

## 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

