



WATER-RIGHT DOCKET

Natural Bridges National Monument

Docket No: 4

AGREEMENT WITH STATE

State Water Rights Documentation

10-28-2010: Water Rights Agreement

NATURAL BRIDGES NATIONAL MONUMENT

WATER RIGHTS AGREEMENT

This Agreement is made and entered into by the United States of America ("United States") and the State of Utah ("Utah" or the "State").

RECITALS

A. Utah has initiated a statutory general adjudication of water rights entitled "IN THE MATTER OF THE GENERAL DETERMINATION OF RIGHTS TO THE USE OF WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF THE COLORADO RIVER IN SAN JUAN, GRAND AND UINTAH COUNTIES, UTAH AND EXCLUSIVE OF THE GREEN RIVER DRAINAGE," filed in the Seventh Judicial District, Grand County, State of Utah, as Civil No. 810704477. This adjudication is commonly referred to as the Southeastern Colorado River General Adjudication (the "General Adjudication") and encompasses the area within which the Natural Bridges National Monument (the "Monument") is located, which area is within the Colorado River drainage (Area 99). The United States has not yet been joined as a party in the General Adjudication. However, in order to remove any causes of present and future controversy over use of water at the Monument, the United States and Utah have conducted negotiations regarding a federal reserved water right for the Monument.

B. These negotiations have resulted in the recognition of a federal reserved water right of the United States for the Monument, subject to the terms and conditions set forth herein and in resolution of all such existing rights for the Monument.

AGREEMENT

NOW, THEREFORE, based on the mutual promises contained herein, the parties agree to the following:

1. Establishment of Monument. The Monument was established by Presidential Proclamation No. 804, 35 Stat. 2183, dated April 16, 1908; Presidential Proclamation No. 881, 36 Stat. 2502, dated September 25, 1909; Presidential Proclamation No. 1323, 39 Stat. 1764, dated February 11, 1916; Presidential Proclamation 3486, 76 Stat. 1495, dated August 14, 1962; and Public Land Order 3352, Utah 0118454, dated March 23, 1964, pursuant to the Antiquities Act of June 8, 1906, 34 Stat. 225, 16 U.S.C. § 431. The purposes for which the Monument was established under these Proclamations and Public Land Order, in conjunction with the National

Park Service Organic Act of August 25, 1916, 64 Stat. 535, 16 U.S.C. § 1, include: the preservation and protection of three extraordinary natural bridges and surrounding prehistoric ruins, the preservation of the area for scientific research, the protection of objects of historic and scientific interest, and the conservation of "the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 U.S.C. § 1). The lands comprising the Monument and the dates on which the lands were reserved are shown in attached Appendix A and are described in the applicable proclamations identified herein.

2. Recognition of Federal Reserved Water Right. To fulfill the purposes for which the Monument was established and subject to the terms and conditions of this Agreement, the United States has a federal reserved right to all naturally occurring water underlying, originating within, or flowing through the Monument (which includes intermittent and ephemeral streams, springs, seeps, ground water, and other natural sources of water) that was unappropriated as of the dates of reservation of the lands now within the boundaries of the Monument. The United States' federal reserved water right shall have four separate priority dates corresponding to the four dates on which the lands comprising the Monument were first reserved from the public domain for Monument purposes on April 16, 1908, September 25, 1909, August 14, 1962, and March 23, 1964, with the priority date of a particular place of use being the date of reservation of those lands.

3. Uses of Federal Reserved Water Right. The United States' federal reserved water right may be used as follows:

3.1 Administrative Uses. In the exercise of its federal reserved water right, the United States may, for administrative uses, divert up to 30 acre-feet per year (AFY) and deplete up to 25 AFY from within the boundaries of the Monument. Such administrative uses include but are not limited to: domestic, culinary, irrigation, landscaping, and campground uses; the excavation, restoration, and preservation of ruins; the construction of visitor facilities; and other administrative uses that shall satisfy the existing and future requirements for the operation and protection of the Monument. In addition, the United States may divert such additional amounts of water as are necessary for emergency fire suppression within the Monument, and such diversions shall not be charged against the maximum annual diversions and depletions that the United States

may make for administrative uses, as described in this paragraph.

3.2 In Situ Uses. The remainder of the water reserved to the United States pursuant to its federal reserved water right shall remain in its free flowing and natural condition for "in situ" uses that shall satisfy and promote the purposes for which the Monument was established. Such in situ uses include but are not limited to providing water for: riparian and wetland vegetation and ecosystems; hanging gardens; geomorphological processes; wildlife habitat and watering; and other uses that shall satisfy and promote the scenic, conservation, preservation, protection, recreational, and other purposes for which the Monument was established.

4. Subordination of In Situ Uses. The United States hereby subordinates the portion of its federal reserved water right held for in situ uses (but not administrative uses) as follows:

4.1 Subordination to Existing Water Rights. The United States hereby subordinates the portion of its federal reserved water right held for in situ uses to all: (1) valid existing water rights that have been perfected and are of record in the Utah Division of Water Rights (the "Division") as of the date of the last party's signature to this agreement (the "Effective Date"); (2) valid diligence claims that are submitted to the Division after the Effective Date; and (3) applications to appropriate, change, or exchange water with proposed points of diversion and places of use outside the Monument but within the sub-basins described in Paragraph 4.2.1 and/or in the ground water protection zone described in Paragraph 5.1 (collectively "Protected Area") and that have been approved by the Utah State Engineer prior to the Effective Date, but that have not been perfected.

4.2 Limited Subordination to Pending or New Applications Outside of Monument. In addition to the foregoing subordination, the United States hereby further subordinates the portion of its federal reserved water right held for in situ uses to applications to appropriate, change, or exchange water that are pending (unapproved) as of the Effective Date or filed with the Division after the Effective Date, if: (1) the applications are subsequently approved by the State Engineer; and (2) the respective approvals authorize points of diversion and places of use outside the Monument but within the Protected Area and water use that does not exceed the following diversion and storage capacity limits (collectively "Newly Approved Applications"):

4.2.1 Within the portion of the White Canyon drainage basin that is comprised of the sub-basins of Armstrong Canyon, Burch Canyon, Deer Canyon, and White Canyon (see attached Appendix C), the subordination shall be limited to Newly Approved Applications with maximum combined diversions from surface water and ground water sources of 200 acre-feet per year (AFY), with maximum combined diversions from surface water sources of 100 AFY and maximum combined diversions from ground water sources of 150 AFY;

4.2.2 Within the Armstrong Canyon and White Canyon sub-basins, the subordination shall be further limited to Newly Approved Applications with maximum combined diversions from surface water and ground water sources of 75 AFY in each sub-basin;

4.2.3 Within the Burch Canyon and Deer Canyon sub-basins, the subordination shall be further limited to Newly Approved Applications with maximum combined diversions from surface water and ground water sources of 50 AFY in each sub-basin;

4.2.4 For Newly Approved Applications that seek the right to store water in the Armstrong Canyon, Burch Canyon, Deer Canyon, or White Canyon sub-basins, the subordination shall be further limited to storage reservoirs that do not exceed the foregoing, maximum combined diversion limits and that have maximum individual storage capacities of 20 AFY or less; and

4.2.5 For Newly Approved Applications for the appropriation of ground water within the "ground water protection zone" established under Paragraph 5 herein, the subordination shall be further limited to Newly Approved Applications that do not exceed the maximum permissible diversions described in Paragraph 5.2 herein.

4.3 Inapplicability of Subordinations. The foregoing subordinations shall no longer be operative as to any perfected water rights or Newly Approved Applications that subsequently lapse, are withdrawn, forfeited, abandoned, lost through nonuse, or are otherwise terminated or reduced. The subordinations also shall not apply to or otherwise affect the portion of the United States' federal reserved water right held for administrative uses. Finally, the subordinations shall not be construed as providing

consent to any applications to appropriate, change, or exchange water filed with the Division after the Effective Date and shall not limit the United States' right to protest any such applications.

4.4 New Change or Exchange Applications. For purposes of the diversion and storage capacity limits applicable within the Protected Area, any Newly Approved Application that seeks to change or exchange a point of diversion for an existing water right: (1) from one location within the Protected Area to another location within the Protected Area; (2) from within the Protected Area to outside the Protected Area; or (3) from outside the Protected Area to within the Protected Area, shall be administered as follows:

4.4.1 The Newly Approved Application shall be subject to the diversion and storage capacity limits applicable to the new point of diversion, if any; and

4.4.2 Upon approval of the change or exchange application, the diversion and storage capacity limits applicable to the prior point of diversion, if any, shall be credited in an amount equal to the volume and/or rate of flow permitted at the prior point of diversion, but only to the extent that the new point of diversion is located within a different portion of the Protected Area (e.g., the new point of diversion is in a different section of land (approximately 640 acres) within the ground water protection zone, a different sub-basin within the Protected Area, and/or within one of the Protected Area's sub-basins but no longer within the ground water protection zone).

4.5 Enforcement of Subordination Limits. The State Engineer shall not approve any applications to appropriate, change, or exchange water that are pending (unapproved) as of the Effective Date or filed with the Division after the Effective Date, in excess of the subordination limits set forth in Paragraph 4.2.1 through 4.2.5 herein.

5. Ground Water Protection Zone. Utah hereby recognizes and establishes a ground water protection zone to protect the flow of seeps, springs, ground water, and other naturally occurring water within the Monument whose source is the Cedar Mesa Sandstone (see attached Appendix D).

5.1. Areas Within Ground Water Projection Zone. The ground water protection zone includes: the SE1/4 of Section 22, the S1/2 of Section 23, Section 24, the NW1/4 of Section 25, the N1/2 and the W1/2 of the SW1/4 of Section 26, Section 27, and the NW1/4 of the NE1/4, the NW1/4, the N1/2 of the SW1/4, and the SW1/4 of the SW1/4 of Section 34, Township 36 South, Range 17 East; Sections 19, 20, and 29, Township 36 South, Range 18 East; the S1/2 of the NW1/4 and the SW1/4 of Section 10, the NE1/4 and the S1/2 of Section 12, Section 13, the S1/2 of Section 14, the W1/2 of the NE1/4, the NW1/4, and the S1/2 of Section 15, the N1/2 of Section 22, the N1/2 of Section 23, and the N1/2 of Section 24, Township 37 South, Range 17 East; Section 5, the NE1/4 and the S1/2 of Section 6, Section 7, the NW1/4 of Section 8, and the NW1/4 of Section 18, Township 37 South, Range 18 East, SLB&M.

5.2. Diversion Limits Within Ground Water Projection Zone. Within the ground water protection zone, the State Engineer shall not approve any applications to appropriate, change, or exchange ground water that are pending (unapproved) as of the Effective Date or filed with the Division after the Effective Date: (1) with maximum individual well diversion rates in excess of 0.015 cubic feet per second (cfs) or maximum individual diversions per section of land in excess of 10 AFY; or (2) that would allow maximum combined diversions from all existing and new wells to exceed 10 AFY per section of land; or (3) that would allow diversions or storage in excess of the subordination limits set forth in Paragraphs 4.2.1 through 4.2.4 herein.

6. Relationship Between United States' Federal Reserved Water Right and Its State-Based Appropriative Water Rights. In addition to the federal reserved water right recognized by this Agreement, the United States also currently owns three state-based appropriative water rights for the Monument, which are listed and summarized in the attached Appendix B (the "state-based rights").

6.1 Federal Reserved Water Right Number. Upon execution of this Agreement, the State Engineer shall assign a water right number in the Utah Division of Water Rights' records for the federal reserved water right recognized by this Agreement. The United States shall provide at least 90 days prior written notice to the State Engineer before developing and/or using any new source of water for administrative uses, pursuant to Paragraph 3.1 herein, under the federal reserved water right.

6.2 Merger of State-Based Appropriative Rights. Upon the issuance of a final, non-appealable decree confirming and adjudicating the federal reserved water right recognized by this Agreement, the United States' state-based rights shall be merged into the portion of its federal reserved water right held for administrative uses, and diversions and depletions for administrative uses under the merged rights shall thereafter be governed solely by the diversion and depletion limits of Paragraph 3.1.

7. Entirety of Federal Reserved Water Right. The federal reserved water right recognized herein includes all water rights of every nature and description derived under federal law from the doctrine of federal reserved water rights from all sources of water, both surface and underground, and includes all types and kinds of uses whatsoever, and encompasses the entire federal reserved water right held by the United States for the Monument as now constituted. Absent Congressional or Presidential action, the federal reserved water right for the lands now constituting the Monument shall not be enlarged, expanded or re-quantified.

8. Issuance of Proposed Determination. The United States has not been joined as a party in the General Adjudication pursuant to the 43 U.S.C. § 666. Upon joinder of the United States in the General Adjudication, Utah agrees to issue, within a reasonable time, a Proposed Determination or, in the event a Proposed Determination has already been issued, an Addendum to the Proposed Determination consistent with the terms of this Agreement. The parties hereto will cooperate to obtain an interlocutory decree on the Proposed Determination, provided that this Agreement shall remain binding on the parties if and when such interlocutory decree is entered and after the entry of the final decree, except to the extent that any of the provisions of the operative decree conflict with the terms of this Agreement.

9. Modification of Agreement. The provisions of this Agreement may be modified only in writing and upon the mutual consent of the parties to this Agreement, which consent shall not be unreasonably withheld.

10. Limitations on Effect of Agreement. Nothing in this Agreement shall constitute an admission, waiver, or precedent as to any party for any other federal reserved water right claim, or create any third party rights. Without limiting the foregoing, nothing in this Agreement shall be construed or interpreted to:

10.1 In any way affect any water rights of the United States other than the water rights held by the United States for the Monument in the Colorado River Basin within the context of the General Adjudication;

10.2 Establish any precedent or standard to be used for the quantification of federal reserved water rights in any other judicial or administrative proceeding;

10.3 Limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;

10.4 Restrict the power of the United States to reserve water in the future, or to acquire additional rights to the use of water under the laws of Utah;

10.5 Restrict the power of Utah or the State Engineer to allocate, administer or distribute the waters of the State, except as expressly provided in this Agreement; or

10.6 Settle other federal reserved water rights of the United States.

11. Protection of Federal Reserved Water Right Under State Law. The federal reserved water right of the United States, as set forth and quantified herein, shall be protected under State law in the same manner as any water right originating under State law, without losing its character as, or the attributes of, a federal reserved water right as provided under federal law.

12. Water Right Records. Utah water right records are available for public inspection. Upon request, the State Engineer will cooperate with the United States to provide information to the United States regarding new water right applications in the portion of the White Canyon drainage basin that is comprised of the sub-basins of Armstrong Canyon, Burch Canyon, Deer Canyon, and White Canyon (see attached Appendix C).

13. Duplicate Copies. This Agreement may be executed in duplicate. Each of the duplicate copies bearing original signatures shall be deemed an original.

It being resolved and agreed to as delineated above, the undersigned parties express their mutual agreement hereto this 28th day of October, 2010.

For the State of Utah:


Gary Herbert
Governor

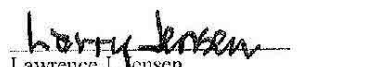

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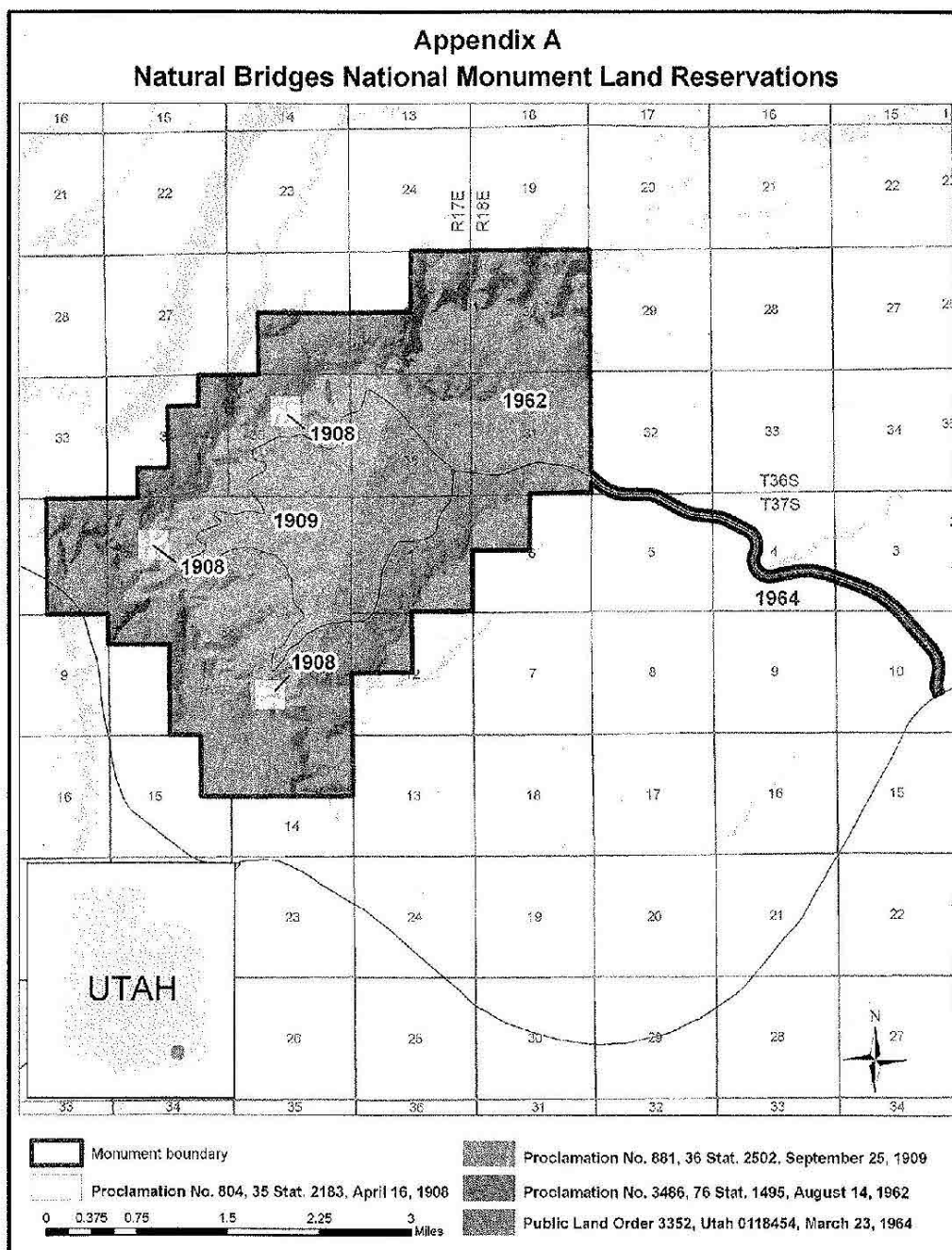

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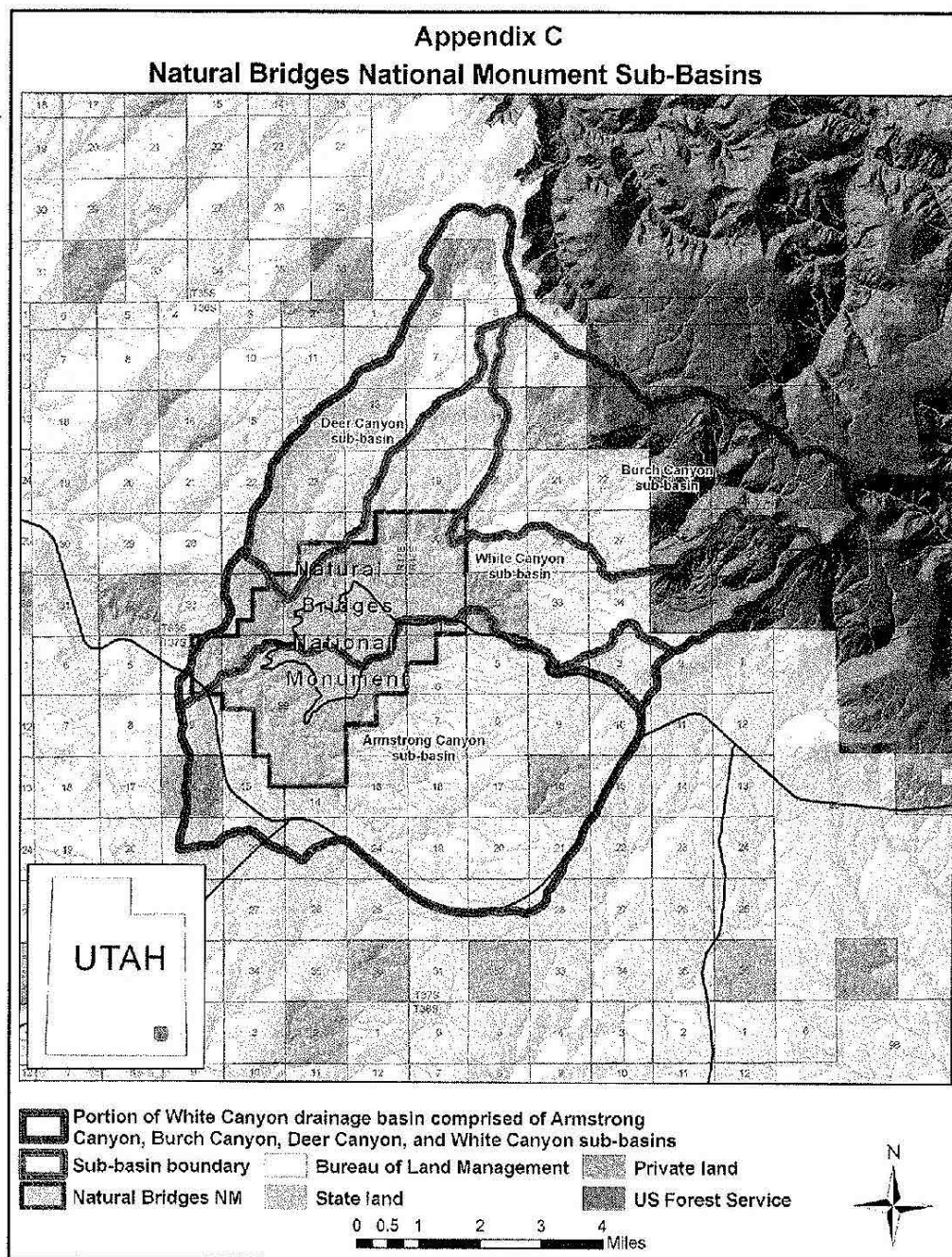

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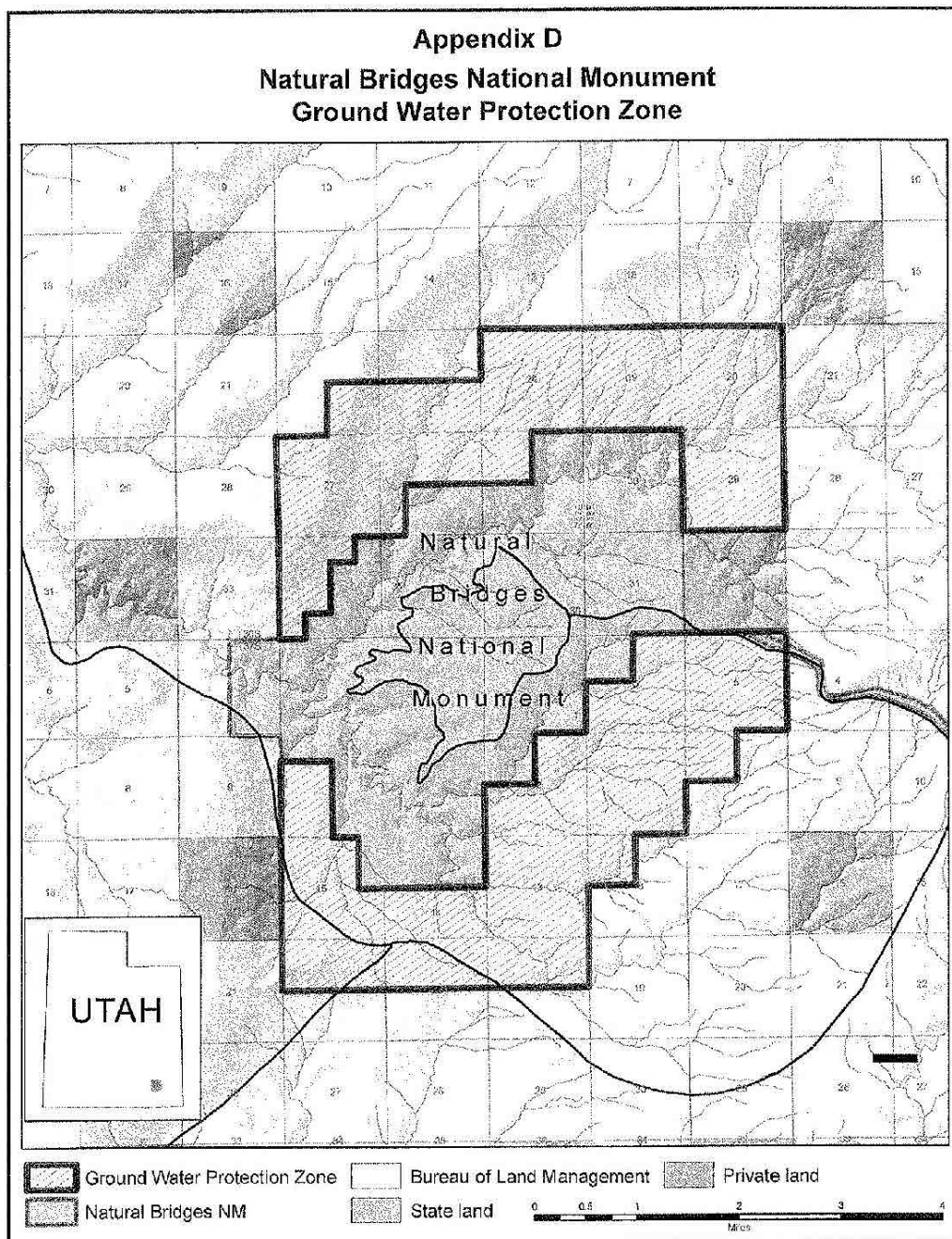


Appendix B

The United States' three state-based appropriative water rights for administrative uses in the Monument as of the Effective Date (as defined in Agreement Paragraph 4.1).

Water Right No.	Water Source	Diversion Works	Priority Date	Point of Diversion (Salt Lake Base and Meridian)	Place of Use	Type of Use	Period of Use	Current Diversion Rate (cfs)
99-37	Headquarters Well #1	6 in. Dia. Well - 650 ft. Deep	April 27, 1964	N. 1236 ft., W. 3947 ft. from SE Cor. Sec. 31, T36S, R18E	Within the Exterior Boundaries of the Monument	Domestic and Other	01/01-12/31	.006
99-38	Headquarters Well #2	10 in. Dia. Well - 700 ft. Deep	October 13, 1964	N. 1007 ft., W. 2734 ft. from SE Cor. Sec. 31, T36S, R18E	Within the Exterior Boundaries of the Monument	Domestic and Other	01/01-12/31	.016
99-88	Headquarters Well #3	8 in. Dia. Well - 750 ft. Deep	October 17, 1980	S. 1950 ft., W. 575 ft. from N4 Cor. Sec. 6, T37S, R18E	Within the Exterior Boundaries of the Monument	Domestic and Other	01/01-12/31	.02





Docket Information

Number of Documents in Docket 13

Documents Dated from 10/28/2010 to 10/28/2010

Docket Compiled: 5/9/2012