nation and members of their extended families, a permanent, irrevocable, prepaid, non-exclusive easement and permit to come upon and to use the Hopi Lands for Navajo Religious Practices.
- 2.2 The Navajo Nation grants to the Hopi Tribe, for the use and benefit of all current and future enrolled members of the Hopi Tribe and members of their extended families, a permanent, irrevocable, prepaid, non-exclusive easement, profit, license, and permit to come upon and to use the Navajo Lands for Hopi Religious Practices, including, without limitation, an easement to travel along, and visit shrines associated with, the Hopi Salt Trail as defined and depicted on Exhibit A, subject, however, to the limitations set forth in Section 2.4 as to the places where certain gathering may be done.
- 2.3 The Hopi Tribe grants to the Navajo Nation, for the use and benefit of all current and future enrolled members of the Navajo Nation, a permanent, irrevocable, prepaid, non-exclusive easement, profit, license, and permit to come upon the Hopi Lands and to gather and remove plants, herbs, green boughs, feathers, rocks, and minerals for religious and medicinal purposes from the Hopi Lands

generally; provided, however, that such materials and things shall not be gathered for sale or other commercial purposes.

- 2.4 The Navajo Nation grants to the Hopi Tribe, for the use and benefit of all current and future enrolled members of the Hopi Tribe, a permanent, irrevocable, prepaid, non-exclusive easement, profit, license, and permit to come upon the Navajo Lands, and to gather and remove fledgling Golden Eagles and hawks within the areas depicted on Exhibit B, and to gather and remove minerals and plant materials for religious and medicinal purposes from the Navajo Lands generally; provided, however, that such materials and things shall not be gathered for sale or other commercial purposes. This Compact does not grant to the Hopi Tribe or its members any easement, profit, license, permit, or right to gather or remove any Golden Eagle or hawk from any part of the Navajo Lands outside the areas depicted on Exhibit B, and this Compact does not prevent, limit or restrict the Navajo Nation from enforcing any law governing trespass, hunting or interference with wildlife against any person who comes upon any part of the Navajo Lands outside the areas depicted on Exhibit B for the purpose of gathering or removing any Golden Eagle or hawk. This Compact does not waive, limit or restrict any right the Hopi Tribe or its members may have under the United States Constitution or federal law to come upon any part of the Navajo Lands outside the areas depicted on Exhibit B for the purpose of gathering or removing any Golden Eagle or hawk.
- 2.5 The rights of both parties described in Sections 2.1 and 2.2 shall be subject to the following conditions:
- A. If any Navajo Religious Practice or Hopi Religious Practice is anticipated to involve more than 20 individuals at any one place and time, or if habitable structures are to be constructed for use in any such religious practice, or if non-habitable structures will be erected which are required to be left to degrade naturally, the member of the Navajo Nation or the Hopi Tribe responsible for such religious practice shall give advance notice to the Landowner Tribe in the manner set forth in Article 9 not later than 5 calendar days before commencement of such religious practice, stating the expected dates of commencement and completion of the ceremony or ritual, its location, the approximate number of expected attendees if the number is greater than 20, and the location and type of any structures to be constructed; and
  - B. The member of the Navajo Nation or the Hopi Tribe responsible for the Navajo Religious Practice or Hopi Religious Practice will dismantle any habitable structures erected in connection with such religious practice within 5 days of its completion, and, if he fails to do so, the Landowner Tribe may dismantle such structures without liability, but the Landowner Tribe shall not dismantle any structure as to which notice was given pursuant to subsection A above to the effect that the structure would be a non-habitable structure that is required to be allowed to degrade naturally, regardless of the Landowner Tribe's opinion as to whether the structure is non-habitable.

- 2.6 No permit shall be required to exercise any of the rights granted in Sections 2.1, 2.2, 2.3, or 2.4, and no advance notice shall be required before exercising any such rights, except as required by Section 2.5 and Article 5.
- 2.7 When traveling on the lands of the other party to exercise any of the rights granted in Sections 2.1, 2.2, 2.3, or 2.4, members of the Navajo Nation and the Hopi Tribe and members of their extended families are authorized to travel upon any route across any lands that a member of the Landowner Tribe could lawfully travel upon under the laws of the Landowner Tribe.
- 2.8 While on the land of the other party, members of the Navajo Nation and the Hopi Tribe and members of their extended families shall be subject to laws generally applicable to the Landowner Tribe's members; provided, however, that no such law shall (a) prohibit a Hopi Religious Practice or a Navajo Religious Practice altogether, or deem any such religious practice in and of itself to be a trespass or other violation of law, or (b) prevent or materially limit the exercise by any member of the other party of rights granted by this Compact.
- 2.9 Any person traveling to or from any place for a religious purpose may request an escort by the Landowner Tribe and, if such an escort is requested a reasonable time in advance, the law enforcement agency of the Landowner Tribe shall provide such an escort at no cost. If any member of the Navajo Nation or the Hopi Tribe or member of the extended family of such tribal member experiences difficulty obtaining access to a religious site on the land of the other party, and, if the Landowner Tribe is requested to do so, the Landowner Tribe shall take such reasonable steps as are necessary to facilitate access.
- 2.10 Nothing herein shall be deemed to extend rights to anyone who is not a member of the Navajo Nation or the Hopi Tribe or a member of the extended family of such member or to authorize the conduct of any practices other than Navajo Religious Practices and Hopi Religious Practices. Nothing in this Compact authorizes anyone to conduct practices that are traditionally conducted by Indian tribes other than the parties but are not traditionally conducted by members of one of the parties.
- 2.11 No easement, profit, license, or permit granted by this Article shall give the grantee party any civil or criminal jurisdiction or taxing authority over the land that is subject to the easement, profit, license or permit. No easement, profit, license or permit granted by this Article shall be subject to taxation by the Landowner Tribe. No easement, profit, license, or permit granted by this Article shall give the grantee party any interest in the mineral rights to any area subject to such easement, profit, license, or permit.

### **Article 3: Secrecy and Privacy**

- 3.1 Each party desires to maintain the secrecy of the exact location of the sacred places of its members to the greatest extent possible. Accordingly, the parties are not required to notify each other at the present time or in the future of the location of any sacred site.

- 3.2 The Landowner Tribe shall respect the privacy of persons engaging in religious practices, and shall not observe or intrude upon religious activities or impede, search, inspect, or interfere with any person traveling to or from such activities. If a participant requests an escort pursuant to Section 2.9, the escort shall respect the privacy of the participants except as necessary to provide the requested escort services.
- 3.3 The parties shall make reasonable efforts to advise their members of the terms of this Compact, to encourage their members to respect the privacy of the religious activities of others on their land, and to urge their members to deal courteously and respectfully with area residents when they enter upon the other party's land for religious purposes; provided, however, that the Exhibits A, B, C, and D to this Compact may not be shown to members of the parties other than elected leaders and those employees of the party having responsibility for performance and/or enforcement of this Compact, or to any other person.

#### **Article 4: Protection of Religious Sites**

- 4.1 Except as the parties may otherwise agree in writing with respect to a particular site, the Navajo Nation shall prohibit any new man-made improvement, structure, installation, or apparatus, whether placed on, under, or above the ground, including the temporary or permanent placement of moveable structures capable of human habitation, to be placed or constructed within any of the areas listed in Exhibit C. The reference numbers used in Exhibit C are for reference purposes only, and no significance should be attributed to the choice of numbers, the sequence of the numbers, or any gaps in the numbers.
- 4.2 The Navajo Nation grants to the Hopi Tribe a permanent, irrevocable, non-exclusive, prepaid conservation easement and servitude consistent with the terms and provisions of Section 4.1 to the areas listed on Exhibit C.
- 4.3 Whenever the Navajo Nation receives an application or request for construction on the Navajo Lands, and where the application or request, if approved, would result in any activity specified in Section 4.1 within 800 meters of any area listed on Exhibit C, the Navajo Nation shall give notice in writing and provide a copy of the application or request to the Hopi Tribe before approving or authorizing the proposed activity.
- 4.4 Except as the parties may otherwise agree in writing with respect to a particular site, the Hopi Tribe shall prohibit any new man-made improvement, structure, installation, or apparatus, whether placed on, under, or above the ground, including the temporary or permanent placement of moveable structures capable of human habitation, to be placed or constructed within 800 meters of any active Golden Eagle nest on the Hopi Lands; provided, however, that this prohibition shall not apply to any land located within 800 meters of any Hopi village existing as of the time of the proposed construction.

- 4.5 The Hopi Tribe grants to the Navajo Nation a permanent, irrevocable, non-exclusive, prepaid conservation easement and servitude consistent with the terms and provisions of Section 4.4 to the areas described in Section 4.4.
- 4.6 Whenever the Hopi Tribe receives an application or request for construction on the Hopi Lands, and where the application or request, if approved, would result in any activity specified in Section 4.4 within 1600 meters of any active Golden Eagle nest on the Hopi Lands, the Hopi Tribe shall give notice in writing and provide a copy of the application or request to the Navajo Nation before approving or authorizing the proposed activity; provided, however, that this Section shall not apply to any construction on land located within 800 meters of any Hopi village existing as of the time of the proposed construction.
- 4.7 Except as may be otherwise agreed to in writing by the parties, the restrictions on placement and construction described in Sections 4.1 and 4.4 shall not limit or affect the right of any person to enter or use any such area for any purpose other than such placement and construction including, without limitation, entry and use for religious observances, livestock grazing, and use and maintenance of existing roads, fences, corrals, fields, wells, springs, and livestock watering tanks.
- 4.8 The Landowner Tribe shall make reasonable efforts to prevent any person from violating the provisions of Section 4.1 or Section 4.4. If any person nevertheless violates the provisions of Sections 4.1 or 4.4, the Landowner Tribe shall cause the prohibited placement or construction to be removed within 90 days of the date on which it receives notice of the violation.
- 4.9 Where the Landowner Tribe has actual notice that damage or destruction is likely to occur, the Landowner Tribe shall make reasonable efforts to prevent any individual from damaging or destroying any Golden Eagle nest or cultural artifact within any of the areas listed in Exhibit C or Section 4.4, or any shrine known by the Landowner Tribe to be sacred to members of the other Party. If such damage or destruction nevertheless occurs, the Landowner Tribe shall investigate and prosecute the perpetrators consistent with the laws of the Landowner Tribe.
- 4.10 If the Landowner Tribe desires to undertake any substantial new improvement or development of any spring identified in Exhibit D, it shall first consult with the other party and, insofar as practicable, carry out such improvement or development in such a fashion that access to the spring for religious purposes will be maintained and that a portion of the flow of the spring will remain in its natural condition. Nothing in this Compact prohibits, regulates or affects maintenance or repair of improvements installed at any spring as of the Effective Date, nor does anything in this Compact require removal or alteration of any improvement installed at any spring as of the Effective Date.
- 4.11 Additional religious sites may be designated as being subject to the provisions of this Article 4 only by further written agreement of the parties.

- 4.12 No easement or servitude granted by this Article shall give the grantee party any civil or criminal jurisdiction or taxing authority over the land that is subject to the easement or servitude. No easement or servitude granted by this Article shall be subject to taxation by the Landowner Tribe.

**Article 5: Studying and Enhancing Golden Eagle Population; Collection of Golden Eagles and Hawks by Hopis**

- 5.1 As soon as practicable after the Effective Date, the parties shall establish a Joint Golden Eagle Advisory Board. The purpose of the Board shall be to collect data concerning the Golden Eagle population in and around the Hopi and Navajo Lands and to make recommendations to tribal authorities concerning specific measures to be taken to preserve and enhance the Golden Eagle population through habitat protection and otherwise. Each party shall appoint 2 people to serve on the Board, both of whom shall be knowledgeable in the field of wildlife biology. The Board shall consider and make appropriate recommendations regarding all environmental and other factors affecting the Golden Eagle population, including measures to improve productivity, protect habitat suitable for nesting, prevent disturbances during nesting season, enhance the prey base, prevent accidental deaths and otherwise decrease infant and juvenile mortality and similar matters. The parties shall submit the Board's recommendations to their respective governmental authorities responsible for wildlife management, land-use planning and environmental protection with directions that such recommendations should be taken into consideration in decision-making to the extent each party shall deem appropriate in dealing with its sovereign lands, but no recommendation of the Board shall be binding on the parties.
- 5.2 The parties hereby jointly request the United States Fish and Wildlife Service or its successor agency to conduct a study of the Golden Eagle population within the Navajo Lands and the Hopi Lands ("Study"). The Study shall be conducted according to the study design set out in Exhibit E, subject to the Service's determination as to the best available science to apply and subject to available funding, with the objective of providing a scientific basis for the United States Fish and Wildlife Service or its successor agency to issue permits conforming to the requirements of Section 5.5.
- 5.3 During the first four years of the Study ("Initial Phase"), in each year when the United States Fish and Wildlife Service or a successor agency issues a permit for the collection of Golden Eagles by Hopi tribal members in northeastern Arizona, the permit application shall not seek the take of more than 18 Golden Eagles from within the areas depicted on Exhibit B. During the Initial Phase, the Navajo Nation shall not require the Hopi Tribe or its members to apply for or obtain a permit from the Navajo Nation to take Golden Eagles from the areas depicted on Exhibit B in each year when the United States Fish and Wildlife Service, or a successor agency, issues a permit that authorizes Hopi tribal members to take not more than 18 Golden Eagles from within the areas depicted on Exhibit B. This Section does not constrain the United States Fish and Wildlife Service or successor agency from specifying in any permit the number of Golden Eagles

that may be taken from any part of northeastern Arizona other than the areas depicted on Exhibit B, nor does it otherwise constrain the Service or successor agency in the performance of its permitting function.

- 5.4 During the Initial Phase of the Study, in any year when the Hopi Tribe or its members file a timely application with the United States Fish and Wildlife Service or a successor agency for a permit to take no more than 18 Golden Eagles from the areas depicted on Exhibit B, in the event the United States Fish and Wildlife Service or a successor agency fails to issue a permit before the gathering season commences conforming to the requirements of Section 5.3, Hopi tribal members shall take from the areas depicted on Exhibit B no more than 18 Golden Eagles, and the Navajo Nation shall issue permits to the Hopi Tribe or its members authorizing the taking of 18 Golden Eagles from the areas depicted on Exhibit B. For purposes of this Section, a timely decision by the United States Fish and Wildlife Service that no eagles may be taken, or the issuance of a permit allowing an unlimited number of eagles to be taken, does not constitute a failure to issue a permit or a failure to specify the number of eagles which may be taken. Neither this Section, nor the Secretary's signature on this Compact, shall be interpreted as an authorization by the Secretary to take Golden Eagles without a valid permit issued by the United States Fish and Wildlife Service pursuant to the Bald and Golden Eagle Protection Act.
- 5.5 The parties hereby jointly request that, after the Initial Phase of the Study, any permit issued by the United States Fish and Wildlife Service or a successor agency for the Hopi Tribe or its members to take Golden Eagles from northeastern Arizona shall separately specify (a) the number of Golden Eagles that may be taken from northeastern Arizona, and (b) the number of Golden Eagles that may be taken from that portion of northeastern Arizona depicted on Exhibit B, and hereby jointly further request that both such numbers shall be based on the results of the Study as of the time of issuance of the permit, with the objective of maintaining the stability of the Golden Eagle population on Navajo and Hopi lands as a whole.
- 5.6 After the Initial Phase of the Study, including the issuance of findings regarding the specific matters set out in Exhibit E, the Navajo Nation shall not require the Hopi Tribe or any individual member of the Hopi Tribe to apply for or obtain a permit from the Navajo Nation to take Golden Eagles from the areas depicted on Exhibit B if the Hopi Tribe or its member holds a valid permit issued by the United States Fish and Wildlife Service or its successor agency conforming to the requirements of Section 5.5.
- 5.7 After the Initial Phase of the Study, in any year when the Hopi Tribe or its members file a timely application with the United States Fish and Wildlife Service or a successor agency for a permit to take Golden Eagles from the Navajo Lands and the Hopi Lands, in the event the United States Fish and Wildlife Service or a successor agency fails to issue a permit before the gathering season commences conforming to the requirements of Section 5.5, Hopi tribal members shall take from the areas depicted on Exhibit B no more than the number of



Golden Eagles permitted to have been taken from that area pursuant to the then most recent federal permit, and the Navajo Nation shall issue permits to the Hopi Tribe or its members authorizing the taking of such numbers of Golden Eagles from the areas depicted on Exhibit B. For purposes of this Section, a timely decision by the United States Fish and Wildlife Service that no eagles may be taken, or the issuance of a permit allowing an unlimited number of eagles to be taken, does not constitute a failure to issue a permit or a failure to specify the number of eagles which may be taken. Neither this Section, nor the Secretary's signature on this Compact, shall be interpreted as an authorization by the Secretary to take Golden Eagles without a valid permit issued by the United States Fish and Wildlife Service pursuant to the Bald and Golden Eagle Protection Act.

- 5.8 As soon as practical after the United States Fish and Wildlife Service or its successor agency shall have issued any permit to the Hopi Tribe or its members to take Golden Eagles from northeastern Arizona, the Hopi Tribe shall provide a copy of any such permit to the Navajo Nation.
- 5.9 Members of the Hopi Tribe may collect no more than 12 hawks each year from within the areas described in Section 2.4 and shown on Exhibit B, without applying for or obtaining a permit from the Navajo Nation.
- 5.10 Not later than September 30 of each year, the Hopi Tribe shall report to the Navajo Nation regarding the number of Golden Eagles and hawks taken by Hopis from the Navajo Lands, including the general location where taken and the condition of each Golden Eagle and hawk when taken.
- 5.11 No party shall be obligated by this Article to disclose the exact location of Golden Eagle nests or other information considered confidential or sensitive. The parties agree to use their best efforts to maintain the confidentiality of any information disclosed which is considered secret or sensitive by the disclosing party.
- 5.12 Nothing in this Compact shall be construed as a waiver of the Hopi Tribe's or its members' claim that their right to gather Golden Eagles and hawks for religious purposes is protected by the First Amendment to the United States Constitution and is not subject to regulation or limitation by any governmental agency.
- 5.13 Nothing in this Compact shall be construed as a waiver of any claim by the Navajo Nation or its members against the United States Fish and Wildlife Service for failure to perform its duties pursuant to the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668a or regulations thereunder.

#### **Article 6: Star Mountain**

- 6.1 Within 90 days after the Effective Date the Hopi Tribe shall remove the sections of fence indicated on Exhibit F, and no fence shall be constructed or reconstructed on or around Star Mountain except in the locations shown on Exhibit F.

## **Article 7: Claims Released and Litigation Dismissed**

- 7.1 As of the Effective Date, without any further instrument or action by either party, each party shall be deemed to have irrevocably and absolutely waived and released: (a) each and every claim of title or beneficial title in law or in equity to any land to which title or beneficial title is held by the other party as of the Effective Date within the areas covered by the Act of June 14, 1934, 48 Stat. 960; (b) any claim, whether or not such claim is now known, against the other party for an accounting, fair value of grazing, damages, or for other relief under 25 U.S.C. § 640d-7(c); and (c) any claim, whether or not such claim is now known, against the other party for fair rental value under 25 U.S.C. § 640d-15 as to lands within the areas covered by the Act of June 14, 1934, 48 Stat. 960. Nothing in this Compact shall be deemed to be a waiver or release by either party of any present or future claim or right against the Navajo Nation, the Hopi Tribe, the United States, or any other person or entity based upon an easement or way of necessity or similar doctrine, and excepting the easements expressly described in Sections 2.1, 2.2, 2.3, 2.4, 4.2 and 4.5 of this Compact, nothing in this Compact shall be deemed to create any easement or way of necessity or interest under any similar doctrine nor shall anything in this Compact be deemed an admission by either party or by the United States of the existence of any such easement or way of necessity or interest under any similar doctrine.
- 7.2 The parties agree that all funds received, collected, or held by the Department of Interior and/or the Bureau of Indian Affairs as payment by third parties for easements, rights-of-way, or other interests within the area known as the "Bennett Freeze," for the period from July 8, 1966 to the Effective Date, are to be distributed in equal shares to the Navajo Nation and the Hopi Tribe.
- 7.3 As soon as practicable after this Compact shall have been executed by the parties, the parties shall jointly present it to the United States Secretary of the Interior for approval of the agreements and creation of the beneficial interests and use and access rights upon and to certain trust lands set forth in this Compact. Neither this Compact nor the Secretary's approval of it shall be construed to mean that the Secretary or the United States has authorized either party or its members to violate any federal or state law, including without limitation the Bald and Golden Eagle Protection Act, or to violate or abrogate the legally protected property rights of any individual. The parties hereby agree and represent to the Secretary of the Interior that an appraisal of the fair market value of the property rights conveyed under this Compact is not necessary or appropriate in light of the special relationship between the parties and the special circumstances recited in this Compact, that nothing in this Compact describes any "major federal action" for any regulatory purpose, and that no further investigations or approvals are necessary or appropriate. Approval of this Compact by the Secretary does not create any new claim against the United States for monetary damages.
- 7.4 As soon as practicable after this Compact shall have been fully executed by the parties and the Secretary of the Interior or his or her duly authorized

representative, the parties shall stipulate to and obtain an order and judgment in the Litigation (a) confirming and incorporating the orders and judgments entered by the District Court in 1992 following the partition phase of the trial (all as reported at 816 F. Supp. 1387 (1992)); (b) adopting the terms and provisions of this Compact as an order and judgment of the Court; (c) declaring that the Court has jurisdiction under the 1934 Act (Pub. L. No. 73-352, 48 Stat. 960) and the 1974 Act (25 U.S.C. § 640d *et seq.*) over the parties and the subject matter of this Compact; (d) quieting title to the property interests established herein; (e) continuing the Court's jurisdiction over the parties and the subject matter for the purpose of proceedings to vacate, modify, or enforce any Decision and Award made under Section 8.4, or original enforcement proceedings under Sections 8.7 and 8.8; (f) dismissing any and all claims asserted against each other in the Litigation, with prejudice, with each party to bear its own attorneys' fees and costs; (g) declaring that no lands are any longer "in litigation" for purposes of 25 U.S.C. § 640d-9(f), and that the restrictions on development contained in that statute, commonly known as the "Bennett Freeze," are of no further force or effect; and (h) directing that Exhibits A, C, and D attached to this Compact shall be filed under seal.

- 7.5 On the Effective Date, each party shall be deemed to have consented, for purposes of 25 U.S.C. §640d-9(f), to any and all future "development" as that term is used in 25 U.S.C. § 640d-9(f) within the lands of the other party covered by that statute, including but not limited to development planned as of that date, and upon request of the other party shall execute any and all consents that might be requested as to any such development; provided, however, that neither party shall be deemed under this Section to have consented or waived any objection to any such development under any provision of law other than 25 U.S.C. § 640d-9(f); and provided further that this Section shall not apply to any development which is prohibited under Article 4 of this Compact.
- 7.6 After the Effective Date, the Hopi Tribe agrees to endorse and publicly support any bill the Navajo Nation may submit to Congress insofar as it requests the repeal of 25 U.S.C. § 640d-9(f); provided, however, that the Hopi Tribe does not agree to endorse or support any other provision of any legislation which may be proposed or requested.

## **Article 8: Enforcement and Dispute Resolution**

- 8.1 As soon as practicable after the Effective Date, there shall be established by the parties a Joint Commission to administer and facilitate this Compact. Each party shall appoint 2 persons to serve on the Joint Commission, at least one of whom should be familiar with the religious practices of members of that party. The fifth member of the Joint Commission shall be a neutral person, skilled in the resolution of disputes, who has previously served as a judge of a tribal, state, or federal court and is not a member of either party. The neutral fifth member of the Joint Commission shall be appointed either by agreement of the parties or, failing such agreement, by the Chief Judge of the United States Court of Appeals for the Ninth Circuit or the Chief Judge's designee. Any compensation to the neutral

fifth member shall be paid equally by the parties. The neutral fifth member shall serve an indefinite term, unless and until he or she shall resign or the parties shall agree to appoint a replacement.

- 8.2 The parties shall attempt in good faith to negotiate and resolve any dispute arising under this Compact, beginning at the lowest practical operational level and escalating to the highest officials of each party if necessary, before initiating any proceedings under Section 8.3. This Section shall not, however, require either party to forbear for any particular period of time before initiating such proceedings.
- 8.3 Any dispute arising under this Compact that is not resolved by negotiation may be submitted to the Joint Commission for arbitration, which shall be commenced by mailing a written demand for arbitration setting forth in detail the dispute and the relief requested to each member of the Joint Commission and the other party, by registered or certified mail, postage prepaid. Arbitration before the Joint Commission shall be the only procedure and the only forum for resolution of such disputes unless and until the Joint Commission shall fail to make a decision within the period specified in Section 8.4.
- 8.4 The Joint Commission shall establish its own rules and procedures not inconsistent with the terms of this Compact for the resolution of any dispute which is the subject of a demand for arbitration, hearing such evidence and argument as it may, in its discretion, choose to accept. When any dispute is so submitted, the Joint Commission shall decide and resolve the dispute by issuing a written Decision and Award signed by a majority of the 5 members within 180 days after the date on which the demand for arbitration shall have been mailed to the last of the members of the Joint Commission and the other party.
- 8.5 The Joint Commission in its Decision and Award shall have the authority to issue restraining orders, injunctions, declaratory judgments, and orders of specific performance enforcing the terms of this Compact, but shall not have the authority to award damages, attorneys' fees, or the costs of arbitration.
- 8.6 A Decision and Award of the Joint Commission shall be subject to judicial review and enforcement only in the United States District Court for the District of Arizona, and may be vacated or modified only on the grounds permitted under the Federal Arbitration Act (9 U.S.C § 1 *et seq.*) as it exists on the Effective Date, except that no Decision and Award shall be vacated or modified on the ground of partiality of either or both of the two members appointed by each of the parties.
- 8.7 In the event a neutral fifth member shall not be serving on the Joint Commission at the time the demand for arbitration is mailed to the party-appointed members and such neutral fifth member shall not have been appointed within 30 days thereafter, either party may then commence litigation in the United States District Court for the District of Arizona for appointment of a neutral fifth member to the Joint Commission.

- 8.8 In the event the Joint Commission shall fail to issue a Decision and Award within the period set forth in Section 8.4, either party may then commence litigation in the United States District Court for the District of Arizona for any relief that the Joint Commission could have awarded.
- 8.9 Each party hereby consents to arbitration and/or suit in the circumstances and for the relief described in Sections 8.3 through 8.8, and hereby waives its sovereign immunity for the limited purpose of such arbitration and/or suit, but the limited waiver of sovereign immunity expressed herein does not extend to any claim for any other remedy.
- 8.10 The Joint Commission shall meet at least once annually or, at the request of either party, more frequently, to discuss, counsel, interpret, or mediate the provisions of this Compact and seek to establish informal agreements between the parties regarding the implementation of the provisions of this Compact. When meeting for the purposes described in this Section, the neutral fifth member of the Joint Commission need not attend unless one of the parties so requests, and, if one of the parties does so request, the meeting shall be deferred until the neutral fifth member is in attendance. No action of the Joint Commission shall be binding on the parties other than a Decision and Award issued pursuant to Sections 8.3 through 8.5.
- 8.11 Nothing in this Compact prevents either party or its members from exercising any rights under, or invoking the authority of the United States Secretary of the Interior to implement and enforce, the provisions of 25 U.S.C. § 640d-20.
- 8.12 Except as provided herein, the parties shall not be liable for any acts taken by any of their individual members not acting in an official capacity.

#### **Article 9: Notices**

- 9.1 Any notice required or permitted under this Compact shall be in writing and shall be placed in the United States mail, first-class postage prepaid, addressed as specified below or to such other addresses as any party may hereafter specify. Any notice so provided shall be deemed effective as of the date it is mailed.
- 9.2 Notices to the parties shall be addressed as follows:

A. To the Navajo Nation:

Navajo Nation  
Attention: Director of Historic Preservation Department  
P.O. Box 4950  
Window Rock, Arizona 86515

and a copy to:

Navajo Nation  
Attention: Attorney General  
P.O. Drawer 2010  
Window Rock, Arizona 86515

B. To the Hopi Tribe:

The Hopi Tribe  
Attention: Director of Cultural Preservation  
P.O. Box 123  
Kykotsmovi, Arizona 86039

and a copy to:

The Hopi Tribe  
Attention: General Counsel  
P.O. Box 123  
Kykotsmovi, Arizona 86039

9.3 Either party may, by written notice to the other, change the designated persons to whom notice should be addressed and/or the address to which such notice shall be sent.

9.4 Nothing contained in this Compact shall prohibit informal communications in addition to the formal written notices otherwise required by this Compact. In order to expedite informal attempts to resolve disputes each party is encouraged to, and at its election may, provide the other party from time to time with the names, telephone numbers, and other information necessary to transmit information electronically as to any officials or employees of the party designated to attempt to resolve issues informally.

**Article 10: Modification**

10.1 This Compact may not be changed, waived, discharged, or terminated orally, but only by an instrument in a writing signed by the parties.

**Article 11: Delegation and Assignment**

11.1 Each party may, in its own discretion, designate one or more of its officials, employees, agencies, committees, or other political subdivisions to perform any obligation of the party under this Compact and delegate authority to such person or entity to perform such obligations. Such designation and delegation shall not, however, relieve either party of its own obligations to the other party under this Compact. No party may assign any right or interest under this Compact and, except as provided in this Section, no party may delegate any duty or obligation under this Compact, and any attempted or purported assignment or delegation in violation of this Section shall be void.

**Article 12: Binding Effect**

12.1 Each party has warranted and represented to the other party that the officer whose signature appears on this Compact has been duly and fully authorized, empowered and instructed to execute this Compact on behalf of the party, with the intent that each party be immediately and irrevocably bound by, and entitled to the benefits of, this Compact.

- 12.2 Nothing in this Compact shall affect, modify, or supersede any Accommodation Agreement or other agreement between the Hopi Tribe and any member of the Navajo Nation.
- 12.3 Nothing in this Compact shall affect, modify, or supersede: (a) any requirement imposed by Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, or the regulations implementing that Section, 36 C.F.R. Part 800, regarding the comment and consultation process concerning identification of historic properties, assessment of potential adverse effects and avoidance, and minimization and/or mitigation of any adverse effects on historic properties on the Hopi Lands or the Navajo Lands or elsewhere; or (b) the rights or obligations of either party under the Native American Graves Protection and Repatriation Act, 25 U.S.C. §3001 *et seq.*
- 12.4 Nothing in this Compact shall be construed as a waiver of (a) any claim made by the Navajo Nation in the pending litigation known as *Navajo Nation v. United States* (No. 508-88L in the United States Court of Federal Claims), (b) any claim made by the Navajo Nation in the pending litigation known as *Navajo Nation v. United States* (No. 93-763L in the United States Court of Federal Claims), or (c) any claim made by the Hopi Tribe in the pending litigation known as *Hopi Tribe v. United States* (No. 00-217L in the United States Court of Federal Claims). Neither this Compact nor the approval of this Compact by the United States Secretary of the Interior may be used in the litigation identified in subpart (a) above as proof that the Navajo Nation had title to the so-called "Bennett Freeze" area as of the time of imposition of the "Bennett Freeze," but the Navajo Nation does not waive its right to introduce any other evidence as to such issues.
- 12.5 The rights and interests granted in this Compact are effective on the Effective Date and do not require execution of any other instrument or recordation of this Compact or any other instrument.
- 12.6 All current and future enrolled members of the Navajo Nation and the Hopi Tribe are third-party beneficiaries of this Compact, but no such member shall have the right as an individual to institute or participate in any legal proceeding involving this Compact, including any arbitration or lawsuit authorized by Article 8. This Section shall not be interpreted to imply that this Compact authorizes any form of legal proceeding other than those specifically provided for herein.

### **Article 13: Applicable Law**

- 13.1 Unless otherwise expressly provided herein, this Compact shall be interpreted according to Arizona law, except that the property rights and interests described in this Compact are to be interpreted in accordance with the Restatement (Third) of Property as it exists on the Effective Date.

### **Article 14: Severability of Provisions**

- 14.1 If any provision of this Compact is held to be void or unenforceable, all other provisions shall nonetheless continue in full force and effect.

